

CONTRACTS.

We now proceed to consider matters more particularly pertaining to contracts.

Some seventy-two in all were entered upon before the date of our Commission, which may be grouped as follows, viz. :—

Telegraph Construction. Nos. 1, 2, 3, 4.

Road-bed Construction :

Woodland region—

Between Ottawa and Nipigon. Nos. 12, 16, 37.

Between Nipigon and Fort Garry. Nos. 5, 5a, 13, 14, 15, 25, 33, 41, 42.

Prairie region. Nos. 48, 66.

Mountain region. Nos. 60, 61, 62, 63.

Steel Rails. Nos. 6, 7, 8, 9, 10, 11, 44, 45, 46, 53, 54, 55.

Bolts, Nuts and Spikes. 29, 30, 31, 32, 35, 47, 50, 51.

Transportation of Rails. Nos. 17, 18, 20, 21, 22, 27, 28, 34, 39, 52, 69, 70.

Minor Construction—Ties, Engine-houses, Station buildings, &c. Nos. 19, 23, 24, 26, 32a, 36, 38, 40, 49, 56, 57, 58, 59, 64.

Equipment, &c. Nos. 65, 67, 68.

Operating—Pembina Branch. No. 43.

The expenditure upon construction for each fiscal year, from 1st July, 1871, to 30th June, 1880, is given below; and (for convenience of reference) the figures already given in respect of engineering are here reproduced in a parallel column.

Year.	Surveys, Explorations and Engineering.	Construction, including Fort Francis Locks.	Grand Total.
	\$ cts.	\$ cts.	\$ cts.
1871	30,148 32	.....
1871-1872	489,428 16	.....
1872-1873	561,818 44	.....
1873-1874	310,224 88	.....
1874-1875	474,529 19	1,071,712 48	
1875-1876	791,121 19	2,555,445 87	
1876-1877	754,624 57	936,525 40	
1877-1878	322,695 42	1,905,877 71	
1878-1879	281,123 92	1,959,161 55	
30th June, 1880.....	150,973 68	3,893,549 04	
Total	4,166,687 77	12,322,072 05	16,488,759 82

TELEGRAPH LINES.

The first contracts made in connection with the Canadian Pacific Railway related to the construction of telegraph lines. The Statute entitled "An Act to provide for the construction of the Canadian Pacific Railway" was assented to on the 26th of May, 1874, (37 Vict., Chap 14), and contained the following sections concerning works which embrace the construction of the telegraph line :—

"Section 5. A line of electric telegraph shall be constructed in advance of the said railway and branches along their whole extent respectively, as soon as practicable after the location of the line shall have been determined upon."

"Section 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."

Under the date of 18th June, 1874, the Government issued the following advertisement:—

“ A.

“ Canadian Pacific Railway Telegraph Line.

“ Proposals are invited for the erection of a line of Telegraph along the general route of the Canadian Pacific Railway, as may be defined by the Government.

“ The proposals to embrace the following points, viz.:

“ The furnishing of all materials, labour, instruments and everything necessary to put the line in operation.

“ The maintenance of the line for a period of five years after its completion.

“ In the wooded sections, the land to be cleared to a width of 132 feet, or such greater width as may be necessary to prevent injury to the Telegraph from fires or falling trees.

“ Distinct proposals to be made for each of the following sections: such proposals in each case to state the time when the party tendering will undertake to have the Telegraph ready for use:—

“ (1.) Fort Garry to a point opposite Fort Pelly, about 250 miles.

“ (2.) Fort Garry to a bend of the North Saskatchewan, about 500 miles.

“ (3.) Fort Garry to a point in the longitude of Edmonton, about 800 miles.

“ (4) Lac la Hache, or other convenient point on the existing telegraph system in British Columbia, to Fort Edmonton, about 550 miles.

“ (5.) Fort Garry to Nipigon, Lake Superior, about 420 miles.

“ (6) Ottawa to Nipigon, Lake Superior, about 760 miles.

“ The above distances are approximate. They are given for the general guidance of parties desiring information.

“ Any increase or diminution in the ascertained mileage after construction will be paid for or deducted as the case may be, at a rate corresponding with the sum total of the tender.

“ Parties tendering must satisfy the Government as to their ability to carry out the work and maintain it for the specified time.

“ Proposals addressed to the Minister of Public Works will be received up to the 22nd day of July next.

“ By Order,

“ (Signed) F. BRAUN,

“ Secretary.

“ Department of Public Works,

“ 18th June, 1874.”

Under the same date a memorandum was prepared as follows:—

“ MEMORANDUM.

“ Information to Parties Proposing to Tender.

“ It is deemed best to make no binding stipulations as to the form of proposal, so that parties tendering may be at liberty to state their own terms and conditions, leaving the Government to accept the offer which in the interest of the public may be found most advantageous.

"At the same time it is considered advisable to furnish some data for the guidance of parties tendering in order that proposals may be made on the same basis and be uniform in essential points.

"The following is, therefore, with this object in view, submitted :—

"1st. It is intended that the Telegraph shall be built along the line to be adopted by the Government for the railway across the continent.

"2nd. The general character of the country to be traversed by the railway is described in the reports relating to exploratory surveys recently published.

"3rd. The several routes now under consideration and survey are also referred to in the above reports.

"4th. When the route is adopted by the Government on any particular section, the line to be followed by the Telegraph will be defined on the ground by Government officers.

"5th. Through forest the timber must be cut down and completely burned (cleared) to a width of two chains (132 feet) to prevent injury to the Telegraph from falling trees or fire ; at the option of the contractor valuable timber may be cut in lengths, hewn, piled and reserved at his risk.

"6th. Along the cleared ground a pack trail or road to be made for the purpose of carrying material for constructing the Telegraph, and for effecting repairs.

"7th. Through forest the poles should be of moderately large dimensions and of the best available timber to be had in each locality.

"8th. In prairie sections, when suitable timber for permanent poles cannot be obtained until the railway be constructed, and the means of conveying them from a distance thus provided, the poles may be of an average light description, and of such timber as can most conveniently be procured.

"9th. In forest sections the poles may be erected 132 feet apart, and the wire to be used may be that known as No. 11.

"10th. In prairie sections, the poles may be erected 176 feet apart, and the wire to be used may be that known as No. 9.

"11th. Each tender will specify the kind of insulator, as well as all other apparatus and materials proposed to be used.

"12th. Parties tendering may stipulate for maintaining and operating the line for five years, or a longer period.

"13th. On account of the difficulties in the way of transporting building material, it is not expected that the Telegraph will, in the first place, be so permanently constructed as could be desired. The main object, however, is to provide a pioneer line throughout the whole extent of the country, to assist in the building of the railway and settlement of the country. On the completion of the railway through any section, the Telegraph may then be reconstructed under new arrangements.

"14th. In the advertisements the sections are placed in the order in which parties tendering may propose to finish the erection of the Telegraph, and they are at liberty to make a distinct proposal for each separate section, or for the whole line.

"15th. The whole of the section between Lake Nipissing and Fort Garry is wooded, with the exception of about 30 miles of prairie east of the Red River.

"16th. Between Fort Garry and Fort Pelly the country is partly wooded and partly prairie ; the exact proportions are not yet known.

" 17th. Between Fort Pelly and Edmonton the country is prairie.

" 18th. Between Fort Edmonton and the telegraph system in British Columbia, the country is generally wooded, although some mixed prairie and woodland is met west of Fort Edmonton, as well as unwooded bunch grass land in portions of the central plateau of British Columbia.

" 19th. In the valley of the River Thompson there is a growth of fine timber from 6 to 10 feet in diameter. It will not be necessary to clear in that locality to the full width of 132 feet, it will be sufficient to clear and burn up the underbrush and lower branches of the trees so as to render the telegraph secure from damage.

" 20th. The advertisement describes the 6th section as extending from Nipigon to Ottawa, but the object being to connect the Pacific Telegraph Line with the seat of Government, it will be sufficient to make a connection with the telegraph system of Ontario at the most convenient point. It is reported that a telegraph line will be completed to the south-east angle of Lake Nipissing before the close of this season. The distance from Lake Nipissing to Nipigon is about 420 miles.

" 21st. It should be understood that section No. 1 is embraced in section No. 2, and both are covered by section No. 3.

" 22nd. Tenders should give a distinct rate per mile for the line through wooded and prairie land respectively for the sections where both exist.

" DEPARTMENT OF PUBLIC WORKS,

" 18th June, 1874."

At the time of receiving tenders the location of the railway along which the telegraph line was to be erected, had not been determined on.

On the 22nd day of July, the day named for the final reception of the tenders, a large number had been received.

In the Department of Public Works the opening of tenders was occasionally postponed beyond the last hour named for receiving them, in order to allow for the arrival of mails which might be carrying some, and which might be delayed without the fault of the sender. In this instance they were not opened till the sixteenth day after that named in the advertisement. On the 7th August, 1874, Mr. Trudeau, the Deputy Minister, Mr. Braun, the Secretary, and Mr. Fleming, the Engineer-in-Chief, met for the purpose of ascertaining the contents, and a record of the combined judgment of these gentlemen upon the substance and meaning of each offer was then made; this original document was produced before us (exhibit 1). (See page 2, Blue Book Return to Commons, 1st. April, 1876)

It contains one column for the names of the tenderers, one for each section and one for the whole line, and particulars are given concerning each section or the whole line in the column pertaining thereto.

Subsequently on the 12th August, Mr. Fleming submitted a report in which he points out the general bearing of the tenders as a whole. (See Blue Book Return to Commons, 1st April, 1876, page 21.) In it he says :

“It is clear from the above that if the work can be completed for the lowest tenders it would be best to let the contracts by sections.”

The Government proceeded accordingly to deal with the works of the telegraph line by sections.

CONTRACT No. 1.

Telegraph Construction.

By this contract, dated 17th October, 1874, John W. Sifton, David Glass and Michael Fleming undertook to construct the telegraph line between Fort Garry and a point opposite Fort Pelly, “agreeably to the true intent and meaning of the specification or advertisement and memorandum” attached to the said contract and otherwise as described in the said contract, together with station houses, and to “maintain the line in good running order for a period of five years from the date of completion,” receiving \$492 per mile through woodland, and \$189 per mile through prairie land, considered then to be equal to a total of \$107,850 for the construction and also the profits of the line, together with \$16 per mile per annum for the operation and maintenance of the line,—which last item was then estimated to be equal to \$20,000.

The advertisement shows that for the purpose of receiving tenders the whole of the telegraph line, between the then existing telegraph system in British Columbia on the west, and Ottawa on the east, had been divided into four parts, and numbered as sections, in the following manner :—

- Ottawa to Nipigon, Lake Superior, (No. 6.)
- Nipigon, Lake Superior to Fort Garry, (No. 5.)
- Fort Garry to Edmonton, (No. 3.)
- Edmonton to the British Columbia system, (No. 4.)

A separate tender was invited for each of these sections, as well as one for the whole line.

In addition to the above divisions of the line, Section 3 was subdivided in two ways; by one way into two parts, of which the easterly, that between Fort Garry and Fort Pelly, was designated Section 1. By another way into two parts, of which the easterly, that between Fort

Garry and the bend of the North Saskatchewan River, was designated Section 2. And by the same advertisement tenders were invited for each of these easterly parts of Section 3; but none were asked for either of the westerly parts of the said sub-divisions.

The effect of this scheme was that if any tender for Section 1 or 2 should be accepted, the westerly part of Section 3 would be left without any offer concerning it; and it is for such a part that the contract next after this, was made with Richard Fuller, the easterly part alone being provided for in the contract now under consideration. Contracting separately for different portions of Section 3 was not the course first decided on. The lowest tender for the whole of it was accepted, and it was only after the Government found such tender to be unavailable, that letting the work by sub-division was entertained.

In our report on Contract 2, we discuss the method finally adopted for constructing and maintaining the line over that distance known as Section 3, and in the meantime we confine our remarks, as far as practicable, to the matters which affect the contract for Section 1, irrespective of any means of finishing either the whole or the residue of Section 3.

On August 10th, 1874, Mr. Fleming made a report (see page 10 of the Blue Book Return to Commons, 1st April, 1876), which was accompanied by sheets, "intended to show by simple inspection the comparative value of each tender, for each section, and for the whole line."

Each sheet refers to a distinct portion of the line; sheet No. 1 to Section No. 1, for which he states the six lowest proposals to be as follows:—

Tender.	Construction.	Maintenance per Annum.	Time for Completion.
R. Fuller, Winnipeg	\$ 38,750	\$ 6,000	This year.
H. P. Dwight, North-West Tel. Co.	56,250	7,500	1st September, 1875.
Waddle & Smith, Kingston	106,250	\$3,000 with profits....	500 miles a year or more.
J. Sifton, Glass & Fleming, Ottawa	107,850	.....	November, 1874.
Mackenzie, Grier & Co., Toronto	115,750	\$70,000 whole line....	1st September, 1875.
Mitchell, McDonald & Gough, Toronto	154,200	\$265,000 do ...	31st December, 1874.

In this report the firm of Sifton, Glass & Co. get for the first time a standing in the competition for Section 1. In the general schedule of the 7th August, 1874, prepared under the judgment of the three officials before named, the tender of this firm was held to apply to nothing less than the whole line. In the column appropriated in that schedule to the whole line, there is this memorandum: "\$1,290,000, including maintenance; complete 22nd July, 1876. Average cost, \$629 forest; average cost, \$259 prairie."

In other columns dates are given at which they propose to finish specified sections; in that for Section 5 is this memorandum: "Complete 22nd July, 1875." In that for Section 1: "Complete 22nd November, 1874." But in the column for Section 1 there is no reference to a price.

There is nothing to show why the combined judgment of these three officials was overruled, and why Mr. Fleming alone gave this firm a standing, which when in concert with the Deputy Minister and the Secretary of the Department, he did not accord to them. All that can now be ascertained upon this is that after Mr. Fleming's report of 10th August, Sifton, Glass & Co. were assumed to be tenderers for Section 1. The following is their tender in full:—

"In the matter of the Canadian Pacific Railway telegraph line about to be contracted for by the Government of the Dominion of Canada.

"1. We, the undersigned residents of the Province of Ontario, make the following proposal to the Government of the Dominion:—

"2. We will do the whole of the work, along the proposed line, including all the sections thereof, and comprising the finding of the material for and the erection of 'The Telegraph Line.'

"3. The clearing of the roadway, the preparation of the pack trail, and all other matters pointed out in the advertisement and information for parties proposing to tender.

"4. We will have the section between Fort Garry and Fort Pelly completed and in working order by the 22nd of November, 1874.

"5. We will have the section between Fort Garry and Nipigon finished by the 22nd of July, 1875.

"6. We will have the whole line completed and in working order by the 22nd of July, 1876, for the sum of—

"7. One million two hundred and ninety thousand dollars; this includes maintenance.

"8. The wire, insulators and instruments to be of the very best quality. Substantial comfortable station houses of log or frame with shingle or thatched roofs to be erected at distances of not less than fifty miles apart, along the line; location of station houses to be designated by the Government.

"9. This tender to include a complete clearing of the one hundred and thirty-two feet wide, the same as for cropping. But if only roughly underbrushed, and trees cut, removing

trees and brush from centre so as to make a trail, and keep fires from the posts, with trees twenty feet from centre and leaning out from the wire not cut down; then seventy-five dollars per mile to be deducted from the wood lands.

"10. The assumed length of the whole road, from Lac la Hache, or to connect with the telegraph system of British Columbia to Lake Nipissing, or to connect with the telegraph system of the Province of Ontario, is 2,190 miles, of which 1,485 is assumed to be wood, and seven hundred and five (705) miles prairie.

"11. The average cost per mile for wood land would be \$629, for everything including telegraph clearings, pack trail, station houses, insulators, instruments, tools, etc., all of the best description; but the actual cost of each mile will vary according to the location of the forest.

"12. The average cost per mile for prairie land will be \$259, including everything as per advertisement and information for parties proposing to tender, but the actual cost per mile will depend much upon the location; for instance, the work from Fort Garry can be done much more cheaply than the sections further in the interior.

"13. In our estimate we place the wood land from Fort Garry to Winnipeg River, and from Fort Garry to Fort Pelly, at \$492 per mile, also the prairie land within a distance of 250 miles of Fort Garry, at \$189 per mile.

"14. We are prepared to proceed at once with the work, and if the contract is awarded to us will lose no time in carrying it forward under the direction and to the satisfaction of the Government.

"15. We will be glad to give full information on every subject in our power if requested so to do.

"Dated at Ottawa, this 23rd day of July, 1874.

(Signed) JOHN W. SIFTON, [Seal.]
 " DAVID GLASS, [Seal.]
 " MICHAEL FLEMING, [Seal.]

There is no allusion in this tender to a price for Section 1 as such. The document purports to give some information, and offers to give still more upon matters not necessary to mention, in order to convey a substantive offer. The tenderers say that in their estimate they place the wood land from Fort Garry to Winnipeg River, and from Fort Garry to Fort Pelly, at a certain sum per mile. There was no section corresponding to the distance between Fort Garry and Winnipeg River, and it does not seem to us reasonable to say that these remarks amounted to a tender for the distances, or either of them, to which they thus allude.

Neither does the proposal to complete Sections 1 and 5, respectively, within stated times, support the view that they were tendering for less than the whole line. Mr. Sifton, in his evidence, stated that this reference to the time of completing Section 1 was made only on the understanding that his firm should get the whole line.

On the 6th October, 1874, the Secretary of the Department telegraphed to Messrs. Sifton, Glass & Co., asking if they were prepared to contract for Section 1. Two days afterwards they sent a message to him enquiring "Does Section 1 extend from Fort Garry to Edmonton."

The transaction of the Department with Messrs. Sifton, Glass & Co., so far as it concerns Section 1, may be divided into two branches: (1.) Treating them as tenderers for that section. (2.) The terms finally granted to them. As to the first branch, we think it clear upon the evidence that the Department founded this contract upon the theory that in the public competition of July, 1874, Messrs. Sifton, Glass & Co. had made a distinct offer for the construction and maintenance of Section 1. It is not necessary, therefore, to consider how far it would have been advisable to enter upon negotiations disconnected with that competition.

We agree with the combined judgment of the Deputy Minister, the Secretary and the Chief Engineer on this subject, as recorded at the first consideration of the tenders on the 7th day of August, viz. that the tender of this firm related to the construction and maintenance of nothing less than the whole line.

We think there was no more ground for the Chief Engineer interpreting it afterwards as a tender from Fort Garry to Fort Pelly, than for calling it a tender from Fort Garry to Winnipeg River. The same language is used concerning each of these distances, and as there was no section from Fort Garry to Winnipeg River, it follows that the said language ought not to be construed as applying to any of the advertised sections for which separate offers might be made.

Assuming, however, that it was competent for the Department in this case, without breach of faith to other competitors, and for other grounds not disclosed by the evidence, desirable to treat the tender in question as a distinct offer for Section 1, we have not found in that document, or in any other evidence, the reason for granting to Messrs. Sifton, Glass & Co., terms so advantageous as those covered by this contract.

In order to consider this branch of the transaction, it will be necessary to recall Mr. Fleming's report of 10th August, 1874, in which he gave the prices asked by the six lowest tenderers, and ranked them as follows:—

1. R. Fuller.
2. H. P. Dwight.

3. Waddle & Smith.
4. Sifton, Glass & Co.
5. Mackenzie, Grier & Co.
6. Mitchell, McDonald & Gough.

Fuller's offer could not be utilized for reasons explained in our report on Contract 2; the one finally made with him for the residue of Section 3, after deducting this Section 1.

On the 16th September, 1874, the Secretary of the Department enquired whether Mr. Dwight was prepared to carry out his offer for Section 1. On the next day Mr. Dwight answered in the negative. This, according to the ranking by Mr. Fleming before mentioned, and contained in the report of the 10th August, left Waddle & Smith's tender the only obstacle to treating with Sifton, Glass & Co.

The offer of Waddle & Smith was, as stated in Mr. Fleming's report before mentioned, \$106,250 for construction, and \$3,000 per annum for the five years, with profits for maintainance, they finding offices at an average distance of twenty-five miles apart. It appears to have been decided that this ought not to be accepted, though a better offer for the Government than the final one by the successful firm. A report of Mr. Fleming, dated 13th October, 1874, purports to give a reason for this decision. This report, however, was made several days after the letter of Mr. Braun to Messrs. Sifton, Glass & Co., enquiring on 6th October, if they were prepared to contract, and after their answer in the affirmative. Mr. Fleming's reason is as follows: "It has already been determined not to award two sections to Messrs. Waddle & Smith."

This remark has reference to the following circumstances:—Waddle & Smith had made the lowest eligible tender for Section 4, as well as for Section 5. In a report of Mr. Fleming, of 12th August, 1874, hereinbefore alluded to, and in which he recommended, amongst other things, the letting of specified sections on specified tenders, he made the following remarks, concerning Section 4, which extended from the telegraph system of British Columbia to Edmonton:—

"The next lowest is the tender of Waddle & Smith, of Kingston; but as these gentlemen are the lowest for Section 5, which, if awarded to them, would require all their energies to complete it, and as Section 5 extends from Fort Garry to Lake Superior, while Section 4 is for a great extent beyond the Rocky Mountains, I do not think it would be advisable to place both sections in the hands of the gentlemen last referred to."

This language conveys to us the idea, that Mr. Fleming's objection to the award of the two sections to Waddle & Smith, was based upon the great intervening distance between Sections 4 and 5, and we do not see that the adoption of this last mentioned report of Mr. Fleming determined that two sections should not in any case be awarded to Messrs. Waddle & Smith, particularly if they were, as in this case, adjoining sections, with Fort Garry, the best base of supplies as a common terminus. It decided no more than that two named sections, one from Fort Garry eastward and the other from Edmonton westward, ought not to be awarded at the same time to Waddle & Smith. Mr. Trudeau in his evidence suggests another reason for passing over Waddle & Smith's tender for Section 1, viz.: that they omitted to furnish the required security when they had the opportunity of doing so in order to take another contract, that for Section 5. We deal with the question whether on that occasion Waddle & Smith failed in doing what was required of them in our report on contract No. 4, which was given to Oliver, Davidson & Co., for Section 5. We think, however, that their action or omission in that case, did not influence the decision to pass them by in favour of Sifton, Glass & Co., in this case, for the evidence shows that the Secretary of the Department proposed on the 6th of October, 1874, to contract with Messrs. Sifton, Glass & Co., and that on a later day, the 21st of that month, he was corresponding with the Minister of Justice, concerning the nature and amount of the security to be furnished by Messrs. Waddle & Smith in relation to Section 5.

We cannot learn from any of the witnesses that the expediency of awarding this contract to Messrs. Waddle & Smith, together with the adjoining section from Red River to Thunder Bay, was taken up for consideration. None of the officials state that this feature was discussed, and it seems to have been taken for granted that because Mr. Fleming had advised against giving them two sections, one from Lake Superior to Red River, and the other from Edmonton to the telegraph system of British Columbia, therefore they ought not to have two sections, though having practically a common terminus at Winnipeg.

Tenders had been invited for the construction of the whole line under one contract, and that course was not adopted, apparently on the ground that it would be built at less expense with separate agreements. Mr. Fleming's report of 12th August, concerning the comparative cost of building the line

on one tender or on several, reads: "It is clear from the above that if the work can be completed for the lowest tenders, it would be best to let the contract by sections." There is no evidence of a Departmental decision, that under no circumstances should adjoining works be carried on by a single management; but in this case it seems to have been assumed that there had previously been such a decision.

Whether at the time of discarding Messrs. Waddle & Smith's tender, the expectation that the whole distance from Fort Pelly to Thunder Bay, Sections 1 and 5, would, under two contracts, be built with more speed and efficiency than under one, and so compensate for the higher cost which was finally promised, may be open to argument. There were no reports on that question, and, as before mentioned, apparently no discussion. We are not able to offer any decided opinion on it.

In reaching the terms finally conceded to Messrs. Sifton, Glass & Co., none more favourable were passed by—except those offered by Messrs. Waddle & Smith. The latter firm being disposed of as just mentioned, the Department, on 6th October, 1874, communicated through its Secretary to Messrs. Sifton, Glass & Co., asking if they were ready to contract for Section 1.

The day before that Mr. Fleming had reported specially on the state of affairs in relation to this section, as follows:—

"OTTAWA, 5th October, 1874.

"F. BRAUN, Esq.,

"Secretary Public Works.

"SIR,—Referring to my letter of September 16th, respecting the tender for the Pacific Railway Telegraph, and the subsequent award of Section No. 1 to the parties represented by H. P. Dwight, it appears that these parties (who have recently been here) now decline to execute the contract on the ground that they did not embrace the clearing required in the wooded portion in their calculations, and they would be required to be paid extra for clearing at the rate of \$320 per mile.

"On reference to the comparative statement prepared when the tenders were opened, embraced in my letter to you, dated August 10th, I find that the assumed length of woodland, adopted at the time for calculation, was 200 miles in this Section (No. 1.)

"Assuming that these parties were permitted to amend their tender by adding the clearing at \$320 per mile, or say \$64,000, added to their original sum, \$56,250, would make a total sum of \$120,250.

"The three next lowest tenders are as follows:—

	"Construction.	Maintenance.
"Tender Letter O.—Waddle & Smith,	\$106,250	\$3,000 per annum with profits.
" " A 1.—Sifton, Glass & Co.,	107,850	Included.
" " I.—Mackenzie, Grier & Co.,	115,750	\$70,000 for whole line.

"As Tender A 1. appears to include the maintenance of the telegraph in the price for construction, it is really the lowest of the three.

"The prices given in Tender A 1 for the section between Fort Garry and Fort Pelly are as follows :—

"Through woodland, \$492 per mile ; through prairie, \$189 per mile.

"This tender states that these prices are intended to include clearing through woodland to a width of 132 feet (as for cropping), pack trail, station houses, all material required, instruments and appliances of the best description.

"I am, &c., &c.,

"SANDFORD FLEMING."

It will be noticed that this report of Mr. Fleming is based upon a construction of the tender of Messrs. Sifton, Glass & Co., which would exclude any separate price to them for maintenance.

On the 7th October, Sifton, Glass & Co. telegraphed the Secretary that they would enter into the contract, and after an exchange of views in a correspondence upon securities, Mr. Glass came to Ottawa to represent his firm in the arrangement for closing the contract. While in Ottawa, he made it apparent to the Department that the tender of Sifton, Glass & Co. had been misconstrued, when Mr. Fleming undertook to give its meaning in his report of 10th August, before alluded to, and also in his report of 5th October, above set out.

Mr. Glass appears to have pointed out that the allusion in their tender to their estimate concerning the country from Fort Garry, eastward and westward (to Winnipeg River, and Fort Pelly, respectively), was not intended to name prices for the construction and maintenance of Section 1.

Whether this assertion awakened any doubt in the minds of the officials as to the propriety of having assumed their tender to be a complete and distinct offer for Section 1, is not to be ascertained from the evidence.

In the tenders for the construction of the telegraph line the Government had departed from the usual custom of requiring offers to be made on prescribed forms.

The memorandum for the information of parties proposing to tender opens as follows :—

"It is deemed best to make no binding stipulations as to the form of proposal so that parties tendering may be at liberty to state their own terms and conditions."

Some tenders stated prices for maintenance without reference to operating the line or the profits from it, some for maintenance and operating

without profits, some for maintenance coupled with both operating and profits.

In this case the tender of Messrs. Waddle & Smith had been in the alternative. They had offered to keep the line, or *any part of it*, in good running order at \$24 per mile per annum, without profits, or \$12 per mile per annum with profits. This was equivalent to a bid of \$15,000 for the profits to be made over and above working expenses on Section 1 for five years.

The tender of Messrs. Sifton, Glass & Co, stated by implication a price for maintenance of whole line, but made no allusion to profits. Before Mr. Glass visited Ottawa, in October, 1874, his firm had not coupled the item of profits with their offer; after his arrival he discussed the meaning of his tender in a conversation with the Chief Engineer, after which the following correspondence ensued:—

“ OTTAWA, 14th October, 1874.

“ TO SIFTON, GLASS & Co.

GENTLEMEN,—The draft of contract for the Telegraph between Forts Garry and Pelly having been referred to me, and having been under the impression that the prices named in your tender, viz.: for woodland, \$492 per mile; for prairie, \$189 per mile, covered the cost of maintenance for a period of five years; you, however, having asserted that these prices do not include maintenance, I would wish you to explain in writing the exact meaning of your tender and state the prices which you hold should be mentioned in the proposed contract.

“ Yours very truly,

“ SANDFORD FLEMING.”

“ OTTAWA, 14th February, 1874.

“ SANDFORD FLEMING, Esq.

“ DEAR SIR—In reply to your letter of this morning, we beg to say that according to our tender of the 22nd July last for the construction of the Canadian Pacific Railway Telegraph, or any section thereof, the average price per mile for wood land was to be \$629 per mile, and for prairie \$259 per mile. We estimated that there would be 1,485 miles of wood land, which at \$629 per mile would come to \$934,065, and that there would be 705 miles of prairie, which at \$259 per mile would be \$182,595; in all, \$1,116,660. Our whole tender for the whole work was \$1,290,000. The difference between the two sums, viz., \$173,340, being our tender for maintaining and working the whole line for five years, any portion of the work now awarded to us should be based upon this calculation which we estimate at say \$16 per mile per annum. Contractors are to maintain work and receive the profits of the line.

“ Yours very sincerely,

“ SIFTON, GLASS & CO.”

This letter did not purport to be a new proposition or negotiation for terms different from those proposed by Messrs. Sifton, Glass & Co., when

in competition with others in the previous July. This firm had been asked "to explain in writing the exact meaning" of their tender, and the above letter was the formal answer. It opens with a suggestion which was not according to the fact. It refers to the tender of 22nd July as having been made for the whole line, "or any section thereof." We think no ingenuity could give it such an interpretation. It closes with an explanation of the meaning of that tender which is entirely without foundation, for throughout that document there is no mention of working the line or any part of it for the profits. The rest of the letter is taken up with showing the gross amount which they had asked for maintaining the whole line—namely, from Lac la Hache in British Columbia to Lake Nipissing or Ottawa, over the country north of Lake Superior. That gross sum gave an average of \$15.83 on their assumed mileage, and the proposition was that that amount should be a basis for allowing them \$16 per mile per annum for maintenance on any portion of the line to be awarded to them—they then knowing from the notification by the Secretary of the 6th October, 1874, that Section No. 1 had been awarded, and then also knowing that section to be the least expensive of all the sections to maintain. All the terms suggested by this letter were acceded to immediately, and as far as we can learn without any report or serious consideration as to their reasonableness.

This correspondence was followed on the same day by a report from Mr. Fleming, erroneously, as he says, dated the day before, in these words :

"OTTAWA, 13th October, 1874.

"F. BRAUN, Esq.,

"Secretary, Public Works.

"SIR,—With regard to the contract for the Pacific Telegraph Line between Fort Garry and Fort Pelly, Messrs. Sifton, Glass & Co. claim that an allowance for maintenance of \$16 per mile per annum should be inserted in the contract, and that if they are required to maintain the line they should also operate it and receive any profits that may arise.

"When I reported on the 5th inst I was under the impression that the price, viz.: \$492, through woodland, and \$189 through prairie, mentioned in their tender, included the maintenance of the telegraph for five years, but in this it seems I was mistaken.

"I have asked Sifton, Glass & Co. to make their own explanations and state the price which they hold should be placed in the contract. I enclose a copy of their letter of this date giving the required explanation.

"It appears that in their tender for the whole line, the length of which they placed at 2,190 miles, there was an allowance for maintenance of \$173,340, or at the rate of very nearly \$16 per mile per annum, and at this rate they are prepared to maintain, operate and receive the profits of the section now awarded to them.

"The allowance for maintenance claimed by Sifton, Glass & Co. does not materially affect the relative positions of the three lowest tenders, as will be seen from the following :—

	Con.	Main.	
"Tender Letter O, Waddle & Smith...	\$106,300	\$3,000	per annum profits.
" A 1, Sifton, Glass & Co..	167,850	4,000	"
" I, Mackenzie, Grier & Co.	115,750	8,000	"

"It has already been determined not to award two sections to Messrs. Waddle & Smith, leaving the tender of Sifton, Glass & Co, as now explained, still the lowest.

"I am, &c., &c.,

"SANDFORD FLEMING."

As before mentioned the letter of Messrs. Sifton, Glass & Co., of 14th, October, pointed out a means by which their tender may be so analyzed as to show a price asked for the maintenance of the whole line, namely, \$173,340. This was the result of deducting from their gross price, for the construction and maintenance of the whole line, the price which by a calculation could be seen as their price for the construction alone, and they proposed that this difference of \$173,340 should be taken as a basis for allowing them a price per mile for maintenance of Section 1 alone, equal to the average per mile of the price they had so proposed for the whole line, and which was really \$15.83 per mile. The difference between this \$15.83 and \$16 per mile is not material. But we learn from the evidence before us of Mr. Sifton, the active member of this firm, that mileage would not give any proper idea of the comparative cost of maintaining the different portions of the line.

This witness said that before tendering, his firm had discussed very fully the maintenance of the line on the different sections, that they considered some portions of the line would be more expensive to maintain than others, the most expensive would be between Lake Nipissing and Nipigon, the next between Thunder Bay and Red River, the next in British Columbia, the next between Edmonton and Pelly, and the least expensive of all this Section No. 1, which would, in the opinion of Mr. Sifton, be from 15 to 25 per cent. cheaper than the next cheapest distance, that is, from Pelly to Edmonton. The reports of Mr. Fleming, 1872 and 1874, indicate the very rough character of the sections, which are thus described as requiring the greatest outlay in maintenance, and we think it ought to have been apparent that this, the easiest section, did not call for a price equal to the average which had been impliedly asked for the whole line. The other condition, the profits to be derived from working the line, made its first appearance in the letter of Messrs. Sifton, Glass & Co, above set out.

We cannot learn why these terms were granted, as of course. Mr. Fleming has stated that his memory is not a retentive one, and he has not been able to describe the substance of any conversations concerning this matter. His evidence was in effect that some years ago Mr. Glass had been in his office frequently. He believed that Mr. Glass and Mr. Fleming, another of the firm of Sifton, Glass & Co. were in Ottawa in October, 1874, but was not sure. He found it impossible to state the substance of any conversation between Mr. Glass and Mr. Fleming and himself before the contract was finally decided upon; but he said he had no doubt Mr. Glass pressed his own views very strongly, and that he combatted them as well as he could, as far as they were inconsistent with what he thought was the meaning of their tender. We understood him to mean that this pressure and this combatting were matters of surmise, not of recollection.

The proper measure of this demand for profits (meaning of course the profits left after payment of working expenses) is not to be gathered from the subsequent events, because these have not been what were then to be anticipated.

We describe hereafter the character of the construction and maintenance of the line over this section, more circumstantially than is here necessary. But in connection with our present subject it is pertinent to say that the line was not well constructed, and has been insufficiently maintained, facts which necessarily lessen the number of messages over it and the consequent receipts. Mr. Sifton, in his evidence, gives \$1,300 as the probable net gain by operating the line for the whole period. At the time, however, of conceding this item to his firm, it was understood that the railway would be constructed on the same general route as the telegraph. "Profits," therefore, meant at that time, not those which could be earned over a line ill maintained through a country distant from railway works, but those derivable from a line properly constructed and fully maintained, along the route on which the railway construction would take place. The route on which the telegraph was built has for railway location been since abandoned, and another south of Lake Manitoba has been established in its stead. The condition that Messrs. Sifton, Glass & Co. should operate and take the profits of the line, was not qualified by any terms discriminating in favour of Government messages. No tariff of charges for any of the business was established or arranged for.

As before mentioned, the amount which, in October, 1874, would have been a reasonable estimate of the advantage to be gained by a contractor in

receiving the profits of the line, does not seem to have occupied the attention of the Department. There is no record or other evidence of any official opinion on the subject.

The evidence shows that on 14th October, 1874, the day on which Mr. Glass interprets his firm's tender, their whole demand was, by the Department, directed to be embodied in the contract.

A memorandum concerning this contract is produced in the writing of Mr. Fissiault, the law clerk of the Department, dated 14th October, 1874, mentioning that an Order in Council would be required, because the lower tender of Waddle & Smith had been passed over. The contract was made without such authority. In giving evidence, Mr. Mackenzie and Mr. Trudeau stated that as they understood the rules of practice on this subject, an Order in Council was not required. The following is the language of part of section 21 of the "Act respecting the Public Works of Canada," passed in 1867: "In all cases where it seems to the Minister not to be expedient to let such work to the lowest bidder, it shall be his duty to report the same, and obtain the authority of the Governor, previous to passing by such lowest tender."

We conclude that in this contract, and in addition to any advantage in being ranked as competitors for Section 1, the contractors got that to which they were not entitled under the tender made by them in competition with others, inasmuch as they obtained:—

- (1) A higher price for maintenance than a fair construction of their tender would give.
- (2) The profits of operating the line.

The evidence does not disclose the reason for conceding these advantages, although the gentlemen then acting respectively as Minister, Deputy Minister and Chief Engineer, as well as others, have been examined touching the subject.

Several witnesses have been questioned upon the manner in which this contract has been executed. The tenor of their evidence is to show that a mistake was made in placing too much reliance upon the fact that the contractors had to maintain the line for five years, after its completion; this has not proved a sufficient inducement to make them erect a good line in the first instance.

Mr. Rowan was the District Engineer at Winnipeg during the construction of the telegraph line and had considered this question. His opinion was that a Government Inspector ought to have been appointed to see that the work was efficiently done in the first place; he had recommended that course, but it was not adopted. In his view, the operating and maintaining the line would have been better in the hands of the Government, than of the contractors, because it would have been so managed as to be of more use than it had been to the Government and to the public generally. He testified that the poles had not been properly set in the first place, that it had not been properly maintained, and that communication had been frequently interrupted.

A return to the House of Commons, dated 8th March, 1880, (not printed) shows that Col. French, Commissioner North-West Mounted Police, on the 7th June, 1876, communicated to the Department of Public Works that the line east of Swan River Barracks had not been working for a month, and that he had previously pointed out, "how little zeal or energy had been shown by the contractors" on that section of the line, and that between that place and the Narrows of Lake Manitoba, a distance of 175 miles, there were no persons to repair the line. On the 25th June, 1877, Mr. Marcus Smith pointed out to the Department that the contractors were putting a too liberal construction on the 13th clause of the specifications, which did not require the telegraph line "in the first place to be so permanently constructed as could be desired;" that in the muskegs or swampy ground the poles were not well set or stayed, and on the 16th March following he reported that the maintenance of the line had not been fully carried out. Some of the witnesses examined by us on this subject had taken part in the construction and in the maintenance of the line; others had a knowledge of the office business, the working and the interruptions. The evidence shows that in the winter of 1875-6, a good deal of the line had been carried over muskegs by cutting holes in the ice and putting the poles into them without inserting them into the material at the bottom, which was described as slush—the ice alone holding the poles temporarily in their places. A considerable portion of the country over which the line was constructed is wet and swampy, furnishing very insufficient foothold for the poles except at a great depth from the surface. This surface is often water, and during the construction the character of the country induced the contractors, to erect the poles in such a way that it was impossible for them to remain long in their places.

One witness testified that he alone did the repairs for 165 miles, and that the work was, consequently, not substantial, and the line was not maintained sufficiently to enable it to be worked without unreasonable interruptions. The line was frequently down and communication stopped. These interruptions occurred less frequently in the winter than in the summer season, for the reason that ice is an insulator, and the wire passing through it would not stop communication, while in water the circuit is broken. As a rule the working was continued during the winter, but for less than three-fourths of the summer season. In the summer of 1878 it was better maintained than usual; in other summers, breaks occurred frequently and lasted for weeks.

Almost all the poles were of poplar, which is a short lived wood, lasting about three years, and in the repairing of this line after it was constructed, old poles which had rotted at the ground, were broken off and used again. The contract was, in substance, that the construction of the line should be agreeable to the true intent and meaning of the advertisement and the memorandum hereinbefore set out, which were attached as specifications to the contract. The contractors for telegraph construction on this railway have generally contended, that Section 13 of the memorandum shows the true intent and meaning of the bargain to be, that it was not necessary to construct a line more permanent than would last till the railway should be built, and that then it would be reconstructed. The specifications are, as, under the limited knowledge of the country then possessed by the Department, they must have been, very indefinite, and whether the contractor has fulfilled his promise concerning the construction, may depend upon the legal effect of the language of the memorandum A, and the contract together. We do not venture an opinion upon that matter. We feel satisfied from the evidence, as a whole, that the line constructed was of a very temporary character.

The contractors undertaking to maintain the line in good "running order" for a period of five years from its completion was unqualified. We have to report that this had not been done for the period which elapsed before the date of our commission.

The line under this contract was carried from Fort Garry along the west side of the Red River to Selkirk, and thence to Livingstone. The line ended under Contract 14, at the east side of Red River.

The break thus left at the crossing of the river was supplied by a line constructed under a contract between Mr. Rowan, on the part of the Government, and Mr. Sifton, of Sifton, Glass & Co. Mr. Rowan reported to the Department on the transaction, and it was carried out at a price of \$600—half for construction and half for maintenance.

Up to 30th June, 1880, the amount paid on the main contract was as follows :

30th June, 1875.....	\$18,250
“ 1876.....	50,200
“ 1877.....	31,350
“ 1878.....	2,000
	Construction.....
	\$101,800
	Maintenance.....
	17,285
	Total.....
	\$119,085

CONTRACT No. 2.

Telegraph Line.

By this contract, dated 30th October, 1874, Richard Fuller undertook to construct the telegraph line, on that portion of Section 3 between Fort Pelly and a certain point in the longitude of Edmonton, about 550 miles in length, agreeably to the true intent and meaning of the specification or memorandum annexed to the contract, and as more fully described in the said contract, and also to maintain the line in good running order for a period of five years from the date of completion, receiving for the construction \$117,250, equal to \$213.18 per mile, and for the maintenance \$13,000 per annum.

As explained in our report on Contract No. 1, no separate competition was invited for the distance covered by this Contract No. 2.

At the opening of the tenders on the 7th August, 1874, as hereinbefore described, Mr. Fuller was, according to the schedule prepared by Mr. Trudeau, Mr. Braun and Mr. Fleming, adjudged to be the lowest tenderer for the whole of Section 3.

Besides this general schedule, Mr. Fleming made a report, dated 10th August, 1875, to which was appended a separate sheet for each section. He

sets out his view of the effect of each of the thirteen tenders for Section 3 (See page 15, Blue Book Return, Commons, 1st April, 1876.) In the body of his report he gives the following as a summary of the six lowest :—

Tender.	Construction.	Maintenance per Annum.	Time for Completion.
	\$	\$	
R. Fuller.....	156,000	19,000	1st November, 1875.
McKenzie, Grier & Co.....	202,900	70,000 (and profits.)	1st September, 1876.
M. W. Thompson.....	224,000	11,200	3 years.
Waddle & Smith.....	229,000	9,600	500 miles per year.
Wm. Joselyn.....	280,000	Included.	3 years.
Humphrey & Co.....	(offices not included) 410,000	100,000 (whole line.)	4 years.

On the 15th August, 1874, the Deputy Minister of the Department telegraphed to Mr. Fuller that his tender was accepted, subject to conditions then mentioned concerning security. On the 18th of the same month the following telegraphic message reached the Department :—

“I accept conditions mentioned in your telegram yesterday. Before proceeding to Ottawa, please to inform me if I am to run line to Fort Pelly by way of Fort Ellice, that I may secure poles and have them planted forthwith.

“R. FULLER.”

The mention of Fort Ellice in this telegram is the first allusion to a difficulty which was afterwards made more apparent, and finally prevented the Government from taking advantage of this, the lowest tender for Section 3.

Neither the advertisement for tenders for this work, nor the memorandum of information which followed it, indicated the location which was afterwards adopted or gave data from which one could learn approximately the proportion of woodland or prairie to be crossed on Section 3. The memorandum of information contained the following :—

(Sec. 4.) “When the route is adopted by the Government on any particular section, the line to be followed by the telegraph will be defined on the ground by the Government officers.”

(Sec. 16.) “Between Fort Garry and Fort Pelly the country is partly wooded and partly prairie, the exact proportions are not yet known.”

(Sec. 17.) “Between Fort Pelly and Edmonton the country is prairie.”

The map published with Mr. Fleming's report of 1872, showed the then projected location of the railway to be south of Lake Manitoba, and through a country almost entirely prairie. Mr. Fuller, apparently, relying on what he considered to be authentic information, assumed that the location would be on the southerly route near the Riding Mountains, and made his tender at the gross sum of \$156,000, equal to \$195 per mile, without any distinction in price between woodland and prairie.

It does not appear from the evidence that Mr. Fuller was informed, in answer to his telegram, whether the line of Section 3 would be by way of Fort Ellice. At all events, after some further correspondence between him and the Department concerning securities, he proceeded to Ottawa on business connected with this matter, and while there objected to entering into a contract on the terms of his tender, demanding an additional price of \$20 per acre for the clearing, which would be required through the woodland, upon the northerly route by way of the Narrows of Lake Manitoba.

The substance of the amended offer, and the bearing of it upon the position of the Government in regard to Section 3, will be found in the following letter of Mr. Fuller and the report of the same date by Mr. Fleming :—

“ OTTAWA, 16th September, 1874.

“ SIR,—Referring to my letter of the 14th instant, and your intimation to me that the Government, in justice to other contractors and the public interest, cannot agree to my altered terms with respect to Section No. 1 on account of the clearing,

“ I have no objection to carry out the work on the balance of No. 3 for the sum left by deducting the amount of Section No. 1 from the amount of Section No. 3.

“ I have the honour to be, Sir,

“ Your obedient servant,

“ R. FULLER.

“ SANDFORD FLEMING. Esq.,

“ Chief Engineer, &c., Ottawa.”

“ CANADIAN PACIFIC RAILWAY,

“ OFFICE OF THE ENGINEER-IN-CHIEF,

“ OTTAWA, 16th September, 1874.

“ SIR,—With the view of arranging some of the terms of contract with Mr. R. Fuller, to whom was awarded the construction of that portion of the Pacific Telegraph line, between Forts Garry and Edmonton, I met him, at my office, on the 14th instant.

Mr. Fuller stated that his tender for that portion of the line between Fort Garry and Fort Pelly (section No. 1) was based on carrying the line south of Riding Mountain, and almost entirely through a prairie country; that if it was taken north of the Riding Mountain, he would require to be paid \$20 per acre for all the clearing necessary to be done; this would

have the effect of adding between fifty and sixty thousand dollars to the sum mentioned in his tender.

"As directed by the Minister, I intimated to Mr. Fuller that the altered terms proposed by him could not be entertained by the Government.

"Mr. Fuller writes me this morning, his letter enclosed, stating that though he could not carry out that portion of the work designated section No. 1, he has no objection to carry out the balance of section No. 3, i.e., from Fort Pelly to Fort Edmonton, in accordance with his tender.

Mr. Fuller's tender for the whole of section No. 3 is \$156,000, his tender for section No. 1 (a portion of No. 3) is \$38,750, leaving \$117,250 for the telegraph between Forts Pelly and Edmonton. I find that H. P. Dwight is the next lowest for section No. 1; his tender is \$56,250. This sum added to \$117,250 makes \$173,500 for the whole of section No. 3. I find that the second lowest tender for section No. 3, is Mackenzie, Grier & Co., \$202,900, so that the giving of the work on section No. 1 to Dwight, and the balance of section No. 3 to Fuller, would still keep the cost, \$29,400, under the second lowest tender.

"I am, Sir,

"Your obedient servant,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary of Public Works."

In this report Mr. Fleming does not recommend any action in the altered state of affairs brought about by the new demand of Mr. Fuller; he simply shows that if Mr. Dwight's tender for section 1 should be made available, then the whole of section 3 could be constructed and maintained, part of it by Mr. Dwight, and the balance by Mr. Fuller, at a lower cost than by accepting Mr. Fuller's new offer for the whole. He does not allude to the consequences which would ensue, should Mr. Dwight also refuse to carry out his tender.

The fact that in this report Mr. Fleming presents the cost of section 3, under the new demand of Mr. Fuller, as a matter to be considered on its merits before deciding to decline it, intimates, we think, that in his estimation it was not one which, by the rules of the Department, could, under no circumstances, be entertained. The pecuniary result of this offer is placed in juxtaposition with that of others, so that, by a comparison of such results, the least expensive course may be indicated. The case then presented by Mr. Fleming, made it apparent that for that occasion, Mr. Fuller's new proposition concerning the whole of section 3, ought not to be accepted. This was on the 16th October, 1874. Mr. Dwight declined on the next day to fulfil his offer concerning that portion of section 3 known as section 1; which circumstance presented a new case for the consideration of the Department. The problem was no longer to be solved with Mr. Dwight's

offer as a factor in it. Mr. Fleming, in his above mentioned report, dated 16th September, 1874, upon the effect of Mr. Fuller's new demand, stated that it would add from \$50,000 to \$60,000 to his original tender. The addition of the highest of these sums would raise his demand for the whole of section 3 to \$311,000; but as hereinafter shown, his new demand really increased his offer by \$64,000, making it altogether \$315,000 for construction and maintenance, without profits. The tender next above Mr. Dwight's for the easterly part of section 3, *i.e.*, section 1, was that of Waddle & Smith, which without profits amounted, for construction and maintenance, to \$121,250; this, with the price which Mr. Fuller was still willing to take for the construction and maintenance of the residue of section 3, \$182,250, made a total of \$303,500; and, therefore, if this tender of Waddle & Smith's could be accepted, an opportunity occurred, by which the work on the whole distance of section 3 could be provided for, at \$11,500 less than by accepting Mr. Fuller's amended offer of \$315,000. However, in dealing with section 1, the Department had discarded the tender of Messrs. Waddle & Smith, apparently, for the reasons stated by Mr. Fleming, which are set out and commented upon in our report concerning contract No. 1; and this offer does not seem to have been considered available, when the question for the decision of the Department, as in this instance, related to the method of completing the longer distance covered by section 3. The action of the Department plainly proceeded upon the assumption that Sifton, Glass & Co. were the parties to be dealt with next after Mr. Dwight.

Mr. Fleming's report of 5th October, 1874, stated that the new demand of Mr. Fuller for clearing, increased his tender by a sum of \$64,000.

This last report of Mr. Fleming was not brought to our notice until after the oral testimony before us was concluded. In our examination of witnesses it was assumed that Mr. Fleming's former report of 16th September, 1874, naming \$50,000 to \$60,000 as the probable excess caused by Mr. Fuller's new claim, was correct. This last report of Mr. Fleming shows Mr. Fuller's amended offer to be \$4,000 more than it was so assumed to be, in the first instance.

On the 14th October, 1874, Mr. Fuller's amended offer for the whole of section 3 was as available as when it was discussed in comparison with the effect of Mr. Dwight's tender.

Thus on that day, and assuming that Waddle & Smith were properly excluded from the competition, two methods for the construction and main-

tenance of section 3 were open to the Department—one method by accepting two offers, namely, that of Sifton & Glass for the east part known as section 1, giving them \$127,850 and the profits of the line, and that of Mr. Fuller for the residue of the distance giving him \$182,250 without profits. The other method by accepting Fuller's amended offer for the whole at \$315,000 without profits. It appears that only one of these methods was considered, that in which Messrs. Sifton, Glass & Co. took a part. There is no evidence to show that when Messrs. Sifton, Glass & Co. proposed the new terms for section 1 contained in their letter of the 14th October, 1874, the effect of these new terms on the cost of completing the whole of section 3, was discussed or reported on by any official. Mr. Trudeau, the Deputy Minister, in his evidence, suggests as a reason for excluding Mr. Fuller's amended offer from the competition for section 3 as a whole, the fact that he had there required for clearing through woodland a price beyond that named in his tender, and that by the Departmental practice concerning the letting of contracts on tenders, this fact precluded any dealing with him on the basis of that amended offer. This explanation is not convincing when we see the contract subsequently made with Mr. Fuller for part of section 3, and of Mr. Fleming's report of 16th September, 1874, at which time he submitted the relative advantages of Mr. Fuller's amended offer, and of others including Mr. Dwight's. We are informed by Mr. Trudeau's evidence that no consideration but that of the pecuniary result affected the decision concerning these contracts Nos. 1 and 2. Therefore, on the 14th October, 1874, the propriety of adopting the method afforded by Mr. Fuller's latest offer for the whole of section 3, rather than that which was adopted, namely, by the contract with Sifton, Glass & Co. for part, and with Mr. Fuller for the residue, depended on whether the profits of the line from Fort Garry to Fort Pelly for five years after completion, were at that time to be reasonably estimated at more or less than \$4,900. This feature of the transaction did not apparently occupy the attention of any one in the Department, and it clearly did not so far as to call for any formal report, for there is no record of any official opinion on that subject. All the witnesses who have been questioned concerning it give us the impression that the comparison of the profits with any definite sum was new to them. We have in our report on Contract 1 pointed out the value which one firm of tenderers placed upon these profits on the 22nd July, 1874, viz. : \$15,000. We do not feel justified at this day, in offering any estimate of our own on the prospective profits which ought, in

closing the arrangements, to have been adopted as a basis for the action of the Department.

The evidence of Mr. John W. Sifton, alluded to in our report on Contract No. 1, estimates his net receipts from the working of the line at \$1,300 for the five years. Therefore, though not able to form an opinion upon the profits which in October, 1874, might have been reasonably expected, we have data upon which we can give the actual effect of the course adopted in this instance.

We conclude that the two contracts entered into by the Government for the construction and maintenance of the whole distance of section 3, the said contracts being Nos. 1 and 2, have resulted in the contractors receiving a lower compensation than would have been received by Mr. Fuller had his amended offer for the whole been accepted, and that in obtaining this Contract No. 2 the contractor got no undue advantage.

In this contract the time named for completion of the work was 1st July, 1876. It was completed so far as to be ready for operation on the 15th of that month. In the specifications furnished to tenderers the distance over which this contract extended was described as prairie. After the contract was made it was found that the line passed through some wood land, and Mr. Fuller claimed for clearing through this the compensation of \$30 per acre as an extra. His claim was not allowed in full but a compromise was effected, by which he accepted \$25 per acre for this clearing, and he was paid altogether for that item \$10,200. He also made a claim for delays and losses occasioned by his freighting parties being stopped by Indians. The correspondence on this subject between him and the Department is set out in a return to the House of Commons dated 8th March, 1880, (not printed). These freighting parties had been prevented finishing work for Mr. Fuller, as provided for in the contract with him, and they sued him in a court in Manitoba, recovering judgment against him for their damages. His claim against the Government was for reimbursement. It was not allowed in full, but he received about half the amount that he had expended, and his claim was finally arranged by a payment of \$1,367. When he first took his supplies upon the ground ready to proceed with the construction of the line, it was not located, and he deposited his supplies at a place which turned out to be at some distance from the line as finally adopted. This necessitated a second transportation, and he claimed to be reimbursed for this. His demand was satisfied by payment of a portion.

After the construction of the line, about twenty miles of it was burned down by prairie fires on two occasions. This resulted in interruptions and the Government deducted from the contractor's allowance for maintenance \$960 on this account. This was the most serious omission in the maintenance of the line according to the contract, and on each occasion the line was put into working order as quickly as possible after the fire. The contractor has been allowed to operate the line and take the receipts as his compensation. No tariff having been arranged between him and the Government, he established one to suit himself, at \$1 for ten words or under, and seven cents a word over ten without reference to distance.

At one time he made a proposal to operate the line on specified terms, and the following Order in Council was passed :—

“Copy of a report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 18th March, 1875.

“On a report dated 17th March, 1875, from the Hon. the Minister of Public Works, stating that the only portion of the Canadian Pacific Telegraph line for which arrangements have not been made for operating is that part lying between Fort Pelly and Edmonton, for which Mr. R. Fuller is contractor, and recommending that he be authorized to make arrangements with Mr. Fuller to operate the same on the same terms as the other contractors.

The Committee submit the above recommendation for Your Excellency's approval.

Certified. W. A. HIMSWORTH, C. P. C.

This did not lead to an agreement, and Mr. Fuller has worked the line without any recompense, except that which he has derived from business over it. Working it upon these terms has been a loss to him.

A report from Mr. Fleming, dated 13th January, 1879, states that he had communicated upon the subject with Lieutenant-Governor Laird, who would be well informed on it, and he had found that the line between Livingstone and Battleford had been in pretty regular working condition; that the number of days on which communication had been broken was twelve for the previous year; that between Battleford and the western end, Edmonton, the line had been down for fifty days in the same period. Deduction from the price of maintenance was made on this proportion, upon the said report of Mr. Fleming. In this same report Mr. Fleming stated that Mr. Lucas had inspected the line from end to end, and had found certain defects which it would cost about \$6,000 to remedy. This sum was for the time kept out of moneys going to Mr. Fuller.

We find that the contract has been fulfilled as well as could be expected under the circumstances, and that for such default as there has been,

the Government has kept back from Mr. Fuller out of moneys payable to him, such amounts as were, from time to time, considered to be sufficient to protect the public interest.

Up to the 30th June, 1880, the following sums have been paid on this contract :—

30th June, 1876.....	\$76,950
do 1877.....	21,400
do 1878.....	3,250
do 1880.....	14,000

Construction	\$ 15,600
Maintenance	21,677

	\$137,277

CONTRACT No. 3.

Telegraph Line.

By this contract, dated the 10th of November, 1874, Francis Jones Barnard undertook to construct and finish, according to the specification or memorandum marked "A" attached to the said contract, the line of telegraph along that certain section of the general route of the railway known as section 4, between the existing telegraph office, at Cache Creek in British Columbia, and Fort Edmonton, about 550 miles, and as more fully described in the said contract, and also to maintain the line in good running order, and to operate the same for five years from the date of its completion, the whole to be finished ready for use on the 2nd October, 1876, receiving for the said works \$495 per mile for construction, and for the maintenance and operation without profits \$46.50 per mile per annum; and he further undertook to keep an accurate account of the receipts or messages and pay over the same to Her Majesty. Cache Creek is a point in the valley of the Fraser River, and on the then existing telegraph system in British Columbia.

In the schedule of all the tenders concerning telegraph lines opened on the 7th of August, 1874, by Mr. Trudeau, Mr Braun and Mr. Fleming, as well as in the subsequent report of the 10th of August by Mr. Fleming alone, the six lowest tenders concerning section 4, the one covered by this

contract, are said to rank in the following order, the lowest being given the first place :—

1. W. R. Macdonald.
2. Waddle & Smith.
3. F. J. Barnard.
4. G. W. Wright.
5. Mackenzie, Grier & Co.
6. Mitchell McDonald & Co.

Mr. Fleming's first report, recommending any action upon the tenders for the telegraph line, is dated the 12th of August, 1874. In that he deals with the expediency of letting the line in separate contracts for separate sections rather than by one contract for the whole, and he also recommends the acceptance of certain tenders for respective sections. Amongst others, he recommends the acceptance of F. J. Barnard's tender for the section covered by the present contract. In that report he gives his reasons for advising the Minister to pass by the tender of W. R. Macdonald, the lowest, as well as of Waddle & Smith, the second lowest. In his view the offer of W. R. Macdonald was so low, and the time within which he would undertake to complete the work so short, that he had grave doubts as to the tender being *bond fide*. He pointed out that the tender of Waddle & Smith did not seem to be a proper one to accept because those gentlemen were the lowest in their offer for section 5, which, if awarded to them, would require all their energies to complete, and as section 5 extends from Fort Garry to Lake Superior, while section 4 is for a great extent beyond the Rocky Mountains, he deemed it not advisable to place both sections in the hands of Waddle & Smith. He reported that Mr. Barnard was well and favourably known in British Columbia, and believed to be possessed of sufficient energy and resources to carry out anything he would undertake, and therefore he had no hesitation in recommending that section 4 be placed in his hands. This recommendation was adopted by the Minister, and directions given to the Engineer in Chief to communicate with the respective parties accordingly. The contract was formally awarded to Mr. Barnard in September, after which it was prepared and sent to British Columbia for signature, and was executed on the 10th of November, 1874. The Order-in-Council prescribed by the Statute relating to public works as a condition precedent to passing over the lowest tenders, was omitted in this case.

The contractor proceeded with his work towards Kamloops on the line indicated as the adopted route for the railway. About five months

after the date of the contract the work under it was stopped by the following telegraphic message:—

“OTTAWA, 9th April, 1875.

“Discontinue building of telegraph line British Columbia under contract with this Department. You will not be called upon to proceed with the work for some months. At what price would you erect telegraph, say 45 miles, from Quesnel on old telegraph trail, and clearing twenty feet wide.

“F. BRAUN,

“Secretary.

“To F. J. BARNARD,

“Victoria, B.C.”

This discontinuance led to a correspondence between Mr. Barnard and the Department on the subject of damages, which he suffered in consequence of the unexpected stoppage of his works, as well as the steps taken in view of future operations under his contract. We do not deem it necessary to set out this correspondence or the contention of the contractor in regard to the position in which he was placed by this action of the Department, for the reason that it has since been made the subject of a claim against the Government, and has been referred, under an Order in Council, of the 30th of May, 1879, to one of the official arbitrators. The claim was, at the date of our commission, still unsettled and under consideration in the Department of Justice.

Correspondence took place between the contractor and the Department concerning the continuation of work under his contract which, however, led to no understanding, and finally on the 22nd of April, 1879, an Order in Council directed the work undertaken by Mr. Barnard under his contract to be taken out of his hands, under its second clause. This was accordingly done after proper notification to him by the Secretary of the Department. As to letting this contract, we are of the opinion that the recommendation of Mr. Fleming to the effect that the work should be placed in Mr. Barnard's hands, under the circumstances detailed by him in his report of, the 12th of August, was a proper one in the public interest, and that at that time there was no more economical method of accomplishing the proposed work within the reach of the Department. Mr. Fleming, in his evidence before us, states that Mr. Barnard had done some work between Cache Creek and Kamloops before he was stopped by the order from the Department. This distance is about fifty miles, and he also states that the line which was in the year following directed to be built by Mr. Barnard under his contract, was not upon the line originally contemplated, at the time the contract was

entered into ; that it was between Tête Jaune Cache and Fort George, on another route altogether ; that the starting point of that line was a long way —about 200 miles distant from the nearest work which he had done when he was stopped, and that this direction was not within the original terms of the contract. We therefore arrive at the conclusion that up to the 9th of April, 1875, Mr. Barnard was following the terms of his contract, and that the direction given to him in the year following, was not according to the original understanding of the parties to the contract. We have avoided enquiry into the particulars or the validity of his claim against the Government.

Up to the date of our commission the following sums had been paid on account of this contract :—

30th June, 1875.....	\$ 8,000 00
“ 1876.....	10,284 91
“ 1877.....	8,900 00
“ 1878.....	7,015 09
“ 1879.....	7,700 00

Total	\$41,900 00

CONTRACT No. 4.

Telegraph Line.

By this contract, dated 9th February, 1875, Adam Oliver, Joseph Davidson and Peter Johnson Brown, undertook to construct a Telegraph line between Prince Arthur's Landing and Red River (about 420 miles), according to the specifications or advertisement and memorandum attached to the contract, and as more fully described in the said contract, and also to maintain the line in good running order for a period of five years from its completion, receiving therefor per mile, \$590 for woodland, and \$435 for prairie.

Mr. Thomas Wells, a Barrister of Ingersoll, was a silent partner in this firm, known as Oliver, Davidson & Co.

The schedule of the tenders made as hereinbefore mentioned on 7th August, 1874, by Mr. Trudeau, the Deputy Minister, Mr Braun, the Secretary, and Mr. Fleming, the Chief Engineer, as well as the report upon them

made by Mr. Fleming on the 10th of that month, stated correctly that the six lowest were as follows :—

Tender.	Construction.	Maintenance per Annum.	Time for completion.
	\$	\$	
Waddle & Smith, Kingston.....	189,120	\$5,040 and profits	500 miles per year. or more.
Sutton & Thirkell, Lindsay.....	214,950	Included in construction.	2 years.
Sutton, Thompson & Co., Brantford.....	243,153	.....	.....
Sifton, Glass & Fleming, Ottawa.....	253,080	Included in construction.	July, 1876.
Mackenzie, Grier & Co., Toronto.....	\$288,870 and profits	70,000	1st Sept, 1876.
R. Fuller, Winnipeg.....	315,000	22,500	14 months.

Messrs. Waddle & Smith having been offered the contract, a correspondence took place between them and the Government concerning the securities to be given before the contract was entered into.

This correspondence shows that they offered as such security a mortgage on real estate, which was executed by one Mrs. Sellick as a surety, but which before being accepted as sufficient was withdrawn by her; after the withdrawal, the Deputy Minister of Justice, in a letter dated 6th November, 1874, asked to be informed by the Minister of Public Works whether or not further time was to be given to the tenderers to complete their securities.

Mr. Braun in a letter dated 4th November, 1874, to the Minister of Justice requested that all proceedings had with Messrs. Waddle & Smith should be cancelled, and stated that "the Minister would proceed to the consideration of tenders put in by other parties."

We have not been able to discover any correspondence or notice connected with security by this firm beyond what is printed in the Blue-Book return to the Senate, dated 14th March, 1878, and which does not show that either before or after Messrs. Waddle & Smith took steps towards furnishing securities, there was any notification to them of a definite period within which it will be necessary to complete their security.

Mr. Waddle, one of the firm, was a witness before us, and then stated that he never had the impression that time was a material element in the arrangement, but, on the contrary, that from what had been said by the departmental officials on the subject, he was led to understand that there

was no desire on the part of the Government to have the contract executed until after the end of that year. His evidence also proves, that he had negotiated and arranged at the beginning of December for finding other security to fulfil the requirements of the Government demand. That he went to Ottawa about 7th December to conclude arrangements connected with the contract which he then expected to get, and he there learned for the first time, that the Government was no longer willing to deal with him. He further said that he had on that occasion conversed with Mr. Mackenzie, the Minister of Public Works, and had set up the contention that he had not been notified to give security within a stated time, and was then promised by Mr. Mackenzie that if the parties then negotiating with the Department for the contract failed to give the requisite security, he (Waddle) should have the next opportunity of getting it.

As a fact this was about seventeen days after the Department had offered the contract to Sutton & Thirkell, higher tenderers, and negotiations were then pending for an extension of the time within which they might furnish security.

In corroboration of Mr. Waddle's assertion concerning the willingness of the Government to defer making the contract, there is a letter from the Engineer-in-Chief to the present contractors, Oliver, Davidson & Co., dated 29th December, 1874, before that firm had offered any security, informing them that the matter could be closed at any time convenient to them to go to Ottawa.

Mr. Mackenzie, when before us as a witness, was informed of Mr. Waddle's assertion that a higher tender was taken up without his firm having been informed that their opportunity would end at any specified day. He did not remember that there had been any such contention, and did not believe that there was any foundation for it, mentioning Mr. Trudeau's carefulness in such matters, apparently as a reason for his belief.

Mr. Trudeau was recalled after this evidence from Mr. Mackenzie, and testified that he could find no correspondence beyond that which was published, and had no reason to believe that there was any. This fails to show any notification to Waddle & Smith, or to any one on their behalf, to the effect that they would lose their position unless security should be provided by them in a specified time.

The evidence leads us to say that in this case after the tender of Waddle & Smith, which was understood to be the lowest, was accepted by

the Department, it was passed over in favour of Sutton & Thirkell upon the ground that Messrs. Waddle & Smith had failed to furnish the requisite security, the fact being that the last named firm had never been notified of any day, before which they were required to complete their security.

On the 20th of November, 1874, the Secretary of the Department telegraphed to Messrs. Sutton & Thirkell, at Lindsay, from which place their tender was dated, asking whether they were still prepared to execute the works for the price named in their tender and to furnish the necessary security.

This firm was composed of R. T. Sutton, of Brantford, and W. J. Thirkell, of Lindsay, upon the understanding between them that the latter should have no real interest, but should allow his name to be used solely for Sutton's purposes. Thirkell had left Lindsay before the 20th November, 1874, and was then living in the United States. On the 24th November, 1874, the Secretary received a telegram, "Yes," from R. T. Sutton. After this, several communications, some by telegraph and some by letter, passed between the Department on the one part and Sutton or his solicitor on the other part, by which the time for putting in the necessary security was extended until the 19th December, 1874. All but one of these communications are printed at pages 6 and 7 of the Blue-Book return to the Senate, dated 14th March, 1878, and will show the steps in this negotiation up to 16th December, 1874, when an extension of three days was asked on behalf of Messrs. Sutton & Thirkell. That one, a material link in the story, is produced from the records of the Department. It is as follows:—

" By Telegraph.

" OTTAWA, December 16, 1874.

" R. T. SUTTON, Brantford.

" Minister grants three days' delay asked for.

" F. BRAUN,

" Secretary."

Mr. Sutton, the proprietor of the rights acquired under the tender of Sutton & Thirkell and the extension thus granted, not being able to find the required security, proceeded forthwith to negotiate with other parties in order to secure some of the profits which seemed within his reach, and he succeeded in completing an arrangement with Oliver, Davidson & Co., the present contractors, by which they were within the given time to do all that was necessary in order to secure the contract on the accepted ten-

der, and they agreed to fulfil it, taking for their own use three-fourths of the profits, and paying over the balance to Mr. Sutton.

There is conflicting evidence upon the question whether Mr. Sutton's first approach was made to Mr. Oliver and Mr. Brown at Ingersoll, or to Mr. Davidson at Toronto, where Mr. Sutton saw him and Mr. Oliver together.

However this may be, it is clear that very soon after getting the telegram extending until the 19th December, 1874, the time within which security should be given in support of the Sutton & Thirkell tender, Sutton went to Toronto and saw there Mr. Oliver and Mr. Davidson, two of the present contractors; upon which occasion an arrangement to the effect above mentioned was closed; but not reduced to writing. The time left within which the security was to be provided was then so short, that, on the evening of that same day, Mr. Oliver, Mr. Davidson and Mr. Sutton took the the train for Ottawa, and arrived there before the extension of time granted to Sutton & Thirkell had expired. On the 19th December, 1874, Messrs. Sutton, Oliver & Davidson were in Ottawa, and Messrs. Oliver & Davidson then went together to the Department of Public Works; while there they saw Mr. Fleming and conversed with him on the subject. They remained in Ottawa but one day, leaving the same night; before leaving, Mr. Oliver, according to the belief of Mr. Davidson, saw the Minister concerning this contract.

The first tender higher than that of Sutton & Thirkell, was that of Sutton & Thompson, the latter firm being composed of the R. T. Sutton aforesaid, and Mr. William Thompson, of Brantford, upon an understanding between them, as Mr. Sutton says, that Thompson was not to be a full partner, but was lending his name to strengthen the firm, and that Sutton should pay him for so doing

The contract finally entered into with the Government is at the price named in the higher one of these tenders, higher by \$28,200. We have endeavoured to learn what prevented the Department from closing with these parties on the basis of the Sutton & Thirkell tender, and how it was that Messrs. Oliver, Davidson & Co., procured an arrangement much more advantageous to them than that which they came to Ottawa to make.

We have met with much difficulty in the attempt to ascertain what actually took place on this occasion between any one on behalf of these gentlemen, and those who acted on the part of the Government.

Mr. Sutton, as a witness, says he did not himself converse with any one at the Department, it having been understood that Mr. Oliver and Mr. Davidson would undertake that part of the proceedings. Mr. Oliver, the only one who is said to have communicated personally with the Minister, has been in such bad health since the commencement of our investigation that it was useless to call him.

Mr. Davidson, as a witness, says that he and Mr. Oliver saw Mr. Fleming in his office, and talked together on the subject; but he says he remembers nothing being mentioned about the standing or the prices of different tenders, and that the principal information which he gained from Mr. Fleming was concerning the character of the country to be crossed by the line, and the fact that the "Government always fell back on the lowest tender;" he thought, however, that Mr. Fleming said he would recommend the giving of this contract to his firm.

Mr. P. J. Brown, as a witness, gives his recollection of the negotiations between members of his firm and Sutton, and of other matters, but is manifestly astray concerning some of them. He says that Sutton first approached his firm by meeting him and Oliver with the telegram from Mr. Braun naming three (or five) days within which the security might be furnished; that the time being so short he and Mr. Oliver went to Toronto and purchased for that purpose \$10,000 of Federal Bank stock, and Oliver went on at once to Ottawa and closed the arrangement within the days first named in the telegram; as a fact, these days ended on 19th December, 1874.

There is a letter to Mr. Fleming from this firm dated 5th January, 1875, asking what security will be required by the Government and proposing, to give, as their first choice, their individual bonds; as their next choice, mortgages on their real estate, and stating that they had no municipal debentures.

And another from the same firm to the Minister as late as 9th February, 1875, enclosing an executed duplicate of the contract, and, as the security, a certificate for \$10,000 of Federal Bank stock; in this they say they had intended to deposit municipal debentures but could not agree as to price, and had afterwards procured the bank stock. We do not think this consistent with the view of Mr. Brown, that he and Mr. Oliver purchased the Federal Bank stock, and then Mr. Oliver at Ottawa closed the arrangement within the time (ending 19th December, 1874), given by the telegram to Mr. Sutton.

This correspondence, and the evidence of the other parties, makes it plain to us that Mr Brown's recollection is at fault, and we are consequently led not to rely on his version of this matter where it differs from theirs.

Mr. Brown is not within his own knowledge cognizant of the occurrences at Ottawa, and on this subject we can get no light from his evidence.

Mr. Burpé saw, in Mr. Fleming's office, some of the gentlemen who have been named as visiting Ottawa on this matter, but, not being present in the room, he did not hear what passed between them and Mr. Fleming.

Mr. Fleming, as a witness, has told us that his memory is not good. Messrs. Oliver & Davidson both conversed about this matter with him on the 19th December, and the letter hereinafter mentioned and dated on the 24th of that month came from their firm, but there are no written records of any of the steps in the proceedings, which led up to the decision which forms the substance of Mr. Fleming's answer to them on the 29th, also hereinafter set out, and he fails to give any clue concerning them; he has no recollection on the matter beyond the fact that some of them were in his office more than once, but he cannot say, "whether it was Oliver & Davidson or a gentleman named Brown."

On being reminded by us of the part he had taken in this correspondence—by which Oliver Davidson & Co., had been allowed to get Sutton & Thompson's position, Mr. Fleming said he wished us to understand that from first to last he had nothing to do with making contracts, unless he was specially asked to interfere—that in this case he had probably gone to the Minister, or Deputy Minister, or Mr. Buckingham, to enquire if the thing could be done so that he could answer the letter, but we understood him to state this probability as a surmise.

Mr. Trudeau, as a witness, informed us that dealing with Oliver, Davidson & Co., under the circumstances in which they assumed to have the rights of Sutton and Thompson, that is on the assertion in their letter of 24th December, was not according to the usual practice of the Department—that he cannot give any reason for this being made an exception, and that though he was aware of the irregularity of the case, he did not enquire into it, because the transaction was managed by the Minister.

Mr. Mackenzie being questioned as a witness concerning the letting of this contract, says he does not remember the particulars of the case; that he

does not think he himself ever arranged in regard to contracts, and that he can give no explanation further than what is contained in the records of the Department.

After this we notified Mr. Trudeau of the substance of Mr. Mackenzie's evidence, and asked him to investigate the matter carefully so as to give us, if possible, some account of what took place at the Department at the time this matter was being arranged with Mr. Oliver or Mr. Davidson, or any other person on behalf of that firm. On being recalled as a witness, he said that he had nothing to add to his former evidence, that he did not think he took any part in the matter.

Both Sutton and Davidson testify that the price talked of between them at Toronto was lower than that which they obtained under the contract.

When Sutton and Oliver and Davidson reached Ottawa, there is reason to believe that Sutton himself was ignorant of the fact that there was no intervening tender between that of Sutton & Thirkell and the higher one of Sutton & Thompson; he said he thought he first learnt that fact from Oliver & Davidson.

Davidson testifies that when they left Ottawa they did not know positively that they would get this contract (at the higher price), but he "thought the thing was looking that way."

Sutton says his first arrangement was that Oliver & Davidson were to "go in with him" on the Sutton and Thirkell tender (the lower one), and he thinks it was verbally arranged while they were at Ottawa, between some of them and the Government, that the Sutton & Thirkell tender should be set aside, and the one from Sutton & Thompson taken, because they went back after the arrangement to "get things into shape," and he thinks there was no doubt that the arrangement was accepted by the Government.

In addition to the fourth share of the profits which were promised to Sutton when he first arranged with Oliver & Davidson on the basis of the lower tender, they did in fact, before the contract was obtained on the higher tender, pay him a further sum of \$800, which he said "had to go to Thompson," and that amount, or part of it, was paid to Thompson for an assignment of his interest in the higher tender.

This transaction with Thompson was no part of the original arrangement, and was an unserviceable expenditure unless these parties after reaching Ottawa learnt that it was advisable to get into Thompson's position.

After the date of the visit to Ottawa by Sutton, Oliver & Davidson, the first step recorded in the Department concerning the substitution of the higher tender is the following letter :

"INGERSOLL, 24th December, 1874.

"MY DEAR SIR,—We now arranged to carry out the tender of Sutton, Thompson & Co, of Brantford, for section 5, Canadian Pacific Telegraph. What time would be convenient to have the matter closed with the Department? Could it stand over until after the Ontario elections? Please advise and oblige yours.

"(Signed) OLIVER, DAVIDSON & CO.,

"By A. OLIVER.

"To S. FLEMING,

"Chief Engineer, C. P. R."

This was answered as follows :—

"CANADA PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, 29th December, 1874.

"GENTLEMEN,—I have your letter of the 24th inst, with respect to the construction of the telegraph between Lakes Superior and Manitoba.

"This matter can be closed at any time convenient to you to come here.

"Yours truly,

"(Signed) SANDFORD FLEMING.

"OLIVER, DAVIDSON & Co., Ingersoll."

The phraseology of the letter of the 24th December, the word "now" occurring in the original, conveys to our minds the impression that it was intended to inform Mr. Fleming of the accomplishment of what had before then been spoken of between them as an uncertainty—and that what was alluded to was the assignment from Thompson, a matter which became desirable only after their interview on the 19th of December.

After this Mr. Oliver went to Ottawa without any of his partners and secured the contract, which was executed in its present shape on or about the 9th of February, 1875.

Sutton at some time gave a letter to Mr. Oliver to be handed to the Government to the effect that he refused to carry out the Sutton & Thirkell tender, *i. e.*, the lower one. The date of this is not given. No trace of its date or contents is to be got from the Department.

Sutton said he thought there was no document assigning the interest of Sutton & Thompson to Oliver, Davidson & Co. It was left principally to Oliver to arrange with the Government to get the contract.

This much is evident—that on the 19th December the time expired which had been granted to Sutton & Thirkell for furnishing security. The

parties representing that firm were in Ottawa with the intention of carrying it out. They omitted to do so, and yet the omission was followed by no such departmental action as was regular and usual in such cases.

Sutton & Thirkell were not officially discarded, nor was the contract offered to the tender next higher than theirs. The reason for this to be extracted from the evidence is that the higher price would go to a firm which comprised a person, who had not been a party to the bargaining up to that time, and whose rights must be disposed of or acquired before Oliver, Davidson & Co. could be sure of the higher sum. The transaction was apparently kept open that this might be accomplished if possible.

The official records show :—

- (1.) No decision to discard the Sutton & Thirkell tender ;
- (2.) No reason for such a step ;
- (3.) No communication to Sutton & Thompson, or any one on their behalf, that the Government proposed to adopt their tender until after Oliver, Davidson & Co, on 24th December, communicated the fact that, they had acquired the position of the higher tenderers ;
- (4.) No assignment of the interest of Sutton & Thompson (the higher tenderers) to Oliver, Davidson & Co ;
- (5.) No decision that Oliver, Davidson & Co. were entitled to take the standing of Sutton & Thompson.

Owing to the lack of direct evidence found in the statements of the four witnesses who were pecuniarily interested in this contract, and to the bareness of the records of the Department, coupled with the defective memory of its officials, we have to draw our conclusions partially from circumstantial evidence.

We think there is reason to believe that on the 19th December, 1874, Mr. Oliver and Mr. Davidson, under arrangement to that effect with Mr. Sutton, visited the Department of Public Works, intending to take this contract on the tender of Sutton & Thirkell, and to provide the requisite security within the prescribed time ; that while at the Department, they learned that a higher price might be obtained if they could procure the standing of Sutton & Thompson ; that, being uncertain as to the accomplishment of this, they did not forego their position in regard to the lower tender ; but they afterwards secured

an assignment from Thompson which, with Sutton's acquiescence, then gave them the desired status; that no reason for this substitution is recorded or can be ascertained.

The evidence leads us to conclude that in obtaining this contract the contractors got undue advantages.

(1.) Lower eligible tenderers (Waddle & Smith) were passed over without being allowed any specified time for furnishing the requisite security.

(2.) The contractors got a higher price than that at which they were willing to take the contract.

(3.) That the Department had the opportunity of entering into the contract with these same contractors for the same work at a cost \$28,000 less than the amount agreed to be paid to Messrs. Oliver, Davidson & Co.

The evidence does not disclose the reason for paying the higher price.

Towards the completion of the construction under this contract, an arrangement was made by which the contractors were to operate the line.

On the 3-d May, 1876, Mr. Fleming made the following report:—

“ OTTAWA, May 3rd, 1876.

“ F. BRAUN, Esq.,

Secretary Public Works Department.

“ Sir.— Oliver, Davidson & Co., contractors, for telegraph construction between Lake Superior and Red River, have made an offer to operate the line as it advances from both ends, furnishing offices where no buildings exist, batteries, instruments and operators, for ten dollars (\$10) per mile per annum; all messages on Government business to be free, they receiving in addition to the \$10 per mile, what profits they may earn from outsiders, charging them the same rates as the Montreal and Dominion Telegraph Companies.

“ This proposal, if concurred in, would be a great convenience in connection with the surveys and construction of the railway and as the charge per mile does not seem unreasonable, I would recommend that the offer be accepted.

Yours truly,

(Signed) SANDFORD FLEMING.”

This was followed by an Order-in-Council to the following effect:—

A Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 19th May, 1876.

“ On a memorandum, dated 13th May, 1876, from the Hon. the Minister of Public Works, reporting that Messrs. Oliver, Davidson & Co., contractors for telegraph construction between Lake Superior and Red River, have offered to operate the line as it advances from both ends,

furnishing offices where no buildings exist, batteries, instruments and operators, for \$10 per mile per annum; all messages on Government business to go free,—they receiving what profits they may earn from the public who are to be charged at rates similar to those of the Montreal and Dominion Telegraph Companies.

“That said terms appear to be reasonable, and that the free use of the telegraph line by Government would be of great advantage in connection with surveys and construction of Pacific Railway.

“The Minister, therefore, recommends acceptance of said offer, the contract to be terminable on giving six months' notice to the contractor at any time and the payment for any part of a year to be at above rate.

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

W. A. HIMSWORTH, C.P.C.”

By letter of 10th June, 1876, the offer of Messers. Oliver, Davidson & Co, was accepted; but the portion of the line between Selkirk and Rat Portage was not handed over to them, because it was being worked by Mr. Rowan, the District Engineer, and his subordinates on behalf of the Government. The western end of the line covered by this contract was well constructed as far as Whitemouth; beyond that the country is difficult and there the line was not so well constructed. In many places the tops of the trees were cut off, and the wires stretched over them. This had the effect of killing the trees, and the roots decaying, caused the supports and the wires to fall together to the ground. Mr. Brown, one of the contractors, testified that in the construction the poles were placed in the middle of the road-bed, particularly on section B; that he asked permission to move them at the expense of the Government, which was not granted, but the contractors for the railway were allowed to do so, and this was done, but not well done, causing trouble. On section 41 he said that the excavation had taken place about the foot of the poles, and that the amount of earth left being insufficient to support them, they were blown down by the wind. The principal portion of the poles on this section was of better wood than on section No. 1. Mr. Rowan, the District Engineer at Winnipeg, said that the maintenance of this line had been very poor, especially that portion of it east of Rat Portage, and that this fact had materially interfered with the business connected with the railway, serious delays having occurred which resulted in loss to the work. He had means of communicating directly from his office over this line, and the manner in which it had been maintained was, therefore, continually within his knowledge. The ordinary habit was that messages would be repeated at Rat Portage, but this was not invariably

the case. He testified that the line was out of order, and not sufficiently maintained for about one-sixth of the year. The following report was made by Mr. Gisborne, of the Telegraph and Signal Service :—

“TELEGRAPH SIGNAL SERVICE.

“CANADIAN PACIFIC RAILWAY,
“OFFICE OF THE ENGINEER IN CHIEF,
“OTTAWA, December 29th, 1879.

“SIR—After a careful perusal of the contract and correspondence relating to Messrs. Oliver, Davidson & Co.'s contract for the construction and maintenance of the Telegraph line between Fort William and Selkirk, and also of their after agreement to operate the same, I have the honour to report :—

“1st. That the insulators, &c., (as per sample placed before me for inspection) were certainly not of the best quality commonly used, as required by contract. 2nd. That the line (as represented to me) has been very badly constructed, and was and is very inefficiently maintained—for example, the wires are reported to have been down,

“19 days during	September,	1878.
10 “ “	October,	“
14 “ “	November,	“
10 “ “	December,	“

“Since which dates no returns (so I am informed) have been made to the Department as ordered by Mr. Sandford Fleming. I am also informed by Engineers who have lately traversed the line, that it is in a most deplorable state of repairs.

“It is my opinion, therefore, that the application of Messrs. Oliver, Davidson & Co, their successors and assigns, for a return of the \$10,000 deposit account contract, or of the 10 per cent. drawback, or any portion thereof, or for any payment account operating the line is inadmissible at present, and that no further payment should be made until the line has been inspected and its operation approved by your Superintendent.

“I have the honour to be, Sir,

“Your most obedient servant,

“F. N. GISBORNE,

“Superintendent of Telegraph and Signal Service.

“The Honourable

“The Minister of Railways and Canals.”

We are not able to say whether these contractors have fulfilled their contract according to the legal construction of it. We find that they have not constructed a good line. By their contract they bound themselves to maintain the line in good running order for a period of five years from its completion. Up to the date of our Commission they had not done so. The following sums were paid on this contract up to the 30th June, 1880 :—

30th June, 1875.....	\$ 2,140
“ 1876.....	49,410
“ 1877.....	39,450
“ 1878.....	88,600
“ 1879.....	33,500
“ 1880.....	2,200
<hr/>	
Construction	\$215,300
Maintenance	3,868
<hr/>	
Total.....	<u>\$219,168</u>

CONTRACT No. 5.

Railway Construction.

By this contract, dated 30th August, 1874, Joseph Whitehead undertook to do the necessary excavation and grading on the Pembina Branch at the rate of 22 cents per cubic yard, in the manner specified in the said contract. The work was started hurriedly in consequence of reports made to the Government by people of influence in Manitoba, that numbers of persons were in very distressed circumstances, owing to the grasshopper plague, and Mr. Rowan, the District Engineer at Winnipeg, was ordered to make an examination and to locate a line between Emerson and Winnipeg, on which work could be commenced immediately, following as much as possible one of the road allowances between the two points named. On the 8th of August, 1874, the Government advertised, asking for tenders for the grading of the Pembina Branch between the international boundary and a point opposite the town of Winnipeg. Specifications of the same date were furnished for the use of tenderers. These showed that the work to be undertaken would not be over so great a distance as suggested by the advertisement, and that the work to be actually done was divided into two sections: No 1, the southern section, passing through townships 2, 3, 4 and 5, about 24 miles; No. 2, the central section, through townships 6, 7, 8 and 9, about 24 miles. The work was the excavation and grading necessary to form a road bed, leaving openings at streams for the subsequent insertion of bridges. The tenders included only one item, which was a price per cubic yard for this work. They were opened on the 26th of August, the

day after that named for their receipt. Twenty-one tenders had been sent in, ranging in their prices from 21 cents to 59 cents per yard. The three lowest were those of :

C. Peach.....	at 21 cents.
Joseph Whitehead.....	at 22 cents.
A. H. Clark.....	at 22 cents.

On the same day, Mr. Peach was requested to see the Minister on the subject of his tender. On the 27th, the day following, Mr. Peach wrote intimating a fear that he could not give the security required, and asking a delay until he could hear from England. On the day following that, the Secretary of the Department informed him that the delay could not be granted. On the 7th of September, 1874, an Order-in-Council authorized the acceptance of Mr. Whitehead's tender, and the contract was entered into on that basis.

At the time that Mr. Peach and Mr. Whitehead were tendering they were boarding in the same house in Toronto. An arrangement was made between them before the contract was awarded to Mr. Whitehead, by which Mr. Peach should go to Manitoba as a foreman for Mr. Whitehead. He did so, and for his services received \$100 a month and board. He afterwards sued Mr. Whitehead in Manitoba, claiming that he was really a partner in the transaction of this contract, but failed in his suit. The evidence before us leads us to conclude that Mr. Peach was a stranger in the country, with but little means; that Mr. Whitehead's obtaining the contract was not due to any bargain made between them, having for its object the failure of Mr. Peach to find the necessary security. In entering into this contract, Mr. Whitehead was acting entirely in his own interest, not being associated in name or in reality with any other person. At the time this contract was closed the location of the line was not finally decided on, but no delay on that account occurred, as the country to be crossed was easy and the engineers were able to locate in front of the contractor's forces. The specifications and the formal contract based upon them did not include all the work that was afterwards done by Mr. Whitehead, nominally under this bargain. The southern section mentioned in these documents did not include the township in Manitoba next the international boundary, for the reason that the railway connection in Minnesota was not then established, and until that should be done no point of junction could be fixed. Similarly the northern section did not include the route through the township next to St. Boniface, because the precise line could not then be settled on.

The work done by the contractor at the prices named in this contract included portions of these distances so omitted, as aforesaid, from the specifications.

Mr. Whitehead said that he started from the south side of Bishop Tache's estate at St. Boniface, and went as far as the boundary line of the Province.

We conclude that in obtaining this contract, the contractor got no undue advantage, and that at the time of awarding it the Department had no opportunity of securing the same work at a lower price.

A dispute arose between the contractor and the Government respecting the measurement of part of the work, but it was settled to the satisfaction of Mr. Whitehead, though at a sum less than that claimed by him, and the contract was fully completed and paid for.

The expenditure under the contract has been as follows :—

To June 30th, 1875.....	\$18,900 00
“ “ 1876.....	175,965 60
“ “ 1877.....	13,298 00

Total	\$208,163 00

CONTRACT No. 5 A.

Railway Construction.

Though this is numbered as if it pertained to contract 5, it was not entered into until May, 1877, nearly three years after that one. There is no formal agreement concerning the work done under the arrangement which is distinguished in the records of the Department as contract 5 A. Neither was there any understanding, verbal or otherwise, between Mr. Joseph Whitehead, the party who has done the work, and any one on behalf of the Government defining what was to be done. It was undertaken under the following circumstances :—

In May, 1875, an arrangement was made between the Department and the Red River Transportation Company (see contract 18) by which it was provided that a quantity of rails (required for section 14) would be transported from Duluth to Selkirk. This was not accomplished owing, it is said, to the state of the water in Red River at and near the rapids north of

Winnipeg. The Engineer-in-Chief submitted the following memorandum and letter:—

“ CANADIAN PACIFIC RAILWAY,

“ OFFICE OF THE ENGINEER-IN-CHIEF,

“ OTTAWA, 19th April, 1877.

“ (Memorandum.)

“ Under the contract with Sutton, Thompson & Whitehead, the rails have to be furnished them, in order that they may proceed with the track-laying on section 14.

“ The rails would, of course, have to be delivered at some point on, or adjacent to the line, say at Selkirk. There are now 918 tons at Selkirk, sufficient to lay about ten miles. It therefore becomes necessary to transport as many as may be required to that point from Winnipeg, where they are now lying.

“ The total quantity of rails required to lay the track, covered by the contract of Sutton Thompson & Whitehead, is nearly 11,000 tons.

“ I sent a telegram a few days ago to St. Paul, enquiring of the forwarders there at what rate they would carry the rails from Winnipeg to Selkirk. I also telegraphed to the same effect to Winnipeg, and have received replies.

“ An offer has come from Mr. Kitton, the Manager of the Red River Transportation Company, offering to carry the rails at the rate of \$2.13 per ton (2,240 lbs.) provided his offer be at once accepted, as the whole work will require to be done within the next five or six weeks, if done at all by water this season.

“ The cost of transporting these rails from Winnipeg to Selkirk, including the handling between the river's edge and the edge of the track, would probably be nearly \$3.00 per ton, which would come to over \$30,000.

“ Mr. Whitehead offers to do the grading on the extension of the Pembina Branch at the same rate as his original contract, and lay the track at the same rate as the present contract for sections 14 and 15. I have examined the profile of the line, and am of opinion that, for the present, the grade may be reduced in some places about a foot, so as to decrease the number of yards in the embankment to about 8,000 yards per mile, and on this I have based the following estimate:—

Grading 20 miles at 8,000 c. yards; 160,000 c. yards at \$	0.22.....	\$35,200
Ties do do 45,000 do	0.40.....	18,000
Track-laying, 20 miles.....	290.00.....	5,800
Bridging streams		1,000
		\$60,000

“ From this it would appear that the track could be laid on the Pembina Branch at sub-grade for only \$30,000 more than the cost of transporting the rails by water; and I would wish to suggest, for the consideration of the Minister, whether it would not be better to enter into the arrangement with Mr. Whitehead.

“ I do not mean that the northern end of the Pembina Branch should remain at what I have called sub-grade, as in that condition it would not be so efficient; but it would answer the purpose of conveying material forward to the trunk line for some years to come, and it must be borne in mind that there will be as much difficulty in getting rolling-stock taken to

Selkirk when it is required by-and-bye, as it is now in getting the rails down, unless the branch be extended as now suggested.

"I would submit another reason why it would be advisable at once to carry out the above suggestion. The line between Winnipeg and Selkirk passes a deposit of gravel suitable for ballast, while the impression is that there is no material on section 14 suitable for the purpose.

"Then the contractor would be enabled to go on with this part of his work at an early day, if the track was laid as proposed, on the extension of the Pembina Branch.

"SANDFORD FLEMING,
"Engineer-in-Chief."

"CANADIAN PACIFIC RAILWAY,
"OFFICE OF THE ENGINEER-IN CHIEF,
"OTTAWA, 2nd May, 1877.

"SIR,—With regard to the extension of the Pembina Branch, from Winnipeg to Selkirk, as referred to in my letter of the 19th April last, and your communication of the 30th of the same month, I would suggest that, in order that there may be no misunderstanding as to the terms upon which the work is to be done, an Order-in-Council be passed, accepting the proposal of Mr. Whitehead, and defining the terms.

"As I understand the proposal is as follows:—The grading (not exceeding 8,000 yards per mile) to be done at the price of Mr. Whitehead's original contract for the Pembina Branch, viz, 22 cents per yard. The other work to be done at the prices of Messrs. Sutton, Thompson and Whitehead's contract for section 15, viz: Ties, 40 cents each; track-laying and ballasting, \$290 per mile.

"It will be necessary, I think, to view this matter in the light of a supplementary contract for the Pembina Branch.

"It should not be done under the 15 contract, as the account for the Pembina Branch should be kept distinct from the main line.

"I am, etc., etc,
"SANDFORD FLEMING.

"F. BRAUN, Esq.,
"Secretary of Public Works."

These were followed by an Order-in-Council in these terms:—

"Copy of a Report of the Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 11th May, 1877.

"On a Report dated the 28th April, 1877, from the Hon. the Minister of Public Works, stating that under the contract entered into with the contractors for section No. 14 of the Canadian Pacific Railway, the Government are required to furnish the rails to be used in the laying of the track.

"That the weight of rails necessary for that purpose is stated, by the Chief Engineer of the Canadian Pacific Railway, to be nearly 11,000 tons, and he adds that there are 918 tons already on the spot ready for use, at Selkirk, leaving, say, 10,082 tons still to be supplied.

"That it is necessary to provide for the transport of this quantity of rails from Winnipeg to Selkirk during the present season.

"That it has been ascertained that the probable cost of transportation by water, between the points named, would be \$30,000, and that to enable the service to be performed, at even this cost, the work would have to be done within the next five or six weeks, before the water of the river subsides.

"That it is suggested, that under these circumstances, it is expedient to extend the Pembina and Winnipeg Branch Railway, which at present terminates at Winnipeg, to Selkirk, a distance of twenty miles.

"That the Chief Engineer represents that Mr. Whitehead, contractor, has offered to do the grading of this extension line at the rate for grading mentioned in his contract, viz: 22 cents per cubic yard, and to lay the track at the rate given in his present Pacific Railway Contract, viz: \$290 per mile; and the Chief Engineer, by reducing the grades on the profiles, in some places about a foot, so as to decrease the number of yards of embankment to about 8,000 yards per mile, is able to furnish the following estimate of the cost of this twenty miles of railway, viz:—

Grading, 20 miles at 8,000 cubic yards, 160,000 yards at 22 cents....	\$35,200
Ties 45,000 at 40 cents.....	18,000
Track-laying, 20 miles at \$290.....	5,800
Bridging streams.....	1,000
	\$60,000

"It will be seen, the Minister observes, that the whole cost of laying the track, grading, &c., as above, is only \$30,000 more than the cost of transportation of the rails by the cheapest means available from Winnipeg to Selkirk.

"It further appears, that by opening up this line of railway at once, a deposit of gravel, suitable for ballast, would be rendered available for early use on section 14, on which section, the impression is, there is no such material to be found.

"That the line, it is pointed out, would also be useful for getting rolling stock, taken to Selkirk when it is required for the main line of the Pacific. In view of these considerations, the Minister is of the same opinion as the Chief Engineer, that it is advisable to proceed at once with the construction of this extension of the Pembina Branch Railway from Winnipeg to Selkirk;—and he accordingly recommends that he be authorized to issue instructions to Mr. Fleming, Chief Engineer, to direct the contractor (Mr. Whitehead), to carry out the work at the prices mentioned, viz: grading 22 cents per cubic yard, such price being the amount as per contract, for the construction of the branch from the main line to the boundary near Pembina, ties, 40 cents, track-laying, \$290 per mile, such price being those specified in the contract for ties on the main line between Selkirk and Keewatin, on contracts 14 and 15; bridging \$1,000, the whole cost not to exceed \$60,000.

"The Minister observes that it is not intended this road should remain in what the Engineer terms a "sub grade," as in that state it would not be so efficient, though it would answer the purpose for which it was required, for some years to come, viz: the transportation of materials, &c.

"The Committee submit the above recommendation for your Excellency's approval.

"Certified,

"W. A. HIMSWORTH,

"Clerk, Privy Council."

On the same day Mr. Braun telegraphed as follows:—

"11th May, 1877.

"Authorize Mr. Whitehead to proceed with the Pembina Extension, as part of the first contract, at twenty-two (22) cents for earth-work, and the other work at prices as per his contract (15.)

"F. BRAUN,
"Secretary."

"J. H. ROWAN, Winnipeg."

And the following letter was sent to the acting Engineer-in-Chief five days later:—

"16th May, 1877.

"SIR,—I beg to inform you that, on the 7th instant, Mr. Rowan was instructed, by telegraph, to authorize Mr. Whitehead to proceed with the works on the Pembina Extension, as part of his first contract, at twenty two (22) cents per cubic yard for earth excavation, and the other work as per prices in his contract for section (15) fifteen.

"I have the honour to be, Sir,

"Your obedient servant.

"F. BRAUN,
"Secretary."

"MARCUS SMITH, Esq.,

"Acting Chief Engineer,

"Canadian Pacific Railway, Ottawa."

In accordance with the suggestion made by Mr. Fleming at the close of his letter of the 2nd of May, above set out, this was treated as a supplementary contract for the Pembina Branch. It was, nevertheless, not a supplementary contract to that one, unless the agreement to build any portion of the railway, is supplementary to the agreement by which an adjoining portion was built. No competition, public or otherwise, had been invited at any time for the work done under the arrangement known as contract 5a. As before mentioned in our report on contract 5, the specifications on which that was based limited the distance within which the work was to be done, and for which tenders were to be received to the southern and central sections of the Pembina Branch, the southern one embracing townships numbers 2, 3, 4 and 5, and the central one numbers 6, 7, 8 and 9, the northern limit of this whole distance being a point several miles south of St. Boniface. Moreover, the work itself, under contract 5, covered only one of the items mentioned in the telegram of Mr. Braun, of the 11th May. That telegram was intended to cover, at least, the four items mentioned in the Order-in-Council, viz. : grading, ties, track-laying and bridging; contract 5 covered only the road-bed described

in Mr. Fleming's specification of the 8th of August, 1876, and relating to that contract as follows:—

“Section 5. The work now to be placed under contract is the excavation and grading required in the formation of the road-bed, or so much thereof as the Minister of Public Works may determine within the limits of the two sections above referred to.”

As a fact, this telegram of Mr. Braun did not limit the work to that described in the Order-in-Council above set out. Neither did his subsequent letter of the 16th May to Mr. Smith.

Under the arrangement known as contract 5 A, many different kinds of work have been performed and paid for, some within the meaning of the said Order-in-Council, but a large proportion beyond it. The total outlay has been \$161,124. No part of the work was submitted to public competition. More than \$100,000 of the whole cost was expended without the support of either competition or an Order-in-Council. Some of this \$100,000 was consumed by allowing a price for work twice as high as would have been paid had it been submitted to competition.

On one item \$24,682 was given for off-take ditches at the rate of 45 cents per yard. The contractor himself testified that if this had been let by tender, it might have been done at one-half the price he got.

On this section, between St. Boniface and Selkirk, the work performed includes about twenty classes, instead of the four named in the Order-in-Council. They are stated in detail in Mr. Fleming's report of 1879, page 126. The expenditure there mentioned has been increased before the date of our Commission to the sum before mentioned by us. Mr. Mackenzie, Mr. Trudeau and Mr. Braun have been examined by us, with a view of learning the reason for the telegram of the 11th of May, awarding the high prices of section 15 to all the work to be done on this extension of the line except the one item at 22 cents, but no one of them was able to inform us. Mr. Fleming said:—

“The whole thing seems to be a mistake. There was no intention of doing off-take ditches in the first place.”

Mr. Smellie, on the 16th of July, 1877, mentioned the matter in a letter to the Secretary, and called attention to the excess in the expenditure beyond the \$60,000 authorized by the Order-in-Council, and pointed out the high price of 45 cents which had been charged for off-take ditches. Subsequently he called the attention of Mr. Marcus Smith, the acting Chief Engineer, to

this item ; but Mr. Marcus Smith decided that Mr. Whitehead was entitled to the price charged, it being the same as that which had been allowed on section 15. Mr. Smellie's recollection is that Mr. Marcus Smith said this price was authorized by the Order-in-Council. That view could hardly be maintained, since the Order-in-Council specified the items to which it applied, and off-take ditches was not one of them. It is probable that the foundation for the decision was that the telegram of the 11th of May, and the letter of the 16th of May, authorized the prices of section 15 to be applied to all items except the one mentioned in these communications.

Whether sections 3, 4, 12 and 16 of the Canadian Pacific Railway Act of 1874, taken together, required this the construction of one of the branches to be let by public competition rather than by Order-in-Council, is a question upon which we do not think it necessary to give an opinion.

The evidence leads us to conclude that in obtaining the prices which have been paid ostensibly under this contract, the contractor got an undue advantage, namely, a higher price for some of the work than it was worth, and higher than that at which it could have been otherwise procured ; that the action of the Department in directing this work as it was directed had the effect of increasing unnecessarily the cost of the railway.

The work has been completed, and the following sums expended upon it up to the 30th of June, 1880 :—

30th June, 1877..	\$ 990 00
“ 1878.....	100,610 00
“ 1879.....	40,200 00
“ 1880.....	19,824 97
	\$161,124 97

CONTRACTS NOS. 6, 7, 8, 9, 10 AND 11.

Steel Rails and Plates, Bolts and Nuts.

These contracts cover the purchase of 50,000 tons of steel rails, accompanied in each case by fish-plates and in some by bolts and nuts. The names of the contractors and the quantities taken from each, as well as the prices, are set out below. The prices of bolts and nuts are mentioned

where they were contracted for; that of the fish-plates was the same as the rails:—

No of contract.		Tons of Rails	Price.	Price of Bolts and Nuts if furnished.
6	Guest & Co	5,000	\$ c. 54 00	\$ c. 93 29
	" "	5,000	55 24	93 29
7	Ebbw Vale Steel, Iron and Coal Co.....	5,000	53 53	117 41
8	The Mersey Steel and Iron Co	20,000	54 26	—
9	The West Cumberland Iron and Steel Co.....	5,000	53 33	97 33
10	" " " "	5,000	53 33	97 33
11	Naylor, Benzon & Co.....	5,000	51 10	—

The quantity to be supplied under the last of these contracts was delivered in England. There the price was £1 sterling less than at Montreal where the delivery was to take place under the others. The contracts Nos. 6, 7, 8, and 9 were based on tenders made in a public competition in November, 1874. Those numbered 10 and 11 were brought about by offers from the contractors, spontaneously made some weeks after that competition was over. The first advertisement for tenders was as follows:—

“TENDERS FOR STEEL RAILS.

“Tenders, in quantities of not less than 5,000 tons of steel rails, will be received by the undersigned not later than Thursday, the 8th October, 1874.

“The tenders to state the name of the maker and the price per ton of 2,240 pounds, delivered on the wharf at Montreal during the season of navigation of the year 1875; the last delivery to be not later than 1st October.

“Payments will be made of 85 per cent. of the delivered price on the bills of lading in England.

“Weight of the rails to be 90 tons to the mile of railway.

“Tenders to be marked “Tenders for Steel Rails”

By Order.

“ F. BRAUN,
Secretary.”

“ DEPARTMENT OF PUBLIC WORKS,
OTTAWA, Sept. 29, 1874.”

Before the day here named, the 8th of October, it was decided to prolong the period for the receipt of the tenders, and the same advertisement was continued, with this addition:—

"POSTPONEMENT.

"The period for receiving tenders for the steel rails is postponed until the 16th November next.

"By Order.

"F. BRAUN,

Secretary.

"DEPARTMENT OF PUBLIC WORKS,
"OTTAWA, 3rd October, 1874."

We take up each of these contracts hereafter, and report upon it as a separate matter without reference to the expediency of the purchase covered by it; in the meantime we confine ourselves to the action of the Department in providing the 50,000 tons.

There was no Order-in-Council authorizing the purchase of this quantity or any part of it; it was effected by the Department of Public Works under the direction of the Minister.

We have enquired into the reasons which led to this action, and have examined as witnesses the gentlemen who were at the time filling the respective offices of Minister of Public Works, Deputy-Minister and Engineer-in-Chief. The evidence shows that they who were charged with the responsibility of the purchase were impressed with the belief that some of the rails ought to be bought without delay, and irrespective of price. We cannot, however, define the extent of the purchase which was due to this belief, as distinguished from that to be attributed to other causes, because the need of any particular quantity as a feature of the transaction was not deemed to be of sufficient importance to cause the Minister or any of his subordinates to estimate or report upon it.

The evidence shows that the purchase was brought about at the instance and upon the recommendation of Mr. Fleming, who was Chief Engineer, Mr. Mackenzie, as Minister, having adopted his recommendation, and ordered the several contracts. The advertisement for tenders invited offers for no more than 5,000 tons, the quantities beyond that were decided on after the opening of tenders in November, 1874.

The traces of the steps which led up to the conviction in Mr. Fleming's mind of the propriety of this purchase, and to the decision by Mr. Mackenzie to follow Mr. Fleming's views to the extent he did, are very indistinct.

The expediency of having any trace, seems to have first occurred to these gentlemen when the matter was afterwards being discussed in Parliament.

Mr Fleming testified that in March, 1876, "when the matters were fresh" in his mind, he prepared a memorandum respecting this purchase; that he supposed the memorandum was made at the request of the Minister; that Parliament was then sitting, and the subject was under discussion; that his communications with the Minister prior to and during the transaction, and up to the making of the memorandum, had been chiefly verbal, the only exception which he knew of was that he had furnished a draft specification of rails to be acted on if thought best: that this memorandum gave a history of the transaction as far as he knew, and he would "very much rather trust to that than to his recollection."

Mr. Fleming said he thought it was shown to the Minister. It is recorded in the Department, No. 11,160, on 3rd April, 1876, and is as follows:—

(Memorandum.)

"During the summer of 1874, advices from England showed a great decline in the price of steel rails. It was generally considered that they had all but reached the lowest rate, and that an excellent opportunity presented itself of providing a quantity of rails, at lower prices than they would in all probability be obtained for at any future period. Early in August, 1874, the Chief Engineer mentioned the matter to the Minister of Public Works, and advised that steps should be taken to secure such quantity as might be deemed advisable. On the 13th of the same month he renewed his recommendation, and furnished a draft specification to be acted on if thought best.

"The Chief Engineer was absent from Ottawa until near the end of September, when he again renewed his recommendation to secure the rails. A notice calling for tenders on the 8th October was advertised on the 29th September; on the 3rd October the time was extended for receiving tenders to the 16th November, and specifications dated October 3rd were printed. By the letter, a copy of which is attached hereto, it was provided that tenders would be received on the 16th November following.

"It was felt that to advertise for tenders for rails for the Pacific Railway, or for any considerable portion of it, would defeat the object in view, viz., to secure rails at a low rate, and hence the character of the advertisement and specification.

"'Pacific Railway' is not mentioned in either, and tenders for a large quantity are not invited.

"Tenders for the delivery of 350,000 tons were received, the prices ranging from \$53 53 to \$82.73 per ton, delivered in Montreal.

"The average price was \$57 per ton.

"The lowest tenders were:

From Cox & Green, for West Cumberland Co.....	\$53 53 per ton.
From Joseph Robinson, for Ebbw Vale Co.....	53 53 " "
From Cooper, Fairman & Co., for Mersey Co.....	54 26 " "
From Post & Co., for Guest & Co. (mean)	54 62 " "

“Contracts were entered into with these parties at the above prices for all the rails they were willing to deliver, viz :

West Cumberland Co.....	5,000 tons.
Mersey Co.....	20,000 “
Ebbw Vale Co.....	5,000 “
Guest & Co.....	10,000 “
—————	
Total	40,000 tons.

“In addition to the above it was arranged to accept the most favourable terms for the delivery of the rails f. o. b. in England for transportation to British Columbia. Accordingly contracts were made as follows :

West Cumberland Co., for 5,000 tons, at \$48 67.....	f. o. b.
Naylor, Benzon & Co., for 5,000 tons, at \$51.10.....	f. o. b.”

This is a narrative of two matters concerning the purchase now under consideration : one, the reason for action which the Chief Engineer thought proper to lay before the Head of his Department; the other, the action which followed. For the present we may dismiss that portion of it which deals with the action taken. As to the reason thus recorded by Mr. Fleming, it is to be noticed that he avoids all mention of requirements; that was a subject upon which he would have some actual knowledge and upon which, if called upon, he would be expected to assume some responsibility.

We interpret his memorandum as a careful declaration that no such responsibility was cast upon him; that the time when any definite quantity of rails would be required for use, was not a material element in the expediency of purchasing at that period, and that the purchase was made, as a whole, without any serious consideration of that feature.

The single idea which Mr. Fleming appears to have had at that time connected with the proposition to buy and to have communicated to the Minister, is what he described while giving evidence as “the principal reason” for the purchase, namely, the “supposed low price.”

During the course of their evidence, however, both Mr. Mackenzie and Mr. Fleming intimated that the need of some rails for early use was a reason which was mingled with the low price as a motive for the purchase of the 50,000 tons, but neither was able to state to what quantity this reason would apply.

We do not think that the necessity of procuring a part can lessen the whole transaction, and that, in considering the action of the Department on this occasion, is it proper to speak of different, though undefined, portions of the whole quantity as if they had been bought for separate reasons. The

need of some for early use could not be even a remote cause for buying any of those which were understood not to be needed for early use, and the attractiveness of the market could not have induced the purchase of those which were to be bought "irrespective of price."

Therefore, when Mr. Fleming testified that the "supposed low price" was "the principal reason why the rails were purchased," we understood him to mean that that was the reason for purchasing the principal portion.

Mr. Fleming stated that he spontaneously approached Mr. Mackenzie with his advice concerning the matter.

Mr. Mackenzie testified that Mr. Fleming first brought the purchase of rails to his notice, saying that it was absolutely necessary that rails should be had as soon as possible, as it would take a long time to transport them, and construction could not go on without their being on the ground; that the prices of rails were then at the lowest rate which they were likely to reach, and that as large a lot as possible should be secured, Mr. Fleming being very urgent in these representations; that before adopting a conclusion he weighed to some extent the reasons which Mr. Fleming gave; that it was a mere matter of speculative opinion as to the price being at the lowest, but that he certainly thought Mr. Fleming's representations were right as to the necessity of having rails very soon, irrespective of price; that, in judging of the necessity for rails, the quantity would be a material element, and would be in proportion to the distance to be provided for, that he could not say precisely the distance over which the railway was then expected to proceed, but that there was then every probability of several hundred miles being placed under construction within a year. His recollection was that, except those to be used on the Pembina Branch, the first necessity was to provide for the line between Thunder Bay and Red River. This branch would require (at the ordinary rate of ninety tons a mile), in all, less than 10,000 tons; that as to the further quantity, the time at which they would be required weighed in the decision, but he declined to explain whether the necessity of having them for use at any particular period was a reason for the purchase irrespective of price, putting his objection to do so on the ground that the act of every Department must always be assumed to be the act of the Government, and therefore beyond the reach of our enquiry. Our nearest approach to information on the sub-

ject of the quantity which, at that time, might have been deemed requisite, was through an indirect answer of Mr. Fleming.

He was asked if 20,000 tons were then considered as likely to be required. His answer was that, if his impression had been right with regard to a speedy rise in the price of rails, it would have been advisable to lay in a much larger quantity than 10,000 tons. The natural inference from this answer seem to us to be that it would not have been deemed advisable to lay in a much larger quantity than 10,000 tons, but for the expectation that there would be a rise in the price.

Mr. Trudeau has stated that there is not in the records of the Department any report or memorandum showing the quantity of rails which, at the time of this purchase, was estimated to be required within any given time or for any specified work.

Mr. Fleming said he did not think that before the transactions he ever reported on the quantity which he deemed it advisable to buy; that that was decided by the Minister after the tenders came in; that he cannot explain whether there ever was anything more than an informal conversation between him and the Minister concerning this transaction; that in his experience he did not remember of a purchase as large as even 5,000 tons having been accomplished without something more formal from the Engineer than a conversation; that in the case of the Intercolonial Railway there were written reports from the Commissioners as well as from himself advising the purchase of rails; that when the conversation took place between him and the Minister on this matter it was not known how large the transaction would be; that they only asked for 5,000 tons in the advertisement, and the transaction grew to be a larger one at a later date; he could not say at what time he had supposed they would be required when he recommended their purchase; that he made no recommendations as to the quantities till after the tenders came in; that if he had foreseen that the price would go down as it did, he would not then have recommended the purchase to any great amount. Besides the information to be gained from the testimony of these gentlemen, some is to be got from returns to Parliament concerning the use which [was afterwards made of the rails included in these purchases, and of the distances of the railway which were subsequently, from time to time, ready for the use of rails:—

A return to the Senate showing the use which had been made during the year 1876 of any portion of these rails, dated 5th March, 1877, is as follows:—

	Tons.
Laid on track from Fort William westward 25½ miles.....	2,295
Delivered at railway wharf, Fort William.....	14,057
Delivered opposite Winnipeg at St. Boniface.....	12,008
“ at Selkirk, Red River.....	918
“ for the Intercolonial Railway at Halifax.....	11,160
“ at Penitentiary wharf, Kingston.....	4,575
“ at Nanaimo, British Columbia.....	5,077
Total.....	50,090

The evidence taken before us as to the dates at which rails were employed on the different contracts, shows that a large proportion of the 50,000 tons might have been purchased much later than the winter of 1874-75, and have been still in time for the use to which they were actually put.

Inasmuch, however, as the oral testimony before us and these returns together fail to show how far the subsequent events differed from those which in the fall of 1874 appeared probable, we do not feel justified in attempting to define accurately, the quantity which was bought in excess of what was on that day likely to be deemed requisite. The evidence leads us to believe that it was a large quantity, and we proceed to consider separately the action of the Department concerning that undefined portion, which was so bought, beyond the understood requirements of the time, and according to the evidence, bought upon the alleged attractiveness of the market.

The Department in this instance, because of a speculative opinion concerning the future of the market, purchased property expected to be required for use at a future day, but before there was supposed to be any necessity to procure it.

We do not offer any remark as to the propriety of a step of this character, but assuming that such a course was open to a Department, we feel called upon to report whether it was taken with the caution and consideration of results, that would be generally shown by private individuals, before investing their own means in similar ventures.

Before dealing with the reasonableness of the speculation in these rails at the time it took place, it is well to see if there is any material distinction, in a pecuniary point of view, between a purchase of rails at such a time as

would provide them when required, and a purchase without reference to that, solely on the ground that a rise in the price might be expected.

In the first place, we must point out that the price for that quantity, which was bought beyond the need of the time, was actually higher than that of the quantity bought for the emergency, because the quantity required would be provided for first from the lowest tenders. For instance, assuming for the purpose of illustration, the required quantity to have been 15,000 tons at Montreal, it would have been satisfied by the three lowest tenders, as follows:—

West Cumberland,	5,000 tons at	\$53 53
Ebbw Vale.....	“ “ “	53 53
Guest & Co.,.....	“ “ “	54 00

This would provide 15,000 tons at an average price under \$53.69.

An additional 5,000 tons at Vancouver, (the quantity which finally went there), would not raise this average, inasmuch as the acceptance of the second lot of 5,000 tons from the West Cumberland Company, furnished that, at £10 sterling=\$48.66, and this would, in fact, slightly diminish the average of the whole 20,000 tons.

Ending the transactions at these stages, viz: 15,000 tons at Canadian points and 5,000 tons in England, would have prevented the acceptance of the following tenders, all at higher rates, namely:—

The Mersey Co., at Montreal,.....	10,000 tons.
Cooper, Fairman & Co., “	10,000 “
Guest & Co, “	5,000 “
Cooper, Fairman & Co., Liverpool,.....	5,000 “

In order to compare the price under these purchases with those of the 20,000 tons assumed to be needed, it will be necessary to state the prices in Canadian currency. £1 Sterling=\$4.86, was the price for transatlantic carriage; therefore, adding that sum to the price of what was bought at Liverpool, will show what the price would have been if delivered at Montreal; the result would be as follows:—

Mersey Co.....	10,000 tons at	\$54 26
Cooper, Fairman & Co.....	10,000 “ “	54 26
Guest & Co.....	5,000 “ “	55 24
Cooper, Fairman & Co.....	5,000 “ “	55 96

These prices give an average of about \$54.70, higher, by \$1.01 per ton, on the last 30,000 tons than on the first 20,000 tons.

If the quantity needed was more than 20,000 tons, then the balance was bought at an average still higher than \$54.70, for each time one of the lower priced lots is taken from the aggregate, the average of the balance must be raised.

In the next place, the risk attending such a speculation would be greater with a Government than with an individual. A private party, buying in anticipation of a rise, could keep his property in some centre of demand, where it would be available for a rapid sale should the rise take place, and he would thus retain a chance of gain or prevention of loss, which he would be deprived of, should his purchase be available only by actual use at the end of an indefinite period.

It is not necessary to dwell on the improbability of selling advantageously steel rails lying at Vancouver or on the western lakes, for it is to be assumed that a sale of any part of these rails was never contemplated.

In Mr Fleming's memorandum of March, he says that it was thought that rails "had all but reached the lowest rate." This is, of course, alluding to some time not later than August, 1874. But either then or later in December, 1874, or January, 1875, when the rails were bought, if it had been made certain that they had actually reached their lowest rate, not only for that time, but for all time to come, still that certainty could not of itself have made the purchase a profitable speculation.

There was, in fact, but one event possible which could make the transaction anything but a losing one, and that was a rise in the price, so high and so continuous that it would keep pace with the interest on the purchase, the deterioration of the property, and all expenses incidental to the ownership up to the time at which it would be necessary to procure them for use. Anything short of this made a loss inevitable.

In order, therefore, that the Department might judge of the merits of the speculation, it would be necessary to have what was believed to be a well-founded estimate upon several data.

- (1). The times at which respectively the different portions of the whole quantity would be called into use.
- (2). The amount by which the price would be increased.
- (3). How far the increase would be temporary or lasting.

The evidence shows that there was before the Department no estimate upon any of these particulars.

It is obvious that any given day might be "a good time to buy" such rails as were necessary, in view of the period at which they were likely to be used, and still a poor time to buy those which were not wanted, and could only be turned to account when used, and for which the time of use was in an undefined future.

The tenor of the evidence shows that in the fall of 1874 there was an opinion amongst rail dealers that the price would rise. It had been falling from about £18 sterling, the price to which it had risen temporarily during the inflated period in 1873, until it was nearly as low as it had been in 1869-70, and consequently they who were obliged to provide rails would find it a good time to buy. That fact, however, does not touch the transaction we are considering, and it does not help us to see why the state of the market on that occasion, or the chances of it afterwards, should be assumed to be sufficient grounds for the Chief Engineer urging so earnestly as he did the large purchase, beyond the requirements of the day which took place on this occasion.

Mr. Mackenzie was asked what appeared to be the reasons in support of the view that the price of the day made it expedient to buy on this occasion. He said he knew of none except the fact. And being asked what that was, he said the price had reached a lower point than it had ever reached, and that Mr. Fleming thought it likely to rise. The tenor of his evidence was that throughout this matter he leant upon Mr. Fleming's judgment concerning the state of the market, and its probabilities in the future, and upon being asked whether he had not deemed it expedient to enquire into Mr. Fleming's reasons more deeply, than merely by hearing what was his conclusion, his answer was, "Well, of course, I adopted his reasons." Mr. Fleming stated that he had no doubt that he had said to Mr. Mackenzie: "You cannot purchase too many rails at that price."

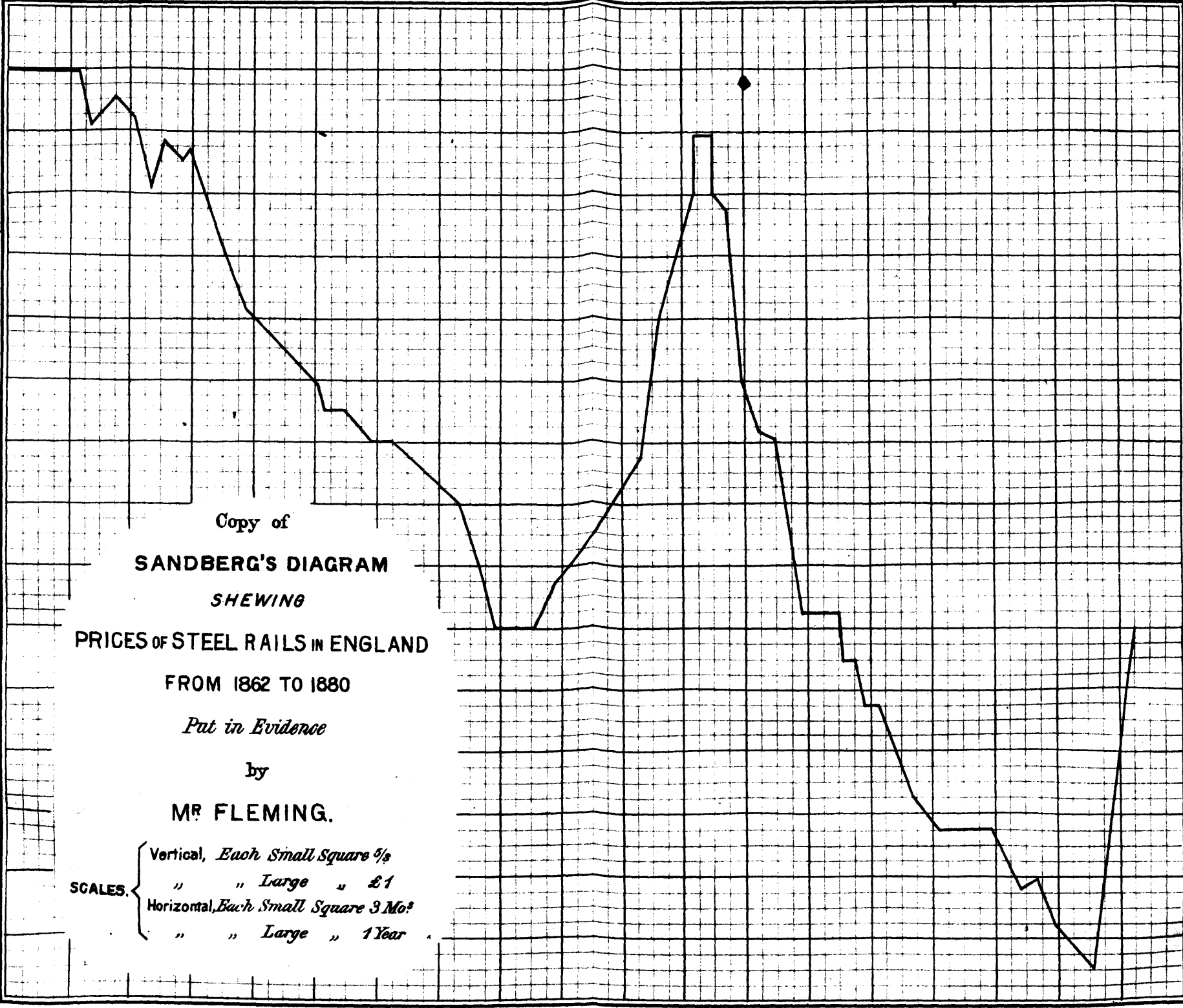
We have examined Mr. Fleming on different occasions, with a view to learn the grounds for his strong opinion on this matter, and the reason for his pressing it as earnestly as he did. As to the grounds for his opinion, all the evidence on the subject points to the conclusion that he had none of any consequence, except the fact that a Mr. Sandberg had entertained that opinion, and had communicated it to him.

Mr. Fleming testified that from all he could learn the price of rails had then reached bottom, and there would be a rebound immediately ; that no one in the trade had expected it would go lower : that, in saying this, he meant of course, according to the information he had received. He explained what he had learned on the subject, and the source from which he had learned it. He thought at one time that he had had letters from two correspondents in England, a Mr. Sandberg and a Mr. Levesey, his advices coming "more especially from Mr. Sandberg."

Subsequently, he was not sure that he had heard from Mr. Levesey, but he defined what he had learned from Mr. Sandberg. This gentleman lived in London, and was looking after the interests of the Canadian public in this manner : he was employed as the Government Inspector of Rails, and was paid according to the quantity. For his services in this transaction he received £3,906 16s. 6d. stg. Mr. Fleming testified that the information in this case had been offered voluntarily by Mr. Sandberg. Mr. Fleming had, at first, no doubt that the letters from Mr. Sandberg were in the office. At a later day he said that they might be called either private or official ; they were not marked private, and yet were not written in a very formal manner. He thought there were several, and had made enquiry for them, but they could not be found. Mr. Burpé who had charge of the correspondence of Mr. Fleming as Engineer-in-Chief was called as a witness. He had heard Mr. Fleming's evidence concerning these letters and had searched for them, but had not found them, and said it would be useless to call anyone else in the Department, he having failed to discover them. He had also searched for copies of letters, if there were any, from Mr. Fleming to Mr. Sandberg, written prior to the purchase of these rails, and had found none. Mr. Fleming produced two diagrams, printed for private circulation, by Mr. Sandberg, purporting to show the fluctuations of the English rail markets (both iron and steel) one from 1862 to midsummer of 1880, and one from 1862 to end of 1874, and he thought that a similar one had been sent to him in some of the correspondence before alluded to. He said that according to his recollection his recommendation to Mr. Mackenzie was based upon the positive opinion of Mr. Sandberg, that rails had reached the lowest point that they were likely to reach, that Mr. Sandberg had said to him that it was the general opinion of rail makers that the price of rails had certainly reached bottom, and that his impression of the correspondence was that it was not a question of comparative profit to the manufacturers, but that rails could not be made to sell at a lower price, and

1862 x 1863 x 1864 x 1865 x 1866 x 1867 x 1868 x 1869 x 1870 x 1871 x 1872 x 1873 x 1874 x 1875 x 1876 x 1877 x 1878 x 1879 x 1880

20 £
19 £
18 £
17 £
16 £
15 £
14 £
13 £
12 £
11 £
10 £
9 £
8 £
7 £
6 £
5 £
4 £



Copy of
SANDBERG'S DIAGRAM
 SHEWING
 PRICES OF STEEL RAILS IN ENGLAND
 FROM 1862 TO 1880

Put in Evidence

by

MR FLEMING.

SCALES. { Vertical, Each Small Square 5/8
 " " Large " £1
 Horizontal, Each Small Square 3 Mo.^s
 " " Large " 1 Year

that this was the groundwork of his (Mr. Fleming's) opinion. He could not remember whether any reasons had been given by Mr. Sandberg, beyond the bare statement of his opinion that it was a good time to buy.

The great weight which Mr. Fleming attached to this correspondence from Mr. Sandberg made us anxious to see the text of it, not that we consider any views from Mr. Sandberg to be, of themselves, a reason for the action of the Department, but that we might see whether his opinions were really so extreme as Mr. Fleming thought them to be; and, if so, to see how far they would bear analysis.

Mr. Fleming had an impression that he handed these letters to Mr. Mackenzie while the matter was being discussed in the House of Commons (March, 1876). At our request he wrote to Mr. Mackenzie for them, and also sent a cablegram to Mr. Sandberg at London, England, to forward copies of any letters from Mr. Sandberg to him on this subject in 1874, but we have not had the advantage of seeing either originals or copies.

In the face of Mr. Fleming's circumstantial account of this correspondence, we cannot say that it was not of the character described by him, but we have no hesitation in saying that if he has correctly stated the substance of it, then a very slight investigation of facts, or a careful inspection of his own diagram would show that Mr. Sandberg's representations were not well founded.

Several periodicals published in England have been mentioned to us by witnesses as authorities on the general state of the rail market. We have examined two of them: "Iron" and "The Iron and Coal Trade Review."

We submit herewith an enlarged copy of one of the two diagrams before mentioned, as published by Mr. Sandberg and put in evidence by Mr. Fleming—so far as it relates to steel rails—having selected that which covers the longer period, from 1862 to 1880.

We find that though this diagram agrees generally with the fluctuations, or the tendency of the market from time to time, as shown in the periodicals before mentioned, so far as we have been able to see them, they are not always alike in the price given as ruling at the respective dates.

We account for this by assuming that neither in the diagram nor in newspapers can prices be given exactly the same as those which might govern actual transactions, and that such authorities do no more than give

what is conceived to be or to have been the average price at respective dates. It is in evidence before us that on the same day offers from different individuals will show a wide variation in prices. For instance, Mr. Fleming, in reporting on the tenders which were received upon this occasion, states that the average price of all the tenders for delivery in Montreal was, as nearly as possible, \$57.03 per ton, while some of the contracts were based upon the price of \$53.53 per ton. We assume that the price named in either the diagram or in any of the periodicals is what was understood to be the average ruling price at the various dates, but not the lowest which, at those dates respectively, could be obtained in actual transactions, especially for large purchases and such prompt terms of payment as would be offered by a Government.

These authorities would, nevertheless, be accurate enough to show whether the market was a rising, or a falling, or a steady one, between various dates or how otherwise, and we take it for granted that the prices given in any of these authorities as the ruling one for ordinary transactions, would bear about the same relation, at one time as at another, to those which would be named in individual transactions, where the quantities or the terms of payment might lead to some variation from the general price.

There can be no doubt that Mr. Fleming's approaching the Minister "early in August, 1874," was due to Mr. Sandberg's letters, for Mr. Fleming was asked the sources of the advices which, in his memorandum of March, 1876, he mentioned as having led to his recommendation, and he gave us the names of Mr. Sandberg and Mr. Levesy. Therefore, such letters must have been written not later than July, 1874.

It becomes material, in this connection, to bear in mind the strong view which Mr. Fleming says was communicated by the correspondence in question, and adopted by him on the strength of it, namely, that "it was not a question of comparative profit to the manufacturer, but that rails could not be made to sell at a lower price."

If Mr. Sandberg, in July or August, 1874, expressed the view that rails could not be made to sell at less than they were then selling at, it became palpable, in November, 1874, that he was an unreliable authority, for rails had continued to fall steadily from July to that time. The authorities, above mentioned, the diagram and the periodicals, show in November, 1874, a price, between £2 sterling and £3 sterling, less than when Mr. Sandberg's mid-summer letter first operated on the mind of Mr. Fleming. Other facts

however, much more striking than this are exhibited by these authorities, facts which, if understood, could hardly fail to remove any belief that rails had never been so low, and could not be made to sell at that price. "Early in August," the date first named in Mr. Fleming's memorandum as the time of his approach to the Minister, the diagram gives the price as about £12 10s. During the whole of the years of 1869, 1870 and 1871, they had been selling at prices lower than that, and had, in fact, been for part of that time—some seven months (between November, 1869, and August, 1870),—standing at £10 sterling. When the tenders were opened in November 1874, the rail market, according to the said authorities, was not so low as it had been four years before that time.

From mid-summer, 1870, the price rose, until early the next year, 1871, it was about £1 sterling higher. At that time the Government was receiving tenders for steel rails for the Intercolonial Railway, of which Mr. Fleming was Chief Engineer. On the 11th January, 1871, those tenders were opened, and contracts were afterwards entered into based on some of them; amongst others, one with the Ebbw Vale Co. at £11 sterling for delivery in England, other charges being added for inspection, insurance, and freight to Canada.

Taking these things into consideration, we do not see how Mr. Fleming adopted so readily the fallacious views said to have been communicated by Mr. Sandberg, nor why it should be supposed that, after November, 1874, rails should not only never get so low as they had been in 1870, but that they should rise so far above the price of that day as to outstrip interest, deterioration and expenses, up to the time at which it might become necessary to buy them.

The only letter of Mr. Sanberg, which Mr. Fleming put in evidence, was written on 17th December, 1874. This was after 40,000 tons had been bargained for; and our attention was called to the following portion of it, the remainder not relating to the subject:—

"It is, indeed, not unlikely that a strike would take place, which would probably send up prices, and, therefore, I am anxious to have everything square. By the enclosed card of prices you will see that you have bought both this and the last order at very favorable periods. In fact, in the whole of my experience, I know of none having used the time better, and I only hope that this order will be executed a little quicker than that at Barrow, which is still lingering on slowly."

We do not see in this remark of Mr. Sandberg's anything further than the fact that the course of the Department had met with his approbation.

Mr. Sandberg was not in a position to lose by large purchases for Canadian use, and, if his views have been correctly stated, it is evident to us that, during all these transactions, he has looked at but one side of the question. He does not mention in this letter what purchases he alludes to, but we take it for granted that Mr. Fleming would not have offered it to us unless it referred to those for the Pacific Railway, about which he was giving evidence. These included 40,000 tons at a price averaging \$54.17 at Montreal. The day after Mr. Sandberg was sending his congratulations upon this transaction, other persons, who were parties directly interested on their own behalf, were sending a communication of a different tenor. The West Cumberland Company, through Messrs. Cox & Green, their Montreal agents, on the 18th December, spontaneously offered to the Department 5,000 tons more than they had previously bargained for, at \$53.53 per ton, or 64 cents per ton less than those obtained by the purchase approved of in Mr. Sandberg's letter.

The fact that Mr. Sandberg volunteered his views, having no responsibility in the matter, that he had no interest in limiting the purchase of rails by the advantage it would bring to Canada, that the views said to have been advanced by him from time to time could then have been ascertained to be not well founded, lead us to think that Mr. Fleming's belief in the "supposed low price," must have been a weaker element in the recommendation to purchase than he now thinks it was. There was, then, another motive for his advice to the Minister, which he said was coupled with the attractiveness of the market, and the presence of it may have made him careless in testing the validity of the other.

In Mr. Fleming's evidence, after stating that there had been a good deal of hesitation about the beginning of the works, he gave as a reason operating on his mind for the expediency of the transaction, and in addition to the need of rails and the low price, the fact that he, as a citizen of Canada, was very anxious to see the railway commenced; he said he did not separate this from the other reasons; they all entered his mind at one time; and he thought this was one of his motives for recommending this purchase, though, if standing alone, he would not have been actuated by it; still he said that, according to his view, this might have been a perfectly good reason, though the others were positively bad.

The unfortunate results of Mr. Mackenzie omitting to examine more deeply than he did Mr. Fleming's reasons upon the probable future of the

rail market, and of adopting them, as of course, is now apparent. We doubt that any person, in considering the expediency of investing his own means in a speculative purchase, would take the future fluctuations of any market for any article as a matter so entirely within the professional knowledge of an engineer, as to make his opinion on them necessarily correct.

Before these purchases were made on the alleged ground of a **strong** probability of a rise in the price of rails, there was at least one **other** source of information open to the Department in addition to the view of the Chief Engineer. The opening of the tenders disclosed offers for seventy times the quantity asked for. This was some intimation that one of the causes of a rise in price, scarcity in the supply, did not exist.

Instead of rising, as Mr. Sandberg is said to have predicted, the price of rails fell almost continuously, until about midsummer of 1879, when it was in the neighbourhood of £4 10s. sterling, that is, less than half that at which it had stood as before mentioned in 1869-70. After this it rose again rapidly and steadily till it reached about £10 sterling in the spring of 1880.

In addition to the sworn testimony on the subject of this purchase Mr. Fleming has forwarded to us the correspondence hereinafter set out.

Though these letters came to us as late as their dates indicate, we should have cross-examined Mr. Brydges on his statement had we seen it to be material.

The main fact established by the letters is that Mr. Sandberg expressed, in 1874, strong views in favour of large purchases. That has already been established by sworn testimony. It is also asserted that Mr. Brydges held the same opinion as Mr. Sandberg so far as this: that prices had then touched bottom, and that he had advised Mr. Mackenzie of his entertaining this opinion. He does not mention when he communicated this, and there is no reason to think it was before the purchase under consideration, or had any influence upon it. Moreover, the belief that the price was then at the bottom would do no more than encourage purchases of required quantities. Beyond that, as before explained, nothing would be bought with judgment, unless there was a definite belief on other points, such as the time at which the rails would be used and the extent and continuance of the rise in the price. The letters fail to touch any of these points. They are as follows:—

" OTTAWA, 25th January, 1882.

" N. F. DAVIN, Esq, Secretary,

" Canadian Pacific Railway Commission.

" SIR,—I wrote you on the 14th instant, enclosing certain papers and documentary evidence for the Commission.

" I have not succeeded in obtaining the letters of Mr. Sandberg, which the Commission desired when I saw them recently. I enclose, however, a letter from Mr. C. J. Brydges, dated 9th January, 1882, in which he refers to a letter of Mr. Sandberg in 1874, and refers, also, to the prevalent opinion at that time in England amongst the most experienced dealers in rails, that prices had then touched bottom. Mr. Brydges adds that he advised Mr. Mackenzie that he held the same opinion, and that it was generally entertained by all persons who had any dealings in rail-

" I enclose, also, for the information of the Commissioners a letter from the Hon. A. Mackenzie, dated 13th January last, in which he states that he has a very distinct recollection of a letter from Mr. Sandberg, concerning steel rails, which bore out the general impression that prevailed in 1874, that prices had then reached the lowest prices likely to be reached. I may mention that Mr. Mackenzie's letter is in reply to a note which, at the request of the Commissioners, I sent him, enquiring if he remembered the circumstances which I had referred to in my evidence, and asking him to forward to me the letter, or letters, of Mr. Sandberg, if he could find them.

" Yours truly,

" SANDFORD FLEMING."

" MONTREAL, 9th January, 1882.

" MY DEAR SIR,—I have your note of the 5th. I sent all my papers *re* Intercolonial to Ottawa when I gave up that charge.

" I am sure, however, that my letter to Mr. Mackenzie was not amongst them. It was a private letter, enclosing one from Sandberg, giving an account of the condition of the different steel rail mills in England, and the prevalent opinion at that time amongst the most experienced dealers, that prices had then touched bottom.

" I advised Mr. Mackenzie that that was also my own opinion, and that it was also entertained here by all those who had any dealings about rails.

" Yours very truly,

" C. J. BRYDGES."

" SANDFORD FLEMING, Esq,

" Ottawa."

" TORONTO, 13th January, 1882.

" My Dear Sir,—I remember very distinctly getting a letter of Mr. Sandberg's, concerning the price of rails, in 1874, which bore out your impression that prices had then reached the lowest price likely to be reached. I received this letter from either you or Mr. Brydges. I cannot say whether I have that letter, but will examine all my papers as soon as I can spare time, and if I find it I will forward it to you at once.

" I am yours faithfully,

" A. MACKENZIE.

" SANDFORD FLEMING, Esq.

" Ottawa."

The evidence leads us to the following conclusions :—

That a large portion of the 50,000 tons now under consideration, was purchased without any defined view as to the times at which they would be wanted, and without reference to those times, but solely upon the ground that a rise in the price of rails was to be expected ;

That such purchase was made by direction of the Minister of Public Works without the authority of an Order in Council ;

That the said purchase was urgently recommended by Mr. Fleming, the Engineer-in-Chief, for the alleged reason that the rail market was not likely to be thereafter so favourable to purchasers as it then was ;

That the Minister adopted without question the view of Mr. Fleming upon the probable future state of the rail market ;

That in so recommending the purchase of this quantity on speculation, Mr. Fleming was actuated by two motives, one being the fact that as a citizen of Canada he was anxious to see the railway commenced, the other, his belief in the attractiveness of the market ;

That Mr. Fleming's opinion as to the state of the rail market was derived almost exclusively from representations which he said were made to him by Mr. Sandberg, then employed in England by the Canadian Government as an Inspector of rails, and paid for his services according to quantity ;

That Mr. Sandberg was not responsible to the Government for his said representations, and was not interested in limiting the purchase to such quantities as might be profitably bought ;

That if the foundation of Mr. Fleming's recommendation had been enquired into, he could not have shown any, sufficient to induce an ordinary business man to purchase on speculation at that time, steel rails at the price paid for these ;

That if the purchase of the rails in question had been delayed until the times, respectively, at which it would have been necessary to provide them, a material saving in the cost of the railway would have been effected.

On the 17th of November, 1874, the day after the final receipt of tenders, those which had reached the Department in due time, were then opened, in presence of the Deputy Minister and Mr. W. J. Tilley.

Although the advertisement asked only for offers to deliver at Montreal, some were found to be proposals for delivery at other points.

Twenty-nine were received and opened, after which the Chief Engineer submitted the following report :—

"CANADIAN PACIFIC RAILWAY,
"OFFICE OF THE ENGINEER-IN CHIEF,
"OTTAWA, 19th November, 1874.

"SIR,—As requested, I have examined the tenders received by the Department for furnishing steel rails, and have prepared a schedule of these tenders according to the several rates. I find that tenders have been received for the delivery of about three hundred and fifty thousand (350,000) tons. The average price of all the tenders for delivery in Montreal is as near as possible \$57.03 per ton. The lowest tenders for one hundred thousand (100,000) tons seem to be as follows:—

	Tenders.	Delivery at Montreal.	Delivery at Thunder Bay.	Delivery at Duluth.
A.	Oox & Green.....	5,000 tons at \$53 53		
C.	Jos. Robinson.....	5,000 do at 53 53		
F.	Post & Co.....			5,000 tons at \$58 16
F.	Post & Co.....			5,000 do 59 40
S.	Cooper, Fairman & Co.....		10,000 tons at \$59 86	
B.	Cooper, Fairman & Co.....	10,000 tons at \$54 26		
C.	Thomas Reynolds & Co.....	5,000 do 54 75		
X.	Rice, Lewis & Son.....	10,000 do 55 00		
V.	John Fraser.....	15,000 do 55 17	60 76	60 76
R.	T. V. Allis.....	20,000 do 55 76		60 76

"There is one tender for the delivery of 10,000 tons at Vancouver's Island (Tender S) at \$64.75.

"SANDFORD FLEMING.

'The Hon. A. MACKENZIE,
"Minister of Public Works."

The schedule embodied in this report does not describe accurately the substance of the tenders to which it refers. The tenders sent in by Perkins, Livingston, Post & Co. were offers to deliver at Montreal as well as at Duluth, and the names of the different tenderers are given without discrimination between principals and agents. The following is a correct schedule, showing the substance of the tenders up to 100,000 tons referred to in the above report, as far as they relate to the points of delivery named in that report:—

B.

SCHEDULE.

Letter of Tender.	Principals.	Agents.	Quantity in tons.	Price.	Delivery at
A.	West Cumberland Co..	Cox & Green.....	5,000	\$53.53	Montreal.
C.	Ebbw Vale Steel and Iron Co.....	Jos. Robinson & Co...	5,000	53.53	do
F.	Guest & Co.....	Perkins & Co.....	5,000	{ 54.00 } { 58.16 } { 58.91 }	do
D.	The Mersey Steel and Iron Co.....	Cooper, Fairman & Co			10,000	54.26	Montreal.
C.	The Aberdare Co.....	Thos. Reynolds, jr....	5,000	54.75	do
X.	Rice, Lewis & Co.....	None.....	10,000	55.00	do
S.	Cooper, Fairman & Co.	None.....	10,000	59.86	Duluth or Th'der Bay
V.	John Fraser.....	None.....	15,000	55.17	Montreal.
F.	Guest & Co., for an additional quantity..	Perkins & Co.....	5,000	55.40	do
R.	T. V. Allis.....	None.....	20,000	{ 55.76 } { 60.76 }	do
S.	Cooper, Fairman & Co.	None.....			10,000	64.75	Vancouver Island
		Total.....	100,000		

The following tenders were received : —

“(Form of Tender.)

“PUBLIC WORKS OF CANADA.

“TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

“The undersigned do hereby tender to deliver at the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, 5,000 tons to 10,000 tons Bessemer steel rails, with proportionate quantities of fish-joints, at the following rates :—

Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at \$55 per ton ; iron bolts and nuts at \$99 per ton.

The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract.

“RICE, LEWIS & CO.,

“Toronto, Ontario.”

“(Form of Tender.)

“PUBLIC WORKS OF CANADA.

“TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

“The undersigned hereby tenders to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, ten to fifteen thousand tons, Mersey & Bolton Co. make, Bessemer steel rails, at the following rates:—

“Per ton of 2,240 pounds—£11 6s. 9d. sterling; Bessemer steel fish-plates, £11 16s. 9d. sterling; iron bolts and nuts at (\$100.80) one hundred dollars and eighty cents per ton.

“The undersigned is ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to his ability to complete the contract.

“I further tender to deliver at Duluth or Thunder Bay, Bessemer steel rails as above, at £12 9s. 6d. sterling; steel fish-plates at Duluth or Thunder Bay, at £12 19s. 6d. sterling per ton of 2,240 pounds; fish-bolts delivered at Duluth or Thunder Bay at \$107 per ton of 2,240 pounds.

“I also tender for delivery at French River at a reduction of 2s. per ton on rails and fish-plates.

“The wharfages, or dock or harbour dues at Duluth, Thunder Bay or French River, if there should be any, are excepted in the above prices.

“JOHN FRASER,
“Kingston.”

“(Form of Tender.)

PUBLIC WORKS OF CANADA.

“TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

“The undersigned hereby tender to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, 5,000 to 10,000 tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:

“Per ton of 2,240 pounds—Rails to be of our own manufacture, ‘Dowlais Steel’—5,000 tons Bessemer steel rails and fish-plates at \$54 per ton; 5,000 tons additional at \$55.24 per ton; iron bolts and nuts at \$93.29.

“The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete contract.

“GUEST & CO.,
“Dowlais, Wales.

“Per PERKINS, LIVINGSTON, POST & Co.
“Agents, 59 Liberty Street, New York.

“We beg to say that we have furnished Guest & Co’s. steel rails to the following roads, and would refer the Government to the gentlemen mentioned: Sloanes, President,—Delaware, Lackawanna and Western Railway Co., 25,000 tons; Wm. H. Vanderbilt, President,—New York Central and Hudson Railway, 45,000 tons; Wm. Thomson, Director,—Canada Southern

Railway, 24,000 tons, and many other roads in the United States, making a total of about 200,000 tons.

“PERKINS, LIVINGSTON, POST & CO.”

“OTTAWA, ONT., November 14th, 1874.

“DEAR SIR,—Should the Government prefer to take these rails delivered at the following points--Duluth, Fort William and Georgian Bay, instead of Montreal, we can deliver them at Duluth or Georgian Bay at \$4 per ton additional, and at Fort William at \$4.75 additional, conditional as to the delivery at points named, that there be a sufficient depth of water for vessels to go thereto, and that the consignees are to unload. Not knowing if it is the intention of the Government to insure the various cargoes on the lakes, we have not included the lake insurances on the inland freights, \$4 and \$4.75, which would be about 16 cents per ton.

“Your obedient servants,

“PERKINS, LIVINGSTON, POST & CO.,

“Agents of GUEST & Co.

“The Minister of Public Works.”

“(Form of Tender.)

“PUBLIC WORKS OF CANADA.

“TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

“The undersigned hereby tenders to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, 20,000 tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates :—

“Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at \$55.76 ; iron bolts and nuts at \$94.50 per ton of 2,240 lbs., with the option of delivering at Duluth or Georgian Bay at \$5 per ton additional.

“The undersigned is ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to his ability to complete the contract.

“T. V. ALLIS.

“Dressel Building, New York.

“Will furnish from one or more of the following manufacturers, viz :—

- “Barrow Hæmatite and Steel Co., England.
- “Brown, Baily & Dixon’s “ “
- “Manchester Steel Co., “
- “Dowlais Steel Co., “
- “C. Cammell & Co. Steel Co., “
- “Mersey Steel Co., “
- “Ebbw Vale Steel Co., “
- “Limus-Landore “ “
- “Creuzot “ France
- “Terre Noire “ “
- “Petin Gaudet “ “

“Very respectfully,

“T. V. ALLIS.”

(Form of Tender.)

"7 LAWRENCE-POUNTNEY HILL,

"LONDON, 29th October, 1874.

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, five thousand tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £11 sterling; iron bolts and nuts at £24 2s. 6d.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete contract.

"For the Ebbw Vale Steel, Iron & Coal Co. (Limited).

"JOSEPH ROBINSON & Co.,

"Agents.

"CANADA ADDRESS:—

"St. Lawrence and Ottawa Railway Co's. Office,

"Ottawa, Canada."

(Form of Tender.)

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver, F.O.B., Liverpool, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, five to ten thousand tons 'Mersey' or 'Bolton' brands Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £10 10s. 0d. sterling; iron bolts and nuts at £19 10s. 0d. sterling.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract. We would also tender for delivery of the above at some good port in Vancouver Island, B.C.:—

"Bessemer steel rails, at.....£13 5 3 sterling.

Fish-bolts, at..... 22 5 3 do.

"COOPER, FAIRMAN & CO.,

"Montreal.

"(Form of Tender.)"

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf, at Duluth or Thunder Bay, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, five to ten thousand tons, brand 'Mersey Steel and Iron Co.,' Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £12 6s 0d sterling; iron bolts and nuts at \$107 currency.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract. We would also tender for delivery at French River, at a reduction of two shillings per ton on above prices, any wharfrage or harbour dues on ports, payable by Government.

"COOPER, FAIRMAN & CO,
"Montreal."

"(Form of Tender.)"

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, five to ten thousand tons Bessemer steel rails, with proportionate quantity of fish joints, at the following rates:—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £11 3s. 0d. sterling; iron bolts and nuts at \$101 currency.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete contract.

"The Mersey Steel and Iron Co.,
"of Liverpool.
"Per COOPER & FAIRMAN, Agents,
"Montreal.

"TENDER FOR STEEL RAILS.

"13 AND 15 HOSPITAL STREET,
"MONTREAL, 10th Nov., 1874.

"DEAR SIR,—We beg, in the name of our principals, Messrs. The West Cumberland Iron and Steel Co. (Limited), Workington, England, to submit to you this our tender for supplying five thousand (5,000) tons of steel rails to the Dominion of Canada, in accordance with the terms mentioned in your advertisement in the Montreal Herald dated Ottawa, 29th Sept., 1874.

" TENDER.

" We offer to supply 5,000 tons of steel rails (new) at £11 sterling per ton, delivered on the wharf, at Montreal, during the season of navigation of the year 1875, the last delivery not to be later than October, 1875.

We beg herewith to hand you an original letter received from the West Cumberland Iron and Steel Co., by which you will see that this firm have, during the past year, supplied upwards of twenty thousand (20,000) tons of steel rails to the principal railway companies of Great Britain.

" We are, dear Sir,

" Yours truly,

" COX & GREEN.

" F. BRAUN, Esq., Secretary,
" Public Works Department,
" Ottawa."

" (*Form of Tender.*)

" PUBLIC WORKS OF CANADA.

" TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

" The undersigned hereby tender to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, five thousand tons of Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

" Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £11 0s. 0d. sterling; iron bolts and nuts at——.

" The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract.

" For West Cumberland Steel and Iron Co.,

" COX & GREEN,

" 13 and 15 Hospital Street,

" Montreal."

" (*Form of Tender.*)

" PUBLIC WORKS OF CANADA.

" TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

" The undersigned hereby tenders to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, five thousand tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

" Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £11 5s.; iron bolts and nuts at £24 2s. 6d.

" The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract.

" For the Aberdare Co.,

" THOS. REYNOLDS, JUN.,

" *Agent*, London, E.C.

" CANADA ADDRESS:—

" St. Lawrence and Ottawa Railway Co's. Office,

" Ottawa, Canada."

" MONTREAL, 14th Nov., 1874.

" DEAR SIR,—I beg to offer you five thousand (5,000) tons of flanged steel rails, to approved specification and section, at ten pounds five shillings (£10 5s.) sterling per ton, net cash, against bills of lading, delivered at Liverpool, during the summer of next year.

" I am, dear Sir,

" Yours, &c.,

" JAS. CRAWFORD.

" The above rails will be manufactured by the Mersey Iron and Steel Co.

" HON. A. MACKENZIE,

" Commissioner of Public Works,

" Ottawa."

The tenders above set out include those of the successful parties, and those which, in our opinion, are material in order to understand the action which was finally taken by the Department. The others are not further referred to in our report. They are printed in full in the return to the House of Commons of the 4th April, 1876. We omit such portions of the correspondence, as have no bearing on the contracts now under consideration. This correspondence is also printed in full in the above mentioned return to the House of Commons.

We now proceed to take up *seriatim* the six contracts which embrace the supply of 50,000 tons of rails, numbered respectively 6, 7, 8, 9, 10 and 11, and we deal with them in this order:—

CONTRACT NO. 6.

Steel Rails.

By this contract, dated 23rd December, 1874, George Thomas Clark, trading under the name and firm of Guest & Co., undertook to manufacture and deliver at Montreal 5,000 tons of steel rails, on or before the 1st of October, 1875, receiving therefor \$54 per ton; and an additional 5,000 tons on or before 1st July, 1876, receiving therefor \$55.24 per ton; and also a

proportionate quantity of fish-plates and bolts and nuts, receiving per ton for the fish-plates, the same price as for rails; and for bolts and nuts, \$93.25.

The tender upon which the contract was awarded is set out above, and it will be seen that it contains offers for distinct quantities at different prices. The schedule hereinbefore mentioned as having been prepared by Mr. Fleming, and dated two days after the opening of the tenders, omits to state the particulars of this one as far as it relates to the terms finally accepted by the Government—namely, for delivery at Montreal. Mr. Fleming's special report of 1877 describes the contract as having been made for 10,000 tons at \$54.62. That conveys a correct idea of the pecuniary results, but it is not in accordance with the terms of the contract itself, or of tenders on which the contract was based. The tender offers 5,000 tons at \$54, and an additional lot of 5,000 tons at \$55.24. The proposal in this shape would, in a fair competition, other things being equal, secure to the party making it a sale of 5,000 tons against any other offer at a price above \$54 (for example, at \$54.10); but if treated, as was finally done, as an offer of 10,000 tons at \$54.62, it would let in that offer at \$54.10, and Messrs. Guest & Co. would lose the sale as against it. Under that treatment, Guest & Co., would in our opinion, have a just cause of complaint because their tender was not interpreted according to its exact terms; or, if no lower offer than \$55.25 intervened, Messrs. Guest and Co. would, by that tender, secure a sale of the whole 10,000 tons. At all events, for reasons of their own, the Guest & Co. elected to take their chances on the offer in the shape in which it was sent, and we can see no good reason why it should be treated as a tender for 10,000 tons at \$54.62, particularly as that had the effect of excluding three intervening tenderers, whose prices were lower than that named for the additional lot of 5,000 tons, which Guest & Co. proposed to supply at \$55.24, and which was allotted to them. These intervening offers were as follows:—

The Aberdare Co.	\$54 75
Rice, Lewis & Son	55 00
John Fraser.....	55 17

At the time of opening the tenders and awarding the contract, Mr. Thomas Reynolds, engineer, representing the Aberdare Company and the Ebbw Vale Company, as well as Mr. H. A. V. Post, of the firm of Perkins, Livingston, Post & Co., representing Messrs. Guest & Co., were at Ottawa. There is no evidence that the Aberdare Company was not a satisfactory

firm to deal with, or that they refused to carry out their offer. The contract was awarded by the following letter :—

“OTTAWA, 1st Dec., 1874.

“SIR,—The tender made on the 14th ultimo by Messrs. Perkins, Livingston, Post & Co., on behalf of Messrs. Guest & Co., Dowlais, Wales, for the supply of 10,000 tons of steel rails, with the bolts and nuts required for that quantity of rails, having been accepted, I am directed to send you the enclosed draft articles of agreement (in triplicate), and to request you to be kind enough to have them executed by Messrs. Guest & Co., and to then return them to me.

“ I have, &c.,

“ F. BRAUN,

“ Secretary.”

“ H. A. V. Post, Esq.,
“ Russell House, Ottawa.”

The result of the decision here communicated is to pay a price, for the second lot of 5,000 tons covered by this contract, higher than that asked by other tenderers. On the item of rails the extra price amounts to \$2,450, but this sum was not entirely lost. A portion of it was saved because Guest & Co. had named for bolts and nuts a lower price than that proposed by the Aberdare Co., the firm who had made the lowest offer of the three excluded tenderers. The offer of the first lot of 5,000 tons in the tender of Guest & Co. was \$54, and was available without accepting the higher-priced additional lot. It could have been accepted together with the 5,000 tons offered by the Aberdare Co. at \$54.75 ; this would have made the average for the 10,000 tons of rails, \$54.37½ instead of \$54.62.

In order to understand the transaction which took place, it is not necessary to do more than compare the offer of the Aberdare Co. for 5,000 tons, with that of Guest & Co. for the additional or second lot of 5,000 tons, inasmuch as the lower-priced lot of 5,000 tons would be accepted irrespective of these.

Comparative Statement.

Guest and Co.,—

5,000 tons rails @ \$55.54.....		\$276,200 00
Half the quantity delivered under contract 6 with	} 192 tons fish-plates, \$55.24..	10,606 08
10,000 tons of rails, say :—			42 “ bolts & nuts @ $93.29	3,918 18
Total		<u>\$290,724 26</u>

Aberdare Co:—

5,000 tons rails @ \$54.75.....	\$273,750 00
192 “ fish-plates @ \$54.75.....	10,512 00
42 “ bolts and nuts @ \$117.41.....	4,931 22
	<hr/>
Total	\$289,193 22
	<hr/> <hr/>
Loss.....	\$1,501 04

Upon the evidence we do not discover any grounds for this preference of Messrs. Guest & Co., and we conclude that in obtaining this contract, the contractors got an undue advantage, and that at the time of awarding it, the Department had an opportunity of procuring the articles provided by this contract at a lower price than was given. The evidence does not disclose the reason for paying the higher price.

The contract has been fulfilled, and the following amounts were paid on account of it:—

30th June, 1875.....	\$281,524 57
30th June, 1876	294,887 02
	<hr/>
Total.....	\$576,411 59

By a subsequent arrangement some of the rails covered by this contract were transferred to the Intercolonial Railway, and the account of the Pacific Railway was credited accordingly.

CONTRACT NO. 7.

Steel Rails.

By this contract, dated 9th of February, 1875, the Ebbw Vale Steel, Iron & Coal Company, undertook to make and deliver at Montreal, during the season of navigation in 1875, 5,000 tons of steel rails, with the proportionate quantity of fish-plates, bolts and nuts, receiving therefor per ton for rails and fish-plates £11 stg., equal to \$53.53, and for bolts and nuts £24 2s 6d., equal to \$117.41. The report of the Chief Engineer, dated 19th of November, 1874, on the tenders received, as well as the tenders themselves, both hereinbefore set out, show that the tender of this firm was one of the two lowest received, and was at the rates above specified. The acceptance of the tender was communicated by the following letter to Mr. Reynolds who was the agent of the contractors:

"OTTAWA, 3rd December, 1874.

"SIR,—The tender of the Ebbw Vale Steel, Iron and Coal Company (Limited) enclosed in your letter of the 16th ult., for the supply of five thousand tons steel rails, &c., having been accepted, I am directed to request that the accompanying contract in triplicate be forwarded to the company for execution, and that it be returned here for completion.

"I have, &c.,

" F. BRAUN,

" Secretary.

"THOMAS REYNOLDS, Esq.,
" Engineer,
" Ottawa."

We find that in obtaining this contract the contractors got no undue advantage, and that in awarding it the Department purchased the material covered by it at the lowest available offer.

It has been fulfilled, and the following payments were made on account of it :—

To 30th June, 1876..... \$284,117 21

Subsequently some of the material included in this contract was transferred to the Intercolonial Railway, and the account of the Pacific Railway was credited accordingly.

CONTRACT No. 8.

Steel Rails.

By this contract, dated 14th January, 1875, the Mersey Steel and Iron Company undertook to make and deliver at Montreal, half before the 1st October, 1875, and the balance before the 1st July, 1876, 20,000 tons of steel rails, with the proportionate quantity of fish-plates, receiving therefor £11 3s. sterling, equal to \$54.26 per ton.

The Mersey Steel & Iron Company did not tender for so large a quantity as is provided for in this contract. Their tender was for from 5,000 to 10,000 tons at the price above named, and also for bolts and nuts at \$101. It was signed in their name by Messrs. Cooper, Fairman & Co., who described themselves as their agents. This firm of Cooper, Fairman & Co. were also tenderers in their own names for from 5,000 to 10,000 tons, Mersey or Bolton brands, the rails to be delivered at Liverpool at £10 10s. sterling, with bolts and nuts at £19 10s. sterling, offering at the same time to deliver the same at Vancouver Island at the following rates :—

Rails at..... £13 5 3 sterling.
Fish-bolts at..... 22 5 3 "

Messrs. Cooper, Fairman & Co. were also tenderers for from 5,000 to 10,000 tons of the Mersey Steel and Iron Company's brand of rails, to be delivered at Duluth or Thunder Bay, at £12 6s. sterling per ton, with bolts and nuts at \$107 per ton, and accompanying this offer was one to deliver at French River at two shillings less per ton than the above prices.

The tender made by the Mersey Company reached the Department in an envelope by itself; the tender by Messrs. Cooper, Fairman & Co. in another. The following letter was written by the Secretary of the Department:—

"OTTAWA, 2nd December, 1874.

"GENTLEMEN,—The tenders you have made on behalf of 'The Mersey Steel and Iron Company' of Liverpool, for the supply of steel rails, &c., having been accepted, I am directed to send you the enclosed draft articles of agreement, and to request you to have the kindness to have them executed by the Company, and to then return them to me.

"I have, &c.,

"F. BRAUN,

"Secretary."

"Messrs. COOPER, FAIRMAN & Co.,
"Agents, Montreal."

This notification is made as if Cooper, Fairman & Co. had made more than one tender on behalf of the Mersey Steel & Iron Company, which was not the fact. In this and in many other instances, throughout the contracts concerning steel rails and bolts and nuts and transportations, it appears that an understanding existed from time to time between this firm and the Department of Public Works, beyond that which is conveyed by letters or papers on record. The tenders above set out as made by Messrs. Cooper, Fairman & Co., relate to delivery at Duluth, Thunder Bay, French River, Liverpool and Vancouver, none of them being named in the advertisement as places at which delivery would be accepted. After the tenders were received, Mr. Fleming describes the effect of some of these tenders in his schedule of the 19th November, as if it was then expected that the Department would entertain them, though no competition had been invited except for delivery at Montreal. There was, in fact, not more than one tender in the name of the Mersey Company. The other tenders were by Messrs. Cooper, Fairman & Co., in their own name, and were not for delivery at Montreal.

The proceedings which followed this notification of 2nd December, show that it was thereby intimated that not only the offer made in the name of the Mersey Co., for 10,000 tons to be delivered at Montreal, but also the offer of Cooper, Fairman & Co. for an additional 10,000 tons with a

price for delivery at Duluth and French River, was accepted, though no competition had been invited for the points thus named by Messrs. Cooper, Fairman & Co., and though Messrs. Perkins, Livingston, Post & Co. had made an offer for delivery at the same points, lower than that of Messrs. Cooper, Fairman & Co.'s tender.

Mr. Fleming's schedule of 19th November, 1874, stated the following as the result of the offers for delivery on western lakes :

Contractor.	Tons.	Thunder Bay.	Duluth.
		\$ cts.	\$ cts.
Post & Co.....	5,000	.....	58 16
do	5,000	.....	59 40
Cooper, Fairman & Co.....	10,000	59 86	.....

This gives the idea that they did not compete on deliveries at both places, but they did, and the substance of their respective offers was as follows :

Contractor.	Tons.	Thunder Bay.	Duluth.
		\$ cts.	\$ cts.
Post & Co.....	5,000	58 41	58 16
do	5,000	60 15	59 40
Cooper, Fairman & Co.....	10,000	59 60	59 60

Thus the tenders before the Department at that time showed that Post & Co. offered 10,000 tons at Duluth, or 5,000 tons at Duluth and 5,000 tons at Thunder Bay, at prices lower than those named by Messrs. Cooper, Fairman & Co.

It was decided to take 10,000 tons for delivery on the western lakes, though no competition was invited at such ports, and to award the supply of them at the higher prices of Messrs. Cooper, Fairman & Co.'s tender. A contract was prepared in the name of the Mersey Company for both lots of 10,000 each, one to be delivered at Montreal, and the other on the western lakes. The Mersey Company declined to contract for delivery on the lakes.

and retained the right to deliver the 20,000 tons at Montreal. This led to the necessity of a new contract for transportation the following year, and competition was invited for it by advertisement. Then, after the opening of the tenders, Messrs. Cooper, Fairman & Co. interfered, and, without having taken part in that competition, claimed that in consequence of the acceptance of their offer in this case, they were entitled to the contract for transportation of these rails from Montreal to the western lakes, and it was given to their nominee (see contract 20).

Mr. Trudeau testified to the loss which had been sustained in consequence of accepting the offer of Cooper, Fairman & Co. in this case, as notified by Mr. Braun as aforesaid, instead of the lower one of Messrs. Perkins, Livingston, Post & Co.

Mr. Trudeau stated that the acceptance of the lower offer of Post & Co. would have saved upon the 10,000 tons covered by their tender, \$12,400 if delivered at Duluth, and \$4,900 at Fort William.

As a fact about 5,349 tons of rails and accessories were delivered at Duluth, and about 5,477 tons at Fort William, upon which, at the rates stated by Mr. Trudeau, the loss would be over \$9,000.

A contract was prepared for execution on the basis of the two tenders above mentioned and accepted by Mr. Braun's letter of 2nd December, 1874, and it was expected to be executed by the Mersey Company.

The following two letters are the next on record between the Department and this firm concerning this contract :—

“GREY NUNS' BLOCK, 42 AND 41, FOUNDLING STREET,
“MONTREAL, Dec. 4th, 1874.

“Our Mr. Fairman leaves here for England, *via* New York, Monday afternoon; and before going we would like to know if you would accept delivery of rails west, and at what points. By knowing this we may be able to reduce the pressure on the Montreal freight market by sending a portion *via* New York, and thus get a more speedy delivery. An early reply will oblige.

“COOPER, FAIRMAN & CO.

“Honourable A. MAUCKENZIE,
“Ottawa.”

“OTTAWA, 5th December, 1874.

“GENTLEMEN.—With reference to your letter of the 4th inst. relative to the delivery of steel rails, I am to state that the Department is not prepared to specify the quantities to be delivered at each of the ports mentioned in the contract of the Mersey Steel & Iron Co., but that it is not intended to receive any *via* New York.

"It may, however, be decided to have some of them delivered at an English port, in which case due notice will be given in time.

"I have, &c.,

"F. BRAUN,

"Secretary.

"Messrs. COOPER, FAIRMAN & Co.,

"Montreal."

The document evidencing the present contract was not the one first prepared. That was based upon the acceptance of the two tenders above mentioned; it is not forthcoming, and never reached the Department after it was sent to Messrs. Cooper, Fairman & Co. with the letter of the 2nd December above mentioned. The subsequent letter of Mr. Braun above set out, and dated the 5th December, 1874, makes it clear that that contract which had been forwarded for execution included delivery of rails at ports on the western lakes.

On the 4th January, 1875, the following message reached the Department:—

"OTTAWA, January 4th, 1875.

By Telegraph from Montreal.

"Mersey Co. have signed tender delivered only at Montreal. Cannot now deliver west. Above received by cable.

"AGENTS MERSEY CO.

"Hon. A. MACKENZIE."

This communication in effect informs the Department, that the tender for delivery at western ports was not made on behalf of the Mersey Company, and that that firm had declined to adopt it. The contract which had been prepared as above mentioned for execution by the Mersey Company, and enclosed to Messrs. Cooper, Fairman & Co., on the apparent understanding that they were authorized agents for these contractors, and with the intention that it should be executed in England, including in its terms as aforesaid, delivery at ports on the western lakes, and the supply of bolts and nuts, as well as rails and fish-plates, was evidently not returned. According to the above-mentioned letter of 4th December, 1874, Mr. Fairman, of Cooper, Fairman & Co., intended to leave Montreal for England, and in his evidence before us he stated that he was in England, and heard from the President of the Company that they would not execute the contract as sent to them; but he knew of no authority from the Government which permitted a new one to be executed in a different shape. A contract different in substance from that which was sent to Messrs. Cooper, Fairman & Co., on the 2nd December, was executed in England by the Mersey

Company, and is the one now under consideration. By what authority the change was made does not appear. When the substituted document reached the Department, Mr. Fissiault discovered that it was different from that which had been forwarded, and applied to Mr. Fleming on the subject. The following is a memorandum which at the time he made and attached to the contract :—

“REMARKS ON CONTRACT NO. 4,538, OF THE 14TH JANUARY, 1875, WITH THE MERSEY STEEL AND
“IRON COMPANY.

“In the original draft prepared by me, there was a price for the delivery of rails at Duluth, and one for delivery at French River, also a price for iron bolts and nuts for each delivery.

“The only price (£11 3s.) in this contract received this day, is for rails delivered at Montreal—no mention of delivering any portion at Duluth nor at French River.

“The bolts and nuts are also omitted.

“Mr. Fleming, whom I have consulted on this says, it makes *no difference*.

“H. A. FISSIAULT.

“Feb'y 15th, 1875.”

The italics are Mr. Fissiault's.

The tenders which had been made in the name of the Mersey Company by Messrs. Cooper, Fairman & Co., as their agents, and by this firm in their own name, included bolts and nuts. The contract returned from England was without them. Mr. Fairman, was a witness before us, and on this point said that he had inserted the item “bolts and nuts” in the tender made in the name of the Mersey Company, without any authority from them. In March, 1875, the fact that this item had been in these tenders was made a ground for the Department awarding the contract to Messrs. Cooper, Fairman & Co. for bolts and nuts at the price given in this tender, and without competition, although several others of the competing tenderers had on a former occasion in November, 1874, made offers at much lower prices for the same articles. (See contract 30.)

We find that a tender made by Messrs. Cooper, Fairman & Co in their own name, for delivery at points other than those at which competition had been invited, was accepted, and that its terms were included in a proposed contract with the Mersey Company for 20,000 tons of rails; that the Mersey Company refused to comply with these terms, and elected to execute a contract for the rails alone, without the accessories named in the tender on which the contract was based; that the action of the Department throughout the negotiations with Cooper, Fairman & Co. concerning matters connected with this contract, was calculated to give, and did give that firm

an undue advantage over other competitors in subsequent transactions ; that in obtaining this contract in its final shape, the contractors—the Mersey Steel & Iron Co.—got no undue advantage, and that in awarding it the Department purchased the material covered by it at the lowest available offer.

The contract was fulfilled, and the following sums have been paid on it :—

To 30th June, 1875.....	\$323,944 99
" 1876.....	721,738 66
" 1877.....	83,053 70
	\$1,128,737 35

By a subsequent arrangement, some of the rails included in this contract were transferred to the Intercolonial Railway, and the account of the Pacific Railway was credited accordingly.

CONTRACTS NOS. 9 AND 10.

Steel Rails.

This contract, dated 6th April, 1875, is the result of two distinct bargains between the contractors and the Government. The first is concerning 5,000 tons of rails, &c., and was numbered 9 ; the second was for an additional lot of 5,000 tons, and the contract, as executed, embodied the terms upon which both lots were purchased. It is referred to in the books of the Department as contracts 9 and 10. By it the West Cumberland Iron and Steel Co. (Limited), undertook to make and deliver 10,000 tons of steel rails with the proportionate quantity of fish-plates, bolts and nuts, of which 5,000 tons of rails, etc., were to be delivered in Montreal at £11 sterling, equal to \$53.53 per ton for rails and plates, and £20 sterling, equal to \$97.33 per ton for bolts and nuts, and the residue of 5,000 tons of rails, etc., free on board in England, at £10 sterling, equal to \$48.67 per ton, for rails and plates, and £19 sterling, equal to \$92.48 per ton, for bolts and nuts. The first arrangement was the acceptance of the tender sent in by the contractors in the November competition. It was one of the two lowest, and named £11 sterling as the price for rails and fish-plates, but omitted to give a price for bolts and nuts. This was afterwards fixed by correspondence. After the decision to accept the tender, the following correspondence took place :—

"OTTAWA, 20th November, 1874.

"Telegram to Messrs. Cox & Green, 13 Hospital Street, Montreal.

"Tender to supply five thousand tons of steel rails accepted. Contract, based on printed specification issued by this Department dated October 3rd, will be made with your principals.

"T. TRUDEAU,
"Deputy Minister of Public Works."

"13 AND 15 HOSPITAL STREET,
"MONTREAL, 20th November, 1874.

"DEAR SIR,—We have the honour to acknowledge your telegram of this day: 'Tender to supply five thousand tons of steel rails accepted. Contract, based on printed specification issued by this Department, dated October 3rd, will be made with your principals.'

"We presume you are kindly sending us copies of the specification you mention, on receipt of which we shall have the matter put into proper shape.

"Awaiting your valued favours,

"We are, dear Sir,
"Your obedient servants,
"COX & GREEN.

"T. TRUDEAU, Esq.,
"Deputy Commissioner Public Works,
"Ottawa."

"OTTAWA, 25th November, 1874.

"GENTLEMEN,—As in the tender you made on the 10th inst., in behalf of the West Cumberland Iron and Steel Co. (Limited), for the supply of 5,000 tons of steel rails, you omitted to state the price the Company would charge for furnishing the bolts and nuts required for that quantity of rails, I am directed to ask you to be good enough to now give that information.

"I have, &c.,
"F. BRAUN,
"Secretary.

"Messrs. COX & GREEN,
"Hospital Street, Montreal."

"OTTAWA, 5th December, 1874.

"GENTLEMEN,—The tender of the West Cumberland Iron and Steel Company (Limited) for the supply of steel rails having been accepted, I have to send to you herewith for execution by said Company the draft of contract for same in triplicate, which you will be pleased to return here as early as convenient for completion.

"I have, &c.,
"F. BRAUN,
"Secretary.

"Messrs. COX & GREEN,
"Montreal."

Shortly after awarding this contract an offer was made on the part of the Government to increase the quantity to be supplied by these tenderers, which offer was declined. Subsequently, however, on the 18th December, 1874, Messrs. Cox & Green made an offer to supply 5,000 tons more at the same price as mentioned in their original tender, concerning which the following correspondence took place:—

“13 AND 15 HOSPITAL STREET,

“MONTREAL, December 18th, 1874.

“DEAR SIR,—We are to-day in receipt of a cable communication from West Cumberland Iron and Steel Company (Limited), informing us that taking into consideration the favourable terms of payment, they are prepared to increase the quantity of steel rails which they are contracting to deliver from 5,000 tons [as the quantity now stands to (10,000) ten thousand tons. We would remind you that our price is the lowest of any, viz.: (£11 0s. 0d.) eleven pounds sterling per ton delivered in Montreal. We would now, therefore, respectfully request that you would bring the proposition to the notice of the Minister of Public Works, calling his particular attention to the very low price of the rails.

“Soliciting the favour of a reply,

“We are, dear Sir,

“Your obedient servants,

“COX & GREEN.

“F. BRAUN, Esq., Secretary,
“Public Works Department,
“Ottawa.”

“MONTREAL TELEGRAPH Co.,

“OTTAWA, December 21st, 1874.

“By Telegraph from Montreal to T. Trudeau, Public Works.

“See our letter 18th December to Mr. Braun, offering five thousand tons more rails if wanted; reply quick, as a railroad is in treaty.

“COX & GREEN.”

“OTTAWA, 22nd December, 1874.

“Telegram to Cox & Green, Montreal.

“No further steel rails wanted. Thanks.

“F. BRAUN,

“Secretary.”

“OTTAWA, 5th January, 1875.

“GENTLEMEN—The Minister of Public Works having reconsidered your offer on behalf of the West Cumberland Iron and Steel Company (Limited) of Workington, to supply 5,000 tons of steel rails in addition to the quantity stipulated in their contract at £10 (ten pounds) sterling per ton, and on the terms and conditions of their said contract f. o. b. at Workington, I am to inform you that said offer is accepted, and to request you will advise the Company accordingly.

“I have, &c,

“F. BRAUN,

“Secretary.”

“Messrs. COX & GREEN,
“Montreal.”

Accompanying the original tender of this Company, a letter dated 23rd October, 1874, from the Secretary to Messrs. Cox & Green, the agents at Montreal, was sent to the Department. This letter named £10 sterling as a price at Workington, or £11 sterling at Montreal; and it seems to have been considered that their offer of December 18th, 1874, might be treated as still continuing this alternative. Mr. Mackenzie, in his evidence, stated that about the time of accepting this last offer it was considered expedient to procure some rails for delivery in Vancouver, and the fact that the terms of the new offer by these contractors on the 18th December was accepted on the condition that the delivery should not be made in Montreal as proposed by their agents, Messrs. Cox & Green, but at Workington, in England, as mentioned in Mr. Braun's letter of the 15th of January, 1875, indicates, that it was at that time intended, that this second purchase from the West Cumberland Co., should go to Vancouver. The following letter was subsequently written by the Secretary of the Department:—

"OTTAWA, 4th March, 1875.

"GENTLEMEN,—A new contract with the West Cumberland Iron and Steel Co. being required for the supply of 5,000 tons steel rails, &c., it has been determined to amalgamate the same with the contract executed by the Company on the 2nd February instant, for the first 5,000 tons.

"The accompanying draft has been prepared accordingly and is endorsed for execution.

"You will remark that the price per ton for bolts and nuts does not cover duty.

"The first contract in triplicate is returned herewith.

"I have, &c.

F. BRAUN,

"Secretary.

"MESSRS. COX & GREEN.

"Montreal."

The contract was executed. The delivery of 5,000 tons to be at Montreal, and of 5,000 at Workington. Subsequently the Department proposed to change these terms, as shown by the following correspondence:—

"OTTAWA, April 20th, 1875."

"Would West Cumberland Company, deliver the whole ten thousand tons rails at Montreal at eleven, and bolts and nuts at twenty pounds, sterling.

F. BRAUN,

"Secretary.

"COX & GREEN,

"Montreal."

"13 & 15, HOSPITAL STREET,

MONTREAL, 20th April, 1875.

"DEAR SIR,—We have your telegram of to-day and copy enclosed.

"The first five thousand tons have already or are about being shipped. We have no doubt the Company could send the other five thousand also, and we dare say can arrange to deliver

them to you here. Adding one pound sterling to the price you have agreed to pay them delivered in England, we will lay the matter before them by mail leaving here next Friday, the 23rd inst, and when their reply reaches us we shall have the honour of communicating it to you.

“ We are your obedient servants,
COX & GREEN.

“ F. BRAUN, Esq., Secretary,
“ Public Works Department,
“ Ottawa.”

The evidence shows that in obtaining this contract (numbered 9 and 10) the contractors obtained no undue advantage, and in awarding it the Department bought the material covered by it at a price as low as that for which it could have been then obtained from any other source.

It was finally arranged that the delivery should be made in Canada, and the contract was fulfilled. The following sums were paid on the contract:—

To 30th June, 1875.....	\$230,645 14.
To 30th June, 1876.....	147,284 99.
To 30th June, 1877.....	186,145 73.
Total.....	\$564,075 86.

By a subsequent arrangement some of the rails included in this contract were transferred to the Intercolonial Railway, and the account of the Pacific Railway was credited accordingly.

CONTRACT NO. 11.

Steel Rails.

By this contract, dated 9th February, 1875, a firm, composed of persons whose names are not given, using the style and firm of Naylor, Benzon & Co., undertook to supply five thousand tons of rails, with the proportionate quantity of fish-plates, free on board, at Liverpool, receiving therefor £10 10s. per ton, deliverable as follows: 2,500 to 3,000 tons in March or April, 1875; the remainder in May, 1875.

This contract was the result of offers by Messrs. Cooper, Fairman & Co.' without competition. The tenders which reached the Department in answer to the advertisement issued on this occasion, and which had invited offers for delivery only at Montreal, were accompanied by two for delivery at Liverpool, one from James Crawford at £10 5s. ster-

ling per ton, and one from Messrs. Cooper, Fairman & Co. at £10 10s. The latter tender contained also the only offer for delivery at Vancouver, which was at £13 5s. 3d. sterling.

Before the time named for receipt of tenders, the following correspondence passed between the Department and a Mr. Justice :—

“ PHILADELPHIA, 23rd October, 1874.

“ DEAR SIR,—In making tenders for ‘steel rails,’ you require deliveries to be made at Montreal.

“ I write to ascertain if tenders would be received for rails to be delivered at Liverpool and all matters of freight and insurance would then be in your hands. This course would bring out greater competition in way of bids, thus reducing prices.

“ Yours truly,

“ PHILIP S. JUSTICE.

“ F. BRAUN, Esq., Secretary,

“ Public Works Department,

“ Ottawa, Canada.”

“ OTTAWA, 27th October, 1874.

“ SIR,—In reply to the enquiry made in your communication of the 23rd instant as to whether the Department would accept tenders for steel rails delivered at Liverpool, England, &c., I beg to inform you that no such tenders would be accepted. In addition to the place mentioned in the specification for delivery, the Department would have no objection to tenders for delivery on Georgian Bay, Lake Huron, or Duluth and Thunder Bay, Lake Superior.

“ I have, &c.,

“ F. BRAUN,

“ Secretary.

“ PHILIP S. JUSTICE, Esq.,

“ No. 14 North Fifth Street,

Philadelphia, Pa., U.S.

Although the Department had requested no competition for delivery in England for Vancouver, nevertheless, after the opening of the tenders, Mr. Fleming, on the 19th November, 1874, thought it proper, in his report, to submit the substance of the one for Vancouver, made by Messrs. Cooper, Fairman & Co.

After consideration of the different tenders, the notification of the acceptance of some of them took place at the dates and for the quantities below mentioned :—

Nov. 20th, to Cox & Green, 5,000 tons at.....	\$53 53
Dec. 1st, H. A. F. Post, 10,000 tons (at average)..	54 62
Dec. 2nd, Cooper, Fairman & Co., 20,000 tons at.	54 26
Dec 4th, Thos. Reynolds, jun., 5,000 tons at.....	53 53

This provided for 40,000 tons. The day following the last of these notices, the following letter was written by the Secretary :—

“OTTAWA, 5th December, 1874.

“GENTLEMEN,—With reference to your letter of the 4th inst., relative to the delivery of steel rails, I am to state that the Department is not prepared to specify the quantities to be delivered at each of the ports mentioned in the contract of the Mersey Steel and Iron Company, but that it is not intended to receive any *via* New York.

“It may, however, be decided to have some of them delivered at an English port, in which case due notice will be given in time.

“I have, &c.,

“F. BRAUN,

“Secretary.

“Messrs. COOPER, FAIRMAN & Co.,
“Montreal.”

This is the first official record of an intention by the Department to purchase rails for delivery at an English port. We cannot, from its language, understand whether it refers to the tender which had been put in as aforesaid by Messrs. Cooper, Fairman & Co. in company with the regular tenders for delivery at Montreal, and which mentions the same price as that which was subsequently given under this contract, or to the prospect of a subsequent negotiation by competition or otherwise. No one from the Department has been able in his evidence to state the grounds for the decision to purchase in this case beyond what the records exhibit. We have attempted to trace through these records the steps taken, or information obtained, by the Department concerning rails to be delivered in England or in Vancouver. On the 9th December, 1874, the Secretary wrote the following letter :—

“OTTAWA, 9th December, 1874.

“GENTLEMEN,—In reply to your communication of the 30th ult., asking if any more steel rails would be required by the Government during the coming year in addition to those lately purchased, I beg to inform you that should any more be required, tenders will be called for as previously done.

“I have, &c.,

“F. BRAUN,

“Secretary.

“CHAMPLIN & GILLET,
“P. O. Box 3012, New York, U.S.”

An offer was made by Cox & Green, of Montreal, the agents for the West Cumberland Company, dated the 18th December, 1874, to supply 5,000 tons beyond the quantity covered by their original tender. The following correspondence will show the substance of that offer and how it was at first disposed of :—

" 13 AND 15 HOSPITAL STREET,

" MONTREAL, December 18th, 1874.

" DEAR SIR,—We are to-day in receipt of a cable communication from West Cumberland Iron and Steel Company (Limited), informing us that taking into consideration the favourable terms of payment, they are prepared to increase the quantity of steel rails which they are contracting to deliver from (5,000) five thousand tons, as the quantity now stands, to (10,000) ten thousand tons. We would remind you that our price is the lowest of any, viz.: (£11.00) eleven pounds sterling per ton, delivered in Montreal. We would now, therefore, respectfully request that you would bring the proposition to the notice of the Minister of Public Works, calling his particular attention to the very low price of the rails.

" Soliciting the favour of a reply,

" We are, dear Sir,

" Your obedient servants,

" COX & GREEN.

" F. BRAUN, Esq., Secretary,

" Public Works Department,

" Ottawa."

" MONTREAL TELEGRAPH CO.,

" OTTAWA, December 21st, 1874.

" *By Telegraph from Montreal to T. Trudeau, Public Works.*

" See our letter 18th December to Mr. Braun, offering five thousand tons more rails if wanted; reply quickly, as a railroad is in treaty.

" COX & GREEN."

" OTTAWA, 22nd December, 1874.

" *Telegram to Cox & Green, Montreal.*

" No further steel rails wanted. Thanks.

" F. BRAUN,

" *Secretary.*"

This refusal seems to us not to be in accord with the intention of the Department suggested to Messrs. Cooper, Fairman & Co., on the 5th December, at which time Mr. Braun, in the letter above mentioned, had used this language to them:—

" It may, however, be decided to have some of them delivered at an English port."

For, if rails were required at Vancouver, it was hardly expedient to refuse 5,000 tons at the price named by the West Cumberland Co., the lowest of all tenderers, especially as it was understood that their offer was meant to give the alternative of £11 sterling at Montreal, or £10 sterling at an English port.

After this refusal on the 22nd December, 1874, of the offer made on behalf of the West Cumberland Co., the next recorded correspondence on the subject of a further supply of rails is the following, which opens a fortnight

after the letter of Mr. Braun, informing Messrs. Cooper, Fairman & Co. that some might be taken at an English port :—

“ MONTREAL, 29th December, 1874.

“ DEAR SIR,—I have just received a cable message through Mr. Fairman, on behalf of the makers, offering 6,400 best Bessemer steel rails—additional at £10 10s. 0d. f. o. b. Liverpool—subject to reply upon Thursday. Should you be able to take this extra lot, I will secure them at once, as the prices will probably advance after New Year. The writer will wait upon you in the morning at the station with reference to this offer.

“ Your obedient servant,
“ JAMES COOPER.

HON. A. MACKENZIE.

Between this date and the next letter, as we judge from the contents of the latter, some one, acting for the Department, had informed the firm of Messrs. Cooper, Fairman & Co., that 10,000 tons would be required at Liverpool :—

MONTREAL, 4th January, 1875.

“ DEAR SIR,—We received cable message advising that the Mersey Co. have signed tender for delivery in Montreal only. With reference to the 10,000 tons required f. o. b. Liverpool, by taking immediate action by cable, we can probably arrange it, the original tender being all for shipment here. To facilitate matters, we would be glad to have your instructions with reference to this, and the delivery at Vancouver Island. We can probably secure freight at £2 per ton, although £2 10s. has been asked. Upon receipt of your instructions, we will cable for figures and make contract for delivery on the Pacific Coast. Waiting your early reply,

“ We remain,

“ Yours respectfully,

“ COOPER, FAIRMAN & CO.,

“ FOR MERSEY IRON STEEL CO.

“ Hon. A. MACKENZIE,

“ Ottawa.”

Messrs. Cooper, Fairman & Co. here refer to *the* 10,000 tons as if it had been the subject of a previous conversation or communication, and plainly propose to enter into a contract without competition, on their own terms, not only as to rails, but as to freight.

On the next day the three following communications are recorded :—

“ OTTAWA, 5th January, 1875.

“ GENTLEMEN,—The Minister of Public Works having reconsidered your offer on behalf of the West Cumberland Iron and Steel Co. (Limited), of Workington, to supply 5,000 tons of steel rails in addition to the quantity stipulated in their contract, £10 (ten pounds) sterling per ton, and on the terms and conditions of their said contract f.o.b. at Workington, I am to

inform you that said offer is accepted, and to request you will advise the Company accordingly.

" I have, &c ,

" F. BRAUN,

" *Secretary.*

" MESSRS. COX & GREEN,
" Montreal."

" OTTAWA, 5th January, 1875.

" SIR,—In reply to your communication of the 23rd ult., asking the probable destination of the rails lately purchased by the Government, in order to enable you to make offers for the carriage of the same, I beg to inform you that the place of delivery will be Montreal and Vancouver Island.

" I have, &c.,

" F. BRAUN,

" *Secretary.*

" JOHN G. DALE, Esq.,
" New York, U.S."

" OTTAWA, 5th January, 1875.

" SIR,—In reply to your communication of the 29th ult., offering to supply 6,400 tons of Bessemer steel rails at £10 10s. f. o. b. at Liverpool, I beg to inform you that the Department does not require any more.

" I have, &c ,

" F. BRAUN,

" *Secretary.*

" JAMES COOPER, Esq.,
" Montreal."

Two days after this the following acceptance of Messrs. Cooper, Fairman's proposal was telegraphed :—

" OTTAWA, January 7th, 1875.

" *Telegraph to Messrs. Cooper, Fairman & Co., Montreal.*

" If freight to British Columbia can be got at two pounds sterling, the Government will take five thousand tons of steel rails, shipped at any time. Delivery will be at Esquimalt Cowichan Bay or Nanaimo, at all of which places there are good facilities.

" F. BRAUN,

" *Secretary.*"

After which the following correspondence took place :—

" MONTREAL, 13th January, 1875.

" DEAR SIR, In reply to telegram of the 7th instant, we beg to advise you that we have purchased on account of Dominion Government 5,000 tons Bessemer steel rails, at £10 10s. Od., f. o. b. Liverpool; cash against bills of lading.

" We have also contracted freights to Vancouver ports, viz. :—Esquimalt, Cowichan Bay and Nanaimo, at £2 5s. Od. sterling per ton.

"The Government assuming the responsibility of freight, &c., which is to say—to pay shippers, makers not assuming delivery to Vancouver ports.

"Should you require the track bolts for this lot, we can arrange for them and include. We are advised that steel rails are now held at £11 0s. 0d. We would be glad to be favoured with the address of your Bankers in England, to whom we suppose the bills of lading will require to be presented to. Kindly confirm the contract as soon as possible to enable us to cable reply, the necessary documents to follow.

"Yours faithfully,

"COOPER, FAIRMAN & CO.

"Hon. A. MACKENZIE,

"Ottawa."

By this letter Messrs. Cooper, Fairman & Co. intimate that they expect to close the transaction, by supplying the quantity named by Mr. Braun on the 7th January, 1875, though it should cost more than had been mentioned by him as a condition on which the purchase would be effected.

Between the 14th and 18th January, 1875, inclusive, the following six communications from this firm, to the Private Secretary of the Minister, are amongst the records of the Department. There is no trace of his answers if he gave any. The attention of the Deputy Minister was called to these communications, but he was not able to say whether there had been any answer.

Mr. Trudeau testified that it was the intention in the Department, that any official letter written by the Private Secretary should be recorded, and that it was not usual in negotiations concerning Departmental transactions that correspondence should take place between tenderers or contractors and the Private Secretary.

(Confidential.)

"Copy of Cable received 13th January, Cooper, Montreal.

"Have bought Vancouver rails, cash f. o. b. here, freights arranged; obliged to pay 45 shillings, obtain differences from Government; Government must assume responsibility, freights and insurance; makers now asking eleven pounds."

This purports to be a cablegram to Mr. Cooper from his partner in England.

"MONTREAL TELEGRAPH Co.,

"OTTAWA, 14th January, 1875.

"By Telegraph from Montreal to Wm. Buckingham, Department of Public Works.

"Have cabled for positive information; believe insurance included; will answer to-morrow.

"COOPER, FAIRMAN & Co.

" MONTREAL TELEGRAPH Co.,

" OTTAWA, 14th January, 1875.

" *By Telegraph from Montreal to Wm. Buckingham, Public Works Department.*

" Government have to pay freights at rates averaged 45 shillings to Vancouver ports; the makers not assuming delivery beyond Liverpool. I cabled to get freight at 40 shillings; after much labor succeeded in getting delivery at 45 shillings, being better than allowing rails to be withdrawn. Rails now worth £11 Os. Cd., assuming difference means accepting rates arranged for, namely, 45 shillings per ton.

" JAMES COOPER."

" MONTREAL, 15th January, 1875.

" *Wm. Buckingham, Esq., Ottawa:*

" DEAR SIR,—I am in receipt of your telegram in reply to cable message received to-day. The extra five shillings added was for insurance, which was omitted in quotations for delivery at Vancouver ports. I have cabled again this evening, and will likely have a final reply to morrow afternoon, which I trust will be satisfactory to you.

" I remain, yours respectfully,

" JAMES COOPER."

" MONTREAL TELEGRAPH Co.,

" OTTAWA, 15th January, 1875.

" *By Telegraph from Montreal to Wm. Buckingham, Public Works.*

" Cable reply received says freight and insurance, 50 shillings; impossible to get less.

" JAMES COOPER."

" OTTAWA, 18th January, 1875.

" *By Telegraph from Montreal to W. Buckingham, Public Works.*

" Accept your offer made by telegraph on the seventh. Rails ten pounds ten shillings (£10 10s.); freight forty shillings, insurance not included.

" JAMES COOPER."

" MONTREAL, 18th January, 1875.

" DEAR SIR,—We are in receipt of a cable message to-day which enables us to accept your offer of 7th January for 5,000 tons of Bessemer steel rails at £10 10s., f. o. b., Liverpool, terms cash on delivery and freight to Vancouver ports, viz.: Esquimalt, Cowichan and Nanaimo, at forty shillings per ton—insurance an open question.

" Makers of rails only delivering f. o. b., Liverpool.

" Please confirm the above at your earliest convenience to enable us to confirm sale in England by cable.

" We remain, yours faithfully,

" COOPER, FAIRMAN & Co.

" P.S.—We would be glad if you can favour us with the address of your Bankers, to whom we are to present bills of lading of delivery.

" Wm. BUCKINGHAM, Esq.,

" Ottawa."

On the 21st of that month the transaction was closed by the following official communication :—

“ OTTAWA, 21st January, 1875.

GENTLEMEN,—In reply to your several communications on behalf of Messrs. Naylor, Benzou & Co., I am to state that the Government accept's their offer to supply 5,000 tons of steel rails at £10 10s. 0d. sterling per ton f. o. b. at Liverpool, and allows £2 0s. 0d. per ton for freight to the Vancouver ports.

“ The Agent-General of the Dominion, E. Jenkins, Esq., M.P., will see to the insurance.

“ Messrs. Morton, Rose & Co., are the Financial Agents of the Government in London.

“ I have, &c.,

“ F. BRAUN,

“ Secretary.

“ Messrs. COOPER, FAIRMAN & Co.,
“ Montreal.”

The evidence shows that there was no such rise in the market price of rails as that which, in Mr. Cooper's letter to Mr. Buckingham of the 14th January, is stated to have taken place, and no such advance as in Mr. Cooper's letter of the 29th December, 1874, to Mr. Mackenzie, was mentioned as probable after New Year. Mr. Reynolds' testimony, as well as Mr. Sandberg's diagram and the periodicals before mentioned as authorities, namely, *Iron* and *The Iron and Coal Trades Review*, all indicate that from the latter end of November until after all these transactions were closed there was no general rise in the price of rails, but, on the contrary, if there was any movement it was downwards. It is not, however, inconsistent with such evidence that individual makers may have asked £11 sterling. In fact, periodicals or other authorities of that nature purport to do no more than to give the general state of the market. The tenders that were sent, in answer to the advertisement in this case, ranged from £11 to £17 sterling for delivery at Montreal, equivalent to £10 to £16 sterling at English ports, and if, at the time this purchase was being closed, *i. e.*, in January, 1875, any maker asked £11, or any other price, at an English port, that fact gave no indication of the lowest price at which a Government could purchase rails.

On the 4th January, 1875, there were two offers before the Department for rails to be delivered in England, both made spontaneously: one from Cox & Green, made on the 18th December, 1874, at £10 sterling, which we say, was still before the Department, because, though it had been refused by telegram on the 22nd December, it was at this time, the 4th January, 1875, treated as available, and, in fact, accepted. Another was from Cooper, Fairman & Co., made the 29th December, 1874, at £10 10s. sterling.

It was on this 4th of January, also before the Department, on its records, that Mr. Justice had desired to tender for delivery at Liverpool, and had been informed that—"No such tenders would be accepted:" that Mr. Crawford had offered to take, for delivery at Liverpool, £10 5s. sterling per ton ; that there were signs of a weakening in the market, for makers were then inclined to take less than they would accept on a previous occasion. That the market had been firmer is perfectly clear, for Mr. Mackenzie testified that, after the opening of the tenders, and before this spontaneous offer of 18th December, the West Cumberland Co. had declined to furnish a further quantity at \$53.53 ; and there is other evidence to show that the Ebbw Vale Co. had, soon after the opening of the tenders, declined to accept that price for an additional supply. Therefore this offer, coming spontaneously from Cox & Green to supply 5,000 tons at a price which they had previously refused, was an intimation that the market was weakening. With a knowledge, on the 4th January, 1875, of these facts, the Department took action as follows.

On 5th January, 1875, Mr. Braun wrote Cox & Green accepting their offer for 5,000 tons at £10 sterling.

On 5th January, 1875, Mr. Braun wrote Mr. Cooper, of Cooper, Fairman & Co., declining to take any more rails.

On 7th January, 1875, Mr. Braun telegraphed Messrs. Cooper, Fairman & Co. that if freight could be got at £2 sterling the Government would take 5,000 tons shipped at any time.

And after some intermediate attempts of this firm to get a higher price for transportation, the purchase was concluded on the terms named in Mr. Braun's telegram of 7th January, 1875.

Mr. Mackenzie was asked whether, before deciding upon awarding this contract to Cooper, Fairman & Co., the circumstances of these applications from Mr. Justice and Mr. Crawford were taken into consideration, or whether any attention was given to the fact that two days before that he had been offered voluntarily, by the West Cumberland Co., 5,000 tons at a price ten shillings lower than that named by Messrs. Cooper, Fairman & Co. His answer was that he had no doubt they were all considered ; that the fact that there was a decision in the case implied consideration ; but he had no recollection of any discussion respecting the matter, and upon being asked why it was not worth while to ask for the competition of Crawford or of the West Cumberland Co., he said he knew of no reasons whatever, except

what were in the public documents in the office. After the acceptance of this last lot from Cooper, Fairman & Co., the one of 5,000 which had been previously bargained for with the West Cumberland Co. to be delivered at an English port was arranged to be delivered at Montreal instead, so that this purchase from Cooper, Fairman & Co. had indirectly the effect of increasing the quantity to be delivered at Montreal from 40,000 to 45,000 tons.

We have not been able to get any information upon the question how the Minister was induced, without competition, to concede to Messrs. Cooper, Fairman & Co. a price 10s. sterling higher than that which the West Cumberland were, two days earlier, willing to take.

Mr. Mackenzie stated that in awarding contracts, his "decision was invariably not only in concert with, but in acquiescence of the views of the officers of the Department," in consequence of which statement Mr. Trudeau, who had been the Deputy Minister at the time of this contract, was re-called, in order to ascertain how far the circumstances above alluded to were considered before awarding this contract to Cooper, Fairman & Co.

Mr. Trudeau testified that it was not a matter of doubt with him as to whether his judgment had been asked concerning the rail contracts, and he stated that the Minister had himself decided.

Mr. Fleming, as a witness, said he wished us to understand that from first to last he took no part in awarding contracts. We have, therefore, been unable to learn the reasons which led to £10 10s. being given to Messrs. Cooper, Fairman & Co. under the circumstances above stated.

The bargain was closed by a formal contract with Messrs. Naylor, Benson & Co.

The evidence leads us to conclude :

That in this case the contractors got an undue advantage, namely, a price higher than was necessary to be paid in the state of the market at that time, and higher than was then being paid to other manufacturers—such price being conceded without competition :

That the action of the Department concerning rails to be delivered at Liverpool had the effect of silencing competition and of giving to Messrs. Cooper, Fairman & Co. an undue advantage over other dealers.

The contract has been fulfilled; the amount paid on it being \$265,052 36.

CONTRACT No. 12.

Georgian Bay Branch.

By this contract, dated the 27th of February, 1875, the Hon. Asa Belknap Foster undertook to locate and construct about eighty-five miles of railway, to be known as the Georgian Bay Branch, from the mouth of French River to a point in the centre of four townships, lettered A, B, C, D, on a map attached to said contract, according to specifications, and within a time mentioned in said contract; which railway, on its completion, was to be the property of the contractor, and to be worked for his advantage under certain specified conditions, he receiving therefor ten thousand dollars per mile together with interest at four per cent on \$7,400 for each mile of the railway, this interest to be paid for a period of twenty-five years from its completion, as well as the proceeds of 20,000 acres of land for each mile thereof in the manner in the said contract set out. This contract is printed (No. 44) in the Sessional Papers of 1875.

A return to the House of Commons dated 5th March, 1875, shows the tenders for the construction of the Georgian Bay Branch, with Orders in Council, correspondence and papers relating thereto.

A return to the House of Commons, dated 28th of February, 1877, shows reports, statements, correspondence and other papers subsequent to the execution of the contract concerning work done under it; the failure to perform it, and Orders in Council concerning the cancellation of said contract, and other matters. On the 23rd of April, 1877, the Select Standing Committee on Public Accounts presented to the House of Commons their fourth report, which was evidence taken (not under oath) in reference to the expenditure for work performed under this contract, together with several documents.

An advertisement of the 6th of November, 1874, invited tenders for the construction of this branch, stating that, amongst other things, such information as the Government possessed concerning the country through which the line passed, might be obtained at the Department. The substance of the tenders, and the action taken upon them, appear by the following:—

“ DEPARTMENT OF PUBLIC WORKS,

“ OTTAWA, January, 1875.

“ *Memorandum.*

“ The undersigned reports that tenders have been invited for the Georgian Bay Branch of the Canada Pacific Railway in two forms as follows:—

“ Form No. 1.—To include the delivery of the railway completed to Government.

“ Form No. 2.—To include the construction of the Railway, and its working after completion upon certain regulations as to accomodation for connecting railway lines and otherwise to be established by Government. The road, subject to such regulations, to remain the property of the contractors.

“ That said tenders are all based on the following conditions as to remuneration :

“ 1st.—The payment, as per cap. 14, Vic. 37, sec. 8, sub-sec. 3, of a sum of \$10,000 per mile.

“ 2nd.—A grant of 20,000 acres of land per mile.

“ 3rd.—A guarantee of 4 per cent. for 25 years on a sum to be named by the parties tendering, in the event of said quantity of land per mile not being sufficient.

“ That the following is a list of the tenders received :—

<i>Form No. 1.</i>	Guarantee required on
John Wardrop & Co., Brockville.....	\$40,000
James H. Dean, Port Perry.....	75,000
C. E. English, Toronto.....	90,000
C. E. English, Toronto.....	100,000

Form No. 2.

J. D. Edgar, Ontario and Pacific Junction Railway.....	30,000
N. C. Munson, Boston.....	7,400
A. B. Foster, Waterloo.....	12,500
C. E. English, Toronto.....	110,000

“ The undersigned, therefore, recommends that the offer of N. C. Munson, of Boston, be accepted, said offer appearing to be most advantageous.

“ Respectfully submitted.

“ A. MACKENZIE,

“ *Minister of Public Works.*”

“ *MEMO.—This Report was approved by a Committee of the Honourable the Privy Council on the 4th February, 1875.*”

“ BOSTON, MASS.,

“ 28th January, 1875.

“ SIR,—We beg to inform you that we have transferred the tender for the construction of the Georgian Bay Branch of the Canadian Pacific Railway to the Hon. A. B. Foster, who has acquired all the interest we hold in the tender sent in by us.

“ Your obedient servant,

“ N. C. MUNSON.

“ Hon. A. MACKENZIE,

“ *Minister of Public Works,*

“ *Ottawa.*”

" CANADA CENTRAL RAILWAY CO.,

" SECRETARY AND TREASURER'S OFFICE,

" OTTAWA, 3rd February, 1875.

" SIR,—I beg to inform you that I have acquired the interest of N. C. Munson in the Georgian Bay Branch of the Canadian Pacific Railway, and herewith enclose a transfer, and am prepared to enter into contract for same.

" Yours truly,

" A. B. FOSTER.

" Hon. A. MACKENZIE,

" Minister of Public Works,

" Ottawa."

The contract was entered into with Mr. Foster in accordance with the above-mentioned recommendation. It contained a stipulation that in no case should the gradients ascending easterly exceed 1 in 200. Subsequently it was cancelled.

An Order in Council, dated 28th of February, 1876, authorized the contract to be annulled, and the repayment to the contractor of \$85,000, which he had deposited as security, together with the fair value of works which had been performed by him so far as they were necessary to, or could be made available for, the prosecution of the work. The contract was annulled and Mr. Foster was repaid his deposit of \$85,000, together with \$41,000 towards reimbursing him for the expense on the works aforesaid.

We do not think it necessary to describe at length the correspondence and other steps which led up to this result. They are set out in the return to the House of Commons dated 26th March, 1877, before mentioned, (Sessional Papers, No. 57), but some reference to them may be useful.

On 26th October, 1874, Mr. Walter Shanly wrote to Mr. Foster and used the following language concerning this branch :—

" The levels already run, extending from the mouth of the river to the ' Nipissing Road,' a distance of about sixty miles, show beyond all question that the maximum gradients and curvature limited by the contract, namely, 26 feet per mile ascending east and 52 feet on the westwardly ascent, are not obtainable on, or near the line laid down on the contract map."

On the 17th November Mr. Fleming reported on this letter, stating that he had had the advantage of the views of Mr. Ridout and Mr. Hazlewood, and that, in his judgment, the proper course was, " for the contractor to carry on the surveys with every possible energy until a line coming within the terms of the contract be found." Mr. Fleming does not give

the language in which the views of Mr. Ridout and Mr. Hazlewood were communicated to him, and we are not able to judge how far his own strong view that the contractor by surveying with energy could find the specified grades, was a reasonable deduction from their representations. But from his letter of the 9th of February, 1877, set out in the said return, in which he said that the light gradients which he had expected were not obtained, and in which he indicated that grades had then (February, 1877) been adopted at a maximum twice as steep as those prescribed by the contract, as well as from the information contained in the said return to the House of Commons, and other evidence on the subject, we conclude that in the terms of this contract, a grade for the railway was specified as the maximum which was not obtainable, and that this was the main reason for cancelling the contract.

The general route of the line specified in this contract was not selected for engineering reasons. According to Mr. Fleming's evidence it was due to the policy of the Government. We have not enquired into the expediency of adopting the route. We have endeavoured to learn why the grades described in the contract should have been taken as practicable so positively as to make them the basis of a bargain between the contractor and the Government.

On the 6th October, 1874, the Chief Engineer submitted a report to the Minister which is hereinafter set out. In order to understand the bearing of this report it must be kept in mind that it relates to a route which included at the westerly end, about 85 miles covered by this contract, and known as the Georgian Bay Branch, and also a continuation of the same line which was subsequently agreed for, by contract 16, and is generally alluded to as the subsidized portion of the Canada Central.

“Letter from the Engineer-in-Chief to the Minister of Public Works, giving a synopsis of information respecting the country between River French and Renfrew, as well as Pembroke: from Reports of an Exploration made by Samuel Hazlewood, C.E., in the season of 1874.

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, 6th October, 1874.

“SIR,—In accordance with your wishes I instructed Mr. Hazlewood to walk over and examine the country between the mouth of River French and Pembroke, also along the River Bonnechere to Renfrew. The following remarks on the character of the country, its suitability for railway construction, &c., are gleaned from Mr. Hazlewood's letters to me, dated the 14th July, 5th August, and 15th September last.

"Mr. Hazlewood proceeded first to Parry Sound district, and travelled up the road leading from Lake Rousseau to Lake Nipissing; he selected the corner post between lots 158 and 159 as the initial point, and started from that place on the 1st July, on a direct course for the mouth of River French, a distance of about sixty miles. He reports the country between these points as being favourable for railway construction, no obstacles of any importance presenting themselves, except near River French, where the heaviest rock excavation will be necessary. The streams to be crossed are few and unimportant, and there is an ample supply of good stone. The land, as a general rule, is level, and as far as could be judged, much of it adapted for settlement. The timber is large and valuable. Pine, apparently of a fine quality, is to be had in abundance.

"The mouths of River French were reached on the evening of the 7th July. Here Mr. Hazlewood expected to find some Government stores, but learning that the Hudson Bay Company had lately broken up their post at this place and removed the stores to Byng Inlet he found it necessary to proceed there for a supply.

"Having procured a sufficient quantity of supplies, Mr. Hazlewood ascended the River French to Lake Nipissing, and thence by River South and Nipissing Road, returned to the camp between lots 158 and 159.

"On the 17th July he left the Nipissing Road and walked in as straight a course as possible easterly towards Pembroke. About one and a half miles from the road he crossed the River Comonda, about twenty five feet in width, flowing in a northerly direction—a short distance farther up it turns to the westward.

"For the first eight miles some rough ground was encountered, but with a little time and care Mr. Hazlewood is convinced a good line may be secured. At ten and a-half miles he crossed the River South or Namanitagong, 75 feet in width and 8 feet deep, and at sixteen and a-half miles again crossed this river, 50 feet in width. From the latter point he followed the general course of the River South to about the twenty-first mile. At seventeen and a-half miles he came upon a large deposit of gravel, the first seen between this point and River French, a total distance of seventy-seven miles. At the twenty-first mile the River South was lost sight of, but at the twenty-fourth mile a brook was crossed which he took to be one of its heads, and at the twenty-sixth and a-half mile crossed what he supposed to be the other head; this latter stream he followed to the twenty-eighth mile, where it was finally lost sight of.

"The valley of the River South from this point (twenty-eight miles) back to the eighth mile is wide, and offers no serious obstructions to the location of an easy line through it.

"About the twenty-ninth mile he reached the watershed. Here the aspect of the country changes a little; the ridges were less elevated, and his track crossed them at an angle instead of running with them as heretofore. At the thirtieth mile he crossed a brook running north-easterly, and a mile further on passed a lake, having its outlet in the same direction. At the thirty-fifth mile he reached Creek Nipissing, an important lumbering stream; at the point of crossing it is fifty feet wide. All the streams from the thirtieth mile flow into this creek. Mr. Hazlewood said he would anticipate no difficulty in getting from the valley of the River South to the valley of Creek Nipissing, the watershed between them being quite low.

"From the Creek Nipissing to the River Petewawa, a distance of eleven miles, the country is somewhat broken, but from appearances there is nothing to prevent a good line being

found through it. The Petewawa may be crossed at either end of Lake Burnt; one span of 100 feet will be sufficient, and the foundations on both sides will be rock.

"Speaking generally of the country walked over between River French and Lake Burnt, Mr. Hazlewood remarks that he feels quite safe in stating that a railway could be located on a very direct course between these points; in fact that the departure from a straight line would probably not increase the distance more than five per cent. He reports a large quantity of good land met with, covered generally with a fine growth of timber, consisting of pine, maple, beech, elm, birch hemlock, cedar, with some spruce and tamarac.

"He arrived at the River Petewawa on the evening of the 25th July; and, his provisions falling short, he considered it advisable to proceed direct to Pembroke by the quickest route.

"Having procured supplies, Mr. Hazlewood continued his examination. The following is a description of the country between Lake Burnt and Renfrew, *via* the River Bonnechere:—

"Running easterly through the valley of Creek Alder to the River Petewawa, the line may cross at the Narrows, at the foot of Lake Long, by a span of 100 feet; thence along the south side of Red Lake Pine, and along the southern base of the ridge, which extends along the north side of Lake Lamures to the Little Petewawa, which it may cross at the falls between Hogan's and Lake Lamures: thence passing the south-western bays of Lake Hogan to the right wing of Lake Crow. From this point it may follow a valley, leading to the third rapid from the mouth of River Crow; crossing this river with one span of 50 feet, rock foundations; thence south-easterly across the valley of a little brook which flows northerly into River Crow. Along the base of 'Baptist Ridge,' and along the flat land around the head of the south-eastern Bay of Lac Laviella to the outlet of Lac la Clare, where a bridge of 30 feet span will be required. Good stone may be procured on the spot. Thence along the shore of Lac la Clare to its northern bay, and by a valley running easterly to the inlet of Lake White Partridge.

"From this point either the northern or central branches of the head waters of the Bonnechere may be followed to what is known as the 'village,' on the north side of the river, a distance of from five to seven miles, thence crossing to the south side of the river, about a mile east of the 'village,' to Egg Rock, a distance of about sixteen miles. As far as could be judged, rock excavation will be necessary in rounding this rock. Thence along the south side of Lakes Round, Golden, and Mud to Eganville, and thence a distance of 22 miles to Renfrew.

"If thought desirable the line may cross to the north side of the Bonnechere, about six miles below Eganville, and continue down the north side through the village of Douglass to Renfrew, crossing to the south side again at the latter place; the south side is, however, reported to be the best throughout.

"The valley of the River Bonnechere from Renfrew to the 'village,' or head waters, Mr. Hazlewood says, has a uniformly even surface, and there would be no difficulty in constructing a railway through it. Very few structures of any importance would occur, and there is an abundance of good stone to be had close at hand. The grades and curves would be extremely easy. The land is good between Renfrew and Eganville, but between the latter place and the 'village' it is poor.

"On the whole distance from Lake Burnt to Renfrew the gradients need not exceed 1 per 100, and there will be no necessity for employing sharper curves than 1910 feet radius.

“ With regard to the examination of the country between Lake White Partridge and Pembroke, Mr. Hazlewood was prevented by scarcity of water and the fires in the woods from walking over the whole of this portion of the country. He, however, managed to obtain a good idea of its character by canoeing along Lakes Crooked and Grand, as well as along the south branch of the River Petewawa, and by walking into the interior wherever an opportunity occurred. He also had a good view of the country from the top of the high hill near the mouth of the Carcajon, a stream flowing into Lake Grand. From what he saw, he thinks there would be no great difficulty in obtaining a fair line with easy grades and curves between Pembroke and the Lake White Partridge, at which latter point the examination to Renfrew branched off.

“ East of Lake Burnt the land is reported as being broken, and of a poor quality, with the exception of about five miles west of Pembroke, and along the Bonnechere between Renfrew and Eganville.

“ The distance from the mouth of River French to Lake Burnt, allowing for curvature, will probably be under 110 miles ; from Lake Burnt to Douglass, say 95 miles ; from Lake Burnt to Renfrew, say 107 miles ; from Lake Burnt to Pembroke, say 73 miles.

“ I am, &c., &c.,

“ SANDFORD FLEMING.”

“ To the Hon. ALEX. MACKENZIE,
“ Minister of Public Works,
“ &c., &c.”

As before mentioned, Mr. Fleming in this report deals with an extent of country beyond that covered by the Georgian Bay Branch, to which alone this contract alludes, and in order to see how far the statements of Mr. Hazlewood to which he there refers support the opinion that any particular grade could be obtained, it is necessary to keep out of view that portion of it which described the section further east than eighty-five miles from the mouth of French River. In this report Mr. Fleming does not profess to do more than to give the result of Mr. Hazlewood's walking reconnoissance. Mr. Hazlewood did not start at either end of the line which he examined. He proceeded first to Parry Sound district, and travelled up the road leading from Lake Rosseau to Lake Nipissing, until he came to his initial point for this survey, and that was the corner posts of lot 158 and lot 159. This point is on the general route of the line specified in this contract, and was about 60 miles distant from its western terminus—the mouth of French River. From this spot Mr. Hazlewood started on a direct course to that western terminus. Mr. Hazlewood is said to have reported the country between these points as being “ favourable for railway construction, no obstacles of any importance presenting themselves, except near French River, where the heaviest rock excavation will be necessary. The streams are few and unimportant; the land, as a general rule, is level.” This

description relates to the first 60 miles proceeding easterly from the mouth of French River, and ends at the corner posts between lots 158 and 159. From that point easterly, Mr. Hazlewood is said to have reported that "for the first eight miles some rough ground was encountered, but with a little time and care a good line may be secured." From the end of this eighth mile Mr. Hazlewood proceeded easterly, crossing the River South, at times, until he reached a point about 28 miles from the post between lots 158 and 159 aforesaid. He reported that from this point back to the eighth mile above mentioned the valley of the river south was wide and offered no serious obstructions to the location of an easy line through it. The end of this 28th mile was about three miles further east than the eastern terminus of the Georgian Bay Branch, as defined in the contract. At a short distance beyond this, that is, about the 29th mile, "the aspect of the country changes; the ridges were less elevated." Mr. Fleming also states that, speaking generally of the country walked over, Mr. Hazlewood had remarked that he felt quite safe in stating, that a railway could be located on a very direct course between French River and Lake Burnt, the latter being further east than the Georgian Bay Branch extended. We notice that Mr. Hazlewood has alluded to easy curves over this distance, but not to easy grades. The description of the country still further east is more definite, and it is mentioned only because it contrasts with the vague allusions to the gradients over the Georgian Bay Branch country. Speaking of the valley of the River Bonnechere, from Renfrew to the village, Mr. Hazlewood said that the grades and curves would be extremely easy, and that on the whole distance from Burnt Lake to Renfrew, the gradients need not exceed 1 per 100. The grade here defined "1 per 100" as obtainable near Renfrew was twice as steep as that which the Government required Mr. Foster to find on the Georgian Bay Branch. Inasmuch as Mr. Hazlewood spoke of that grade existing on a line on which the grades and curves would be extremely easy, we do not see why his indefinite description of the country further west, that crossed by the Georgian Bay Branch, should be taken to mean grades only half as steep as these; it is evident that Mr. Fleming had a strong faith in the contract gradients being obtainable, for when Mr. Foster submitted to the Government Mr. Shanly's report that the levels taken showed them to be not practicable, Mr. Fleming's answer was to the effect, that energy in further surveys would find a line within the terms of the contract.

We do not see anything in the extracts from Mr. Hazlewood's letters, of which Mr. Fleming reported a synopsis on 6th December, 1874, aforesaid, to sustain this strong opinion, and judging from the results and the other evidence, we have to say that the contract was entered into upon terms which were not possible to be fulfilled, and that the Chief Engineer had not then sufficient grounds for supposing them to be possible of fulfilment.

Before the Government paid Mr. Foster his disbursements in connection with this contract, he submitted a statement showing an outlay of over \$63,000 on this contract, and that for the extension eastward before alluded to, concerning which Mr. Fleming reported as follows:—

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, 28th April, 1876.

“SIR,—With respect to that part of the Order in Council of March 8th, touching the value of the works of exploration, survey and construction performed by the Hon. A. B. Foster I have made every enquiry into the subject, and I feel assured that in the event of the Georgian Bay Branch being proceeded with, the expenditure incurred will generally be available in the prosecution of the work.

“I find, of the accounts furnished by Mr. Foster, there are only receipts for about \$20,000. Accordingly I would advise that he be called upon to furnish complete vouchers, and that the whole be placed in the Audit Department for examination.

“I am, &c.,

“SANDFORD FLEMLING.

“F. BRAUN, Esq.,

“Secretary Public Works Department.”

The contractor received on account of his disbursements under this contract:—

March 13, 1876	\$20,000
May 6, “	4,000
“ 9, “	4,000
“ 10, “	8,000
“ 30, “	5,000
Total.....	\$41,000

CONTRACT NO. 13.

Railway Construction,

By this contract, dated 3rd April, 1875, Henry Sifton and Frank Ward, partners under the name of Sifton & Ward, bound themselves to complete the road-bed of the railway between Fort William on Lakes

Superior and Shebandowan, about 45 miles in length, providing all materials except ties, sleepers, rails, fastenings, ballasting, and the laying of the track, the whole to be finished by the 1st of August, 1876; receiving therefor the prices mentioned in their tender, and applied to the items given in the bill of works, which bill of works, together with a copy of their tender, was attached to their contract.

Before entering into this contract the Government, in view of the possibility of the road east of Thunder Bay not being constructed for several years, had adopted the policy of obtaining a line of railway between Thunder Bay and Red River *via* Rat Portage, as short as possible, and with the best possible grades and curves, and looking to water communication being used between the Ontario system of railways and Fort William as well as, possibly, on the small lakes in the interior of the country, for a time, and the Government decided to construct the portion covered by this contract as well as that between Red River and Rat Portage, as fast as it could be put under contract. At this time the Government did not understand that such an instrumental survey had taken place as made it possible to mention the quantities over the whole line with anything like accuracy, but it was understood that the east and west ends had been then "ascertained." As to the section covered by this particular contract, the Government at the time of deciding to build the line, considered, and the engineers had reported, that they had the means of arriving at accurate quantities of the different kinds of work to be executed, and because the specifications on which this contract was let purported to give quantities, the Minister of Public Works came to the conclusion that there had been a regular location of the line. The evidence establishes the fact that at the time of letting this work there had not been a regular location of the line, but only a trial location, which is sometimes called a preliminary survey, and that no such calculation or examination had taken place, as would enable the quantities of the several kinds of work to be executed, to be given with approximate accuracy. The location of the line was actually begun some weeks after the contractors were on the ground ready for work. A claim, made by the contractors, for the delay so occasioned, was subsequently paid by the Government under the award of Mr. Marcus Smith, who was authorized to investigate and settle the matter.

The subject of the method of letting contracts upon bills of works, which give approximate quantities, or upon those which are far from correct, has been much discussed in relation to this contract and others which followed

it. Evidence touching this subject was taken before the Select Standing Committee on Public Accounts in 1879, upon which they made their first report of the 8th May, 1879, as well as before a Select Committee of the Senate, who reported in March, 1879. The Chief Engineer had previously advocated, and said while giving evidence before these bodies that he knew of no better way than letting contracts by bills of works such as those which had been adopted for this and other contracts between Red River and Thunder Bay, in which the quantities, according to his account, were not supposed to be approximate, but were furnished only for purposes of comparison, and he contended that one could get a fair comparison of tenders in that way. The result of such a system upon the expenditure under the contracts is remarked upon more fully in our report upon engineering (page 71). We allude to it here, because, when giving evidence before us concerning the letting of this contract, and although it was, in fact, the one of the three first on which there was the least discrepancy between the estimated and the executed quantities, Mr. Fleming stated that the information obtained by the engineers up to the time of advertising for tenders in this case, was not so full as could be desired, and he did not know that sufficient had been obtained to enable the contract to be let at the lowest possible price. At the time of letting this contract it was understood that Rat Portage was an objective point, but it was not known whether that was to be reached over a railway to Lake Shebandowan and thence partly by water stretches, or altogether by a railway line, of which the residue was to be afterwards located, but it was thought important, at all events, that the Lake should be tapped by the first link of railway going westerly from Thunder Bay.

Tenders for the work described in this contract, to be received up to the 27th February, 1875, were invited by advertisement. The work was intended to be and was let upon what is called a detail system, as distinguished from a lump sum system. A schedule showing each class of work, or materials, if any, to be furnished by the contractor, as well as the quantities assumed to be probable on each item, was furnished to tenderers, they being required to state a price for each item. The moneying out of these items and their respective prices gave a gross sum to each tender, which would form the basis of comparison between them all.

In this case such specifications concerning the work and a bill of the estimated quantities on each item were furnished to applicants. As before mentioned, the line let under this contract extended to Lake Shebandowan,

a distance of 45 miles from Thunder Bay, and the quantities stated in the bill of works were based upon that intended distance. The tenders were opened in the presence of Mr. Braun, the Secretary, Mr Rowan an Assistant Engineer, and Mr. Palmer, an Accountant, on the 1st of March, 1875. The moneying out of the items in the bill of works at the prices proposed by each offer, gave the following results in relation to the four lowest :—

E. A. Charters & Co.....	\$363,420
G. W. Taylor.....	397,520
Sifton & Ward.....	406,194
J. Wardrop.....	410,025

On the day of the opening Mr. Fleming reported to that effect. On 3rd March, Mr. Braun telegraphed Mr. Charters, a member of the firm of E. A. Charters & Co., asking if he was ready to take the contract as tendered for. On the next day Mr. Charters telegraphed in reply saying that he had not expected an answer so soon, and would require a short time to see other persons, adding that he would in all probability accept the contract if time was allowed. On the 11th of that month Mr. Braun telegraphed to Mr. Charters as follows :—

“ Not hearing from you, and ample time being allowed, the Minister has passed on to the next tender.”

To which the following answer was sent :—

“ Telegram received, and having had no answer from you regarding my first request for delay of time, I was compelled to relinquish contract against my will.”

The contract having been offered by the Department to Mr. Taylor, the next lowest tenderer, he telegraphed on the 15th March to Mr. Braun, as follows :—

“ Still confined to bed ; will have to abandon contract.”

Upon which the contract was awarded and offered to the present contractors, who were the next lowest tenderers. It was accepted by them and closed.

Our conclusion upon the evidence is that in obtaining this contract the contactors got no undue advantage, and that the action of the Department in awarding it caused no unnecessary expense.

The work was not completed over the whole distance to which the contract was originally intended to apply. Further surveys and examination of the country had shown that a continuous line of railway could be

secured from Thunder Bay to Rat Portage, by deflecting it before reaching Lake Shebandówan, and it was decided to carry the work no further than Sunshine Creek upon the route at first adopted. A clause in the contract enabled the Government to make this change.

The line described in the contract was, as before mentioned, about forty-five miles long. The distance from Thunder Bay to Sunshine Creek was about thirty-two and a-half miles, and the contractors were given the option of stopping work under their contract at the last mentioned point, or of proceeding until they reached on the new line the same distance from Thunder Bay that had been originally intended, namely, about 45 miles. They elected to stop at Sunshine Creek.

This contract did not include track-laying or ballasting. A subsequent contract, No. 25, upon which we hereinafter report, was made to cover the construction of a road-bed, over a distance further west than was made under this contract, and the track-laying and ballasting of the whole distance from Thunder Bay to English River, the western end of that contract.

In 1876, Mr. Marcus Smith, then acting as Engineer-in-Chief, visited the work under this contract and walked over twenty miles of it. The work was satisfactory, and was progressing well. In July, 1878, Mr. Marcus Smith again visited this section. The contract was then nearly finished, so nearly that the contractors on the next section had begun to lay the rails on this one. Some of the work under this contract was left unfinished by Sifton & Ward, for the reason that it was desired that the track-laying and ballasting should be proceeded with immediately, and this unfinished work was done by the contractors for section No. 25. It was principally widening and raising the height of embankments, together with some cuttings.

In the case of this contract the amount of work executed and paid for, was considerably in excess of that estimated as probable at the time of letting the contract, and some increase in cost was due to changes in the character of the work, but that would be more than balanced by the saving of expense caused by other changes in the character, one of which was the use of trestle in places instead of solid embankments. The principal cause of the excess was, in our opinion, the inaccuracy of the quantities first estimated, and that was due to the data then ascertained being insufficient for

the purpose of affording close calculations. This matter is remarked upon more fully under the head of Engineering.

The work under this contract was not done, when that of the adjoining section on the west, (No. 25), was let to Purcell & Ryan—which included also the track-laying and ballasting of this section; and as before mentioned in order to prevent the confusion which might arise if two contractors were carrying on, at the same time, work of different kinds over one line, it was considered advisable to take this section as it was from the contractors, and to allow Purcell & Ryan to do the unfinished work at the prices of this contract. This was carried out without disagreement, and it will account for the fact that the amounts charged to this contract were paid, some to Sifton & Ward, some to Purcell & Ryan.

The amounts paid were as follows :—

To 30th June, 1876, to Sifton & Ward.. .. .	\$141,700 00
“ 1877 “	114,100 00
“ 1878 “	42,000 00
“ 1879 “	15,400 87
	\$313,200 87
“ 1878, to Purcell & Ryan.....	13,700 00
“ 1879 “	5,000 00
	\$331,979 51
Total.....	\$331,979 51

CONTRACT NO. 14.

Railway Construction.

By this contract, dated the 3rd of April, 1875, Henry Sifton and Frank Ward, partners under the name of Sifton & Ward, bound themselves to complete the road-bed of the railway between Red River and Cross Lake, a distance of seventy-seven miles as specified in the said contract, providing all labour and all materials excepting the ties, sleepers, rails, fastenings, ballasting and tracklaying; receiving for the work done the rates and prices respectively applied to the different classes of work mentioned in the tender of the contractors, a copy of which tender was affixed to the contract.

Tenders for this work were invited by advertisement at the same time as those for section No. 13, and in pursuance of the Government policy

described in our remarks upon that contract, under which the Government decided to construct the portion from Red River to Rat Portage, and from Thunder Bay to Lake Shebandowan as quickly as possible.

This is one of a series of contracts which were let upon the schedule price system as distinguished from the lump sum system, and in which it was intended to give tenderers some information upon the subject of the quantities, which were expected to be executed in the progress of the work. In this series, the work executed largely exceeded the quantity which was estimated at the time of inviting the tenders, but, according to the opinion of Mr. Fleming, the inaccuracy of quantities would have no appreciable effect upon the relative rank of the tenders, although it might lead to disappointment because of the total amount which was to be paid to the contractor. In giving his evidence before us he said that, assuming no other reasons than financial ones as governing the question, exact quantities are not essential. We have remarked upon this subject in our report upon the engineering of the line, (page 71). The effect of it upon the amounts paid under these different contracts before alluded to, was discussed very fully, and evidence given concerning it before the Select Standing Committee on Public Accounts in 1879, and it was made the subject of their first report of the 8th May of that year. It was also investigated, and evidence taken upon it before a Select Committee of the Senate, in March, 1879.

In this case applicants were furnished with schedules of quantities, showing the amount of work expected to be done in each class, and with specifications describing the work, and other particulars.

On the 31st March, 1875, the Engineer-in-Chief reported upon the substance of the tenders sent in concerning this contract. He reported upon eight of the lowest. It will be sufficient to notice the first three of them. They were:—

Wallace & Co.....	\$377,250
Sifton & Ward.....	402,950
T. W. Patterson.....	407,970

On the 25th March, Mr. Braun telegraphed to Mr. Wallace, one of the firm who made the lowest tender, as follows:—

“If your tender for contract 14 is accepted, are you ready to make deposit required? If so, come. Contract papers must be completed within eight days from this. Answer.”

On the same day, 25th March, Mr. Wallace telegraphed Mr. Braun :
 “I am ready, and will be there to close contract first of next week.”

On the 29th, Mr. R. J. Campbell telegraphed Mr. Braun as follows :

"Just heard that section 14 was awarded us. If necessary, will you extend the time to qualify five days? Answer."

At the foot of the telegram a memorandum is made in these words :

"Minister says no. March 30th, 1875."

And on that day Mr. Braun telegraphed to Mr. Campbell :

"Time cannot be extended ; matter too urgent. Answer."

On the 31st Mr. Campbell telegraphed to Mr. Braun :

"When will time expire? Answer immediately and oblige."

And on the same day Mr. Braun telegraphed to Mr. Campbell :

"Time expires Friday, second proximo."

On the 3rd April, Mr. Campbell telegraphed to Mr. Braun :

"Our inability to qualify, was owing to Wallace being sick; will be in Ottawa and explain. Hope it will have no effect on 15. Notify me at St. Catharines on 15."

This firm were tenderers for the adjoining section, No 15, which had been advertised at the same time as section No. 14. Upon the failure of Wallace & Co., to put up the requisite security within the time named as aforesaid, the contract was awarded to Messrs. Sifton & Ward by order of the Minister. This was upon the same day that this firm were closing the arrangements concerning contract No. 13.

According to the account of Mr. John W. Sifton as a witness before us, Mr. Trudeau asked Mr. Sifton whether he could put up the security immediately if the contract should be awarded to him, and said that Parliament was about to be dissolved and it was desired to close the matter before the House prorogued. The contract was executed upon the same day as that for section No. 13.

We find that in obtaining this contract the contractors got no undue advantage, and that the action of the Department, in awarding it, did not increase unnecessarily the cost of the railway.

The time named for the completion of this work, under the contract, was the 1st of August, 1876, at which time it was not nearly finished. The first delay in the progress of the work, was because the location had not been finally adopted, at the time the contractors reached the ground ready to go on. A location had been made, but at the west end, where it was

intended to commence work, there was a probability of a change being made, and the engineers were not ready to lay out the work for the contractors. Work really commenced at a point about five miles east of the terminus of the line embraced by this contract. The contractor has stated in evidence that he arrived on the ground in the latter part of April or beginning of May, with large numbers of men and horses; that they had about sixty teams and twelve hundred men, and kept them for some time, paying their board, and because the work was not ready to proceed these men were scattered, and it was difficult to get men in again that summer; that at first they were paying \$1.75 per day; that afterwards they had to raise the wages in the hope of bringing back men, but even then they failed, for it was reported in the States, to which place most of them had gone, that there was no work going on, and labourers were afraid to come. The engineers went in June to lay out the work. The contractors had to build a road from Red River to the point at which they were allowed to commence, over which to carry their supplies. In the following December the contractors got notice not to proceed further with the work. This notice to stop was positive and unqualified. The contractor testifies that the stoppage at this time had the effect of delaying the completion of the works as much as a year. Towards the end of 1878 Mr. Marcus Smith, acting Chief Engineer, after visiting this section, stated that the contractors were not likely to get it done within the time that the Government was willing to allow them for that purpose.

The country for about a mile and a-half at the east end of this section partakes of the character of section No. 15, the one next east of it, and is quite different from the rest of section No. 14. There was a very deep filling upon it which could not be completed satisfactorily, without the use of machinery, a train of cars and a steam-shovel, which Sifton & Ward had not procured, and which were not necessary upon the westerly portion of the work. The contractors claim that they would have procured the necessary machinery if time had been given them to do it, but that the Acting Engineer-in-Chief was urgent, and pressed them to make an arrangement by which Mr. Whitehead, the contractor for section 15, should undertake the finishing of this easterly length of about a mile and a-half, and that in consequence of that pressure, they did close such an arrangement subject to the approval of the Minister. Upon this matter, as well as upon the delay caused as aforesaid at the beginning of the work, and also in consequence of some changes in the localities in which the work was by the engineers,

directed to be done, these contractors were making, at the time of our examination of witnesses, in Winnipeg, a claim against the Government, to the amount of over \$200,000. We were requested by the contractors to consider their claim, evidently with the idea that we had some jurisdiction over it. We intimated to them that we did not think it within our authority, and that it was not likely that we would pass any judgment upon it; but we would not refuse to hear such evidence as they proposed to bring forward, because, although it was not necessary to hear it in order to ascertain the foundation of their claim, it would enable us to learn something of the management by the Government Engineers of the operations under the contract. We have taken evidence concerning the expediency of locating this line in its present position, and have reported upon that feature of it under the head of "Engineering."

The following amounts have been paid on account of this contract to 30th June, 1880 :—

30th June, 1875, to Sifton & Ward.....	\$	468
“ 1876 “		113,012
“ 1877 “		130,470
“ 1878 “		250,750
“ 1879 “		138,780
“ 1879, to Joseph Whitehead, on work at East End.....		18,500
“ 1880 “		78,230

Total.....	\$	725,210

CONTRACT No. 15.

Railway Construction.

By this contract, dated 9th of January, 1877, Robert Twiss Sutton, William Thompson and Joseph Whitehead, covenanted that they would, on or before the first of July, 1879, provide and do all that was necessary to complete the works set out in the specifications thereto annexed; including amongst other things all the excavation, grading, and other works to be done between station 1940, near Cross Lake, and station 0 at Rat Portage,

together with the track-laying and ballasting (by one lift) between Red River and Rat Portage, receiving therefor the prices specified in the contract for the respective kinds and quantities of work and material, which should be provided by them in carrying out their contract. At the time of executing this contract, Mr. Sutton and Mr. Thompson were not interested in its consequences. They lent their names in pursuance of an agreement between them of the one part, and the Hon. Donald MacDonald, a member of the Dominion Senate, and Joseph Whitehead, above mentioned, of the other part, by which they (Sutton and Thompson) should be indemnified for the use of their names until they were released from the undertaking; and that they should be released as soon as possible, the real understanding concerning this contract and its results, being one which had been made between the said Mr. McDonald and Mr. Whitehead and Mr. Mitchell McDonald, to the effect, that it should be carried on as a partnership between Mr. Mitchell McDonald and Mr. Joseph Whitehead aforesaid.

Although the track-laying and ballasting in this contract extended over the whole distance from Red River to Rat Portage, the principal portion of the work, namely, construction of the road-bed, extended only over the eastern portion of the whole distance, *i.e.*, from Cross Lake to Rat Portage. This last-named distance has come to be known and generally alluded to as section 15, or contract 15. The work under this contract was tendered for and let upon a schedule of items and estimated quantities for each item, and upon prices to be paid for such items respectively. It was one of a series of contracts for distances between Lake Superior and Red River, in which the quantities were not stated in the schedules with approximate accuracy, and which were largely exceeded in the execution of the works.

The system of letting the contracts in this way was approved by the Engineer-in-Chief, as affording a proper means of comparing the relative rank of tenders without any material disadvantage to the country except in so far as a disappointment might ensue, in consequence of the total outlay being larger than was to be expected, from the quantities so stated. This system has thus become an engineering question, rather than one to be disposed of when reporting on the action of the Department, in letting the contract. For this reason, as well as because it affects several contracts, we have reported our conclusions on that system under the head of "Engineering," (page 71.)

There have been several reports to Parliament on subjects which embrace matters connected with this contract. On the 8th of May, 1879, the Select Standing Committee on Public Accounts, in their first report, submitted to the House of Commons documents and evidence touching the letting of this contract, the system on which the tenders were invited, the consequences of that system, and the proceedings under the contract. In March, 1879, a Select Committee of the Senate was appointed to enquire into matters relating to this railway, and to take evidence upon most of the subjects above enumerated. The evidence taken before this Committee of the Senate was printed. A printed return to the House of Commons, dated 28th of March, 1877, gives papers and correspondence, &c, connected with the awarding of this contract, and minutes of Council concerning the same.

Before entering into this contract tenders concerning the construction of the road-bed included in it had been received on three different occasions. On the first occasion the tenders were received in March, 1875, at the same time as that named for the works to be done under contract 14. Specifications, dated the 25th February, 1875, describe the works intended on that occasion to be contracted for. It was then proposed to make the road-bed for the line with "solid embankments throughout, everything complete," somewhat of the same character as at present constructed, only with more rock and less earth in the embankment, the grade being then at a lower level than that now adopted. The substance of the tenders then sent in was reported on by Mr. Fleming, under date of 31st March, 1875, showing the following as the result of the seven lowest :—

C. H. Lewis.....	\$997,892 50
O. Manson & Co.....	1,042,635 00
Wallace & Co.....	1,109,156 90
Robinson & Co.....	1,685,580 00
Steady & Steady.....	1,688,915 00
Rorque & O'Hanley.....	1,860,500 00
H. F. Sharpe.....	1,888,340 00

These offers involved an expenditure greater than was then considered expedient, and it was decided to ask for tenders for making only such portions of the embankments as would be provided from the cuttings, leaving the gaps unfilled and to be crossed under some subsequent arrange-

ment. Tenders were invited upon that basis, and were received in May, 1876, of which the eight lowest were as follows:—

Names of Contractors.	Names of Sureties.	Penalty or Bonus per day.	Amount of Tender.
Hunter & Murray.....	John Healy, W. Coy.....	\$ 5	\$ 935,025
Rodgers & Co.....	O'Brien, Lyons & Martin.....	1,000	1,068,600
Sifton & Farewell.....	J. Sifton, J. H. Fairbank.....	1	1,222,310
Patrick Purcell.....	W. Barrett, James Purcell.....	5	1,244,400
A. P. McDonald & Co.....	P. McRae, R. Ray, J. McKintosh.....	50	1,286,710
Brown & Ryan.....	W. Doran, A. Sutherland.....	Nil.	1,323,910
Joseph Whitehead.....	J. T. Wilkie, E. Stevenson.....	500	1,450,510
J. A. Henry & Co.....	C. W. Phelps, T. Hammill.....	10	1,616,450

It was decided not to accept any of them.

In August, 1876, competition was again invited for work to be done on this section, and the specifications then furnished were the basis of the present contract. The main features of the scheme then devised were the excavation of the cuttings which were mainly in rock; the material from such cuttings to be deposited near them in the embankment, and the gaps left after this and after using such earth as there was in the neighbourhood, were to be crossed by wooden trestle work. The following is the advertisement for tenders on this last occasion:—

“CANADIAN PACIFIC RAILWAY.

“TENDERS FOR GRADING, TRACK LAYING, &C.

“Sealed tenders addressed to the Secretary of Public Works and endorsed: ‘Tender Pacific Railway,’ will be received at this office up to noon of Wednesday, the 20th September next, for works required to be executed on that section of the Pacific Railway, extending from Red River eastward to Rat Portage, Lake of the Woods, a distance of about 114 miles, viz:—The track-laying and ballasting only of about 77 miles, and the construction, as well as track-laying and ballasting, of about 37 miles between Cross Lake and Rat Portage. For plans specifications, approximate quantities, forms of tender and other information, apply to the office of the Engineer-in-Chief, Ottawa.

“No tender will be entertained unless on the printed form and unless the conditions are complied with.

“F. BRAUN,

“Secretary.

“Department of Public Works,

“Ottawa, 1st August, 1876.”

Some idea may be formed of the expectation of the Department at that time concerning the character of the work as a whole to be done under this contract, by giving the quantities of the main items mentioned on that occasion in the bill of works. Under the head of "approximate quantities" they were as follows:—

- 300,000 cubic yards of solid rock excavation,
- 30,000 " " loose " "
- 80,000 " " earth excavation on line cuttings and borrowing,
- 1,615,500 lineal feet of timber (square and round) for trestles, bridges, etc.

The length of the road-bed was about 37 miles altogether. It has been stated in evidence that the wood work provided for in these specifications, would be sufficient for about eight miles of trestle viaduct. The following is a report of the substance of the tenders received on this occasion:—

List of Tenders received 20th September, 1876.

1. A. P. Macdonald & Co.....	\$1,443,175
2. Martin & Charlton.....	1,562,090
3. Sutton & Thompson.....	1,594,085
4. John A. Green.....	1,679,065
5. Talbot & Jones.....	1,683,085
6. W. Hinkson.....	1,695,665
7. W. S. Booth.....	1,744,120
8. C. C. Gregory.....	1,745,415
9. Mullen & Whelan.....	1,749,595
10. O'Brien & Rider.....	1,806,810
11. A. Farewell.....	1,815,185
12. Hill, Lipe & McKechney.....	1,827,155
13. Wright, Shackhill & Cross.....	1,832,175
14. Kavanagh & Kieran.....	1,895,404
15. W. A. Cleveland.....	1,899,680
16. Joseph Whitehead.....	1,899,790
17. Hunter & Murray.....	1,966,755
18. Campbell & Riley.....	2,052,770
19. Macfarlane & McRae.....	2,093,970
20. Brown & Ryan.....	2,199,125
21. Reid, Davis & Henry.....	2,950,000

MARCUS SMITH,
Per W. B. SMELLIE.

The result of this competition is remarkable in that the lowest tender on this new and supposed cheaper method of providing a road-bed, is nearly fifty per cent. higher than the lowest offer in March, 1875, which latter was made to construct a road-bed of "solid embankments, everything complete." And this comparison is not confined to the lowest offers on the two occasions, for the average of them all would be in about the same proportion.

By arrangements subsequent to the contract the character of the work has been so far changed, as to make it very similar to that proposed by the first scheme in 1875, solid embankments throughout. At the date of our commission the work was not completed, but the progress estimate of the 31st May, 1880, showed that what was done up to that time amounted, at the prices named in this contract, to \$1,951,022. Of this \$161,615 was for ballasting and track-laying—items not included in the tenders in 1875, thus leaving the balance of \$1,789,407 paid up to the 31st May, 1880, and this was expected to be increased, by the completion of the contract, to the neighbourhood of \$2,300,000 as the cost of a road-bed, of the general character similar to that which was contemplated, at the time of receiving tenders in March, 1875. This is considerably higher than the average of the seven lowest tenders sent in at that time.

The following correspondence shows the negotiations between the Department and the firm who made the lowest tender, 20th of September, 1876 :—

" 30th September, 1876.

" Please deposit to credit of Receiver-General the five (5) per cent. required in connection with contract for Section (15), Canadian Pacific Railway, and forward bank certificate.

" F. BRAUN,

" *Secretary.*

" Messrs. MACDONALD & KANE,

" 394 St. Antoine Street, Montreal."

" 7th October, 1876.

" MACDONALD & KANE,

" 394 St. Antoine Street, Montreal.

" In view of advanced state of season Minister requests you to state by twelfth (12) instant at latest the precise time when you will deposit requisite 5 per cent. Section (15) fifteen, C.P.R.

" F. BRAUN,

" *Secretary.*"

" OTTAWA, 13th October, 1876.

" SIR,—In making out our tenders for sections 14 and 15, Canadian Pacific Railway, our figures were based upon the early completion of section 14, by the present contractor, as a means of transportation by rail between section 15 and the Red River, believing that a large quantity of the timber and ties required would have to come by way of that river.

"The above mentioned means of access caused a reduction of 25 per cent. to be made by us in our bid, as we were of the opinion that the track laying on section 14 would make it available by August, 1877.

"This would give us connection with the west end of section 15, upon which a large amount of work has been done with no other means of access without a very heavy outlay. From the best information we have, the contractors of section 14 have been granted an extension of time; so that it will take two years before that section could be made available to carry men and supplies. Believing, as we do, that the Government in connecting the track-laying, ballasting, &c. of section 14 with section 15, that it would facilitate and lessen the cost of section 15.

"On account of the above mentioned facts, it would be imprudent in us to enter into contract unless we were put in possession of the advantages which the specification and form of tender led us to believe and base our calculations upon.

"Now if the Government will make good to us the difference between bringing men and supplies by rail over section 14, and the most available route by land and water from the 1st August, 1877, until such time as section 14 is completed, and extend our time of completion in accordance with the delay of getting track to section 15.

"We are prepared to enter into contract and furnish the necessary securities required.

"We are certain that it will be difficult for the Government to get good experienced contractors to take the work unless the advantages of access could be granted them.

"Hoping you will favourably consider our requests, which we believe we are justly entitled to, and should be fairly understood before entering into contract.

"We have the honour to be, Sir,

"Yours respectfully,

"A. P. MACDONALD,

"ROBERT KANE.

"To the Hon. ALEX. MACKENZIE,

"Minister of Public Works,

"Ottawa"

"OTTAWA, 14th October, 1876.

"GENTLEMEN,—I am directed to acknowledge the receipt of your letter of the 13th instant, in which you state that you will be prepared to enter into a contract with the Government for the execution of the work on section 15 of the Canadian Pacific Railway, on the Government agreeing to make good to you the difference of cost in the transport of men and materials you may require by rail over section 14, and by any other route that may have to be followed should section 14 not be ready early enough, and on certain other conditions.

"In reply, I am to inform you that the Government cannot consent to any modification of the condition laid down in the specification for these works.

"I beg to request that you will inform the Department immediately on the receipt of this letter, whether you intend to sign the contract or not.

"I have the honour to be, Gentlemen,

"Your obedient servant,

"F. BRAUN,

"Secretary."

"Messrs. A. P. MACDONALD & KANE,

"Ottawa."

"OTTAWA, 14th October, 1876.

"SIR,—I have the honour to acknowledge the receipt of your letter of the 14th instant, and beg to say, in reply, that I will answer your communication on Monday next.

"I have the honour to be,

"Your obedient servant,

"ROBERT KANE.

"F. BRAUN, Esq.,

"Secretary, Public Works."

"MONTREAL, 16th October, 1876.

"SIR,—In reply to your communication of the 14th instant, we beg to state that we cannot enter into contract for sections 14 and 15, Canadian Pacific Railway, on account of reasons stated in our letter of the 13th instant.

"We therefore most respectfully decline to sign said contract, but beg to add that if the Minister of Public Works should see fit to change his decision we would most gladly enter into contract.

"We have the honour to be, Sir,

"Your obedient servants,

"A. P. MACDONALD,

"ROBERT KANE.

"F. BRAUN, Esq.,

"Secretary, Public Works Department,

"Ottawa."

After this refusal by Messrs. Macdonald & Kane to carry out their tender—except on new conditions—the Department passed to the firm first above them, Messrs. Martin & Charlton, when the following correspondence took place:—

"17th October, 1876.

"GENTLEMEN,—With reference to your tender, dated 20th ultimo, for the 15th contract of the Canadian Pacific Railway, I am directed to request you to state how soon you would be ready to put up the requisite 5 per cent. deposit in connection with said contract.

"I have the honour to be, Gentlemen,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"MESSRS. MARTIN & CHARLTON,

"Contractor, Montreal."

"OTTAWA, 18th October, 1876.

"SIR,—In reply to your letter of yesterday, I have the honour to state that I shall be prepared to put up the requisite five per cent. security in mortgages on real estate in ten or twelve days.

"I have the honour to be, Sir,

"Your most obedient servant,

"E. J. CHARLTON, for

"MARTIN, CHARLTON & Co.

"F. BRAUN, Esq.,

"Secretary, Public Works Department,

"Ottawa."

At this stage of the negotiations the following communications passed between the Department and the acting Chief Engineer :—

“(Telegram)

“MONTREAL TELEGRAPH COMPANY,

“FROM WINNIPEG, 21st October, 1876.

“To F. Braun.

“What has been done with Contract Fifteen? Full staff of engineers and axe men now on ground; could be reduced if contractors will not commence work before spring. Navigation just closing, after which contractors plant cannot be brought in except by trains from Moorehead, a distance of over three hundred miles.

“MARCUS SMITH.”

“24th October, 1876.

“Marcus Smith, Winnipeg.

“Reduce staff, as work on contract fifteen (15) cannot begin before spring.

“F. BRAUN.

“Secretary.”

“(Telegram.)

“MONTREAL TELEGRAPH COMPANY,

“FROM WINNIPEG, 25th October, 1876.

“To F. Braun.

“If contract fifteen not let it may be better to defer it till my return. Last improvement in location and gradients materially alters quantities, reducing timber work and slightly increasing rock. Leave here to-morrow or next day.

“MARCUS SMITH.”

This led to no discontinuance of correspondence with the tenderers, and it proceeded as follows :—

“28th October, 1876.

“GENTLEMEN,—With reference to your letter of 17th instant, respecting the security required for due performance of works on section 15, Canadian Pacific Railway, I am to state that unless proper security be deposited as in your said letter your tender will be passed over.

“I have the honour to be, Gentlemen,

“Your obedient servant,

“F. BRAUN,

“Secretary.

“Messrs, CHARLTON, MARTIN & Co.,

“Contractors, Montreal.”

Between the 28th of October, 1876, and the following 21st of December, many letters upon the subject of the requisite security passed between the Department and Messrs. Martin & Charlton. These letters are not material to our report. They are set out in the return to the House of Commons before mentioned. Mr. Whitehead, one of the contractors in this case, had on his own account sent in a tender considerably higher than the one made by Sutton & Thompson, on which this contract is based; but after the

tenders were opened, he discovered, in conversation with various persons who had made offers, that there were several between his and that of Sutton & Thompson. This firm knew that they could not put up the security, and were willing to sell out their position. Mr. Whitehead bargained with them that he was to have the privilege of assuming their tender and becoming the sole proprietor of it upon payment to them of \$10,000. He procured from them the following letter to the Department :—

“BRANTFORD, 16th October, 1876.

“SIR,—In the event of our tender for the construction of section fifteen of the Canadian Pacific Railway being accepted, we desire to have associated with us in the contract, Mr. Joseph Whitehead, of Clinton, contractor.

“Your obedient servants,

“SUTTON & THOMPSON.

“Hon. ALEX. MACKENZIE,

“Minister of Public Works, Ottawa.”

Being thus interested in the withdrawal of Messrs. Charlton & Martin, whose offer was the only obstacle in his way to the contract, he wrote the following letter with the intention of furthering his own interest :—

“OTTAWA, 28th November, 1876.

“DEAR SIR,—It is the general impression outside that you are going to give the contract section 15 to Charlton & Co., and he is going to turn the contract over into the hands of some Americans from New York, and, according to the feeling, you are going to make a great mistake if you allow such a thing to be done, as it is well known that Charlton says that he never intended to put a spade into the contract of section 15; he only wanted to make some money out of it the same way as he did out of the Grenville Canal, when he sold out to Cooke & Jones, and got six thousand dollars.

“Now, if you will give the contract section 15 to Sutton & Thompson's tender, I will guarantee that the grading, track-laying and ballasting shall be done and complete; the engine into section 15 by the month of August next; and, further, the whole of section 15 shall be finished complete by the fall of 1878, and for every day over and above, if any, you shall have the best of security that the Government shall be paid five hundred dollars per day for every day over and above the two dates named above, and this is the only way to put some life into the Pacific Railway, as there has been no life in it yet.

“Now, I hope you will pardon me for taking the liberty of writing you this note, as I have no other object in view than to let you know the feeling outside, as you must admit that Sutton & Thompson's tender is not an extravagant one, only I know what I have said in this note can be done.

“I remain your obedient servant,

“JOSEPH WHITEHEAD.

“Hon. ALEX. MACKENZIE.”

It was subsequently arranged between Mr. Whitehead and the Hon. Mr. McDonald, aforesaid, and as Mr. Whitehead believes at the suggestion

of Mr. McDonald, that Charlton should be paid to withdraw his tender. Mr. Whitehead's evidence on this point was that he said he "would go \$20,000, and Mr. McDonald made the rest of the arrangement." About the 20th of December, 1876, the Hon. Mr. McDonald, Mr. Whitehead and Mr. Charlton met in a room at the Prescott Station on the Grand Trunk Railway. Then Mr. Whitehead went out of the room and the arrangement was closed between Mr. McDonald and Mr. Charlton, by which Mr. Charlton withdrew his tender. Mr. Whitehead did not see the money paid, but Mr. McDonald told him that the amount was \$20,000, and Mr. Whitehead afterwards paid him interest on that sum at the rate of ten per cent. per annum, believing it to have been the amount which was paid over at that time. Mr. Charlton said to a witness who gave evidence before us that he had received a sum of money to withdraw his tender in this case, but he did not name the amount. We have not considered it necessary to ascertain, whether he had received the full amount stated by Mr. McDonald to have been paid to him, that being principally a matter of account between Mr. McDonald and Mr. Whitehead. The following letters and telegram appear as the next steps towards the contract in its present shape:—

"MONTREAL, 21st December, 1876.

"SIR,—I have the honour to acknowledge receipt of your letter of 19th inst., directing me to furnish additional paper and mortgage registrations as therein detailed in connection with the required security for completion of the 15th contract, Canadian Pacific Railway. I have met with so many unfortunate difficulties in procuring security for so large a sum so as to satisfy the demands of the Government, and have been so worried and disheartened by the difficulties of the position in which I found myself, and consequent failing health, that I am reluctantly obliged to say that I cannot now undertake so serious an enterprise, more especially as all the most experienced men whose advice or assistance I have asked, have convinced me and my friends that the work cannot satisfactorily be performed for the price tendered for.

"I beg therefore to ask that the Honourable Minister of Public Works will allow me to withdraw my tender, and will please to return to Mr. Baird of Brooklyn, who proposed to join in the work, his deposit, and also to return to me the papers which I deposited as given to make up the balance of the security required.

"I have the honour to be, Sir,

"Your obedient servant,

"E. J. CHARLTON.

"F. BRAUN, Esq.,

"Secretary, Department of Public Works."

"MONTREAL TELEGRAPH COMPANY.

"By Telegraph from Montreal.

"F. BRAUN,:

"Dissension from within, added to extraordinary pressure from without, has left no alternative but withdrawal.

"CHARLTON & CO."

"29th December, 1876.

"SUTTON & THOMPSON,

"Brantford.

"Are you prepared to deposit five (5) per cent. security in connection with contract fifteen (15), C. P. R., and enter into contract without delay ?

"F. BRAUN,

"Secretary."

"BRANTFORD, 29th December, 1876.

"To F. BRAUN, Esq.,

"Secretary.

"Yes ; we are prepared to comply fully.

"SUTTON & THOMPSON."

"OTTAWA, 29th December, 1876.

"SIR,—*Re* section 15 Canada Pacific Railway, I have just learned with much surprise, through your Department, that E. J. Charlton has withdrawn from our *joint* tender to build said section 15, Canadian Pacific Railway. His withdrawal was without my knowledge of consent.

"I am prepared to deposit the security required by the Government, and am prepared to perform the work mentioned in or contemplated by said tender. And I now offer to comply with the conditions and requirements of the Government, as specified in the advertisement calling for tenders for said work, and in our said tender ; and I protest against any and all acts depriving me of said contract.

"Trusting that justice will be done me in the premises,

"I have the honour to be, Sir,

"Most respectfully yours,

"PATRICK MARTIN."

"To the Honourable the Minister of

"Public Works of Canada, Ottawa."

"(Memorandum.)

"30th December, 1876.

"The undersigned reports that tenders having been invited for construction of section No. 15, Canadian Pacific Railway, twenty-one have been received at schedule rates, which, when extended, are found to vary between \$1,443,175 and \$2,950,000.

"That the firms whose tenders are first and second lowest respectively, Messrs. McDonald & Kane, and Messrs. Martin & Charlton, are unable to furnish the necessary security.

"That the third lowest tender is from Messrs. Sutton & Thompson, of Brantford, amounting to \$1,594,155 (one million five hundred and ninety-four thousand one hundred and fifty-five dollars).

"That this firm are prepared to make the necessary 5 per cent. cash deposit, and propose to associate with themselves Mr. Joseph Whitehead, contractor, of Clinton, Ontario.

"The undersigned, therefore, recommends that the tender of Messrs. Sutton & Thompson be accepted, and that they be allowed to associate Mr. Whitehead with themselves accordingly.

"Respectfully submitted,

"A. MACKENZIE,

"Minister of Public Works."

"OTTAWA, 5th January, 1877.

"I am directed by the Minister of Public Works to say that the Department has been informed by parties interested that the firm of Sutton & Thompson, or some persons acting on their behalf, have paid Charlton & Co., or Mr. Charlton individually, a sum of money for withdrawing their tender for the construction of section 15 of the Canadian Pacific Railway, and to ask if there is any truth in this statement.

"F. BRAUN.

"Messrs. SUTTON & THOMPSON,

"Brantford, Ont."

"(Memorandum.)

"6th January, 1877.

"The undersigned reports for the information of Council, the following facts regarding contract 15 of the Canadian Pacific Railway :—

"Tenders were received for this contract on the 20th September, and as soon as possible afterwards, Messrs. McDonald & Kane, the lowest tenderers were notified of the acceptance of their offer of \$1,443,175. On the 13th of October they asked for certain changes to be made which would involve a further and indefinite expenditure by the Government.

"The Department declined to accede to this request, and on the 16th October they notified the Department that they were not prepared to proceed any further.

"On the 17th October, Messrs. Charlton & Martin, who were the second lowest, were notified that their tender of \$1,562,090 was accepted, and they were called upon to make immediate arrangements for depositing 5 per cent. as security. On the 27th October they made tender of a mortgage on certain timber limits; on the 28th October they were notified that these securities could not be accepted, and that no further delay could be permitted.

On the 16th November, Messrs. Charlton & Co. offered mortgages upon certain property as security, and on the 21st November a lithographed plan of the property so offered, with a certificate of valuation of the same, representing it to be worth \$83,250, was sent to the Department. On the 22nd November these mortgages and this plan were transmitted to Messrs. Darling & Valois, the Government valuers in Montreal, with instructions to ascertain the cash value of the property, exclusive of the encumbrances upon it. On the 28th November Messrs. Darling & Valois reported that this property, if sold, would not realize more than about \$30,000. The Department accordingly declined to accept these mortgages on the ground of their insufficiency, and Messrs. Charlton & Co. were so notified on the 29th November. On the same day Charlton & Co. intimated to Messrs. Darling & Valois that they would offer additional security, and wrote to the Department on the 4th December to say that their securities would be completed on the 10th December. On the 11th December a firm from New York, named Baird, Arnold & Stephenson, made a cash deposit of \$20,000 for Charlton & Co., and promised to make good the remainder of the required security. The remainder

was never, however, lodged either in cash or in mortgages which could be accepted, and on the 21st December Mr. Charlton wrote withdrawing the tender.

"On the 28th December, Messrs. Baird & Co., of New York, wrote, complaining that Charlton had used them shamefully; that they had gone to Montreal to meet him, and had staid there three days, but had been unable to find him, and they asked to be allowed to lodge cash security and to take the contract themselves; in accordance with the terms of Messrs. Charlton & Co.'s tender. It being contrary to proper practice and to the custom of the Department to allow such a proceeding, their request was not acceded to.

"On the 28th December Messrs. Sutton & Thompson, the third lowest, were notified that their tender of \$1,594,085 was accepted, and were required to deposit the necessary security. On the 29th December, P. Martin, one of Charlton's partners, lodged a protest against Charlton being allowed to withdraw his tender, and stated that it was done without his knowledge, and that he (Martin) was prepared to proceed. On the 30th December the Honourable Donald McDonald, Senator, presented a letter to the Department from Messrs. Sutton & Thompson, in which they asked to be allowed to associate Mr. Joseph Whitehead with them in the contract. Mr. McDonald, at the same time, deposited \$80,000 by his cheque, accompanied by a letter from the Honourable A. Campbell, stating that the cheque would be accepted upon the Consolidated Bank of Canada as security for the firm of Messrs. Sutton & Thompson; and was informed that the contract must be completed with the firm of Messrs. Sutton & Thompson, the original tenderers, and the deposit made in their name until it was so completed. On the same day, a contract was drafted and submitted to the Minister of Justice. When in the Department of Public Works on the morning of the 30th December, Mr. McDonald's attention was called to a statement in a newspaper of the previous day to the effect "he or Whitehead, on behalf of Sutton & Thompson, has paid Charlton a sum of money to withdraw his tender," when he stated that the report was entirely devoid of truth.

"On the 5th January, the following telegram was addressed to the firm of Messrs. Sutton & Thompson:

'Messrs. SUTTON & THOMPSON,
' Brantford, Ontario :

' OTTAWA, 5th January, 1877.

'I am directed by the Minister of Public Works to say that the Department has been informed by parties interested that the firm of Sutton & Thompson, or some person acting on their behalf, has paid Charlton & Co., or Mr. Charlton individually, a sum of money for withdrawing their tender for the construction of section 15 of the Canadian Pacific Railway; and to ask if there is any truth in this matter.

' F. BRAUN,
' Secretary.'

"On the morning of the 6th January, the following reply was received:—

(Private)

' OTTAWA, 6th January, 1877.

'By telegraph from Brantford, 6th, to F. BRAUN, Esq., Secretary of Public Works Department.

'No truth whatever in the statement that we, or any person on our behalf, paid Charlton & Co., or Mr. Charlton individually, a sum of money for withdrawing their tender for construction of section fifteen of the Canadian Pacific Railway.

' SUTTON & THOMPSON.'