

" It is not necessary to consider the effect which the Government might be disposed to give the circumstances alleged, if they proved to be true, as the pointed denial given by Messrs. Sutton & Thompson and by the Honourable Donald McDonald, leaves the Government free to act upon the rule which governs the letting of contracts. That rule has invariably been, when the lowest tender withdraws, to pass on to the next.

" The letter of Mr. Martin, one of the principals of the firm of Messrs, Charlton & Co., already referred to, contains a statement that he is prepared to proceed to give the necessary security. But he did not tender any security, and as he had been given the opportunity for two months to do so, it would have been evidently useless to wait longer on his account, setting aside altogether the matter of the rupture of the firm of which he was a member.

" The undersigned recommends, for the reasons assigned, that the contract be awarded to Messrs. Sutton & Thompson, as the next lowest tenderers for the work, and that they be allowed to associate Mr. Joseph Whitehead with them in the contract.

" Respectfully submitted,

" A. MACKENZIE,

" *Minister of Public Works.*"

" Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 8th January, 1877.

" The Committee of the Privy Council have attentively considered the memorandum dated 6th January, 1877, from the Hon. the Minister of Public Works, having reference to the awarding of the contract for No. 15 section of the Canadian Pacific Railway; and, for the reasons therein given, they respectfully advise that the tender of Messrs. Sutton & Thompson, for the sum of \$1,594,085 be accepted, and that the contract be awarded to that firm, and they be allowed to associate Mr. Joseph Whitehead with them in the contract.

" Certified.

" W. A. HIMSWORTH,

" To the Honourable

" The Minister of Public Works."

Before signing the contract the Hon. Mr. McDonald, his son Mr. Mitchell McDonald, and Mr. Whitehead were together at Toronto, and it was then arranged that Mr. Mitchell McDonald was to be a partner in the contract. Mr. Mitchell McDonald was neither a railway man nor a wealthy man, and Mr. Whitehead, in giving evidence, said that he supposed he was selected because his father being in the Senate could not take the partnership himself, and this way was taken "to secure the benefit of it by giving the son the partnership." The contract was executed by Messrs. Sutton and Thompson and Whitehead. It had been previously arranged that Messrs. Sutton & Thompson were only to lend their names, and that Mr. McDonald and Mr. Whitehead were to get them released as soon as possible afterwards, and to indemnify them against any liability in the interval. At the execution of the contract Mr. McDonald paid to Sutton, who was

authorized to act on behalf of Messrs. Sutton & Thompson, the sum of \$10,000, for having withdrawn from the position held by them under their tender. Subsequently, Mr. Mitchell McDonald entered into writings by which the partnership between himself and Mr. Whitehead was to be dissolved, Mr. Whitehead promising him as full satisfaction for his claim on the profits \$112,000, out of which amount he then got \$20,000 by a warrant from the Department. The Hon. Mr. McDonald was ill at the time, but Mr. Whitehead afterwards saw the warrant in his hands. Mr. Whitehead understood afterwards that the elder Mr. McDonald was not satisfied at the dissolution of the partnership, and testified that, "Mitchell wrote a deed and put things back as they were."

We have not considered it necessary to examine closely into the question whether in this arrangement Mr. Mitchell McDonald was the party substantially interested, or was a trustee for his father, for the reason that the fact of either of them being a partner with Mr. Whitehead, or interested in the profits of the contract, has not been brought home to anyone connected with the Department.

Mr. Mackenzie testified to the effect that he was not aware at the time of signing the contract that any parties who had withdrawn their tenders had been paid for so doing, or that Mr. Senator McDonald, or his son, was interested in the contract; or that Sutton & Thompson were only lending their names as parties to the contract.

Upon the evidence we conclude that in obtaining this contract the contractors obtained an undue advantage, *i.e.*, the withdrawal of lower tenderers by collusion with them; that the action of the Department in awarding the contract was taken in ignorance [of the facts either as to the parties really interested, or as to the collusion which had been practised between them and the lower tenderers.

Subsequently Messrs. Sutton & Thompson were allowed to withdraw from the position of contractors, the change being authorized by an Order in Council. This was done with such consent as prevented the discharge of the security which had been previously given by the Honourable Mr. McDonald for the due fulfilment of the contract, to the extent of \$80,000. This security had been originally in cash, but in its place landed security to the same extent was afterwards substituted.

Work was commenced by the contractor on this section in February, 1877. Changes in the character of the work were made almost continuously

and gradually from that time forward. In June following a material change was made by lowering the grade of the line. In the fall of that year other material changes were made. It was found that more earth was available for embankment than had been at first supposed. The contractor was permitted to prepare a rock basis or rock protection walls, as for solid earth embankments, instead of for trestle work with which it had been originally intended to fill the voids. In the prices attached to Sutton & Thompson's tender, those for rock work and earth work were high; that for timber work was low. Therefore, the changes above mentioned were in the direction of making the contract a more profitable one. These changes not only increased the profits in proportion to the whole receipts for the work, but they increased largely the amount to be expended on the contract. After this excess over the original estimate reached a formidable sum, the matter was investigated by Parliamentary Committees, before whom considerable evidence was taken, one of the main objects being, apparently, to discover the authority, if any, by which the expensive changes had been directed. It appeared that Mr. Fleming and Mr. Mackenzie had discussed the matter, Mr. Fleming recommending the change, and Mr. Mackenzie expressing himself favourable to it. Mr. Mackenzie had submitted to the Privy Council a report of the facts, and the matter was left for further consideration; he did not recommend immediate action, and none was taken. This appears by his evidence before the Committee of the Senate in April, 1879. Mr. Fleming, between the time of his recommendation and this report to the Privy Council, left Canada for England. In the Department, month after month progress estimates came in, showing that the original estimates were being largely exceeded, but no objection was made on that account.

Different views have been expressed by different engineers before the Committees, and before us, as to the effect of the changes on the final cost of the work. We have investigated the bearings of these opinions and analyzed the evidence upon the subject. We think, upon the whole, that the variation from the character of the work as originally intended, caused an increase of expenditure to a sum in the neighbourhood of \$250,000. We have remarked upon this in our report on "Engineering," but we have not thought it necessary to report more accurately upon the excess in the cost caused by the change. Mr. Fleming subsequently renewed his report in favour of the changes as they had been adopted in the progress of the work, and stated that the contractor had obtained a large amount of rolling-stock and plant,

which would not have been required, but for the purpose of carrying out these changes.

An Order in Council was passed confirming them, and to the same effect as the report which had been originally submitted by Mr. Mackenzie when Minister of Public Works.

During the investigation of matters connected with this contract before the Standing Committee on Public Accounts, above referred to, Mr. Whitehead was in Ottawa. He had not been examined before the Committee, but he understood from Mr. Chas. H. Mackintosh that there was "something about the contract going on" before the Committee, and it was supposed that the contractors for section B (which was the one next east of section 15) wanted to get this contract out of Mr. Whitehead's hands, and he was not willing that it should be taken from him.

Upon one occasion when this matter was the subject of conversation between them, Mr. Whitehead gave to Mr. Mackintosh promissory notes to the amount of \$11,000 or \$12,000.

The evidence upon the subject of the inducement offered to Mr. Whitehead to give these promissory notes, is conflicting, and we do not consider it material to our enquiry to decide what that was then stated to be, as that is an affair between those two persons alone; but we deem the object of the transaction to be a matter of public interest, if either of them intended the notes to be used, in obtaining any improper advantage for this contractor.

Upon the evidence we find that Mr. Whitehead gave to Mr. Mackintosh promissory notes amounting to \$11,000 or \$12,000, expecting and intending that they should be used to influence one or more members of Parliament, and so to secure for him some advantage concerning this contract, which, but for giving these notes, he thought he would not be likely to procure. We have felt it our duty to ascertain whether his expectations were realized. We have examined Mr. Mackintosh, as well as members of Parliament who were then acting on the Committee of Public Accounts, including one whose name Mr. Whitehead said was mentioned as exerting himself adversely to him.

We conclude upon the evidence on this subject, that no part of the proceeds of the said notes, or any other money given by Mr. Whitehead to Mr. Mackintosh had the effect of, or was used for the purpose of obtaining for

Mr. Whitehead, or for any other person, any advantage concerning this contract, or any other matter connected with this railway. The notes were at first discounted by Mr. Mackintosh. They were subsequently retired by him, and eventually returned to Mr. Whitehead. On other occasions considerable sums of money or notes changed hands from Mr. Whitehead to Mr. Mackintosh, under circumstances which we found, on investigation, not to affect the public interests, and we do not think it necessary further to allude to them.

While Mr. Whitehead was carrying on this contract he became unable to meet his financial engagements, and obtained some assistance from the Government both by releases, from time to time, of portions of the drawback which had been, under the terms of the contract, left in the hands of the Government out of moneys earned by him, and also by money advances on two occasions, which were, however, sufficiently secured by assignments from him of plant and machinery. We have inquired into the particulars of these transactions.

On one occasion, not getting such assistance from the Government as he had applied for, he arranged with Messrs. Fraser & Grant to become partners with him in his contract, to supply the necessary funds to relieve him from his embarrassments, and carry on the works with less difficulty than he had experienced, while depending on his own resources. Writings between these parties were entered into to that effect. The arrangement, however, was not effectual. The new partners were, according to Mr. Whitehead's account, not so able to provide funds as he had expected, and the Government declined to change the parties to the contract lest it should have the effect of releasing some of the securities.

The transactions of Mr. Whitehead, in relation to this contract, as described in his own testimony, made it apparent to us that he had a strong belief in the corruptibility of public men. We have taken evidence at some length concerning the dealings between the Government and him while he was carrying on this contract, with a view of ascertaining whether he had obtained any favours by improper means, or otherwise, at the expense of the public. The evidence on this subject leads us to conclude that since the execution of the contract, no influence had been exercised on his behalf more effective than his own representations were or would have been, and that he has not gained from the Department or any member of Parliament or any engineer, or any other person in the Government employ, an advantage that was not consistent with the best interests of the country.

He was not permitted to complete the works. In 1880 it was found, as he himself states, that he could not supply provisions for the men, or pay the wages due by him, and that the work was, therefore, not being prosecuted with vigour. This, without any disagreement on his part, induced the Government to take charge of the construction and to use his plant and machinery, engaging the laborers and others employed on the works, since which time the work has been carried on at the expense of the contractor, the Government in the first place advancing the necessary funds.

This arrangement will not result in any loss to the Government. The work provided for in the contract was not complete at the date of our commission.

The following sums have been paid on it up to the 30th June, 1880 :—

30th June, 1877.....	\$54,300
“ 1878.....	532,200
“ 1879.....	877,700
“ 1880.....	411,630
	\$1,875,830

CONTRACT NO. 16.

Railway Extension.

This concerns a subsidy from the Government to the Canada Central Railway Company, to be paid for the extension of a line of railway from the eastern terminus of that portion of the Canadian Pacific Railway known as the Georgian Bay Branch to the town of Pembroke. The existing arrangement was substituted for an earlier one which was also known by this same No. 16. That was for the extension between termini and over a route different from those covered by the present agreement.

The Canadian Pacific Railway Act of 1874, contained, amongst others, the following enactments :—

“ 14. The Governor in Council may also grant such bonus or bonuses, subsidy or subsidies, to any company or companies already incorporated or to be hereafter incorporated, not exceeding twelve thousand dollars per mile, as will secure the construction of the branch lines extending from the eastern terminus of the said Canadian Pacific Railway to connect with existing or proposed lines of railway ; the granting of such bonuses or subsidies to be subject to such conditions for securing the running powers and other rights over and with respect to the whole or any portion of the said branch railway, to the owners or lessees of the main line

of the said railway or of any section thereof, or to the owners or lessees of any other railway connecting with the said branch railway, as the Governor in Council may determine; but every Order in Council granting such subsidy shall be laid before the House of Commons for its ratification or rejection, and shall only be operative after its ratification by resolution of the House.

“15. The Governor in Council may, at any time after the construction of the said branch railway, make with the company or companies owning any portion of the said branch railway, such arrangement for leasing to such company or companies any portion of the said branch railway which may belong to the Government, on such terms and conditions as may be agreed upon—such lease not to exceed a term of ten years; and may also make such other arrangements as may be deemed advantageous for working the said railway in connection with that portion of the said branch railway belonging to such company or companies: Provided no such contract for leasing the said branch railway, and no such agreement for working the said railway in connection with any other railway, shall be binding until it shall have been laid before the House of Commons for one month without being disapproved, unless sooner approved by a resolution of the House.”

In the summer of 1874, at the request of the Minister of Public Works, the Chief Engineer instructed a reconnoissance of the country between the mouth of French River, on Georgian Bay, at the west, and Pembroke and Renfrew respectively at the east, to be made under Mr. Hazlewood. While this examination was in progress, the following memorial was presented to the Government by the Canada Central Railway:—

“To His Excellency the Governor-General of Canada in Council assembled.

“The Memorial of the Canada Central Railway Company, humbly sheweth,—

“That in the year 1861 your Memorialists were incorporated with power to construct a railway from the city of Ottawa to Lake Huron. The Legislature of Canada deeming the opening up of the Ottawa Valley by railway communication, and the extension of a line to Lake Huron, a work of such public importance that to stimulate its construction a large land grant was offered to the Company to aid in the building of the road;

“That the Company were unable to avail themselves of the offer of the subsidy, and build the railway within the time limited for its construction, and the grant, therefore, lapsed, except for a short section, to Carleton Place, from which point an extension to the village of Renfrew has been completed and is now in successful operation;

“That your Memorialists were, in the year 1872, allotted a subsidy of \$2,650 per mile by the Ontario Government, to encourage the building of the line through the county of Renfrew towards Pembroke.

“The country west of Renfrew village being but sparsely settled, the Company has been unable to receive that substantial aid which it might fairly expect from the great public advantages naturally flowing from the development through railway enterprise of that important section of Canada;

“That the eastern terminus of the Canadian Pacific Railway is on the line of the route which the Canada Central was authorized to construct in reaching Lake Huron;

"That with the subsidy of \$12,000 per mile, proposed to be given under the Canadian Pacific Railway Act, to a Company capable of constructing a railway to connect with existing or proposed lines, your Memorialists believe they can complete their extension to the eastern terminus of the Canadian Pacific Railway as soon as the branch railway authorized by the said Act has been built ; your Memorialists would therefore pray that an Order in Council be passed granting the subsidy of \$12,000 per mile from the village of Renfrew to the eastern terminus of the Canadian Pacific Railway, subject to the provisions prescribed in the 14th section of the said Act.

"(Signed) H. L. REDHEAD,

" *President of the Canada Central Railway Company.*

"OTTAWA, August 22nd, 1874."

No definite action was taken upon this memorial until after a report of the 6th October, 1874, by the Chief Engineer, which is set out in full (see contract 12), and from which it was assumed that certain grades and conditions might be specified as feasible over a route from a point then fixed upon as the eastern terminus of the Georgian Bay Branch, and extending eastward to the village of Douglas, in the valley of the Bonnechere River.

On the 4th November, 1874, the following Order in Council was passed :—

"*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 4th November, 1874.*

"The Committee of Council have had under consideration the application of the Canada Central Railway Company, for the subsidy proposed to be granted to Railway Companies under the terms of the Act 37th Vic., Cap. 14, intituled "An Act to provide for the construction of the Canadian Pacific Railway," and they advise that a subsidy of \$12,000 per mile be granted to the said Company to aid in constructing their line from the vicinity of the village of Douglas, westward, to the eastern end of the Branch Railway, proposed to be built from Georgian Bay by the Government, being about one hundred and twenty miles, upon and subject to the following conditions, namely:—

"1st. That the road shall be built upon a line to be approved by the Minister of Public Works, but which may be defined generally as ascending the valley of the Bonnechere, from the vicinity of the village of Douglas *via* Golden Lake and Round Lake, thence by as direct a line as may be found to Burnt Lake, and thence to the proposed terminus of the Government Railway, at about the eighty-fifth mile from Georgian Bay.

"2nd. That the Company shall, within one month from the ratification of this Order in Council by the House of Commons, satisfy the Minister of Public Works that they have entered into a *bonâ fide* contract or contracts for the building of the Railway, and have provided sufficient means with the Government bonus to secure the completion of the line on or before the first day of January, 1877, and also that the Company shall, from the date of such contracts, make continuously such progress as will justify the hope of the completion of the line within the time mentioned.

"3rd. That the Company shall enter into an agreement to grant running powers, on terms to be approved by the Governor in Council, to the Northern Colonization Railway Company.

and the Kingston and Pembroke Railway Company, from the point of intersection of their respective lines, provided such point of intersection is on the subsidized line or within five miles of the same, and also to such other Companies as may have the termini of their systems on or towards Lake Huron, and may be designated or approved by the Governor in Council as entitled to such running powers, provided that the terms of such running powers may be mutually agreed upon by the Canada Central Railway Company and the other Companies named, and, in the event of a disagreement, the conditions shall be settled by arbitration, one arbitrator to be selected by each Company and one by the Governor in Council.

"4th. The Government, or lessees of the Government line from Georgian Bay to the Western terminus of the subsidized line, or any future owners of said line, shall possess running powers on said railway on similar terms to the Companies designated.

"5th. That payment of the subsidy shall only be made on the completion of the railway in sections of not less than twenty miles, each payment to be made on the certificate of an engineer, to be appointed by the Government, that a section or sections has or have been completed; payment may, however, be made of an amount equal to the subsidy on twenty miles on work extended over a larger distance, which in value will be equivalent to not less than twenty-five miles of finished roadway; payment will also be made on rails delivered at any point of the line to be constructed to the extent of seventy-five per cent. of the value thereof, such rails to become the property of the Government until they are laid on the road for use.

"The grant to be operative only after the ratification of this Order in Council by resolution of the House of Commons.

"Certified.

"W. A. HIMSWORTH,

"Clerk, Privy Council.

This Order in Council was ratified on the 13th March, 1875, by a resolution of the House of Commons, which fact was, on the 27th of the same month, communicated, by the Secretary of the Department, to the Canada Central Railway Company.

On the 24th March, 1875, that company had transmitted to the Department of Public Works a copy of a contract, dated the day before, and made between the said company of the one part, and the Hon. A. B. Foster of the other part, having for its object the construction and equipment on or before the 1st January, 1877, of a single line of railway from the eastern terminus of the said Georgian Bay Branch to the terminus of the Canada Central Railway, at Renfrew Village; and in all respects, according to, and in compliance with, the said Order in Council of the 4th November, 1874. This contract is printed in full in a return to the House of Commons, dated 27th April, 1877.

It will be noticed that the contract between the company and Mr. Foster included the whole distance to Renfrew Village, which was some

miles beyond Douglas, the terminus of the line covered by the arrangement between the Government and the Canada Central Railway Company.

During the season of 1875 Mr. Foster, who was also the contractor with the Government for the construction of the Georgian Bay Branch (contract No. 12), put surveying parties in the field, with a view of locating a line from the mouth of French River, the western end of Georgian Bay Branch, to Douglas, the eastern terminus named in the above Order in Council.

In the contract between Mr. Foster and the Government concerning the Georgian Bay Branch, the maximum grades ascending easterly were specified at one in 200, or 26 40 feet per mile. No grades were actually specified either in the Order in Council concerning this extension, or in the contract between Mr. Foster and the Canada Central Railway Co., but it seems to have been taken for granted that the same maximum grade was applicable to the arrangement concerning this extension.

In a report by the Chief Engineer on the 23rd December, 1875, concerning an application by Mr. Foster for a modification of the grades and curves, he alludes to those defined by the contract for the Georgian Bay Branch, and remarks that they were intended to apply equally to the Canada Central extension. Apparently, in the expectation that this arrangement would be carried to completion, Mr. Foster had procured a quantity of rails to be used on the extension from Douglas westward, and they were, in the season of 1875, deposited at Renfrew, from which point he had, as before mentioned, contracted with the Canada Central Railway Co. to build a railroad westward. This was several miles east of Douglas, the terminus of the line included in the arrangement with the Government for a subsidy. On these rails the Government made advances to Mr. Foster as follows :—

25th September, 1875.....	\$23,000
27th October, 1875.....	45,000
	\$68,000

This advance was subsequently assumed by Messrs. McIntyre & Worthington, the present contractors, by a communication of the 15th July, 1878, which is hereinafter set out.

In the fall of 1875 Mr. Foster represented to the Government that the specified conditions as to the grades over the extension were not likely to be

obtained, and he transmitted a report from his engineer to himself relating principally to this subject, dated 26th October, 1875, in which Mr. Shanly shows that, in some places on the line, only heavy work could secure grades even as good as 70 to 80 feet per mile and curves of 60.

This was the beginning of correspondence and proceedings, which led finally to the abandonment of the line described in the first contract for this extension, and the adoption of another covered by the contract now in force.

We do not think it necessary to set out these steps in full. All that are material are printed in a Return to the House of Commons, dated 26th March, 1877, (Sessional Papers, No. 57.) A short description of them, however, will not be out of place.

Mr. Shanly's report above mentioned was referred to the Chief Engineer. He remarked upon it under date of 17th November, declining to adopt Mr. Shanly's opinions, and advising that the contractors should carry on the surveys with every possible energy, until a line within the terms of the contract should be found.

On 23rd November, the Secretary of the Department notified Mr. Foster to that effect.

On 27th November, Mr. Foster answered that a survey was going on as fast as practicable and that he had had four parties out most of the time from the May previous.

On the 20th December, 1875, Mr. Foster again addressed the Department, setting out difficulties, which seemed to him insurmountable, and asking for modifications of his contract.

This was also referred to Mr. Fleming, and he reported on it on 23rd December, 1875, stating in relation to the principal trouble mentioned by Mr. Foster, that he (Mr. Fleming) had seen nothing as yet to show the necessity of abandoning the grades and curves defined by the contract for the Georgian Bay Branch, and intended to apply equally to the Canada Central extension.

In February, 1876, a correspondence ensued, in which Mr. Fleming enquired, and Mr. Foster stated, the arrangements which had been made for proceeding under the contracts then in force concerning the Georgian Bay Branch and this extension.

On 28th February, 1876, an Order in Council was passed authorizing the cancellation of the contract concerning the Georgian Bay Branch, and

alluding to the application of Mr. Foster to have this one modified, as a matter upon which the Minister would subsequently report.

On 23rd March, 1876, Mr. Foster again addressed the Department in the following letter, which is the first suggestion on record of a new route for the subsidized extension.

OTTAWA, 23rd March, 1876.

"SIR,—Since my communication to you on the 20th December, in reference to the line of the Georgian Bay Branch and Canada Central Railway, my engineers have been continuously at work in exploring and surveying the country between Douglas and French River.

"I now beg leave to give you the result.

"The shortest possible line between Renfrew and the Amable du Fond is (132) one hundred and thirty-two miles, and from that point to the mouth of French River (105) one hundred and five miles.

"I enclose a letter from Mr. Shanly expressing his doubt as to the possibility of obtaining a practicable line on the route originally contemplated.

"I propose the exploration of the country between Pembroke and Lake Nipissing.

"I hope the suggestion will meet with the approval of the Government.

"I propose to send out an engineering party immediately to ascertain the character of the country and length of that line, and would like the Government to send an engineer with the party, who would make an independent report for the information of the Government.

"I have the honour to be, Sir,

"Your obedient servant,

"A. B. FOSTER.

"The Hon. Minister of Public Works,

"Ott wa."

On the 6th April, 1876, the Secretary of the Department informed Mr. Foster that his application on this matter would receive due consideration, after which, the next communication on the subject we record, is nine months later, as follows:—

"OTTAWA, January, 1877.

"SIR, - Owing to important reasons that affect the Canada Central Railway very seriously, but which it is not necessary to discuss in this communication, it is imperatively necessary that I should be at once informed as to the decision of the Government on my proposal to alter the line of the Canada Central Railway, by continuing the extension westward from Pembroke instead of from Douglas. Acting on the belief that the Government preferred the route up the Bonnechere Valley, I spent nearly two years in the effort to locate a line of railway by which the Canada Central could be extended in that direction, to the proposed eastern terminus of the Canadian Pacific Railway. After, however, an expenditure of \$35,000 (thirty-five thousand dollars), I have been reluctantly forced to the conclusion that a line with curves and gradients, such as a first-class road ought to possess, cannot be obtained by that route; moreover, after the first fifty miles, the country is so uninviting as to dispel the hope that settlement would follow the construction of the road. Acting on the advice of the Chief Engineer of the Company, Mr. Walter Shanly, I despatched a party under the immediate

charge of Mr. William Murdoch, C.E., to examine and report on the route between Pembroke and Nipissing. I had the honour to transmit to your Department, in June last, a copy of Mr. Murdoch's report; it confirmed the opinion that Mr. Shanly had previously expressed, that the extension *via* Pembroke possessed so many advantages over the other route as to make its selection a necessity in the interest of the Company; lying nearer the valleys of the Ottawa and Mattawan the country is so much lower than by the Bonnechere route, and less broken by hills, with fewer lakes to avoid, the land seems better adapted to support an agricultural population. This is evidenced by the fact that settlements on the Ottawa are rapidly extending westward towards the Mattawan—the latter point is now a thriving village; the settlements are also increasing between it and Lake Nipissing. It is now admitted that the Quebec system of railways will shortly be completed from Quebec to Aylmer. The extension of the Canada Central Railway up the valley of the Ottawa, in close proximity to the Province of Quebec, will permit an easy connection at Portage du Fort, or even further west, in the event of an extension in that Province. Mr. Shanly is also of opinion that the distance either to the south-east corner of Lake Nipissing or to Contin's Bay, on French River, is about the same by Pembroke as by the Bonnechere; and that the elevations are more favourable. Mr. Harris and Mr. Murdoch, the other engineers employed by the Company, concur in this opinion.

"In view of all these facts it is evident that the true interests of the country, and also of the Company, will be better served by the construction of the railway from Pembroke rather than Douglas.

"I propose to build the Canada Central Railway to the south-eastern corner of Lake Nipissing, the Government granting the subsidy for an equal number of miles as proposed from Douglas, namely, 120.

"If it is thought best in the public interest, instead of the Government constructing a line from the south-east end of Lake Nipissing to Contin's Bay, I would undertake to extend the Canada Central to the latter point on the payment of a subsidy of \$20,000 a mile, for that portion between Lake Nipissing and Contin's Bay; the road to be in every respect equal to the newly built portion of the Canada Central between Renfrew and Pembroke.

"The railway to be completed within five years.

"You will much oblige by giving me an answer as early as possible.

"I have the honour to be,

"Your obedient servant,

"A. B. FOSTER."

This was followed by a formal communication from the Canada Central Railway Company, as shown below :—

"OTTAWA, 10th February, 1877.

"SIR,—In November, 1874, the subsidy of \$12,000 a mile was granted to the Canada Central Railway Company to connect its line with the eastern terminus of the Canadian Pacific Railway, under the authority of the Act for the construction of the Canadian Pacific Railway. The route then proposed was westward from the village of Douglas by the valley of the Bonnechere. Early in the spring of 1875 the Company despatched a staff of surveyors and engineers to explore the country and locate the line for the railway, and although the first fifty miles proved favourable, the country further west was found to be intersected by

hills and ridges with considerable bodies of water, and altogether unsuited for a line with the curves and gradients of a first-class road.

“After an expenditure of upwards of \$35,009 the Company have been compelled to abandon the extension of the road on that line.

“Acting on the advice of W. Shanly, Esq., Chief Engineer of the Company, an exploratory survey was last year made under the immediate charge of Mr. Wm. Murdoch, C.E., of the country lying between Pembroke and Lake Nipissing. The result of the exploration confirmed the opinion that Mr. Shanly had previously expressed, that the extension *via* Pembroke possessed so many advantages over the other route as to make the selection a necessity in the interest of the Company; following the valley of the Ottawa, the country is much lower than by the Bonnechere and less broken by hills.

“It is now apparent that the Quebec system of railways will shortly be completed from Quebec to Aylmer, and it is contemplated to extend the Quebec Railway line to Portage du Fort, or some other point further west.

“The extension of the Canada Central Railway up the valley of the Ottawa in close proximity to the Province of Quebec, will permit of easy connection either at Portage du Fort or at such other point as may be considered desirable.

“It is the opinion of Mr. Shanly that the distance from Renfrew to Lake Nipissing is not materially increased by the adoption of the northern over the southern line. Mr. Harris and Mr. Murdoch, the other engineers employed by the Company, concur in this opinion. In view of all these facts it is evident that the true interest of the country and also of the Company, will be better served by the construction of the Railway from Pembroke, rather than from Douglas.

“The Company now propose to extend the Canada Central Railway to that point where the South River enters Lake Nipissing, being the outlet of the Nipissing road, the Government granting the subsidy for an equal number of miles as was proposed from Douglas; this will carry the railway line nearly twenty miles further than the point originally settled as the eastern terminus of the Canadian Pacific Railway, and thus save a proportionate mileage on that line.

“Under the original Order in Council granting the subsidy, the Company was bound to grant running powers, on terms to be approved by the Governor in Council, to the Northern Colonization Railway Company with the Kingston and Pembroke Railway Company, from the point of intersection of their respective lines, provided such point of intersection was on the subsidized line, or within five miles of the same; in the case of the former Company the connection, five miles east of Douglas, would involve the construction of about eleven miles of road. The Canada Central is willing to concede to that railway the privilege of running powers at any point of intersection opposite Portage du Fort, thus shortening, by about eleven miles, the proposed connecting line; it is also willing to enter into an agreement with the Kingston and Pembroke Railway, to grant running powers from the village of Renfrew or any other point further west.

“The Company request that payment of the subsidy shall be made on the basis of 80 per cent. of the expenditure, the drawback of 20 per cent. to be paid on the completion of every ten miles, the line to be completed in three years. The provision for the advance on rails to

be similar to that contained in the former Order in Council, namely, 75 per cent. when delivered.

" I have the honour to be, Sir,

" Your most obedient servant,

" J. W. READ,

" *Vice President C. C. Railway.*

" The Honourable

" The Minister of Public Works."

This having been submitted to the Chief Engineer, he made the following report :—

" OTTAWA, 16th, February 1877.

" SIR,—I have the honour to report on the proposal, made by the Canada Central Railway Company, in the communication addressed to you, of date 10th instant.

" I do not altogether concur with the view expressed as to the impossibility of finding a line and building a first-class railway, on the route originally laid down, by the valley of the Bonnechere.

" It is due, I think, to an officer on my staff, Mr. Hazlewood, to state that the surveys which have since been made substantially confirm the report, on the reconnoissance which he made in 1874. He was instructed to walk over the ground and report if it would be practicable to build a railway, across the country, in a direct course. On his return, he reported that he felt ' quite safe in stating, that a railway could be located, on a direct course, between the mouth of French River and Burnt Lake; in fact, that the departure from a straight line would probably not increase the distance more than five per cent.'

" He farther reported on the character of the country between Burnt Lake and Renfrew, *via* the Valley of the Bonnechere River, and expressed the opinion, that there would not be any great difficulty in finding a practicable route for the railway.

" While I have as yet seen nothing to alter my own views with respect to the general accuracy of Mr. Hazlewood's report; I am satisfied that there are no engineering objections to the proposal now submitted by the Canada Central Company, to extend the line westerly from Pembroke, instead of from Renfrew.

" Indeed the information obtained goes to show, that a line with more favourable gradients may be obtained on the route now proposed to be adopted by the Canada Central, and that it will serve the interest of the country fully as well. I have, therefore, no hesitation in recommending that the proposal be favourably entertained.

" I think it would be well to stipulate with the Canada Central Company that the gradients ascending westerly may be as high as 52·80 per mile, but that the maximum ascending in the opposite direction should be 26·40 per mile; and that the curvature and general alignment should be approved by the Department.

" I have the honour to be, Sir,

" Your obedient servant,

" SANDFORD FLEMING.

" The Hon. A. MACKENZIE,

" Minister of Public Works."

On the 18th April the following Order in Council was passed :—

“ Report of a Committee of the Hon. the Privy Council, approved by His Excellency the Governor General in Council, on the 18th April, 1878, which is as follows :—

“ The Committee of the Privy Council have had under consideration the questions relating to the construction of the Georgian Bay Branch of the Canadian Pacific Railway, and the extension westward of the Canada Central Railway, in consideration of a subsidy to be paid by the Government, as provided by the Canadian Pacific Railway Act of 1874.

“ That a contract was entered into in 1874, with Mr. A. B. Foster, for the building of the Georgian Bay Branch, under which Mr. Foster was to execute all the surveys, as well as perform the work of construction from the mouth of the French River, 85 miles eastward.

“ That on the 28th February, 1876, this contract was annulled, and Mr. Foster was paid such portions of his expenditures on the surveys, as were reported by the Chief Engineer to be serviceable to the Department, in completing the survey.

“ That on the 4th November, 1874, an Order in Council was passed, under the terms of the Act 37 Vic., cap. 14, known as the Canadian Pacific Railway Act of 1874, whereby a subsidy of \$12,000 per mile was granted to the Canada Central Railway Company, for a distance not exceeding 120 miles from the eastern end of the Georgian Bay Branch above referred to, upon the conditions :—

“ 1st. That the road should be built upon a line to be approved by the Minister of Public Works, but which was defined generally, as ascending the valley of the Bonnechère from the vicinity of Douglas Village, *viâ* Golden Lake and Round Lake, and thence by as direct a line as might be found, to Burnt Lake, and thence to the proposed terminus of the Georgian Bay Branch—about the 85th mile from Georgian Bay.

“ 2nd. That the Company should, within one month, satisfy the Minister of Public Works, that they had entered into a *bonâ fide* contract for the building of the railway.

“ 3rd. That running powers should be given to certain roads on stated conditions.

“ 4th. That the Government or the lessees of the Government line from Georgian Bay, should possess running powers on similar terms to the Companies designated.

“ 5th. That payment of the subsidy should be made on the completion of the railway in sections of not less than 20 miles, upon the certificate of an engineer to be appointed by the Government.

“ That in consequence of the annulling of the contract for building the Georgian Bay Branch, it was considered best to complete the survey of the country to be traversed which had been, to a great extent, executed by the engineers of the contractor, with the result of raising some doubts as to the best direction.

“ That it was deemed inadvisable to urge the Canada Central Railway Company to proceed with the building of the subsidized line, until the more complete examination and survey of the country should have been accomplished.

“ That Mr. Hazlewood, the engineer originally charged with making an examination of the country from the mouth of the French River to the neighbourhood of Douglas and Pembroke, reported that a line, with fair gradients and average work, was practicable in the direction indicated by the Order in Council referred to.

“ That the engineers of the Canada Central, and those employed by Mr. Foster, reported more serious obstacles in grades and engineering work, and difficulties after leaving the lower part of the Bonnechere Valley ; and though the Chief Engineer stated that he believed that

a more thorough exploration would prove that they were mistaken, it became necessary to ascertain the facts with greater particularity.

"That Mr. Lumsden was, therefore, despatched early in the season of 1876 with a strong party to do the work.

"That this engineer has reported, as the result of the season's operations, that a fair line can be obtained on Mr. Hazlewood's plan, but that for a considerable distance the work will be somewhat heavy, in consequence of the prevalence of rock-cutting, and that the maximum grade rising eastward would be 52.80 feet per mile, in an aggregate distance of about seven miles, and that there are three miles of the same grade rising westward. That this grade, though not excessive, is much higher than Mr. Hazlewood expected.

"That the engineer employed by the Canada Central Railway Company has reported that, so far as works of construction are concerned, a more favourable line could be obtained, ascending from Pembroke on a line nearly parallel with the Ottawa River, and distant from the same, after leaving the Petewawa River, an average of 8 or 10 miles, and touching in its course the south-east corner of Lake Nipissing.

"That the same engineer reports generally that the alignment of the road is good, and that it will not exceed 6 per cent. of curvature; that from Pembroke to Nipissing Road, five rivers are crossed four requiring bridges of a span of 100 feet, and one (the Petewawa) a span of 400 feet; that 40 miles are through a spruce, tamarac and hardwood country, and ninety miles through burnt woods and open country, the soil generally being of a sandy or gravelly character, with considerable reaches of clayey sand and sandy loam.

"That the estimated distance from Pembroke to the south-east corner of Lake Nipissing is about 130 miles. This point is about 20 miles further west than the point previously determined on as the eastern terminus of the Canadian Pacific Railway, (thus saving to the public the construction of about 20 miles of railway). From this point westward to Cantin's Bay, the projected station on French River, the distance is between 50 and 55 miles.

"That the Canada Central Railway Company, in a letter dated the 10th February, 1877, proposed that the Company should build the westward extension from Pembroke on this line, to the south-east corner of Lake Nipissing, for a total bonus of \$1,440,000, being at the rate of \$12,000 per mile upon 120 miles; that payment of the subsidy should be made on the basis of 80 per cent. of the expenditure, the drawback of 20 per cent. to be paid on the completion of every 10 miles, the line to be completed within three (3) years, and 75 per cent. of the value of rails delivered on the ground to be paid as the rails are delivered.

"That Mr. Fleming, Engineer-in-Chief, to whom the proposal was referred, reports as follows:—

' CANADIAN PACIFIC RAILWAY,

' OFFICE OF THE ENGINEER-IN-CHIEF,

' OTTAWA, 16th February, 1877.

' The Hon. A. MACKENZIE,

' Minister of Public Works.

' SIR,—I have the honour to report on the proposal made by the Canada Central Railway Company, in the communication addressed to you of date 10th inst.

' I do not altogether concur with the view expressed as to the impossibility of finding a line and building a first-class railway on the route originally laid down by the valley of the Bonnechère. It is due, I think, to an officer on my staff, Mr. Hazlewood, to state that the surveys

which have since been made substantially confirm the report on the reconnoissance which he made in 1874. He was instructed to walk over the ground, and report if it would be practicable to build a railway across the country in a direct course. On his return he reported that he felt quite safe in stating that a railway could be located on a direct course between the mouth of French River and Burnt Lake; in fact that the departure from a straight line would probably not increase the distance more than 5 per cent.

‘He further reported on the character of the country between Burnt Lake and Renfrew, *viâ* the valley of the Bonnechère River, and expressed the opinion that there would not be any great difficulty in finding a practicable line for the railway.

‘While I have, as yet, seen nothing to alter my own views with respect to the general accuracy of Mr. Haz’ewoo’s report, I am satisfied that there are no engineering objections to the proposal now submitted by the Canada Central Railway Company, to extend the line westerly from Pembroke instead of from Renfrew.

‘Indeed, the information obtained goes to show that a line with more favourable gradients may be obtained on the route now proposed to be adopted by the Canada Central, and that it will serve the interests of the country fully as well. I have, therefore, no hesitation in recommending that the proposal be favourably entertained.

‘I think it would be well to stipulate with the Canada Central Company that the gradients ascending westerly may be as high as 52·80 per mile, but that the maximum ascending in the opposite direction should be 26·40 per mile; and that the curvature and general alignment should be approved by the Department.

‘SANDFORD FLEMING.’

“That the House of Assembly of the Province of Quebec, on February 13th, 1875, passed a resolution which was communicated to the Government of Canada stating that, according to the reports of eminent men on the nature and configuration of the ground, it appears that a track which would follow the Mattawan would present the cheapest, the easiest, the shortest route for the development of the vast commerce of the west and of the Pacific, as well for the branch of the Pacific to the east of the Georgian Bay as for the line to be subsidized by the Government and that in the event the exploration proves that a preferable line to that of the Mattawan exists to the south of the River Ottawa, the line to be subsidized by the Government, be brought to Pembroke, and not to Renfrew, where a junction with the railway system of the Province of Quebec is impossible, seeing the enormous expense which it would entail.

“That since that period the Government of Quebec have commenced the construction of railways on the northern side of the St. Lawrence and Ottawa Rivers, and the railway from Montreal westward to Ottawa has been completed by that Government.

“That though the line would be lengthened by this deflection to the northward, the western end of the subsidized line would, as stated, reach a point much further to the westward of the previously proposed terminus, or junction with that portion of the Canada Pacific Railway proposed to be built under the terms of the Act, to the French River, and would thus save to the public the cost of constructing about twenty miles of railway.

“The Committee of Council, after fully considering the facts as already summarized, recommend,—

“First.—That the proposition of the Canada Central Railway Company to extend the line to such point as may be selected by the Government as the terminus of the Canada Pacific

Railway, at or near the crossing of the Nipissing Road, at the south-east corner of Lake Nipissing, for the sum of one million and four hundred and forty thousand dollars (\$1,440,000) should be accepted, upon the condition as to grades recommended by the Chief Engineer, and that the total payment to be made shall not, under any circumstances, exceed the sum of twelve thousand dollars (\$12,000) per mile.

“Second.—That the Company shall, within three months of the ratification of this Order in Council by the House of Commons, satisfy the Minister of Public Works that they have entered into a *bonâ fide* contract or contracts, for the building of the railway, and have provided sufficient means, with the Government bonus, to secure the completion of the line and also that the Company shall, from the date of such contracts, make continuously such progress as will justify the hope of the completion of the line within the time mentioned.

“Third.—That the Company shall enter into an agreement to grant running powers, on terms to be approved by the Governor in Council, to the Montreal, Ottawa and Western Railway, now in process of construction, from Montreal, on the northern side of the Ottawa River, or any railway in extension thereof from any point of intersection west of the town of Renfrew, that may be approved of by the Governor in Council, and also to the Kingston and Pembroke Railway Company, from the intersection of their line, provided such point of intersection is at or west of Renfrew, and to such other Companies as may have the termini of their systems on or towards Lake Huron, and which may be designated by the Governor in Council as entitled to such running powers: Provided that the terms of such running powers to any of the said Companies or roads may be mutually agreed upon by the Canada Central Railway Company and the Quebec Government, and the other Companies named; and in the event of a disagreement, the conditions to be settled by arbitration, one arbitrator to be selected by each party, and one by the Governor in Council.

“The Government of Canada and the lessees or future owners of the Government road, westward of the western terminus of the subsidized line, shall possess running powers in the said railway on similar terms to the Companies designated.

“Fourth.—That payments be made to the extent of eighty (80) per cent. of the said bonus of \$12,000 per mile on the completion of every ten miles—one-half of such payment may be advanced when work equal to five miles is completed on any one section, on the certificate of the Chief Engineer that satisfactory progress is being made—and payment to the extent of sixty (60) per cent. may be made on work extending over twenty-five miles upon the certificate of the Chief Engineer, that such work is equal to ten miles of completed track.

“The balance to be paid on the entire completion of the railway to the Nipissing road at the south-east corner of Lake Nipissing; Provided that payments may be made upon rails delivered, to the extent of seventy-five (75) per cent. of the market value thereof—the amount so paid on rails to be deducted from each settlement of ten miles.

“All payments to be made on the certificate of the Chief Engineer.

“They further recommend that payments be made to the extent of eighty (80) per cent. of the work actually executed, on the completion of every ten miles, in the proportion which ten thousand dollars per mile bears to the actual cost of each section.

“The Company, however, to have the option of substituting the payment by the Government of the interest (or part of the interest) on bonds of the Company, running over such

term of years as may be hereafter approved by the Governor in Council, in lieu of the mileage subsidy referred to.

"The terms and conditions in all other respects to be the same as above provided.

"The grant to be operative only after the ratification of this Order in Council by resolution of the House of Commons.

"Certified.

"W. A. HIMSWORTH,

"Clerk, Privy Council."

This was laid before the House of Commons by the Minister of Public Works, and on the seventh day of May, 1878, it was ratified by a resolution of the House.

On the 26th of April, the Canada Central Railway Company notified the Minister of Public Works that on the 20th of that month, the Company had executed a contract with Messrs. Worthington & Co. for the construction of the extension from Pembroke to the point of junction with the proposed Georgian Bay Branch, a copy of which contract was, on the 10th May following, furnished to the Department.

We think it sufficient for the present purpose to give no more than the following portion of the said contract:—

'THIS INDENTURE, made between Duncan McIntyre, merchant, and James Worthington, contractor, both of Montreal, in Canada, hereinafter called the contractors, of the first part; and the Canada Central Railway Company, hereinafter called the Company, of the second part;

"Witnesseth: that the said parties hereto have contracted and agreed, and by these presents do contract and agree to and with each other in manner following, that is to say:—

"1. That the contractors will, at their own expense, construct and complete a railway for the transit of locomotives, steam engines, and any other description of motive power, ordinarily used and applied on lines of like nature, and of all carriages and waggons drawn or propelled thereby, and in complete readiness for such transit, as a single line, from a point at or near the crossing of the Nipissing road, at the south-east corner of Lake Nipissing, to be fixed by the Government of Canada as the Eastern Terminus of the Georgian Bay Branch of the Canadian Pacific Railway, to a junction with the presently constituted portion of the Canada Central Railway at or near the town of Pembroke, (the said railway being a section or extension of the Canada Central Railway, being hereinafter designated and known as the Western Section, and the presently constructed portion of the said Canada Central Railway, and being hereinafter designated and known as the Eastern Section); together with all stations and station houses, engine houses, sidings, switches, turnouts, turntables, fencing, and other appurtenances necessary for the due and convenient use of the said Western Section; and shall also do and perform, or cause to be done and performed, at their own expense, all engineering work required in surveying, planning, laying out, preparing for and carrying on the said work; including the making of all necessary plans, surveys and books of reference, and the perform-

ance of all the obligations in respect of engineering plans and surveys imposed upon railway companies by the general Railway Act of the Dominion, and by the charter of the said Company; of all which plans, surveys, sections and books of reference, copies shall be deposited with the said Company, free of charge, as soon as conveniently may be after the making thereof.

"2. The said Western Section shall be constructed, and the said works shall be done and performed in a good, substantial and workmanlike manner, and according to such plans, sections and drawings, as may be hereafter made under the supervision, or by the orders, of the Department of Public Works of Canada; or by or under the supervision of any engineer to be appointed by the Government of Canada as Supervising Engineer; or that may be adopted or approved by any order or report of any Committee of the Honourable the Privy Council of Canada, approved by His Excellency the Governor-General in Council, made or to be made in the premises, or by any subsequent order, amending or altering the same; and in all respects in accordance with such Orders in Council. And the portion of the Canada Central Railway, lying between Renfrew and Pembroke, shall be regarded as constituting a fair average standard of the character of the work to be done under this contract; subject always to such Order or Orders in Council as are or shall be made and passed, as hereinbefore described.

"3. The contractors shall, at their own expense, provide and pay for all materials, utensils and implements, labour and workmanship, required in the performance of the work contracted for; and will use and employ the best materials of every kind, such as the engineer for the time being having the supervision of the works on behalf of the said Government, shall approve of.

"4. The contractors shall provide the right of way for the said Western Section, and all land required for stations, sidings, turnouts, gravel and ballast pits, and the like, and shall pay for the same, and for all land and other damages which may become due and payable in respect thereof. And all title deeds of such land, and acquittances for such land damages, shall be taken in the name of the Company. And the contractors shall be, and are hereby, authorized and empowered to take all necessary steps and proceedings, make tenders and offers, appoint arbitrators, and carry on arbitrations, suits and actions, such as shall be useful or necessary in the acquisition or expropriation of land and adjustment of land damages; the whole in the name of the Company, but at their own proper cost and charges, to the entire exoneration of the Company.

"5. The said contractors shall commence the construction of the said railway so soon as the Order in Council respecting the subsidy is ratified by Parliament, and shall complete and finish the said railway according to the provisions hereof, in perfect running order, on or before the thirty-first day of December, in the year of our Lord one thousand eight hundred and eighty. And during the interval they shall make continuously such progress as will justify the expectation of the completion of the line within the said period; and if at any time during the progress of the work the Company's engineer shall report to the Company that the contractors are not then making such progress as will justify such expectation, and if the Company and the Honourable the Minister of Public Works of the Dominion concur in such report, such report shall be communicated to the contractors; and if within three months thereafter they shall not take such steps as shall be prescribed in such report as being necessary to cause their rate of progress to conform to the conditions of this clause, they shall be

conclusively held to be in default in the performance of this contract; and the Company shall thereupon have the right to take the works hereby contracted for out of the hands of the contractors, and to continue and complete them at the expense of the contractors; for which expense they shall have immediate right of action against the contractors from time to time, as disbursements are made by the Company in respect thereof; and the taking over the said works in the said manner and for the said cause, shall not be held to be an acceptance by the Company of the said Western Section within the meaning of this contract; nor shall the said Company thereby become liable either as to its personality in any manner whatever nor as to its realty to any extent beyond the said Western Section, for any bonds issued upon the said Western Section, or for any debt whatever contracted in respect thereof; and upon such taking over, the Government and all other subsidies in aid of the said work shall cease to be payable to the said contractors, and shall thereupon and thereafter become payable to the Company; and all obligation under this contract to deliver bonds to the contractors, and the right of the contractors to use and control the said Western Section, shall thereupon cease and determine.

"6. In consideration of the premises, and of the performance by the contractors of the several agreements, covenants and conditions on their part herein contained, they shall be entitled to receive for each mile of the said road, in respect of which a subsidy has been granted by the Government of Canada, to the extent of twelve thousand dollars per mile, the amount of the said subsidy, upon the terms upon which it has been granted; but without any warranty by the said Company of the payment thereof, the contractors themselves assuming the risk thereof and undertaking to obtain the same.

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This contract having been referred to the consideration of the Chief Engineer, he reported upon it as follows:—

"OTTAWA, 17th May, 1878.

"SIR,—With respect to the contract between Messrs. McIntyre & Worthington, and the Canada Central Railway Company, which has been referred to me for consideration.

"It is not my province to deal with any but engineering questions and with respect to them I beg to remark:—

"1. I find the only specification as to the character of the line to be built in the 2nd clause: 'the portion of the Canada Central Railway lying between Renfrew and Pembroke, shall be regarded as constituting a fair average standard of the character of the work to be done under this contract.'

"2. On enquiry I have found that although that section of the Canada Central may serve the purpose of a railway, it is by no means of a high character and before it be accepted by the Government as the standard, I would advise that an examination be made of it.

"3. Under the 21st clause, the engineer of the Company appears to have very limited control over the works.

"4. There appears to be no provision for rolling stock and if my information be correct, the contract seems to give the contractors the power to build an inferior railway.

"5. As already stated I would advise that an examination be made of the proposed standard, and the Government reserve the right to approve of the gradients and curves and generally the plans and profiles of the location survey before being finally adopted.

"6. The western end of the line is rather indefinitely described; I would suggest that it be defined as being opposite the post office of Nipissingan, on the western side of South River.

"I have the honour to be, Sir,

"Your obedient servant,

"SANDFORD FLEMING,

"*Engineer-in-Chief.*

"F. BRAUN, Esq.,

"Secretary Public Works."

In pursuance of the recommendation contained in the above report, Messrs. Smellie and Ridout were, on May 23rd, 1878, directed to make an examination of that portion of the Canada Central Railway lying between Pembroke and Renfrew, and report thereon. They did so on the 6th June, 1878, and it gave rise to the following letter:—

"OTTAWA, 7th June, 1878.

"SIR,—I am directed by the Minister of Public Works to inform you that he has had under consideration the contract into which the Canada Central Railway Company have entered with Messrs. McIntyre & Worthington, for construction of line westward from Pembroke to be subsidized by Government, and that the same meet his approval, subject, however, to the following being understood with respect to certain portions thereof.

"Section 2 states that the portion of the Canada Central Railway lying between Renfrew and Pembroke shall be regarded as constituting a fair average standard of the character of the work to be done under the contract, but subject to special orders from the Government respecting plans, &c.

"The Minister regards that portion of the Canada Central Railway as being in some respects inferior to the character of the road which should be built under the subsidy; and, first, as regards the width of the embankments, which is at present about 14 feet at the finished level, they will require to be at least 16 feet, and if at certain points the Government engineer should deem it necessary to have the width extended to 17 feet, his requirements in this respect shall be acceded to. The cuttings of that portion of the road are also too narrow to afford proper drainage, and to make allowance for material falling into the ditches, and it will be required that the cuttings on the new line shall be not less than 22 feet. It will also be required that none of the curves shall be of less radius than that of the minimum radius of the curve upon the portion of the road between Pembroke and Renfrew, viz.: $4^{\circ} = 1,432$ feet; and the percentage of that curvature allowed shall be subject to the approval of Government.

"It will likewise be understood that the pile bridging existing on this portion of the road is not to be adopted on the subsidized line, but that the piles should be taken to the water or ground level, and bents erected thereon, which may, when necessary, be removed without inconvenience, and that where it is possible to do so without excessive expense, it would be desirable to have the abutments of stone work.

"It is further to be understood that no portion of the gradients ascending westward shall be in excess of 52.80 per mile, and that no portion of the gradients extending eastward shall be in excess of the maximum grade obtainable on the Georgian Bay Branch, which connects with the subsidized line at Lake Nipissing, and that the percentage of such maximum grade

relatively to the whole line shall not exceed the percentage of similar grades on the Georgian Bay Branch.

"Moreover, it is to be understood that it will be very desirable to have steel rails for the whole of the line; and although the Minister does not insist upon this as being a condition in the contract, he does insist, if steel rails are not laid, upon the procurement of a superior quality of iron rails, and that such rails be subject to the inspection and approval of Mr. C. P. Sandberg, the Government Agent in London, England.

"The contract gives authority in certain instances to the contractors to act in the room and stead of the Company in negotiations and business engagements with the Government.

"There is no special objection to this arrangement; but such provisoes are approved only with the understanding that the Company themselves are not by such approval relieved from any of the obligations necessarily attached to them by virtue of the Order in Council, sanctioned by Parliament.

"I am, Sir,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"Jno. G. RICHARDSON, Esq.,

"President Canada Central Railway Co.,

"Brockville, Ont."

On 10th June, 1878, Messrs. McIntyre & Worthington, by a letter to the Minister of Public Works, formally accepted the conditions specified in the letter of the 7th of that month, above referred to, after which on the 7th June, 1878, an Order in Council was passed confirming the said contract, subject to the restrictions which had been specified in the above letter, from the Secretary of the Department, to the President of the Canada Central Railway.

The advance on account of rails which had been previously made in the year 1875, as before mentioned, to the extent of \$68,000, was satisfied by the new contractors, Messrs. McIntyre & Worthington, according to the terms of the following letter from them:—

"MONTREAL, 15th July, 1878.

"Sir,—Mr. Asa B. Foster has this day paid us the sum of eight thousand one hundred and seventy-two dollars for a shortage of two hundred and twenty-seven tons iron railroad rails, at the rate of thirty-six dollars per ton. And we hereby accept the railroad iron at Renfrew, now stored and lying there upon our contract for the extension of the Canada Central Railway from Pembroke to Lake Nipissing, for the sum of sixty-eight thousand dollars, the amount advanced by the Government on account of Government subsidy on said road to that amount.

"We have the honour to be, very respectfully,

"Your obedient servants,

"MCINTYRE & WORTHINGTON.

"The Honourable

"The Minister of Public Works,

"Ottawa."

It will be noticed that in the arrangement last made with the contractors, the grade which had, in the first instance, been adopted on the Georgian Bay Branch, and which was considered to be equally applicable to the extension, under the first contract with Mr. Foster, was no longer preserved. That which was held to be the maximum under the new contract was the one which was obtainable over the new location of the Georgian Bay Branch. That, though not mentioned in the writings, was, in fact, 40 feet per mile, as a maximum.

In the progress of the works under this new contract with Messrs. McIntyre & Worthington, it was ascertained that this grade could be secured only at an excessive cost. An application was made to the Government to relieve them, over a portion of the line, from that condition in the contract. Accordingly, 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 16th June, 1880.

“On a memorandum, dated 14th June, 1880, from the Hon. the Minister of Railways and Canals, representing that by an Order in Council, dated 17th June, 1878, having reference to the construction of the extension of the Canada Central Railway westward to meet the Pacific Railway, it was provided that ‘no portion of the gradients ascending westward shall be in excess of 52·80 per mile, and that no portion of the gradients extending eastwards shall be in excess of the maximum grade obtainable on the Georgian Bay Branch (namely, 40 feet per mile).’

“That an application has been received from the contractors, Messrs. Duncan McIntyre & Co., for permission to use the grade of 52·80 feet in place of 40 feet for a distance of three (3) miles, near Deux Rivieres, ascending eastwards, the formation of the country being stated to be of such a nature as to render compliance with the order specified, almost impossible.

“That the then Engineer-in-Chief of the Pacific Railway has reported that the ground is very difficult for a few miles at this point, and that no serious objection exists to the change proposed.

“The Minister accordingly recommends that he be empowered to make the concession desired by the contractors for the change of grade at the point named. Such concession to be, however, distinctly understood as being exceptional and in no way to be drawn into a precedent.

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

“Certified.

“J. O. COTÉ,

“Clerk, Privy Council.”

The works have been carried on under the above mentioned contract up to the date of our commission.

The expenditure upon it up to the 30th June, 1880, was as follows:—

30th June, 1879.....	\$250,479
30th June, 1880.....	629,494
Total.....	\$879,973

CONTRACT No. 17.

Transportation of Rails.

By this contract, dated 8th April, 1875, James Anderson, James George Skelton Anderson, Alexander Gavin Anderson and William Richard Anderson, under the name of Anderson, Anderson & Co., covenanted, for the price of £2 sterling per ton, to transport in the manner and at the times specified, from Liverpool, England, to ports on Vancouver Island, about 5,000 tons of steel rails with their necessary accessories.

This contract was entered into without any competition, and arose in consequence of the purchase of a quantity of rails to be delivered at Liverpool, with a view to sending them to Vancouver Island. As before mentioned in our reports on contracts respecting steel rails, no tenders had been invited for any to be delivered except at Montreal. The first official intimation of the likelihood of requiring some at an English port is to be found in a letter from the Secretary of the Department to Messrs. Cooper, Fairman & Co., dated the 5th December, 1874. This was written in answer to an enquiry by that firm concerning the delivery of rails upon the western lakes, and it contains the following closing sentence:—

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

This was followed on the 29th December, 1874, by a letter from Mr. Cooper to the Minister, offering 6,400 tons of rails at Liverpool without any reference to the item of transportation. That offer led to no transaction, and was followed on the 4th January, 1875, by another letter from this firm set out below:—

“MONTREAL, 4th January, 1874.

“DEAR SIR,—We received cable message advising that the Mersey Company 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 figure and make contract for delivery on the Pacific coast. Waiting your early reply, we remain,

“ Yours respectfully,
 “ COOPER, FAIRMAN & CO.,
 “ For Mersey Iron and Steel Company.

“ HON. A. MACKENZIE,
 “ Ottawa.”

This is the first step in the negotiations concerning freights to Vancouver, which is recorded in the Department, and from the tenor of this letter, we gather that in some previous communication this firm had been informed that a quantity of rails would be required by the Government, to be delivered at Liverpool, and transported to Vancouver Island. On the day after this, the Secretary of the Department formally declined the offer which had been previously made on the 29th December, 1874, to supply 6,400 tons, as before mentioned. On the 7th January, 1875, the Secretary of the Department telegraphed Messrs. Cooper, Fairman & Co. as follows:—

“ If freight to British Columbia can be got at £2 sterling, the Government will take 5,000 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 7th inst., 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. Od. 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. 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.”

‘(Confidential.)

‘ Copy of cable received 13th January.

4 COOPER, Montreal :—

‘Have bought Vancouver rails 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.’”

“ MONTREAL TELEGRAPH COMPANY,

“ 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 COMPANY,

“ 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 labour, succeeded in getting delivery at 45 shillings, being better than allowing rails to be withdrawn. Rails now worth £11 Os. Od. Assuming difference means accepting rates arranged for, namely. 45 shillings per ton.

“ JAMES COOPER.”

“ MONTREAL, 15th January, 1875.

“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.

* WM. BUCKINGHAM, Esq.,

“ Ottawa.”

“ MONTREAL TELEGRAPH COMPANY,

“ OTTAWA, 15th January, 1875.

“ By Telegraph from Montreal to Wm. Buckingham, Public Works.

“Cable reply received says freight and insurance fifty shillings; impossible to get less.

“ JAMES COOPER.”

“ OTTAWA, 18th January, 1875.

“ By Telegraph from Montreal to Wm. Buckingham, Public Works.

“Accept your offer made by telegraph on the 7th. 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."

" OTTAWA, 21st January, 1875.

" GENTLEMEN,—In reply to your several communications on behalf of Messrs. Naylor, Benzon & Co., I am to state that the Government accepts their offer to supply 5,000 tons of steel rails at £10 10s. Od. sterling per ton f.o.b. at Liverpool, and allows £2 0s. Od. 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."

We have endeavoured to ascertain why the Department assumed that the price named by Messrs. Cooper, Fairman & Co. would be a proper one to pay for the work to be done under this contract. We have not learned that any enquiry took place upon the subject, and it appears to have been left in the hands of Messrs. Cooper, Fairman & Co. to fix the price at which it should be undertaken.

Mr. Mackenzie was asked whether he remembered if any steps were taken to ascertain the prices of freights in England before giving the work to Messrs. Cooper, Fairman & Co., or whether they were allowed to fix the rates. His answer was as follows :—

" No; we had some information. Whether it was looking at the newspapers or getting the rates from some other quarter, I do not remember. That was about the freight: £2 10s. was what they asked in the first place, I believe. That we declined, and we gave £2."

Mr. Mackenzie's recollection upon this last feature was at fault, because, as has been shown, their first offer was £2, and after it was

accepted they endeavoured to raise the price, but were held to the original bargain.

The character in which Messrs. Cooper, Fairman & Co. acted in this transaction is not plain upon the evidence. In their first letter, of the 4th January, 1874, above set out, they allude to the 10,000 tons which had been apparently mentioned upon a previous occasion between them and the Minister, or some other person on behalf of the Department, and they say that to facilitate matters they would be glad to have the Minister's instructions with reference to this quantity of rails, and the delivery at Vancouver Island, proceeding to say that they can secure freight at £2 a ton. The tone of this letter appears to us to suggest, that they assumed that they were acting to some extent as agents for the Government.

Mr. Fairman, of the firm of Cooper, Fairman & Co., was in England negotiating with Messrs. Anderson, Anderson & Co. concerning this contract, and while giving evidence as a witness, was asked to explain the relation between his firm and the Government, upon the subject of this contract. He said, in effect, that he acted as a go-between for the Government and these contractors, in the interest of Anderson, Anderson & Co.; that acting in that interest his object would be to get as much freight as possible, and as high prices as possible, and being asked whether it had ever been understood that he was acting for the Government during these communications, his answer was in the affirmative. In the progress of his examination he stated that he was desirous not to pay more than was necessary in connection with the matter; that in the matter of freight, he had no interest except to get it as reasonable as he could.

The formal contract was closed in accordance with the letter of the Secretary, of the 21st January, 1875, by which the offer of Messrs. Cooper, Fairman & Co at £2 sterling per ton was accepted. We have had no opportunity of learning, whether at the time that this offer was accepted, the price named in it was as low as any at which the transportation could be secured, and upon the evidence there is no reason to conclude that any unnecessary expense was incurred by the Department, in entering into this contract.

The following sums have been paid on account of it :—

30th June, 1875.....	\$32,325 57
“ 1876.....	19,137 39

Total.....	<u>\$51,462 96</u>
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CONTRACT No. 18.

Transportation of Rails.

This contract is not contained in any single document. It was closed by a letter of the 22nd May, 1875, directed to the Manager of the Red River Transportation Company, in which the Secretary of the Department accepted and recited the terms of a previous offer. The terms thus stated were confirmed by a subsequent letter from Mr. Kittson, the Manager of that Company, dated 27th May, 1875. The bargain was for the transportation of about 5,000 tons of rails from Duluth to Winnipeg, or some point on the Red River between Pembina and Winnipeg, and, (subject to certain specified conditions), to the railway crossing at Selkirk, at the rate per ton, of 2,000 pounds, of \$15, American currency. A much larger quantity than 5,000 tons has been transported by these contractors, and the expenditure concerning the whole has been charged under the head of this contract. There was a correspondence in 1876, between these contractors and the Government, concerning the transportation of a larger quantity than above mentioned, and there may be a question whether all beyond 5,000 tons was carried under terms supposed to be concluded in that correspondence, or as a continuation of work under the correspondence of 1875. The price named for rails throughout being the same, \$15 American currency for a ton of 2,000 pounds, the correspondence of both years is hereinafter set out. No competition was invited in this case. There were, nevertheless, two rival offers for the work to be done. The first of these was contained in a letter of Messrs. Fuller & Milne, as follows:—

“HAMILTON, 16th April, 1875.

“SIR,—Noticing your advertisement for tenders to transport steel rails and fastenings to Fort William or Duluth, we have the honour to state that if the Government conclude to take railroad materials to Manitoba *via* Duluth, we are prepared to carry the steel rails and fastenings required for the Pembina Branch, and for the section of the Canada Pacific Railway, from the crossing of Red River to Lake of the Woods during the present and ensuing summer, at the following rates (American currency) delivered over the rail, viz:—

“From Duluth to any point on Red River between the boundary line and Fort Garry, for thirteen dollars and fifty cents (\$13 50) per ton. From Duluth to the crossing of the Canadian Pacific Railway over Red River, for the sum of fifteen dollars (\$15) per ton. In either case no Customs fees or dues to be charged to us on entering Manitoba.

“Provided the Government obtain permission from the American Government to transport the same through their territory without bonds, or on our own personal bond.

" Payments to be made at the rate of ninety per cent. on delivery, and that we be informed of the acceptance of this tender on or before the fifth day of May next. Our address will be Fort Garry after the 30th inst.

" We have the honour to be, Sir,

" Your obedient servants,

" FULLER & MILNE.

" F. BRAUN, Esq.,

" Secretary Public Works Department,
" Ottawa."

On the 21st April, 1875, the two following communications were forwarded to the Department from Mr. Kittson, the General Manager of the Red River Transportation Company :—

" OFFICE OF THE RED RIVER TRANSPORTATION COMPANY,

" No. 92 THIRD STREET, ST. PAUL, MINN., 21st April, 1875.

" SIR,—I hereby offer to transport railroad iron chairs, fish bars, spikes, and other material for track, from Duluth, Minnesota, to Winnipeg, Manitoba, or any point on the Red River between Pembina and Winnipeg, at the rate of \$15 (United States currency) per ton of 2,000 lbs., and I further offer that in case the channel of the Red River, at the Rapids at St. Andrews, between Winnipeg and the Stone Fort, is improved, so as to make a channel of sixty feet in width free from rocks and boulders, so as to enable boats and barges to pass with ordinary safety, to make the same rate, namely, \$15 per ton, from Duluth to the point of crossing of the Canadian Pacific Railway, north of said Stone Fort, or in case the said rapids are not improved I will allow the barges loaded with such railway material to be run down to said crossing, provided that the Canadian Government will receipt for the material at Winnipeg, and will assume all risk of danger of navigation arising from said rapids on down trip to both boat and cargo.

" The above rate to hold good and be in force during the season of navigation on the Red River, as long as there is two feet of water on the rapids and shoals of said river.

" This offer includes all labour in handling above material from the dock at Duluth to the bank of the river at point of delivery.

" Very respectfully,

" Your obedient servant,

" N. W. KITTSOON,

" General Manager.

" The Honourable ALEXANDER MACKENZIE,

" Minister of Public Works,
" Ottawa."

" OFFICE OF THE RED RIVER TRANSPORTATION COMPANY,

" No. 92 THIRD STREET, ST. PAUL, MINN., 21st April, 1875.

" SIR,—In accordance with your wish expressed to our Mr. Hill during his recent visit to Ottawa, I now desire to put in writing the offer made by him, to transport railway iron, chairs and spikes from Duluth to a point in Manitoba.

"With reference to the improvement of the rapids mentioned in my offer, I beg leave to state that from the information I have received, I am of the opinion that it could be made at a very small cost to the Government.

Very respectfully,

"Your obedient servant,

"N. W. KITTSON,

"General Manager.

"Hon. ALEXANDER MACKENZIE, Minister Public Works, Ottawa."

On the 23rd April, 1875, the Secretary of the Department wrote to Messrs. Fuller & Milne, acknowledging the receipt of their offer without further reference to it, after which it was not noticed by the Department. On the same day the offer of Messrs. Fuller & Milne was referred to the Chief Engineer. The offer of Mr. Kittson was not so referred. On the 28th April, 1875, the following letter was written by the Secretary to Mr. Kittson :—

"OTTAWA, 28th April, 1875.

"SIR,—I beg to acknowledge the receipt of your letter of the 21st. inst., together with the accompanying written offer relative to the proposed transportation from Duluth, U. S., to Manitoba, of steel rails, etc., and to state that Mr. Hill's verbal offer to the Department, when in Ottawa, comprised wharfage or other charges at Duluth. As no mention of these is made in your written offer, I am requested to ask that it be also put in writing so as to form part of said offer."

I have the honour to be, Sir,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"N. W. KITTSON, Esq.,

"92 Third Street,

"St. Paul, Minn., U. S."

The records of the Department, in the writing of the Deputy Minister, show the following directions : "Agree with these people for 5,000 tons, 30th April, 1875."

Subsequently, on May 5th, 1875, the Chief Engineer furnished the following report :—

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER IN CHIEF,

"OTTAWA, May 5th, 1875.

"SIR,—I return the letter of Messrs. Fuller & Milne offering to carry rails from Duluth to any point on the Red River between the boundary line and Fort Garry at the rate of \$13.50 per ton.

"Considering everything, I do not think price unreasonable; but before entering into a contract with these gentlemen, I think it would be advisable to look into the matter mentioned in the second last paragraph of their letter.

"Yours truly,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary Public Works."

On May the 8th Mr. Kittson amended the formal offer which he had previously made, as follows:—

"ST. PAUL, 8th May, 1875.

"SIR,—I have the honour to acknowledge the receipt of your favour of the 23th ult.

"In reference to the omission to include in my offer 'wharfage and other charges' at Duluth, was, so far as the wharfage, an oversight on the part of Mr. Hill in reporting the terms to me. On consulting Mr. Alexander, of the North Pacific Railway, and Mr. Hill, they informed me that they understood that wharfage or dockage was to be included in the offer, and I now beg leave to say that these charges are included in my offer. You must, however, allow me to state my offer cannot cover any charges on the material in question which may arise in the United States Customs Department, if any.

"If our offer is accepted we respectfully ask that the Dominion Government grant us time to make necessary and indispensable preparations to do the work satisfactorily.

"I have the honour to be,

"Very respectfully,

"Your obedient servant,

"N. W. KITTSON,

"General Manager R. R. Transportation Company.

"F. BRAUN, Esq.,

"Secretary Department Public Works,

"Ottawa."

The offer thus made on behalf of the Red River Transportation Company was accepted by the following communication from the Secretary of the Department:—

"OTTAWA, 22nd May, 1875.

"SIR,—Referring to your letters, of the 21st ult. and 8th inst., on behalf of the Red River Transportation Company, offering to transport rails and accessories from Duluth, Minnesota, to a point in Manitoba, on the conditions hereafter mentioned, I beg to inform you that the Honourable Minister of Public Works accepts of said offer, viz.:—

"To transport railroad iron, chairs, fish bars, spikes and other material for track, from Duluth, Minn., to Winnipeg, Man., or any point on the Red River between Pembina and Winnipeg at rate of (\$15) fifteen dollars, United States currency, per ton of two thousand pounds, and in case the channel of the Red River at the Rapids of St. Andrews, between Winnipeg and the Stone Fort, is improved so as to make a channel of sixty feet in width, free from rocks and boulders, so as to enable boats and barges to pass with ordinary safety, to make the same rate, namely, fifteen dollars per ton from Duluth to the point of crossing of

the Canadian Pacific Railway, north of said Stone Fort, or in case the said rapids are not improved to allow the barges loaded with such railway material to be run down to said crossing, provided that the Canadian Government will receipt for the material at Winnipeg, and will assume all risk of danger of navigation arising from said rapids on down trip, to both boat and cargo.

"The above rate to hold good and be in force during the season of navigation on the Red River as long as there is two feet of water on the rapids and shoals in said river.

"This offer to include all labour in handling above material from the dock at Duluth to the bank of the river at point of delivery, also all wharfage or other charges at Duluth, but not charges which might arise in the United States Customs Department.

"The transportation of these rails, about five thousand tons, to take place within one month from their arrival at Duluth.

"The points of delivery of these rails, &c., to be indicated by the Government.

"I have the honour to be, Sir,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"N. W. KITTSOON, Esq.,

"General Manager Red River Transportation Company,

"St. Paul, Minn., United States."

This was followed by a letter to the Secretary from Mr. Kittson, closing the negotiations, and from that time forward the matter has been treated as a binding contract. The last-mentioned letter is set out below:—

"ST. PAUL, MINN., 27th May, 1875.

"SIR,—I have the honour to acknowledge the receipt of your favour of May.

"The conditions contained in your communication are all in accordance with the proposition which I had the honour to make on the 21st April and 8th inst. for the transport of rails and other material to Manitoba. Preparations will at once be made for moving the rails with as little delay as possible after their arrival at Duluth, so that as large a proportion as practicable can be delivered before the season of low water. You will please indicate to me in due time the point of delivery, and name the Agent for the Government who will receive the rails in Manitoba.

"Allow me to bring to the notice of the Honourable Minister of Public Works, that no mention has been made of the time of payment. I presume the usual mode would not be objectionable, that is, payment to be made as fast as our boats deliver the rails at the point of destination. Will you kindly inform me, if this is acceptable, and if so, if any particular form of certificate will be required to be obtained by me from the Agent at Manitoba as a satisfactory voucher to be paid on presentation.

"The Northern Pacific Railway Company will receive the rails on arrival at Duluth.

"I have the honour to be, very respectfully,

"Your obedient servant,

"N. W. KITTSOON,

"General Manager R. R. T. Co."

"F. BRAUN, Esq.,

"Department of Public Works,

"Ottawa."

The offer above mentioned as having been made by Messrs. Fuller & Milne appearing to us to be decidedly more favourable to the Government than that made by the present contractors, we have endeavoured to ascertain the reason which moved the Department, to accept the higher-priced one. It will be noticed that in the offer on behalf of the Red River Transportation Company the ton is limited to 2,000 pounds. The evidence before us shows that the offer of Fuller & Milne was intended to cover a ton at 2,240 pounds. There appears to be some difference of opinion among the officials connected with the Department as to the weight of a ton of rails, when the number of pounds is not specified. Messrs. Fuller & Milne were not asked by the Department to specify the number of pounds at which they estimated the ton of their offer.

Mr. Fuller, as a witness, stated that the ton meant by him was the long ton, and that he never thought of any other in connection with this matter than that of 2,240 pounds. He testified that he was able to make a competing offer upon this occasion because there were rival lines of boats on Red River, the opposition being very keen, and that there were also competing lines of railway from Duluth to Red River, which fact lowered also the prices of land carriage. According to his recollection, rails were carried during that season between Duluth and points on the Red River at \$50, American currency, per car load of ten tons.

At this time the Mr. Fuller, of Fuller & Milne, was a contractor with the Government for the construction and maintenance of a telegraph line from Livingston to Edmonton, under contract No. 2, and there seems to have been no difficulty upon the subject of his responsibility. Mr. Mackenzie said in his evidence that he supposed he could be dealt with.

The offer of Fuller & Milne, if it had been enquired into by the Government, would have been ascertained to mean \$13.50, American currency for a ton of 2,240 pounds from Duluth to any point on Red River, between the boundary line and Fort Garry, and it was at the rate of \$15, American currency for delivery at the crossing of the Canadian Pacific Railway over the Red River, *i.e.* Selkirk, without any qualification as to state of water in Red River.

The offer made on behalf the Red River Transportation Company was plainly encumbered by very serious conditions, concerning the delivery at the crossing at Selkirk, which was the intended destination of a consider-

able portion of the rails, and these conditions led to a disappointment in the delivery at that point as hereinafter described.

Mr. Mackenzie, when asked by us why a higher price should be paid to Kittson & Co., than to Fuller & Milne, said he thought they were the only parties who could do it—that they had control over all the boats on the river, and of the Railway, and that by giving it to Kittson they paid nothing for storage or wharfage, and that there was a question of currency which made a difference of some cents. It is evident that Mr. Mackenzie is mistaken in the last-mentioned reason, because, in fact, Messrs. Fuller & Milne had made their offer plainly in the same currency as that named by Mr. Kittson.

It will be noticed that in Mr. Fleming's report of 5th May, above mentioned, he refers to the matter mentioned in the second last paragraph of Messrs. Fuller & Milne's letter, which related to some terms on which the transportation was to be made through American territory. This paragraph created no material difference on this score between the offers of Messrs. Fuller & Milne and the Red River Transportation Company, and it is in evidence that the acceptance of the one or the other in no way turned upon the clause thus referred to by Mr. Fleming.

As a fact, the amount of \$946.84 was paid by the Government for bonding charges on the rails transported under this contract, in addition to the prices named in the correspondence for the service itself.

The terms upon which this bargain was closed between the Government and the Red River Transportation Company included, among other things, this condition—that the transportation should take place within one month from the arrival of the material at Duluth. As a fact, 5,118 tons were landed at Duluth in 1875. Of these no more than 2,558 tons were delivered on the banks of the Red River during that season, and these were deposited where they were not available for the purpose for which they were transported. The residue 2,560 tons, were left at Duluth to be moved in some following season.

After investigating the merits of the two offers, it appears to us that that of Messrs. Fuller & Milne was, at the time of awarding the contract, more favourable to the Government than the other one, in the following respects:—The rate was \$1.50 lower per ton for whatever quantity should be moved, no further north than Winnipeg, and for the balance the liability to deliver at Selkirk was positive. The offer of Messrs. Fuller &

Milne was to take upon themselves the duty of moving the rails at such a time of year as would make the navigation of Red River available—or the alternative of moving them by land at their own cost—while the offer of Mr. Kittson threw all these risks, and they turned out to be serious and expensive risks upon the Government.

Again, the weight of the ton was, in the estimation and the intention of Messrs. Fuller & Milne, 2,240 pounds instead of 2,000 pounds, at which latter weight the contract was awarded to the Red River Transportation Company. This distinction alone gave the opportunity of saving an additional \$3,500 American currency on the 5,000 tons named in the contract.

As a fact, the failure to reach Selkirk on account of these conditions being granted to the contractors led, as mentioned in our report upon contract 5 A, to the Government entering into an arrangement with Mr. Whitehead, in order that these rails should be made available for contract No. 14 as quickly as possible, and the entering into that contract No. 5 A without competition, as was done, and without defining carefully the prices, as was also done, led to a serious loss by paying higher prices on that contract 5 A than ought to have been paid under the circumstances.

The evidence concerning this contract, as a whole, leads us to conclude that in obtaining it the contractors got an undue advantage; they got higher prices than were necessary to be paid, and were allowed conditions as to the delivery which were not desirable, and which could have been avoided by accepting the lower offer, and that at the time of awarding it, it was within the power of the Department to secure the work covered by it at a price considerably less than was promised to the contractors, and without conditions which were inserted, and which proved to be a great disadvantage to the Government. The evidence does not disclose the reason for paying the higher price, or conceding the other advantages; although the gentlemen who were then respectively the Minister, the Deputy Minister and the Chief Engineer, have been examined by us touching the subject.

As before mentioned, 2,560 tons of the quantity covered by this contract remained unmoved at Duluth, at the end of the year 1875.

In the spring of the following year, Mr. Kittson wrote as follows:—

“ST. PAUL, MINN, 19th April, 1875.

“SIR,—I hereby respectfully offer and agree to transport railway material, as described below, at the respective rates for each article named therefor; such transportation to be done over the Northern Pacific Railway and the steamboats and barges of the Red River Transport-

ation Company, and the rates named hereafter to hold good and be in force as long as there is a depth of 30 inches of water on the rapids and shoals of said Red River; and to deliver such railway material at any point designated on the bank of said river (where a good landing may be obtained) in the Province of Manitoba; provided it shall not be required of me to deliver any of such material north of the so-called rapids on said river at or near St. Andrews, in said Province, unless the depth of water on such rapids shall be for the purpose of navigation not less than 6 feet. The rapids at St. Andrews are considered, by steamboat pilots, a very dangerous place, against the dangers of which we cannot insure, and I make the stipulation in regard to the depth of water on said rapids, having in view both the safety of the boats and cargo. However, in case of emergency, when it should be desired to take any material over said rapids I will do all in my power, provided that the Dominion Government takes the risk of both boat and cargo.

"The rates for transportation to be as follows: rails, chairs, joints and spikes, 75 cents per 100 lbs., in U.S. currency.

"Railway locomotives, from St. Paul or Duluth to Moorehead, 35 cents per mile, and from Moorehead to point of delivery, in Province of Manitoba, \$1 per 100 lbs., in U.S. currency.

"Passengers or baggage cars, 15 cents per mile, from St. Paul or Duluth to Moorehead, and 75 cents per 100 lbs. from Moorehead to points of delivery in Province of Manitoba.

"Boxcars, 10 cents per mile, and flatcars, 8 cents per mile, from St. Paul or Duluth to Moorehead, and 75 cents per 100 lbs. from Moorehead to points of destination in Province of Manitoba, all in U.S. currency. It is understood that all locomotives and cars shall be in such condition that they can be hauled over the railway from St. Paul or Duluth on their own wheels.

"It is understood that the officer or engineer receiving the material should furnish a sufficient tramway or trestle upon which locomotives or cars can be safely unloaded.

"The Red River Transportation Company have now seven steamboats and fourteen barges, and the carrying capacity of the line is more than double what it was last year.

"With a fair stage of water in the Red River the coming season I could transport from 8,000 to 10,000 tons.

"The remainder of the rails, from last year, will go down on the first toots.

"I have the honour to be, Sir,

"Very respectfully

"Your obedient servant,

"N. W. KITISON,

"General Manager, R.R. Transportation Co.

"To the Honourable

"Minister of Public Works,

"Ottawa, Canada."

On this matter the Chief Engineer reported as follows:—

"OTTAWA, 13th May, 1876.

"SIR,—With regard to the transportation of rails to Red River, there were 5,118 tons landed at Duluth last year, of which 2,558 tons were delivered on the banks of Red River, about eight miles from Winnipeg; the remainder, 2,560 tons are, I believe, to be moved forward this spring.

"I would recommend that arrangements be entered into for moving a further quantity this year, and I would suggest that they be delivered at the town plot of Selkirk. I doubt if

the forwarders, from what I can learn, will be able to transport more than 5,000 tons, during the present season, but I think arrangements should be entered into for that quantity.

"I would also suggest that arrangements be at once made to take forward to Selkirk, one locomotive and say a dozen flat cars; this can only be done while the water in Red River is high, and as the river is in this condition only for a few weeks, no time should be lost.

"With a working train at the place indicated, we would be enabled to commence track-laying on the 14th contract at an early day.

"I am, etc., etc.,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary Public Works Department."

Mr. Kittson's offer was accepted in the following communication as far as all the articles are concerned except rails:—

"16th May, 1876.

"SIR,—With reference to your letter of the 19th ult., offering to transport material required in connection with the Canadian Pacific Railway, I am to state that your offer is accepted on the following conditions:—

"All transportation to be done over the Northern Pacific Railway and by the steamboat and barges of the Red River Transportation Company, at the rates named hereafter, to hold good during the present season of navigation, so long as there is a depth of thirty inches of water on the rapids and shoals of the Red River, the material to be delivered and piled at any point designated by this Department where a good landing may be obtained in the Province of Manitoba. No delivery to be required north of the rapids at or near St. Andrews, unless there be a depth of water on said rapids, for purposes of navigation, of six feet.

"The rates of transportation to be as follows:—

"Fish-plates and bolts, spikes, points, crossings and switch gear, 75 cents U. S. currency, per 100 lbs. weight. Each railway locomotive with tender, from St. Paul or Duluth to Moorehead, 35 cents per mile, and from Moorehead to point of delivery in Manitoba, \$1.00 per 100 lbs. U. S. currency. Each passenger or baggage car, 15 cents per mile from St. Paul or Duluth to Moorehead, and from Moorehead to point of delivery in Manitoba, 75 cents per 100 lbs. weight. Each box car 10 cents per mile, and each flat car 8 cents per mile, from St. Paul or Duluth to Moorehead, and from Moorehead to point of delivery in Manitoba both box and flat cars, 75 cents per 100 lbs. weight, all in U. S. currency.

"All locomotives and cars to be in such condition that they can be hauled over the railway on their own wheels; and the officer receiving them to furnish sufficient tramway or trestle for their unloading in the Province of Manitoba.

"If, owing to the state of the water, or to other cause, transportation be delayed, the material not to be allowed to remain at Duluth or any other place, where wharfage or demurrage dues may be charged against the Government.

"I have the honour to be, Sir,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"N. W. KITTSON, Esq.,

"General Manager Red River Transportation Co.,

"St. Paul, Minn."

Mr. Braun's letter was answered as follows:—

"OFFICE OF THE RED RIVER TRANSPORTATION COMPANY,
"120 EAST THIRD STREET,

"ST. PAUL, 27th May, 1876.

"SIR,—I have the honour to acknowledge the receipt of your favour of the 16th inst., informing me of the acceptance of my offer made to the Hon. Minister of Public Works, under date of April 19th, 1876, with the addition of the following clause:—

"If, owing to the state of the water or to other cause, transportation be delayed, the material not to be allowed to remain at Duluth or any other place where wharfage or demurrage dues may be charged against the Government.

"Which additional clause I hereby accept and include in my offer of above date.

"The iron remaining over from last season is being taken down and will all be landed in Manitoba within two weeks, when we shall be pleased to receive another quantity equal in amount or more to your last year's shipment.

"I remain, very respectfully,

"Your obedient servant,

"N. W. KITTSOON,

"General Manager.

"F. BRAUN, Esq.,

"Secretary Department Public Works,

"Ottawa."

In Mr. Braun's acceptance of Mr. Kittson's offer it will be noticed that rails are omitted. The evidence does not show whether that omission was due to inadvertence or to the idea that since the same price for rails was asked in the offers of both years, there was no need of repeating the bargain.

As a fact the new correspondence was numbered contract 28, but as none of the principle articles named in it, except rails, were transported, Mr. Fleming's report of 1877, page 395, states that no work was performed under contract No. 28. The books of account show no expenditure charged against it, the Department treating the transportation of rails by these contractors as part of contract 18, and the payments are charged accordingly.

As before mentioned the failure by these contractors to deliver the rails at Selkirk, was alleged to be, on account of the state of the water in Red River, and that they were thereby relieved from delivering them.

Mr. Rowan, the District Engineer, gives the following evidence on this matter:—

"The facts are these: The first I knew of such a contract at all was the rails coming here (Winnipeg), and parties asking me where they would

unload them, and I told them at Selkirk; and they told me they could not go down the rapids at St. Andrew's. I said: 'You must go down; I want the rails down there.' They said they would not, that their agreement with the Government was that they could navigate the whole of the Red River from Moorehead to St. Boniface, and were bound by the Government to carry the rails as long as there was two feet of water in the river, but to go over the St. Andrew's Rapids they had to have six feet. I thought it was a very peculiar thing, and if my recollection serves me right, I applied to Ottawa to know if it was the case, and I got a copy of the agreement that was made, and I insisted upon their going down, notwithstanding their contract. I said they must go down, that there was six feet of water there. They went down with the first load part of the way, and then turned back when they got to the head of the rapids, and unloaded them when they got to a place called the Birches, opposite Bird's Hill, Pembina Branch now. I think it was the following year they made the same pretext, and said there was not six feet of water in the rapids; I said there was, they said there was not. It was a question of assertion; and I hired a small steamboat and had a beam stretched across her forty feet long, and had teeth put into it like a rake three feet apart, and made her go down the river from here to Selkirk, and took the levels in the river when she went down, and there was no denying that there was eight feet of water, without any boulders to strike the teeth three feet apart, and by that means I got the rails, 900 tons, down to Selkirk. Then the water fell to the level that we knew by our levels would not leave more than six feet over some of the boulders, and I ceased to insist. But my own impression is that the difficulty was not so much that they could not go down, as that having gone they had not the power to tow their barges back again up the rapids."

In June, 1876, the following letter was sent from the Department to the contractors:—

"OTTAWA, 15th June, 1876.

"Sir,—The Department is advised that steel rails have been taken to Winnipeg, but that none have been delivered at Selkirk below the rapids. As the Department had a right to expect that an effort would be made to transport at least a portion of them to the latter place, will you please communicate to me when you anticipate that this delivery will be effected.

"I have the honour to be, Sir,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"N. W. KITTSO^N, Esq.,

"General Manager Red River Trans. Co."

The deliveries under the contract were as follows:—

	Tons.	Lbs.
During 1875, at Pritchards, 9 miles north of Winnipeg.....	2,378	1,360
1876, Selkirk.....	918	465
St. Boniface.....	11,839	926
1877 "	271	1,086
1878 }	414	238
1880 }		

For delivery at St. Boniface, the prices of Messrs. Fuller & Milne were \$1.50 per ton less than of these contractors.

That difference in the quantity delivered there would amount to about \$18,800 American currency.

The discount on American currency varied during the period of the payments under that contract, falling gradually from 13½ per cent. in the first year to about 4 per cent. in 1877, and after that there was no discount.

The offer of Messrs. Fuller & Milne was intended, and could have been ascertained to mean the long ton instead of the short ton. That would give about 1,696 fewer tons to be paid for, which, under this contract, cost \$25,410 American currency.

On 19th April, 1877, Mr. Fleming reported that about 11,000 tons were wanted at Selkirk for section 14, of which quantity only 918 tons had reached there; and he stated that this same company of contractors offered to take the rails from where they had been left to Selkirk, at \$2.13 per ton, which, with handling, &c., he said would probably increase the cost of the second moving to \$3.00 per ton.

This left 10,082 tons to be moved forward to Selkirk from the places at which they had been deposited under this contract.

It is manifest that it would have been a saving to get the service done and the delivery effected under the Fuller & Milne offer instead of the way in which it was subsequently accomplished. The handling alone was an item of some thousands of dollars, but the exact loss cannot be calculated under the circumstances, because the service was not performed by contractors—it was done by building the North Pembina Branch under contract 5 A, and taking the rails over that.

So far our remarks have been made as if it had been possible to get for the whole quantity terms as favourable as those offered by Messrs. Fuller &

Milne for the first 5,000 tons. We have no means of ascertaining whether this was possible. No competition was invited. The price named by Mr. Kittson in 1875 and in 1876 was the same, and as before mentioned the transaction has been treated in the books of the Department as an enlargement of the contract made with his Company in 1875:

The difference between the direct money outlay upon the whole quantity at Mr. Kittson's prices, and of those of Messrs. Fuller & Milne, would be about \$44,000 American currency.

Assuming that the comparison should be made only in the quantity named by Messrs. Fuller & Milne in 1875, the direct loss would be on 5,000 tons instead of on 15,822, and would be diminished in that proportion.

This, however, is without taking into account the consequences of the failure of the Red River Transportation Company to deliver at Selkirk, as proposed to be undertaken unconditionally by Fuller & Milne.

The expenditure under this contract was as follows:—

30th June, 1876.....	\$ 80,865 38
“ 1877.....	125,985 12
“ 1878.....	3,563 70
“ 1879.....	3,514 04

Total.....	\$212,928 24

CONTRACT NO. 19.

Construction of an Engineer's House.

By this contract, dated 3rd June, 1875, Moses Chevette agreed to perform the work described in specifications attached to the agreement, including amongst other things, the building of an Engineer's house at Read's, near Kaministiquia Bridge, for the price of \$1,600.

The contract was let under the supervision of the Engineering Department, and, according to the evidence, was made without giving the contractor any undue advantage or causing unnecessary expense. It was duly fulfilled, and the amount mentioned in the contract was paid without extras before the 30th June, 1876.

CONTRACT No. 20.

Transportation of Rails.

By this contract, dated the 29th day of July, 1875, the Merchants' Lake and River Steamship Company covenanted to transport during the navigation of 1875, from Montreal to Duluth and Fort William, or either of them, or part to one and part to the other, 5,000 tons of rails and accessories, at the price of \$6 20 per ton of 2,240 pounds.

In this case the agreement was made by correspondence, and covered the transportation and other services connected with it of about 10,391 tons of rails and their accessories, from Montreal to Fort William or Duluth, at the rate of \$6.20 per ton.

Competition for this work was invited by advertisement, dated 1st April, 1875, which named the 19th of that month for the receipt of tenders—several offers were duly received by the Department and reported on, but the result of the competition was not adopted as a basis for an agreement owing to the preference of spontaneous offers made at different times by Messrs. Cooper, Fairman & Co., who took no part in the said public competition.

On the day after that named for the final receipt of tenders, the following report of their contents was made to the Department:—

“TENDERS FOR TRANSPORT OF RAILS TO LAKE SUPERIOR.

A. Charles Stephenson, Kingston, per ton.....	\$6 50
B. C. Edwards, Kingston, per ton.....	6 25
C. T. H. Beatty & Co., Thorold, per ton.....	7 00
D. Holcomb & Stewart, Kingston, per ton.....	6 74
E. W. H. Perry, Buffalo, per ton.....	7 00
F. G. E. Jaques & Co., Montreal, per ton.....	6 30
G. Cox & Green, Montreal, per ton.....	6 50
H. E. Samuel, Montreal, per ton.....	6 00

Opened by

“F. BRAUN, *Secretary.*

“F. H. ENNIS.

“DEPARTMENT OF PUBLIC WORKS,

“OTTAWA, 20th April, 1875.”

Three days after the opening of the tenders Messrs. Cooper, Fairman & Co., addressed the following letter to the Deputy Minister:—

“MONTREAL, 23rd April, 1875.

“DEAR SIR,—Owing to our having tendered, and the Department having accepted, the tender for delivery from “Montreal” to the “West,” we have become committed in matter of

charter, &c., for delivery of from (10,000 to 12,000) ten to twelve thousand tons rails, shipment to begin immediately. We therefore beg that you would advise to what ports you wished the first lot shipped and the quantities required at each place. We have advice from the Mersey Company that we will have about 2,000 tons here by the 1st of May. We also understand that you require *cartage, handling and piling* to be done by the shippers, which was not included in our tender, but we would be pleased to attend to these for an additional sum of (60) sixty cents per ton, making a total of \$6.20 per ton gross for carting, handling, insurance, piling, &c. Your early reply will oblige.

“COOPER, FAIRMAN & CO.,

“*Representing the Merchants' Lake and Steamship Line,*

“*Consisting of eighteen first-class Propellers.*”

“T. TRUDEAU, Esq.,

“Deputy Minister Public Works,

“Ottawa.”

The contention here set up by Messrs. Cooper, Fairman & Co. is shown by the records of the Department to be without foundation, and it is to be remarked that they were silent concerning it during the period which elapsed from the date of the advertisement until three days after the opening of the tenders, and after the report upon them had been made to the Department. They made their claim, however, before the Department had taken action with any of the regular tenderers. The allusion in their letter to the acceptance of the tender for delivery from “Montreal to the West” pointed to tenders which they had made in November, 1874.

As mentioned in our report on steel rails, 1874-75, the advertisement issued by the Department in the fall of 1874, called for tenders for delivery at Montreal and at no other place, notwithstanding which fact Messrs. Cooper, Fairman & Co. sent in tenders in their own name for delivery at other points as follows:—

“*(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, 5,000 to 10,000 tons ‘Mersey’ or ‘Bolton’ brand Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

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

“The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastening, 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.:

	Per Ton.
Bessemer steel rails, at.....	£13 5 3 stg.
Fish-bolts, at.....	22 5 3 stg.
" 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, 5,000 to 10,000 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 lbs., Bessemer steel rails and fish-plates, at £12 6s. Od. sterling; iron bolts and nuts, \$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 wharfage or harbour dues on ports payable by Government.

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

It is plain that these offers were not within the terms of the advertisement. Nevertheless, Mr. Fleming included the result of them in his report of the 19th November, 1874.

In a separate envelope a tender for 10,000 tons had been made at that time, in pursuance of the terms of the advertisement, by the Mersey Steel and Iron Company, as follows :-

" (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. Od. 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 & Co., Agents,
" Montreal."

On 2nd December, 1874, the following letter was addressed to Messrs. Cooper, Fairman & Co. :—

“ 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.”

The evidence shows that the acceptance here notified was intended to be not only of the offer by the Mersey Company for 10,000 tons, to be delivered at Montreal according to the advertisement, but of an additional 10,000 tons covered by the offer of Messrs. Cooper, Fairman & Co. for delivery on the western lakes, and made as aforesaid without competition public or private. Agreements were prepared and forwarded to be executed by the Mersey Company as if that Company had, in their own name, tendered for delivery of 10,000 tons at ports on the western lakes as well as 10,000 tons at Montreal.

The evidence shows that the Mersey Company repudiated the authority of Messrs. Cooper, Fairman & Co. to make an offer on their behalf either for delivery on the western lakes or for bolts and nuts, which latter articles had been included in the tender signed in the name of the Mersey Company by Messrs. Cooper, Fairman & Co., as their agents, in the November competition.

On January 4th the following telegram was received at the Department :—

“ OTTAWA, 4th January, 1875.

“ By Telegraph from Montreal.

“ Mersey Company have signed tender delivered only at Montreal. Cannot now deliver West. Above received by cable.

“ AGENTS MERSEY CO.

“ Hon. A. MACKENZIE.”

Mr. Mackenzie, in his evidence, stated that this signature “ Agents Mersey Co.” meant Messrs. Cooper, Fairman & Co.

Subsequently to the above telegram the Minister was informed that the Mersey Company had declined to fulfil the offer made in their name by

Messrs. Cooper, Fairman & Co. concerning bolts and nuts, as shown by the following letter :—

“MONTREAL, 2nd March, 1875.

“DEAR SIR,—In the contract for steel rails, &c., with the Mersey Steel and Iron Company they make strong objections against having bolts and nuts included in their contract, and they were accordingly left out. The price was to have been (\$101) one hundred and one dollars per gross ton, delivered in bond at Montreal.

“We, as agents for Messrs. Robb & Co., of the Toronto Bolt and Nut Works, beg to supply the Laird bolts and nuts as per sample bolt, to be furnished by the Inspector, Mr. C. P. Sandberg, of London, the price to be (\$101) one hundred and one dollars per gross ton, *duty paid*, delivered in Montreal or Toronto.

“We are, dear Sir,

“Yours, &c.,

“COOPER, FAIRMAN & CO.,

“Agents for ROBB & Co.

“The Minister of Public Works,

“Ottawa.”

The contention put forward by Messrs. Cooper, Fairman & Co., in their letter of the 23rd April, above mentioned, was thus based upon the fact that they had in November preceding made a spontaneous offer in their own names for the delivery of 10,000 tons at ports on the western lakes, points at which no delivery had been submitted to competition; that this offer was accepted in its entirety and connected with an offer of 10,000 tons made within the terms of the advertisement by the Mersey Company for delivery at Montreal, these two quantities of 10,000 tons, each being included in one contract, intended to be executed by the Mersey Company in England. It was after the Department had become aware that the Mersey Company had repudiated the offer for delivery on western lakes, and after the result of a public competition for the same work had become known to the Department, that Messrs. Cooper, Fairman & Co. advanced this claim in their letter of the 23rd April, which had the effect of interrupting negotiations with tenderers, who had made offers in the regular way, in a public competition.

Mr. Trudeau, as a witness, states that this claim of Messrs. Cooper, Fairman & Co., was, in his opinion, not a good claim.

Before the receipt of the letter of 23rd April, from Messrs. Cooper, Fairman & Co., the Secretary of the Department had addressed Mr. Samuel, the lowest tenderer, as follows :—

"22nd April, 1875.

"Furnish list and descriptions of vessels you intend employing; also nature of security for fulfilment of contract.

"F. BRAUN,
"Secretary.

"EM'L. SAMUEL,
"P. O. Box, 483½,
"Montreal."

After which the following communications were received from Mr. Samuel :—

"No. 110.

OTTAWA, 26th April, 1875.

"By Telegraph from Montreal, 26th.

"Offer as surety D. Butters & Co., merchants. If more required can furnish security to any amount. Guarantee to ship by first-class propeller. Answer.

"E. SAMUEL.

"To F. BRAUN, Esq.,
"Secretary,
"Board Public Works."

"No. 82.

OTTAWA, April 27th, 1875.

"By Telegraph from Montreal, 27th.

"Are you open to more than the quantity named in my tender? If so, please name the quantity of rails you desire carried on same terms.

"E. SAMUEL."

"To F. BRAUN."

"No. 13.

OTTAWA, 29th April, 1875.

"By Telegraph from Montreal, 29th.

"Your early reply to my tender will oblige, so as to regulate movements of propellers pending arrival of rails. Security and propellers will be made satisfactory to you.

"E. SAMUEL.

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

The day before the date of the last letter, the Secretary of the Department had notified Messrs. Cooper, Fairman & Co., as follows :—

"OTTAWA, 28th April, 1875.

"Minister of Public Works would be glad to see you respecting carriage of steel rails westward.

"F. BRAUN.

"COOPER, FAIRMAN & Co.
"Montreal."

On the 30th April an Order in Council was passed as hereinafter set out :—

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 30th April, 1875.

“On a Report, dated 29th April, 1875, from the Honourable the Minister of Public Works, stating that proposals have been invited for the transport of 5,000 tons of steel rails and fastenings from Montreal to Fort William or Duluth, Lake Superior, during the season of 1875; the price to include all cost of handling, piling, insurance and charges at all points, and that the undermentioned tenders have been received, viz:—

	Per ton.
1. E. Samuel, Montreal.....	\$6 00
2. C. Edwards, Kingston.....	6 25
3. G. E. Jaques & Co., Montreal.....	6 30
4. Chas. Stephenson, Kingston.....	6 50
5. Cox & Green, Montreal.....	6 50
6. Halcomb & Stewart, Kingston.....	6 74
7. J. H. Beatty & Co., Thorold.....	7 00
8. W. F. Perry, Buffalo.....	7 00

“That in a tender made in November last for the supply of steel rails Messrs. Cooper, Fairman & Co., agents, stated the difference in price for delivering those rails in Montreal or Duluth and French River would be \$5.60 per ton exclusive of any harbour or wharfage dues at the ports named.

“That those gentlemen now offer on behalf of the Merchants’ Lake and Steamship Line, (consisting of eighteen first-class propellers) for an additional sum of not more than sixty cents per ton to the price of \$5.60 asked in their tender of November last, or say a total sum of \$6.20 per ton, to undertake the transport of 5,000 tons of steel rails from Montreal to Fort William or Duluth, and assume all cost of handling, piling, insurance and charges as required by the advertisement.

“That Mr. E. Samuel, who is the lowest bidder on the list given above, is not a steam-boat owner.

“The Minister, therefore, recommends that the offer of Messrs. Cooper, Fairman & Co., be accepted.

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

“Certified,

“W. A. HIMSWORTH,

“Clerk Privy Council.”

The \$5.60 referred to in this Order in Council is apparently the difference between £11 3s. sterling equal to \$54.26, at which price an offer had been made on behalf of the Mersey Co. for delivery at Montreal, in the November competition, and £12 6s. sterling, equal to \$59.86, at which price, in their own name, Messrs. Cooper, Fairman & Co. had then offered delivery on the western lakes.

Mr Fairman stated, in evidence, that when his firm wrote this letter, on the 23rd April, they were not owners, or part owners, of any steamboat line, and according to the evidence before us, the offer of Messrs. Cooper, Fairman & Co. in their own name was accepted on the 2nd December, 1874, for delivery on western lakes without any ground for supposing them to be owners of any steamboat, or to be representing any such owner. As far as we can judge from the evidence, the tender of Mr. Samuel was not refused because he was not a steamboat owner, but upon the assumed ground that Messrs. Cooper, Fairman & Co. had a claim to the contract for transportation in consequence of the notification aforesaid made by the Secretary of the Department, on the 2nd December, 1874, concerning tenders made on behalf of the Mersey Co. In our judgment Messrs. Cooper, Fairman & Co. had not, under the circumstances, a claim to the contract for transportation as asserted by them.

On the 5th May, 1875, the Secretary of the Department notified Mr. Samuel as follows :—

“OTTAWA, 5th May, 1875.

“SIR,—Referring to your telegram of the 29th ult., relative to your tender for the transport of steel rails westward, I am to inform you that the Minister of Public Works has made other arrangements for this service.

“ I have the honour to be, Sir,

“ Your obedient servant,

“ F. BRAUN,

Secretary.

“ E. SAMUEL, Esq.,

“ Montreal.”

A week afterwards Mr. Samuel addressed the following letter to the Secretary of the Department :—

“ No. 65.

OTTAWA, 12th May, 1875.

“ *By Telegraph from Montreal.*

“ Sir,—For reasons unnecessary to state, I beg to withdraw my tender for transport of railway iron for Lake Superior ports.

“ E. SAMUEL.

“ To F. BRAUN, Secretary B. P. W.”

The day following this the Secretary of the Department sent the following communication to the successful firm :—

“ OTTAWA, 13th May, 1875.

“ The carriage of five thousand tons (5,000) of steel rails and accessories from Montreal to Duluth, or Fort William, for six dollars and twenty cents, including all charges, is awarded to you. A contract will be prepared.

“ F. BRAUN.

“ COOPER, FAIRMAN & Co.,

“ Montreal.”

On the 10th of the following month a new spontaneous proposal was made by Cooper, Fairman & Co, and accepted by the Department. It is shown in the two following letters :—

“ MONTREAL, 10th June, 1875.

“ DEAR SIR,—We hereby agree as agents of the Merchants' Lake and River Line of steamer's to carry from ten to twenty thousand tons of steel rails, on the same terms and conditions as former contract, namely, at six dollars and twenty cents currency per gross ton for Duluth and Fort William, on Lake Superior, which rate includes piling at the port of delivery and insurance—said insurance we bind ourselves to effect to the entire satisfaction of the Department.

“ Yours most respectfully,

“ COOPER, FAIRMAN & CO.

“ T. TRUDEAU, Esq.,

“ Public Works Department,

“ Ottawa.”

“ OTTAWA, 10th June, 1875.

“ GENTLEMEN,—I beg to acknowledge the receipt of your letter of this day's date, offering on behalf of the Merchants' Lake and River Line of steamers to carry from ten to twenty thousand tons of steel rails on the same terms and conditions as former contract, namely, at six dollars and twenty cents, currency, per gross ton, for Duluth and Fort William, on Lake Superior, which rate includes piling at port of delivery and insurance, and to inform you that the Department accepts your offer for five thousand (5,000) tons.

“ I have the honour to be, Sirs,

“ Your most obedient servant,

“ F. BRAUN,

“ Secretary.

“ Messrs. COOPER, FAIRMAN & Co.,

“ Montreal.”

The effect of this correspondence, as a whole, is to give Messrs. Cooper, Fairman & Co., or their principals, \$6.20 per ton for transportation of 10,000 tons from Montreal to ports on the western lakes; and it is alleged that the reason for so doing is that they were promised, in the fall of 1874, a contract for rails to be delivered at those ports at a price which, including some new items, would equal this \$6.20 beyond the price at which they then offered rails at Montreal.

In the competition in the fall of 1874, another firm, whose tender is set out at page 181, had made offers to deliver rails on the western lakes, and the result of their tender, as well as that of Messrs. Cooper, Fairman & Co., was reported on by Mr. Fleming on the 19th November, 1875. (See page 178.)

There he gives the substance of these offers as follows :—

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

This, however, does not indicate that these offers competed with each other for both places, as they did in fact. The substance of the offers from these firms, at the above-mentioned ports, was really as follows :

	Tons.	Thunder Bay.	Duluth.
Post & Co	5,000	..... \$58 91	\$58 16
“	5,000	..... 60 15	59 40
Cooper, Fairman & Co..	10,000	..... 59 86	59 86

Inasmuch as all the rails that both firms offered for delivery at Montreal, were accepted by the Government, the final cost of any portion delivered by either, at ports on the western lakes, would be, more or less, according as the highest or lowest price was paid for the transportation of any portion of them to those ports.

No competition had been invited for delivery on the western lakes by the advertisement in the fall of 1874, but if the Department desired to accept any spontaneous offer concerning this matter, the tenders before them on the 19th November, 1874, showed that Messrs. Post & Co. had offered 10,000 tons for delivery at Duluth, or 5,000 at Duluth and 5,000 at Thunder Bay, at prices lower than those named by Messrs. Cooper, Fairman & Co., and adopted in the notification of Mr. Braun on the 2nd December, 1874, which has been made the ground for giving that firm this contract.

Although the correspondence above mentioned covered two separate quantities of 5,000 tons each, the formal contract referred to at the head of this report, and dated subsequently to the closing of that correspondence, named no more than 5,000 tons. The quantity actually transported was about 10,391 tons.

Mr. Trudeau, in his evidence, said that subsequent events have shown that, if in 1874 the tender made by Post & Co. had been accepted, the cost of the 10,000, if delivered at Duluth, would have been decreased by \$12,400, and if at Fort William, by \$4,900.

As a fact, about 5,349 tons of rails and accessories were delivered at Duluth and about 5,477 at Fort William, upon which, at the rates stated by

Mr. Trudeau, the loss occasioned by accepting the offer of Cooper, Fairman & Co., in preference to the lower one of Post & Co., was over \$9,000.

We conclude from the evidence that, in this contract, the contractors got an undue advantage, namely, a higher price than that at which other tenderers had offered to do the work bargained for. The evidence discloses no reason for refusing the lower offer of Post & Co.

The work having been completed, the following sum was paid on the contract: \$67,126.28.

CONTRACT No. 21.

Movement of Rails.

By this contract, dated the 9th August, 1875, Patrick Kenny undertook to remove all the steel rails that would be landed from sea-going vessels in Montreal during that year's navigation, and to lay them on the ground at the Rock Cut, on the Lachine Canal, at the rate of 80 cents per ton.

The work under this contract was let by public competition. The Deputy Minister, on the 14th July, 1875, instructed Messrs. Morin & Co., of Montreal, to call for tenders. Advertisements were accordingly issued stating that tenders would be received by Messrs. Morin & Co., up to noon of the 19th July. On the 20th July, Messrs. Morin & Co. reported that they had received, up to the time named in the advertisement, 16 tenders, of which two named 80 cents per ton for the work to be performed, one by Messrs. Holcomb & Stewart for a quantity of 5,000 tons, and the other by Patrick Kenny, without limiting the quantity. The contract was awarded to the latter, who had, in our judgment, made the best available offer for the Department.

After about 11,000 tons had been removed, the work was not proceeded with, because the Department was led to the conclusion that it would be more economical to transport the balance, as they arrived, to a point further west.

A claim is made by the contractor against the Government for damages occasioned by the stoppage of the work contrary to the meaning of the contract, and at the date of our commission the claim was not settled. The amount paid under the contract up to the 30th June, 1880, was \$8,782.11.

CONTRACT No. 22.

Transportation of Rails.

In this case there is no formal contract. The correspondence between the Department and the contractor, shows that Messrs. Holcomb & Stewart undertook to transport from 1,000 to 10,000 tons of steel rails from a wharf or ship's side in Montreal to Kingston, at the price of \$1.80 per ton or less, upon the terms and conditions hereinafter set out.

Competition was invited by the Chief Engineer at the request of the Deputy Minister of the Department. This was done by a telegram to each of the following forwarders :—

D. McPhie.....	Montreal
Millar & Jones.....	Montreal.
Jacques & Co.....	Montreal.
Holcomb & Stewart.....	Kingston.

The request for competition was in the following words :—

“ At what rate per long ton would you take rails from wharf or ship's side, Montreal, and deliver them at the Penitentiary wharf, Kingston ? ”

The answer from each of the firms addressed as aforesaid is shown by the report upon the subject by the Chief Engineer, dated 20th September 1875, and hereinafter set forth. The answers showed that Messrs. Holcomb & Stewart made the offer which was most favourable to the Government.

Before this competition was invited, Mr. Leonard G. Bell had been directed to examine into the matter and report upon the expediency of storing the rails at Kingston rather than at the Lachine cut at Montreal, to which point Mr. Kenny, under a previous contract (No. 21), had been delivering them. Mr. Bell's report upon the subject having been considered by the Chief Engineer, he, on September 14th, 1875, had recommended that the forwarding should be awarded by competition in the way in which it was subsequently accomplished. Mr. Bell's report had shown that the Warden of the Penitentiary at Kingston was anxious to obtain the work of piling and re-loading the rails, as there was then not sufficient employment for the convicts, and after the receipt of the tenders showing the offer of Messrs. Holcomb & Stewart to be the most favourable, the following correspondence took place between that firm and the Department relative to a deduction from the price named in the tender :—

" OTTAWA, September 14th, 1875.

" GENTLEMEN,—Referring to your offer of the 2nd ulto., for transporting rails, &c., from Montreal to Kingston for \$1.30 per ton, which sum to cover all expenses connected with that service, I am directed to enquire what reduction you would be willing to make from the above price if the Government assumed the expense of unloading and piling the rails.

" I have the honour to be, Gentlemen,

" Your obedient servant,

" F. BRAUN,

" *Secretary.*

" MESSRS. HOLCOMB & STEWART,
Kingston, Ont."

" KINGSTON, Ont. September 15th, 1875.

" SIR,—Referring to your favour of yesterday's date, we would agree to make a reduction of Ten (10) cents per ton from our rate, provided the Government assumed the expense of unloading and piling the rails. It would not cost us this sum, as such labour is generally done by our own crews.

" As the season is far advanced, we would beg leave to press on the Department the necessity of taking immediate action. We can place capacity at once alongside the iron at Montreal for 2 to 3,000 tons. Kindly reply by return mail, or, if possible, by telegram, to-morrow.

" The writer can go to Ottawa if desired to do so.

" We remain, yours respectfully,

" HOLCOMB & STEWART.

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

On September the 20th, the Chief Engineer reported as follows :—

" OTTAWA, Sept. 20th, 1875.

" SIR,—As requested by the Deputy Minister on the 18th inst., I sent a telegram to the following forwarders :—

" D. S. McPhie, St. Lawrence Forwarding Company, Montreal.

" Millar & Jones, Forwarders, do

" Jacques & Co., do do

" Holcomb & Stewart, do Kingston.

" At what rate per English ton would you take rails from wharf or ship's side, Montreal, and deliver them at the Penitentiary wharf, Kingston ?'

" I enclose herewith the replies received :—

" No. 1. From D. McPhie, offering to carry rails between the points named at \$.35 per English ton, exclusive of canal tolls.

" No. 2. From Holcomb & Stewart, offering to carry rails at \$1.30 per English ton, including canal tolls and all charges.

" No. 3. From Millar & Jones, offering to convey rails at \$1.50 per English ton.

" As the canal tolls would probably amount to about 15 cents per ton, it is clear that the offer of Holcomb & Stewart is the lowest.

"These gentlemen further propose to make a deduction of 10 cents per ton, provided the Government assume the expense of unloading and piling the rails. As the Penitentiary labour will be available for that purpose, I think, under all the circumstances, it would be advisable to accept the offer. In the event of this being done, as there is [no time to be lost, I would recommend that a telegram be immediately sent to Holcomb & Stewart, so that the barges they have in Montreal ready for the work may at once be loaded. The Penitentiary authorities should also be notified to make preparations for unloading and piling the rails on their arrival.

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

" SANDFORD FLEMING.

" F. BRAUN, Esq.,

" Secretary, Public Works Department."

Upon which the contract was closed by a formal letter from the Secretary of the Department to Messrs. Holcomb & Stewart, which is set out below:—

" OTTAWA, 22nd September, 1875.

" GENTLEMEN,—Your tender of 27th August last, as modified by your letters of the 13th and 18th instant, to provide standard barge stock of from 3,000 to 4,000 tons capacity, for taking one, five or ten thousand tons of steel rails for the Canadian Pacific Railway from the wharf or ship's side in Montreal and delivering them at Kingston, in the dock yard or Queen's Wharf, or on the penitentiary wharf, has been accepted.

" The conditions are as follows:—

" That you will from time to time, during the present season of navigation (1875), provide a sufficient number of standard barges with proper steam power and transport from the port of Montreal to such wharf or wharves in the port of Kingston as the Minister of Public Works may direct, about five thousand tons (the ton of 2,240 pounds) of steel rails with their accessories, in manufacturing parcels, or such lesser or greater quantity as may be then ready for shipment.

" That you will despatch the rails, &c., without delay, and deliver and pile the same on the wharf indicated, at and for the price and sum of one dollar and thirty cents (\$1.30) per ton, which sum will cover all charges whatsoever from ship's side, including canal tolls, but insurance against damages of navigation and fire excepted:

" Provided, however, that in case the unloading at Kingston and piling on the wharf should be done and assumed by Government, a reduction of ten cents (10 cents) per ton will be made from the above rate.

" Payments to be made on production to this Department of a certificate signed by the officer of the Government at Kingston, showing the delivery there of each cargo complete in every respect.

" I have the honour to be, Gentlemen,

" Your obedient servant,

" F. BRAUN,

" Secretary.

" MESSRS. HOLCOMB & STEWART,

" Forwarders, &c.,

" Kingston, Ont."

The contract having been thus awarded to the lowest available offer ; it was duly fulfilled, and up to the 30th June, 1880, the following amount was paid on account of it :—

30th June. 1876.....\$5,850.00.

CONTRACT No. 23.

Supplying Ties.

By this contract, dated 4th October, 1875, Henry Sifton and Frank Ward, under the name of Sifton & Ward, bound themselves to furnish 56,000 ties according to specifications agreed upon, at the price of 26 cents each, to be delivered upon the railway line near Prince Arthur's Landing.

This contract was let by Mr. Hazlewood, the District Engineer at Prince Arthur's Landing. The Chief Engineer sent to him, on the 25th September, 1875, the following telegram :—

“ ‘ A.’ Invite tenders for ties in ten-mile sections, Fort William to Kaministiquia, to be delivered in proportionate quantities every half mile along the track. Receive tenders in ten days and forward here. A cash security of ten per cent. on contract ; amount to be deposited with the Department.

“SANDFORD FLEMING.”

On the 27th September, advertisements were issued by Mr. Hazlewood asking for tenders up to six o'clock p.m., of 2nd October, 1875. This advertisement numbered the sections 1 and 2, and asked for 28,000 ties to be delivered along each of them, stating that separate offers would be received for each section.

Twenty-four tenders were sent in. William McAlister's offer for section 1 was at 25 cents per tie, and for section 2 at 23 cents. Sifton, Ward & Co's. offer for the whole was 26 cents. All the other tenders were higher than these.

Mr. Hazlewood interpreted the telegram as directing him to close a contract, probably understanding that the words “forward here” applied to the cash security which was mentioned next after those words, and which would be forwarded only after the contract had been awarded. The intention of the Department, however, was that he should send forward the tenders for consideration at Ottawa.

There is no reason to think that the tender of Messrs. Sifton & Ward, the present contractors, would have been available for section 2 alone at 26

cents, the price mentioned by them "for the whole" distance. If it had been so available, that would have reduced the price a trifle by accepting Mr. McAllister's offer for 25 cents for section 1. As it was, we think that Mr. Hazlewood accepted the tender which was most favourable among those available to the Government. He closed a bargain and entered into a formal contract, the document above mentioned. This was forwarded by him to the office of the Chief Engineer, with the original advertisement and tenders. Mr. Fleming, on the 13th November, 1875, made the following report upon it:—

"OTTAWA, 13th November, 1875.

"SIR,—I enclose herewith a contract made on behalf of the Public Works Department by S. Hazlewood with Sifton, Ward & Co., dated 4th inst., for the delivery of 56,000 ties on the 13th contract.

"It was not intended that Mr. Hazlewood should enter into a contract, as you will see by the enclosed telegram marked A. He was to receive tenders and forward them here. The telegram, however, as he received it, read as if he was directed to enter into contract and forward here a cash security of ten per cent.

"Mr. Hazlewood was very unwilling to assume the responsibility of making a contract, but on consultation with the Chief Surveyor and other gentlemen he felt that he could not decline without defeating the object in view, namely, to provide work for the men and horses in that locality in order to keep them there during the winter. He saw there was no time before the close of navigation to communicate with Ottawa for instructions, and thought it best to make the contract.

"I also enclose all the tenders received by him, 1 to 24 inclusive, and other papers connected therewith.

"I enclose at the same time, paper marked "C," being an order from Sifton, Ward & Co. to retain out of the monies payable to them on the 13th contract the sum of \$1,456 being the amount to be deposited as security for the performance of their contract enclosed.

"I am, &c.,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary Public Works Department."

The contract was duly fulfilled, and the following sums were paid on account of it:—

30th June, 1876.....	\$10,978.35	
" 1877.....	3,669.79	
Total.....	\$14,648.14	

CONTRACT NO. 24.

Building an Engine House.

By this contract, dated the 6th September, 1875, Adam Oliver, Joseph Davidson and Peter Johnson Brown, under the name of Oliver, Davidson & Co., agreed to erect and finish, on or before the 20th June, 1876, a house, according to specifications and plans agreed upon, receiving therefor \$3,000.

We have not been able to ascertain whether this contract was let after any competition or by accepting a single offer. It was closed by Mr. Hazlewood, the District Engineer at Prince Arthur's Landing. He seems to have been clothed with a general authority to arrange for the erection of engineers' houses.

On May the 18th, 1875, written instructions were given to him for the purpose of governing his action as district engineer, as aforesaid. The only clause in these instructions which touches the present subject, is as follows:—

“You are authorized to enter into arrangements on the most favourable terms for the erection of a sufficient number of engineers' houses at points where they may hereafter be utilized in connection with the operating of the road.”

Under this authority he entered into several contracts for the construction of houses. Some of these appear among the contracts reported on in Mr. Fleming's special report of 1877, and others do not.

The practice was to place funds in the control of Mr. Hazlewood, and out of them he paid, upon some occasions, the cost of houses erected under such arrangements as were closed by him. He would be credited against the funds charged to him in this way, with such sums as he offered sufficient vouchers for. Those disbursements, not having been made through the Department at Ottawa, would not be charged against any particular contract, and thus it happened that only some of the contracts closed by him, are mentioned in the regular reports of the disbursements of the Department here. His practice as to letting by competition or otherwise was variable. For instance, on the 23rd August, 1875, he informed the Chief Engineer by letter that he had contracted with Messrs. Oliver, Davidson & Co. for building two dwelling houses at the town plot of Fort William for the use of railway employes there, and he then enclosed a copy of an offer which had been made by that firm and which had been accepted, apparently without competition.

Upon another occasion, on the 25th October, 1875, Mr. Hazlewood addressed the Chief Engineer, enclosing the copy of a contract which he had entered into with Mr. Chevrette for the erection of an engineer's house near Sunshine Creek. Upon that occasion he mentioned that he had received three tenders and showed that the contractor had made the lowest of them. Neither of these two last-mentioned bargains made by Mr. Hazlewood appears in the ordinary reports upon contracts issued by the Department. In this particular case we are not able to say whether the contract was entered into after competition or not.

A copy of the contract itself and a bond by two sureties were enclosed by Mr. Hazlewood, on the 30th September, 1875, accompanied by the following letter :—

"PRINCE ARTHUR'S LANDING,

"30th September, 1875.

"DEAR SIR,—I enclose you herewith a copy of bond and contract for the erection of an engineer's house at the town plot of Fort William.

"Yours very truly,

"SAMUEL HAZLEWOOD.

"S. FLEMING, Esq.,

"Chief Engineer, C. P. R.,

"Ottawa."

Mr. Fleming has expressed before us his confidence in Mr. Hazlewood's abilities and integrity, and upon the evidence we have no reason to suppose that the contractor in this case obtained any undue advantage, or that any unnecessary amount was paid on account of the erection of the house mentioned in this agreement.

The contract was duly fulfilled, and the following sums were paid upon it, including some extras :—

30th June, 1876.....	\$ 750 00
" 1877.....	2,333 70
" 1878.....	441 40
	<hr/>
Total.....	\$3,525 10

CONTRACT No. 25.

Railway Construction.

By this contract, dated 7th June, 1876, Patrick Purcell and Hugh Ryan covenanted that they would, on or before the 1st day of November, 1878,

complete all the excavation, grading and bridging on the line between Sunshine Creek and English River, in length about eighty miles, together with the track-laying and ballasting between Fort William and English River, and so much of the works as would allow working trains to run to the navigable waters of Lac des Mille Lacs on or before the 1st day of August, 1877, and so much as would allow working trains to run to English River by the 1st day of August, 1878, receiving therefor the prices specified in the contract for the respective kinds and quantities of work and material provided by them in carrying out the contract.

The work covered by this contract was submitted to public competition. An advertisement, dated 22nd April, 1876, was issued from the Department of Public Works, giving notice that sealed tenders for the grading from the westerly end of the 13th contract to English River, and for the track-laying and other works west of Fort William would be received up to 22nd May, 1876; and that plans, approximate quantities and other information could be had on application. On the 22nd May, above named, the tenders were opened in presence of the Chief Engineer and two of his assistants, Mr. Marcus Smith and Mr. Rowan. At the time of this opening a schedule was prepared and certified by these gentlemen. This record and the original tenders have been produced before us. There were twelve offers, varying from \$1,037,061 to \$1,635,660. The lowest was made by Mr. P. Purcell, and is the foundation of this contract.

After the contract had been awarded to Mr. Purcell upon his tender above mentioned, and after he had put up all the requisite security, but before the contract was signed, he addressed the following letter to the Minister:—

“ OTTAWA, 30th May, 1876.

“ SIR,—I beg to be allowed to associate with me Hugh Ryan, as partner in the contract for section 25 of the Pacific Railway, and to have his name inserted in the contract.

“ And oblige

“ Your very obedient servant,

“ P. PURCELL.

“ The Hon. Minister of Public Works. ”

We have taken evidence concerning the negotiations which led to the introduction of Mr. Ryan as partner in this contract. He had been interested in a tender made in the name of Brown, Brooks & Ryan, and which was considerably higher than that of Mr. Purcell. After the contract had been awarded to the latter, he asked Mr. Ryan to join him, and Mr. Ryan

consented. There is no reason to suppose that the partnership was due to any undue pressure upon Mr. Purcell, or for believing that in obtaining this contract the contractors got any undue advantage, or that the work covered by the contract could then have been provided for at a less cost than that which was promised by the terms of the agreement.

This is one of a series of contracts for distances between Lake Superior and Red River which were let upon schedules purporting to give approximate quantities of the different classes of work to be executed, upon which quantities tenders named a price for each class of work, and in which series the quantities so named were exceeded in carrying out the contract—in some cases very largely, in all to a considerable extent.

In the case of this contract the quantities furnished to tenderers were stated and the contract let before the line was located. The whole distance covered by it was something over eighty miles, but the ground over which the railway was to be made was known only to the extent of about sixty miles. A profile, but no cross-sections, had been made for that portion of the line, and for the last twenty miles or more at the western end even the centre line had not been ascertained. The work under this contract crosses a country not very rough, but much of it "is flat, dotted with rocky islands like small hills."

The system of letting contracts upon bills of work in which quantities were not given with approximate accuracy, was advocated by the Engineer-in-Chief as affording a proper means of comparing the relative ranks 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 given in the schedules. We have dealt with the expediency of such a practice as an engineering question, reporting our conclusions upon it under the head of "Engineering" (page 71).

On this contract the estimated cost at the time of letting it was \$1,037,061. The cost under the last progress estimate was \$1,396,824. The difference is not to be attributed entirely to the inaccuracy of the first estimates, for ballasting and other improvements have taken place in addition to the works contemplated at the time of making the contract. There can be no doubt, however, that irrespective of extras the work intended to be provided for by the contract has cost a very much larger sum than could have reasonably been expected by the Department at the

time of making it. There are, apparently, two main causes for this: one that the nature of the material on this section was not known. Much of the embankment has been formed from excavations in muskegs in which, according to the evidence, the material when moved will furnish in the embankment not more than from 40 to 50 per cent. of its cubic contents in the place where nature placed it. The other, that the quantities named in the estimates were not correct, because no sufficient information had been obtained upon which to state them accurately, even if the nature of the material to be worked had been understood. These causes are more fully alluded to in our report upon Engineering.

There is, however, another matter touching this particular contract, and the cost which has been incurred under it, which, though somewhat within the jurisdiction of the engineers, we allude to now for the reason that it concerns the conduct of Government officers and the fair dealing of the contractors.

The measurement of the work in this case, as in all such cases, was certified to the contractor from time to time as it progressed, and on the certificates so obtained the price was paid by the Government. The measurement was here taken under the superintendence of Mr. McLennan, a Government official known as "resident engineer." It was generally made, in the first place, by one or more of his assistants and revised by himself. The measurement of a considerable portion of the work under this contract, as first certified by Mr. McLennan, has been disputed, and a re-measurement was directed to be made under Mr. L. G. Bell and another engineer who had been in no way connected with the work. We set out below the instructions of the Chief Engineer to Mr. Bell, the report by Mr. Bell, a corroboratory certificate by Mr. Mortimer who assisted him in the re-measurement, and an accompanying memorandum by Mr. Hill, who was associated with him in the work, as well as the report of the Chief Engineer in submitting the former documents to the Minister:—

"MAY 28th, 1879.

Memorandum of Instructions for Mr. L. G. Bell.

"Mr. Bell has been appointed by the Honourable the Minister of Public Works, to re-measure the work on section 25, consisting of bridging and grading between Sunshine Creek and English River, and ballasting and track-laying between Fort William and English River.

"Mr. Bell will at once proceed to Fort William, and report himself to Mr. J. H. Caddy, the senior engineer in that district. Mr. Bell will apply for and obtain all the measurement books; copies of the monthly estimates, &c., in connection with the contract; the plans, profiles, cross sections, and all other information.

"The Engineer-in-Chief has pointed out verbally to Mr. Bell the necessity for the re-measurement of the work on this contract; explained the nature of the difficulties he will probably meet in carrying out the duty with which he is charged. In some portions of the section, particularly where muskegs prevail, it will doubtless prove a difficult task to make accurate measurements of the work that has been done. In such cases Mr. Bell must use his best judgment in making proper allowance, so as to arrive at just and fair results. As explained to Mr. Bell, in cases where the cuttings, ditches, and borrowing pits, from which material has been taken, have been disfigured or seriously altered, it may be expedient to measure the work in embankment.

"Mr. Bell will bear in mind that the object of the examination with which he is charged, is to make a verification measurement of all the works, chiefly excavation and embankment on contract 25, and the Engineer-in-Chief commends to the diligence and zeal of Mr. Bell the important duties entrusted to him. The Engineer-in-Chief confidently trusts that these duties will be performed with judgment, determination and industry, and that the information obtained will be as perfect as circumstances will admit.

"Mr. Bell will report to the head office weekly, the progress being made with all particulars worthy of note, and on completion, furnish full detailed measurements of the works, with report covering the whole.

"The Honourable the Minister has been pleased to associate with Mr. Bell, Mr. A. J. Hill, as an assistant in this important verification measurement; Messrs. C. McGammon and Wm. Fraser are appointed rod-men.

"The Department will furnish Mr. Bell from time to time, with funds to carry on the service, and while the Engineer-in-Chief refers him to the rules established by the Department with respect to the making of payments, the keeping of accounts and the character of vouchers, &c., attention is directed to the necessity of exercising economy in personal expenditure.

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

"CANADIAN PACIFIC RAILWAY,
"OFFICE OF THE ENGINEER-IN-CHIEF,
"OTTAWA, 17th April, 1880.

"SIR,—I have the honour of reporting that the work of re-measuring contract No. 25 that was entrusted to me by the Hon. the Minister of Railways and Canals, has now been completed, and I have now to lay before you the accompanying statements of the quantities of excavation by which you will see that according to my measurements the work done in the following items is less than what the engineers in charge have returned it by the following amounts:—

	Cubic yards.
"Excavation in solid rock.....	23,713
" loose rock.....	103,342
" earth in line, cuts and borrows.....	305,961
" off-takes.....	30,852
"Total.....	463,868

"These great differences are, I believe, due partly to the measurements of the engineers in charge having been made on what I consider an erroneous basis, and partly to what I consider a very grave misinterpretation of the clauses of the specification describing what is to be classed as loose rock and solid rock.

"I did not measure the rip-rap on the contract, but I took notes of a considerable quantity of work done which has been returned by the engineers in charge as rip-rap, which, in my opinion, ought not to be so classed, and for which there ought to be a reduction in that item of 1,722 cubic yards.

"In numerous places the engineers in charge have made "allowances," many of which I believe ought not to be admitted. Some others may be admitted, but the amount is relatively very small.

"I have measured also the several ballast pits on the contract, and estimated the quantity taken out of each pit up to the date of my measurement of it. But as the work was then in progress in three distinct pits and continued so for some time longer, I am able to give only a check on the measurements of the engineers in charge at the time of my measurement, which check indicates satisfactorily that the engineer's measurements were then practically correct for progress estimates.

"Mr. A. J. Hill, C.E., was associated with me in the work of re-measurement, and in all respects he concurs with me in the measurements and classification of work. In all our work we acted under a desire to give full and liberal measurements, and we spared no pains to obtain accurate and reliable results.

"I have the honour to be, Sir,

"Your obedient servant,

"LEONARD G. BELL.

"I have read the above report, and hereby confirm all that Mr. Bell has said in it.

"ALBERT J. HILL."

CANADIAN PACIFIC RAILWAY.

Contract No. 25.

Quantities of Excavation, exclusive of that for foundations and culverts, as at 30th September 1879.

STATIONS.		EXCAVATION.				TOTALS.
		Rock.		Earth.		
From.	To.	Solid.	Loose.	Line cuts and borrows.	Off takes.	
1,685	2,215	19,140	2,261	267,352	6,671	295,424
2,215	2,810	6,414	483	182,636	483	190,016
2,810	3,275	1,335	10	143,664	613	145,622
3,275	3,825	1,703	436	215,711	13,950	231,775
3,825	545	3,295	384	178,945	12,615	195,239
545	47	12,668	406	194,800	1,193	209,067
47	560	5,790	342	193,083	9,786	209,001
560	1,206	2,081	686	172,845	8,411	184,023
		52,426	5,088	1,549,036	53,697	1,660,167

"OTTAWA, 17th April, 1880.

"We hereby certify that the above statement represents the quantities of excavation of rock and earth on contract No. 25, between 32½ and 113 miles, as measured by us up to the 30th September, 1889.

"LEONARD G. BELL,
"A. J. HILL."

CANADIAN PACIFIC RAILWAY.

Contract No. 25.

QUANTITIES of Excavation, exclusive of that for the foundations and culverts, as at 31st December, 1878, according to returns of Engineer in charge.

Stations.		Excavation.				Totals.
		Rock.		Earth.		
From	To	Solid.	Loose.	Line cuts and Borrows.	Off-takes.	
1685	2215	24,286	33,815	272,536	7,509	328,146
2215	2810	10,019	11,982	195,143	2,777	219,921
2810	3275	1,795	5,209	174,052	3,245	184,292
3275	3825	4,442	9,053	305,147	18,385	337,927
3825	545	4,795	15,173	211,672	21,571	253,211
545	47—0	20,439	25,795	215,968	2,367	264,564
47—0	560	7,058	3,377	241,627	15,111	267,173
560	1206	3 305	3,955	238,852	13,584	259,696
		76,139	108,350	1,854,997	84,549	2,124,035

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

OTTAWA, 17th April, 1880.

"SIR,—As supplementary to my report of this date, I beg leave to say that in the re-measurement of contract No. 25, Mr. H. J. Mortimer, a civil engineer of many years experience, and for several years in charge of surveys in this railway, being at the time out of employment, came with me in a subordinate capacity and wrought in the measurements. As he has had considerable experience in works, I had frequent conversations with him on points wherein I differed from the engineers in charge of contract No. 25, and he fully agrees with me in all I have done in the measurements and classification.

"I have the honour to be, Sir,

"Your obedient servant,

"LEONARD G. BELL.

"I have read the above and I hereby confirm all that Mr. Bell has said in it.

"HENRY J. MORTIMER.

"SANDFORD FLEMING, Esq."

OTTAWA, 18th April, 1880.

"SIR,—As requested by you, I beg to submit the subjoined memorandum of the methods employed in the re-measurement of contract 25, Canadian Pacific Railway, and of facts noted during the progress of the work which do not elsewhere appear.

"At the commencement of the work, the duty was assigned to me of the measurement of excavation generally, including side ditches, borrow pits, line cuttings and outfalls. Mr. Bell supervised the chainage, centres, levels and classification, and Mr. Mortimer, commissariat and transport. I was accompanied throughout by Mr. C. L. McCammon as rodman, with two of the most intelligent men of the party as tapemen, the latter being occasionally changed as the exigencies of the work required.

"In cross-sectioning line cuttings the zero of the tape was invariably held at the top of the south slope and the distance of each sight from that point noted, the centre of the track being always entered in its proper place.

"Where rock occurred, the junction with the earth slope, top of rock slope, bottom of water table, were taken, and in all cases sections were taken at such distances on the centre line as to ensure accuracy of measurement as far as possible.

"When water tables were silted in, holes were dug to the rock, and also the rock at formation laid bare.

"Ground and rock surfaces were plotted in the office from the original cross-sections. All borrow pits where practicable, were carefully cross sectioned at short intervals and wherever stakes could be found the sections were referred to original data. In many of the borrow pits quantities of boulders were left lying, which were carefully estimated and noted to be deducted.

"In taping ditches, zero of the tape was always carried at the off-side. The exact width of the ditch to the nearest tenth was first taken, called, noted and repeated. The tape was then carried back on each side till clear of any depression due to teaming, walking or other causes near the edge, and drawn taut. The levelling rod was then set upon the bottom in one or more places as seemed necessary or possible and the average depth as shown by the stretched tape called, recorded and repeated as before. The sides of the ditches in muskegs are practically plumb; where sloped in ordinary ground the average of two measurements of top and bottom was always taken.

"Where the bottom was soft the rod was forced down till considered to have reached the original bottom as cut, care being always taken by Mr. Bell's directions to measure liberally and give the contract the benefit of any doubt.

"In a few cases where, owing to the sinking of the bank, the side ditches had been disturbed to such an extent as to render the tape measurement untrustworthy, the fact was noted and the original estimates allowed. This occurred in two or three places of small extent.

"Where, as frequently occurred, the boulders met with in the excavation of the borrow ditches were not removed, and which often amounted to a large percentage of the total excavation, their cubic contents were carefully noted for deduction.

"In a few cases in which the ditches either from being irregularly cut or subsequently washed out, could not be satisfactorily taped, the corresponding embankment was cross-sectioned as a check.

"When silting of ditches was apparent, holes were dug through the foreign soil and the depths taken on the original bottom. The total possibility of error from this source, however, was very trifling, the ditches being generally cut clean and plumb, with bottoms firm and even rendering accurate measurements easy.

"In many instances packing upon the sides of the ditches had been resorted to which, undetected, would have the effect of increasing the measurements, and in several cases, notably in a large muck borrow at Upsala, under packing had been extensively carried out by lifting the turf and introducing sods of from four to six inches thick, which were then mostly trimmed and faced so as to almost defy detection.

"On many of the muskegs, moss from one to two feet deep occurs, over the peat, in measuring which we allowed it compressed about two-thirds.

"In order to test the possibility of the ditch depths being affected by the draining of the adjacent muskeg, we frequently took cross-sections of from 600 to 800 feet across the track and ditches, at points most favourable for the detection of subsidence from this cause, which however, never revealed any appreciable difference of level, due to drainage. The only exception, and that in my opinion a doubtful one, is at the diversion of Mud River, which I believe follows one of the many natural depressions in this vicinity. The bottom of the ditch is generally solid and firm and the sides plumb and solid, both showing distinctly the spade marks though subjected for a long time to a pretty rapid current. The discrepancy in the quantities I look upon as suspicious, in view of the fact that a branch out-fall of almost equal dimensions through the same muskeg shows only a moderate excess.

"Our method in measuring out-falls was to tape and stake the entire length of the ditch downwards, taking the sectional area at every one hundred feet or oftener on the return.

"A portion of the rock from the line cuttings has been put in embankment, but by far the greater part has been wasted either by being thrown over the sides of the previously finished embankment or carted out right and left at the cutting. At Upsala Lake and a few other points the broken rock thrown over the embankment has been returned as rip-rap. In addition to the waste of rock, the amount of earth waste upon the line is very large and in many cases, I think, unnecessarily and uselessly so.

"I am, dear Sir,

"Yours very respectfully,

"ALBERT J. HILL.

"SANDFORD FLEMING,

"Engineer-in-Chief,

"Canadian Pacific Railway."

"* It is comparatively rare to find the material of a rock cutting put into embankment, though, as mentioned above, in some cases it is utilized. The usual course appears to have been to waste the rock cuttings and form the embankments from side borrow. The excessive quantity of loose rock returned may be accounted for by the custom of allowing a percentage of loose rock in cuttings and borrows, where, according to the usual interpretation of the specification, none existed, as for instance in the large gravel cut at Upsala, and by the apparent estimate and return of boulders of all sizes in borrow ditches and pits, which were never moved nor utilized for construction purposes.

"The cutting at Upsala consists of a coarse gravel in which there appears to be but few boulders above the size of a man's head. In this cut 40 per cent. of loose rock has been allowed in the original measurements.

"A. J. H."

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, May 19, 1880.

"SIR,—I beg to submit the following documents relating to the re-measurement of work on section No. 25 :—

- "1. Copy of instructions to L. G. Bell, (A).
- "2. Joint Report of L. G. Bell and A. J. Hill, (B).
- "3. Letter from L. G. Bell, (C).
- "4. Letter from Albert J. Hill, (D).

"The re-measurement does not confirm the accuracy of the returns previously received of work executed. According to this examination it appears that the total quantity of excavation done on section 25 is 463,868 cubic yards less than that covered by the certificates issued in the contractor's favour. This is made up of the following classes of work :—

"Excavation in solid rock	23,713	cubic yards.
" " loose rock.....	103,342	"
" " earth in line cuts and borrows.....	305,961	"
" " off-takes	30,852	"

Total..... 463,868 cubic yards.

"In the matter of the earth which embraces a certain proportion of muskeg work, I understand from Messrs. Bell and Hill that in the quantities now furnished they have made no deduction for the shrinkage of that material. The discrepancy is therefore very serious and calls for further investigation.

"I am, etc.,

"SANDFORD FLEMING,

"Engineer-in-Chief.

"The Honourable Sir CHARLES TUPPER, K. C. M. G.,

"Minister of Railways and Canals."

The difference between the original measurements by Mr. McLennan and those by Mr. Bell is serious. If Mr. Bell's quantities are correct the amount of the contractors' claim would be largely reduced. Mr. Bell reports that in the following classes of work his measurement is less than that previously allowed by Mr. McLennan to the extent below stated, namely :—

Excavation in solid rock.....	23,713	cubic yards.
" " Loose rock.....	103,342	"
" " Earth in lime, cuts } and corrows... }	305,961	"
" " Off-takes.....	30,852	"

Total..... 463,868 cubic yards.

And he also suggests a further reduction of 1,722 yards of rip-rap. At the contract prices these reductions would lessen the cost of the work as follows:—

Excavation in solid rock.....	\$35,569
“ “ Loose rock.....	93,007
“ “ Earth in lime, cuts and borrows...	100,967
“ “ Off-takes	10,798
	Total.....
	\$240,341

Mr. Bell mentions in his report two origins for the discrepancy, one an error in the basis on which the first measurements were made, and one a misinterpretation of the clauses in the specifications concerning loose rock and solid rock. If he means by “misinterpretation” that executed quantities of one kind of rock were improperly certified under the head of another kind, that might have given to the contractors too high or too low a price for the class of material which they had moved, but it would not affect the total cubic contents of the rock which had been excavated under one or the other class. Therefore the fact of the discrepancy of 463,868 yards would stand altogether unexplained.

The other cause to which he alludes is the “erroneous basis,” meaning we presume, for no other reason could account for the discrepancy, that work had been certified to have been done which had not been executed in any class.

We examined witnesses at some length on the subject of this disputed measurement, not because we intended to decide finally upon the claims of the contractors to have it allowed, but that we might be informed upon the course which had been adopted by the resident engineer and his assistants while in charge of the public interests.

Under some of the other contracts the works had cost much more than was expected, because of the sinking of the abutments at rivers and lakes on which foundations for the embankments had been placed. In this case no great disappointment resulted from such a cause. The material which has led to the excess in the expenditure under this contract is found in swamps or muskegs. The nature of the contention of those who uphold the correctness of Mr. McLennan’s measurement, is that the effect of excavating muskeg material and placing it in the embankment, is to change the configuration of the particular spot from which it is taken, as well as the

general surface in the neighbourhood of the embankment, so much as to make it impossible, after the lapse of several months, to ascertain with anything approaching accuracy the shape of the original surface of the ground, and that without knowing that there are no data from which to judge of the quantities which had been removed.

It is the practice of engineers, in setting out works for forming the road-bed of railways, to take levels at the centres and sides of the cuttings and of the embankments, as well as for the lateral and off-take drains. These levels, being stated with reference to a given datum, are carefully recorded and preserved for future reference, and they form data from which, at any stage of the work or after its completion, the quantities removed can be calculated with accuracy by the process of running a new set of levels over the same ground. In ordinary cases this process holds good, and the results are indisputable.

We have examined witnesses at some length on the subject of this measurement and re-measurement. Mr. Hugh Ryan, one of the contractors, Mr. McLennan before mentioned, Mr. Caddy, who was engineer-in-charge of the works at a later date, and Mr. Schreiber, the present Chief Engineer, have given evidence.

Mr. Caddy took charge when trains were running as far west as the 113th mile. He said that the construction of this contract was through a country "difficult to get into shape;" that there was a good deal of muskeg which was uneven, and sank and settled a good deal both before and after rails were laid on it.

Mr. Hugh Ryan gave much evidence in support of his contention that Mr. McLennan's measurement was correct, and that a subsequent one could not possibly be correct. He evidently expected that we would pass upon his claim against the Government concerning it, but was informed that we had no intention of so doing.

Mr. McLennan said that in forming the road-bed through the muskeg, the material taken out of the borrow pits or side ditches, was principally of a wet nature, and sometimes light. When placed in the embankment, the embankment got compressed within itself and subsided on the original surface of the soil, and he mentioned these as main reasons for the inability of any person going subsequently to make measurements, to determine where "all the lines were lost by changes of position, in both lines, side

ditches and embankments." He gave a rough estimate of the proportion of the whole excavation which was made in muskeg material, stating it as nearly one-half.

In the above report of Mr. Bell he took the measurements of the 31st December, 1878, as those whose accuracy was to be tested by him. According to the certificate of that date the whole earth material then moved amounted to about 1,939,000 yards, of which quantity Mr. McLennan's estimate above mentioned would give us the neighbourhood of 900,000 yards, as the quantity of muskeg material which had been moved on this contract up to that date.

From the opinions of all the engineers who have given evidence on the matter, this material becomes compressed in the embankment to a proportion varying between 40 and 60 per cent. of the space which it occupied in its natural position. Assuming 50 per cent. as the proportion for the present purpose, the embankments made of this material would show a cubic measurement of 450,000 yards less than the spaces from which the material was taken would show, if their outlines remained undisturbed. The contention of Mr. McLennan and of those who support his measurement is that, in fact, the outlines do not remain undisturbed, but, on the contrary, that as soon as a portion of the material is removed that which originally surrounded it moves gradually in the direction of filling up the space left by the removal, and that though the opening is not always entirely closed, it is invariably lessened to a considerable extent. Evidence has been given which shows that besides this filling-up in the immediate locality of the excavation, the drainage effected in the neighbourhood of the railway embankment, and the consequent depression caused by the weight of the embankment, has the effect of lowering the general surface of the surrounding country, sometimes to a distance of hundreds of yards. This makes the material all through that neighbourhood next the surface more compact than it was before, and so lessens the depth of any ditch or other place from which the material had been removed. It is obvious that even if the fact were established beyond question that 450,000 yards of material had been used beyond that which was expected at the time of the original bill of works, that fact would not of itself touch the difficulty of testing at any subsequent period the accuracy of the first measurement. It only bears upon it, because the same character of the material which made it necessary to increase the quantity excavated so as to supply permanently any given cubic contents in the embankment, would make it unlikely that

the sides or limits of the excavation would remain firm afterwards. In fact, in the immediate locality of the excavation the movement and compression of the surrounding material becomes certain. How far that compression would affect the cubic measurement of the spaces left after the excavation, is not shown by the effect which compression has had upon material placed in the embankment. Therefore, no figures which have been placed before us enable us to calculate the extent to which the existing state of the locality would, at any given time after the work was done, show what had taken place before the first measurement

Mr. Schreiber testified, in effect, that these conflicting measurements, when first brought to his notice, were startling to him, and he thought there was something wrong about those taken by Mr. McLennan; but directly he saw the ground he entirely changed his opinion. He then had not the slightest doubt that the ground, as he saw it, was totally different from its condition when originally measured; that it is quite consistent with the correctness of the subsequent measurements that the previous ones should also be correct under the peculiar circumstances of the case. Those circumstances were the nature of the soil and of the country through which the line ran; that when a ditch was excavated and the material placed in the middle of the bank, within a short period afterwards the sides of the ditches would close towards one another and the bottom would rise up, and so prevent the original depth being visible. In one particular case, within a week he measured a ditch in this muskeg. The day the man dug it, it was exactly 8 feet wide; one week afterwards it was 7 feet 3 inches wide. The depth of it had also changed.

We have ourselves, in passing over a portion of the railway formed of and upon material similar to this, observed the effect produced upon the muskeg by drainage and by the weight of the roadway. The side ditches were evidently changed in form, their bottoms and sides rounded and distorted from the lines by which they were originally cut, and in that way much reduced in size.

The construction under this contract affords the most striking example of the loss occasioned by the presence of muskeg, and the omission of providing for its removal at a price separate from that of earth excavation. We have hereinbefore (page 79) reported our views upon the omission of the Engineering Department, to make itself aware of the existence of this material in a country where it was so frequent as to become a prominent

feature in the construction of the whole road-bed, and upon the second omission which was a consequence of the first—namely, not inviting the tenderers to state separately the prices at which they would excavate this and ordinary earth.

Mr. Rowan, in his evidence concerning another section on which muskeg is prevalent, gave that fact as one of the main reasons why the cost of railway there had largely exceeded the original estimates, and Mr. Fleming, speaking of this section 25, and explaining that it took from two to two and a half yards of this material to form one yard of solid material in the embankment, testified that in this case the whole discrepancy between the original estimates and the quantities returned and paid for, arose in that way.

Mr. Hill's memorandum, attached to Mr. Bell's report above mentioned, alludes to instances in which packing upon the sides of excavations had been resorted to. Inasmuch as this would not necessarily be noticed by the engineers upon the spot, we did not understand that it reflected in any way upon the conduct of the Government officials, and having been led to understand that the case mentioned (in a borrow pit at Upsala) was not one of much amount, and was, in fact, concerning work done by the sub-contractor and certified to by the Government engineer, we did not think it necessary to take further testimony concerning it, particularly as we had no intention of deciding finally upon the amount of the contractor's claim concerning his work.

After considering the reports by Mr. Bell and his assistants, and the evidence given before us by different witnesses, under oath, we were not inclined to impugn the accuracy or integrity of Mr. McLennan's conduct concerning the first measurement, mainly because in such a case as this is shown to be, there is, in our opinion, at a date several months after the first measurements, no tangible means of arriving at a correct measurement of the quantities originally removed.

At the date of our commission the contractors were still progressing with their work, and the dispute between them and the Government concerning this matter had not been settled, in fact they had not been informed of the result of the re-measurement by Mr. Bell.

Since taking the evidence above alluded to, a document has reached us from Mr. Bell, in which he goes into the particulars of the re-measurement by him, and his conclusions upon it, and his reasons for believing that his

is the correct measurement, very much more fully than he states them in his formal report to the Government above mentioned. He was in Ottawa during a portion of the time covered by our sittings, and after we were aware that his evidence would be desirable concerning this measurement. Owing, however, to the absence for some weeks of Mr. Miall, one of the Commissioners, immediately after the death of his father, and we being of opinion that in the absence of any one of us the others could not properly administer an oath to a witness, we deferred calling Mr. Bell. Before Mr. Miall's return, Mr. Bell left Canada on professional service in a distant territory of the United States, where he has since resided. He was led to understand, from conversations with some of us before he left, as well as by letters afterwards, that we desired to be fully informed concerning the matters within his knowledge, and he has transmitted the writing above referred to, no doubt in furtherance of what he believed to be our wishes. Inasmuch, however, as it is not accompanied by any formal affidavit corroborating its contents, and has been framed without meeting questions which have occurred to us as being proper to be answered, in order to explain fully what is within his knowledge, we have not felt at liberty to base upon his statement any finding of facts; and inasmuch as we do not propose to offer any opinion upon the amount due to the contractors concerning the work in this, or in any case, we have not thought it necessary to ask Mr. Bell to come to Ottawa to give evidence. We think it proper, nevertheless, to print his last communication in full amongst the exhibits, and it appears in the appendix.

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

30th June, 1877.....	\$ 335,800
“ 1878.....	687,600
“ 1879.....	241,300
“ 1880.....	81,400

Total.....	\$1,346,100

CONTRACT No. 26.

Engine House.

By this contract, dated 17th July, 1876, James Isbester covenanted to furnish a ten-stall engine house at Fort William according to the specifica-

tions referred to in the contract, the same to be completed by the 1st of August, 1877, for the price of \$30,989.

The work was let by public competition. Advertisements issued by the Department gave notice that tenders would be received up to the 22nd May, 1876, and that specifications and other information could be had on application. On the day named for the final receipt the tenders were opened in the presence of the Chief Engineer and two of his assistants, Mr. Marcus Smith and Mr. Rowan. They showed five offers, varying between \$30,989 and 38,900. The lowest was made by Mr. James Isbester, and this contract is based upon it.

Mr. Fleming, in reporting upon the tenders, stated that Mr. Isbester had already erected an engine house on precisely the same plan for the Intercolonial Railway, and he recommended placing this contract in his hands.

The contract has been duly fulfilled, and the property accepted and used by the Government. There were some extras paid upon it, the whole disbursement being as follows:—

To 30th June, 1877.....	\$16,600
“ 1878.....	18,831
	—————
Total.....	\$35,431

CONTRACT NO. 27.

Transportation of Rails.

There was no formal document containing the agreement in this case. The substance of it is set out in a letter from the Department dated May 16th, 1876.

This contract was the result of public competition. An advertisement, dated 19th April, 1876, invited proposals for the transport of 5,000 tons of steel rails and fastenings from Montreal, Lachine or Kingston, as the Government might require, to Fort William, Lake Superior, and a further quantity, not exceeding 5,000 tons, to Duluth. Noon on the 10th May was named as the last time for receiving tenders. On the 11th May, 1876, ten tenders, all that had been received, were opened in the presence of the Deputy Minister and the Secretary of the Department. The lowest was that made by G. E. Jaques & Co., on behalf of the Merchants' Lake

and River Steamship Company, at the price named in the letter before mentioned. The lowest offer above mentioned was accepted by the following letter :—

“ OTTAWA, 16th May, 1876.

“ GENTLEMEN,—Referring to your tender of the 8th inst., on behalf of the Merchants' Lake and River Steamship Line, for the transport, during the season of navigation of 1876, of about (10,000) ten thousand tons (of the weight of 2,240 pounds per ton) of steel rails and accessories from Montreal, Lachine and Kingston to Fort William and Duluth, Lake Superior, I am directed to inform you that it is accepted, the rates to be paid being as follows, viz :—

	Per ton.
From Montreal Harbour wharves to Duluth or Fort William, at the option of the Government.....	\$4 50
From Lachine to Duluth or Fort William.....	4 50
From Kingston to Fort William.....	2 75
From Kingston to Duluth.....	3 25

these rates to cover all costs of handling, piling, insurance, wharfage dues and other charges if any, at all points.

“ In the event of the Government requiring to have more than 10,000 tons of rails carried to Duluth and Fort William, it is understood that you will be prepared to transport to those ports, at the above mentioned rates, any quantity of such rails up to 20,000 tons, at the option of the Government.

“ You will please acknowledge the receipt of this letter and state whether you accept all its conditions.

“ F. BRAUN.

“ Secretary.

“ To Messrs. G. E. JAKES & Co.,

“ General Agents of the Merchants' Lake and River Steamship Line.

“ Montreal.”

Messrs. G. E. Jakes & Co., on behalf of the contractors, accepted the terms above mentioned.

The contract was duly fulfilled, and the following amount paid on it :—

To 30th June, 1877..... \$89,060

CONTRACT NO. 28.

Transportation of Rails.

There was no formal contract in this case. The agreement was contained in correspondence, and was without competition.

As described in our report upon contract No. 18, an offer, made by Mr. N. W. Kittson, as Manager of the Red River Transportation Company, and dated 21st April, 1875, was accepted for the transportation of material con-

nected with the Railway from Duluth to Winnipeg and to other points, as mentioned in that report, at the rate of \$15, American currency, per ton of 2,000 pounds. In that offer he named certain conditions as controlling the liability to deliver at the point of crossing of the Railway, north of Stone Fort. During that year, about half of the quantity had been carried under that agreement.

The Chief Engineer, on the 13th May, 1876, reported to the Secretary of the Department, that 5,118 tons had been landed at Duluth the previous year, of which 2,558 had been delivered on the banks of the Red River, about eight miles from Winnipeg, and that the remainder, 2,560 tons, should be moved that spring of 1876; and he also suggested that arrangements should be made at once to take forward to Selkirk a locomotive and some flat cars, remarking that that could only be done while the water in Red River was high, and that as the river was in that condition for only a few weeks no time should be lost. The manager of the Red River Transportation Company, had, in a letter, anticipated this recommendation by offering, upon the 19th April, 1876, to the Minister, to transport railway material at rates for each article named in his letter. These rates were given for rails, chairs, joints and spikes at seventy-five cents per 100 pounds in American currency. Rates were also named for locomotives, passenger and baggage cars and box and flat cars, and he added conditions concerning the depth of water on the rapids and shoals of Red River. This offer was accepted by a letter from the Secretary of the Department naming the rates for transportation as applied to each of the articles mentioned in Mr. Kittson's letter, except rails. That item was omitted.

Although the terms of Mr. Kittson's offer of 1876 differed from that which was accepted in 1875, in respect to the depth of water in Red River, which would control his liability to perform the transportation, the work which was really done after his offer of May, 1876, has been always treated as if it had been performed under the contract of 1875; the price per ton of rails being the same in both instances, and nothing but rails and their accessories having been carried under their contract.

In Mr. Fleming's special report of 1877, he states that no work was performed under this contract No. 28 up to that date. The transaction, therefore, as carried out, has been treated by us under the head of contract No. 18.

CONTRACT No. 29.

Railway Spikes.

There is no formal contract in this case; the agreement being contained in a tender, and in the acceptance of it, as hereinafter mentioned.

An advertisement, dated 7th July, 1876, asked for sealed tenders up to noon of the 24th of that month for the supply of from 100 to 300 tons of railway spikes, specifications and other information being offered to applicants.

On the 25th July, the tenders which had been received in due time, were opened in presence of the Deputy Minister and the Secretary of the Department. They were five in number, ranging from \$57 per ton upwards. The lowest was made by Messrs. Cooper, Fairman & Co. Their offer at \$57 per ton of 2,240 lbs. was formally accepted on the 28th July, 1876, without giving them any undue advantage.

The agreement has been fulfilled, and the following amount paid on account of it :—

30th June, 1877.....\$8,532.90.

CONTRACT No. 30.

Bolts and Nuts.

There was no formal contract in this case, the agreement being contained in correspondence as hereinafter mentioned.

At the competition for rails and accessories, in the fall of 1874, the Mersey Steel & Iron Co. had tendered for 10,000 tons of rails and for bolts and nuts to be delivered at Montreal, naming \$101 as the price per ton for bolts and nuts. This tender was signed by Messrs. Cooper, Fairman & Co. as agents for the said tenderers. Messrs. Cooper, Fairman & Co. had, at the same time, tendered in their own name for 10,000 tons of rails, and for bolts and nuts to be delivered at Duluth or Thunder Bay, and naming \$107 as the price per ton for such bolts and nuts.

The Department treated these two offers as made on behalf of the Mersey Co., and notified Messrs. Cooper, Fairman & Co. of their acceptance, sending, at the same time, contracts to be executed by the Mersey Co. for 20,000 tons of rails and proportionate quantity of bolts and nuts. This contract the Mersey Co. declined to execute except for rails alone, and those to be delivered at Montreal. It was closed on that basis. The Department

was notified, as shown in our report on contract No. 8, of the refusal of the Mersey Co. to carry out any offer made by Messrs. Cooper, Fairman & Co., except that for rails alone and their delivery at Montreal.

Mr. Fairman testified that he had not been authorized by the Mersey Co. to include in their tender an offer for bolts and nuts.

The notice to the Department that the Mersey Co. declined to carry out the offer for bolts and nuts, was conveyed in the following letter:—

“MONTREAL, 2nd March, 1875.

“DEAR SIR,—In the contract for steel rails, &c., with the Mersey Steel and Iron Company, they make strong objections against having bolts and nuts included in their contract, and they were accordingly left out. The price was to have been (\$101) one hundred and one dollars per gross ton, delivered in bond at Montreal.

“We, as agents for Messrs Robb & Co., of the Toronto Bolt and Nut Works, beg to supply the Laird bolts and nuts as per sample bolt, to be furnished by the Inspector, Mr. C. P. Sandberg, of London, the price to be (\$101) one hundred and one dollars per gross ton, duty paid, delivered in Montreal or Toronto.

“We are, dear Sir,

“Yours, &c.,

“COOPER, FAIRMAN & Co.,

“Agents for Robb & Co.

“The Minister of Public Works,
“Ottawa.”

The original offer in November, 1874, was treated as made for the Mersey Co., the principals of Messrs. Cooper, Fairman & Co. On those principals declining it, this new offer was made plainly on behalf of other persons, and there is no reason, apparent from the evidence, why the contract should be given to the parties named by Messrs. Cooper, Fairman & Co., without learning whether others would supply the articles at a lower price. Other proposals for bolts and nuts at prices less than \$101 had been made to the Department before this letter. Some were in connection with tenders for rails, some not.

Messrs. Darling & Co., had, on the 16th November, 1874, opened a correspondence with the Department, concerning bolts and nuts, irrespective of rails, which is set out below:—

“30, ST. SULPICE STREET,

“MONTREAL, 16th November, 1874.

“SIR,—In reference to the tenders for rails and fastenings asked for in your circular of the 3rd ult., we regret to say, as regards rails, a reply has not reached us, although we have reason to suppose has been despatched, and we look for a communication by telegraph on the subject from hour to hour.

"As to fish-bolts and nuts, we are prepared to supply them, delivered on the wharf here, at £19 sterling per ton of 2,240 pounds, no charge for packages, with the understanding that we pay no duty upon the goods, and that the Government assume all the risk that cannot be covered by the ordinary policy of insurance. Payment to be made in accordance with terms mentioned in your circular.

"Immediately on receipt of reply regarding rails, we shall take the liberty of communicating with you on the subject.

"We are yours faithfully,

"WM. DARLING & CO.

"F. BRAUN, Esq.,

"Secretary Public Works Department, Ottawa."

"In explanation of the risk above referred to, of which we desire to be held free, we may say, that under the ordinary policy of insurance, damage by sea-water, where the ship is not burnt nor stranded, is at the owner's risk. Such risk may be insured against by a policy covering 'all risks,' that is not usual, and would involve an additional expense of about 2 per cent. If it be desired to have the goods insured 'all risks,' we would undertake to do so, charging the difference in the premium, as compared with the premium, free of particular average. This would make the price about £19 7s. 6d. per ton."

"MONTREAL TELEGRAPH COMPANY,

"OTTAWA, 18th November, 1874.

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

"Will supply one hundred tons; if more wanted please inform us; we are not restricted to quantity.

"WM. DARLING & CO."

"MONTREAL, 18th November, 1874.

"DEAR SIR,—In reply to your telegram of yesterday, we telegraphed this morning: 'Will supply one hundred tons; if more wanted please inform us; we are not restricted to quantity.' Should a large quantity be required, we will be pleased to have an opportunity to ask our correspondents how much they can undertake to furnish during the season of 1875.

"We are, yours very respectfully,

"WM. DARLING & CO.

"T. TRUDEAU, Esq.,

"Deputy Minister Public Works, Ottawa."

"OTTAWA, 2nd December, 1874.

"GENTLEMEN,—Referring to your letter and telegraphic message, both dated the 18th ultimo, offering to furnish 100 tons of railway bolts and nuts, I beg to inform you that the parties who have contracted to supply the steel rails will also furnish the bolts and nuts required for the quantity of rails contracted for.

"I have, &c.,

"F. BRAUN,

"Secretary.

"WM. DARLING & Co., Montreal."

Messrs. S. Waddell & Co., on the 12th December, 1874, addressed the Department with a view of quoting prices for bolts and nuts, irrespective of rails. Their letter and reply are set out below:—

“ 27, St. JOHN STREET,

“ MONTREAL, 12th December, 1874.

“ DEAR SIR,—We learn you are making enquiries about fish-plates, bolts and nuts, and would be glad if you will kindly allow us an opportunity to quote for same for delivery in 1875, either in Montreal or Toronto, or both points.

“ Will you be kind enough to return sample of Cammell's rails sent you by us.

“ Yours truly,

“ S. WADDELL & Co.,

“ Per A. S. HALDEN.

“ F. BRAUN, Esq.,

“ Secretary Department of Public Works,

“ Ottawa.”

“ OTTAWA, 21st December, 1874.

“ GENTLEMEN,—With reference to your letter of the 12th inst., offering to supply fish plates, bolts and nuts, I am to state that the quantity required has already been contracted for by the Government.

“ The sample of “Cammell's Rail,” transmitted by you has been returned by express.

“ I have &c.,

“ F. BRAUN,

Secretary.

“ Messrs. S. WADDELL & Co.,

“ Montreal.”

In the November competition the following offers had been made for bolts and nuts in connection with tenders for rails:—

Guest & Co.....	\$93 29
Rice, Lewis & Son.....	99 00
T. F. Allis.....	94 50
James Watson & Co.....	92 47
A. G. Godeffroy.....	82 37
Wm. Darling & Co.....	92 47

The Deputy Minister testified that after the notice that the Mersey Co, had excluded the bolts and nuts from their contract, no effort was made by the Department to ascertain if these articles could be obtained at prices lower than proposed by Messrs. Cooper, Fairman & Co. The offer of that firm was accepted by the following telegram:—

“ OTTAWA, 5th March, 1875.

“ Telegram to Cooper, Fairman & Co., Montreal.

“ Your tender on behalf of Robb & Co., Toronto, for supply of bolts and nuts at \$101 (one hundred and one dollars) per ton is accepted.

“ F. BRAUN,

Secretary.”

On the cover attached to the offer of Messrs. Cooper, Fairman & Co., are these words:—

“ Recommended, S. F.,” and “ Approved March 5th, 1875, T. T.”

The latter initials being those of the Deputy Minister, and the former those of the Chief Engineer.

Mr. Fleming stated, in evidence, that he knew nothing of the transaction; that he had written the word “recommended” above mentioned; that it was likely he did not give it much attention; that this paper was disposed of amongst hundreds of others referred to him in that manner in the usual routine. He added, however, that he probably looked into it at the time and thought it a proper thing to do, though from the appearance of the paper he would say that his attention was not specially called to the fact that there was any intention of entering into a contract.

Mr. Reynolds, who lives in London, England, and is acquainted with the fluctuations of the market of iron materials connected with railways, testified that the tendency of that market was downwards in the fall of 1874 and beginning of 1875, falling away gradually and steadily; that the fluctuations would apply to bolts and nuts as well as to rails, so that in March, 1875, the market for them would be weaker, about £2 sterling less than in November previous.

Mr. Fairman, speaking of the tendency of the market from November, 1874, forwards, testified that he thought the market dropped after three months or so.

The evidence, therefore, shows that in November, 1874, several offers for the supply of bolts and nuts were made lower than \$101, and that persons acquainted with the market believed that from that time forward prices did not rise, but if there were material fluctuations they were downwards. Inasmuch as no competition was invited we have no positive knowledge of the price at which the Department could have procured the articles covered by this contract at the time it was made.

Upon the whole the evidence shows that the offer was received by the Department and passed through the hands of Mr. Fleming to the Deputy Minister, who decided to accept it, without either of these officials considering it necessary to investigate the merits of the offer, or to learn whether the articles could be procured at a lower rate.

We think that there was at the time strong reason for believing that the bolts and nuts contracted for in this case could have been obtained at a cost less than that which was promised, without competition, to Messrs. Cooper, Fairman & Co.

The contract has been fulfilled, and the sum of \$16,160 paid upon it before the 30th June, 1876.

CONTRACT No. 31.

Bolts and Nuts.

There is no formal contract in this case; the agreement is contained in the correspondence hereinafter set out, and was arrived at without competition.

On the 21st January, 1875, the Department of Public Works, by a formal letter from the Secretary, accepted the offer of Messrs. Cooper, Fairman & Co. for 5,000 tons of rails to be delivered at Liverpool, and which were intended by the Government to be shipped thence to Vancouver Island. No arrangement had been made concerning the supply of bolts and nuts for these rails, up to 2nd March, 1875, when the following proposal was made :—

“MONTREAL, 2nd March, 1875.

“DEAR SIR,—We beg to quote for bolts and nuts for the 5,000 tons rails for Vancouver Island, to be supplied by us to Sandberg's section, at (£19 10s.) nineteen pounds ten shillings per gross ton, f. o. b., Liverpool, the said bolts to stand Sandberg's test, and to be paid for by the Financial Agents of the Canadian Government in London, upon presentation of invoice bills of lading and inspection certificate; deliveries to be made in March, April and May of this year.

“We are, dear Sir,

“Yours truly,

“THE PATENT BOLT AND NUT CO.,

“Per FAIRMAN & Co.,

“Agents.

“F. BRAUN, Esq.,

“Secretary Department of Public Works,

“Ottawa.”

This passed through the same process as the offer of the same date, made by the same firm, on which contract No. 30 was based. It was referred on 4th March to the Chief Engineer, who endorsed it “Recommended, S. Fleming, 4th March,” after which the Deputy Minister endorsed it “Approved, 5th March, 1875, T. T.,” and it was accepted accordingly by the following telegram :—

“ OTTAWA, 5th March, 1875.

“ *Telegram to Cooper, Fairman & Co., Montreal.*

“ Your tender for bolts and nuts for rails to Vancouver Island at £19 10s. sterling, (nineteen pounds ten shillings) per ton, is accepted.

“ F. BRAUN,
“ *Secretary.*”

This was equal to \$94.90 at Liverpool, or \$99.76 at Montreal. Neither Mr. Fleming nor Mr. Trudeau gives any reason for the transaction or explains why no competition was invited. In the case of contract No. 30, Messrs. Cooper, Fairman & Co., in making their offer, called attention to the fact that \$101 had been promised to the Mersey Co. This had been done in connection with a tender sent in for that company by Messrs. Cooper, Fairman & Co. as their agents; and that circumstance may have been relied upon as sufficient to induce the Department to waive the test of competition, though the refusal of the Mersey Co. to conclude any bargain except concerning their own manufactures, namely, rails, had freed the Department from any liability to these Montreal agents. In this case there was no such circumstance, nor any other which could be a reason for entertaining the offer otherwise than on its own merits.

As pointed out in our report in contract No. 30, there was on the 5th March, 1875, the date of accepting this offer, recorded in the Department the following facts: Messrs Darling & Co. had offered, in November, 1874, irrespective of rails, to deliver bolts and nuts at Montreal at £19 stg.=\$92.34 per ton. Messrs. S. Waddell & Co. had endeavoured to make offers irrespective of rails, and were informed on 21st December, 1874: “That the quantity required had already been contracted for.”

Offers had been made in the tenders for rails to deliver bolts and nuts at Montreal, as follows:—

Guest & Co.....	\$93 29
Rice, Lewis & Sons.....	99 00
T. V. Allis.....	94 50
Jas. Watson & Co.....	91 47
A. G. Goodefroy.....	82 37
Wm. Darling & Son.....	92 47

The price of transportation from England to Montreal was shown to be 1 stg. or \$4.86 per ton, thus leaving the price at Liverpool \$4.86 lower than the respective prices above named for delivery at Montreal.

There had been, in fact, no rise in the market between November, 1874, and the acceptance of this offer. The price at which bolts and nuts were to be had does not seem to have been considered. The evidence leads us to find that at the time of accepting this offer, facts were recorded in the Department which showed good reasons for believing that the articles covered by this contract could then have been procured at a lower price than was here promised. As there is, however, no such positive means of information as would be afforded had there been a competition, we can only look to the evidence of the general state of the market in March, 1876, as compared with that in November, 1874.

The testimony of Mr. Reynolds and Mr. Fairman, referred to in our report on contract No. 30, leads us to believe that at the time of accepting the offer in this case, the articles referred to could have been purchased at Liverpool at a price less than that paid without competition under this contract.

The contract was fulfilled.

The amount paid on it to the 30th June, 1875, \$6,800.69.

CONTRACT No. 32.

Railway Spikes.

By this contract, dated 12th May, 1877, James Cooper and Frederick Fairman, under the name of Cooper, Fairman & Co., bound themselves to supply 250 tons of railway spikes, in accordance with specifications attached to the said contract, at the rate of \$54.95 per ton of 2,240 lbs.

On the 31st January, 1877, the Chief Engineer, in a communication to the Secretary of the Public Works Department, reported that there would be required, on the opening of navigation, at Fort William 75 tons of spikes, and at Selkirk, 175 tons.

On the 19th February, 1877, the Department issued an advertisement asking for tenders for the supply of from 100 to 300 tons of railway spikes up to noon of the 13th March following, and stating that specifications and other information could be had on application. On the 15th March, seven tenders, which had been received in due time, were opened in presence of the Secretary and Mr. Smellie. A schedule was made at the time of opening and it shows that the prices in the offers sent in varied from \$54.95 up to \$75 per ton. The lowest was made by Messrs. Cooper, Fairman & Co., and is the basis of this contract.

The acceptance of the tender of this firm was notified to them by the Secretary of the Department on the 26th March, 1877. A correspondence between Messrs. [Cooper, Fairman & Co. and the Department ensued concerning the packages in which the spikes were to be forwarded, they desiring to vary the terms of the specifications by using kegs which would contain two hundred weight, instead of those mentioned in the specification, which were to contain no more than one hundred weight.

We do not consider it necessary to set out this correspondence. It resulted in the spikes being forwarded in the packages as originally described with the exception of a small proportion which were packed in kegs of the larger size, under the approval of Mr. Smellie, who inspected them on behalf of the Engineering Department.

The contract, made without giving any undue advantage to the contractors, was fulfilled, and the following sums were paid on it:—

To 30th June, 1877.....	\$13,645 50
" 1878.....	90 00
Total	\$13,737 50

CONTRACT No. 32A.

Engineer's House.

By this contract, dated the 10th January, 1877, Edward F. Lemay and William Blair agreed to erect and finish, according to specifications, one round-house and platform, at each of the following places:—

- Buda,
- Nordland,
- Linkoping,
- Port Savanne,
- Upsala,
- Carlstadt,
- Bridge River and
- English River,

at the respective times mentioned in the said agreement, receiving the prices mentioned therein, and which varied according as the building should be of logs or of balloon frames, and also varying in price at the different places.

This contract, for the building of eight houses, was entered into by Mr. Hazlewood, Resident Engineer, at Prince Arthur's Landing, acting

on behalf of the Government. It was not altogether fulfilled, having been withdrawn on the recommendation of Mr. Marcus Smith, after four houses had been built, and after some materials had been collected for others.

In addition to the letter of the 13th May, 1875, from the Chief Engineer to Mr. Hazlewood, of which an extract is given in our report upon contract No. 24, he wrote the following on 6th May, 1875 :—

“ CANADIAN PACIFIC RAILWAY,
“ OFFICE OF THE ENGINEER-IN-CHIEF,
“ OTTAWA, May 6th, 1875.

“ MY DEAR SIR,—With regard to the erection of engineers' houses, on the line of the Pacific Railway, the Department authorizes the erection of the structures required under a contract which the Engineer in charge will make, taking care to have the agreement on the most favourable terms possible to the Government, and to forward a copy of the contract in each case to the head office.

“ Yours truly,
“ SANDFORD FLEMING.

“ SAMUEL HAZLEWOOD, Esq.,
“ Ottawa.”

On the 15th November, 1876, Mr. Marcus Smith, acting Engineer-in-Chief, wrote the following letter to Mr. Hazlewood :—

“ OTTAWA, 15th November, 1875.

“ DEAR SIR,—Your statement of the 13th October, in regard to payments made by Mr. Bethune for trifling works that would be chargeable under the head of ‘construction,’ has been laid before the Department, and I enclose herewith a copy of the reply from the Secretary (F. Braun, Esq.)

“ You will understand that the Minister has strong objections to any work being done, except by contract, for which tenders have been invited by advertisements in the newspapers. And I would suggest, for your consideration, whether there is enough slashing now to be done to make it advisable to call for tenders. For other trifling jobs, you will, of course, use the discretionary power given you by the Secretary's letter above referred to.

“ Yours truly,
“ MARCUS SMITH.

“ S. HAZLEWOOD, Esq.,
“ Prince Arthur's Landing.”

On the 28th November, 1876, Mr. Hazlewood issued advertisements at Prince Arthur's Landing, asking for tenders up to noon of the 8th January, 1877, for the erection of eight engineers' houses, including wood-sheds, platforms, &c., along the line of railway at the following points :—

Buda, 39½ miles west of town plot.	
Nordland, 50½	do
Linkoping, 60	do

Port Savanne, 71 miles west of town plot.
 Upsala, 80½ do
 Carlstadt, 89, do
 Bridge River, 98½ do
 English River, 112 do

And stating that plans and other information could be obtained at his office.

On December 18th, 1876, Mr. A. Bethune, who was paymaster at Prince Arthur's Landing, forwarded a copy of this advertisement to the Secretary of the Department, and asked to be instructed as to whether the houses were to be paid for through him. This was brought to the notice of the acting Engineer-in-Chief, who wrote the following to Mr. Hazlewood letter:—

“OTTAWA, 23th December, 1876.

“DEAR SIR,—I have received by mail a printed hand-bill calling for tenders on Monday, January 8th, 1877, for the erection of eight engineers' houses, wood-sheds, platforms, &c., on the line of the Canadian Pacific Railway, between Fort William and English River, purporting to be issued by your authority as District Engineer, and dated November 28th, 1876.

“I am not informed by what authority you have called for these tenders, and the Deputy Minister of Public Works requests me to call your attention to the letter of the Secretary, dated November 14th, 1876. A copy of which was enclosed for you in my letter dated November 15th, 1876. The Secretary therein distinctly states that:—‘It is desirable that works of construction in connection with the railway be approved by the Department before expenditure is incurred.’

“In compliance with these instructions, I have to request that you will forward by mail to this office all the tenders you may receive on or before the 8th January, 1877, for the construction of the works mentioned in the hand-bill, together with copies of the plans, sections, specifications, &c., relating to the same, to be submitted to the Department before any contracts are made.

“Yours truly,

“MARCUS SMITH.

“Acting Engineer in-Chief.

“SAM. HAZLEWOOD, Esq.,

“Prince Arthur's District.”

The letter of Mr. Bethune, above alluded to, was referred to Mr. Fleming, the Chief Engineer, who reported it as follows:—

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, February 10th, 1877.

“SIR,—In reply to your letter dated the 5th inst., enclosing a communication from Mr. Angus Bethune of date 18th, December, relative to construction of houses for engineers along the line of the Canadian Pacific Railway.

"I beg to say that the District Engineer, Mr. Hazlewood, has been directed not to enter into any engagements of that kind without first regularly getting the approval of the Department, and that the tenders to be received by Mr. Hazlewood on the 8th January, are directed to be forwarded by mail to this office in the first place, when, if considered advisable, they will be brought before the Department.

"I am, etc., etc.,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary Public Works."

In the meantime Mr. Hazlewood had received the tenders at Prince Arthur's Landing on the day named in the advertisement, and had assumed the responsibility of entering into the contract above-mentioned, which was based upon the lowest of these tenders.

There were nine offers in which the aggregate of the prices for the eight houses varied from \$23,409 to \$29,920. In the following June Mr. Marcus Smith went over the line on which these houses were being erected and he wrote the following letter to Mr. Smellie, of the Engineering Department at Ottawa :—

"PRINCE ARTHUR'S LANDING, June 11th, 1877.

"MY DEAR SIR,—Herewith I enclose a certificate in duplicate of Mr. Hazlewood, the engineer in charge of this district for \$7106.75 for work done in the erection of four engineers' houses on the line of the Canadian Pacific Railway, under the contract with Messrs. Lemay & Blair, dated the 10th day of January, 1877, of which you will find a copy in my desk in the pigeon hole, headed 'Prince Arthur District,' or it may be amongst Mr. Fleming's papers. Also, a bill of extras for piling, foundation and other work not comprised in the contract, amounting to \$616.50. Mr. Hazlewood let this contract on the authority of a letter from Mr. Fleming, dated May 6th, 1875, a copy of which I herewith enclose with a list of the tenders he received in response to an advertisement by hand bills or posters, a copy of which you will also find in my desk. Mr. Hazlewood states that the houses and shanties had previously been erected on the same authority, but on the 15th November, 1876, I wrote to Mr. Hazlewood enclosing him a copy of the letter of the Secretary, Mr. Braun, to Mr. Bethune, dated Nov. 14, 1876, a copy of which is herewith enclosed. In December, I received a copy of the hand bills calling for tenders, and immediately on the 28th wrote to Mr. Hazlewood again calling attention to the Secretary's letter of the 14th of November, and requested him to send down to the Department of Public Works all the tenders he might receive with a copy of the plans and specifications for the erection of these houses. He states that these letters having been written after the close of navigation on the lakes, he did not receive any of them till after he had awarded the contract which he did to the firm who sent in the lowest tender and that they have so far done their work satisfactorily. The houses embraced in the contract are at the following stations :—

“ ‘Buda,’ 39½ miles from Fort William; ‘Nordland,’ 50½ miles from Fort William; ‘Linkoping,’ 60 miles from Fort William; ‘Port Savanne,’ 70 miles from Fort William; ‘Upsala,’ 80½ miles from Fort William; ‘Carlstadt,’ 89½ miles from Fort William; ‘Bridge River,’ 98½ miles from Fort William; ‘English River,’ 112 miles from Fort William.

“ It is for work done on the houses at the four first stations that the enclosed certificate is given and they are so far advanced that I think it best the contractors should complete them without delay. But the erection of the last four houses west of Port Savanne is not commenced, though there is a large quantity of material delivered on the ground including a variety of manufactured articles, such as doors, sashes, locks, hinges, nails, &c. These are principally delivered at Carlstadt.

“ That which was delivered at Upsala has been burned by bush fires, and the house that was completed at Buda has been destroyed by the same course. I am more than doubtful if it would be good policy or economy to erect these houses so long before the line will be opened for public traffic. It was thought that by erecting these at once, it would save the expense of building huts for the accommodation of the engineering staff during construction. But we see that they are liable to be destroyed by fire, that they will only be occupied for a year or so during the construction of the line, and will be vacated as the engineers move on with the work, then comes the expense of some one to take care of them and it would probably be found, even after the line was opened for traffic that some of these houses would not be required for years as station houses, for in the rough country between Savanne and Rat Portage there is very little land fit for settlement.

“ I think it would be better to confine the erection of houses during the construction of the railway to a few central points convenient for transportation of supplies, &c., such as Savanne, English River, Rat Portage, &c., and construct huts for the engineers where required, these should not cost more than \$500 to \$700 at each station, and will be of some use as stables or storehouses after the line is completed. I think this cost would be less than that of maintaining and watching houses after being vacated by the engineers and altering them to be suitable as station houses. If the department approves this view of the case, then I think the erection of the last four houses in the west of Savanne should be stopped at present and the contractors paid for material delivered. Except probably that at English River which will be a main station and an engine house will be required there. Please bring this subject before the Minister and instruct Mr. Hazlewood.

“ I am, Sir,

“ Yours truly,

“ MARCUS SMITH.

“ W. B. SMELLIE, Esq.”

In consequence of this recommendation the work under this contract was not further proceeded with. Mr. Marcus Smith was charged with the final settlement with the contractors, in which a considerable amount was paid beyond the price of the four houses which had been erected. The items were as follows ;—

Cost of four houses and platforms.....	\$11,299 50
Materials burnt at Upsala and Carlstadt.....	1,393 62
Materials delivered.....	4,221 54
Provisions and camp equipage.....	393 82
Labour upon Upsala station	400 97
Watching fires at Nordland.....	21 00
<hr/>	
Total.....	\$17,730 45

It will be noticed that materials destroyed by fire were paid for. This was because the fires were the consequence of the operations in the building of the railway. One of the houses which had been erected at Buda, as well as the material above mentioned as having been destroyed, was burnt before the contract was stopped.

Upon the evidence we conclude that in making this contract Mr. Hazlewood exceeded the authority which the Department intended to leave in his hands at that time ; that the directions of the 6th May, 1875, above mentioned, were, to some extent, qualified by Mr. Marcus Smith's letter of the 15th November, 1876, and were expected to be altogether withdrawn by his letter of 28th December, 1876 ; that the latter having failed to reach Mr. Hazlewood before the date of the contract, and without any fault of his, he was not to blame in assuming that under the circumstances the execution of the contract was still within his jurisdiction.

We find that the contractor got no undue advantage in the agreement, and that the Department, at the time of the contract, could not have obtained the work provided for at a cost less than that mentioned in the agreement.

The amount paid was, as above mentioned, \$17,730.45.

CONTRACT NO. 33.

Railway Construction.

By this contract, dated the 21st June, 1873, Timothy Kavanagh, James Murphy and Joseph Upper, covenanted to provide and complete at the times stated therein the excavation, grading, bridging, track-laying, ballasting and other work necessary to complete the Pembina Branch between St. Boniface station and the International Boundary, at the respective prices specified in the contract for the several classes of work.

At the time of executing this contract, Mr. Kavanagh was not interested in its consequences, having joined as a contractor as a matter of form, and lending his name upon the understanding between him and the other contractors that they should carry it on for their own benefit. The reason for this is hereinafter stated.

Under Contract No. 5, Mr. Joseph Whitehead had done earth-work for a road-bed over most of the distance between St. Boniface and Emerson, leaving openings at the streams. This Contract No. 33, was intended to include the road-bed from a mile south of St. Boniface to the point where Mr. Whitehead's grading had ended, and "the putting of Mr. Whitehead's grading over the rest of the line into proper shape" to complete the road, together with all the bridges, culverts, cattle guards, crossings, &c.

On the 7th February, 1878, the Government issued an advertisement asking for tenders up to noon of the 1st March, following, for the works to be done, naming the distance at 63 miles, and stating that plans, specifications, &c., could be had on application.

Fifteen tenders were received in due time, and opened on the 2nd March, 1878, in presence of the Deputy Minister and Mr. Marcus Smith, engineer. The offers varied from \$232,202, made by the above mentioned Timothy Kavanagh, to \$393,885, made by Messrs. Robinson & Robertson. The tenders included an item of 165,000 ties, which were, however, omitted from the contract in consequence of other arrangements concerning them having been made by the Government.

Mr. Kavanagh's offer for ties was at 27 cents each, equal to \$44,550. His offer for ties being the lowest; the deduction did not change his rank in the competition. The contract was awarded to him. He made his tender intending it to be on behalf of himself and a Mr. Falardeau. The Minister of Public Works objected to Mr. Falardeau being joined in the arrangement, whereupon Mr. Kavanagh, not being willing to take the contract alone, told Mr. Murphy, one of the present contractors, the state of affairs, and mentioned the prices at which he had proposed to do the work. Mr. Murphy expressed a willingness to take the contract at Mr. Kavanagh's figures, and Mr. Kavanagh assented. It was then understood that Mr. Kavanagh was to be named in the contract as well as Messrs. Murphy & Upper, but he had virtually abandoned all interest in it and left the management of it to them.

Messrs. Murphy & Upper had, on their own account, tendered in the competition above mentioned, their offer being \$333,536 for the whole work, or, deducting the item of ties, their offer was \$262 586, which is \$74,934 higher than the price at which they assumed it, in place of Mr. Kavanagh.

Before the advertisement in this case, tenders for 165,000 ties had been, on the 4th February, 1878, received at Winnipeg by Mr. Nixon, the purveyor (See report on contract No. 36). That quantity was intended to be used under this contract, and the arrangement made by Mr. Nixon led to the withdrawal of the item of ties from the agreement in this case, as above mentioned.

Upon the evidence we find that in obtaining this contract the contractors got no undue advantage, and at the time of awarding it, the work could not have been provided for by the Department at a cost less than that provided by the agreement.

The contractors did not proceed with the work according to the terms of their agreement, and the Government being dissatisfied with the conduct of it by the contractors, took the work out of their hands.

At the date of our commission, several bridges, road-crossings, some ballasting and a portion of the fencing had yet to be done in order to complete the work undertaken by Messrs. Kavanagh, Murphy & Upper. This was then being carried on by day's labour under the direction of Mr. Rowan, the District Engineer at Winnipeg.

Up to the 30th June, 1880, the following amounts had been paid on it :—

30th June, 1879.....	\$62,500
30th June, 1880.....	29,000
	Total.....
	\$91,500

CONTRACT NO. 34.

Transportation of Rails.

The expenditure under two distinct agreements has been charged in the books of the Department as if there were but one, and that bearing this number.

The first was a written contract dated 29th May, 1878, by which the North Western Transportation Co. covenanted to transport in the manner

and at the times therein mentioned, from Kingston to St. Boniface, about 5,000 tons of rails and their accessories, unloading, piling, delivering and insuring the same, and paying all tolls and harbour dues on the route, at \$18 per ton of 2,240 pounds.

The second agreement was contained in a correspondence closed by a letter from Mr. Braun, the Secretary of the Department, to Mr. Henry Beatty, on the 30th September, 1878, to transport 1,000 tons, more or less, from Fort William to Emerson, at \$18 per ton, the same price as paid under the first mentioned contract from Kingston to St. Boniface. We report on each of these agreements in the order of dates.

Owing to a report of Mr. Marcus Smith, Acting Engineer-in-Chief, dated 15th February, 1878, that it would be necessary to forward to Manitoba, 4500 tons of rails, the quantity then lying at Kingston, advertisements were issued, dated the 2nd March, 1878, for the transportation of about 5,000 tons of rails from Kingston to St. Boniface. On the day named for that purpose, four tenders had been received. They were opened on the day following in presence of Mr. Trudeau, Deputy Minister, and Mr. Braun. The schedule then prepared shows that the tenders varied from \$18 to \$22.95 per ton. The lowest was made by the North-West Transportation Co., and was accepted by a letter from Mr. Braun to Mr. Sylvester Neelon, the President of the said Company, dated the 15th May, 1878.

A formal contract on this basis was closed without any undue advantage to the contractor. It has been fulfilled. The amounts paid under it are stated hereinafter, in conjunction with those paid under the subsequent agreement before alluded to.

In Mr. Marcus Smith's report of the 15th February, above mentioned, he stated the probability of 1,500 tons of rails, then at Fort William, being required in 1879 in Manitoba, in addition to the 4,500 tons then at Kingston, as follows :—

“ OFFICE OF THE ENGINEER-IN-CHIEF,

“ OTTAWA, 15th February, 1878.

“ SIR,—In reply to your letter of the 30th inst., No. 8629, I beg to state that, in order to complete the track-laying on the Pembina Branch, and contract No. 14, and make provision for laying a portion on contract No. 15, say twenty miles, during the coming season, it will be necessary to forward to Manitoba all the rails now lying at Kingston, said to be 4,500 tons.

“To complete the line between Emerson and Keewatin, 6,000 tons in all will have to be transported to Manitoba, but the balance of 1,500 tons, which will have to be taken from the stock at Fort William, may not be required until the spring of 1879. However, to prevent

any chance of the contractor being delayed, it might, I think, be advisable to remove the 1,500 as far as Duluth, where they might remain and be transported by all rail to contract No. 15 when wanted. This precaution will, however, entail a considerable expense for wharfage at Duluth.

"In addition to the above, it will be necessary to transport 200 tons of fish-plates and 40 tons of bolts and nuts.

"I send you, herewith, form of advertisement for transport from Kingston and Fort William to Duluth.

"I have the honour to be, Sir,

"Your obedient servant,

"MARCUS SMITH,

"Acting Engineer-in-Chief.

"F. BRAUN, Esq.,

"Secretary, Public Works."

Mr. Smith here speaks of a form of advertisement for transportation from Kingston and Fort William to Duluth. It seems not to have been then considered advisable to ask for competition from Fort William. The advertisement appeared in the first instance dated the 21st February, and afterwards in an amended form, dated the 2nd March, omitting in both cases any mention of Fort William.

On the 26th September, 1878, Mr. Braun telegraphed Mr. Henry Beatty as follows :—

"What price per ton will you charge for moving say 1,000 tons of rails from Fort William to Emerson?"

Mr. Beatty answered this the next day from Ottawa as follows :—

"OTTAWA, 27th September, 18.8.

"DEAR SIR,—In reply to your telegram of yesterday I beg to say I will transport one thousand tons of rails, more or less, from Fort William to Emerson, for eighteen dollars (\$18) per ton. This rate includes all charges for loading, unloading, piling, wharfage, harbour dues, storage and insurance.

"This rate may seem out of proportion to the price you are paying from Kingston, but if you will consider, a special steamer will have to be sent to do this work and that she will return light from Duluth to Fort William, and also that the usual rates on freight to St. Boniface and Emerson are the same, you will readily see that it will not much more than cover expenses.

"Respectfully yours,

"HENRY BEATTY.

"F. BRAUN, Esq.,

"Secretary Department Public Works,
"Ottawa."

On the 30th September, 1878, this offer was accepted by the following letter from the Department :—

OTTAWA, 30th September, 1878.

"SIR,—I am directed to state that the offer contained in your letter of the 27th inst., to transport railroad iron from Forts William to Emerson at \$.8 (eighteen dollars) per ton, inclusive of loading, storage, insurance, &c., is hereby accepted for the following quantities or thereabout:

	Tons.
6,800 rails, equal.....	1,500
12,800 pres. fish-plates, equal.....	110
Bolts and nuts, equal.....	11

"Delivery will be made by Mr. R. McLennan, engineer, at Fort William.

"I am, Sir,

"Your obedient servant,

"F. BRAUN.

"HENRY BEATTY, Esq.,

"N. W. Transportation Co.,

"Sarnia, Ont."

Mr. Trudeau was examined as a witness on this matter. He knew of no reasons, except those stated in Mr. Beatty's letter, why the same price should be paid for the distance between Fort William and Emerson as under the contract of the 29th May, for the much longer distance between Kingston and St. Boniface. He thought it was probable, but did not know, that the points were discussed between Mr. Fleming, the Chief Engineer, and Mr. Mackenzie, the Minister. There was no record in the Department, and he had no recollection of the circumstances urged by Mr. Beatty, such as the necessity of sending a steamer specially for this work, its returning light, etc. There were no more extra items, such as loading, unloading, tolls, insurance, etc., in this bargain than in the former one, and he said that this agreement was finally made upon the authority of Mr. Mackenzie.

Mr. Fleming testified that he knew nothing about this contract.

Mr. Mackenzie testified that he did not remember any of the circumstances; that the principal price in transporting rails is for loading and unloading, the mere matter of a day's sailing not amounting to much; and he suggested that if \$15 was the price to Duluth, the balance of \$3 to Fort William would not be very high, but he could not say that \$15 was the price between Emerson and Duluth.

Mr. Campbell, who had had an active experience in the management and freighting of vessels for twenty years, thought there was no scarcity of vessels in September or October, 1878. He gave evidence at some length concerning the freight at different points on the western lakes. The tenor

of his statement was that the extra labour of loading and unloading beyond what could be done by a vessel's own men and machinery, would be worth under 20 cents per ton, and that \$3 between Fort William and Duluth was, under the circumstances of this last agreement, a very high price.

We have no positive evidence from witnesses on the cost of transport in 1878, between Fort William and Emerson, nor between Duluth and Emerson; neither have we the advantage of knowing what price competition would have indicated. Messrs. Fuller & Milne had offered to transport (contract No. 18) at \$13.50, American currency, from Duluth to Winnipeg, when American currency was subject to a discount of about 13½ per cent.; and these contractors in May, 1878 tendered and contracted at \$18, from Kingston to Winnipeg.

We cannot understand, and there is no explanation given, why competition was not invited. It occurs to us that if Mr. Beatty was willing to name as low a price as could be done in competition with others he would have done so without coming to Ottawa to answer the Secretary's telegram.

From the evidence concerning this and other contracts on the subject of transportation we are led to the conclusion that the work provided for by this last agreement of September, 1878, could have been secured by the Department at a lower price than was paid for it, and that in getting the price named, the contractors obtained an undue advantage.

The contract was fulfilled. The amounts paid upon the two agreements were,—

To 30th June, 1879.....	\$60,600
“ 1880	49,800 44
Total.....	<u>\$110,400 44</u>

CONTRACT NO. 35.

Railway Spikes.

By this contract, dated the 3rd June, 1878, James Cooper and Frederick Fairman, under the name of Cooper, Fairman & Co., bind themselves to supply, in accordance with specifications and conditions thereto annexed, 480 tons of railway spikes, at the price of \$49.75 per ton of 2,240 lbs., to be delivered part at Fort William and part at Duluth.

On the 21st February, 1878, the Department issued an advertisement inviting tenders for railway spikes up to noon of the 19th March following. The specifications stated the quantity to be 480 tons.

On the 22nd March, 1878, sixteen tenders which had been received in due time were opened in the presence of Mr. Trudeau, the Deputy Minister, and Mr. Braun, the Secretary of the Department. The offers varied from \$49.75 to \$63.45. The lowest tender was made by Messrs Cooper, Fairman & Co., and was accepted as the basis of the contract on the terms above mentioned.

The evidence shows that the Department awarded this contract on the lowest available offer, and giving no undue advantage to the contractors.

An offer had been made by the Warden of the Kingston Penitentiary, to supply the spikes at a price five per cent. under the lowest tender, if allowed to purchase machinery. That offer was withdrawn, but before entering into this contract a report of the Minister recommending it was approved by an Order in Council dated the 16th May, 1878.

The contract was fulfilled and the following sum paid on it:—

To 30th June, 1879..... \$23,880

CONTRACT NO. 36.

Railway Ties.

By this contract, dated the 22nd February, 1878, William Robinson undertook to supply 165,000 ties according to specifications, at 44 cents each, of which 75,000 were to be delivered at St. Boniface, 60,000 at Rat River and 30,000 at Rosseau River, at the respective times named in the contract.

On the 3rd January, 1878, Mr. Braun, the Secretary of the Department, authorized Mr. Marcus Smith, the acting Chief Engineer, to call for tenders for the supply of ties for the completion of the Pembina Branch. Mr. Nixon, the Purveyor at Winnipeg, was directed to receive tenders there for the whole quantity, such tenders to state prices for the separate places of delivery above mentioned.

On the 22nd February, 1878, the day specified for the receipt, the tenders were opened by Mr. Nixon and a schedule of their contents prepared. A copy of this was forwarded forthwith to the Department at

Ottawa and has been produced before us. It shows that twenty-eight offers had been made, varying in price from 25 cents to 70 cents per tie. Many of the tenders were found to be for less than the full quantity and for less than the quantities required at the separate places.

The following list gives the tenders, including that of the contractors and all lower ones, the others being higher, are not material to this report:—

Name.	St. Boniface.	Rat River.	Rousseau River.
A. F. Martin.....	75,000 at 25 cts.	60,000 at 25 cts.	30,000 at 25 cts.
Chas. Nolin.....	10 000 25 "	.....	.....
Augustus Nolin.....	.....	10,000 at 25 cts.	.....
T. W. Quigley.....	75,000 at 29 cts.	60,000 25 "	30,000 at 27 cts.
W. C. Lewis.....	.....	60,000 30 "	.....
A. Bissonnette & Co.....	.....	60,000 33 "	.....
McKinnon & McDonald.....	75 000 at 35 cts.	.....	.....
Alex. McNabb.....	.....	60,000 at 35 cts.	30,000 at 35 cts.
John Nesbitt.....	.....	10,000 39 "	.....
Joseph Pillow & Co.....	.....	5,000 40 "	.....
Geo. Taylor.....	75,000 at 49 cts.	60,000 49 "	30,000 at 40 cts.
Wm. Robinson.....	75,000 44 "	60,000 44 "	30,000 40 "

The lowest tender, by A. F. Martin, for the whole quantity required at each point at the rate of 25 cents per tie, was accepted, but was withdrawn. Mr. Nixon put himself in communication with the Department concerning the state of affairs, and was instructed to pass to Charles and Augustin Nolin, who had made offers at the same rate for a portion of what was wanted at St. Boniface and at Rat River, and to give the balance to T. M. Quigley, who had made an offer to supply the whole, some at 25 cents and some at 27 cents each. Mr. Charles Nolin named a day to close the arrangement respecting the quantity to be awarded to him, but failed to appear. Augustin Nolin did not answer. Mr. Quigley declined to enter a contract unless the Government would make advances to him before delivering ties. This condition was communicated to the Department, but

declined by a telegram to Mr. Nixon from Mr. Braun, dated the 10th February, 1878, in which telegram Mr. Nixon was directed to act quickly. After this, each of the following parties was sent for in the order named, and declined to contract :—

W. C. Lewis,
A. Bissonnette & Co.,
McKinnon & McDonald, and
Alex. McNabb.

There were some intervening tenders, left between the parties named and William Robinson, but the latter declined to contract if any intermediate offers for portions of the quantity were accepted, and Mr. Nixon closed a bargain with him at 4½ cents per tie for the whole quantity. This decision was telegraphed to the Department on the 13th March, 1878, after which 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 22nd March, 1878.

“On a memorandum dated 13th March, 1878, from the Honourable the Minister of Public Works, representing that tenders having been called for for the supply of one hundred and sixty-five thousand railway ties for the Pembina Branch of the Canadian Pacific Railway, twenty-eight tenders were received, the highest being at the rate of seventy-five cents and the lowest twenty-five cents.

“That the tender of Mr. A. F. Martin accepted as being the lowest, was withdrawn by him That Messrs. Charles and Augustus Nolin, Quigley, Lewis, Bissonnette, McKinnon & McDonald, McNabb, Nesbitt, and Pillon & Co., to whom following the regular sequence of rates, the contract was proffered, have all, for reasons specified, declined to carry out their tenders.

“That the tender of Mr. William Robinson, at the rate of forty-four cents for the whole quantity, is the next lowest, and accordingly recommending that authority be granted for the acceptance of his offer.

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

“Certified.

“W. A. HIMSWORTH,
“C.P.C.

“To the Honourable

“The Minister of Public Works.”

The evidence shows that the contract was awarded upon the lowest available offer and without any undue advantage to the contractor.

The contractor failed to fulfil his contract either as to quantities or as to time of delivery, and the matter was taken out of his hands.

The ties not supplied by him were procured by the Department from other sources, and the cost of them was charged to the contractor.

To the 30th of June, 1880, the following sums had been paid on this contract:—

To 30th June, 1879.....	\$51,006 88
" 1880.....	18,488 04

Total.....	\$69,494 92

CONTRACT NO. 37.

Railway Construction.

By this contract, dated 2nd August, 1878, John Heney, Alphonse Charlebois and Thomas Flood covenanted to complete the excavation, grading, bridging, track-laying and ballasting of the Georgian Bay Branch, between station O on the location of 1877 on the western side of the South River, near Nippisingang post office, to the head of navigation on French River, about five miles east of Cantin's Bay, in length about fifty miles, to be finished by the 1st July, 1880, according to specifications, receiving therefor the prices respectively named in said contract for the different classes of work to be done under it.

The contract with Mr. Foster, No. 12, concerning the Georgian Bay Branch, having been annulled by Order in Council of the 28th February, 1876, as before mentioned, and the route named in that contract having presented more engineering difficulties than were anticipated, a new survey of the country to be crossed by a railway near Georgian Bay was, in the year 1877, made under the direction of Mr. Marcus Smith, acting Chief Engineer. This led to the adoption of the route named in this contract and described more fully in the special report of the Chief Engineer for 1877, page 17.

On the 20th May, 1878, advertisements were issued inviting, up to noon of the 29th June following, tenders for the work above described. Proposals were to be received in two forms, which, together with other information, might be had on application to the Department. Form A was upon the basis of a subsidy per mile in cash and in land, together with interest at the rate of four per cent. for a stated period upon the amount to be proposed by the tenderer. There were some offers on this basis, but they were not entertained.

Form B was based upon a schedule of estimated quantities of the different classes of work to be performed, for each of which the tenderer

was asked to name his price according to the method generally adopted in letting contracts for this railway.

The tenders were opened on the day appointed for their receipt, and a schedule was prepared and certified upon that occasion by Mr. Braun, Mr. Page and Mr. Smellie, officers of the Department. This shows that on form B twenty-six regular tenders had been received in which the total price asked for the work varied from \$809,813 to \$1,228,448, the lowest of these being made by Messrs. McGreevy & Heney. This one is the foundation of the present contract.

The evidence shows that the contract was without any undue advantage to the contractors awarded on the lowest available offer.

Before the contract was executed, Mr. McGreevy, one of the firm of successful tenderers, asked leave to withdraw, and his partner, Mr. Heney, asked to associate with him Messrs. Charlebois and Flood. This was acceded to, and an Order-in-Council based on the following memorandum confirmed the arrangement :—

“10th August, 1878.

“*Memorandum.*

“The undersigned reports that the lowest tender received for the construction of the Georgian Bay Branch of the Canadian Pacific Railway was from Messrs. Robert McGreevy and John Heney.

“That Mr. McGreevy has afterwards asked leave to withdraw his name from the tender, and Mr. Heney requested that the names of Alphonse Charlebois, of Montreal, and Thomas Flood, of Sandy Hill, N. Y., be put in lieu thereof in the contract.

“As Messrs. Charlebois and Flood have the reputation of being good contractors, the undersigned agreed to this and therefore recommends that approval be given to his according the contract to Messrs. Heney, Charlebois and Flood.

“Respectfully submitted,

“A. MACKENZIE,

“*Minister of Public Works.*”

On the 10th June following, Mr. Fleming submitted to the Minister of his Department the following memorandum :—

“*Memorandum.*

“THE GEORGIAN BAY BRANCH, 10th June, 1879.

“SIR,—At the request of the Hon. the Minister, the undersigned begs to report on the present condition of the Georgian Bay Branch.

“According to returns received, the total value of work executed up to the 1st of the present month is \$11,173. This consists almost wholly of chopping down the standing timber; no earth or rock excavations, or any other kind of work, except \$45 of grubbing has yet been executed.

"The number of men of all kinds engaged, according to last returns, is 69, but this force appears to have been on the ground only a few days, as the average for the month of May was only 36.

"The average for the previous months was about 30.

"The contract is dated 2nd August, 1878; the date for completion 1st July, 1880, giving 23 months for executing the work, which, according to the tender, is estimated at \$809,813.

"The time which has elapsed between the date of the contract and the 1st June was 10 months, during which period the whole work done amounts to \$11,713, leaving work to the value of \$798,643 yet to be executed in 13 months.

"It is quite obvious from the small amount of work done, and the comparatively very low prices for work remaining to be done, that it will be impossible for the contractors to bring the contract to a satisfactory completion.

"SANDFORD FLEMING.

Before much progress had been made under this contract, the Government adopted the policy of discontinuing the construction of the Georgian Bay Branch, and the following Order-in-Council was passed:—

"Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on the 25th July, 1879.

"On the report, dated 24th July, 1879, from the Hon. J. H. Pope, acting in the absence of the Minister of Railways and Canals, stating that on the 2nd day of August, 1878, a contract was entered into with Messrs. Heney, Charlebois & Flood for the grading, bridging, track-laying and ballasting of a line of Railway between a point on the west side of South River, near Nipissingan Post Office, and the head of navigation on French River, about five miles east of Cauntin's Bay, the said line being in length about 50 miles.

"That the contract provided that the whole of the works comprised therein should be completed and delivered on or before the first day of July, 1880.

"That the approximate value of the work contracted for amounts to the sum of \$809,813 00, and that the estimated value of the work performed, as shown in the Engineer's returns of the 30th June last, is \$12,260.40.

"The Minister recommends that the contractors be notified that it is not the intention of the Government to proceed further with the work under this contract, and that instructions be given them to stop work.

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

"Certified,

"J. O. COTE, *Assistant Clerk.*

"The Hon. Minister of Railways and Canals."

On the 5th August, 1879, Messrs. Ripley, Smith & Co., addressed the Minister of Railways and Canals in a letter, which is published in full at page 3 of a return to the House of Commons, dated the 28rd March, 1880, concerning the stoppage of the works under this contract. In this letter Messrs. Ripley & Smith gave notice in substance that they had acquired the interest of Messrs. Heney, Charlebois & Flood in their contract.

The transfer thus alluded to was not recognized by the Department. Subsequently Messrs. Ripley & Smith founded a claim for compensation against the Government on the stoppage of the works, such demand being partly for damages and outlay actually incurred, and partly for the loss of prospective profits. We do not propose to offer any opinion on the validity of this demand, and it is not necessary further to allude to the position taken by Messrs. Ripley & Smith.

On the 9th August, 1879, the following memorandum was submitted to the Privy Council:—

“(Memorandum.)

“OTTAWA, 9th August, 1879.

“The undersigned begs respectfully to report that an Order in Council on the 25th day of July last, cancelling the contract with Messrs. Heney, Charlebois & Flood, for the construction of that section of the Canadian Pacific Railway known as the Georgian Bay Branch, for the reasons stated in the report of the undersigned, recommending the said contract be cancelled.

“That since the said 25th day of July, to wit, on the 5th day of August instant, it came to the knowledge of the undersigned that previous to the said 25th day of July, to wit, on the 13th day of June last past, the said contractors, Messrs. Heney, Charlebois & Flood, had without the knowledge or consent of Her Majesty, or the Minister of Railways and Canals acting in that behalf for Her Majesty, assigned and transferred the said contract to Messrs. Smith, Ripley & Co.

“That the undersigned was not aware, when he recommended the Order in Council of the 25th of July, that such assignment had been made in contravention of the 17th article of the said contract entered into by said contractors with Her Majesty.

“That on the 5th day of August last, he was notified by letter purporting to be signed by the said Messrs. Smith, Ripley & Co., that such assignment had been made to them, and at the same time a paper purporting to be an assignment of the said contract, duly executed, was deposited in the Department of Railways and Canals.

“That by the seventeenth section of the contract entered into by the said contractors, it is provided, and is made a condition of the said contract, that no assignment of such contract shall be made without the consent of Her Majesty.

“Her Majesty may take the work out of the contractors' hands and employ such means as she may see fit to complete the same.

“That such assignment was never assented to by Her Majesty, or by the Minister of Railways and Canals acting for Her Majesty.

“The undersigned, for the above reasons, as well as for those set forth in the former report, recommends that, in accordance with the terms of the said contract, the contractors, Messrs. Heney, Charlebois & Flood be notified that the said contract is taken out of their hands and annulled.

“Respectfully submitted,

“J. H. POPE,

“Acting Minister of Railways and Canals.”

This was followed by the Order in Council below set out :—

“Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 14th August, 1879.

“On a Memorandum, dated 9th August, 1879, from the Hon. J. H. Pope, acting in the absence of the Minister of Railways and Canals, having reference to the Order in Council passed on the 25th day of July last, cancelling the contract with Messrs. Heney, Charlebois & Flood, for the construction of that section of the Canadian Pacific Railroad known as the Georgian Bay Branch, and recommending for the reasons stated in said memorandum that the contractors, Messrs. Heney, Charlebois & Flood, be notified that the said contract is taken out of their hands and annulled.

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

“Certified,

“W. A. HIMSWORTH, C. P. C.

“The Hon. Minister of Railways and Canals.”

On the same day the Acting Secretary of the Department wrote to the contractors as follows :—

“OTTAWA, 9th August, 1879.

“GENTLEMEN,—By direction of the Acting Minister of Railways and Canals, I have to inform you that by an Order in Council, dated 25th July last, a copy of which is herewith enclosed, the contract made with you for the construction of that portion of the Canadian Railway, known as the Georgian Bay Branch Railway, was by virtue and in pursuance of the terms of the said Order in Council, cancelled and annulled, and you are hereby notified that the said work is, on behalf of Her Majesty, taken out of your hands, and you will accordingly cease all further operations under or by virtue of said contract.

“I have the honour to be, Gentlemen,

“Your obedient servant,

“F. H. ENNIS,

“Acting Secretary.

“Messrs. HENEY, CHARLEBOIS & FLOOD.”

“MONTREAL, 13th August, 1879.

“SIR,—We have to acknowledge yours of the 9th instant (No. 12,191), covering a copy of an Order in Council (No. 19,791), of the 25th July, authorizing you to cancel our contract for the construction of the Georgian Bay Branch of the Canadian Pacific Railway; also your notice of August 9th to us to discontinue operations under said contract.

“In pursuance of your notice, I immediately transmitted your order to discontinue operations to the parties temporarily in charge of the work, by telegraph to Collingwood, the executive office of our firm.

“Should there be a failure of full compliance to your order by the parties temporarily in charge of the work, on account of certain efforts to negotiate with us for the entire control of said work, we would hereby inform and notify you that such negotiations were never completed, or deemed sufficiently likely to become so, to cause us to ask your official sanction

thereto. Therefore, we shall only enumerate, subject to amicable settlement, such charges as have become chargeable previous to the receipt of your notice to discontinue operations.

“ We have the honour to be, Sir,

“ Your obedient servants,

“ HENEY, CHARLEBOIS & FLOOD.

“ Hon. JOHN POPE,

“ Acting Minister of Railways and Canals.”

At the date of our commission neither the original contractors nor their assignees had been finally settled with.

Mr. Fleming, in a report to the Minister, dated 9th February, 1880, stated that the work at that date performed under the contract had been measured up, and the final certificate issued for \$24,807.94.

The expenditure up to the 30th June, 1880, under this contract was as follows :—

To 30th June, 1879.....	\$10,050
“ 1880.....	950

Total.....	\$11,000

CONTRACT No. 38.

Alteration of Building.

By this indenture, dated the 26th July, 1878, Edmund Ingalls, agreed within the time therein stated, to alter and to finish the Government building on lot 34 in the town plot of Fort William, according to specifications and plans annexed to the said contract, receiving therefor \$3,261 at the times mentioned.

The object of this contract was to alter the Neebing Hotel, so as to afford accommodation for officers and a residence for the Purveyor at Fort William.

An advertisement invited tenders to be received up to 4 o'clock p.m., of the 20th July, 1878, which was issued by Mr. McClennan, the engineer in charge at Prince Arthur's Landing, under directions from the Department at Ottawa.

The tenders received in due time were opened on the 26th July, 1878, by Mr. McClennan, and showed seven offers, varying from \$3,261 to \$4,487. The lowest was made by Edmund Ingalls, and was accepted by Mr. McClennan, who forwarded a copy of the advertisement and a schedule of the

tenders to the office of the Engineer-in-Chief at Ottawa. The contract was based upon the lowest tender and without any undue advantage to the contractor.

It was supposed, at the time of letting it, that the amount named would be somewhat reduced by the value of doors, windows and materials to be furnished to the contractor from buildings at Fort William, which were not required and which could not then be rented. The amount, however, was not reduced, but increased in consequence of some extras in the completion of the work.

The amount paid was :—

To 30th June, 1879..... \$3,456 85

CONTRACT NO. 39.

Transportation of Rails.

By this contract, dated the 18th July, 1878, John Irving covenanted to convey, on or before the 1st November, 1878, 5,266 imperial tons, being all the rails then at Esquimalt and at Nanaimo, respectively, to Emory's Bar, on the Fraser River, or at a point in the neighbourhood of the toll-gate at Yale, according to specifications, receiving therefor \$6.44 per ton of 2,000 pounds.

This contract was awarded at Victoria, B.C., by Mr. John Robson, Purveyor, under instructions from Mr. Braun, the Secretary of the Department at Ottawa.

On the 12th June, 1878, Mr. Braun telegraphed Mr. Robson to "Advertise for tenders for the removal of steel rails to Yale, * * * * * to be completed by the 1st November next." Two days afterwards, Mr. Robson advertised, inviting tenders up to the 8th July following for the removal and stacking of 3,111 tons then at Nanaimo, and 2,155 tons then at Esquimalt, to be completed before the 1st November, 1878. The character of the vessels to be employed was described, and it was mentioned that the offers were to be made subject to direction afterwards concerning the exact points of delivery.

In answer to questions of the 6th July, 1878, by telegram from Mr. Robson, Mr. Brann on that day telegraphed him as follows:—

"(Telegram)

"6th July, 1878.

"Rails to be stored at Yale. Open tenders with Cambie, both countersigning. Report amount and standing of three lowest by telegraph and wait for instructions.

"F. BRAUN,

"Secretary.

"JOHN ROBSON,
"Victoria, B.C."

On the 10th July, 1878, Mr. Robson telegraphed Mr. Braun as follows:—

"Three tenders for rails—\$7, \$6.50 and \$6.44 per ton, respectively—all from responsible parties."

On the 12th July, 1878, Mr. Braun answered:—

"Accept lowest tender for transportation of rails."

On the 19th June, 1878, Mr. Robson had addressed a letter to Mr. Braun, enclosing a copy of the advertisement before mentioned, and asking for definite instructions as to the method of dealing with tenders, insurance, &c., and containing the following passage:—

"The time (the 1st November) is, in view of existing facilities, rather limited, and I beg to suggest for the consideration of the Department, whether it might not be desirable to extend the time for delivery of the major portion of the rails till the latter part of next summer, provided that by so doing the freight rate would be materially reduced."

At the time of the first direction from Mr. Braun as above mentioned, it was understood in the Department that Burrard Inlet would be favourably recommended to Council as the Pacific terminus for the railway, and that rails would be, therefore, required at Yale. On the 13th July, 1878, 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 13th July, 1878.

"On a Memorandum, dated 11th July, 1878, from the Honourable the Minister of Public Works, reporting that on the 1st June, 1877, an Order in Council was passed in accordance with the provisions of the Canadian Pacific Railway Act, 1874, defining the route of the railway between Fort William, on the Kaministiquia River, and Jasper House and Tête Jaune Cache;

"That the same Order in Council also defined the route from the last-named point to the Pacific Ocean, in the event of the Butte Inlet or Dean Inlet routes being ultimately adopted, these being the routes through British Columbia, one of which at that time it seemed probable would be adopted;

"That later information has shown that it would be in the public interest that the route of the railway from the neighbourhood of the Tête Jaune Cache should be towards Burrard Inlet;

"The Minister, therefore, recommends that the route of the railroad shall be defined generally as passing from the neighbourhood of the Tête Jaune Cache by the Albreda River, to the North Thompson River, and descending the valley of the said North Thompson River, towards Kamloops Lake, to the Fraser Valley at Lytton, and thence descending the valley of the Fraser by Yale and New Westminster to Port Moody, or such other point on or near Burrard Inlet, as may be found most convenient for the purpose of harbour accommodation.

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

"Certified,

"W. A. HIMSWORTH,

"C. P. C."

In obedience to Mr. Braun's telegram of the 12th July before mentioned, the contract was awarded to Mr. Irving, and the following report of the transaction was forwarded by Mr. Robson to the Department at Ottawa:—

"CANADIAN PACIFIC RAILWAY SURVEY,
"WESTERN DIVISION,

"VICTORIA, B.C., 19th July, 1878.

"Sir,—Agreeably to instructions, and in accordance with advertisement, tenders for transportation of steel rails were received and the result telegraphed to you.

"I have now to report that the contract has been awarded to Captain Irving at the lowest figure (\$6.44 per ton), that the contract and bond have been duly executed, and that the first cargo of the rails will go forward next week.

"I have to call your attention to the fact that I am still without instructions as to insurance of these rails while in transit.

"Referring to this subject, in my letter of the 19th ultimo, I intimated that it seemed probable not more than 100 tons would be at one risk. I now beg to qualify that opinion by stating that it is in contemplation to carry 2,351 tons from Esquimalt to New Westminster on the 'Wilson G. Hunt,' considered a good, staunch steamer; and 760 tons from Esquimalt and 2,155 tons from Nanaimo on the 'Bonanza,' a good seaworthy schooner which will carry from 200 to 250 tons at a time, and will be towed by the said 'Wilson G. Hunt.'

"I have further to add on this subject that, after consultation with their principals, the insurance agents inform me that the rate would be $\frac{3}{4}$ of 1 per cent., with a rebate of 10 per cent.

"Unless instructed on the subject, I shall assume that it is not the intention of the Department to effect an insurance upon the property in question.

"I may be permitted to remark that the rate at which the contract has been taken is very low, but it is satisfactory to know that the work has been undertaken by the party best prepared and most competent to carry it out. But, even in the best of hands, much must necessarily depend upon the nature of the season and consequent stage of water in the Fraser as to the practicability of conveying the whole of the rails to their destination within so limited a period.

"There need be no difficulty, however, about having them all removed from where they now are to some convenient point on the Fraser within the specified period, thereby stopping the process of rusting and rental outlay involved in their remaining where they are.

"Herewith I beg to hand you copies of specifications, contract and bond.

"I have the honour to be, Sir,

"Your obedient servant,

"JOHN ROBSON,

"Paymaster and Purveyor, C.P.R.S."

"F. BRAUN, Esq.,

"Secretary Department Public Works,

"Ottawa."

Subsequently the rails were insured by Mr. Robson at 67-100 of 1 per cent. under instructions from the Department.

On the 21st October, and again on the 26th October, 1878, Mr. Braun telegraphed Mr. Robson asking for information as to the progress of the transportation under the contract. On the 29th October Mr. Braun sent the following message :

"(Telegram.)

"DEPARTMENT OF PUBLIC WORKS,

"OTTAWA, 29th October, 1878.

"Notify John Irving to stop moving rails and other railway material from Vancouver Island, Langley or other points after thirty-first (31st) instant when contract expires—take possession of rails at the several points and report quantity.

"F. BRAUN,

"Secretary.

"To JOHN ROBSON, C.P.R.S.,

"New Westminster, B.C."

To which Mr. Pearson, a clerk in the office in British Columbia, answered that Mr. Robson was in the interior, but would be down the Friday following.

On the 30th October, Mr. Braun sent the following message :—

"30th October, 1878.

"(Telegram.)

"Stop moving rails and other railway materials from Vancouver Island, Langley and other points after 31st instant, when your contract expires.

"F. BRAUN,

"Secretary.

"JOHN IRVING,

"New Westminster, B.C."

After several intermediate telegrams, which need not be reported, the following letter was sent by Mr. Robson :—

" CANADIAN PACIFIC RAILWAY SURVEY,
" WESTERN DIVISION,

" NEW WESTMINSTER, B.C., 6th November, 1878.

" DEAR SIR,—I have the honour to acknowledge the receipt of three telegrams, dated 21st and 29th October, respectively, relating to the transport of steel rails, &c., all of which came during my absence in the interior; and I now beg to report for the information of the Minister as follows:—

" 1. Immediately on receiving your telegram of the 29th October, I served a notice upon the contractors to discontinue moving rails and other railway materials; and I took possession of said rails, &c., at the places of deposit, excepting some 242 tons water-borne at the time but now in course of landing at Langley.

" 2. As the matter stands now, 3,584½ tons have been transported from Vancouver Island (3,484½ tons from Esquimault and 100 tons from Nanaimo) to the Fraser River. Of that amount about 2,000 tons are at Yale, and the remainder at Langley and New Westminster, mostly, however, at Langley.

" I have said about two thousand tons are at Yale, because there being only 562½ tons stacked. I have only the contractor's word, but judging from the piles there seems to be no reason to question the accuracy of the statement.

" 3. The 400 tons, or thereabouts, lying at the wharf at New Westminster will, if permitted to remain where they are, become liable to wharfage charges.

" 4. Of the rails landed at Yale, less than 600 tons have been stacked, the remainder still lying on the beach, where they cannot remain over winter without risk of loss during spring freshets; consequently I asked for instructions in my telegram of 1st instant, respecting the disposition of these rails.

" I am, Sir,

" Your obedient servant,

" JOHN ROBSON,

" Paymaster and Purveyor, C. P. R. S.

" P. S.—Since writing the within your telegram of the 4th instant has been received, and will be duly attended to.

" F. BRAUN, Esq.,

" Secretary Public Works,

" Ottawa."

This was followed by a letter from Mr. Pearse, the resident engineer:—

" PUBLIC WORKS DEPARTMENT,

" VICTORIA, B.C., 8th November, 1878.

" SIR,—I have the honour to acknowledge the receipt of your telegram, dated October 30th, instructing me to see that no more steel rails were removed after the 31st ult. This telegram only came to hand at 10 a.m. on the 2nd instant, and as I knew that the contractor for their removal had gone to Nanaimo for a cargo, I consulted with the Hon. Mr. Walkem as to the possibility of obtaining the services of a war vessel to take me to Nanaimo for the purpose of placing some trustworthy person in charge of the rails. We found, however, that we should lose a great deal of time by this, even if it were possible, which was very doubtful, so I determined to sail on Sunday morning the 30th inst., in the American vessel "California," whose commander courteously gave me a free passage. We arrived at Nanaimo at 4

p.m., but on our way up sighted the contractor's vessel, with a cargo of 250 tons of rails on board, just entering the Frazer. It was impossible to catch him, and equally impossible, had we done so, to have compelled him to return with the cargo to Nanaimo. I have placed the remainder of the rails, possibly about 2,000 tons, in charge of the Provincial Government Agent at Nanaimo, with instructions to see that no more rails are removed. Mr. Walkem placed the services of that gentleman at my disposal in the matter. I have also notified the contractor of the substance of my instructions and warned him against proceeding further in his contract. On my return to Victoria I inspected the line of the proposed telegraph between Nanaimo and that city.

"I have the honour to be, Sir,

"Your most obedient servant,

"V. W. PEARSE,

"Resident Engineer.

"F. BRAUN, Esq.,

"Secretary Public Works Department,

"Ottawa."

On November 15th, 1878, Mr. Robson reported that \$3.22 per ton would be a fair compensation for the transport of the rails left at Langley, and that the contractor claimed some compensation for a wharf built by him at that place, as it would be of service in the subsequent removal of the rails. On the 29th November the contractor wrote as follows:—

"NEW WESTMINSTER, 29th November, 1878.

"SIR,—I have the honour most respectfully to bring to the notice of the Honourable Minister of Public Works (through you), the loss I sustain in consequence of the Government cancelling my contract for transporting steel rails from Esquimalt and Nanaimo to Yale. You are aware that the preparations necessary for carrying out the contract have been large and costly; and unless I am permitted to complete the contract, I submit with great respect that the Government pay the loss I sustain. It is certainly correct that the work was not completed at the time the contract stipulates, but it is equally true and well known that, considering the limited means available for transportation, the very utmost that could be done under the circumstances for faithfully carrying out the contract has been done by me.

"I, therefore, venture to hope that the Government will favourably consider my case and make me such an allowance as they may deem under the circumstances reasonable.

"I have the honour to be,

"Your obedient servant,

"JOHN IRVING.

"To JOHN ROBSON, Esq.,

"New Westminister."

The contractor founded a claim against the Government on the stoppage of the works as above mentioned. This was settled, without any loss to the Government, by Mr. Irving being permitted to continue the transportation under the terms of the original contract.

The amount paid up to the date of our commission on this matter was :—

To 30th June, 1879..... \$9,660

CONTRACT No. 40.

Engine House.

By this contract, dated the 5th August, 1878, Charles Louis Gouin, James Murphy and Joseph Upper covenanted to erect and complete a ten-stall engine house according to specifications attached to the contract, to be finished by the 1st September, 1879, receiving therefor \$30,500, and, if necessity should arise, to add such further works as were mentioned in the contract, then an additional price stated for the extra work in the body of the contract.

On the 20th May, 1878, advertisements were issued from the Department at Ottawa, asking for tenders for this work up to noon of the 29th June, 1878, stating that specifications and other particulars could be obtained on application to the District Engineer at Winnipeg, or at the office of the Engineer-in-Chief in Ottawa.

On the 15th July, 1878, the tenders received were opened in presence of Mr. Trudeau, the Deputy Minister, and Mr. Braun, the Secretary of the Department. The schedule prepared upon that occasion, in the usual way, showed that six offers had been made, varying from \$30,500 to \$45,500. The lowest tender was made by Messrs. Gouin & O'Meara, at \$30,500. Subsequently Mr. O'Meara requested to have his name withdrawn from the transaction, and the names of Messrs. James Murphy and Joseph Upper to be inserted instead. This change was approved of by the Department, and the following Order in Council passed to confirm it :—

"COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 2nd September, 1878.

"On a report dated 10th August, 1878, from the hon. the Minister of Public Works, stating that the lowest tender received for the erection of a ten-stall engine house at Selkirk for the C. P. Railway was from Messrs. C. S. Gouin and M. O'Meara, jr.

"That Mr. O'Meara was afterwards asked leave to withdraw his name from the tender, and Mr. Gouin requested that the names of James Murphy and Joseph Upper be put in lieu thereof in the contract, that as Messrs. Murphy and Upper have the reputation of being good contractors, he, the Minister agrees to this, and the names of Messrs. Murphy & Upper, have accordingly been associated with that of Mr. Gouin in the contract.

"The Minister recommends that the contract entered into with Messrs. Gouin, Murphy and Upper for the erection of the engine house be approved.

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

"W. A. HIMSWORTH,
"C.P.C."

The evidence shows that this contract was let upon the lowest available offer and without any undue advantage to the contractor.

The work was completed satisfactorily and taken off the hands of the contractors. Some extras were required as provided for in the terms of the contract, and were paid for as follows :—

180 cubic yards earth at.....	25
10 " " rock "	1.50
117 yards masonry "	5.00
467 " " drain "	5.00

In addition to these which had been provided for as before mentioned, there were other charges which were extras beyond the arrangement entered into at the time of making the bargain. One was for increasing the diameter of turn-table to 50 feet, \$200; and removing turn-table from Selkirk to Emerson, \$105.

The work has been done satisfactorily, and has been paid for as follows :—

To 30th June, 1880..... \$33,785

CONTRACT No. 41.

Railway Construction.

By this contract, dated the 7th March, 1879, Thomas Marks, John Ginty, Patrick Purcell and Hugh Ryan, covenanted to construct and complete, according to specifications, including track-laying and ballasting, the line of Railway from English River to Eagle River, about 118 miles, receiving therefor the prices set out in the contract as applying to the respective classes of work to be performed.

There were two sets of prices arranged for, one (the lower rate) to apply if the work should be completed by the 1st July, 1883, and ready for the passage of through trains by the 1st July, 1882. The gross sum at these rates, upon the quantities then estimated would be \$2,203,896.

The other, the higher rates, were to apply if the work should be completed by the 1st July, 1882, and ready for the passage of through trains on the 1st July, 1881. The gross sum, at these rates, would be \$2,300,196.

The contract contained a condition that if it should appear that, at the rates named, the intended total expenditure (2,208,896) would be exceeded, then the work might be stopped; and that no work beyond that amount should be done unless first authorized by the Minister.

Papers connected with the letting of this contract and the following one, No. 42, are printed (as 43 M and 43 E) in the sessional papers of 1879, and also in a return to the House of Commons upon the subject, dated the 31st March, 1880.

In August, 1878, there was a gap of 185 miles between the portions under construction at the two ends of the railway between Thunder Bay and Red River. Tenders were invited by advertisement, dated the 13th August, 1878, to be received up to 1st January, 1879.

In November, 1878, the Government desiring to get more accurate information concerning the details of the work to be executed than could be afforded in time to permit of satisfactory tenders so early as the day thus named, the Department extended the time until the 15th January, 1879, and then, finding that the information was not so complete as was expected, and was not likely to be obtained so as to be available at the end of that period, the time was again extended until the 30th January, 1879, of which extensions due notices were given by advertisement.

Upon the first occasion the advertisement stated that the work was to be divided into three sections.

- (1.) From the Westerly end of the 25th Contract, English River, to Raleigh, about fifty miles.
- (2.) From Raleigh to Eagle River, about sixty-eight miles.
- (3.) From Eagle River to Keewatin, about sixty-seven miles.

The distances thus named were not changed in the advertisements, but all tenders being required to be made on forms according to specifications prepared at the Department, it was intimated that these would be furnished to applicants, and these forms and specifications were framed so as to permit of offers in the three following shapes.

Form A. English River to Eagle River, 118 miles.

Form B. Eagle River to Keewatin, 67 miles.

Form C. English River to Keewatin, 185 miles.

This new feature of inviting, with the others, offers for the whole length, was adopted upon the view of Mr. Fleming, the Chief Engineer, that if contractors possessing sufficient skill and means would undertake the entire distance, the completion would probably be secured at an earlier period than if done under separate contracts, but for fear the work as a whole should be too great to attract proper competition, tenders were also asked for in relation to each of the two sections last mentioned, the easier work being on the longer of such divisions.

In the afternoon of the day named for the final receipt, all the tenders were opened in the presence of Mr. Trudeau, the Deputy Minister, Mr. Braun, the Secretary, Mr. Fleming and Mr. Marcus Smith, Engineers.

The following report and other documents are recorded in the Department on this subject :—

‘ CANADIAN PACIFIC RAILWAY,
“ OFFICE OF THE ENGINEER-IN-CHIEF,
OTTAWA, 1st February, 1879.

“The Honourable

“ The Minister of Public Works

“ SIR,—On the 30th ultimo, at noon, the time had elapsed for the reception of tenders for the construction of that portion of the Pacific Railway between English River and Keewatin, 185 miles.

“ It had previously been arranged that the tenders should be opened at 2 o'clock in the afternoon. Accordingly the Secretary, F. Braun, to whom the tenders were addressed, laid on the table all the tenders received. They were opened, numbered and endorsed in the usual way, in presence of the Deputy Minister, Mr. Trudeau, Mr. Marcus Smith, the Secretary and myself.

“ We first saw that the prescribed conditions with respect to an accepted bank cheque accompanying each offer, the printed forms, and other matters, were strictly complied with.

“ In each case that the conditions were not complied with, the tenders were thrown out as irregular. The regular tenders only were recorded as they were opened, on sheets 1, 2, 3 and 4, which accompany this.

“ The following is the number of regular tenders received :—

Rails to be laid 1st July, 1882.

Form A. English River to Eagle River, on Sheet No. 5.....	17
Form B. Eagle River to Keewatin, on Sheet No. 6.....	12
Form C. English River to Keewatin, on Sheet No. 7.....	11

Rails to be laid 1st July, 1881.

Form A. English River to Eagle River, on Sheet No. 8.....	20
Form B. Eagle River to Keewatin, on Sheet No. 9	12
Form C. English River to Keewatin, on Sheet No. 10.....	13
	— 45
	—
Total.....	85

"The tenders being opened and properly registered, I asked Mr. Marcus Smith to make a critical examination of the six lowest tenders for the separate sections A and B and for the combined section C, taking care to have the printed quantities accurately moneyed out at the rates given in the tenders, in order to test the accuracy of the total amounts in each case.

"I herewith enclose Mr. Smith's report, and I would direct attention to what he says, with much of which I concur.

"First, he refers to the tenders on Form A section, English River to Eagle River; second, he takes up the tenders on Form B section, Eagle River to Keewatin.

"He points out what is perfectly true, that there are some manifest errors and inconsistencies in the lower tenders. I could not, therefore, recommend their acceptance as they now stand, and to attempt to correct the mistakes would alter the relative amounts.

"Coming to the tenders on Form C, for the combined section from English River to Eagle River, and Eagle River to Keewatin, I find No. 15 to be the lowest. The parties tendering being Messrs. Morse & Co. (Morse, Nicholson & Marpole), of Toronto, the amount being \$5,699,707.

"There are certain advantages of having the whole work placed under one contract, but these advantages would be of little avail, unless the contractors had prices sufficient to enable them to execute the work, and unless they were men of well-known experience and contracting capacity, in a case circumstanced like this, and involving such an enormous outlay. I have not sufficient personal knowledge of the gentlemen whose names are attached to this tender, to judge, and I am at a loss to understand how they can possibly do the work at the exceedingly low rates which they propose to do it for. Had the rates in their tender for the heaviest kinds of work been higher, and had enquiries which I have made, indicated that Morse & Co., had unquestionable experience in similar works and ample resources at their command, I would have at once recommended the Government to award them the contract for the combined section. I consider, however, that it would be hazarding the satisfactory completion of the work, and the early opening of the line, to place the whole 185 miles in their hands.

"I would rather advise relieving them of the difficult section of 67 miles east of Keewatin, their price for which is \$3,364,336, and leave them the remaining 118 miles from Eagle River to English River. This contract would amount to \$2,335,371, and I am of opinion that this work would be sufficiently large to place in their hands, and that it would be inexpedient to give them more, unless Morse & Co. can satisfy the Government that they possess or control greater skill and capacity than I am aware of.

"Referring to Sheet No. 5, I find that there are several parties who offer to execute the section from English River to Eagle River, for less than Morse & Co. With regard to these tenders I would refer to the report of Mr. Smith, the mistakes discovered, the insufficiency

of the prices, and the absence of information respecting the ability and standing of the parties for such a large contract. Messrs. Wardrop & Ross, of Toronto, (No. 10), well known men, however, undertake to do the same work for practically the same amount as Morse & Co., the difference between the totals in these tenders being only about \$1,000, and which difference may ultimately be found, one way or another, as the quantities may vary in actual execution. Some of Wardrop & Ross' prices are very low, but these men have the reputation of being skilful contractors of wide experience, and not likely to fail in anything they may undertake.

"By awarding this portion of the railway to Morse & Co., or to Wardrop & Co., there would remain the sixty-seven miles from Eagle River to Keewatin, for which, I think, Morse & Co's. prices are inadequate. I find the next lowest tender for this section is No. 11, Andrews, Jones & Co., of Newburgh and Brooklyn, New York, and St. Catharines, \$3,915,942, but I have no personal knowledge of the men, and I can learn nothing in the Department regarding them; besides their prices are somewhat incongruous, and, taken with their tender, generally indicate a want of due appreciation of the difficulties. For example, rock excavation, by far the heaviest item in the tender, is rated at very much less than experienced men think it can be done for, and less than five-ninths the price we are actually paying for the same class of work on the contiguous section west of Keewatin; and again, they do not appear to think that time is an important element to them in executing the work, as they make no offer, except for the shorter period prescribed, indicating, I think, a great lack of knowledge of the peculiarities of the country through which the line is to be built.

"The next tender (No. 25, Fraser & Co.,) Fraser, Grant & Pitblado, of New Glasgow, the amount is \$4,130,707. I know these contractors to be skilful, energetic men, having satisfactorily completed, under my supervision, portions of the Intercolonial Railway and its branches. I would not hesitate to place this work in their hands at the price they offer to do it for,

"By thus dividing the works, I think there is a reasonable probability of its being completed within the specified time, at as low rates as it can be done for—at lower rates indeed than are being paid on the contiguous sections, Nos. 15 and 25, now under construction.

"I am aware that there are objections to discriminating in this or any other way, but of one thing I am satisfied, unless the work be put under contract at prices which will involve the contractors in no serious loss, the consequences will be most unsatisfactory, and it can scarcely fail, in the long run, to cost the public a great deal more than if let in the first place to good, skilful men and at fair paying prices.

"Should the Government be disinclined to discriminate in any way, the only course left is to let the work on the lowest tenders, and deal with the difficulties or disasters which may follow as they arise.

"I have not referred to the tenders for completing the work, so as to have the rails laid throughout by July, 1881. I have always entertained doubts as to the practicability, at a reasonable cost, of accomplishing this. There would not be the slightest difficulty in getting some men to undertake it, regardless of the peculiar circumstances of the case. It would be quite another matter to get the work out of their hands by the time fixed, unless their resources were great and their prices very liberal indeed, such, in fact, as would warrant them in pushing the work at whatever cost.

"I am aware that it is considered of very great moment that the line should be opened for public use as early as practicable. I would accordingly suggest that, in addition to the

stipulation in the 18th clause of the printed form of indenture, that "time" shall be deemed to be of the essence of "this contract," a substantial bonus be offered the contractors for every month they may be in advance of the time, and, on the other hand, a heavy penalty be exacted for every month or week that they may be behind, ample funds being retained in the hands of the Government, out of which to deduct the penalty should it be necessary to enforce it.

"Whichever course the Government may adopt, I would strongly advise that no time be lost in having contracts executed, so as to afford the contractors an opportunity of making an early and vigorous beginning of the work.

"In the country draining into the Lake of the Woods and Lake Winnipeg, the sun is generally very powerful after the month of February, and soon renders the winter roads un-serviceable.

"Full advantage should be taken of the short period that will elapse before the breaking up of the ice, in conveying to the accessible portions of the sections, food for men and horses, explosives, tools, plant and all necessary supplies. Unless this be done, I greatly fear that a great part of the coming summer will be lost before an actual beginning [of construction be effected.

"I have the honour to be, Sir,

"Your obedient servant,

"SANDFORD FLEMING,

"*Engineer-in-Chief.*"

FORM OF TENDER A.

CANADIAN PACIFIC RAILWAY.

English River to Eagle River—118 miles.

(To be opened 1st July, 1882.)

List of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	1st COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Marks & Conmee.....	13	2,203,896	2,203,869
2	Charlebois & Shanly.....	17	2,207,534	2,207,874
3	Denis O'Brien.....	12	2,305,754	2,310,754
4	Wardrop & Ross.....	10	2,324,499	2,334,490
5	J. R. McDonell.....	18	2,353,602	2,353,611
6	James Goodwin & Co.....	14	2,397,335	.....
7	Robert H. McGreevy.....	26	2,412,520	.....
8	Manning, McDonell & Co.....	19	2,504,523	.....
9	James S. Grant & Co.....	20	2,508,420	.....
10	Purcell, Ginty & Ryan.....	21	2,528,843	.....
11	F. B. McNamee & Co.....	6	2,612,565	.....
12	Walsh & McCarron.....	22	2,661,591	.....
13	Pitblado, Fraser & Grant.....	25	2,699,055	.....
14	Stevens, Turner, Burns & Co.....	23	2,805,794	.....
15	H. C. O'Reilly.....	5	2,825,217	.....
16	Wm. Hendrie.....	3	3,019,766	.....
17	Ferguson, Symmes, Mitchell & Co.....	4	3,190,291	.....

FORM OF TENDER B.

CANADIAN PACIFIC RAILWAY.

Eagle River to Keewatin—87 miles.

(To be opened 1st July, 1882.)

List of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	1ST COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Morse, Nicholson & Marpole.....	15	3,364,274	3,364,336
2	Fraser, Grant & Pitblado.....	25	4,130,707	4,130,707
3	Manning, McDonell & Co.....	19	4,158,933	4,157,933
4	James Goodwin & Co.....	14	4,313,135	4,313,135
5	Wardrop & Ross.....	10	4,343,747	4,347,867
6	F. B. McNamee & Co.....	6	4,404,196	.....
7	Joseph Whitehead.....	8	4,587,064	.....
8	Ferguson, Symmes, Mitchell & Co.....	4	4,682,639	.....
9	Loss & McRae.....	9	4,774,544	.....
10	Denis O'Brien.....	12	4,774,740	.....
11	Robert H. McGreevy.....	26	4,833,005	.....
12	Hunter, Murray & Booth.....	2	4,987,870	.....

FORM OF TENDER C.

CANADIAN PACIFIC RAILWAY.

English River to Keewatin—185 miles.

(To be opened 1st July, 1882.)

List of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	1st COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Mearse, Nicholson & Marpole.....	15	5,699,645	5,699,707
2	Denis O'Brien.....	13	6,678,859	6,678,859
3	Wardrop & Ross.....	10	6,668,246	6,632,346
4	James Goodwin & Co.....	14	6,731,000	6,731,015
5	Parcell, Ginty & Ryan.....	21	6,731,614	.....
6	Manning, McDonell & Co.....	19	6,793,467	.....
7	F. B. McNamee & Co.....	6	7,021,301	.....
8	Joseph Whitehead.....	8	7,576,811	.....
9	Ferguson, Symmes, Mitchell & Co.....	4	7,872,933	.....
10	Loss & McRae.....	9	8,051,873	.....
11	Stevens, Turner, Burns & Co.....	.....	9,547,181	.....

FORM OF TENDER A.

CANADIAN PACIFIC RAILWAY.

English River to Eagle River—118 miles.

(To be completed 1st July, 1881.)

LIST of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	2ND COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Andrews, Jones & Co.....	11	2,248,585	2,239,525
2	Marks & Conmee.....	13	2,300,196	2,300,196
3	Denis O'Brien.....	12	2,421,041	2,426,291
4	Charlebois & Shanly.....	17	2,423,036	2,431,386
5	Wardrop & Ross.....	10	2,440,724	2,440,724
6	Hunter, Murray & Booth.....	1	2,490,980	.....
7	J. R. Macdonnell.....	18	2,505,747	.....
8	James Goodwin & Co.....	14	2,573,297	.....
9	Purcell, Ginty & Ryan.....	21	2,604,643	.....
10	James S. Grant & Co.....	20	2,633,842	.....
11	Manning, McDonell & Co.....	19	2,726,172	.....
12	Robert H. McGreevy.....	26	2,774,328	.....
13	H. C. O'Reilly.....	5	2,825,217	.....
14	Pitblado, Fraser & Grant.....	25	2,860,199	.....
15	Hurlburt, Orennell & Campbell.....	24	2,945,707	.....
16	F. B. McNamee & Co.....	6	2,976,565	.....
17	Stevens, Frazer, Burns & Co.....	23	3,086,373	.....
18	Wm. Hendrie.....	3	3,160,766	.....
19	Walsh & McCarron.....	22	3,202,459	.....
20	Ferguson, Symmes, Mitchell & Co.....	4	3,366,488	.....

FORM OF TENDER B.

CANADIAN PACIFIC RAILWAY.

Eagle River to Keewatin—67 miles.

(To be completed 1st July, 1881.)

LIST of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	2ND COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Morse, Nicholson & Marpole.....	15	3,467,506	3,467,568
2	Andrews, Jones & Co.....	11	3,915,942	3,915,942
3	Manning, McDonell & Co.....	19	4,470,275	4,470,272
4	Wardrop & Ross.....	19	4,647,809	4,652,196
5	James Goodwin & Co.....	14	4,716,606	4,716,606
6	Joseph Whitehead.....	8	4,722,954	.....
7	Ferguson, Symmes, Mitchell & Co.....	4	4,920,230	.....
8	Denis O'Brien.....	12	5,013,477	.....
9	F. B. McNamee & Co.....	6	5,136,796	.....
10	Loss & McRae.....	9	5,213,544	.....
11	Hurlbert, Crennell & Campbell.....	24	5,250,852	.....
12	Robert H. McGreevy.....	....	5,799,606	.....

FORM OF TENDER C.

CANADIAN PACIFIC RAILWAY.

English River to Keewatin—185 miles.

(To be completed 1st July, 1881.)

LIST of Tenders received 30th day of January, 1879.

No.	Name.	Envelope No.	2ND COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Morse, Nicholson & Marpole	15	5,937,670	5,937,732
2	Andrews, Jones & Co	11	6,062,559	6,062,559
3	Purcell, Ginty & Ryan	21	6,903,364	6,903,364
4	Denis O'Brien	12	7,012,802	7,012,802
5	Wardrop & Ross	10	7,088,533	7,092,920
6	James Goodwin & Co.	14	7,394,428	7,428,778
7	Manning, McDonell & Co.	19	7,567,590	.....
8	F. B. McNamee & Co.....	6	7,728,251	.....
9	Joseph Whitehead	8	7,803,141	.....
10	Hurlbert, Crennell & Campbell	24	7,916,839	.....
11	Ferguson, Symmes, Mitchell & Co.	4	8,286,719	.....
12	Loss & McRae	9	8,944,838	.....
13	Stevens, Turner, Burns & Co.....	23	10,501,899	.....

Sir Charles Tupper, then the Minister of the Department of Public Works, has testified that the importance of getting this work done at as early a day as possible would have induced the expenditure of a larger sum under one contract, for the whole distance, than might have been called for by separate contracts; that the increased price which was asked in this case by the tender for the whole line under the Form C as aforesaid, over the aggregate of the prices demanded by the lowest offers for the separate sections, would not have been of itself any reason for not accepting the tender for the entire distance, and had this one of Morse & Co. at \$5,699,645 emanated from contractors of sufficient strength and resources, it would have been favourably considered; but that, as far as could be ascertained, placing the work in their hands would not have been likely to secure the advantage for which the higher price would be willingly paid, therefore it was decided to let the work by sections.

In addition to the three methods above mentioned in which tenders had been invited, namely, for the eastern link of 118 miles, the western link of 67 miles, and the whole distance of 185 miles, offers had been asked by the said advertisement, to be based on different prices for each of these distances according to the time at which the tenderer was willing to finish the work.

Each tender had two columns, the one to contain the price asked for completing the work by the 1st July, 1883, and ready for passage of trains by the 1st July, 1882; the second, for completing each stage one year earlier, *i.e.* the whole by the 1st July, 1882, and the passage of trains by the 1st July, 1881. Where any distinction is made in the tenders on this subject, the price asked for the earlier period is higher than the price asked for the later period.

Mr. Fleming pointed out that taking the earlier period as a basis for contracts would lead to disappointment and an unnecessarily high price, because it would be in effect promising a rate which could not be earned, and he recommended adopting the later periods and lower prices as the basis of the bargain, subject, however, to a bonus being paid if the work should be done earlier than the contract positively called for. This course was adopted by the Department, and steps were taken to deal with the tenders on the basis of the longer periods and lower prices.

It will be noticed that Mr. Fleming's report above set out recommends negotiating at once with some of the tenderers who had not made the

lowest offers, and he gives what seems to us to be valid reasons for so doing; but, according to the evidence of Sir Charles Tupper, the Department felt that to be an embarrassing proceeding, owing to the fact that the eligibility of the parties had been established according to a prescribed test, namely, the deposit of a stated sum with the tender, and therefore the course of applying first to the lowest tenderers was followed.

The lowest tender for section A, on the long term, for completion, was made by Messrs. Marks & Conmee, at \$2,203,396, and it is the basis of this contract, No. 41, now under consideration. The prices and the total sum named in the tenders were not in this case taken as a matter of course to be those intended by the persons who submitted them. Mr. Fleming asked Mr. Marcus Smith to revise the calculations, and also to consider the offers in respect to their reasonableness

The following is Mr. Smith's report on the subject:—

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, January 31st, 1879.

“SIR,—In accordance with instructions, I herewith enclose an abstract of six of the lowest tenders for the construction of that portion of the Canadian Pacific Railway between English River and Keewatin, 185 miles, with some remarks on the same:—

“Form A, English River to Eagle River, 118 miles. The lowest tender on this form is No. 13, Marks & Conmee, but the rates are not consistent; there are also some evident errors, and some of the items betray a want of knowledge of the work, or else are used disingenuously to lower the bulk sum, or perhaps in the hope that other work will be substituted, for instance:—

“1st. Platform of logs in crossing muskegs, the rate put down is less than half a cent per cubic foot of timber.

“2nd. Earth borrowing, with haul of 1 to 1½ miles, the rate is 10 cents per cubic yard, which must have been intended as additional to the ordinary rate of 25 cents. This corrected would increase the amount by \$52,500.

“3rd. Bridge masonry, \$3.00 per cubic yard; culvert, \$4.00 per cubic yard; concrete, \$1.00 per cubic yard. All these rates are absurd.

“4th. Cast-iron pipe, \$3.50 per foot run. This is about one-half the price of the metal.

“The next lowest is No. 17, Charlebois and Shanly. There are some inconsistencies in this, and generally the rates are exceedingly low, such as would be suitable in the settled portions of the Dominion. Some of the rates for timber are just what the rough timber would cost, so that there is no allowance for labor in putting it in the work. This tender betrays a want of knowledge of the difficulties in prosecuting work in an outlying, unsettled country.

“The third is No. 11, Andrews, Jones & Co., and is extended only in the second column.

“The rates are exceedingly low in the main items of rock and earth excavation.

“The fourth in order is No. 12, O'Brien.

“There are some inconsistencies in this tender.

"Crib-wharfing is put down at \$2.50 per cubic yard, and ballasting the same as earth excavation, making no allowance for haul and lifting track.

"The fifth is No. 10, Wardrop & Ross. The rates for rock excavation and masonry are excessively low, otherwise the items are generally consistent.

"Form B, Eagle River to Keewatin, 67 miles. The lowest tender for this is No. 15, Morse & Co. The rates on the large items of rock and earth excavation, ties and ballasting are excessively low, and are altogether inconsistent with our knowledge of the difficulties of access to the country, the nature of the rock and the experience of the cost of contiguous works. I do not think it possible that the works could be carried through at the rates in this tender, and, if attempted, a breakdown may be expected, involving loss of time and ultimate additional cost. The next in order is No. 11, Andrews & Co., and the rates are extended only in the second column, which clearly indicates want of knowledge of the difficulties of the country. There are some inconsistencies, also, which show a lack of information as to the nature of the rocks. Solid rock excavation is put down at \$1.50 per cubic yard, and the rock borrowing, that is, widening the cuttings, at \$1.80 per cubic yard. The large-sized timbers which will probably have to be imported, are put down at about cost price, leaving nothing for labor in work. The rate for ties is also low, as timber is scarce in this section. I should doubt the possibility of carrying out the work at the rates in this tender without loss. The third in order is No. 25, Fraser, Grant & Pitblado. The rates in this tender are rather low on the large items, but generally consistent, except those for timber, which indicate that the parties tendering are not aware of the scarcity of good sized timber on this section. The next three tenders are Nos. 19, Manning; 14, Goodwin; and 10, Wardrop. These call for no special remarks, as they are generally consistent. The last two are the best.

"Form C, English River to Keewatin, 185 miles. The lowest tender on this form is No. 15. The rates for rock excavation, ties and some other items seem absurdly low, and betray ignorance of the difficulties of the country, scarcity of timber, etc., and a want of practical knowledge of the nature of the rocks, the great cost of getting forward plant, machinery and supplies for men and horses. The rates seem more applicable to sandstone or limestone, in a well settled country, with good roads, and it would be contrary to all our experience with contiguous contracts to expect that the work could be carried through at the rates in this tender.

"The consequence of a breakdown would be delay, by which the business of the country, and the colonization of the North-West Territories, would suffer; besides, a great additional cost would be entailed in re-letting the work.

"The next in order is No. 11, Andrews. This is carried out only in the second column, and the same remarks apply to it as to the last, though in a somewhat different degree. The two tenders have a strong family resemblance, with a little transposition of the low rates. I should not consider either of them good tenders or likely to have good results if accepted.

"The tenders next in order are No. 12, 10, 14 and 21, to B. W. R. Goodwin. The rates for rock excavation in No. 12 seem barely sufficient to cover actual cost, and the large sized timber would certainly cost more before it reached the points where required than the rates given for it in the work, thus allowing nothing for labor; otherwise this tender seems tolerably consistent. The last three tenders seem to have been well considered, and may be classed as fair and honest tenders. No. 10 has no rates for the several items, but the totals are those of the tenders by the same parties for Forms A and B.

"Attached to No. 14 is a proposal to construct the whole of the works between English River and Keewatin for a fixed sum. The party proposes to reduce the quantity of earth excavation by a process that appears feasible, though at somewhat greater cost per cubic yard. They could probably effect a considerable saving on the whole, as also, a rock excavation, and long hauls by substituting structures at some points.

"I have extended the *net* quantities at rates to bring the whole amount within this bulk sum. These rates would be moderate, but without a due allowance for contingencies, which might be considerable, in crossing the many arms and bays of lakes. The party, however, asks to have the benefit of any other reductions in quantities so as to cover this contingency.

"If the proposal were in order I would consider it the best tender received, viewed with the light of our experience in other contracts where the final amounts have so greatly exceeded those estimated at the letting of the contracts.

"I am, yours very truly,

"MARCUS SMITH."

"SANDFORD FLEMING, Esq.,

"Engineer-in-Chief.

ABSTRACT of Tenders for the construction of the Railway between English River and Eagle River.

FORM OF TENDER A.—118 MILES.

No.	Contractors.	Sureties.	Year 1883.	Year 1882.
			\$	\$
13	{ Thomas Marks	{ A. M. Smith	2,203,869	2,300,196
	{ James Conmee.....	{ W. W. Keighley		
17	{ A. Charlebois	{ L. Z. Mallette.	2,207,674	2,431,386
	{ E. Shanly	{ A. Bowie		
12	Denis O'Brien	{ R. Warmington	2,310,754	.....
		{ Louis Paré		
11	{ Andrews, Jones & Co.	{ Albert Chatfield .....	.....	2,239,525
	{ John P. Andrews			
	{ N. F. Jones			
	{ J. H. Drake			
10	{ John Wardrop	{ A. Myers	2,334,499	2,440,724
	{ John Ross	{ John W. Wardrop		
18	J. R. Macdonell.....	{ Joseph Kavanagh	2,353,602	2,505,744
		{ R. W. Cruice		

ABSTRACT of Tenders for the construction of the Railway between Eagle River and Keewatin.

FORM OF TENDER B.—67 MILES.

No.	Contractor.	Sureties.	Year 1883.	Year 1882.
			\$	\$
15	{ G. D. Morse Frank Nicholson..... R. Marpole	{ Close A. J. Thompson Walker Morley	3,364,336	3,467,568
11	{ Andrews, Jones & Co. John P. Andrews N. F. Jones..... J. H. Drake	{ Albert Chatfield John Heney .....	.....	3,915,942
25	{ James H. Fraser & Co..... George G. Grant..... James M. Pitblado	{ Wm. Fraser & Co. John M. Blackie	4,130,707	.....
19	{ Alex. Manning..... John Flint..... Alex. McDonell..... John J. McDonald	{ Joseph Kavanagh..... C. H. Mackintosh	4,157,933	4,470,272
14	James Goodwin.....	{ E. Griffin A. Mortimer	4,313,135	4,716,606
10	{ John Wardrop..... John Ross	{ A. Myers John W. Wardrop	4,347,847	4,652,196

ABSTRACT of Tenders for the construction of the Railway between English River and Keewatin.

FORM OF TENDER C.—185 MILES.

No.	Contractor.	Sureties.	Year 1883.	Year 1882.
			\$	\$
15	{ G. D. Morse Frank Nicholson..... Richard Marpole.....	{ Close H. J. Thompson Walker Morley.....	5,699,707	5,937,732
11	{ Andrews, Jones & Co. John P. Andrews N. F. Jones..... J. H. Drake	{ Albert Chatfield John Heney .....	.....	6,062,559
12	Denis O'Brien	{ R. Warmington..... Louis Paré	6,628,859	7,012,802
10	{ John Wardrop..... John Ross	{ A. Myers John W. Wardrop	6,668,246	7,088,533
14	James Goodwin.....	{ E. Griffin..... A. Mortimer	6,731,015	7,428,778
21	{ Patrick Purcell..... John Ginty..... Hugh Ryan.....	{ John Turner..... Robert Beaty	6,731,614	6,903,364

On the 12th February, Mr. Fleming, having made enquiries concerning the standing of some of the tenderers, reported as follows:—

“FURTHER COMMUNICATION from Sandford Fleming, Esq., to the Honourable the Minister of Public Works, dated Ottawa, the 12th February 1879, in reference to his Report, dated Ottawa, 1st. February, 1879, on the tenders received for constructing the sections of the Canadian Pacific Railway between English River and Keewatin.

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, February 12th, 1879.

“SIR,—In my report, dated February 1st., on the tenders received for constructing the sections of the Pacific Railway between English River and Keewatin, I felt that I could not advise the Government to accept the lowest tenders for reasons given.

“You deemed it advisable, however, to have enquiries made respecting the resources, skill and experience of the parties who sent in the lowest tenders, and accordingly I was directed, along with Messrs. Trudeau and Smith, first to see Morse & Co., they being the lowest for the whole work. Form of Tender C: We had an interview with Messrs. Morse & Nicholson respecting the firm, and heard all they had to say. It was subsequently explained to them that it would be expedient for them to seek the co-operation of some other persons who had the experience and qualifications, which they appear to want, in conducting a work of such magnitude. Messrs. Morse & Co. have, for some time, been endeavouring to strengthen their hands, but I have been unable to learn that they have succeeded in getting men of sufficient skill and experience to join them in the contract. This is not at all surprising when the extreme lowness of the rates in their tender is taken into account.

“The next tender (Form C) on the list is that of Andrews, Jones & Co., of New York, Brooklyn and St. Catharines, \$6,062,559. I have already referred to these gentlemen in my report of February.

“I have since made enquiries of gentlemen from St. Catherines and others, but I have not succeeded in getting any satisfactory information respecting them.

“The next tender is that of Denis O'Brien. I have had an interview with Denis O'Brien, and have made enquiries about him, and am favorably impressed with him as a contractor. His name appears to stand well in the Department, but his operations appear to have been confined to comparatively small contracts, and I scarcely think it would be expedient to place the whole 185 miles in his hands.

“Immediately above Denis O'Brien come several unexceptional tenders from well-known contractors. The tenders stand in the following order, viz. :—

Wardrop & Ross.....	\$6,682,346
James Goodwin & Co.....	6,731,215
Purcell, Ginty & Ryan.....	6,731,614
Manning, McDonell & Co.....	6,793,467

“Turning to tenders, Form B., Eagle River to Keewatin, I have already referred to the parties who have sent in the two lowest tenders—Morse & Co. and Andrews, Jones & Co. The next on the list is that of Messrs. Fraser, Grant & Pitblado, \$4,130,707. In my report of February 1st I referred to these contractors, and I have only now to state that if, in addition to their skill and experience, they can bring satisfactory evidence of the resources at their command, I am of opinion that the work may be placed in their hands.

"It is more difficult to advise with regard to the tenders (Form A) for the section between Indian River and Eagle River. I can learn nothing about Marks & Conmee to satisfy me that they have the necessary resources, skill, and experience for so heavy a contract, besides which there is an error in their tender which, if corrected, would make their tender not the lowest and would bring us to that of Charlebois & Co., the next on the list.

"I can learn but little of Charlebois & Co. as contractors. Mr. Charlebois is spoken of in the Department as a good business man who has recently turned to contracting, but who has had but little experience in the construction of works of any kind, particularly railways, and that his means are limited. In August last, however, Charlebois & Co. entered into an agreement to construct the Georgian Bay Branch. This, I should say, is a sufficiently heavy contract, and, as far as I am informed about their resources, one which will probably require all their energy and means to carry on.

"The next tenders on the list are those of :—

Denis O'Brien.....	\$2,310,754
Wardrop & Ross.....	2,334,499
J. R. McDonell.....	2,353,602

"It has already been stated that although Morse & Co. furnished no special tender for the section (Form A), their tender, Form B, deducted from their tender, Form C, gives \$2,335,371. Independently of this, it will be seen that we have several proposals to construct the section from English River to Eagle River, with an extreme difference of less than two per cent, on the whole. It remains for the Government to select one of these; the ordinary course being to begin with the lowest and pass upwards to the next, until parties are reached who can satisfy the Government as to the skill and experience they can bring to bear upon the work, so as to have it completed satisfactorily by the time and according to the conditions of the contract.

I am, &c.,

"Your obedient servant,

"SANDFORD FLEMING,

"Engineer-in-Chief."

On the 13th February the following letter was written by Messrs. Marks & Conmee :—

"OTTAWA, 13th February, 1879.

"SIR,—In the event of section A, of the Canada Pacific Railway, being awarded to our tender, we will associate with us in the contract Messrs. Purcell, Ginty & Ryan, the contractors for the section east of the one in question, and all preliminary arrangements made by them with the Government respecting our tender will be satisfactory.

"We have the honour to be, Sir,

"Your obedient servants,

"THOS. MARKS,

"JAMES CONMEE.

"Hon. Dr. TUPPER, C.B.,

"Minister of Public Works."

After which the following correspondence took place :—

“ OTTAWA, 20th February, 1879.

“ GENTLEMEN,—In reply to your letter dated 13th February, but received to-day, informing me that in the event of section A, of the Canada Pacific Railway, being awarded to your tender, you will associate Messrs. Purcell, Ginty & Ryan with you in the contract, and that all preliminary arrangements made by them with the Government respecting your tender will be satisfactory, I have to say that the Government are prepared to enter into a contract with you, associated with Messrs. Purcell, Ginty & Ryan, provided the required deposit is made within one week from to-day, but that the contract must be made upon your tender, without any modification of any kind whatever in its terms.

“ Yours faithfully,

“ CHARLES TUPPER.

“ THOMAS MARKS, Esq., and

“ JAMES CONMEE, Esq., Ottawa.”

“ OTTAWA, 21st February, 1879.

“ SIR,—We beg to acknowledge receipt of yours of the 20th inst., informing us that the contract for section A, of the Canada Pacific Railway, had been awarded to our tender, providing that we would associate ourselves with Messrs. Purcell, Ryan & Ginty, and that the required deposit would be made in one week from this date, all of which we agree to, and request that the names of Patrick Purcell, Hugh Ryan and John Ginty be substituted for that of James Conmee in the contract, having made arrangements with Mr. Conmee to that effect.

“ We have the honour to be, Sir,

“ Your obedient servants,

“ MARKS & CONMEE.

“ Hon. Dr. TUPPER, C.B.,

“ Minister of Public Works.”

“ OTTAWA, 27th February, 1879.

“ DEAR SIR,—The tender of Mr. Marks and myself for the construction of section A of the Canadian Pacific Railway, having been accepted, I beg to inform you that it has been agreed that Messrs. Patrick Purcell, Hugh Ryan, and John Ginty shall be associated with Mr. Marks in the contract in my place. I therefore beg that you will allow the said gentlemen, viz., Messrs. Purcell, Ryan and Ginty to sign any contract that may be awarded for the said section, and to substitute the said gentlemen for me in all matters, as if they had tendered instead of myself.

“ You will also please allow Mr. Marks to withdraw the deposit of \$5,000 paid in on the said tender, as he has put in his proportion of the security in full.

“ I am Sir,

“ Your obedient servant,

“ JAMES CONMEE.

“ The Honourable

“ The Minister of Public Works.

“ Witness: P. PURCELL.”

" CANADIAN PACIFIC RAILWAY,
" OFFICE OF THE ENGINEER-IN-CHIEF,
OTTAWA, 1st March, 1879.

" SIR,—As the tender of Marks & Conmee, Form A, has been accepted, I deem it my duty to again point out what appears to be a mistake.

" I think it is due to those who offer to perform the work that the mistake should be pointed out to them before they execute the contract.

" The price of ordinary earth excavation in the 1st column of the tender is 25 cents, and in the 2nd column 26 cents.

" The next item is earth borrowing, with haul of 1 to 1½ miles, and the price in both columns is 10 cents. As this includes a long haul in addition to the cost of excavating, the price should really be higher instead of lower than ordinary excavation.

" The 18th clause of the specification provides that under ordinary circumstances the maximum haul shall be 13 cents, for a haul of 2,500 feet or upward; this rate is to be added to the price of ordinary excavation, viz., 25 cents, making 38 cents per yard.

" The item to which reference is now made is for extra long haul, from 5,280 to 9,240 feet, and which it was intended should have a special rate. I shall be obliged, however, under the specification and printed form of tender to money out all excavation with this extra long haul at only 10 cents.

" I think the contractors should be informed that payments can only be made in conformity with the exact terms of their tender as above set forth.

" I have the honour to be, Sir,

" Your obedient servant,

" SANDFORD FLEMING,

" *Engineer-in-Chief.*

" The Honourable

" The Minister of Public Works."

Messrs. Marks, Ginty, Purcell & Ryan were specially notified of the prices of the tender as pointed out here by Mr. Fleming, and they decided to abide by its exact language, and signed a writing to that effect.

On the 3rd March, 1879, 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 3rd March, 1879.

"On a Report from the Honourable the Minister of Public Works, stating that tenders have been invited and received for the construction of the 185 miles of the Canada Pacific Railway between English River and Keewatin.

"That these 185 miles have been divided into two sections and the tenders made on forms called 'A' and 'B,' the first 'A' covering the 118 miles between English River and Eagle River, and the second 'B' the 67 miles between Eagle River and Keewatin.

"That the forms of tender used contain two columns, the first being for the insertion of the rates required by the tenderers to complete the works by the 1st July, 1883, and have them ready for the passage of through trains by the 1st July, 1882, and the second column for the rates required to complete the works by 1st July, 1882, and have them ready for the passage of through trains by the 1st July, 1881.

"That the two lowest tenders received for the 67 miles section—form 'B'—for doing the work in the shorter period are:—

" Morse & Co.....	\$3,364,274
" Andrews, Jones & Co.....	3,915,942

"That Messrs. Morse & Co., who have been offered the contract upon their tender, have refused to take it, by a letter addressed to the Department, dated the 25th February, 1879.

"That by direction of Council he, the Minister, has notified Messrs. Andrews, Jones & Co. that a contract would be entered into with them for the section, Form 'B,' provided they made the required deposit of five per cent. upon the amount of their tender by four o'clock p.m., this day, Saturday, 1st March.

"That the lowest tender made for the 118 miles section, Form 'A,' for executing the work in the time stated in the first column or the long period, is from—

" Marks & Conmee.....	\$2,203,896
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"And the two lowest for doing the work in the time stated in the second column, or the short period, are from—

" Andrews, Jones & Co.....	\$2,248,585
" Marks & Conmee.....	2,300,196

"That at the written request of Messrs. Marks & Conmee, the names of Messrs. John Ginty, P. Purcell and Hugh Ryan, well known and experienced contractors, have been associated with Mr. Marks in the tender in the place of Mr. Conmee.

"That Messrs. Marks, Ginty, Purcell and Ryan have expressed their ability and willingness to complete the work by the shorter period, and have made the required security deposit of five per cent. on the amount of their tender, or say \$115,000, and recommending that the tender sent in by Messrs. Marks & Conmee on Form 'A' be accepted, and that a contract be entered into with Messrs. Marks, Ginty, Purcell & Ryan in accordance with that tender; that they be paid as the works proceed at the lower rates, viz: those in the first column of the tender until the 1st July, 1881, when if the rails have been laid and the line made ready for the passage of through trains the contractors shall be allowed the higher rates for the whole work, viz: those given in the second column of the tender.

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

Certified.

"W. A. HIMSWORTH,
"Clerk Privy Council.

"The Hon. Minister of Public Works."

Subsequently the contract was executed upon the basis of the lower tender as above mentioned.

We conclude that, in obtaining this contract, the contractors got no undue advantage, and that at the time of awarding it the Department had no opportunity of providing for the work covered by it at a cost less than the prices given.

Mr. Caddy became engineer-in-charge of this contract on behalf of the Government as soon as the contractors commenced operations. He was examined as a witness by us. The line on which the contract was let had been run through when he took charge, and the work was then being finally laid out with bench marks, etc., on that portion which was understood to be finally located. Other portions, however, were expected to be amended.

The character of the country over this section is very changeable, varying as often as every five miles—some of it sand, some muskeg, some rock and some clay. About one-third of it was rock and muskeg, and this was the most difficult portion to overcome.

Those parts of the line which were to be amended were not cross-sectioned before the contract, and therefore the quantities on the whole distance were not given with accuracy at the time the contract was let. When Mr. Caddy was before us it was expected that the quantities executed would be very much less than those estimated at the time of asking for tenders, and that the improvements which had taken place in the location would shorten the distance considerably. This witness stated as his opinion that over this contract the distance would be shortened about four and a-quarter miles, and the cost lessened by about four or five hundred thousand dollars in consequence of engineering changes subsequent to the signing of the contract.

Up to the time at which we were taking evidence at Winnipeg, in the fall of 1880, the work done on this section was satisfactory to the Government Engineer, and he stated that the contractors were fulfilling the substance of their agreement. There had been differences of opinion between him and them about some matters, but they had been settled generally without difficulty, sometimes only after reference to the Engineer-in-Chief.

The expenditure on this contract up to the 30th June, 1880, was as follows:—

To 30th June, 1879.....	\$ 22,600
To 30th June, 1880.....	597,800
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Total.....	\$619,900