

CONTRACT No. 42.

Railway Construction.

By this contract, dated the 20th March, 1879, James Hugh Fraser, George Johnston Grant, James Macdonald Pitblado, Alexander Manning, John Shields and John James McDonald, covenanted to execute and complete the excavation, grading, bridging, track-laying, ballasting, and other works to be done, according to specifications on that portion of the railway commencing at station 1,290, near the crossing of Eagle River, and terminating at the easterly end of the 15th contract at Keewatin, in length about sixty-seven miles, receiving therefor the prices named in the said contract as applying respectively to the different classes of work mentioned therein, and upon the quantities then estimated, amounting altogether to \$4,130,707. A right being reserved to the Government to stop the works should it appear the expenditure would exceed that sum, or at its option to proceed with them at the same rates; such work to be completed by the 1st July, 1883, and ready for passage of through trains by the 1st July, 1882.

Subsequently, by a document, dated the 6th September, 1879, it was agreed between the said Fraser, Grant & Pitblado, of the first part, the said Manning & McDonald and one Alexander Shields, of the second part, and Alexander McDonell, James Isbester and Peter McLaren, of the third part, and Her Majesty, of the fourth part, that the said Fraser, Grant & Pitblado might retire from the said contract, and be relieved therefrom, and that the said Alexander McDonell, James Isbester and Peter McLaren should be accepted in their stead, the said Alexander Shields having previously acquired by assignment the interest which the said John Shields had held in the original contract.

The work under this contract was submitted to public competition by the same advertisement, and tenders for it were received up to the same date as for the adjoining section (contract No. 41). Most of the steps of the Department of Public Works in the progress of the tendering, the consideration of the tenders after they were received, and the reports of engineers upon the character and rank of them have been already described in our report on that contract. What has been there said concerning the period before the decision to deal with the lowest tenderers in each case, may be treated as part of the report on this contract.

The time for receiving tenders expired at noon on the 30th January, 1879. They were opened at two o'clock in the afternoon of that day. For

the present purpose it is not necessary to refer to more than the four lowest tenders for section B. Of these, the substance was as follows:—

	Long Period.	Short Period.
	Trains through on 1st July, 1882.	Trains through on 1st July, 1881.
	\$	\$
Morse, Nicholson & Co.....	3,361,274	3,467,506
Andrews, Jones & Co.....		3,915,942
Fraser, Grant and Pitblado.....	4,130,707	
Manning, McDonald & Co.....	4,158,933	4,470,275

In this case the contract was based on the third lowest tender, the two lower ones were from Morse, Nicholson and Marpole, and from Andrews, Jones & Co., respectively, neither of which last mentioned firms had experience in contracting for works of this character, or means commensurate with the undertaking for which they made proposals. Each of them, for their capital, relied on the probability of borrowing it after they should be offered the opportunity of contracting.

The tenders were opened on 30th January, 1879. After this, three weeks were spent in enquiries concerning the strength and fitness of the different tenderers and in considering the substance and the character of the several proposals, much of it devoted to these two lowest tenders.

At the end of that time, there was strong reason to believe that neither of these offers could be carried out, and that the acceptance of some of the higher ones would be best for the public interest, but the Government did not feel at liberty to take what seemed the wisest course for the reason that a money deposit with each tender was held to give to the party who had made it rights which could not be overlooked.

On the 20th February, 1879, the contract was offered to Morse & Co., the lowest tenderers, and eight days given to provide the specified security. On the 24th February no security being as yet provided, Morse & Co., and Andrews, Jones & Co., who were next above them, and \$551,668 higher, combined and agreed that Morse & Co. should not carry out their tender, but should amalgamate and share the chances on that of Andrews, Jones &

Co. On the 25th February Morse & Co. signed a withdrawal of their tender, and on the 26th delivered it to the Department. (They were subsequently repaid the deposit which they had made, ostensibly as an evidence of their good faith.) On the same day, the 26th February, official notice was given to Andrews, Jones & Co., that the contract was awarded to them, and that until 4 o'clock p.m., on 1st March, the Saturday following, was allowed for furnishing the specified security.

Under the arrangement between these firms it had been agreed that if Andrews, Jones & Co. failed to find half the security they were to abandon all their rights to Morse & Co. On the 28th February, the day before the time was up, they knew at New York that they could not find their share, and telegraphed to a person representing the interests of Morse & Co., consenting that all their rights should be assumed by the last named firm.

On the 1st March the day named for completing the security (nearly \$200,000), Morse & Co. concealing the fact that they claimed the position of Andrews, Jones & Co., deposited at Toronto about one-fourth of this amount, and no more. On the 27th February the Secretary of the Department had notified Andrews, Jones & Co. that no extension of time would be granted; nevertheless, Mr. Nicholson, one of the firm of Morse & Co., being at Ottawa, and having reason to believe that the Government might still extend the time if convinced of the financial strength of Andrews, Jones & Co., induced his firm to make such efforts in Toronto as resulted in a deposit on Monday, 3rd March, of a second quarter of the requisite amount, and in the name of Andrews, Jones & Co. On 5th March no further deposit having been made, the contract was awarded to the tender of Fraser, Grant & Pitblado at \$214,765 higher than that of Andrews, Jones & Co., and became the foundation of the contract now under consideration.

We attempt elsewhere, in our report on "Contract-letting," to show that the system which has prevailed in letting contracts for the construction of the Canadian Pacific Railway is open to this, amongst other objections, that after weeks or months of time, which can be ill-spared by the country, have been spent in the effort to get available offers from suitable persons, the tenders which come in, on prescribed forms, for estimated quantities, according to carefully prepared specifications, and which are ceremoniously opened and considered by authorized officials may do no more than announce to the Government prices, at which the tenderers will *not* do the

work, and which entail as a certain consequence, the loss of still further time to discover their worthlessness.

We proceed to give a detailed report of the negotiations amongst tenderers and other persons who attempted to be interested in this contract, as far as the evidence discloses them, because they seem to us to illustrate some of the weaknesses of the said system—a system which, though the loss of every day was a serious one, and though the transaction was one of several millions, in this case made the temporary deposit of \$5,000 with tenders, which were never believed to be capable of fulfilment, a reason for another month's delay before treating with substantial contractors who, on the reception of the tenders, were reported by the Chief Engineer and understood by the Minister to be efficient and able.

The firm which made the lowest tender was composed of G. D. Morse, F. Nicholson, R. Marpole and A. J. Thompson, the name of the last appearing in the tender only as a surety.

Sometime in January, 1879, Messrs. Morse & Nicholson went to the office of Mr. P. G. Close, a man of capital in Toronto, and asked him to be one of their sureties in tendering for this work. This led to negotiations which ended in an agreement. The parties to this agreement have been examined as witnesses. They do not agree in their respective accounts of the object of the arrangement, or the motives for making it. The following, in our judgment, are the facts properly deducible from their evidence as a whole.

Morse & Co. felt their weakness in not being known as contractors for large works, and feared that though the amount of their tender might not be objectionable, they would be overlooked in favour of some other person, who might be considered more responsible and efficient.

Mr. Close was believed to be a supporter of the Government and he was well known to its members, he was approached with a view of procuring his influence and his recommendation.

Mr. Morse was a cattle exporter, and Mr. Close says that he intended to show the Government that Morse & Co. had Messrs. Gooderham & Worts and other substantial men "at their back." It does not seem to have occurred to either of these negotiators that Messrs. Gooderham & Worts or other substantial men could, by their own act or word, show that they were at the back of Morse & Co. quite as plainly as could be done through any statement of Mr. Close.

In fact, Morse & Co. intended and desired to get through Mr. Close, some more tangible advantage than a mere representation of their circumstances, namely, a consideration of their offer, whatever it might be, more favourable than others of equal merit, and because of influence expected to be exerted by Mr. Close or Mr. Shields over members of the Ministry.

Before these negotiations, Mr. Close and Mr. John Shields had been discussing a method by which they might reap some gain in connection with the Government works then advertised to be let, and Mr. Close at first appeared loth to deal with Morse & Co. unless with the acquiescence of Mr. Shields, so a meeting was arranged and took place between Messrs. Close, Shields, Morse and Nicholson.

After some bargaining an agreement was closed and reduced to writing as follows:—

“ This agreement made this twenty-second day of January, one thousand eight hundred and seventy-nine between G. D. Morse, of the city of Toronto, in the county of York, contractor; R. Marpole, of the town of Barrie, in the county of Simcoe, contractor; G. F. Thompson, of the said city of Toronto, contractor, and Frank Nicholson, of the said city of Toronto, contractor, of the first part; and Patrick George Close, of the said city of Toronto, merchant, of the second part.

“ Whereas the said parties of the first part are tendering for the construction of section B of the Canadian Pacific Railway, and have requested the said party of the second part to assist them in obtaining the said contract for construction, and to waive and abandon all efforts to obtain the said contract on his own behalf, which, in consideration as after mentioned, the said party of the second part has agreed to do.

“ Now, therefore, this agreement witnesseth that if the said party of the second part do exert his utmost and all legitimate endeavours to procure for the said parties of the first part the contract for the said section, and act in their behalf, for this special purpose, as their agent or broker, and abandon all application for the said contract upon his own personal behalf, or upon the behalf of any person or persons other than the said parties of the first part; and provided that the said parties of the first part, or any of them, obtain the said contract, or any portion or part thereof, then it is also agreed and understood as follows, that is to say: The said parties of the first part covenant to pay to the said party of the second part brokerage or commission in relation to the said contract, an amount equal to 2 per cent. of the amount of the said contract, to be paid to the said party of the second part, from time to time, upon the amounts paid to the said parties of the first part, under and by virtue of the said contract and at the times when such amounts are paid to the said parties of the first part; but it is understood that the first three monthly payments, under such contract, shall be paid to, and received by, the said parties of the first part free and clear of any deduction by or payment to the said party of the second part, nevertheless that the said brokerage or commission upon the first three monthly payments shall be charged against, and payable out of the fourth monthly payment, along with the said brokerage upon the said fourth monthly payment to the said party of the second part.

" It is also agreed that the said brokerage be the first charge or lien upon the amounts so paid, from time to time, to the said parties of the first part, save as aforesaid, and the parties of the first part do grant and assign the said 2 per cent. unto the said party of the second part and authorize and direct the Government of Canada, or whomsoever pays the amount of the said contract to the said parties of the first part, to pay the said brokerage to the said party of the second part.

" It is also agreed that this covenant and grant and assignment shall be binding upon the amounts coming, from time to time, under the said contract to the said parties of the first part, whether the said parties of the first part keep the said contract or assign the same, and that this assignment is considered as being made under the statute to render clauses in action assignable.

" It is also agreed that the party of the second part shall have the preference of supplying to the parties of the first part, such goods as they may, from time to time, require in relation to the contract; that is to say, if the said party of the second part offers to supply said goods of as good quality and for as low prices as can be obtained, then the said parties of the first part shall be bound to purchase the same from him.

" In witness whereof the said parties have set their hands and seals the day and year first above written.

"Signed, sealed and delivered in presence of JOHN A. PATTERSON.	}	" G. D. MORSE [Seal] " R. M. MARPOLE [Seal]. " A. G. THOMPSON, G.D.M. [Seal]. " FRANK NICHOLSON [Seal]. " P. J. CLOSE [Seal]."
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Throughout this bargaining and agreement Mr. Close and Mr. Shields were in partnership, though Mr. Close's name alone was used.

The members of the Morse firm in making this arrangement seem to have thought that they had bought an influence which would be of great value to them, that matters could be so manipulated by Messrs. Close & Shields, as to give them decided advantages over competing tenderers—at one time thinking that their tender would be accepted in preference to others—so long as it did not exceed the others by \$100,000; at another time that it would be better to make sure of the contract by making their tender low enough to entitle them to the award of the work, and that Messrs. Close & Shields would be able afterwards so to manage Government officials as to make up the amount by favours from Engineers, and by advances of rails and in other ways.

In proof of their sincerity in this last view, at the suggestion of Mr. Shields, and at almost the last moment before putting in this tender, they lowered its amount very considerably from that at which their firm had, in Toronto, fixed it a few days earlier.

The consideration mentioned in the above agreement as the inducement for Morse & Co's. promise of 2 per cent., was not the true considera-

tion, or at all events, not the main consideration as understood by the Morse firm. The witnesses on the different sides of this bargain differ in their evidence as to the consideration which had been verbally stated; one side saying it was the withdrawal by Mr. Close & Shields from all efforts on their own behalf; the other side, that it was the exertion of their influence in aid of Morse & Co. We think this is not material, and, indeed, that both matters were probably mentioned as considerations

Before the tenders were put in Mr. Shields became interested in the chances for the contract as a partner in the firm of Manning, McDonald & Co., the fourth lowest on the list.

Mr. Shields testified that before the tender was put in there was an understanding between himself, and he thinks, others of the firm of Manning, McDonald & Co., that Mr. Close was to have some, though an undefined share in the tender, the others of that firm say they were not aware of such an arrangement.

On the day of opening the tenders, 30th January, the firms above mentioned as having made the four lowest were largely represented at Ottawa, amongst them were Mr. Morse, Mr. Nicholson, Mr. Marpole, Mr. Jones and Col. Smith, Mr. Fraser, Mr. Grant, Mr. Pitblado, Mr. Manning, Mr. McDonald, Mr. Shields and Mr. Close.

The members of the Morse firm thought Mr. Shields and Mr. Close were at the capital on their behalf. Mr. Shields was the source from whom one of this firm first learnt its rank in the list of competitors, and that it was lowest for the whole distance as well as for section B.

Mr. Marpole testified that Mr. Shields "professed all along to be in close communication with the Department"; but he came to believe that Mr. Shields had no advantage in the shape of information which others had not.

As a fact, it is a common thing in Ottawa, immediately after the opening of tenders for the relative position of the offers to be publicly known, the various tenderers communicating to each other the figures of their respective proposals.

Mr. Nicholson testified that he never learnt that Mr. Shields was able to get for Morse & Co. a position, or rank, or advantage to which they were not entitled as a matter of right.

On the next day after it became known that Morse & Co. had made the lowest offer for the section C (the whole distance), the following agreement was made by which the terms of the previous bargain between Mr. Close and Morse & Co., respecting section B, became applicable with some modification to the other portions of the work :—

“This agreement, made the thirty-first day of January, in the year of Our Lord one thousand eight hundred and seventy-nine, between George D Morse, A. J. Thompson and F. Nicholson, of the city of Toronto, and Richard Marpole, of the town of Barrie, contractors, of the first part, and P. G. Close, of the city of Toronto, merchant, of the second part.

“Whereas the said parties entered into an agreement bearing date the twenty-second day of January, A.D., 1879, respecting the tendering for and doing the work of section B, of the Canadian Pacific Railway, and whereas it has been thought desirable to tender also for the work on section A of the said railway, and also to tender for both the sections together, now this agreement witnesseth, that the said parties agree that in case they, the said parties of the first part, should obtain the contract for the said section A, or the two together, that then all the provisions and stipulations contained in the said recited agreement shall extend to, and include the contract for said section A, or the two together, as if said section A had been originally included in the said agreement of the twenty-second of January, 1879, excepting only that the brokerage or commission which shall be paid to the said party of the second part, in respect of the amount received on account of said section A, shall be only 1 per cent. instead of 2 per cent.

“And this agreement shall be binding on the heirs, executors and administrators of the said parties.

“Witness our hands the day and year first above written.

“G. D. MORSE,

“per his attorney, F. NICHOLSON.

“A. J. THOMPSON,

“F. NICHOLSON,

“R. MARPOLE,

“P. G. CLOSE.

“Signed in the presence of

“THOS. WATTS.”

On the day after the opening, Mr. Marcus Smith made a report on the tenders received. This is set out in our report on contract 41. Concerning this section B, he points out that Morse & Co.'s tender is, on the main items, excessively low, and is altogether inconsistent with a knowledge of the difficulties of access to the country, the nature of the rock, and the cost of contiguous works. He did not think it possible that the works could be carried through at the rates named, and if attempted, he said, a breakdown might be expected, involving loss of time and ultimate additional cost.

As to the tender of Andrews, Jones & Co., he reported that their only offer was to finish the work at the shorter period (*i.e.* the passage of trains

on 1st July, 1881, and completion a year after), that this fact clearly indicated a want of knowledge of the country, and he mentions some of the prices which were too low, amongst others, rock excavation, at \$1.50. As a fact this was by far the largest item on the work. The contractors on the adjoining section were getting \$2.75 for it. He also named rock borrowing at \$1.80. The importance of a reasonably fair price on these two items will be understood when it is mentioned, that at these low rates they would amount to \$2,116,800 out of the total offer of \$3,915,942, for the completion of this work, and Mr. Smith doubted the possibility of carrying out the work, at the rates in this tender, without loss.

On the day after this, viz., on the 1st February, 1879, Mr. Fleming enclosed Mr. Smith's report, accompanied by one of his own, which is also set out in our report on contract No. 41. Mr. Fleming thought that concerning this section the prices named by Morse & Co. were inadequate, and that the prices of Andrews, Jones & Co. were incongruous, and taken with their tender generally indicated a want of due appreciation of the difficulties; and he proceeds to recommend the tender next above Andrews, Jones & Co., that of Fraser Grant & Pitblado, as a proper one to be accepted, representing that he knew these contractors to be skilful, energetic men, who had satisfactorily completed, under his supervision, portions of the Intercolonial Railway and its branches.

These reports not having been deemed sufficient to justify a decision, the Chief Engineer proceeded to make further enquiries respecting the resources, skill and experience of the tenderers, and on the 12th February, 1879, he reported the results to the Minister. This is to be found in our report on contract No. 41. In that he states that he believes Morse & Co., had not succeeded in getting men of sufficient skill and experience to join them in the contract, and that that was not surprising; and after referring to his previous report on the standing of Andrews, Jones & Co., he adds that he had not succeeded in getting any satisfactory information respecting them.

At the end of this time, two weeks had been lost at a most critical period of the year, in deference to this system of letting contracts, and still the Department was so trammelled as to be unable to do what, in our opinion, would have been done on the 1st of February by any private proprietor—that is, to adopt the report of the Chief Engineer, and of his next in command, by accepting the lowest offer from any firm believed to have sufficient skill and resources for the undertaking.

The Minister of the Department gave evidence before us and described the position as embarrassing. He testified that on one side of the question was felt the importance of placing the contract in the most vigorous and efficient hands; and, in the other, getting the work at the lowest possible cost; that it was not felt to be proper to adopt the recommendations of the engineer, to award it to parties having the necessary skill and resources, because the Government had apparently fixed a test or qualification for the work, which was, in the first place, a deposit of \$5,000 with each tender, and, in the second place, to show their ability to deal with the work by a further deposit of 5 per cent. on the bulk sum of the contract.

We do not see how the intention to ask 5 per cent. on the bulk sum of the contract if the contract should be awarded, touches the propriety of deciding not to award it, for under such a decision the second test could not be applied.

In this case the evidence shows that there was reason to believe, that the two lowest tenderers had not asked such prices as would enable them to complete the work without loss, and that they had not sufficient resources to bear a serious loss, and we think the system is not a desirable one which prevented the Department on the 1st of February, from taking the same course which would, in our opinion, have commended itself to a good business man where private funds were at stake, and which after a month's delay was ascertained to be inevitable. We think this case has clearly proved that the deposit of a small sum with a tender does not establish either the good faith or the ability of a tenderer.

And, according to our view of the evidence, it is reasonable to conclude that if it had been necessary to send in with each tender some such substantial security either in the form of money, or of an undertaking from responsible parties, as is suggested by us in our report on "contract letting," neither the tender of Morse & Co. nor of Andrews, Jones & Co., would have made its appearance to embarrass the Government and delay the work as they did in this case.

It is true that about a fortnight after the contract was awarded to them, Morse & Co. did put up nearly \$100,000 in money, but that was not upon their own tender, and it was done upon the chance of taking the work at a sum \$51,668 higher than that named in their own offer. It is plain upon the evidence of the members of this firm, that they put in their tender, not believing or expecting that the work could be done for the price stated in

their offer; they deliberately made a proposal not expecting to fulfil it, in the belief that something would turn up afterwards to save them from loss. The system which encourages such proposals and permits them to be made with impunity, seems to us to require a radical change.

On the 20th February the contract was awarded to Morse, Nicholson & Co., the lowest tenderers, and that fact was communicated to them by a formal letter from Mr. Braun, the Secretary of the Department. Up to the 24th January no arrangements were made concerning the deposit required from this firm, but on that day, as before mentioned, they and the firm next above them, Andrews, Jones & Co., entered into an arrangement by which Morse & Co. were to decline to fulfil their offer, and the two firms were to amalgamate and take their stand on the offer of Andrews, Jones & Co., which was more than half a million higher.

On the day this agreement was made, Mr. Jones, a partner in the firm of Andrews, Jones & Co., wrote the following letter to the Secretary of the Department of Public Works:—

“ OTTAWA, 24th February, 1879.

“ SIR,—We have the honour to inform you that we have associated with us Mr. A. L. Langer, jun., contractor, of Montreal, in connection with our tenders for the works of construction on the Canadian Pacific Railway between English River and Keewatin, and to state in case our tenders should be amongst the lowest and the works awarded to us, that we are prepared to make the necessary deposit of 5 per cent. immediately, and commence operations at once.

“ We might add that our firm is composed strictly of practical railroad men of large experience.

“ We have the honour to be, Sir,

“ Your obedient servants,

“ ANDREWS, JONES & CO.

“ Per N. F. JONES

“ F. BRAUN, Esq.,

“ Secretary, Department of Public Works.”

This same firm had previously addressed the Minister of Public Works by a letter dated 6th February, which was as follows:—

“ ST. CATHARINES, 6th February, 1879.

“ SIR,—It having been rumoured that the tenders in the neighbourhood of 6,000,000, for that portion of the Pacific Railway between English River and Rat Portage—185 miles—will not be considered by the Department, we desire to state that we have every confidence in the figures that we have submitted, and that if the contract is awarded to us, we are prepared to furnish the 5 per cent. required by the Government for its fulfilment, and to proceed with the work immediately on being ordered to do so. We can also satisfy you as to our ability to

carry out the works to a successful completion. All we ask is that our tender may be considered on its merits, and if the lowest that it will receive at your hands favourable consideration.

“ We have the honour to be, Sir,

“ Your obedient servants,

“ ANDREWS, JONES & CO.

“ Hon. DR. TUPPER,

“ Minister of Public Works, Ottawa.”

The firm of Andrews, Jones & Co. were not possessed of means sufficient to enable them to undertake this contract, but they had made arrangements with a wealthy party in New York to find the capital necessary to carry on the works, provided a confidential agent to be sent by that party to Canada should, after enquiring carefully into all the circumstances, so report, as to satisfy him of the safety of the advance. Whether the party alluded to, was one person or a firm we did not deem it necessary to enquire. A Mr. Dillon was either the only person or one of the persons expected to assist Andrews, Jones & Co., and we hereafter mention him as the party. Mr. Dillon named Colonel Smith as his agent to come to Canada on his behalf, and he accompanied Mr. Jones, one of the tendering firm, to Ottawa. After they arrived here, a new arrangement was made by which Colonel Smith might possibly have a direct interest in the contract. He and Mr. Jones agreed that if Andrews, Jones & Co. should get the contract and Colonel Smith should find a certain share of the security, then Colonel Smith might become a partner. He was thus occupying the double position of adviser to his principal in New York, concerning the expediency of his finding the money to support a contract by Andrews, Jones & Co., and of a person to be benefitted by his principal taking that course

Neither Mr. Jones nor Colonel Smith had the power to decide that the necessary money would be forthcoming. Colonel Smith's duty was to return to New York and report, and then his principal was to decide whether he would risk his capital.

It was not known amongst the Canadian tenderers that Colonel Smith's position was that of an agent sent on to report to a capitalist, and that Andrews, Jones & Co. depended on that report as a step towards their procuring the contract.

After the bargain of 24th February, between Mr. Jones and Colonel Smith, in the name of Andrews, Jones & Co., and Morse & Co., by which the withdrawal of the latter was to take place, Mr. Nicholson, on the 25th,

in the name of his firm, wrote the following letter, and on the 26th February handed it in to the Department :

“ OTTAWA, 25th February, 1879.

“ SIR,—Referring to the interview which our Mr. Nicholson had the honour to hold with you yesterday on the subject of our tender for section “ C ” of the Pacific Railway, and your statement that section A, part thereof, had been awarded to other contractors, and after duly considering the difficulties to be encountered in the execution of the contract for section “ B ” alone, especially in view of the decided opinions of the Engineer of the Department, that our prices for the rock work on section “ B ” are below the actual cost, we have concluded to withdraw so much of our tender as relates to the said section “ B.”

“ We have the honour to be, Sir,

“ Your obedient servants,

“ MORSE & CO.

“ The Hon. Minister of Public Works.”

If Col. Smith and Mr. Jones were sincere in the intention and belief, that this contract would be carried out on the basis of Andrews, Jones & Co's tender, and knowing as they did that nothing would be done by Mr. Dillon to support them until Col. Smith should report at New York, we cannot understand why, after agreeing as they did on 24th February for Morse & Co.'s withdrawal, the only obstacle between them and the contract, Col. Smith did not at once proceed to lay before his principal, the information which he had obtained in Canada. These gentlemen were not altogether confidential with each other. Col. Smith testified that he was not made aware of the letter of 24th February above mentioned, as written by Mr. Jones in the name of his firm to Mr. Braun, in which the statement was made that they had associated themselves with Mr. Laberge, and he added that the assertion of Mr Jones, that he was prepared to make the deposit immediately, was without foundation.

As will be shown further on, Col. Smith had, in Canada, acquired such information concerning the country to be crossed by this section of the railway, that when he repeated it to Mr. Dillon, that gentleman decided on the spot not to make the desired advances, and that, without reference to the length of time which had been allowed for furnishing the security.

This knowledge, on the part of Col. Smith, of the difficulties in fulfilling the contract, might have made him lukewarm about hastening to New York, and might account for Mr. Jones attempting to do what he had said, namely, associate himself with Mr. Laberge or some other new partner. Mr. Jones was not before us ; he lives near New York.

As before mentioned, the withdrawal of Morse & Co. was handed in at the Department on the 26th February; on the same day it was awarded to Andrews, Jones & Co. by the following letter :—

“ OTTAWA, 26th February, 1879.

“ GENTLEMEN, —I have to inform you that your tender for the construction of section “ B ” of the Canadian Pacific Railway, has been accepted, and that a contract will be entered into with you in accordance with that tender, provided you deposit the five per cent. required in the specification by four o'clock p.m., on Saturday next.

“ Yours faithfully,

“ CHARLES TUPPER.”

“ Messrs. ANDREWS, JONES & Co.

After this letter, on the same day, the following formal agreement was entered into confirming and carrying out the above-mentioned agreement of the 24th February, 1879 :—

“ Memorandum of agreement, made this 26th day of February, A. D. 1879, between Andrews, Jones & Co. of the one part, and Morse & Co. of the other part. Whereas the said Andrews, Jones & Co. have been awarded the contract for the construction of section B of the Pacific Railway of Canada; and whereas, under an agreement between the said parties, bearing date the 24th day of February, instant, one-half interest in the said contract was to be assigned to Morse & Co. as soon as the same should be awarded by the Department of Public Works. Now this agreement witnesseth that the said Andrews, Jones & Co. have assigned (for good and valuable consideration and in pursuance of the said last-mentioned agreement of the 24th instant) and hereby do assign and convey to the said Morse & Co. one-half part and interest in the said contract with the Department of Public Works, and they hereby agree with the said Morse & Co. to make and execute, within ten days after the said contract is executed by the Department, a more formal and effectual transfer of the one-half interest therein to the said Morse & Co., and will enter into proper articles of co-partnership with the said parties for the performance of the said contract pursuant to the terms of the said agreement of the 24th instant.

“ And it is hereby agreed by and between the said parties that each of them, that is to say, the said Andrews, Jones & Co., of the one part and Morse & Co. of the other part, shall, within the time required by the Department of Public Works, deposit with the Receiver-General of Canada the five per cent. in respect of their interest in the said contract—that is to say, the said Andrews, Jones & Co. will deposit \$100,000 and Morse & Co. \$100,000, or so much therefore respectively as may be demanded by the Department.

Signed, sealed and executed by the
said firms in our presence this 26th
day of February, A.D. 1879. }

ANDREWS, JONES & CO. [Seal.]

G. D. MORSE & Co. [Seal.]

SAMUEL E. St. O. CHAPLEAU.

On this day, the following letter asking for an extension of the time for making the deposit was written by Andrews, Jones & Co. :—

" OTTAWA, 26th February, 1879.

" SIR,— We have the honour to acknowledge the receipt of your letter of this date, informing us of the acceptance of our tender for the construction of section " B," Canadian Pacific Railway.

" We regret to observe that you have limited us to less than three days to deposit the 5 per cent. required as security. If it should be necessary for one of us to visit New York in order to complete the deposit, *we trust you will extend the time for that purpose for two or three days.* We will be prepared to execute the contract as soon as may be convenient for the Department.

" We have the honour to remain, Sir,

" Your very obedient servants,

" ANDREWS, JONES & CO.

" The Hon. Minister of Public Works"

On the same day, 26th February, Col. Smith and Mr. Jones went to New York to report to Mr. Dillon and to see if the required advance would be made by him.

The members of the firm of Morse & Co went to Toronto on a similar errand, in the belief that there would be no hesitation or failure on the part of the New York branch, and therefore not expecting to raise more than one-half of the required deposit, which was in all about \$200,000.

The time named, as aforesaid, for putting it up expired on a Saturday, the 1st of March, 1879.

Before leaving for New York, Col. Smith and Mr. Jones arranged with Mr. Chapleau, a corresponding clerk in the Department, to ascertain the answer of the Government to the application for an extension of time and communicate it by telegraph to New York. That answer was as follows:—

" OTTAWA, 27th February, 1879.

" GENTLEMEN,—With reference to your letter of yesterday's date complaining that the three (3) days time allowed you by the Minister for making the required deposit of five per cent. on the amount of your tender for section " B" of the Canadian Pacific Railway, is too limited, and requesting that it be extended two or three days more,—

" I am directed by the Minister to state that for some time past you were aware there was a possibility that you would be called upon to take the contract upon your tender for section " B," and that you cannot reasonably advance the plea that the time allowed you for making your deposit is too short.

" For this reason and in view of the importance of placing those works under contract with the least possible delay, the Minister regrets that he cannot grant your application for an extension of time to enable you to make your deposit

" I have the honour to be, Gentlemen,

" Your obedient servant,

" F. BRAUN,

" Secretary.

" MESSRS. ANDREWS, JONES & CO."

The substance of this refusal of the application was communicated by Mr. Chapleau to Andrews, Jones & Co., or to Col. Smith, at New York, on the 28th February.

Col. Smith and Mr. Jones reached New York on the evening of Thursday, 27th February, and saw Mr. Dillon on Friday, 28th. After hearing Col. Smith's statement Mr. Dillon "refused, utterly refused to have anything to do with it." Col. Smith reported to Mr. Dillon, amongst other things, that the country in which this work was to be done "was made up of inlets of water extending into the land," impossible to cross when the ice on the lakes and rivers broke up, that unless the plant and supplies for the work were transported in the winter across the ice, it would be late in the summer before it would be done.

It was during this interview that Mr. Chapleau's telegram announcing the Government's refusal to extend the time for depositing the five per cent. reached the parties. Col. Smith testified that in his opinion Mr. Dillon would not have put up the money whether time had been extended or not; that they parted on that occasion with the understanding that Mr. Dillon would not give the desired help. They endeavoured to persuade another party, but the time was too limited.

In the course of the same examination Col. Smith said that there being no hope of persuading Mr. Dillon, he would not have tried to persuade any one else, and that in his opinion Mr. Dillon's decision did not proceed from the shortness of time, but from the fact that from his (Col. Smith's) statement, he had "made up his mind that it was not a very safe transaction."

In his evidence before us, Col. Smith stated it to be his opinion that it was at that time late to get in supplies, that there ought to have been more time allowed to get them in, but still, perhaps it was not too late.

After he left his friend in New York, on the 28th, Mr. Jones and he finally gave up the attempt to find the security, partially, he says, because Mr. Dillon, did not think it was advisable.

Col. Smith testified that some of the parties who were to join Andrews, Jones & Co. had mentioned to Mr. Jones that there was a feeling against his firm, because it was "exclusively American," and in giving his evidence he seemed to suggest, that that was one reason for taking in Morse & Co. as partners in the transaction.

We gather from the evidence that, although Col. Smith does not say so, he did, in fact, leave Ottawa without any strong hope that Andrews, Jones & Co. would be able to arrange for the funds requisite to secure them a share in the contract, or that he himself should be finally interested in it.

Morse & Co. had employed Mr. Joseph Macdougall as their solicitor at Toronto, and the Hon. William Macdougall was his agent at Ottawa. On the 28th of February, the day before the time was up for finding security by Andrews, Jones & Co., the following telegram was received by the Hon. Wm. Macdougall :—

“ 28th February, 1878.

“ *By Telegram from New York to the Hon. Wm. Macdougall.*

“ Evident hostile attitude, fatal to project with friends here, forces us to withdraw. Use our rights as if all were held by friends there, and they will be fully transferred. Particulars in letter.

“ N. F. JONES.”

The substance of this was, on the same day, communicated to Morse & Co., at Toronto, who thus became the only persons interested in the tender of Andrews, Jones & Co. This was on Friday, the 28th February. On that Mr. Chapleau telegraphed a second time from Ottawa to Messrs. Andrews, Jones & Co., at New York, that time might yet be granted by the Government, stating that \$50,000 had been put up by Morse & Co. and advising them to reconsider the decision and to put up security. On Saturday, the 1st March, the following telegram was received by Morse & Co :—

“ TORONTO.

“ *To George D. Morse.*

“ Andrews, Jones & Co. have decided they will not take the work, as they think the time given is not enough.

“ J. N. SMITH.”

The Toronto firm on that day, 1st March, answered this last communication from the New York branch, “ urging them to deposit their security.”

On the same day, Saturday, 1st March, Col. Smith replied to that as follows :—

“ TORONTO.

“ *To George D. Morse.*

“ Will see the parties Monday, and will telegraph what they will do.

“ J. N. SMITH.”

On the same day, Saturday, 1st March, \$50,000 was deposited by Mr. A. L. Thompson in the Bank of Montreal, at Toronto, to the credit of the

Receiver-General, on "account of contract, section B, Pacific Railway." Without mentioning the name of any party on whose behalf it was deposited, this fact was telegraphed to the Receiver-General on that day as follows:—

" *By Telegraph from Toronto.*

" OTTAWA, 1st March, 1879.

" A deposit of \$48,950 has been made by A. L. Thompson for your credit, account contract section B, Pacific Railway.

" GEORGE W. YARKER,
" *Manager.*

" The Hon. Receiver-General.

" Received at 4.30 p.m., 1st March, 'A.C.'

Some one using the name of Andrews, Jones & Co. wrote from Ottawa to the Minister of Public Works on the 1st March. No one of that firm was then in Ottawa, and Mr. Nicholson, the only member of Morse & Co. then there, did not know who it was.

The following is the letter:—

" OTTAWA, 1st March, 1879.

" SIR,—We beg to inform you that notwithstanding the short period allowed to us, we have deposited to the credit of the Receiver-General the sum of \$50,000 as security on account of our tender for section B of the Pacific Railway. We shall complete the deposit of 5 per cent. within one week from the date of the notification to us of its acceptance. As a proof of our *bonâ fides* the first instalment of the deposit will, we trust, be deemed sufficient. We beg to repeat that we are prepared to execute the contract and begin our preparations at once.

" We have the honour to be, Sir,
" Your very obedient servant,
" ANDREWS, JONES & Co.

" The Hon. the Minister of Public Works,
" Ottawa."

On the same day Mr. Yarker's telegram was confirmed by this letter:—

" BANK OF MONTREAL,
" TORONTO, 1st March, 1879.

" SIR,—I have the honour, at the request of Mr. A. L. Thompson, to enclose herewith our deposit receipt for \$48,950.00 payable to your order in six months from date, without interest, and which confirm my telegram of to-day.

" Should the receipt not be used you will please return it cancelled to me.

" I have the honour to be, Sir,
" Your obedient servant,
" GEORGE W. YARKER,

" *Manager.*

" The Hon. Receiver-General,
" Ottawa."

The default in the deposit on the 1st March, above described, led to no action by the Department on that day. On the following day, the 2nd March, Mr. Macdougall, in company with Mr. Goodwin, a contractor of long experience and known as a man of capital, called on the Minister, and asked whether a day or two longer, to make the necessary arrangements, would be given if Mr. Goodwin should join Andrews, Jones & Co. in the contract. The Minister understanding Mr. Macdougall to be acting in the interest of Andrews, Jones & Co., and ignorant of the fact that they had abandoned their position to Morse & Co., said that he had no hesitation in stating that if Andrews, Jones & Co. could obtain the co-operation of any contractor of standing and resources, or would give the Government reason to believe that that would be the case, he would advise his colleagues that the tenderers should receive a day or two longer. The Minister reported to his colleagues this interview and what had been said. They concurred in his view.

During Monday, 3rd March, and two following days Mr. Nicholson, a member of the firm of Morse & Co., being at Ottawa, and probably aware of what had been said to the Hon. Mr. Macdougall, the agent for that firm's solicitor, telegraphed several times to his firm at Toronto, encouraging them to proceed if possible with furnishing the security.

On Monday, the 3rd March, a second deposit of \$50,000 was made by Morse & Co. on account of this contract, in the Bank of Montreal at Toronto. In this instance the name of Messrs. Andrews, Jones & Co. was connected with the deposit.

This second deposit was advised by steps similar to that of the one on Saturday, namely:—

- (1.) A telegram of 3rd March from Mr. Yarker to the Receiver-General.
- (2.) A letter of the same date confirming it.
- (3.) A letter from Mr. Baker, of the Finance Department, to Mr. Braun, informing him of the receipt of the money.

In each case the actual amount notified was \$48,950, though alluded to by some of the witnesses as \$50,000. On this day, the 3rd March, a letter was received, ostensibly from Andrews, Jones & Co., but no one of that firm was in Ottawa, and Mr. Nicholson, the only member of Morse & Co. then there, did not know who wrote it; it is as follows:—

“OTTAWA, 3rd March, 1879.

“SIR,—Referring to our letter of the 1st instant, announcing the deposit of some \$50,000 towards the security for our contract, and asking an extension of time in our case for a period equal to that allowed to our predecessors, we have now the honour to state that a further sum of \$50,000 will be deposited to the credit of the Receiver General to day.

“In consequence of the hostile attitude towards us as foreigners, which some member of our firm fancied they discovered in the refusal of the Department to give us the usual time to put up our securities, we have deemed it prudent to associate with our firm two or three Canadian contractors. This has necessarily caused some delay, but as we are ready to execute the contract and commence our preparations at once, we venture to think the Department will not, on a mere question of two or three days time in the completion of securities, deprive us of our acquired right to the contract, and award it to others whose tenders, as we are informed, are not nearly so favourable to the public.

“Already the rumours that the Department would not extend the time in favour of ‘Americans,’ has greatly embarrassed us in our banking arrangements.

“We have the honour to remain, Sir,

“Your very obedient servants,

“ANDREWS, JONES & Co.

“The Hon. the Minister of Public Works,

“Ottawa.”

On that day, the 3rd March, Morse & Co. at Toronto, telegraphed Col. Smith, at New York, as follows:—

“To J. N. Smith, 23 Nassau Street, New York, or 235 Clinton Avenue, Brooklyn.

“Morse & Co’s. deposit made. Urge your friends to put up at once. Meet Nicholson at Ottawa, Wednesday.”

According to the evidence of Mr. Nicholson this brought no answer. On Tuesday, the 4th March, Mr. Goodwin notified the Minister in writing that he declined to go into the contract, that the figures were too low. The Minister then reported that fact to his colleagues.

On the 5th March, Mr. Nicholson being at Ottawa, and misled by advices from Toronto, wrote the following letter:—

“Received 2.15 p.m., 5th of March.

“OTTAWA, 5th March, 1879.

“SIR,—We have the honour to inform you that the balance of the five per cent. required to be deposited to the credit of the Receiver General on our tender for section B, Pacific Railway, has this day been provided through our agents at Toronto, of which you will receive notice through a bank in Ottawa, before the day closes.

“We have the honour to be, Sir,

“Your obedient servants,

“ANDREWS, JONES & CO.

“The Hon. Minister of Public Works.”

In giving evidence, Mr. Nicholson said that, when writing it, he supposed this statement to be correct, but became afterwards aware that it was an error.

In addition to Mr. Fleming's report above referred to, and in which he mentioned the urgency of having the contracts entered into without delay, he stated to the Minister, when Morse & Co. declined to take the contract, that it was a serious matter; for, if the contract was to be let with any hope of carrying out the work—no time could be lost. And upon one occasion, according to Mr. Fleming's recollection, he wrote to the Minister while he was in Council, when some of these matters were being discussed, and used the expression that the loss of a week might mean the loss of a year.

On the 5th March, 1879, a memorandum was submitted to the Privy Council by the Minister, and on the same day an Order in Council was based upon it—they are as follows:—

"(Memorandum).

“OTTAWA, 5th March, 1879.

“On the 6th February, Andrews, Jones & Co. addressed a letter to the Department in which they stated: ‘That if the contract is awarded to us, we are prepared to furnish the 5 per cent. security required by the Government for its fulfilment and to proceed with the work immediately.’

“On the 24th February, they addressed a second letter and stated as follows:—‘We have associated with us Mr. A. Laberge, jun., contractor, of Montreal, in connection with our tenders for the works of construction on the Canadian Pacific Railway, between English River and Keewatin, and to state, in case our tenders should be amongst the lowest, and the works awarded to us, that we are prepared to make the necessary deposit of 5 per cent. immediately and commence operations at once.’

“That on the 26th February, the tender of Andrews, Jones & Co., on Form B, for the 67 miles between Eagle River and Keewatin, amounting to \$3,915,942, being the lowest, they were informed that they would be awarded the contract provided they made the required 5 per cent. deposit by 4 p.m., on Saturday, the 1st instant.

“They replied: ‘That in the event of one of their firm having to go to New York, in order to complete the deposit, we trust you will extend the time for that purpose, for two or three days.’

“They were informed on the 27th February: ‘That for some time past you were aware there was a possibility that you would be called upon to take the contract upon your tender for section ‘B,’ and that you cannot reasonably advance the plea that the time allowed you for making your deposit is too short. For this reason and in view of the importance of placing those works under contract with the least possible delay, the Minister regrets that he cannot grant your application for an extension of time to enable you to make your deposit.’

“That about 8 o'clock on the evening of Saturday, 1st March, a letter was received from Andrews, Jones & Co. stating: “We have deposited to the credit of the Receiver-General some \$50,000 as security on account of our tender for section “B;” and that at 4.30 p.m., on

the same day, 1st March, the following telegram was received by the Receiver-General from Toronto: 'A deposit of forty-eight thousand nine hundred and fifty dollars has been made by A. L. Thompson for your credit account, contract section 'B' Pacific Railway.

"GEO. W. YARKER,
" *Manager.*"

On Monday, 3rd March, the following letter was received by the Receiver-General:—

"BANK OF MONTREAL,
"TORONTO, 1st March, 1879.

"SIR,—I have the honour, at the request of Mr. A. L. Thompson, to enclose herewith our deposit receipt, \$48,950, payable to your order in six months from date, without interest, and which confirms my telegram of to-day.

"Should the receipt not be used, you will please return it cancelled to me.

"I have, etc., etc.,
"GEORGE W. YARKER,
" *Manager.*

"The Hon. Receiver General, Ottawa."

That at 2:15 p.m., 3rd March, the following telegram was received by the Receiver General:—

"A deposit of forty-eight thousand nine hundred and fifty dollars has been made by G. D. Morse for your credit account, contract section "B" Pacific Railway. Andrews, Jones & Co.

"G. W. YARKER
" *Manager.*

And on the 4th March, the following letter was received:

"BANK OF MONTREAL,
"TORONTO, 3rd March, 1879.

"SIR,—I have the honor at the request of Mr. G. D. Morse to enclose our deposit receipt \$48,950, which confirms my telegram of this date.

"In the event of your not using the receipt, I have to request you to return it to me.

"I have, etc., etc.,
"G. W. YARKER,
" *Manager.*

"The Hon. Receiver General, Ottawa."

"That another letter dated 3rd March, has been received by the Department from Andrews, Jones & Co., stating 'that a further sum of \$50,000 will be deposited to the credit of the Receiver General to-day.'

"That up to the present, 5th March, nothing further has been received from any of the parties.

"Under the circumstances the undersigned recommends that the tender of Andrews, Jones & Co. be passed over, and that the third lowest tender, that of Messrs. Fraser, Grant

& Pitblado, be accepted, on condition that they make the required 5 per cent security deposit within three days from the present time.

“ Respectfully submitted,

“ CHARLES TUPPER.

“ *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 5th March, 1879.*”

“ On a memorandum dated 5th March, 1879, from the Hon. the Minister of Public Works, having reference to Messrs. Andrews, Jones & Co., whose tender (for \$3,915,942) on form “ B ” for the sixty-seven miles section of the Canadian Pacific Railway between Eagle River and Keewatin was second lowest, and recommending for the reasons mentioned in said memorandum that the tender of Andrews, Jones & Co. be passed over, and that the third lowest tender, that of Messrs. Fraser, Grant & Pitblado, be accepted on condition that they make therequired 5 per cent. security deposit within three days from the present time.

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

“ Certified.

“ W. A. HIMSWORTH,

“ *Clerk, Privy Council.*”

On the same day, March 5th, Fraser, Grant & Pitblado were notified by the following letter that the contract was awarded to them.

“ OTTAWA, 5th March, 1879.

“ GENTLEMEN,—I have to inform you that your tender for section “ B,” of the Canadian Pacific Railway has been accepted, on condition that you make the deposit required of 5 per cent. on the amount thereof by 4 o'clock p.m. on Saturday next the 8th instant.

“ Yours faithfully,

“ CHARLES TUPPER.

“ FRASER, GRANT & PITBLADO,

“ Ottawa.”

After the above Order-in-Council, and on the same day, the following communication passed between the Department and persons interested in the tender of Andrews, Jones & Co :—

(*Telegram.*)

“ TORONTO, 5th March, 1879.

“ Morse & Co. with whom I am now associated, will be ready to complete the required security deposit to-morrow morning. Arrangements all made, but may not be able to forward the certificate by to-night's mail. Will this be satisfactory? Please reply to G. D. Morse.

“ F. SHANLY.

“ The Hon. DE. TUPPER,

“ *Minister of Public Works.*”

“ OTTAWA, 5th March, 7.30 p.m., 1879.

“ Council directed to-day to award section B to Messrs. Fraser, Grant & Pitblado.

“ CHARLES TUPPER.

“ G. D. MORSE, Esq., Toronto.”

Before the contract was awarded as above mentioned, to Fraser, Grant & Pitblado, that firm had agreed to amalgamate with Manning, Shields & McDonald; Mr. Shields taking part in the negotiations on behalf of the latter firm.

It is not clear from the evidence when the understanding was first arrived at; Mr. Shields said the arrangement was made verbally immediately on the tenders being sent into the Department before "the relative figures" were known.

Mr. Manning said he was introduced to Fraser, Grant & Pitblado, and they showed their tender, but he left Ottawa before any arrangement was made.

Mr. McDonald says, he thinks the arrangement was made while "Morse & Co., were supposed to be the successful tenderers," and Mr. Fraser said it was after Col. Smith went to New York on 26th February, that he was approached by one of the firm, Mr. Shields or Mr. Manning.

At all events, on or before the first of March, it was agreed between these two firms that if the contract should be awarded on the tender of either, they would amalgamate, each firm taking a half-interest and dividing that amongst its own members in the same proportion as those on which they had been originally formed. After this arrangement Fraser, Grant & Pitblado wrote the following letter:—

"OTTAWA, 29th February, 1879.

"SIR,—We beg to inform you that should the contract for section B of the Canadian Pacific Railway be allotted to us on our tender, we are prepared to associate with us Messrs. Manning, Shields and McDonald.

"Yours respectfully,

"FRASER, GRANT & PITBLADO.

"Hon. C. TUPPER, C.B.,
"Minister of Public Works."

There was no 29th February in that year, and this date was probably intended for the 1st March, the day on which the time was up for Andrews, Jones & Co. completing their deposit.

In consequence of this arrangement, the award of the contract to Fraser, Grant & Pitblado had the effect of giving a half-interest to Manning, Shields & McDonald in case the Government was willing that the two firms should be associated.

Before this award was thus made two of the last named firm had bargained with Mr. P. G. Close, to give him conditionally an interest in the rights of Manning, Shields & McDonald. We cannot ascertain definitely on what day this understanding was first arrived at. We think it was after the 1st of March when the time given to Andrews, Jones & Co. had expired, and during the first half of the next week, while the members of the firm of Morse & Co., then at Toronto, were led to hope from the communication of Mr. Nicholson, who was at Ottawa, that they might yet get the contract on Andrews, Jones & Co.'s figures if they succeeded in making further deposits. Mr. Morse about that time was endeavoring to get Mr. Close to help him to \$10,000 of the required \$200,000. Mr. Close and he parted more than once without coming to terms, and in the intervals Mr. Close saw Mr. Shields and was negotiating with him as to an interest in the chances of his firm. This ended in Mr. Morse getting no help from that quarter, and an agreement was made between Mr. Shields and Mr. Close which was reduced to writing on the 6th March. Mr. McDonald was no party to this arrangement. The following is the agreement referred to:—

“TORONTO, March 6th, 1879.

“The undersigned becoming aware that Messrs. Morse & Co. have raised a large part of the money required to deposit as security with the Government in awarding them the contract for section B of the Pacific Railway, and as P. G. Close is one of the parties necessary to raise the balance of the security, and has agreed to withdraw from being the security for said Morse & Co., if we will give him an interest in said contract if the tender is awarded to Fraser, Grant & Pitblado and Manning & Co., and believing that it will be in the interests of all the parties with whom we are associated in said contract, that said P. G. Close shall not be security for Morse & Co., do hereby agree for ourselves and all the parties to be benefited in said contract, that in consideration of his so refusing to be security as aforesaid, that we pledge him for all the parties in the said contract that he shall have a one-twenty-fourth part in said contract if the same is awarded to Fraser & Co., or that it comes to our tender, the said Close to bear his share of the security and to do his portion of the work.

“ALEXANDER MANNING.

“JOHN SHIELDS.

“Witness, ALEX. JARDINE”

About the same time that the negotiations last described were going on at Toronto, two members of the amalgamated firm, namely, Mr. Fraser and Mr. J. J. McDonald were at Ottawa, and did not feel quite certain of holding the contract under the notice from the Department of 5th March above referred to. It had become known that Morse & Co. had combined with Andrews, Jones & Co., and that \$100,000 had been deposited at Toronto by

the latter firm, part of it before the time limited had expired. Mr. Fraser and Mr. McDonald being uncertain whether this fact gave the amalgamated firm of Morse & Co. and Andrews, Jones & Co. a chance of holding the contract, provided the balance of security should be afterwards supplied by the New York branch, were anxious to prevent that, and to bring some influence to bear on Col. Smith, who was supposed to have the power in his hands of supplying it or not, as he might choose.

Mr. Chapleau, before mentioned, was understood to be an intimate friend of Col. Smith, and he had been already in communication with him on matters connected with this contract. It was accordingly arranged on 5th March, 1879, between these three—Mr. Fraser, Mr. McDonald, and Mr. Chapleau—that Mr. Chapleau should leave forthwith for New York and see Col. Smith, and if he succeeded in preventing the balance being supplied which was required to make up the deficiency in the security demanded from Andrews, Jones & Co., then he should receive from Mr. Fraser and Mr. McDonald, or one of them, the sum of \$4,000 as a compensation. Mr. Chapleau left for New York on 6th March, and on 7th March saw Col. Smith and Mr. Jones there. He used no persuasions either with them or Mr. Dillon to prevent the deposit being made. There was no opportunity to do so, for all those gentleman had already abandoned the idea of being connected with this contract. Mr. McDonald afterwards paid \$500 to Mr. Chapleau on account of this \$4,000.

Mr. Chapleau was examined at some length concerning this transaction. In the course of his examination he testified that while he was employed as a clerk in the Department then having control of the affairs of the Pacific Railway, there was an arrangement between him and a Mr. Mowbray who had business transactions with the contractors on this railway.

Mr. Mowbray was a manufacturer of explosives, and by the arrangement Mr. Chapleau was to give him information concerning contracts in which there would be rock work, for which Mr. Mowbray paid him a monthly allowance. Mr. Chapleau's recollection of the amount was "\$30 or may be \$40 per month," and that it lasted "only three or four months probably."

The award of the contract on 5th March, as aforesaid, was carried out, and the contract finally executed on the terms described at the opening of this report.

Upon the evidence we conclude that in obtaining this contract, the contractors got no undue advantage, and that at the time it was awarded there was no opportunity for the Department to secure the works at prices lower than those mentioned in it.

In May, 1879, Mr Jennings proceeded to the works as Government engineer in charge. His jurisdiction was confined to this section. Stakes planted in the ground then indicated the centre line and the cross-sections over the location. The contractors were not hindered for want of work being laid out for them. Mr. Grant, one of the contractors, was on the ground at the time Mr. Jennings arrived.

Mr. Fleming, then Chief Engineer, directed his attention to the improvement of the line over this section so successfully, that in carrying out the directions given by him, and continuing the efforts which he originated, there will be a very large saving in its cost, much of it without lowering the character of the work ; some of it by using trestle work in places instead of solid embankments, and otherwise changing the character in localities so as to make the line there no less useful for present purposes, but less lasting than was at first intended. The gradients have been made less steep than by the original plans and specifications.

The whole saving from these changes was, in the fall of 1880, estimated by Mr. Jennings to reach \$1,500,000, but he said it would take \$500,000 of this to fill in trestle work, which had been substituted for the earth embankments at first designed.

Mr. Schreiber, Chief Engineer, visited the work in December, 1879 ; he found the force at work too small, and the work on that account was not proceeding satisfactorily ; but what was being done was of good character, and there was no ground for complaint on that score. It was owing to this delay that trestle was adopted in places so that the passage of trains, within the time specified, might not be prevented. According to his opinion nearly half the saving above mentioned will be by improvements in location and without lessening the permanency or efficiency of the work, the residue will be by making some of the work less permanent than was at first proposed, but equally useful for present purposes.

Mr. Schreiber testifies that the whole saving over this section is due to efforts made, and directions given, by Mr. Fleming while Engineer-in-Chief.

Up to the 30th June, 1880, the expenditure under this contract was \$429,300.

CONTRACT No. 43.

Equipping and working Pembina Branch.

By this indenture, dated 12th March, 1879, Joseph Upper, James Swift, B. W. Folger, and M. H. Folger, covenanted that before the 30th April, 1879, they would thoroughly equip the Pembina Branch of the railway, and as soon as a certain privilege therein referred to as being possessed by one George Stephen for running trains over the said line should be terminated, they would work the said line according to the terms specified in a certain agreement with this said George Stephen, subject to conditions and provisions set out in the said indenture, receiving therefor the gross earnings of the said line, except 25 per cent thereof or such other sum as should be fixed by arbitration as therein provided for, which 25 per cent. or other sum was to be paid to the Government. By this contract it was also agreed, that upon its termination the rolling stock of the contractors should be assumed by the Government, on terms and conditions therein stated.

The service provided for by this contract was not let by public competition, it was agreed for by accepting an offer made by one of the contractors as hereinafter mentioned.

On the 3rd August, 1878, an agreement had been entered into between Her Majesty of the one part and George Stephen of the other part, having for its main objects, first, a connection at the international boundary between the Pembina Branch and an extension of the St. Paul and Pacific Railway, and, second, after such connection should be made that trains might be run by the said Stephen over the said Branch, on terms therein specified, with a clause that should the said Branch be equipped, Her Majesty might terminate the right of the said Stephen to run such trains as aforesaid, and with a further clause regulating traffic as therein specified over the said Branch and the said St. Paul and Pacific Railway.

On 27th February, 1879, Mr. Joseph Upper, one of the contractors under contract No. 33, made the following proposal:—

“ Hon. C. TUPPER, Esq. C. B.,

“ Minister of Public Works.

“ Sir, — I have the honour to submit the following offer for the working of the Pembina Branch of the Canadian Pacific Railway:—

“ 1. I will equip and work the said line as the assignee of the Government under the lease or agreement entered into between the Canadian Government and George Stephen, dated August 3rd, 1878.

“ OTTAWA, 27th February, 1879.

"2. I will thoroughly equip the said line with all the necessary rolling stock on or before the 31st day of March next, and will thereafter efficiently work the same for a term of five years.

"3. I will pay over to the Government 25 per cent. of the gross earnings of said line or such other sum as may be fixed upon by arbitration as provided for in the lease or agreement before mentioned.

"4. Should I at any time fail to efficiently work the said line, or if for any reasons of State the Government desire to resume possession of said line, the Government will at once have the power to cancel this agreement by taking over the rolling stock and other plant at a fair valuation.

"5. At the expiration of five years should we fail to agree upon terms for the continuance of the agreement to work the said line the Government are to take off my hands all the rolling stock and plant at a fair valuation.

"Should the Government favourably consider this offer, I will furnish satisfactory security for the due fulfilment of the terms of the agreement, and beg to refer you to the following gentlemen named below.

" I have the honour to be, Sir,

" Your obedient servant,

" JOSEPH UPPER.

" Messrs. Calvin & Breck, Kingston,

" Folger Bros. "

James Swift, Esq. "

Thomas Howard, Esq., Montreal."

This letter having been, at the instance of the Minister of Public Works, referred to the Chief Engineer, he made the following report:—

" CANADIAN PACIFIC RAILWAY,

" OFFICE OF THE ENGINEER-IN-CHIEF,

" OTTAWA, March 3rd, 1879.

" SIR,—The offer of Joseph Upper, dated 25th February, 1879, to work the Pembina Branch, has been referred to me for report.

" Joseph Upper is one of the contractors for ballasting the Pembina Branch. In the public interests it is important that while ballasting goes on, construction and traffic trains should be worked by the same authority. It will be an advantage, therefore, to have a traffic arrangement with the ballast contractors, on terms not less favourable than can be made with others.

" I think the proposal is an acceptable one; but I would suggest that the contract should be only until the line is open from Selkirk to Fort William, unless terminated at a shorter period. I would suggest also that the rates to be charged for passage or freight should not exceed the average rates in the adjoining State of Minnesota, and be subject to the approval of the Governor in Council.

" SANDFORD FLEMING,

" *Engineer in-Chief.*

" The Honourable

" The Minister of Public Works."

Negotiations having led to the associations of the other persons named in this contract with Mr. Upper who alone had made the offer, an agreement was arrived at and reduced to writing, dated the 12th March, 1879, which is the contract now under consideration.

This agreement, subject to amendment, was confirmed by the following Order-in-Council:—

“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 March, 1879.

“On a memorandum dated March 13th, 1879, from the Honourable the Minister of Public Works, stating that in view of the great importance of opening immediate communication by rail between St. Vincent and Winnipeg, and the difficulties inseparable from the operating of the line by any other party than the contractor for its construction, he has entered into negotiations with the contractor, Mr. Joseph Upper, from whom an offer was received for the equipment and working of the Pembina Branch Railway in lieu of the Government, under agreement dated 3rd August, 1878, entered into with George Stephen, who represented the controlling interest in the St. Paul and Pacific Railway Company.

“The Minister observes that after negotiation with Mr. Upper and Messrs. James Swift, B. W. Folger and M. H. Folger, the gentlemen associated with him, the agreement produced herewith dated 12th March, 1879, made between Her Majesty of the first part, and the four gentlemen above named of the second part, and signed by those four gentlemen, was come to.

“The Minister therefore recommends that authority be given to the Department of Public Works to execute the said agreement on behalf of Her Majesty, provided a clause (which was agreed upon and omitted by oversight) be added to the effect that the Government is to be indemnified against any claim which the contractors may have or make in any way against the Government by reason of interference with their work or otherwise, on account of the equipment and working of the line under this agreement.

“The Committee advise that authority be granted as requested.

“W. B. HIMSWORTH,
“Clerk, Privy Council.”

The reasons for entering into a contract in this case as set out in the reports of the Chief Engineer, and in the memorandum submitted to the Privy Council as aforesaid, show that this was not a case for competition.

After the contract was closed, the contractors failed to carry out their bargain, and it was decided to cancel the arrangement. The Order-in-Council which authorized this step gives the reasons for it as follows:—

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 26th January, 1880.

“On a report dated 23rd January, 1880, from the hon. the Minister of Railways and Canals, stating that Messrs. Joseph Upper & Co., on the 12th March, 1879, entered into an agreement to thoroughly equip with all necessary rolling stock and other things required for

the efficient working of the Pembina Branch of the Canadian Pacific Railway, to maintain and keep it in an efficient and full state of repair, and to efficiently work it until the Canadian Pacific Railway from Thunder Bay to Selkirk was opened for traffic, unless this agreement be sooner terminated.

"That they never have thoroughly equipped it with the necessary rolling stock and other things for its efficient working, have not efficiently worked it, and in no respect have they fulfilled the terms of the agreement, and that the public have made repeated complaints of the unsatisfactory manner in which it was worked, that in consequence, so long ago as the 29th September, 1879, he, the Minister, notified them by telegraph that he feared he would be compelled to take the operating of the Branch out of their hands.

"That under date the 23rd December ultimo and the 22nd January instant, the Chief Engineer of Government Railways in operation reports, that the said Pembina Branch is not thoroughly equipped with the necessary rolling stock and other things necessary for the efficient working thereof, and that the said Branch is not being efficiently worked, and that in consequence the completion of the works of construction on the Canadian Pacific Railway between Winnipeg and Fort William, and also west of Winnipeg, will be greatly retarded and delayed, unless prompt measures are taken to control the traffic and ensure its prompt despatch.

"The Minister therefore recommends that he be authorized, under the terms of the agreement of the 12th March, 1879, to terminate the said agreement on and after the 10th day of February next, and assume control of the operating of said Branch.

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

"Certified.

"(Signed) J. O. COTÉ,
"Clerk Privy Council.

The following Order in Council speaks for itself:—

"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 March, 1880.

"On a report, dated 13th March, 1880, from the Honourable the Minister of Railways and Canals, stating that under the authority given by an Order in Council, of the 26th January last, the agreement made with Messrs. Joseph Upper & Co. for the equipment and working of the Pembina Branch Railway was terminated on the 10th February;

"That under the terms of clause 14 of the contract with Messrs. Upper & Co., the Government is obliged to take the rolling stock from the contractor at a valuation;

"That a valuation was accordingly made by the Chief Superintendent and the Locomotive Superintendent, and that a telegram was received from the former on the 21st February, in which he estimated the value of the rolling stock at \$70,000, the valuation of the plant not being then completed;

"That upon the advice of the Engineer-in-Chief, he, the Minister, authorized the payment to the contractors of the sum of \$25,000 on account, which sum was paid on the 21st ultimo;

“ He now recommends that he be confirmed in the action taken in making such payment, and further that authority be given for the payment of an additional sum of \$25,000, pending a final settlement with Joseph Upper & Co.

“ The committee submit the foregoing recommendation for Your Excellency's approval.

“ Certified.

“ (Signed) J. O. COTE,
“ Clerk Privy Council.

The expenditure made on this contract up to 30th June, 1880, included the two items of \$25,000 each mentioned in the last named Order in Council, in all \$50,000.

CONTRACT NO. 41.

Steel Rails.

By the agreement in this case the West Cumberland Iron and Steel Company (limited) undertook to supply 2,000 tons of steel rails, to be delivered at Montreal, according to specification, at the rate of £4 19s. sterling per ton.

This was one of a series of contracts entered into between the Government on the one part, and manufacturers in England on the other part, through the intervention of Messrs. Stevens & Reynolds, of London, England. On the 7th June, 1879, Mr. Fleming, the Chief Engineer, addressed the Minister of Public Works as follows :—

“ OTTAWA, 7th June, 1879.

“ SIR,—I beg to draw your attention to the fact that it will be necessary at once to provide for the supply of rails for those portions of the line under construction, and also for those immediately to be put under contract.

“ There are on hand, lying at Fort William, 48 miles of rails over and above the length wanted to lay the main track on contracts 14, 15 and 25.

“ The contracts recently entered into, 41 and 42, will require for main track 185 miles, of which 48 miles are provided as above, leaving to be provided 137 miles.

“ To which should be added the length of line west of Selkirk, with branch to Winnipeg purposed immediately to be built, say 110 miles; also allowance for sidings and spare track on the whole line from Fort William to Selkirk and extension west of Selkirk, say 30 miles.

“ Total required for these services, 277 miles, equal to, say 25,000 tons.

“ In addition to which the Georgian Bay Branch, contracted to be finished 1st July, 1880, will, if carried out, require nearly 5,000 more. In all, 30,000 tons to be provided.

" I will accordingly recommend that all the rails required, with a sufficient quantity of fastenings, should at once be contracted for, to be delivered at Montreal by each of the following dates, viz. :—

" One-third by 1st October, 1879.

" One-third by 1st June, 1880.

" One-third by 1st October, 1880.

" I have the honour to be, Sir,

" Your obedient servant,

(Signed)

" SANDFORD FLEMING,

" *Engineer-in-Chief.*

" The Hon.

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

" Minister of Public Works."

On the 17th June Mr. Fleming, under the direction of the Minister telegraphed to Mr. Reynolds, at London, as follows :—

" When, and for what price could 5,000 tons Sandberg's specific standard be delivered in Montreal.

On the day following, Mr. Reynolds answered by cable :—

" End of next month and August; five pounds sterling; if advised immediately, probably better."

On the 19th June Mr. Fleming cabled to Mr. Reynolds as follows :—

" Receive tenders; 5,000 tons delivered Montreal before 15th August. Cable number tenders and lowest. Rails and fastenings must be specific standard."

On the 21st June, a cablegram to Mr. Fleming from Mr. Reynolds was received to the following effect :—

" Eleven. Lowest delivered c. f. i. Montreal, fifteenth August, five for reply by cable. Shall I inspect?"

On the 21st June Mr. Fleming answered by cable as follows :—

" Order rails and fastenings. Furnish Sandberg's template. Oversee inspection."

On the 19th June, the day on which Mr. Fleming sent the directions, Messrs. Stevens and Reynolds addressed the following circular to the parties named below it :—

" LONDON, 19th June, 1879.

" GENTLEMEN,— Please quote us your lowest price, c. i. f. Montreal, for 5,000 tons steel rails 57½ lbs. per yard, with necessary fish plates to enclose section, to be delivered at Montreal by the 15th August next. Should you be unable to deliver the whole quantity by date specified, please quote for such portion as you can guarantee to deliver by the time named, and if

unwilling to deliver at Montreal, kindly let us have your price for delivery f. o. b. Rails will be inspected during manufacture.

" Payments net cash, no commissions being required.

" We are, gentleman,

" Yours truly,

" STEVENS & REYNOLDS."

This circular was addressed to the following parties :—

Guest & Co.,	Ebbw Vale Co.,
Bolckow, Vaughan & Co.,	Barrow Hæmatite Co.,
Charles Cammell & Co.,	West Cumberland Co.,
John Brown & Co.,	Moss Bay Co.,
Rhymeny Iron Co.,	Wilson, Cammell & Co.,
Brown, Bayley & Dickson.	

The method of competition adopted in this case was decided upon after discussion between the Chief Engineer and the Minister.

Mr. Reynolds, who took part in the transactions and gave evidence upon the subject before us, stated that he considered it was adapted under the circumstances to bring out as low prices as by public advertisement; that sometimes the market is stiffened by public notice of anything like a large quantity being required.

Four of the parties addressed declined to make any offer; the answers from the others contained two offers free on board at Liverpool, one at £5, and the other at £5 5s. sterling per ton, and the offers for delivery at Montreal, which latter ranked in the following order :—

West Cumberland Co.....	2,000 tons at	£4 19s. 0d. sterling.
Barrow Hæmatite Co.....	5,000	" 5 0 0 "
Ebbw Vale Co.....	1,500	" 5 0 0 "
Bolckow, Vaughan & Co	2,500	" 5 0 0 "
Guest & Co.....	2,500	" 5 2 6 "

The following parties who had been addressed as aforesaid declined to compete :—

The Atlas Steel and Iron Works.
 The Moss Bay Co.
 The Rhymeny Iron Co.
 Wilson, Cammell & Co.

It will be seen that in this competition the West Cumberland Co made the lowest offer, namely, £4 19s. sterling.

On the 24th June, 1879, Messrs. Stevens & Reynolds wrote accepting their offer in full.

All the correspondence concerning this transaction by Mr. Reynolds accompanied his report upon the subject to the Department. His action was confirmed and approved of, and there has been no expression of dissatisfaction by the Minister concerning it. In our judgment the action of the Department secured by this contract, at the lowest possible price, the material bargained for.

The quantity of rails agreed for was delivered, and the amount expended was:—

To 30th June, 1880..... \$50,064 74

CONTRACT NO. 45.

Steel Rails.

By this agreement the Barrow Hæmatite Steel Co. undertook to supply 1,500 tons of steel rails with the proportionate quantity of fish-plates, at Montreal, according to specification, at the rate of £5 sterling per ton.

The supply of rails under this contract was submitted to competition in the manner described in our report upon contract No. 44. As shown there, the offers resulted in five for delivery at Montreal, of which the lowest was the one made by the West Cumberland Co., and became the foundation for contract No. 44. There were three other parties who named the price next above that, namely, £5 sterling per ton. Of these the Barrow Hæmatite Co. was one. The offer of this company was for the whole quantity but in order to ensure as early a delivery as possible, it was decided by Messrs. Stevens & Reynolds to divide the 3,000 tons left after ordering the quantity tendered for by the West Cumberland Co. into two orders. They accordingly wrote on the 25th June, 1879, to the Barrow Hæmatite Co. stating that "as the time for delivery is short we have decided to divide the order for the 5,000 tons of steel rails and fish-plates which you quoted us for on the 20th, and we this morning telegraphed you, to which we have just received your answer. We have now pleasure in giving you order for 1,500 tons of the rails with the necessary steel fish-plates delivered at Montreal by the 15th August, at the price of £5 per ton, c.i.f., at Montreal."

In our judgment the action of the Department secured by this contract, at the lowest possible price, the material bargained for.

This contract was carried out, and the expenditure under it, up to the 30th June, 1880, was \$37,844.59.

CONTRACT No. 46.

Steel Rails.

By this agreement the Ebbw Vale Steel, Iron and Coal Co. undertook to supply at Montreal 1500 tons steel rails, with the proportionate quantity of fish-plates, according to specification, at the price of £5 sterling per ton.

The supply of rails under this contract was submitted to competition in the manner described in our report upon contract No. 44. As shown there, the offers resulted in five for delivery at Montreal, of which the lowest was the one made by the West Cumberland Co., and became the foundation for contract No. 44. There were three other parties who named the price next above that, namely £5 sterling per ton. Of these three the Ebbw Vale Co. was one. The offer of this Company was for 1500 tons, which, with the amounts already ordered under contracts Nos. 44 and 45, completed the quantity required by the Department.

On the 26th June, 1879 Messrs. Stevens and Reynolds wrote to these contractors giving the order for the amount offered by them at the price named, £5 sterling per ton.

In our judgment the action of the Department secured by this contract, at the lowest possible price the materials bargained for.

The quantity has been supplied and the contract fulfilled.

The money paid under it up to the 30th June, 1880 was \$37,972.28.

CONTRACT No. 47.

Bolts and Nuts.

By this agreement the Patent Bolt and Nut Company agreed to supply free on board at Newport, England, 96,000 fish-plate bolts and nuts according to specifications, at £10 sterling per ton.

The supply under this contract was the result of competition brought about in the same way as described in our report on contract No. 44.

Messrs. Stevens & Reynolds, on the 2nd July, 1879, addressed a circular to the Patent Bolt & Nut Co., Baylis, Jones & Baylis, and Horton & Son, English manufacturers. This circular was as follows:—

“DEAR SIR,—Please quote us your lowest price for 96,000 fish-bolts and nuts $\frac{1}{2}$ inches diam., $3\frac{1}{2}$ long, cap head and square neck, and nut oiled and packed in strong 2 cwt. iron, bound cases, and delivered f. o. b. Newport. Terms of payment will be net cash on shipment, no commission being required; delivery to be made within three weeks of this day.”

The offers were as follows:—

Patent Bolt and Nut Co.....	£10 stg. per ton.
Horton & Son	10 2s. 6d. “
Baylis, Jones & Baylis.....	10 5s. 0d. “

Unless the packages should contain 4 cwt. each instead of 2 cwt. as was mentioned in the circular: in that case the offer of the last named firm was £10 stg.

On the 4th July, 1879, Messrs. Stevens & Reynolds wrote accepting the offer of the Patent Bolt and Nut Co. as above mentioned.

Upon the evidence we conclude that there was no more favourable opportunity than that afforded by this contract, by which the Department could provide the articles bargained for.

The contract has been fulfilled and the following amount paid under it up to the 30th June, 1880: \$2,277.60.

On the 2nd December, the following letter was written by the Secretary of the Department to the Engineer-in-Chief concerning the last four contracts:—

“OTTAWA, December 2nd, 1879.

“SIR,—Referring to the communication received from your office under date 9th September, last, in relation to the contracts entered into for the supply of 5,000 tons of rails and fastenings required for the construction of the 100 miles of the Canadian Pacific Railway extending west from Winnipeg, I am directed to inform you that the Minister has approved of the purchase, and that you are hereby authorized to grant a certificate for the value of the rails, etc., delivered under such contracts.

“I am, Sir,

“Your obedient servant,

(Signed.) “F. BRAUN,

“Secretary.

“SANDFORD FLEMING, Esq., C.M.G.,

“Engineer-in-Chief Canadian Pacific Railway.”

CONTRACT No. 48.

Railway Construction.

By this contract, dated 19th August, 1879, John Ryan covenanted to complete, according to specifications all the excavation, grading, bridging, track-laying, ballasting, station buildings and other works required to be done on that portion of the railway commencing at Winnipeg and extending 100 miles or any shorter distance north-westerly or westerly, that the Minister of Railways might determine, the whole to be completed before the 19th August, 1880, and fifty miles of it within eight months after the date of the contract; the agreement also covered the carriage of rails and fastenings from Montreal; receiving, therefor, the prices named in the said contract as applying respectively to the different classes of work there enumerated.

On the 16th June, 1879, advertisements were issued asking for tenders up to noon of Friday, 1st August following, for the construction of about 100 miles of railway west of Red River, and it was stated that printed forms and other information might be had at the office of the Engineer at Ottawa, or in Winnipeg.

On the afternoon of the day above named for receiving the tenders, they were opened in the presence of Mr. Trudeau, the Deputy Minister, Mr. Smellie, acting in the place of the Engineer-in-Chief, and Mr. Burpe, a clerk in the Department.

There were thirty-nine in all, varying from \$553,060 to \$994,550, the lowest being made by W. C. Hall, and the one next above him by Mr. John Ryan, the present contractor, whose offer was \$600,500.

In this case it was provided in the specifications furnished to tenderers, that a portion of the work mentioned in the bill of works, might be withdrawn if the Government thought proper, and in this instance, before entering into any bargain it was decided that the fencing on this portion of the line, and half of the ballasting should be omitted from the works to be placed under contract. The prices named in the tenders for these items were deducted from the whole prices named by each offer. The result of such deduction was not to alter the rank of either the lower tender made by Mr. Hall, or the next one by Mr. Ryan, as compared with any of the others.

A report by Mr. Smellie, of the 8th August, 1879, to the Acting Minister of the Department, contains the following:—

“You will also observe that by these deductions some of the tenders take a different place from what they would do if the amounts of the tenders, as sent in, were compared. Numbers 1 and 2 on the list are not thus affected. The lowest tender is that of Mr. W. C. Hall, of Three Rivers, amounting, after the above deductions, to \$486,810, or \$4,868 per mile. Generally the prices in this tender are very low, especially in the items of carrying of rails and fastenings from Montreal, and supply of ties. I have had an interview with Mr. Hall, who has been summoned here in connection with this tender, and find that he can afford very little information as to the basis upon which the prices were fixed, some other parties whom he names having taken an active part in the same.

“Mr. Hall states that he has been for some years engaged upon railway works, and is at present foreman of track-laying and ballasting on the piles branch of the Quebec Government Railways, under Mr. McGreevy. I have no personal knowledge of Mr. Hall, but have communicated with the engineer of the Government Railways at Quebec, as to whether he knew anything of Mr. Hall's abilities or resources, and he replied by saying that he has never heard of him.

“Taking all these matters into consideration, I am of opinion that Mr. Hall has neither the ability, skill, nor resources for carrying on this extensive work, and do not think it expedient that the Government should award him the contract.”

On the 8th August, 1879, Mr. Hall addressed the following letter to the Minister:—

“This being the first time that I tendered for any public works, I was not aware that I would have to be ready with a deposit at once, and having partners in the matter, although not appearing on the tender, and not being able to get them here for a short time, and being informed that there is an alteration in the specification, I decline to accept the work, and hope you will take me favourably into consideration and not compel me to forfeit the deposit already made.

“I remain,

“Your obedient servant,

“W. C. HALL.

Mr. Hall in this letter speaks of the necessity of being ready with a deposit at once. Mr. Trudeau, who as well as Mr. Smellie had seen him, and had conversed on this subject, testified that this language is not in accordance with the intimation which was given to him at the time; that he was given to understand that a reasonable period would be allowed for furnishing the deposit if it was required.

Mr. Ryan has also been examined in order to ascertain whether he took any part in procuring the withdrawal of Mr. Hall, and we have come to the conclusion that Mr. Hall was not able to undertake the contract himself, and that his declining to do so was not in any way attributable to inter-

ference by Mr. Ryan, or any improper pressure by anyone connected with the Department.

On the 9th August the contract was awarded by the following letter :—

" 9th August, 1879.

SIR,—I am directed by the Acting Minister of Railways and Canals to inform you that your tender for the construction of 100 miles of the Canadian Pacific Railway, extending westward from Winnipeg, is the present lowest before the Department. I am, accordingly, to request you to state whether you are prepared to enter into a contract and deposit the necessary security, say \$29,000.

" I am, Sir,

" Your obedient servant,

" F. H. ENNIS,

" Acting Secretary.

" JOHN RYAN, Esq., Ottawa."

On the day before this award of the contract to Mr. Ryan, the Acting Minister of Railways had submitted a memorandum concerning the transaction to the Privy Council, and it was followed on the 12th August by an Order in Council, directing that the cheque enclosed by Mr. Hall with his tender should be returned to him.

On the 18th August, 1879, the Acting Minister of Railways and Canals submitted a memorandum concerning the substance of the tenders, and the withdrawal of Mr. Hall, which was followed on the 22nd August, 1879, by the following Order in Council :—

" 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 August, 1879.

" On a report dated 18th August, 1879, from the Hon. J. H. Pope, acting in the absence of the Minister of Railways and Canals, stating that thirty-nine tenders have been received (1st August, 1879) for the grading, track-laying and ballasting of 100 miles of the Canadian Pacific Railway west from Winnipeg, such tenders ranging from \$553,060 to \$994,550.

" That the lowest tender is that of Mr. W. C. Hall, of Three Rivers, who offers to do the work at rates which, when extended, amount to \$553,060.

" That Mr. Hall was notified on Monday, the 4th, and came to Ottawa on the 7th instant.

" That one of the conditions of the specification upon which these tenders were based requires that the contractor shall deposit with the Government, money or its equivalent value at current rates of public securities or bank stock, to the amount of five per cent. of the bulk sum of the contract.

" That Mr. Hall, by a letter dated the 8th inst., has declared his inability to comply with this condition, and has verbally stated that his financial means were limited to eight or ten thousand dollars.

" That the engineer in charge of the works has reported that, in his opinion, Mr. Hall could not perform the work for the prices named in his tender; and further, that from his

own statement he has neither the financial means or ability to execute the works within the time specified.

"That the next lowest tender received is from Mr. John Ryan, whose prices, when extended, give a bulk sum of \$600,500.

"That Mr Ryan has declared his readiness to proceed with the works, and has duly deposited the sum of \$29,000 as security.

"The Minister recommends that the work be entrusted to Mr. John Ryan at the prices named in his tender.

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

"Certified.

"W. A. HIMSWORTH,

"Clerk, Privy Council."

The requisite security having been deposited by Mr. Ryan on the 28th August, 1879, the contract was entered into as described at the opening of this report.

From the evidence we conclude that by the award of this contract the contractor obtained no undue advantage, and that the action of the Department secured the work at the lowest available offer.

Construction under the contract was not begun for a considerable period after its execution. Mr. Ryan, giving evidence before us, stated that the line was not located until May, 1880, so that work could be done upon it, but that no delay had occurred through his omissions after the line had been sufficiently located to enable him to proceed. There were two lines at first projected from the main one, one called the fourth base line, and the other some four miles north of that. The northerly one was finally adopted.

The work has progressed under this contract very slowly. With the consent of the engineers, a material change was made in the formation of the road-bed: instead of putting earth from side ditches into that, the ties were, over a considerable distance, laid upon the surface of the ground and ballast hauled and deposited between them, after which, the ties being lifted, a bed was formed of ballast instead of earth as was at first designed, ditches being omitted except when they are required for drainage. It is claimed by the contractor that this will make better work than that mentioned in the specifications. The width of the bed will not be so great. The cost, as a whole, will be somewhat higher. This change was made under the direction of Mr. Schreiber, the Chief Engineer, in 1880. By this means the ballasting under the contract will be largely increased, and the excavation of earth very much diminished. It is obvious that this

change in the character of the work, cannot be said in any way to be a breach of the contract by Mr. Ryan.

At the time of our taking evidence in Winnipeg (October, 1880) the trains were running for construction purposes over about forty miles of the line covered by this contract.

The transportation from Montreal of the rails, for the whole length, had taken place, and the cost thereof, a disbursement on behalf of the contractor, appears as a charge against this contract.

The expenditure up to the 30th June, 1880, was \$153,850.

CONTRACT No. 49.

Station Houses.

By this contract, dated the 15th August, 1879, Richard Dickson covenanted to erect and complete combined passenger and freight buildings, to be used in connection with the Pembina Branch, at several different places named in the contract, and at prices stated as applicable respectively to such places, the whole amounting, according to the contract, to \$15,802.40.

This work was let by public competition. The buildings to be erected were for the stations at Emerson, Penza, Otterburn, Niverville, St. Boniface and Selkirk. At other stopping places platforms only were required, namely, Arnaud, Dufrost, St. Norbert and Gonor.

Advertisements were issued on the 17th of June, 1879, for the receipt of tenders up to 15th July following, on which day those received were duly opened by officials of the Department, and they showed offers varying in price according to requirements at the different places, the totals ranging from \$15,802.40 up to \$43,000. The respective prices and names are set out at pages 30 and 32 of a Return to House of Commons, dated 31st March, 1880. The correspondence on the subject in the possession of the Department is there given. Mr. Dickson, the contractor in this case, made the lowest and the contract was awarded to him.

In our judgment, the action of the Department secured the work contracted for, at the lowest available offer and the contractor got no undue advantage in the bargain.

There has been no difference between the contractor and the Government officials concerning the subject of the contract. The work was finished and taken off his hands without dispute.

The total amount expended up to the 30th June, 1880, was \$13,050.

CONTRACT No. 50.

Railway Spikes.

By this contract, dated 4th September, 1879, George Angus Miller, Charles Herbert Miller and James Mitchell, under the firm of Miller Bros. & Mitchell, bound themselves to manufacture and supply 400 tons of railway spikes according to specifications, to be delivered at Fort William, and 300 tons at Montreal, receiving therefor, per ton of 2,240 lbs., the price of \$52.75 for those delivered at Fort William and \$47.75 for those delivered at Montreal, deliveries to be at the times mentioned in the contract.

On the 30th July, 1879, advertisements were issued, asking for tenders of the 20th August following, for the supply of 35 tons of fish-plate bolts and nuts, and 700 tons railway spikes, specifications and other information to be had at the Engineer's Office in Ottawa. The tenders, which were received in due time, were opened on the 20th of August by officials of the Department.

Eight offers had been made, varying from \$52.75 per ton, at Fort William, and \$47.75 at Montreal, to \$65 at Fort William and \$120 at Montreal. The lowest offer was made by Miller Bros. & Mitchell, the present contractors.

On the 23rd August, Mr. Ennis, of the Department, wrote to this firm asking if they were prepared to supply and deliver 400 tons at Fort William and 300 tons at Montreal at the prices named in their tender, and if so, to deposit security equal to 5 per cent.

In answer to this, Miller Bros. & Mitchell telegraphed on the 25th August to Mr. Ennis, asking: "Is it absolutely necessary that spikes must be delivered at dates in tender?" To which a reply was sent by telegraph in the affirmative.

On the 27th August Miller Bros. & Mitchell telegraphed to Mr. Ennis that they would remit their deposit that evening, and this was done accordingly.

In our judgment the action of the Department secured the materials here contracted for at the lowest available offer, and in the bargain the contractors got no undue advantage.

On the 25th August Mr. Tandy, of Moncton, was instructed by the Department to proceed to Montreal, and inspect the iron in process of manufacture by these contractors, and to report upon it as well as the facilities for manufacturing it possessed by that firm, and their capability of executing the contract within the time specified.

On the 3d September, 1769, Mr. Tandy reported that he had examined and tested the quality of iron being used by these contractors, and had submitted the spikes to various tests, finding the quality satisfactory, and equal to the test mentioned in the specifications; also, that the facilities of the manufacturers for completing the contract in the time called for were ample.

The contract has been duly fulfilled, the expenditure under it up to the 30th June, 1830, being \$35,425.

CONTRACT No. 51.

Bolts and Nuts,

By this contract, dated 8th September, 1879, the Dominion Bolt and Nut Company bound themselves to manufacture and supply thirty-five tons of fish-plates, bolts and nuts, according to specifications, to be delivered at Fort William, for the price of \$75 per ton of 2,240 pounds.

On the 30th July, 1879, the advertisement described in our report on contract No. 50, asked for the articles covered by this contract, as well as for spikes mentioned in that one.

The tenders which had been received in due time, were opened on the 20th day of August by officials of the Department.

Five offers had been made varying from \$75 to \$85 per ton. The lowest was made by these contractors.

On the 23rd August 1879, Mr. Ennis, of the Department, enquired of the Dominion Bolt Company whether they were prepared to furnish the thirty-five tons as tendered for, and if so, to deposit security equal to 5 per cent.

On the 25th August, Mr. Livingstone, acting for the Dominion Bolt Company, wrote to the Minister accepting the contract, and security was duly provided.

The evidence leads us to conclude that in this case the Department secured the materials bargained for at the lowest available offer, and without giving the contractors any undue advantage.

On the 5th September, 1879, Mr. Tandy, named in our report on the last contract, was instructed to make such examination as would enable him to report to the Department on the quality of the iron proposed to be used by these manufacturers, and the facilities possessed by them for completing the contract within the time specified.

On the 17th September, 1879, Mr. Tandy reported that he had visited the works of these contractors in Toronto, and that the iron used was of first-rate quality, in every way equal to the specifications, and that the manufacturers had all the facilities requisite to complete the contract in the time called for by specification.

The contract was performed. The expenditure under it was—

To 30th June, 1880 \$2,662 50

CONTRACT NO. 52.

Transportation of Rails.

This contract is not included in any single document. It is contained in correspondence between the Department and the contractors. By the agreement the North-West Transportation Company agreed to transport 5,000 tons of rails, more or less, from the ocean steamer's tackle at Montreal to Fort William, at the rate of \$6 per ton of 2,240 lbs.

This contract was let upon competition invited by circulars addressed to eight different parties, asking for offers to forward 5,000 tons of steel rails and fastenings, from Montreal to Fort William. Only four out of the eight replied to the invitation. All the tenders were at about the same figure, namely, \$6 per ton. Two at that rate were made respectively by Messrs. Smith & Keighley and Mr. Henry Beatty. Two others were made respectively by Messrs. Calvin & Breck and Messrs. Folger & Bros. at \$5.75. The two former, however, included the Montreal harbour dues, and the two latter did not. It was found that the harbour dues amounted to 28 cents, which had the effect of making the two offers last mentioned including the harbour dues \$6.03.

The result of this competition was reported by Mr. Fleming on the 24th September, 1879. In his report, addressed to the Minister, he states :—

“It is important that no time should be lost in completing arrangements. I beg, therefore, you will give instructions as to the offer to be selected.”

On the 29th September, 1879, Messrs. Smith & Keighley, who had made one of the two lowest tenders, telegraphed to the Minister as follows :—

“If you favour us with contract for transport steel rails and fastenings, Montreal to Fort William, kindly make contract to Henry Beatty, as he has made arrangements with Grand Trunk for prompt transport, and we to carry half quantity. Will this be agreeable to you.”

On the 30th September, 1879, the following letter awarded the contract to the North-West Transportation Company :—

“OTTAWA, 30th September, 1879.

“SIR,—I am directed by the Minister of Railways and Canals to inform you that the offer contained in your letter of the 3rd instant, for the transport of steel rails from Montreal to Fort William at the rate of six (6) dollars per ton, is accepted, the quantity requiring transport being four thousand tons. This rate to include harbour dues, canal tolls, insurance to the value of twenty-five dollars (\$25.00) per ton, and piling at the point of delivery, the rails being received by you at the ship's tackle.

“I am, e'tc., etc.,

“F. BRAUN,

“Secretary.

“HENRY BEATTY, Esq.,
“Manager N. W. T. Co.,
“Montreal.”

The evidence leads us to conclude that in this instance the Department secured the work covered by the contract, at the lowest available offer, and without giving the contractors any undue advantage.

Mr. Trudeau, the Deputy Minister, states that this work has been performed and paid for without dispute.

The amount expended on this contract up to the 30th June, 1880, was \$15,034.

CONTRACTS 53, 54 AND 55.

Steel Rails, Plates, Bolts and Nuts.

These contracts cover the purchase of 45,000 tons of steel rails, with the proportionate quantities of fish-plates, bolts and nuts, from the following parties :—

	Tons of rails.
The Barrow Hæmatite Co.....	30,000
Guest & Co.....	10,000
The West Cumberland Co.....	5,000

In each case the contract included the accessories; the prices of the articles varying according to the dates of delivery. Further particulars of each contract are hereinafter given in detail.

Out of this quantity 11,000 tons were bought for relaying the Rivière du Loup section of the Intercolonial Railway, and 34,000 tons for the Pacific Railway. The need of 30,000 tons of the latter quantity was stated in a report from the Chief Engineer on 7th June, 1879, as follows:—

“ OTTAWA, 7th June, 1879.

“ SIR,—I beg to draw your attention to the fact that it will be necessary at once to provide for the supply of rails for those portions of the line under construction, and also for those immediately to be put under contract.

“ There are on hand, lying at Fort William, 43 miles of rails, over and above the length wanted to lay the main track on contracts 14, 15 & 25.

	Miles.
“ The contracts recently entered into, 41 and 42, will require for main track 185 miles, of which 43 miles are provided, as above, leaving to be provided.....	137
“ To which should be added the length of line west of Selkirk, with branch to Winnipeg, proposed immediately to be built—say.....	110
“ Also allowance for sidings and spare track on whole line from Fort William to Selkirk, and extension west of Selkirk—say.....	30
	—
Total required for these services.....	277

“ Equal to, say—25,000 tons.

“ In addition to which the Georgian Bay Branch, contracted to be finished 1st July, 1880, will, if carried out, require nearly 5,000 more. In all 30,000 tons to be provided.

“ I would accordingly recommend that all the rails required, with a sufficient quantity of fastenings, should at once be contracted for, to be delivered at Montreal by each of the following dates, viz:—

“ One-third by 1st October, 1879.

“ One-third by 1st June, 1880.

“ One-third by 1st October, 1880.

“ I have the honour to be, Sir,

“ Your obedient servant,

“ SANDFORD FLEMING,

“ *Engineer-in-Chief.*

“ The Hon. Sir CHARLES TUPPER, K.C.M.G.,
“ Minister of Public Works.”

Three days afterwards an Order-in-Council authorized this recommendation to be acted upon :

“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 June, 1879.

“On a Memorandum, dated 10th June, 1879, from the Honourable the Minister of Railways and Canals, reporting that it has become necessary at once to provide for the supply of rails for the portions of the Canadian Pacific Railway line now under contract, and also for those immediately to be put under contract—the quantity being about 30,000 tons; and recommending that he be authorized to advertise for tenders for the supply of rails required with a sufficient quantity of fastenings, to be delivered at Montreal as follows, viz.:—About one-third by the 1st October, 1879; about one third by the 1st June, 1880; and about one third by the 1st October, 1880.

“The committee advise that authority be granted as recommended.

“Certified.

“W. A. HIMSWORTH,
C. P. C

Accordingly tenders were invited by the following advertisement published in English newspapers :—

“TENDERS FOR STEEL RAILS.

“Tenders addressed to the Honourable the Minister of Railways and Canals will be received at the Canadian Emigration Office, 31 Queen Victoria street, E.C., London, England, until July 15th next, for steel rails and fastenings, to be delivered at Montreal as follows:—

“5,000 tons by October 1st, 1879.

5,000 tons by June 1st, 1880.

5,000 tons by October 1st, 1880.

“Specifications, conditions, forms of tender, and all other information will be furnished on application at this office, or at the Canadian Emigration Office, 31 Queen Victoria street, E.C., London, England.

“By order,

“F. BRAUN,
“Secretary.

“DEPARTMENT OF RAILWAYS AND CANALS,
“OTTAWA, 13th June, 1879.”

Between the date of this advertisement and the 21st of the same month, the purchase of 5,000 tons of rails had been arranged for by cable telegraph as described in our reports on contracts 44, 45 and 46, leaving 25,000 tons necessary to be got for this railway and 11,000 for the Intercolonial.

On the 21st July, 1879, the tenders which had been received in due time were opened at London in presence of Sir Leonard Tilley, Sir John Rose, and the Chief Engineer. An abstract of them was made as they were opened and initialed by these gentlemen, but no decision was arrived

at, owing to the absence of the Minister of Railways, who was then in Europe, but not in England. On his reaching London, on 23rd July, it was then decided by Sir John Macdonald, Sir Charles Tupper, and Sir Leonard Tilley, in consultation with Mr. Fleming, to effect the purchase of the quantities above mentioned, and which included 9,000 tons beyond the £6,000 then understood to be required for use on the two railways.

Inasmuch as the question whether a Department ought to be moved by a speculative opinion, concerning the future prices in any market, to purchase property beyond what would be deemed requisite, in view only of the time at which it was to be used, involves a discussion of the principles upon which public funds may be dispensed by a Department of Government, we avoid comment on this feature, and we remark only on the judgment exercised concerning the financial results of the transactions.

Assuming then that this course was open to the Minister of Railways, we have to say that, in our opinion, the probability of a rise in the price of rails was at that day sufficient to induce a private party requiring 36,000 tons, and expecting in the future to require more, to purchase 9,000 tons beyond his immediate wants.

We are not influenced to this view by the subsequent facts, and although, according to the opinion of Mr. Reynolds, who took part in the inspection of the rails and was acquainted with the past fluctuations of the rail market, these purchases were at "about the lowest prices that have ever been entered into for steel rails either before or since, of that weight or quality;" and although the market rose so rapidly afterwards that the deliveries under the contracts were made at rates considerably less than the prices then prevailing, our duty is to look at the transaction by the light only of the circumstances which existed at that time.

In considering the matter which might then have led one to anticipate a rise in the price of steel rails, we ought not to omit the history of its previous fluctuations. These are already remarked upon in our report of contracts 6 to 11, and are indicated approximately in the copy of Mr. Sandberg's diagram which accompanies that report (page 171).

It will be there seen that in 1862 the ruling price was £19 stg, from which it fell to £10 in 1870, and after rising again to nearly £18 stg. during a short inflated period in 1873, it fell gradually, with occasional rests until sometime in July, 1879, when this diagram places it at £4 10s stg, less than half the price to which the market had descended in its first great

decline before mentioned. This price, £4 10s. is, of course, for delivery in England. In this instance, however, the competition brought out offers even more favourable than that, the first delivery under two of the three contracts was at £4 17s. 6d., and under the other at £4 19s. 0d., which prices covered the ocean freight to Montreal.

A review of the antecedents of the market would be likely, therefore, to create at that time a belief that its future would not be so favourable for buyers, but the position actually taken by the competing tenderers seems to us to have removed the subject from the region of theory, and to have given this belief a foundation of fact.

It will be remembered that tenders were invited for delivery at three different dates, 1st October, 1879, 1st June, 1880, 1st October, 1880. We set out hereinafter a synopsis of all the tenders for delivery at Montreal, but it is pertinent to the matter now under consideration, to point out a strong feature of the competition on this occasion.

Twenty-eight tenders were opened, seventeen of them for delivery at Montreal, the point named in the contracts; some of these were for the accessories only. In fourteen of them the prices for rails ranged, according to the dates of delivery, as follows :—

1st October, 1879, from	£4 17s. 6d.	to	£5 10s. 0d.
1st June, 1880, "	5 0s. 0d.	"	5 15s. 0d.
1st October, 1880, "	5 2s. 0d.	"	5 17s. 6d.

This tendency to the higher price, as time went on, was not confined to those tenders which took the highest and the lowest places respectively.

Eleven out of the fourteen competitors required higher prices for the later dates, and the average of them all was as follows :—

Delivery on 1st October, 1879.....	£5 4s. 2d.
" 1st June, 1880.....	5 7s. 5d.
" 1st October, 1880.....	5 9s. 5d.

From the evidence it appears to us that, while these offers were being framed, causes within the knowledge of the manufacturers as a class were already at work, which would soon make the production of rails more expensive; and so the tenders, at their opening, declared the time for the first deliveries to be a turning-point in the market.

The concurrence of opinion from so many independent sources, in fact rival sources, each a serious proposal for a business transaction, might, in

our judgment, well convince one that a rise in the price was more than probable, and at the same time the offers gave some intimation of the rate at which it would go up. Before these contracts were executed, one of the tendering firms, Wallace & Co., declined to carry out their offer for the reason, as Mr. Fleming says, that the price of rails rose between the tender and the acceptance of it.

In our judgment, the purchase, from his own funds, of one-fourth more than the quantity immediately required, would, on consideration of the facts above stated, commend itself to a careful business man as a desirable investment.

On 1st October following the Chief Engineer gave a history of this transaction as follows:—

“ CANADIAN PACIFIC RAILWAY,

“ OFFICE OF THE ENGINEER-IN-CHIEF,

“ OTTAWA, 1st October, 1879.

“ SIR,—I herewith transmit to you tenders for steel rails received during the past summer in England. The tenders were invited by advertisement, dated 13th June, 1879, and opened 21st July, 1879, by the Hon. Finance Minister, Sir Leonard Tilley, in presence of Sir John Rose and myself. The document A (in No. 20,595) shows the names of the parties tendering in the order in which the tenders were opened, numbered from 1 to 28, inclusive.

“ The tenders for delivery in Montreal are classified in statement B (in No. 20,595). For delivery f.o.b. in statement C (in No. 20,595). For delivery in miscellaneous places in statement D (in No. 20,595).

“ A summary of tenders for delivery of rails in Montreal will be found in statement E (in No. 20,595). For delivery f.o.b., in Statement F. For miscellaneous delivery, in statement G (in No. 20,595)

“ When tenders were opened Sir Charles Tupper, Minister of Railways and Canals, was not in England. He arrived in London on the 23rd July.

“ On the 24th July a telegram was sent to John Wallace & Co., copy enclosed H (in No. 20,595), making enquiries as to their tender and their ability to complete the contract.

“ Similar telegram was sent to Mr. A. T. Drummond, who represented this firm.

“ On 25th July (afternoon) no reply from John Wallace & Co. or Mr. Drummond having been received, it was decided to pass them over, on the ground of irregularity of tender and for other reasons, and accept tenders No. 21, Barrow Steel Co., for 15,000 tons, and tender No. 17, Guest & Co., for 10,000; both these companies were asked if they could deliver a larger quantity this year at the same prices. Unfavourable replies were received.

“ On the 26th July, the tender of the West Cumberland Co. for 5,000 tons was accepted; and that company was asked if they would deliver more on the same terms. The reply was unfavourable for further delivery.

“ Some correspondence having arisen with John Wallace & Co., a telegram was sent them on the 27th July, copy enclosed I (in No. 20,595) accepting their tender for 15,000 tons, and asking them to state the name of the manufacturers. On the 30th July no reply of any kind having been received from Wallace & Co., and the Barrow Co., through their agent, Mr. Halton

Green, having expressed their willingness to renew proposals for an additional quantity, that gentleman was requested to make the proposal by letter, which he did on the 30th July enclosed K (in No. 20,596), and a reply was sent to him the same day, enclosed L (in No. 20,596) accepting the proposal to furnish 15,500, payments being postponed until after the 1st July, 1880.

“ On the 31st July Mr. Drummond called in the interest of John Wallace & Co. He was told that as Messrs. Wallace & Co. had not been heard from since the 27th July, the matter was considered closed and other arrangements made. On the 2nd August, near midnight, a letter was received from Mr. Drummond on behalf of John Wallace & Co., which see M (in No. 20,596).

“ On the 8th August John Wallace & Co. wrote that they were ready to go on with the contract, enclosed N (in No. 20,596); and on the 11th August, a reply was sent to them, accepting the proposal, and stating the terms of contract, enclosed O (in No. 20,596).

“ On the 15th August Mr. Stewart and another gentleman from John Wallace & Co., called and promised a reply that evening by telegraph, whether or not they would undertake the whole 15,000 tons, or only 10,000 tons, the latter to be delivered in 1880; the Minister having given them the option. No further communication had been received from Messrs. Wallace and Co. up to the time I left London on the 18th August.

“ Before I left London, directions were given with regard to the preparation of contracts and other matters Mr. Thos. Reynolds, jun., was appointed Inspector of Rails for the Department on the terms of the letter dated 26th July, 1879, enclosed P (in No. 20,596). In this duty he is to be assisted by Mr. C. P. Sandberg, a former inspector.

“ On the execution of the contracts by the manufacturers in England, Mr. Reynolds was to forward them here; but at this date they have not been received.

“ The tenders as opened by Sir Leonard Tilley, Sir John Rose and myself accompany this.

I am, &c., &c.,

“ SANDFORD FLEMING.

“ *Engineer-in-Chief.*

“ F. BRAUN, Esq.,

“ Secretary Department of Railways and Canals.”

Messrs. Wallace & Co referred to in the above report did not carry out their offer, although it was formally accepted, and a suit at the instance of the Government was instituted against them for the purpose of recovering damages for their default. Subsequently the suit was abandoned under the authority of the following Order-in-Council:—

“ COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 6th January, 1880.

“ On a Report, dated 5th January, 1880, from the Honorable the Minister of Railways and Canals, stating that Mr. John Wallace of Dundee, Scotland, has presented a memorial praying that the action instituted in the law courts in London, England, by the Government against his firm, John Wallace & Co., for damages for breach of their contract for the supply and delivery of 15,000 tons of steel rails, may be discontinued upon his assuming the payment of all the costs and expenses of the suit.

“ That it appears from the memorial that the agreement to enter into the contract in question was made in the absence of the senior partner of the firm of John Wallace & Co., who represents that a suit against them would force the firm into bankruptcy.

"The Minister is of opinion that it is doubtful if any advantage would result to the Government from the prosecution of the suit against John Wallace & Co., and recommends that it be discontinued on the payment by the memorialist of all the costs and expenses.

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

"Certified.

"J. O. COTÉ,

"A. C. P. C."

With Mr. Fleming's report of 1st October was sent a list of the papers which accompanied it. We do not find it necessary to reproduce in full either the list or any of the papers. We have examined the originals, and in connection with the other evidence they show, that each of the three contracts under consideration, was based upon the lowest available offer for the whole, and every portion of the quantity covered by it.

We give below a statement showing the price of each thousand tons at the respective rates named in the fourteen tenders for delivery at Montreal, and the rank which the tenderers take, giving the lowest offer, the highest place, and so on:—

NAMES.	COST OF 1,000 TONS OF RAILS WITH PROPORTIONATE QUANTITY OF FISH-PLATES AND BOLTS AND NUTS.			
	1st Oct., 1879.	1st June, 1880	1st Oct., 1880.	Mean.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
West Cumberland Co	5,245 10 0	5,401 10 0	.....	5,323 10 0
Barrow Hæmatite Co.....	5,212 10 0	5,342 10 0	5,473 15 0	5,342 18 4
Guest & Co.....	5,230 0 0	5,360 0 0	5,620 0 0	5,403 6 8
W. Banks	5,554 10 0	5,513 5 0	5,489 7 6	5,519 0 10
Moss Bay Hæmatite Steel Co.....	5,604 10 0	.....	.....	5,604 10 0
Steel, Tozer & Hampton	5,500 0 0	5,625 0 0	5,750 0 0	5,625 0 0
The John Cockerill Works Co. ....	.....	5,487 10 0	5,800 0 0	5,643 15 0
Brown, Bayley & Dixon.....	5,675 10 0	.....	.....	5,675 10 0
W. H. Pillow & Co.....	5,612 10 0	5,758 15 0	5,758 15 0	5,710 0 0
Samuel Fox & Co.....	.....	5,750 0 0	5,750 0 0	5,750 0 0
Charles Cammell & Co.....	5,671 17 6	5,803 2 6	5,803 2 6	5,759 7 6
Bolkow, Vaughan & Co.	5,605 0 0	5,867 10 0	5,867 10 0	5,780 0 0
Rhymney Iron Co.....	.....	5,880 0 0	5,880 0 0	5,880 0 0
Bateman & Co.	5,775 0 0	5,958 15 0	6,168 15 0	5,967 10 0

This statement shows the order in which the tenders were most favourable to the Government, who took 30,000 tons, (all they would agree to furnish) from the first; 10,000 (all they would agree to furnish) from the second, and 5,000 from the third.

We are led to conclude that in each of these contracts, the Department thus secured the materials covered by it at a lower rate than could have been done by any other means then within its reach, and that in no case did any of the contractors get an undue advantage.

CONTRACT NO. 53.

This was dated 30th August, 1879, and by it the Barrow Hæmatite Steel Company undertook to manufacture, according to specifications attached to the contract, and to supply and deliver at Montreal, steel rails, together with such quantity and number of steel fish-plates, as might be proportionate to, and required for laying the said rails, and also such quantity and number of iron bolts and nuts, as might be proportionate to and required for the rails.

The quantity of rails, and the respective dates of delivery, and the price of each class of material were as follows:—

Date of Delivery.	Rails, Tons.	Rates per ton of 2,240 lbs.		
		Rails.	Fish-plates.	Bolts and Nuts.
		£ s. d.	£ s. d.	£ s. d.
October 1st, 1879.....	5,000	4 17 6	5 17 6	10 5 0
June 1st, 1880.....	5,000	5 0 0	6 0 0	10 5 0
September 1st, 1880.....	5,000	4 17 6	5 17 6	10 5 0
do	5,000	5 0 0	6 0 0	10 5 0
October 1st, 1880.....	10,000	5 2 6	6 2 6	10 7 6

The time for the fulfilment of the contract had not expired at the date of our commission. It had been partially fulfilled, and up to 30th June, 1880, the amount paid on it was \$233,986 for the Canadian Pacific Railway. This covered about three-fourths of the whole quantity which had been delivered up to that time by these contractors; the remainder had been delivered to the Intercolonial Railway, and charged to that account.

CONTRACT NO. 54.

By this agreement, dated 11th September, 1879, George Thomas Clark, under the style of Guest & Co., undertook, in terms similar to those of Contract 53, to deliver at Montreal, steel rails, with fish-plates, bolts and nuts, as follows:—

Date of Delivery.	Rails, Tons.	Rate per ton of 2,240 lbs.		
		Rails.	Fish-plates.	Nuts and Bolts.
		£ s. d.	£ s. d.	£ s. d.
October 1st, 1879.....	5,000	4 17 6	5 17 6	12 0 0
June 1st, 1880.....	5,000	5 0 0	6 0 0	12 0 0

The contract was fulfilled. The amount paid on it up to 30th June, 1880, was \$79,480.11, for the Canadian Pacific Railway. This covered about two-fifths of the whole which had been delivered up to that time by these contractors; the remainder had been delivered to the Intercolonial Railway, and charged to that account.

CONTRACT NO. 55.

By this agreement, dated 29th August, 1879, the West Cumberland Iron and Steel Company undertook, in terms similar to those of contract 53, to deliver at Montreal steel rails, with fish-plates, bolts and nuts, as follows:—

Date of Delivery.	Rails, Tons.	Rate per ton of 2,240 lbs.		
		Rails.	Fish-plates.	Bolts and Nuts.
		£ s. d.	£ s. d.	£ s. d.
October 1st, 1879.....	3,000	4 19 0	4 19 0	9 15 0
November 1st, 1879.....	2,000	4 19 0	4 19 0	9 15 0

The contract was fulfilled. The amount paid on it up to 30th June, 1880, was \$110,076.56.

CONTRACT No. 56.

Constructing a Bridge.

This agreement is not contained in a single document ; it was made by accepting, on the 29th November, 1879, a tender sent in by the Kellogg Bridge Co. for the construction of a railway bridge, according to specifications, over Rat River on the Pembina Branch, the price for its completion being \$1,384.

The following report by the Chief Engineer shows the necessity for the work and the first steps towards the contract.

“ CANADIAN PACIFIC RAILWAY,
“ OFFICE OF THE ENGINEER-IN-CHIEF,
“ OTTAWA, 24th November, 1879.

“ SIR,—On my return from Manitoba I reported, among other things, that a permanent bridge should be erected at Rat River on the Pembina Branch, as the present temporary structure was far from satisfactory, and liable to be washed away by the spring freshets.

“ While on the spot I directed the contractors to prepare pile abutments for the new bridge, and on reaching Ottawa, under your authority, I had an advertisement put in the Toronto, Hamilton and Montreal papers inviting tenders for a single 60 feet iron span.

“ Tenders have been received from the Hamilton Bridge Company, the Toronto Bridge Company and the Kellogg Bridge Company. An abstract of these tenders is attached.

“ I found that the peculiar design of the Kellogg Bridge would necessitate lengthening it three feet to fit the abutments now under construction. I asked by telegraph what additional sum would be required for the extra three feet, and received the following reply :—

“ Three feet additional length will cost eighty-four dollars.”

“ The three acceptable tenders will therefore stand thus :—

Hamilton Bridge Company.....	\$2,798
Toronto Bridge Company.....	3,403
Kellogg Bridge Company.....	1,384

“ I find, on examining the tenders, that to the Kellogg Bridge Company's tender will require to be added the cost of timber beams or ties immediately under the rails. This should not bring the whole cost of the span over \$1,600 erected in place and rails laid.

“ I would advise the immediate acceptance of the tender of the Kellogg Bridge Company, if they will undertake to complete the contract by the 1st February next.

“ I am, Sir, your obedient servant,

“ SANDFORD FLEMING,
“ *Engineer-in-Chief.*

“ The Hon. Sir CHARLES TUPPER, K.C.M.G.,

“ Minister of Railways and Canals.”

Before advertising for tenders as mentioned in this report, Mr. Fleming, considering the matter very urgent, proposed to the Department

that the required bridge should be manufactured without competition, but it was decided to advertise for offers, and the result was the three proposals mentioned by him. We have not thought it necessary to repeat the substance of them, inasmuch as Mr. Fleming's report shows, that the one accepted was the lowest and at almost half the price of the one next above it. The Kellogg Bridge Co. was notified on the 29th November that their tender was accepted.

In consequence of delay in the fulfilment of the bargain, and Mr. Fleming's alarm at the state of the temporary bridge, a person was sent to Buffalo to get the materials, and these were transported to the place for which the bridge was intended; it was then erected by days labour, the cost of it being charged to the contractors. The work was completed in this way, and the bridge gives satisfaction.

Up to the 30th June, 1880, the amount paid on the contract was \$1,150.

CONTRACT No. 57.

Railway Frogs.

This agreement is not contained in a single document; it is embraced in an offer made by the Truro Patent Frog Company, and the acceptance of it, whereby this company undertook to furnish 120 Starrat's adjustable steel rail frogs of specified angles, for the sum of \$65 each, and switch frames, signal posts, connecting bars and gearing complete, (which included wood-work, head blocks and sliding chains,) "\$35 every switch complete."

There was no public competition in this case. The Government had previously been getting railway frogs made at the Kingston Penitentiary at \$80 each, the connecting bar at \$15.50, and the switch gear at \$40, in all \$136.50, for what cost \$100 under this contract.

Mr. Schrieber, considering the Truro frog better than that which had been previously used, brought it to the notice of Mr. Fleming, pointing out that the rails were perfectly interchangeable, that it had more inherent strength, and that after using it on the Intercolonial Railway he had found it all that could be desired.

On the 1st September, 1879, Mr. Smellie, in the absence of the Chief Engineer, reported to the Department that a number of frogs with switch gear were wanted for use at Fort William and in Manitoba, and recom-

mended that these articles should be manufactured without delay, so as to be delivered before the close of navigation.

Mr. Fleming stated in his evidence that he knew of no other place in the country where these frogs could be made, except by the consent of the present contractors, who either were the patentees, or had secured from the patentees the right to make them.

At the request of the Department these contractors stated by telegram their terms for the manufacture of 120; these terms being as above mentioned. Their proposal was accepted, and the acceptance was confirmed by an Order in Council.

The saving was not as great as the difference between the price paid previously for those manufactured at Kingston, and those made at Truro, *i. e.* \$36.50. The cost of transportation between those points was to be deducted from this difference, to show the actual saving. That cost was not ascertained by us.

We give below the Order in Council to which we have alluded:—

"Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 23rd December, 1879.

"In a Report, dated 20th December, 1879, from the Honourable the Minister of Railways and Canals, stating that in the month of November last, upon an intimation from the Engineer-in-Chief of the Canadian Pacific Railway, that certain frogs and switch gear were required before the close of navigation for use in the Fort William and Manitoba districts of that railway, he authorized the acceptance of an offer received from the Truro Patent Frog Company to supply 120 of "Starrat's Patent Adjustable Steel Rail Frogs," for the sum of \$65 each, and switch frames, signal posts, connecting ties and gearing complete, for \$35 per switch complete, making a total cost of \$100 per set, and requesting that his action in the matter, for the reasons stated in his report, be approved, and that the order given to the Truro Company be confirmed.

"The Committee recommend that the action of the Minister of Railways and Canals be confirmed as requested.

"Certified.

"J. O. COLE,

"Assistant Clerk, Privy Council."

On the evidence we conclude that by this contract the Department procured the property covered by it at as low a price as would have been possible by any other course, and that the contractor got no undue advantage.

The contract was fulfilled, and the amount paid on it to 30th June, 1880, was \$12,000.

CONTRACT No. 58.

Railway Turn-tables.

By this agreement, dated 26th February, 1880, W. Hazlehurst undertook to make, according to specifications, and to deliver one decked turn-table at the price of \$2,016, and three open ones at \$1,360 each.

This agreement was the result of competition, invited by circular, addressed to the Hamilton Bridge Company, the Toronto Bridge Company, the Kingston Engine Works, and W. Hazlehurst of St. John.

The circular was as follows:—

“Several first-class iron turn-tables, fifty feet in diameter are required for the Pacific Railway; the first in the engine house at Selkirk must be erected and placed by the 15th March next. This must be decked, the deck supported in centre; for the other tables required, separate prices are invited; for deck and open work proposals will be received up to 30th instant, February, 1880. Drawings should accompany proposals.”

The tenders were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming, and were reported on by Mr. Fleming on 14th February, 1880.

The lowest offer was by W. Hazlehurst, and this contract was based upon its terms. Mr. Fleming's report recommended its immediate acceptance; it was the most favourable for both decked and open turn-tables. The next highest offer was from the Hamilton Bridge Company at \$2,350 for the decked, and \$1,700 for the open turn-table.

According to the evidence of Mr. Fleming, every one in the business likely to send in a tender was appealed to by the said circular, and all probable Canadian competition was thereby excited. He thought that the mode of inviting tenders which was adopted in this case was the best in the public interest.

On the evidence we conclude that in awarding this contract, the Department provided for the articles covered by it at as low a price as was then possible, and that the contractor got no undue advantage.

The contract was not fulfilled at the date of our commission. The amount paid on it up to 30th June, 1880, was \$2,016.

CONTRACT No. 59.

Railway Ties.

By this agreement, dated the 7th day of February, 1880, Charles Whitehead, Henry N. Ruttan and John Ryan, undertook to make and de-

liver 100,000 tamarac ties, according to specifications, on the track on section 14, in sufficient time to admit of their being hauled to the west side of Red River, over the temporary track then laid upon the ice at Point Douglas, in Winnipeg, receiving therefor 27 $\frac{1}{2}$ cents per tie, if stumpage should be charged against them by the Government, otherwise the price should be three cents per tie less.

This contract was brought about because it was deemed expedient by the Government to secure ties for at least a portion of the second hundred miles west of Red River, before the ice broke up in the spring of 1880. The Chief Engineer considered that if the matter were put off until the contract for that portion of the line was let, it would be too late for the contractor to secure the ties necessary to enable him to lay the track, and the Minister concurred in the proposal to invite tenders, before the winter passed away. A letter on the subject was addressed to the Minister by the Chief Engineer, recommending that arrangements should be made without delay, and that the ties, when obtained, should be taken to the west side of the river, and there piled at convenient places until wanted. The suggestion was concurred in and the following telegram sent to Mr. Rowan, at Winnipeg, on the 29th January, 1880 :—

“ Receive tenders for 100,000 tamarac ties to be delivered along track, section 14, in time to be taken across ice bridge to west side of Red River. Telegraph particulars of tenders on receipt.

“SANDFORD FLEMING.”

On the 5th February Mr. Rowan telegraphed Mr. Fleming as follows :

“ Ten tenders for ties received to-day. The following are the lowest, the price covering the Government charge for stumpage. Deduct three cents in all cases if stumpage will not be charged.”

The names are then given, showing that Charles Whitehead and Henry N. Ruttan made the lowest tender at the rate above mentioned. The prices varied up to 33 cents per tie. On the following day Mr. Fleming was authorized to telegraph to Mr. Rowan that the tender of Whitehead & Ruttan was accepted, and Mr. Rowan was instructed to make a contract for delivery in good time. Mr. Ryan's name was added to the firm of contractors with the approval of the Minister. This contract appears to have been entered into at a price as low as would be paid under any other arrangement. The delivery of the whole quantity agreed upon was completed early in April, 1880. Some delay took place in the settlement of the amount due to the contractors, on account of a second inspec-

tion which Mr. Rowan considered to be necessary in the public interest. Up to the date of our commission \$20,800 had been paid upon the contract.

CONTRACT No. 60.

Railway Construction.

By this contract, dated 23rd December, 1879, Andrew Onderdonk covenanted to complete according to specifications, on or before 31st December, 1883, all the works mentioned therein, including the excavation, grading, bridging, track-laying and ballasting on the railway, from Emory's Bar to Boston Bar, about 29 miles, (known as section A), in British Columbia, receiving therefor the respective prices affixed to the different items and classes of work mentioned in a schedule in the said contract, and subject to the condition that if it should appear that the total sum therein named as the intended expenditure (\$2,727,300) would be exceeded at the said prices, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

The first advertisement inviting competition for the work in British Columbia was in August, 1878, on which occasion tenders were asked for the distance between Yale and Kamloops, (about 125 miles.) Subsequently the time was extended by advertisement until 12th January, 1879. No action was taken on that occasion, because it had been decided by the Government to get fuller information concerning the route to British Columbia, before placing this construction under contract.

On the 3rd October, 1879, advertisements called for tenders up to 17th November, 1879, and forms of tenders, as well as specifications and other memoranda of information, were prepared and furnished to applicants. The distance before mentioned, from Yale to Kamloops, was divided into four sections:—

Section A.	Emory's Bar to Boston Bar,	29 miles.
"	B. Boston Bar to Lytton,	29 "
"	C. Lytton to Junction Flat,	28½ "
"	D. Junction Flat to Savona's Ferry,	40½ "

and separate tenders invited for each.

After it was decided by the Government to place this portion of the line under contract, the mode of inviting tenders was discussed by the Privy Council, and after a statement by the Chief Engineer upon the subject, it was considered that the construction of the whole distance would be an

undertaking so heavy, as to induce competition from only a few persons, and consequently that dividing it into four sections, and inviting offers on each section, would result in a keener competition, and finally a smaller cost for the whole; and, therefore, the offers were asked in that shape.

The tenders were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming.

On 22nd November, 1879, Mr. Fleming reported on the substance and effect of the several tenders, giving also a summary of those four contractors who had made offers for the four sections, showing the gross amounts in each case; this is to be found at page 144, of a Blue-book Return to the House of Commons, dated 16th February, 1880, which return included all tenders for works on this railway since January, 1879, and other particulars concerning them, each regular tender for each of the sections above mentioned being set out in full.

The lowest regular tender was accepted for each of the four sections, and became the basis of the contract finally executed.

The following are extracts from Mr. Fleming's said report:—

"I have examined the rates given in the lowest tenders; they generally bear a fair relation to each other, and are about the prices for which other work has been recently placed under contract on other sections of the railway. I do not think experienced and responsible contractors would be safe in undertaking to do the same work at less rates.

"Those who made the surveys and calculations inform me that the quantities are very full, and that in actual execution they can be largely reduced. I am convinced, moreover, that by making an extremely careful study of final location, by sharpening the curvature in some places, by using great judgment in adjusting the alignment to the sinuosities, and sudden and great inequalities of the ground, by substituting the cheaper classes of work for the more costly, wherever it can safely be done, and by doing no work whatever that is not absolutely necessary, a very marked reduction can be made."

Some errors were discovered in the addition of some of the tenders—after correction the five lowest stood as follows for section A, (the subject of this contract):—

1. D. McDonald & Co.....	\$2,727,300
2. J. Heney & Co.....	2,761,380
3. C. Peterson.....	2,766,745
4. Rogers & Farrell.....	2,940,115
5. Shields & Co.....	2,993,620

For this section, there were two tenders adjudged, at the time of opening, to be irregular, both having reached the Department at 3.30 p.m. of the 17th November, on which day noon had been named as the last hour for the receipt of offers. One was from Messrs. Battle, Symmes and Jackson, at \$2,634,120. The other from Brown and Corbett, at \$2,598,480. The

latter was not accompanied by the name of any sureties or by any cheque, as was required by the stated conditions.

At the time of opening these tenders the Minister of Railways was not in Ottawa, and the tenders were put in a sealed package, and until his return were kept by Mr. Trudeau in a safe in his room. On the return of the Minister the contract for this section was awarded to D. McDonald & Co.; and they were notified to that effect by a letter from the Secretary of the Department, dated 25th November, 1879, which required them to deposit by the 8th December following the sum of \$136,000 as security to the Government. This letter was acknowledged on the following day by a letter from this firm, in which they stated that they were prepared to comply with the conditions of the specifications and tender.

On 2nd December, Messrs. D. McDonald & Co., lodged the necessary security for the contracts for sections A and C, with the Department, in the shape of deposit receipts of the Banque d'Hochelaga for \$238,000.

The evidence shows that this contract was awarded at the lowest rate open to the Department, and that the parties to whom it was awarded got thereby no undue advantage.

On the 20th December, 1879, a document to the following effect was received at the Department:—

“OTTAWA, 15th December, 1875.

“SIR,—We hereby authorize the award of the contract for sections A and C of the Canadian Pacific Railroad, in British Columbia, being transferred from us to Andrew Onderdonk, and to the execution by the Government of contract for the said sections with said Onderdonk, and the acceptance by the Government of the deposit required as security for such contracts from said Onderdonk in lieu of that deposited by us, which we agree to receive back from the Government on the security to be put up by said Onderdonk being accepted by the Government.

“Your obedient servants,

“McDONALD, LOSS, CHARLEBOIS, McCRAE & CO,

“As per subjoined names of the individual members thereof:

“DUNCAN McDONALD,
 “H. McFARLAND, per D. McD.,
 “L. M. LOSS,
 “W. M. McCRAE,
 “A. CHARLEBOIS,
 “L. Z. MALLETTTE,
 “ED. SHANLY,
 “JOHN SULLIVAN,
 “P. McOREA, per D. McD.,
 “A. P. MACDONALD.

“To the Hon. Sir CHARLES TUPPER, K.C.M.G.,
 “Minister of Railways and Canals,
 “Ottawa.”

The Minister submitted to the Privy Council a memorandum, of which the substance is shown in the following Order-in Council:—

“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 December, 1879.

“On a memorandum dated 20th December, 1879, from the Honourable the Minister of Railways and Canals, reporting that Messrs. McDonald & Co., the lowest bidders for the sections of the Canada Pacific Railway extending from Emory's Bar to Boston Bar (section A) and from Lytton to Junction Flat (section C), have filed in his Department letters from the cashier of the Banque d'Hochelega stating that Messrs. McDonald, Loss, Charlebois, McCrae & Co. had deposited in his bank to the credit of the Receiver-General the sums of \$198,334 and \$39,666, forming together the sum of \$238,000, payable on demand.

“That on the 20th instant Messrs. Duncan McDonald & Co. have addressed a letter to the Department requesting that the contracts for the two sections A and C be given to Andrew Onderdonk, and that Mr. Onderdonk has deposited to the credit of the Receiver-General in the Bank of Montreal the security required.

“The Minister recommends that he be authorized to enter into contract with Mr. Andrew Onderdonk for the construction of sections A and C at the prices named in the tenders of Messrs. Duncan McDonald & Co.

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

“Certified.

“J. O. COTÉ, *Assistant Clerk.*

The contract was entered into with Mr. Onderdonk under this authority.

The firm to whom this contract had been awarded, Messrs. D. McDonald & Co., were also successful tenderers for section C, and the contract for that was also awarded to them by letter of 25th November, 1879.

For assigning their position concerning these two contracts, Mr. Onderdonk paid that firm \$100,000.

The evidence shows us that there had been, previous to the opening of the tenders, no arrangement by which Mr. Onderdonk, or any one on his behalf or for whom he was agent was in any way interested in the tender of this firm for either of these contracts (A and C).

Mr. Onderdonk finally became the contractor for the whole four sections in British Columbia. He executed three of the contracts in his own name, and the other was assigned him after it had been entered into by Purcell & Co.

We have examined several witnesses upon the question whether, under the circumstances, placing all the contracts in the hands of this contractor was an advantage, or a disadvantage to the public.

Mr. Trudeau testified, that he thought it better that large works should be placed as much as possible in the hands of a single firm if it had large means; that the works are more likely to be constructed effectively, because there would be a unity of action in the preparations and in the manner of conducting the work, in the purchase of provisions and the plant required and less competition for labour; and that it would be a material advantage in this case, because, at all events, all the plant and supplies would probably have to come from one end of the works in British Columbia, and the present arrangements would prevent disputes between different contractors.

Mr. A. P. Macdonald, one of the firm who had made the successful tender, and who had had large experience in contracting, was a witness before us. He stated, in effect, that in a country like British Columbia, one company could do the work on the whole distance at from 15 to 20 per cent. less than it could be done by dividing it into four sections, and that this would enable a person to pay something for the contract, for the whole, and still make as much profit as separate contractors could make on separate sections at the original prices. That in sub-divisions more plant and machinery per mile of the work would be required than on a contract for the whole distance, and he mentioned also the advantage of controlling the labourers better under one management, than by competitors on different sections.

Mr. McCrae, another of Mr. McDonald's firm, gave evidence in the same direction.

Mr. Mills, who represented a syndicate formed to support Mr. Onderdonk in the fulfilment of these contracts, gave his evidence. He had had much experience concerning railways, not as a contractor, but as a proprietor and in furnishing money for building them. His opinion was that all these sections being close together, and all very heavy work, that competition for labour and in other ways would be detrimental, that they could all be prosecuted under one head with much greater economy, that, on the whole, he believed the work would be more efficiently done by having one contractor than separate firms for different portions of the work.

Mr. Fleming testified that, in his opinion, placing all the works in the hands of one contractor, would result in considerable advantages.

Mr. Goodwin, Mr. Ryan and Col. Smith, all contractors of experience, gave evidence to the same effect.

Sir Charles Tupper testified that it was decided to allow Mr. Onderdonk to become the sole contractor, because it was believed that he having the command of great resources, and being a skilled contractor, the work could be executed in a more satisfactory manner, and probably at less cost to the country, than separately by the original parties.

It is in evidence before us, that on an earlier occasion when the letting of contracts 41 and 42 was under consideration by the Department, the Chief Engineer had the impression, that if a firm sufficiently strong in resources and skill, "to grapple with the work as a whole," had it in hand, the work would be done earlier than by separate contractors, and it was then considered by the Minister and his colleagues that it would be proper in the public interest to expend, if necessary, a larger sum for the whole distance under one contract than under two.

In Mr. Fleming's report on the tenders for contracts 41 and 42, he alludes to the advantages to be gained by placing the whole work in the hands of a single firm, provided it was a satisfactory one.

The evidence leaves no room to doubt that the arrangement by which the work on these four sections was placed in the hands of one firm of contractors, was a very desirable one in the public interest, and that it was secured without paying an extra price on that account. Not much had been done under the contract at the date of our Commission, and nothing had been paid on it.

CONTRACT No. 61.

Railway Construction.

By this contract, dated 10th February, 1880, Patrick Purcell, Hugh Ryan, James Goodwin and James N. Smith covenanted to complete, according to specifications, on or before the 30th June, 1884, all the works mentioned therein, including the excavation, grading, bridging, track-laying and ballasting on the railway from Boston Bar to Lytton, about 29 miles (known as section B) in British Columbia, receiving therefor the respective prices affixed to the different items and classes of work mentioned in a schedule in said contract, and subject to the condition that if it should appear that the total sum therein named as the intended expenditure (\$2,573,640) would be exceeded at the said prices, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

This was submitted to competition, together with other sections known as A, C, and D, in British Columbia by an advertisement dated 3rd October, 1879, which invited tenders for each section, up to noon of 17th November, 1879, and which gave notice that forms of tenders, specifications and other information would be furnished to applicants.

The reasons for the decision to advertize the work in British Columbia by separate sections, rather than as a whole, are stated in our report on contract No. 60. We have also given there some extracts concerning the whole four sections, from the report of Mr. Fleming, dated 22nd November, 1879, on the tenders received on that occasion, and which is printed in full at page 144, of a Blue-Book return to the House of Commons, dated 16th February, 1880, giving the tenders for works on this railway since January 1879.

The tenders in this case were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming.

After correction of any errors found in the addition in the tenders, the five lowest for this section stood as follows :—

1. Purcell & Co.....	\$2,573,640
2. D. McDonald & Co.....	2,592,225
3 Shields & Co.....	2,602,185
4. Bannerman & Co.....	2,607,702
5. Fraser & Grant.....	2,678,310

There was one irregular tender, which was higher, however, than the one accepted, and therefore its admission would not have affected the result.

The tenders, after they were opened, were kept by Mr. Trudeau in a safe in his room till the return to Ottawa of the Minister, who was then absent. On his return the lowest tender was accepted, the parties duly notified, and after furnishing the proper security, the contract was executed to the effect above mentioned.

The evidence shows that the Department, by this contract, secured the work covered by it at the lowest available price, and that the contractors got by it no undue advantage.

After the award of this contract to Messrs. Purcell & Co., and before its execution, the members of that firm addressed the following letter to the Minister :—

"OTTAWA, 15th January, 1880.

"SIR,—We hereby authorize the award of the contract for section "B," of the Canadian Pacific Railroad in British Columbia being transferred from us to Andrew Onderdonk, and to the execution of a contract by the Government for said section with said Onderdonk, and the acceptance by the Government of the deposit required as security for such contract from said Onderdonk in lieu of that deposited by us, which we agree to receive back from the Government, on the security to be put up by said Onderdonk being accepted by the Government.

"Your obedient servants,

"PATRICK PURCELL,

"HUGH RYAN,

"JAMES GOODWIN,

"JAMES N. SMITH.

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

"Minister of Railways and Canals, Ottawa."

At the date of this letter Mr. Onderdonk had already obtained the contracts for the three other sections in British Columbia, the proposition to substitute him for the firm to whom this section had been awarded, was not acceded to at once by the Department. The matter was referred to the Chief Engineer, who reported as follows:—

"OTTAWA, 28th January, 1880.

"SIR,—A communication of date 15th January, signed by Patrick Purcell, Hugh Ryan, James Goodwin and James N. Smith, has been referred to me for report.

"These parties sent in the lowest tender for the section in British Columbia extending from Boston Bar to Lytton, and the communication to which I refer, on their part, authorizes the transfer of all their interest in the contract and work to Mr. Andrew Onderdonk, and I am requested to state if I see any objections to the transfer.

"As the other three sections in British Columbia are already awarded to Mr. Onderdonk, and the one in question intervenes between them, it would result in considerable advantages to have the whole in the hands of one contractor of sufficient strength to carry on the work; and from the letters furnished by the General Manager of the Bank of Montreal, and others of high standing, there would appear to be no doubt of Mr. Onderdonk's financial ability and experience.

"I am, etc.,

"SANDFORD FLEMING,

"*Engineer-in-Chief.*"

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

"Minister of Railways and Canals, Ottawa."

On the 30th of the same month the Minister addressed a letter to the Hon Mr. Trutch, the Agent in British Columbia for the Dominion Government, asking whether, in his opinion it would be in the public interest to take Mr. Onderdonk as the contractor for this, as well as the other three sections.

On the day following, Mr. Trutch, who was in Ottawa, answered, giving an opinion decidedly in favour of the arrangement. (See page 191, of the above mentioned Blue-Book.)

On the 10th February, 1880, the firm of Purcell & Co. formally assigned the contract to Andrew Onderdonk, and subsequently an Order-in-Council authorized the Minister to accept and confirm it, substituting Mr. Onderdonk as the party dealing with the Government, and directing the security of the first contractors to be released on receiving an equivalent.

Mr. Onderdonk paid Purcell & Co. \$100,000 for the assignment of their contract. We have examined as witnesses three of this firm, Mr. Goodwin, Mr. Ryan and Col. Smith, and we find that previous to the opening of the tenders, there was not any understanding by which Mr. Onderdonk, or any one with whom he was connected, was in any way interested in the tender of Purcell and Co. for this section.

In our report on contract No. 60 we have remarked upon the advantage to the public interest gained by this arrangement, which placed the four British Columbia sections in the hands of one contracting firm of ability, and ample means.

There was but little done under this contract at the date of our Commission, and nothing paid.

CONTRACT No. 62.

Railway Construction.

By this contract, dated 23rd December, 1879, Andrew Onderdonk covenanted to complete, according to specifications, on or before the 31st day of December, 1884, all the works mentioned therein, including the excavation, grading, bridging, track-laying and ballasting on the railway from Lytton to Junction Flat, about 28½ miles (known as section C), in British Columbia, receiving therefor the respective prices affixed to the different items, and classes of work, mentioned in a schedule in the said contract, and subject to the condition that if it should appear that the total sum therein named as the intended expenditure (\$2,056,950) would at the said prices be exceeded, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

This was submitted to competition, together with other sections known as A, B and D, in British Columbia, by an advertisement, dated 8th October,

1879, which invited tenders for each section up to noon of 17th November, following, and gave notice that forms of tender, specifications and other information would be furnished to applicants.

The reasons for the decision to advertize the work in British Columbia by separate sections rather than as a whole, are stated in our report on contract No. 60. We have there also given some extracts which relate to all the sections from a report of Mr. Fleming on the tenders received on that occasion, which is printed in full at page 144 of the Blue-Book return to the House of Commons, concerning tenders for works on this railway, since January, 1879, and dated 16th February, 1880.

The tenders for the four sections were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming; after correcting some errors in addition, the five lowest for section C stood as follows:—

1. D. McDonald & Co.....	\$2,056,950
2. Purcell & Co.....	2,070,810
3. Bannerman & Co.....	2,168,200
4. Shields & Co	2,220,240
5. English & Co.....	2,256,200

At the opening one tender was found to be lower than that of D. McDonald & Co. above mentioned, but being irregular it was not treated as competing, it was received some hours after noon, the time named in the advertisement for the receipt, and it was accompanied neither by names of sureties nor cheques, as required by the terms stated in the forms of tenders.

The tenders, after they were opened, were kept by Mr. Trudeau in a safe in his room till the return of the Minister, who was then away from Ottawa. On his return the lowest tender was accepted, and the parties duly notified to that effect by the Secretary of the Department.

The evidence shows that by this contract, the Department procured the work covered by it at the lowest available offer, and without giving the parties to whom it was awarded any undue advantage.

The contract for this section and section A were awarded on the same day, 25th November, 1879, to this firm, D. McDonald & Co, and subsequently by a document, dated in December following, they authorized the Department to give the contracts for both sections to Andrew Onderdonk. This document is set out in full in our report on contract No. 60, as well as an Order-in-Council, dated 22nd December, 1879, authorizing the Minister

to enter into the two contracts for sections A and C with Andrew Onderdonk, instead of the firm to whom they had been awarded.

For the transfer of those two contracts Mr. Onderdonk paid them \$100,000. The evidence shows that previous to opening the tenders there was no understanding by which Mr. Onderdonk, or any one with whom he was connected, was interested in the tender for this work made by Messrs. D. McDonald & Co.

In our report on contract No. 60 we mention several witnesses who were examined upon the expediency of substituting, as was done in this case, one contractor for the four sections in British Columbia, for those to whom the several sections had been separately awarded, and we give the general effect of their evidence.

They were unanimous in the opinion that it was an advantage to the public interest, to have the whole work in the hands of one able contractor, as is here the case, rather than under the management of several separate firms.

There was little done under this contract up to the date of our Commission, and nothing paid.

CONTRACT No. 63.

Railway Construction.

By this contract, dated 15th December, 1879, Andrew Onderdonk covenanted to complete, according to specifications, on or before the 30th June, 1885, all the works mentioned therein, including the excavation, grading, bridging, track-laying and ballasting on the railway from Junction Flat to Savona's Ferry, about 40½ miles (known as section D), in British Columbia, receiving therefor the respective prices affixed to the different items and classes of work mentioned in a schedule in the said contract, and subject to the condition that if it should appear that at those prices the total sum therein named as the intended expenditure (\$1,746,150) would be exceeded, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

This was submitted to competition, together with other sections known as A, Band C, in British Columbia, by an advertisement, dated 3rd October, 1879, which invited tenders for each section up to noon of 17th November

following, and gave notice that forms of tender, specifications and other information would be furnished to applicants.

The reasons for the decision to advertize the work in British Columbia by separate sections rather than as a whole, are stated in our report on contract No. 60. We have also given there some extracts from Mr. Fleming's report, dated 22nd November, 1879, on all the tenders received on that occasion for the different works in British Columbia. This is printed in full at page 114 of a Blue-Book return to the House of Commons, concerning tenders for works on this railway since January 1879, dated 16th February, 1880.

The tenders for the four sections were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming. After correcting some errors in addition the five lowest for section D stood as follows :--

1. T & M. Kavanagh.....	\$1,809,150
2. C. C. Gregory & Co.....	1,844,590
3. Shields & Co.....	1,928,400
4. Bannerman & Co.....	1,951,000
5. English & Co.....	1,965,550

At the opening one tender was excluded from the competition, it being accompanied by no cheque or names of sureties, as required by the conditions named to tenderers as those on which offers would be received; it was also received at the Department some hours after the time advertized for the final receipt of tenders; it was higher than the one to which the contract was awarded.

The Minister being out of Ottawa at the time of opening these tenders, they were kept by Mr. Trudeau in a safe in his room till his return; and then the contract was awarded to T. & M. Kavanagh. The correspondence is printed in full in the above mentioned returns to the House of Commons.

The notification of the said award was by letter from Mr. Braun dated 25th November, 1879, and it requested Messrs. Kavanagh to deposit \$90,000 as security at or before 4 o'clock p.m., on the 8th December following.

On the 27th Messrs. Kavanagh acknowledged this communication accepting the contract, and stating that they would make the requisite deposit in due time.

On the 8th December, Messrs. Kavanagh wrote to the Minister, stating that Messrs. Davis & Sons had agreed to be associated with them, and to put

up their share of the security, but had unexpectedly that morning refused to do so, and they consequently requested two days longer to put up the security.

On the 9th December, the Minister reported to the Privy Council this circumstance amongst others connected with letting the works in British Columbia, recommending an extension of time to Messrs. Kavanagh until 4 p.m., on Thursday following (11th). The recommendation was adopted by an Order-in-Council, on 10th December, 1879. (Page 150 of the above-mentioned return to the House of Commons.)

Before this extension expired Messrs. Onderdonk had arranged with Messrs. Kavanagh to take their position concerning this contract, and they, by letter dated the 11th December, formally notified the Minister that Mr. Onderdonk was authorized to take their contract for section D.

On the same day they applied for a further extension for two days, and it was granted by the Minister.

On the 12th December, the Minister reported to the Privy Council the circumstance of the transfer from Messrs. Kavanagh to Mr. Onderdonk, and the further extension of two days, recommending that authority be granted to enter into the contract with Mr. Onderdonk on Messrs. Kavanagh's tender.

A Committee of the Privy Council having advised that such authority be granted, an Order-in-Council was passed on the 13th December granting the authority asked for. (Page 152 of said return to House of Commons.)

On the day before this Order-in-Council was passed, Mr. Onderdonk had furnished the necessary security, and the contract was entered into with him on the terms stated at the opening of our report on this contract.

This contract and those numbered A and C were subsequently assigned by Mr. Onderdonk to a syndicate of capitalists, subject to the sanction of the Government, which was granted by Order-in-Council, dated 8th March, 1880. This is set out at page 197 of the said return to the House of Commons.

The Minister, as a witness, was examined concerning the extensions of time given in this case to Messrs. Kavanagh. After describing the steps in the proceedings to have been as set out in the correspondence (pages 148 to 151) in the said return to the House of Commons—namely, that they had mentioned to him persons upon whom they had relied for assistance in

making up the money, he explained to us that in this case there was no urgency as to time, and no object to be gained by passing to a higher tender.

The evidence shows that in awarding this contract the work covered by it was secured at the lowest rate at which the Department could have secured it, and that no undue advantage was obtained by the contractor.

In our report on contract No. 60 we give the tenor of some of the evidence concerning the advantage gained by placing the four sections in British Columbia in the hands of one strong and experienced firm. All the witnesses who were examined upon it agreed in the opinion, that the arrangement was a very desirable one for the Government.

There was little done under this contract at the date of our Commission, and nothing paid.

CONTRACT No. 64.

Pile Bridge over Red River.

By this contract, dated the 18th day of March, 1880, John Ryan, Charles Whitehead and Henry N. Ruttan undertook to furnish a pile trestle bridge over the Red River at Winnipeg, completed and ready to receive the rails on or before the 15th May, 1880. This contract was brought about to secure railway connection across Red River, and so to facilitate intercourse between the Pembina Branch and the town of Winnipeg and the country west of it. On the 3rd March, Mr. Schreiber being then at Winnipeg in the capacity of Superintending Engineer, Mr. Fleming telegraphed him as follows:—

“If you think it advisable and practicable while river is frozen to construct temporary pile bridge at Winnipeg, you can invite tenders, giving a week's notice.”

On the following day Mr. Schreiber telegraphed this reply:—

“It is advisable in the interest of speedy construction westward to have a bridge; but what about its obstruction to navigation? If it is to be built the piles and timber must be delivered at once; but I do not consider it would be prudent to erect it until after the ice flows.”

On the 6th March, Mr. Fleming, having received authority, directed Mr. Schreiber to get out piles and timbers while the snow lasted; and, on the 10th of that month, Mr. Schreiber was requested to apply to the corporation of Winnipeg to allow a temporary bridge to be erected.

His suggestion to postpone the erection until the ice moved, was adopted by the Chief Engineer; but he was directed to obtain the materials without delay. Accordingly tenders were received on the 10th March, and a report was made on the subject on the 6th of April, the lowest tender having been, in the meantime, accepted under the authority of the Minister. Nine tenders were received. The lowest of them, at a price of \$7,350, was accepted and acted upon, and forms the basis of the present contract, which was awarded without any undue advantage to the contractor. The work has been completed and paid for without dispute. The sum expended up to the time of our Commission was \$2,700.

CONTRACT No. 65.

Rolling Stock.

By this contract, dated the 15th of March, 1880, James Crossen undertook to construct and deliver four first-class passenger cars, capable of carrying sixty-four passengers each, and one official car, all to be constructed and furnished according to specifications and at the prices below named. That portion of this contract which relates to the four cars above-mentioned, was brought about by an advertisement for tenders as follows:—

CANADIAN PACIFIC RAILWAY.

Tenders for Rolling Stock.

"Tenders will be received by the undersigned up to noon of Monday, the 23rd February instant, for the immediate supply of the following rolling stock:—

" 4 First-class cars.

" 2 Postal and baggage cars.

" 60 Box-cars.

" 60 Platform cars.

" Drawings and specifications may be seen, and other information obtained, on application at the office of the Engineer-in-Chief, Pacific Railway, Ottawa, and at the Engineer's Office, Intercolonial Railway, Moncton, N.B.

" The rolling stock to be delivered on the Pembina Branch, Canadian Pacific Railway, on or before the 15th May next.

" By Order,

" F. BRAUN,

" Secretary.

" DEPARTMENT OF RAILWAYS AND CANALS,

" OTTAWA, 7th February, 1880."

" The time for receiving the above tenders is extended one week, viz.: to Monday 1st March; and the time for delivery of a portion of rolling stock is extended to the 1st June.

" By Order,

" F. BRAUN,

" Secretary.

" 19th Feb., 1880."

On the second of March, a report was made of the substance of the tenders ascertained at the opening by Mr. Trudeau and Mr. Braun. This report, in the shape of a schedule, shows that only two were made concerning first-class cars, one by James Crossen, offering to supply the requisite number at \$4,746, and one by the Ontario Car Company at \$4,890 each. The lowest of these tenders was accepted and the contract now under consideration was based upon the contents of that tender, without any undue advantage to the contractor.

After the acceptance of Mr. Crossen's offer for the first-class cars, it was thought desirable to obtain a contract for the supply of one official car. It had been originally intended to include this in the advertisement for tenders, but drawings and specifications could not be prepared in time to do so, and it was consequently omitted. As Mr. Crossen and the Ontario Car Company had made the only two tenders concerning first-class cars, it was not considered necessary to advertise again for a competition concerning this one official car. These two firms were invited to name the prices at which they would furnish it. Mr. Crossen tendered at \$5,977; the Ontario Car Co. at \$7,559; and on March 15th the Minister directed that the lowest tender should be accepted, by which act we think the contractor got no undue advantage.

No money had been paid on this contract up to the issue of our commission. The date named in the agreement for the completion of the contract was the 1st of June, 1880, at which time the cars had not been delivered.

CONTRACT No. 66.

Railway Construction.

By this contract, dated 3rd May, 1880, George Bowie and Malcolm McNaughton covenanted to complete, according to specifications, the works therein mentioned, including the excavation, grading, bridging, track-laying and ballasting on that portion of the line, commencing at the end of the 48th contract, near the western boundary of Manitoba, and extending to a point on the west side of the valley of Bird Tail Creek, in length about 100 miles, receiving therefor the respective prices affixed to the different items and classes of work mentioned in a schedule in the said contract, and subject to the condition, that if it should appear that the total sum therein named as the intended expenditure (\$438,914) would be exceeded at the

said prices, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

By the terms of the contract, the distance of fifty miles was to be in running order by 1st June, 1881, and the whole to be ready for passage of trains by 31st December, 1881.

The contract and specifications are printed in full (Sess. Papers (19 S.), 1880.)

Mr. George MacTavish, of Winnipeg, and Mr. Alexander Bowie, of Ottawa, were silent partners of the said George Bowie & Alexander McNaughton in this contract at the time it was executed, and in the tender on which it was founded.

Tenders were invited by the following advertisement:—

“CANADIAN PACIFIC RAILWAY.

“Tenders for a second 100 miles section west of Red River will be received by the undersigned until noon on Monday, the 29th March, next.

“The section will extend from the end of the 48th contract, near the western boundary of Manitoba, to a point on the west side of the valley of Bird Tail Creek.

“Tenders must be on the printed form, which, with all other information, may be had at the Pacific Railway Engineer's Offices, in Ottawa and Winnipeg, on and after the 1st day of March, next.

“By Order,

“F. BRAUN,

“Secretary

“DEPARTMENT OF RAILWAYS AND CANALS,

“OTTAWA, 11th February, 1880.”

“The reception of the above tenders is postponed until noon on Friday, 9th April, next

“By Order,

“F. BRAUN,

“Secretary.

“DEPARTMENT OF RAILWAYS AND CANALS,

“OTTAWA, 22nd March, 1880.”

On 12th April they were opened, and on the 13th they were reported upon as follows:—

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, 13th April, 1880.

“SIR,—A public advertisement of date 11th February, called for Tenders for a second 100 mile section west of Red River. The section to extend from the end of the 48th contract near the western boundary of Manitoba, to a point on the west side of Bird Tail Creek.

"The Tenders were opened yesterday in presence of the Deputy Minister, the Secretary of the Department and Mr. Collingwood Schreiber. A list is enclosed. There are twenty-six regular tenders, the conditions being complied with. There are four tenders without the required money deposit, therefore irregular, and in consequence ruled out.

"I have caused the moneying out of the twelve lowest tenders to be checked—those lettered G, B, Q, E, O, F, and A, prove correct. Tenders D, M, K, W, and C, are incorrect. Taking the revised total amounts, these twelve tenders stand in the following order: the lowest being letter D, of George Bowie and M. McNaughton, Ottawa, \$438,914, for the grading bridging and track-laying on the 100 miles, on the basis of the estimated quantities printed in the form of Tender.

	Revised Amount.
No. 1. Letter D, Geo. Bowie and M. McNaughton.....	\$438,914.
" 2. " G, Marpole, Oliver & Co.....	454,025.
" 3. " B, C. H. Carriere.....	482,361.
" 4. " M, Denis O'Brien.....	509,085.
" 5. " Q, Charlebois and Macdonald.....	511,082.
" 6. " E, Stevens, Burns and Turner.....	531,446.
" 7. " O, Peter J. Brown.....	545,735.
" 8. " F, James G. McDonald.....	557,390.
" 9. " K, J. C. Rodgers.....	560,472.
" 10. " W, F. Shanly.....	571,760.
" 11. " C, Stewart and Strachan.....	573,162.
" 12. " A, Stewart, Gray & Co.....	580,295.

"I have the honour to be, Sir,

"Your obedient servant,

"SANDFORD FLEMING,

"Engineer-in-Chief,

"The Hon. Sir C. TUPPER, K.C.M.G.,

"Minister of Railways and Canals."

On the day after the above report, Mr. Braun sent the following telegram to Mr. George Bowie, and a similar one to Mr. McNaughton, confirming it on the same day by a formal letter:—

"OTTAWA, 14th April, 1880.

"Your tender for the second hundred miles section, Pacific Railway, is the lowest and is accepted.

"You are hereby called upon to deposit to the credit of the Receiver-General within eight days of this date, 5 per cent. of the bulk sum of your tender, and are notified that should you fail to make such deposit your tender will be passed over and the cheque forwarded will be forfeited. Acknowledge immediately.

"F. BRAUN,

"Secretary

"George Bowie, contractor,

"4 Plateau Street, Montreal."

These were acknowledged on the 15th, by Messrs. Bowie and McNaughton. The requisite security having been deposited on the 23rd April, the contract was entered into on the terms above mentioned.

The evidence shows that the Department awarded the contract, by accepting the lowest available tender, and without giving to the contractors any undue advantage.

An indenture dated 13th May, 1880, was executed between Mr. McNaughton, Mr. MacTavish and Mr. George Bowie before mentioned, by which it was agreed that Mr. McNaughton should transfer all his interest in the said contract to Mr. MacTavish, and that MacTavish should indemnify him against loss.

On the 14th May, Mr. MacTavish wrote to the Minister enclosing a copy of this indenture, and requested that his name should be substituted for that of Mr. McNaughton as the partner of Mr. George Bowie, or added as additional to theirs in the contract. He stated that he had provided from his own funds the \$22,000 which had been deposited as security, and gave this fact as the reason for his desire to be recognized as a principal in the contract.

On the 19th May, the Minister submitted a memorandum of these facts and a recommendation to the Privy Council, on which the following order 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 May, 1880.

“ On a memorandum dated 19th May, 1880, from the Honourable the Minister of Railways and Canals representing that Mr; Malcolm McNaughton, of the firm of Bowie & McNaughton, contractors for the construction of the second 100 mile section of the Canadian Pacific Railway west from Red River, has executed a deed assigning to Mr. George MacTavish, of Winnipeg, all his right and interest in the said contract; and, further, that Mr. MacTavish has made application either for the substitution of his own name in place of that of Mr. McNaughton, or for the addition of his own name to that of the firm as now existing.

“ The Minister states that considering that the public interest would be best served by the adoption of the second of the two alternatives proposed, he recommends that authority be given for the recognition of Mr. MacTavish as a partner in the firm of Bowie & MacNaughton for the purposes of the said contract.

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

“ Certified. J. O. COTÉ,

“ Clerk, Privy Council.”

Up to the date of our commission very little had been done, and nothing paid under the contract.

CONTRACT No. 67.

Rolling Stock.

By this contract, dated the 31st March, 1880, the Moncton Car Company, of New Brunswick, undertook to supply sixty box freight cars, and the same number of platform freight cars, according to specifications, by the 15th of June, 1880, at the price of \$690 each for the box, and \$490 each for the platform cars. This contract was brought about by the same advertisement to which we have alluded to in our report upon contract No. 65. The schedule concerning the tenders which were opened at the date named in the advertisement for their receipt, and signed by Mr. Trudeau, Mr. Smellie and Mr. Braun, shows that these contractors made the lowest tender for the platform cars, at the rate mentioned in the contract, \$490 each, and that their offer for the box cars was \$690 each, the price named in the contract; but one Simon Peters made a lower offer, namely, \$685 each for a number, between fifteen and thirty, of the box cars. Inasmuch as it would be necessary, even if the offer of Peters had been accepted, to take some of the cars from the present contractors, in order to furnish the requisite number, it was decided not to make a separate bargain with Peters for the sake of saving the difference of \$5 on the quantity he would deliver, and this led to the contract now under consideration, with the Moncton Car Company for the whole quantity required. There is no complaint upon the part of Peters that he was improperly passed over, and, in fact, a letter from him asking to withdraw his tender was produced before us. This left the offer of the present contractors the lowest one available to the Department, and we do not find that they obtained any undue advantage in the award of the contract.

At the date of our Commission the contract had not been fulfilled, and no money had been paid upon it. The amount involved was \$70,800.

CONTRACT No. 68.

Rolling Stock.

By this contract, dated the 8th of May, 1880, the Ontario Car Company, of London, undertook to deliver two postal and baggage cars at the rate of \$3,115 each, according to specifications, on or before the 1st of June, 1880. This contract arose out of the advertisement referred to in our report on contract No. 65, and the schedule of the tenders, dated March 2nd, and signed by Mr. Trudeau, Mr. Smellie and Mr. Braun, as above mentioned;

shows that two tenders were received for these articles, one by the present contractors and the other by Mr. Crossen, the offer of the latter being \$3,303 each. The lowest offer was accepted, and this contract was based upon it without giving the contractors any undue advantage. The amount involved in this contract is \$6,230, but nothing had been paid upon it up to the date of our Commission.

CONTRACT No. 69.

Transportation of Rails.

There is no formal contract in this case. In the summer of 1879, the North-West Transportation Company had contracted to carry 11,000 tons of rails at \$16 per ton from Montreal to Manitoba for Mr. John Ryan, the contractor on section 48, for which section he had undertaken to transport the rails from Montreal, and this company had also a contract with the Government (No. 52) to transport 4,000 tons of rails from Montreal to Fort William at \$6 per ton.

Late in the autumn of 1879, it was found that the makers in England were sending to Canada more rails than the 15,000 tons which were expected, and these contractors were directed by the Department to carry those charged against this contract at the same rate as that paid on Mr. Ryan's lot.

Mr. Trudeau testified that, taking as a basis the previous contracts by which the same work had been performed (22 and 34) this arrangement saved \$3.80 per ton.

The Chief Engineer made a report on this transaction, and the 4,000 ton contract to Fort William, from which the following is extracted:—

"Late in the summer 3,000 tons in addition to the 4,000 tons arrived at Montreal, and it was necessary to have them removed from the wharves and forwarded. Mr. Beatty was the only party available for this purpose, and he offered to take them to Emerson at the same rate as he had contracted to convey 11,000 tons for contractor John Ryan. This offer was informally accepted, and Mr. Beatty acted on the acceptance, but no payments have yet been made, as the sum is large. Before certificates are issued, it would be necessary to have the undertaking for the transportation of the 3,000 tons confirmed and approved."

Mr. Fleming testified that, in his opinion, the arrangement was quite a desirable one, and that he had no reason to think the work could have been done at a cheaper rate.

Upon the evidence we conclude that the Department could not have got the work done at a cheaper rate, and that in this case the contractor got no undue advantage.

On the 14th June, 1880, an Order-in-Council was passed confirming the arrangement, and before 30th June, 1880, \$16,100 was paid under it.

CONTRACT No. 70.

Transportation of Rails.

By this contract dated 25th May, 1880, the North-West Transportation Company undertook to transport from Montreal all the steel rails and accessories expected to be received by the Government from England during that season, part to Emerson and part to Fort William, in such proportions as might be directed, at the rate of \$5 per ton to Fort William, and \$14.50 to Emerson.

Public competition was invited by the following advertisement :—

"CANADIAN PACIFIC RAILWAY.

"TENDERS FOR TRANSPORT OF RAILS AND FASTENINGS.

"Sealed tenders, addressed to the undersigned, and endorsed 'Tenders for Transport,' will be received up to noon of Saturday, the 8th day of May next, for the transport of about 23,000 tons of rails and fastenings—about one-half to be delivered on cars at Emerson, and the remainder at Fort William—during the season of 1880.

"Forms of tender can be had and other information, on application at the office of the Engineer-in-Chief, Ottawa.

"By order,

"F. BRAUN,

"Secretary.

"Department of Railways and Canals,
Ottawa, 23rd April, 1880."

On the 14th May, the Minister submitted to the Privy Council a memorandum showing the substance of the tenders, and recommending the acceptance of that made by the present contractor. This was the lowest of the tenders which had according to the terms of the advertisement, proposed a contract for the whole quantity, part to be delivered at one point and part at another.

G. E. Jacques & Co. had named a rate 12½ cents lower than these contractors for delivery at Fort William, but no rate for Emerson.

Before closing the contract 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 15th May, 1880.

"On a memorandum, dated 14th May, 1880, from the Honourable the Minister of Railways and Canals, reporting that tenders having been called for the transport of 23,000 tons of rails from Montreal to Emerson, and to Fort William, the following have been received :—

Section.	Name.	Montreal to Emerson.	Montreal to Ft. William.	—
		\$ cts.	\$ cts.	
A	R. D. Van Allan & Co., Chatham .....	.....	6 00	3,600 tons.
B	A. M. Smith and W. H. Keighley, Toronto	15 25	5 25	
C	James Norris, St. Catharines.....	17 60	.....
D	G. E. Jacques & Co., Montreal.....	.....	4 37	
E	MacPhie, St. Lawrence & Chicago Forwarding Company	16 25	4 75	
F	A. McIntyre Thom, Montreal.....	15 50	4 50	
G	Cooper, Fairman & Co., Montreal.....	15 90	4 65	
H	Henry Beatty, Sarnia.....	14 50	5 00	

"That the form upon which the above tenders were based states as follows :—

"The quantity expected from England is about 23,000 tons in all, and the present intention is to send about one-half thereof each to Emerson and Fort William."

"That upon this basis the tender of Mr. Henry Beatty is the lowest received, and he, the Minister, accordingly recommends its acceptance.

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

"Certified.

"J. O. COTÉ,

"Clerk, Privy Council."

After which the following notification was sent by telegram to Mr. Beatty, and the contract was afterwards executed accordingly :—

"(Telegram.)

"18th May, 1880.

"Your tender for transport of rails from Montreal to Emerson and Fort William respectively, is accepted.

"F. BRAUN,

"Secretary.

"To HENRY BEATTY, Sarnia."

The evidence shows that the Department accepted the lowest offer made for the work submitted to competition, and that the award of the contract gave no undue advantage to the contractor.

Nothing was paid on it up to the 30th June, 1880.

This was the last contract entered into before the issue of our Commission.

MR. THOMAS NIXON, PURVEYOR AND PAYMASTER.

In the spring of 1875, Mr. Thomas Nixon was appointed Paymaster and Purveyor, at Winnipeg, for the Canadian Pacific Railway. He had an office there in which he transacted his official business. He was also entrusted with powers in connection with the Mounted Police and the Indian Department somewhat similar to those which concerned the railway. In his official character he dealt with matters relating to these three distinct branches, and in doing so controlled a large expenditure. He kept, however, separate books relating to the disbursements for the railway, of which the aggregate was about half a million of dollars, and we were thus enabled to confine our enquiry to the moneys paid through his office on this account.

His duties towards this undertaking included the purchase of different kinds of goods required for persons engaged on the work, engineers, their subordinates and others, and he also took part in the payment of moneys which were placed by the Government under his partial control. These amounts were remitted from Ottawa from time to time to a bank agency at Winnipeg, in the form of credits to his official account as paymaster and purveyor, and were subject to be paid out on cheques signed by him and countersigned by another officer also stationed at Winnipeg and known as "Auditor."

The practice generally followed concerning the disbursement of this fund, was that persons having claims upon the matters within the jurisdiction of Mr. Nixon would present their accounts to him and obtain his cheque for the whole, or such part of it as he was willing to pay. This account, together with the cheque, would be presented afterwards to the auditor in order that he might supervise the demand and the payment of it.

Mr. Drummond, who was Auditor at Winnipeg from the time that the office of the purveyor was opened, describes his duties to have been to receive the account of each claim in triplicate, together with such certificate as he would consider sufficient to establish the correctness of the demand, and then to countersign the cheque, keeping one copy of the account and transmitting the other two to Ottawa

In recounting the circumstances of the early transactions through his office, Mr. Drummond stated, that they were not investigated or recorded by him with as much strictness as afterwards; that it was, however, always intended, that each item of each claim should be supported by some memorandum from the officer of the railway acquainted with the fact of the supply having been furnished as stated in the account.

As to several accounts which were passed by him as sufficiently vouched, and covering many different claims by a Mr. Alloway for horses furnished for the use of engineers and others engaged on the railway, the Auditor countersigned the cheques without any evidence of the correctness of the accounts, beyond Mr. Nixon's signature to the cheque. There seems no reason to doubt that the system thus devised for the disbursement of Government moneys, requiring each cheque to be signed by two independent officers, has had the effect of ensuring the payment of all of it to the persons who made the respective claims on which it has been paid out, but we feel it necessary to point out some of the transactions which gave rise to claims satisfied from this fund, as well as other matters concerning the course of dealing between Mr. Nixon, and persons accustomed to furnish supplies on his order as purveyor.

In his official character, Mr. Nixon agreed on behalf of the Government to pay a specified rent to a Mr. Strang, who held the title of a building and lot occupied with stores under the charge of Mr. Nixon. The property was owned, during the whole period, by Mr. Nixon, the title to it having passed to Mr. Strang in pursuance of an arrangement between them by which Mr. Nixon was afterwards to assume the character of tenant in the interest of the Government, and Mr. Strang that of a proprietor interested in the receipt of rent. The rents were paid out of the Government moneys and went to Mr. Nixon's private use, at the rate of \$360 per annum on a property worth about \$2,000.

We have taken evidence concerning his mode of dealing with persons accustomed to furnish supplies through him to the Government, and it points to the conclusion that Mr. Nixon wished to obtain from Mr. Peter Sutherland, a person who had supplied articles on the official order of Mr. Nixon, the positive discharge of an uncontested claim of about \$900, due by Mr. Nixon on his private account to Mr. Sutherland; that subsequently the claim was partially paid, and a balance of about \$300 was left unpaid, because of the relation of Mr. Nixon to the Government, and the power in his hands to order or decline to order supplies from Peter Sutherland.

In the course of Mr. Nixon's duty he provided a considerable number of horses for different services connected with the railway, nearly all of which were furnished under arrangements between him and Mr. Alloway. The accounts filed at Ottawa, after having been settled under the process above described, showed us that Mr. Alloway had not given detailed particulars concerning some of the large lots for which he had been paid, and both Mr. Nixon and Mr. Alloway were examined by us concerning those transactions.

Mr. Alloway was a dealer in horses, and in his evidence stated that most of those procured through him were bought on a commission paid to him as an agent for the Government, and a few by Mr. Nixon purchasing them direct from him.

Mr. H. A. F. McLeod had charge, in the year 1875, of the instrumental surveys between Fort Pelly and Jasper Valley, and the explorations in the Rocky Mountains; under him Mr. Lucas had charge of party P, on a survey from Fort Pelly, and Mr. Ruttan of party L, on a survey eastward from a point near Root River; Mr. McLeod himself exploring the country in advance of Mr. Lucas' party.

Mr. McLeod, on the 13th April, 1875, filed with Mr. Nixon a requisition for eight half-breed horses, together with carts, harness, &c., to be used for transportation of supplies for party P, and for similar service for party L, a requisition for thirty half-breed horses, together with carts, &c.; he also filed another requisition on 27th April, 1875, for five additional horses and carts, saddles, &c., for a similar service for his exploring party; and on the same day Mr. Lucas filed a requisition, "approved" by Mr. McLeod, for two horses and English saddles, one for the Engineer and one for the Assistant Purveyor for party P.

We do not find in Mr. Nixon's "requisition book" any further request for horses until July, 1875, and we are, therefore, led to understand that the facts above mentioned give some indication of the kind of horses which were to be bought, *i.e.* thirty-eight half-breed horses, two saddle horses, and five not specially described.

At that day there was a difference in the price of half-breed horses and those of the larger size, such as imported horses. Mr. Alloway said that cart horses of the native breed would be worth at that date about \$90.

Mr. Nixon testified that the horses bought from Mr. Alloway were mostly half-breeds, and that half-breed horses could be bought "from \$40,

\$60, \$80 to \$100, a \$100-horse would be a very good one," but that they varied so much in quality, that it would be impossible to give an average.

Mr. Augustin Nolin, an old settler who had been engaged with teams in transportation, and in carrying mails, was a witness before us. He said his special business had been buying and selling horses; that \$50 would be about the price, in 1875, of a good cart horse, "that you would buy if you were going to load them to the base of the Rocky Mountains;" that at that time horses were not very dear at Winnipeg, and that except for horses with "a pedigree, or some peculiar qualities, such as trotters," he did not know that more than \$50 would be paid.

The following were the first three accounts paid to Mr. Alloway, including his commission, and they were satisfied by Mr. Nixon's giving an official cheque on the purveyor's fund, kept as before described, and these cheques were countersigned by the Auditor, though the accounts were not certified by any Engineer or other person, having been paid by Mr. Nixon, apparently because of his own knowledge of the price which Mr. Alloway had paid out as Government Agent.

"WINNIPEG, 6th May, 1875.

"Canadian Pacific Railway Survey, Dr.,

"To W. F. Alloway,

"To 18 horses, averaging \$90.75 each..... \$1,633 50

"To my commission on purchasing the same at 5 per cent..... 81 67½

—————
\$1,715 17½

"May 7th, 1875,

"Received payment per cheque,

"W. F. ALLOWAY."

"WINNIPEG, 17th May, 1875.

"Canadian Pacific Railway Survey, Dr.,

"To W. F. Alloway,

"To 18 horses, averaging \$116 each..... \$2,088 00

"To my commission on purchasing same at 5 per cent..... 104 40

—————
\$2,192 40

"Paid by cheque,

"W. F. ALLOWAY."

" WINNIPEG, 21st May, 1875.

" Canadian Pacific Railway Survey, Dr.,

" To W. F. Alloway.

" Two horses at \$157.50 cash.....	\$315 00
To commission on same at 5 per cent.....	15 75
	\$330 75

" Paid by cheque,

" W. F. ALLOWAY."

Mr. Nixon said that in nearly every instance he had himself fixed upon the prices of these animals. That at the time of closing the matter he had a detailed statement of each horse and its cost. That he had it from Mr. Alloway's books which showed "the person from whom the horse was bought, and the price paid, and the description of the horse, bay, or grey, or roan—mare, horse, or gelding, as the case may be." That he had employed Mr. Alloway to buy the horses, and knew the price, and he (Mr. Alloway) could not cheat him. That he presumed he had not kept any record, because he depended on Mr. Alloway's record.

Mr. Alloway said that at that time he did not keep books, having no book-keeper, but kept a sort of memorandum in a pocket diary; he used one up about every six months, and he did not know whether he had destroyed them or not. Upon being recalled he said he had looked for the books; that there had been but one pocket-book and a diary, "and it was only in one," and that he could not find it—that one book had covered the whole time of these transactions; it was "a pocket diary, about three inches by five." He said that he might have bought on commission for the Government less than 100 horses; that if several were to be bought for an engineer's party, the Engineer would exercise his judgment as to whether they were fit; in the case of one, Mr. Nixon would exercise his judgment. Speaking of the first lot he said they were ponies, and on looking at the account for them, he said Mr. Nixon had taken part with him in "bargaining with the individuals," from whom they were purchased, not in variably but generally; that Mr. Nixon was cognizant of each bargain before a horse was bought; and that in this account they were lumped—eighteen horses at \$90—"because that was the price paid for them, and he (Mr. Nixon) said to make the account in that way and he would agree to it." That he thought the certification of accounts "was an institution of a later date."

He also thought the transaction of 17th May was accomplished in the same way as the former one; and he supposed also the other of 21st May.

Throughout these dealings Mr. Alloway was supposed to be buying for and on behalf of the Government, and to be paid a commission for his judgment; but we could get no information as to the persons from whom the horses were bought, or the separate prices paid for them or any of them. Neither Mr. Nixon nor Mr. Alloway thought it advisable to preserve any record of those particulars.

On the 17th April, 1878, Mr. Nixon was examined before the Select Standing Committee of the House of Commons on Public Accounts; the evidence which he then gave concerning his transactions with Mr. Alloway in the purchase of horses is set out at page 1830, of the second volume of Evidence accompanying this report. He there testified that he had paid Mr. Alloway no commission, and the tenor of his evidence on that occasion appeared to us to be, that his knowledge of the particulars of any of the purchases of horses by Mr. Alloway was very exceptional. As this was different from the impression left by his evidence before us, we afterwards submitted to him an interrogatory, asking for an explanation of what seemed to be an inconsistency. His answer to the interrogatory (No. 2) is set out on page 1831, of volume II, of the Evidence.

Mr. Nixon stated in evidence that he had at no time endorsed any paper for Mr. Alloway. He was recalled and informed, as was the fact, that a banker had testified before us that entries of negotiable paper had been found in the books of the bank, bearing the name of Mr. Alloway as promisor, and Thomas Nixon as endorser, and that it had been discounted for Mr. Alloway, in November, 1875. He said that it could be explained by the fact that at that time there was another Thomas Nixon in Winnipeg. The same banker was recalled, and said that he was the person who had decided on the discount, and that there was not at any time any other Thomas Nixon than the one in question, whose name would have been taken by him; this was also mentioned to Mr. Nixon, who had been again recalled; he adhered to his former statement. We think the evidence shows that during the time he was, as Government Purveyor, dealing with Mr. Alloway, he had endorsed his paper, and that Mr. Alloway had raised money on their joint liability.

The first three lots of horses, in all thirty-eight, nearly all of the native breed cost the Government an average over \$111. Other horses were afterwards bought at a much higher price, averaging as far as the purchases have come to our knowledge over \$140.

The whole evidence concerning purchases by Mr. Nixon, through Mr. Alloway as an employe of the Government and from other persons, leads us to believe, that his method of management resulted in the payment of a higher price, than was necessary, for property purchased by him on Government account.

In addition to the duties above mentioned, it was the duty of the Purveyor to take charge of the stores, animals, &c, belonging to the Government, both before they were supplied to persons employed upon the railway, and afterwards if any of them should be returned to his custody, and, if necessary, to re-issue the same if they should be again required for purposes connected with the undertaking. Also, if any of the Government property which had been employed for railway purposes should be disposed of, to receive the proceeds and pay over the same to the credit of the Receiver-General. These payments were to be made in such a way as not to interfere with the debits or credits concerning the amounts which were remitted from time to time, as aforesaid, from Ottawa to the official account of the Purveyor at Winnipeg, but were made so as to appear only in a separate account kept in the name of the Receiver-General, at one of the banks. At times an officer was attached to parties on surveys or otherwise employed for the railway, called a sub-agent or commissariat officer. Mr. Nixon, on requisitions furnished these sub-agents with money, and with goods to be disposed of in satisfying on the spot, men who had claims against the Government for services or otherwise.

Mr. Nixon was allowed to employ a book-keeper or accountant, and at the beginning of his duties he retained a Mr. Conklin in that capacity. A special set of books for the railway was opened by Mr. Conklin under the direction of Mr. Nixon. In addition to this set of books, a Mr. Parr, who was in charge of the store-house, had a book known as the "Store-house book." This was in no way under the management of Mr. Conklin. One of the books kept by Mr. Conklin dealt exclusively with the moneys sent from Ottawa, and deposited in the bank, to the official account of the Purveyor and Paymaster, as before mentioned. This showed the several amounts which were furnished by the Government from time to time, and each cheque on which any part of it was paid out. This book is apparently correctly balanced. In all other respects the books in the Purveyor's office and in the store under his charge, were for the first eighteen months so kept that no trace can be followed of large transactions managed by Mr. Nixon.

From time to time sales of Government property took place at points distant from Winnipeg, and the proceeds were remitted to Mr. Nixon. These proceeds were not made payable to him in his official character. He received them sometimes with and sometimes without the knowledge of his book-keeper. He did not pay them at once into any official account. If they were deposited in any bank it was to his private credit and mixed with his own moneys. He rendered to the Government at different times accounts purporting to show all moneys received by him from such sources, and he paid to the credit of the Receiver-General the amounts exhibited as due from him by such accounts. Whether the accounts so rendered by him showed correctly all moneys which he had received from the sources above mentioned or not, cannot be ascertained from the books or papers which he finally transferred to the custody of the Government at the end of his duties. He said, in his evidence, that he had had large funds from other sources at his command during the period of his official connection with the railway, and that these funds had been mixed up with those which he had deposited, as aforesaid, in his private bank account, and that for that reason his bank book would not give us any light upon the subject. He further testified that he was not able to suggest any method by which a correct statement could be ascertained, except in so far as the returns which he had made on the subject to the Government would give it; but that he believed those returns were correct and sufficient.

During his examination he said that entries on this subject ought to have been made in the books by the accountant; but that he had never directed him to do so. The accountant in his evidence said that he was led by Mr. Nixon to understand that the books were not intended to show these matters, and we found, as a fact, that there was no collected account in the ledger or other book concerning them.

Mr. Conklin having been succeeded by Mr. Currie, as accountant, in May, 1877, it became necessary to get the accounts, which had been kept by Mr. Conklin, balanced so as to start a set of new books with a clean sheet. The accounts which had been opened with different individuals in Mr. Conklin's books could not be balanced within about \$26,000, according to the entries then found in them; and for the purpose of commencing the new set of books, the accounts in the old ones were closed by entries to make them even. This was done because Mr. Nixon said to the new book-keeper that the old accounts had been settled. Besides these so closed, others

appeared unbalanced, of which nothing could be stated, and in order to make the debit side, in the old set of books, equal with the credit side, a fictitious balance of about \$4,400 was entered on one side of the balance sheet.

The store was in charge of Mr. Parr, and besides the goods left with him from time to time, he took the custody of animals returned from different parties until they were disposed of or sent out again for use. Goods, he says, were always entered in a book kept by him in the shape of a memorandum, without any value being attached. Sometimes animals were entered and sometimes not. Goods going out were entered in some shape. Occasionally he was directed to prepare returns of the property on hand for the information of the Government, and he would make one ready for transmission by Mr. Nixon. He testified that on such occasions he would take down what property "his eyes could see," but he never compiled any return derived from a statement of what had gone into his custody and what had gone out.

Excepting the statement of moneys received from the Government and paid out by cheques countersigned by the auditor, the books under the control of Mr. Nixon fail to give a proper clue to the amount of public moneys which reached his hands, and the account of the stores which came into his control is incomplete and unsatisfactory.

It was impossible to ascertain, by calling witnesses before us, the nature or extent of the omissions, if any, in the books kept by Mr. Conklin. Many of these witnesses had been scattered over different parts of the country, and we did not conceive it to be our duty to ascertain exactly the state of accounts between Mr. Nixon and the Government.

From the character of the record of Mr. Nixon's transactions, we have to report that there has been an entire absence of that care by the officer, and of that supervision of his conduct and accounts by his superiors, which generally prevails in business matters, and without which, in our opinion, no business of any importance can be successfully maintained.

FORT FRANCES LOCK.

In consequence of most of the principal matters relating to the Fort Frances Lock having been made the subject of an enquiry, and a report by the Senate in April, 1878, we have deemed it desirable to confine our attention to the manner in which the expenditure was made upon this work.

The expenditure was authorized and directed by the Department of Public Works. Mr. Hugh Sutherland was appointed Superintendent, and on 11th May, 1875, directions to commence work were transmitted to him by letter from the Secretary.

The system under which the works were carried on, and the moneys disbursed was as follows: Mr. H. Sutherland, as Superintendent or Manager had primary charge of the undertaking, except as to engineering questions, which were determined by the visiting engineer. For the purchase of supplies and the general direction of the work he was primarily responsible, subject only to Departmental instructions. Mr. Matthew Thompson was appointed by him as foreman, and was responsible for the practical carrying out of the work under Mr. Sutherland's directions. In the absence of the Superintendent it became his duty to look after the necessary supplies and perform those duties, in addition to his own, which would have devolved upon Mr. Sutherland had he been present.

Under Mr. Thompson, Mr. R. R. McLennan directed the rock work, and Mr. Warren Oliver the timber work.

Mr. Logan was appointed Paymaster and Storekeeper, and all payments made at Fort Frances on account of the lock were by cheques drawn by the Paymaster and countersigned by the Superintendent.

The books were kept by Mr. James Sutherland, a brother of the Superintendent.

Mr. Hugh Sutherland stated, in evidence, that while in charge of this undertaking he was also supervising the erection of certain public works at Fort Pelly and Battleford, so that he was able to make only periodical visits to the Fort Frances work.

The engineering supervision was directed by Mr. Mortimer, whom Mr. Sutherland understood to be acting under the general directions of Mr. Hazlewood. No engineer, however, devoted his whole time to the work; in fact, Mr. Sutherland is of opinion that no engineer was present on an average more than one day a week.

As a rule the supplies were ordered by the the Superintendent, and the receipt of the goods so ordered, having been certified to by the paymaster, the invoices were transmitted to Ottawa for payment by the Department. Sometimes goods were procured from Mr. Bethune, Government purveyor at Prince Arthur's Landing, and occasionally small quantities were purchased and paid for by the Superintendent himself; this, however, was exceptional.

On arriving at Fort Frances, Mr. Sutherland states that he found there was but one store, that of the Hudson Bay Co., and the men engaged upon the work complained of their high charges. On this account a Government store was opened under control of Mr. Logan, the paymaster, assisted, in turn, by Messrs. Marr, Bentley and Wilson.

On account of rumours which were rife as to certain alleged improper transactions made particularly in connection with this Department of the undertaking, a close enquiry was made into those matters. Mr. Wilson, one of the assistant storekeepers, (to whom the Government stock was subsequently transferred), and to whom several of the said allegations referred, was examined closely. We found that a proper store account had been kept in which the workmen were charged with whatever they got, and these accounts being periodically made out and handed to the book-keeper, the amounts were debited to the men's accounts in the general books, and went in diminution of their wages accounts. The general books, kept by Mr. James Sutherland, were, at our request, handed over to our keeping. We have examined them with care and find them to have been kept upon approved business principles, and in creditable style.

In 1877 Mr. Wilson purchased the stock then on hand in the Government store at invoice prices, the cost of transport being added upon such of it as Messrs. Thompson and Logan deemed to be merchantable, and thenceforward he carried on business in another building as a private concern.

The goods thus purchased amounted to some four thousand dollars. He produced his private books, and certain entries therein were the subject of a thorough examination. From the evidence given and the manner in which it was offered, we are of opinion, that the transfer was a fair and legitimate business transaction.

A Government store for provisions was still kept by the paymaster, after the stock of furnishings was sold to Mr. Wilson, and when work ceased upon the locks in the fall of 1878, the goods then unsold and the plant used upon the said works were turned over to Mr. Fowler, together with an invoice of the same—the whole being valued at some \$20,000. These, it is understood, are held by him in charge for the Department of Public Works.

Nothing which transpired in evidence led us to think that any moneys furnished by the Government had been misapplied.

The principal portion of the evidence not susceptible of direct corroboration was the alleged receipt by employes of the amounts stated in the pay-lists. These included large numbers of persons, many of whom were Indians. The correctness of these documents was upheld by the evidence of both Mr. James Sutherland whose duty it was to prepare them from the data furnished by the time book, and by Mr. Thompson, the foreman, who said that he invariably examined them before the men were settled with. Moreover, no exception seems to have been taken to them as vouchers by the officers of the Department, at Ottawa.

We are of opinion, from the general tenor of the evidence, that the funds entrusted to Mr. Sutherland in connection with the Fort Frances Lock were expended in obedience to the general instructions received from Ottawa, and there is no reason to suppose that the method of managing the works and the expenditure in connection therewith was objectionable, or failed to exhibit correctly the transactions of the Government officials there employed.

The amount expended upon the works up to the 30th June, 1880, was \$289,028.51.

MESSRS. COOPER, FAIRMAN & CO.

We have taken evidence with a view of ascertaining the persons who constituted this firm during the period of their dealing in matters connected with the Pacific Railway.

According to the records under the charge of Mr. Ryland, a Registrar in Montreal, Messrs. James Cooper, Frederick Fairman and Charles Mackenzie became partners under the style of Cooper, Fairman & Co., on the first day of January, 1873, and agreed to be partners until the first day of January, 1878. The following is a certificate obtained from the proper officer:—

“ Province of Quebec, }
 District of Montreal. }

“ We, the undersigned, do hereby certify that we have entered into co-partnership under the style or firm of Cooper, Fairman & Company, as merchants, which firm consists of James Cooper, of the city of Montreal, Frederick Fairman, at present residing at Waterloo, in the said Province, as general partners, and Charles Mackenzie, of Sarnia, in the Province of Ontario, as a special partner, the said Charles Mackenzie having contributed fifteen thousand dollars to the capital stock of the said partnership, which said co partnership commenced on

the first day of January, instant, and terminates the first day of January one thousand eight hundred and seventy-eight.

"Dated this second day of January, one thousand eight hundred and seventy-three.

"JAMES COOPER,
"FREDERICK FAIRMAN,
"CHARLES MACKENZIE.

"Signed in the presence of

"JOHN C. GRIFFIN, N.P."

"I certify that the foregoing is a true copy of a declaration which was entered and registered at full length in the Registry Office, for the Registration Division of Montreal in Register D. C., vol. 3, page 26, at ten o'clock in the forenoon of the seventh day of January, eighteen hundred and seventy-three, under the number 5,619, G. H. R.

"G. H. RYLAND,
"Registrar."

Mr. Charles Mackenzie was a special partner, having contributed fifteen thousand dollars to the capital of the firm, upon the understanding that each partner should receive one-third of the profits, and that Mr. Mackenzie should not be answerable for the liabilities of the firm beyond the capital which he had contributed. He said, in giving evidence, that after this firm had secured the contract for steel rails he decided and told his partner, Mr. Cooper (in Toronto) that he would retire from the partnership; that this was the first notification on this subject to any of his firm, inasmuch as he had not thought it necessary that his intention should be communicated at an earlier day by writing; that Mr. Cooper, then in Toronto, informed him that Mr. Fairman was in England, and that consequently a dissolution could not be accomplished until his return; that immediately after Mr. Fairman's return in the spring or summer of 1875, Mr. Mackenzie went to Montreal and dissolved the partnership, papers for that object being then drawn up and signed; that either at the first-mentioned interview with Mr. Cooper, he (Mr. Cooper) had proposed, or subsequently when Mr. Cooper and Mr. Fairman were present, they both had proposed to return him his capital, that is \$15,000, by three notes of \$5,000 each, and that without any discussion as to the terms upon which he should leave the partnership, it was agreed that he should get his whole capital returned to him.

Mr. Cooper's recollection differs from Mr. Mackenzie's on the subject of the time of the first notification that Mr. Mackenzie wished to retire from the partnership. Mr. Cooper thinks he received it at Montreal in writing, but is not positive. Mr. Cooper described the partnership as ending on the 31st December, 1874, saying that the understanding of the dissolution

was that it took place at the end of the year, and he suggested October or November as the time at which he had received the notification of Mr. Mackenzie's intention to withdraw. Mr. Cooper is clearly wrong in this suggestion as to the time, for the first award of the contract to his firm was on the 2nd day of December, 1874, and it was after that, when Mr. Charles Mackenzie told Mr. Cooper he intended to go out of the firm. Again the evidence shows that when Mr. Mackenzie proposed to retire no arrangement could be finally concluded, because Mr. Fairman was in England, and a letter written by Mr. Fairman himself, in the name of the firm, to the Minister of Public Works, dated 4th December, 1874, states that Mr. Fairman would start for England on the Monday following. Therefore the intimation by Mr. Mackenzie to Mr. Cooper, at Toronto, was at the earliest some time after the 5th December, 1874. This is assuming that Mr. Fairman was on the ocean; for if he was really in England as above stated, Mr. Mackenzie's notification to Mr. Cooper must have taken place as late as the 15th December.

Mr. Cooper, in his evidence, said that the dissolution could not be arranged in "October," (meaning the time of the notification), while the business was going on; that it could not be done until the firm should close the books, take stock, &c.

The evidence makes clear to our judgment that about which Mr. Charles Mackenzie seemed uncertain, namely, whether it was when only he and Mr. Cooper were together at Toronto, or after Mr. Fairman had returned from England, and when the three partners were together, that it was proposed that he should get back his whole capital of \$15,000. In the first place it is not probable that Mr. Cooper and he, in the absence of Mr. Fairman, and without his consent, would arrange the terms of a dissolution and the withdrawal of a definite sum from the capital of the partnership; and in the next place it is proved that closing the books, taking stock, &c., was a thing necessary to be done in view of the intended dissolution, and that this took place not earlier than some time in January, 1875; therefore, we think the proposition to give Mr. McKenzie \$15,000 (the amount of his original capital) was made when the three were together, after Mr. Fairman's return from England, and after the stock-taking had been concluded.

If from the beginning of the negotiations for dissolution the intention was to give Mr. Mackenzie his capital back intact, and without reference to the profits or losses of the business, then the dissolution could have been accomplished without stopping the business to close the books, take stock, etc. The

manner in which both Mr. Cooper and Mr. Fairman alluded to this feature of the case, inclines us to think that closing the books and stock-taking did take place as a matter material to the terms, on which Mr. Mackenzie finally retired. But it does not therefore follow that no binding agreement for dissolution took place until the books were actually balanced and stock actually taken, for though the result shown by the books and taking stock may have had a bearing on the amount to be finally paid to Mr. Mackenzie, a positive agreement could have been closed between the parties before those results became known, and on a basis which would provide for the prospective payment to Mr. Mackenzie being more or less according to the results as subsequently shown.

It is obvious, however, that until the minds of the three partners were in accord no agreement for dissolution was arrived at. Up to that time, whenever it was, all notices, negotiations and estimates could be nothing more than features of proposals made by one or more of the firm.

Mr. Fairman stated in evidence that he thought he returned from England about April, 1875; that shortly after his arrival in England he received advices that Mr. Mackenzie wished to retire from the partnership, and that on or about the 1st January, 1875, he wrote to Canada assenting to this proposition; that stock was taken in January, and formal agreements were executed after his return to Canada.

We think it may be assumed, that the letter conveying this assent of Mr. Fairman would reach Canada about the middle of January, 1875, if sent when Mr. Fairman stated it was.

We do not think the terms of the dissolution of this firm a matter material to our investigation, except in so far as they aid in the attempt to ascertain the time at which the act itself of dissolution, or the mutual agreement for the dissolution took place. The partnership had not been formed on the condition that Mr. Mackenzie, might at his option, select a time at which he would go out of the firm, withdrawing his capital, or on any other definite terms, therefore some mutual agreement on the terms became indispensable. The evidence as a whole tends to the view that some time in January, 1875, not earlier than on or the about 15th, the three partners were in accord on the main fact that a dissolution should take place, and that closing the books and stock-taking thereafter, would be a means of settling upon the amount to be paid to Mr. Mackenzie.

The following is a certificate of the record of dissolution :—

“ Province of Quebec, }
 District of Montreal. }

“ We, the undersigned James Cooper and Frederick Fairman, both of the City and District of Montreal, general partners, and Charles Mackenzie of Sarnia, in the Province of Ontario, special partner, do hereby certify and declare that the limited partnership heretofore subsisting between us under the style and firm of Cooper & Co., registered in the office of the Prothonotary and Registrar at Montreal on the seventh day of January, A.D. 1873, hath been dissolved from the fourth day of May last, and we make this declaration to the end that such dissolution may be legally registered as we supposed had been already done, we having, some months since signed a similar declaration, and entrusted it to our agents for the registration; and we have signed.

“ Sarnia, 11th November, 1875.

“ CHAS. MACKENZIE.

“ JAMES COOPER.

“ F. FAIRMAN.

“ Witness,

“ GEO. H. GRUNDY,

“ Montreal, 17th November, 1875.

“ I certify that the foregoing is a true copy of a certificate and declaration which was entered and registered at full length in the Registry Office for the Registration Division of Montreal, in Register D.C., vol. 3, page 427, at twelve o'clock at noon on the seventeenth day of November, eight hundred and seventy-five, under the number 7,279, G. H. R.

“ G. H. RYLAND,

“ Registrar.”

The evidence leads us to conclude that up to, and for some time after the 1st January, 1875, the firm of Cooper, Fairman & Co. included in name and in fact, Mr. James Cooper, Mr. Frederick Fairman and Mr. Charles Mackenzie as partners, in all transactions connected with this railway and made in the name of that firm; that though the firm was not formally dissolved till May, 1875, an agreement was made between its members in January, 1875, the exact day we cannot name, by which all the transactions of that firm connected with the said railway, became thereafter transactions of the Department with Mr. James Cooper and Mr. Frederick Fairman, and no other person.

CONTRACT LETTING.

Up to the date of our commission 72 contracts had been made in connection with the Canadian Pacific Railway. They were numbered from one to seventy, inclusive, and 5 A and 32 A. Of these forty-two were by the Department of Public Works, and the remainder by the Department of Railways and Canals, to which the management of this undertaking was transferred in 1879.

In the first Session of the first Parliament of the Dominion, "An Act respecting the Public Works of Canada" was passed (31 Vic., cap 12), of which the following enactments form a part :—

"Sec. 20. It shall be the duty of the Minister to invite tenders by public advertisement for the execution of all works, except in cases of pressing emergency, where delay would be injurious to the public interest, or where, from the nature of the work, it could be more expeditiously and economically executed by the officers and servants of the Department.

"Sec. 21. The Minister, in all cases, or where any public work is being carried out by contract, shall take all reasonable care that good and sufficient security be given to and in the name of Her Majesty, for the due performance of the work, within the amount and time specified for its completion; and also in all cases, where it seems to the Minister not to be expedient to let such work to the lowest bidder, it shall be his duty to report the same and obtain the authority of the Governor previous to passing by such lowest tender."

It will be observed that the language herein contained points only to security for the due fulfilment of contracts, making no allusion to tenderers, or the expediency of obtaining from them pledges of any kind.

"The Canadian Pacific Railway Act" was passed in 1874; in which it was enacted :—

"Sec. 7. The said Canadian Pacific Railway and the branches or sections hereinbefore mentioned * * * shall be constructed under the general superintendence of the Department of Public Works.

"Sec. 12. In case it shall be found by the Governor in Council more advantageous to construct the said railway, or any portion thereof, as a public work of the Dominion of Canada, the construction thereof shall be let out by contracts offered to public competition, and the Governor in Council may establish, from time to time, the mode and regulations under which the contract shall be given; * * * such regulations not being contrary to any of the provisions of the Acts regulating the Department of Public Works, or to any other Act or law in force in the Dominion."

This last clause suggests that rules are required, in addition to the statutory one, that the lowest offer shall be ordinarily accepted.

The enactments above mentioned were in force while the seventy-two contracts were being made as aforesaid, for matters in connection with this railway.

We understand the spirit of this legislation as a whole to be that the Governor in Council should prescribe such regulations, amongst other things, for the receipt of tenders in all public competitions, as would as far as possible make the lowest tender the best one to accept in the public interest, and that being provided for, the contract should be invariably awarded to the lowest, unless an Order in Council should otherwise direct.

Could regulations be so framed as to accomplish absolutely this desideratum, viz. : that the lowest offer would always be the best to accept, then the action of the Department in letting the contract would be almost mechanical, each tender, fixing by its price, the rank and rights of its author.

But whether regulations so perfect as this could be framed or not, the clauses above alluded to seem to commit to the Governor in Council the authority to make them as sufficient as possible, as well as the right to remove individual cases from the general rule of the Statutes.

It is not inconsistent with the establishment of regulations by the Governor in Council, that Departmental rules may be made auxiliary to them, and indeed it seems to be a necessary consequence of the main regulations, that in the Department there should be some well understood means of deciding, whether these regulations were in each case followed.

Assuming then that regulations are to be framed for the purpose of encouraging such competition for public works as will elicit offers of which the lowest shall be always that which, in the public interest, it is best to accept, the first thing to be accomplished is, in our view, to make the probability of fulfilment, as far as possible, equal in all of them.

The lowest, without this cardinal characteristic, could not be the best to accept, and in the problem as to whether an offer is likely to be fulfilled, the good faith and the ability, both financial and administrative, of the party making it, must be ever present factors; therefore we consider that the main aim of the regulations governing competition, should be to bring forth offers only from tenderers who possess those qualifications.

Without believing it possible to regulate the receipt of tenders, so as to exclude with certainty all offers from those who are not both willing and

able to fulfil them, we feel it a duty to point out some instances in which the present system has led to serious delays and difficulties in the action of the Department, and at times to large gain by speculators who came within the letter of the Statute as lowest tenderers, but whose offers, according to our view of the spirit of the law, ought never to have reached the Department. By doing this we may indicate, to some extent, the nature of the remedy to be applied.

Before taking up individual cases, we may mention that in ten contracts concerning this railway, tenderers to whom they were respectively awarded, have failed to make good their proposals, and agreements have consequently been made at higher rates, the excess over the prices of the said tenders, amounting under such agreements to more than a million of dollars. In some of these cases no deposit had been made with the tender. Whenever it was furnished it was subsequently returned to the defaulter.

In the case of contract 15, the tenders received on 20th September, 1875, showed the following to be the three lowest :—

A. P. Macdonald & Co.....	\$1,443,175
Martin & Charlton.....	1,562,090
Sutton & Thompson.....	1,594,085

Ten days after the final receipt of the tenders, the Department awarded the contract to A. P. Macdonald & Co. About a fortnight after the award, this firm informed the Department that under the opinion that the track-laying on the adjoining section would be at such a time as to make it available in August, 1877, they had made their bid 25 per cent. lower than it would otherwise have been, and they proposed that before entering into the contract, the Government should undertake to make good to them certain expenses, which would be incurred, in case that section should not be available as soon as they had expected (page 232), which conditions being refused they declined, on 16th October, to take the contract.

It will be noticed that the request to have new conditions attached to their offer, took place twenty-three days after all the tenders had been received at the Department.

On the 17th October the contract was awarded to the next lowest tenderers, Martin & Charlton. More than two months elapsed without this firm furnishing the security required of them.

On or before 20th December following, Mr. Charlton was, according to the statement of the Hon. Donald McDonald, paid by the latter \$20,000 to

decline the contract, and it was done accordingly by the following telegram :—

“Dissention from within added to extraordinary pressure from without has left no alternative but withdrawal.

“CHARLTON & CO.”

And on the 21st December a letter to the same effect was sent to the Department signed by Mr. Charlton. (Page 237.)

A cheque of \$1,000 had accompanied the tender of this firm as a guarantee of their good faith. When presented to the bank on which it was drawn it was dishonoured and protested.

On the 29th December the contract was offered to the next lowest tenderers, Sutton & Thompson. They nominally accepted it by a telegram the same day. The evidence leads us to say, that they never intended or expected to take the contract or carry on the work, and never believed that they could do so successfully. They made their offer, trusting solely to the chance of making a profit by selling out to some other person; the system of the Department being one which enabled them to do so with impunity. As a fact the Hon. Mr. McDonald had paid them \$10,000 for their position, in pursuance of an arrangement made between them and Mr. Whitehead, by which, if the contract should be offered to them, they were to have no interest in it; but they were to go through the form of taking it with Mr. Whitehead as an additional partner; and this was done, they being subsequently released under an Order in Council.

The amounts paid by Mr. McDonald to Martin & Charlton, and to Sutton & Thompson, in all \$30,000, were not lost to him or to Mr. Whitehead; they were lost to the country, which paid to the contractors a still higher sum as the consequence of Martin & Charlton's withdrawal.

The tenders for contract No. 42 opened in January, 1879, showed the following as the three lowest :—

	Trains—July, '82.	Trains—July, '81.
Morse, Nicholson & Co.....	\$3,361,271	..... \$3,467,506
Andrews, Jones & Co.....	.....	3,915,942
Fraser, Grant & Pitblado.....	\$4,130,707	

After about three weeks spent in enquiries concerning the ability of the firms who had made the two lowest offers, and coming to the conclusion that there was little or no probability of either of them fulfilling its offer, the Minister decided, nevertheless, that the established system had

fixed the eligibility of each tenderer, and in deference to it, he formally awarded the contract to Morse & Co. on the 20th February, 1879.

This firm had made their offer without any belief that it could be fulfilled. Some time before it was sent in, members of the firm had met at Toronto, and settled on prices to be named in their tender, which would give them more than half a million dollars, beyond the total of their tender as actually sent in. At Ottawa before putting in their offer, it was decided to make it as above mentioned, \$3,364,274, and it reached the Department in that shape. The price was lowered, not because they thought their first offer too high, or because they were willing to carry out a contract at the lesser rate, but because they wanted to make sure of the award of the contract, and to take their chances upon something turning up afterwards, which would relieve them from the proper consequences of the bargain. Six days afterwards they notified the Department that they would not carry out their offer. This was at a critical season of the year, when no time could be lost in closing a contract.

Morse & Co. had before their refusal bargained with Andrews, Jones & Co., the tenderers next above them, to share the chances on the offer of the latter, which was \$551,668 higher than their own.

On the same day, 23th February, the contract was awarded to Andrews, Jones & Co.

Morse & Co. supposed them to have sufficient means at their command to take the contract, and they (Andrews, Jones & Co.) had written on two occasions, 6th February and 24th February, declaring that they were prepared to furnish the security. But, as a fact they were not so prepared, they were themselves unable to do so, and had never made any positive arrangement with any one else to do so. A party in New York would have done this had he been convinced that his money was safe, but this depended on a report from Col. Smith who came to Canada to make enquiries concerning the work to be done and who was to return to New York before he made the report. Three days were given to Andrews, Jones & Co. to make the deposit preparatory to the execution of the contract; they asked for an extension of time which was not granted. Nevertheless, under the impression that a well known contractor of considerable capital in Canada was likely to join them, the Minister deferred for several days passing to the tender next above them; but on being notified that this would not

happen the contract was on the 5th March awarded to Fraser, Grant & Pitblado.

In our judgment every one of these offers was made without any sufficient ground for believing that the tenderer could fulfil it if accepted ; and nearly every one without any desire that he should fulfil it.

It is plain beyond argument that when competitors of this class are amongst tenderers, time is lost to the Department in the process of reaching one whose offer is in earnest, and whose proposal can be made available to the Government, and we think it equally certain, that such competitors will appear unless the conditions under which they may send in tenders are made much more serious than was the case before the date of our commission.

The saving of the time thus lost, would of itself be probably considered worth the effort to eliminate all but genuine tenders from public competition. But the loss of time is not the only evil ; occasionally it might be no detriment and a Department could now and then, without much inconvenience, work its way from the lowest offer, a sham one, up to some higher one, made by a party ready and desirous to take the contract.

But we think the system of requiring deposits so small as to be insignificant, compared with the chances of profit by selling out to higher tenderers, creates another difficulty which the legislation aims at destroying, that is, the necessity of paying more for works than would be done under a fair competition amongst offers made on a business basis

Let us take for illustration a case in which the difference between the highest and lowest offer is \$200,000—and in many of the cases it was very much more—this difference being made up by gradations of \$20,000 each between ten different tenders, a deposit of \$2,000 being required with each tender, as an evidence of good faith, with the certainty that the deposit would be forfeited if the tenderer failed when required to carry out his offer. It is evident that each tenderer to whom the contract was awarded might be tempted to sell his position to a higher tenderer—if he could get more than \$2,000 for doing so—and it is equally clear that the higher tenderer would be tempted to give more than \$2,000 for a withdrawal, which would seem to put within his grasp all his calculated profits on so large a contract.

And thus would be made more than probable the result which the regulations concerning contract letting would be framed to prevent. Even

when the offers are from persons who believe the work could be done at their prices, the system of requiring no forfeits, or trifling ones, offers a sure profit and a quick return to the tenderer who will withdraw for a consideration, and a yet higher price to the one who will buy his withdrawal.

But the case thus stated as an illustration fails to present the temptation in as strong a light as it existed during these contracts.

In the case of section 15, the gradations averaged something like \$70,000; the deposit was \$1,000; and it must have come to be well understood in the tendering community, that making the deposit was a formal act of trifling; for in every case, and there were several, in which it could have been forfeited, it was returned to the defaulting tenderer.

We suggest the expediency of requiring with each tender security of a much more substantial character than any given with those for the contracts we have been considering. We do not think it would be advisable always to make it of an amount sufficient to cover the difference between the tender which it supports and the one next above it, although this could be done by a covenant of sureties, to be sent in with the offer for such an indefinite amount as would meet that case.

It is true that if the security with the tender does not cover the difference in the amount between it and the one next above it, the temptation may occasionally exist, which we have described as leading to the objectionable transaction of selling out; but the differences between tenders vary, and being unknown at the time tenders are being received, a speculator will not be inclined to invest a substantial amount upon the chance, that the difference between him and the one next higher will be so great, as to afford a profit to both by a purchase of his position at a price higher than his deposit, and this will exclude him. The elimination of this class of competitors will be done by themselves, instead of by the Department as heretofore, always at a loss of time, sometimes of money, and it will practically extinguish a class of irresponsible middlemen, through whom reliable contractors are often forced to buy their way to contracts for important public works.

The requirement of substantial security with a tender will also have the effect of making parties, who, in good faith, desire to enter the competition, apply to themselves some test as to financial ability, before asking their offers to be seriously entertained. Hitherto this has been done only after the contract has been awarded, and at times with the result of showing that

it would have been as well for all parties if they had refrained from entering the competition.

We do not suggest that the security with the tender should necessarily be money, but at the option of the tenderers covenants from responsible parties, so worded (if desired) as not to indicate the name of the tenderer, or the amount of his offer.

If a tenderer, though in the best of faith concerning his prices, can furnish with his offer, neither money nor stocks nor sureties to an amount equal to say one or two per cent. on the total cost of the work, then the attempt to enter into a contract with him, on such sufficient security as the Statute demands for that purpose, would almost certainly lead to disappointment.

Up to the date at which the tenders were invited for the construction of section 15, it was not the practice of the Department to require any guarantee from the tenderer. The lowest tenderers for contracts 1, 4, 5, 13 and 14 withdrew their offers, and tenders in lieu thereof were accepted involving on the face of them, an expenditure in excess of those withdrawn aggregating \$132,171.

When the construction of section 15 was submitted for competition, although no Order in Council establishing regulations had been passed, the Department for the first time required each tenderer to deposit with his tender a sum of money (in that case it was \$1,000) which, by the terms of the specifications should be forfeited if the person making the offer should decline or fail to fulfil it, and from that time forward to the date at which we began to take evidence, the highest amount required by the Department, as a deposit with a tender, was \$5,000.

No general Order in Council established any regulations for contract-letting under the authority of the statute above mentioned, until the following:—

“Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 23rd March, 1880.

“On a joint memorandum dated the 20th March, 1880, from the Honourables the Minister of Public Works and the Minister of Railways and Canals, recommending that hereafter all public works involving an expenditure of over \$5,000 shall be let by public tender and contract, unless, owing to urgency or other cause, it be deemed advisable to take different action, and that in all such cases authority be obtained by an Order in Council.

“That with all tenders submitted a money guarantee or approved accepted cheque shall be given, to be open to forfeiture in the event of the tenderer failing to make the necessary

five per cent. deposit hereinafter referred to, within eight days after receiving notice of the acceptance of the tender or of his declining to enter into contract when requested, the amount of such guarantee to be fixed at a sum not less than \$1,000 nor more than \$5,000.

"That upon acceptance of a tender and notification by the Department concerned, the intending contractor shall, within eight days, deposit with the Government a sum of money equal to five per cent. of the amount of his contract.

"That in all cases where tenders have been called for, the lowest received shall be accepted, unless good and sufficient reasons appear for passing over such tender.

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

"Certified.

"J. O. COTÉ,

"C. P. C."

Before formulating our suggestions as to future regulations concerning contract letting, we think it proper to mention some other subjects which might be noticed in them.

The evidence shows that the tenders between the times of their receipt and their opening, have not been kept in such a place of safety as to make it certain that the contents of some have not been improperly divulged.

They were left in a detached upright wooden desk, standing in the secretary's room; this was not an official depository; in it Mr. Braun's private papers were also kept. This gentleman was evidently confident that no one had been able to get at the tenders, and he believed they had been always safe. But we think such important documents, the knowledge of whose contents might be saleable at thousands of dollars, ought to be kept in a place of greater security than the one indicated.

It is clear that the substance of one tender, but after the opening, was communicated as mentioned in the following letter:—

"BRANTFORD, 27th November, 1876.

"Sir,—We have just been informed that Green & Co., (by some means) have discovered that there is an error or omission in our tender for section 15, Canadian Pacific Railway, in not putting a price to the item of rip rap. In case our tender should be reached, we offer to accept as a price for the rip-rap, the average taking the two tenders below our tender, and the one next above our tender, and the average of the three we will accept as our price for rip-rap.

"Should the matter come under your notice, we would ask you to kindly excuse the error or omission.

"We have no doubt, should you award us the contract, we will be able to give you good satisfaction in all matters connected therewith.

"We remain,

"Your most obedient servants,

"SUTTON & THOMPSON.

"The Hon. A. MACKENZIE,

"Ottawa."

In another respect it appears to us, [that an improvement might be made in preserving a record of the receipt of tenders. The practice has been generally to stamp on the envelope, the day only of the receipt, if before noon; if after, the hour also. We found it impossible to ascertain the order in which tenders had reached the Department, because in most cases the envelopes had disappeared, although the officials said it had been intended to preserve them, as references from which to learn this order, if desired

A regular book might be kept in which the hour of receipt of every tender might be entered without delay, together with a letter or distinguishing number, the same letter or number being marked on the envelope of the tender. This letter or number being afterwards shown in the Schedule made at the opening, would complete a record, which would show the order in which it had been received as well as its amount.

In offering public works for tender, it seems to us that the first step towards true economy, would be that of obtaining a knowledge as accurate as possible of what is required.

The more exact the information offered to tenderers, the more precise will be their calculations of cost, and the narrower the margin of profit deemed necessary to cover possible and unlooked for contingencies, and therefore, it seems to be expedient before contracting for works or materials, to have a carefully prepared official estimate of their total cost. This would also be a basis on which to fix the amount of the security to accompany the tender, and without reference to the amount of the tender itself, thus preventing the extent of this security revealing the total of the offer, as it would do were it to be a percentage on the price demanded.

In addition to this official estimate, we have under the head of "Engineering" (page 74), suggested that where it is an object to exclude inconsistent tenders—a further estimate should be officially prepared of the value of each item, that is the price which would be fairly remunerative to a contractor, and these prices being affixed to the respective items in the bill of works to be furnished to tenderers, they should be invited to state simply one general percentage above or below those prices, at which they would undertake the work or supply the material.

One important feature of the present system remains to be noticed. Of the seventy-two contracts above mentioned, the highest authority on record, upon which fully two-thirds of them were awarded, was that of the

head of the Department, or one of its officers presumably acting under the Ministers instructions.

This, as well as the amount involved in each case, will be seen by the following table :—

CONTRACTS entered into for Works on the Canadian Pacific Railway and the Fort Frances Canal, prior to the 16th June, 1830, and of the Amounts estimated as being involved.

No. of Contract	Name.	Highest Authority given before closing the Contract, as far as shown by the Records.		Estimate of Amount involved as shown by extension of Tenders.			
		Authority.	Date	Under O. in Council,	Not under O. in Council.		
			\$	cts.	\$	cts.	
1	Sifton, Glass & Co.	Secretary.....	6th Oct., 1874....			127,850	00
2	R. Fuller.....	Deputy Minister....	15th Aug., 1874....			117,250	00
3	F. J. Barnard	Minister	Undated.....			272,250	00
4	Oliver, Davidson & Co.....	Chief Engineer.....	29th Dec., 1874....			213,850	00
5	Jos. Whitehead.....	Minister.....	29th Aug., 1874....			200,000	00
5a	J. Whitehead.....	Order in Council...	11th May, 1877...	60,000	00		
6	Guest & Co	Minister	Undated.....			553,663	00
7	Ebbw Vale Steel and Iron Co..	do	do			272,346	00
8	Mersey Steel Co.....	do	do			1,101,360	00
9	} West Cumberland Co.....	do	do			543,085	00
10							
11	Naylor, Benzon & Co.....	do	21st Jan., 1874....			259,581	00
12	Hon. A. B. Foster	Order in Council...	4th Feb., 1875....				
13	Sifton & Ward.....	do	18th March, 1875	406,194	00		
14	Sifton & Ward.....	Contract.....	3rd April, 1875....			402,950	00
15	Jos. Whitehead.....	Order in Council...	8th Jan., 1877....	1,593,085	00		
16	Canada Central.....	do	4th Nov., 1874....	1,440,000	00		
17	Anderson, Anderson & Co.....	Minister	7th Jan., 1875....			48,666	00
18	Red River Transportation Co..	do	Undated.....			32,044	00
19	Moses Chevette.....	Mr. Hazlewood, under direction of Chief Engineer...				1,600	00

* \$10,000 per mile; 20,000 acres; interest at 4 per cent. on \$7,500 per mile for 25 years.

CONTRACTS entered into for Works on the Canadian Pacific Railway, &c.—Continued.

No. of Contract.	Name.	Highest Authority given before closing the Contract, as far as shown by the Records.		Estimate of Amount involved as shown by extension of Tenders.			
		Authority.	Date.	Under O. in Council.	Not under O. in Council.		
			\$	cts.	\$	cts.	
20	Merchant's L. & R. SS. Co.....	Order in Council...	30th April, 1875.	31,000	00	.....	.....
21	Patrick Kenny.....	Secretary.....	14th July, 1875...	.....	.....	.....	8,782 00
22	Holcomb & Stewart.....	do.....	22nd Sept., 1875.	.....	.....	.....	6,500 00
23	Sifton & Ward.....	Mr. Hazlewood, under direction of Chief Engineer...	.....	.....	.....	.....	11,560 00
24	Oliver, Davidson & Co.....	do do.....	.....	.....	.....	.....	3,000 00
25	Purcell & Ryan.....	Order in Council...	6th June, 1876....	1,037,061	00	.....	.....
26	Jas. Isbester.....	Secretary.....	23rd May, 1876....	.....	.....	.....	30,989 00
27	Merchant's Lake & River Co..	Minister.....	16th May, 1876....	.....	.....	.....	69,660 00
28	Red River Transportation Co.	do.....	do.....	.....	.....	.....	174,806 00
29	Cooper, Fairman & Co.....	Secretary.....	28th July, 1876....	.....	.....	.....	8,532 90
30	Robb & Co.....	Minister.....	Undated.....	.....	.....	.....	16,160 00
31	Patent Bolt & Nut Co.....	Deputy Minister...	do.....	.....	.....	.....	6,800 00
32	Cooper, Fairman & Co.....	Minister.....	do.....	.....	.....	.....	13,738 00
32a	Lemay & Blair.....	Chief Engineer.....	do.....	.....	.....	.....	17,730 45
33	Kavanagh, Murphy & Upper..	Contract.....	21st June, 1878....	.....	.....	.....	222,202 00
34	North-West Transportation Co	Minister.....	1st May, 1878....	.....	.....	.....	90,000 00
35	Cooper, Fairman & Co.....	Order in Council...	16th May, 1878....	23,780	00	.....	.....
36	Wm. Robinson.....	Mr. Nixon.....	.....	.....	.....	.....	72,600 00
37	Heney, Charlebois & Flood ...	Contract.....	2nd Aug., 1878....	.....	.....	.....	809,813 00
38	Edmund Ingalls.....	Minister.....	12th July, 1878....	.....	.....	.....	3,261 00
39	John Irving.....	Secretary.....	do.....	.....	.....	.....	33,913 04
40	Gouin, Murphy & Upper.....	Contract.....	5th Aug., 1878....	.....	.....	.....	30,500 00 and sch. rates.
41	Purcell & Co.....	Order in Council...	3rd March, 1879.	2,300,196	00	.....	.....
42	Manning, McDonald & Co.....	do.....	5th March, 1879.	4,130,707	00	.....	.....
43	Joseph Upper.....	Minister.....	.....	.....	.....	.....	Percentage of earnings.
44	West Cumberland Co.....	Chief Engineer.....	24th June, 1879	.....	.....	.....	50,061 74
45	Barrow Hæmatite Co.....	do.....	25th June, 1879	.....	.....	.....	37,844 59
46	Ebbw Vale Steel Co.....	do.....	26th June, 1879	.....	.....	.....	37,972 23

CONTRACTS entered into for Works on the Canadian Pacific Railway, &c.—Continued.

No. of Contract.	Name	Highest Authority given before closing the Contract, as far as shown by the Records.		Estimate of Amounts involved as shown by extension of Tenders.	
		Authority.	Date.	Under O. in Council.	Not under O. in Council.
				\$	cts.
47	Patent Bolt and Nut Co.	Chief Engineer.	4th July, 1879.		2,419 71
48	John Ryan.	Minister.	18th Aug., 1879.		600,500 00
49	R. Dickson.	Secretary.	21st July, 1879.		15,802 00
50	Miller Bros. & Mitchell.	Minister.	23rd Aug., 1879.		35,425 00
51	Dominion Bolt Co.	Secretary.	do.		2,662 50
52	North-West Transportation Co.	do.	do.		24,000 00
53	Barrow Haematite Co.	Minister.	25th July, 1879.		781,000 00
54	Guest & Co.	do.	do.		258,000 00
55	West Cumberland Co.	do.	do.		128,500 00
56	The Kellogg Bridge Co.	do.	24th Nov., 1879.		1,384 00
57	The Truro Patent Frog Co.	Contract.	21st Sept., 1879.		12,000 00
58	W. Hazelhurst.	Minister.	27th Feb., 1880.		6,096 00
59	Whitehead, Ryan & Ruttan.	Chief Engineer.			27,750 00
60	D. O. Mills—A.	} Order in Council	22nd Dec., 1879.	2,727,300 00	
62	D. O. Mills—C.			2,056,950 00	
61	D. O. Mills—B.	do.	25th Nov., 1879.	2,573,640 00	
63	D. O. Mills—D.	do.	13th Dec., 1879.	1,746,150 00	
64	Ryan, Whitehead & Ruttan.	do.	16th March, 1880.	7,350 00	
65	James Crossen.	Secretary.	3rd March, 1880.		24,961 00
66	Bowie & McNaughton.	Minister.	7th March, 1880.		438,914 00
67	Moncton Car Co.	Secretary.	11th March, 1880.		70,800 00
68	Ontario Car Co.	do.	3rd March, 1880.		6,230 00
69	North-West Transportation Co.	Order in Council.	14th June, 1880.	48,000 00	
70	do do.	do.	15th May, 1880.	Schedule rates	

FORT FRANCES LOCKS.—No contract made. Work performed by days' labour. Authority sent to Mr. Sutherland to commence work, by letter of the Secretary dated 11th May, 1875.

T. TRUDEAU,
Deputy Minister of Railways and Canals.

It will be seen, that throughout these contracts, a considerable portion were awarded by either the head, or some subordinate of the Department, without having been submitted for approval to the Privy Council.

It is true that the statute does not require the award to be authorized by the Privy Council, unless where the lowest (available) offer is passed over; but it is suggested for consideration, whether unless regulations are to be adopted of a more stringent character than those in force up to this time, so as to exclude offers of a gambling character, it would not be well that all contracts involving sums above a specified amount, be awarded only after consideration by some higher authority, for instance, a Committee of the Privy Council.

Large sums have been expended on this railway, through transactions originated, directed, and concluded solely by the Department without the authority of the Privy Council.

In addition to the inexpediency of depending in such cases entirely on the judgment of one person, the practice seems to us to cast upon the individual a responsibility which is dangerous to himself and injurious to the community; it naturally concentrates upon him party and personal pressure for his favours, and often party and personal abuse for his action, while it fosters in the community a habit of bartering for influence, because it is supposed to be more easily and more effectually exercised over one mind than over more

We think it would be an advantage, if no transaction involving an expenditure beyond a specified sum, could be arranged for by competition or otherwise, unless such expenditure should be first directed by some authority higher than a department, and unless the report or recommendation of the Department in which such direction is asked should, amongst other things, give a written report from its engineer—when the object of the expenditure involves engineering results—and this whether that report be in accordance or not with the step recommended.

In order to avoid the responsibility of passing over any tender which is known to be low enough to call for the contract but which cannot be accepted owing to some omission in the qualifying conditions, it has occurred to us that it would be well to prevent the knowledge of its contents reaching the Department unless and until all preliminary conditions have been first fully performed, and with this object that the tender should be enclosed by itself in a sealed envelope, which, together with the securities and other

necessary documents, should be enclosed in an outer envelope. If on opening the outer envelope, the securities and accompanying documents were not sufficient to entitle the tender to enter the competition, then the inner envelope should be forthwith transmitted unopened to such address as may be given for that purpose in the outer envelope; but if from any cause it should be opened by the Department, then it should be entitled to compete on the same terms as all regular tenders.

If it should be decided to accept personal covenants by way of security with tenders, questions might arise respecting the financial standing of the sureties, and the regulations might provide that in doubtful cases, the decision of such question would be left to some authority, either independent of, or acting with the Department. If the tenderers were parties to this covenant, and were well known capitalists, the document would be necessarily sufficient; if not the parties might, before the last day for receiving offers, learn from the Department whether the sureties they could get would be satisfactory; or in cases of large contracts, where the difference in amount between the various tenders was likely to be considerable, and a short delay would not be detrimental, then the advertisement might name two different days, one for opening the outer envelope, and a later one for the consideration of those tenders which should be shown to be entitled to compete—the intervening period permitting enquiries to be made as to the sufficiency of sureties, if any, offered with tenders.

We submit for consideration whether it would not be expedient to regulate the letting of contracts by rules to the following, or some similar effect:—

No contract expected to involve an expenditure beyond [\$50,000] shall be made, and no competition therefor shall be invited by the [Department of Railways and Canals] unless such expenditure be first authorized by a resolution of [the Treasury Board.]

Such authority shall not be given where the object of the contract involves engineering results, unless the recommendation from the head of the department on which such authority is to be based, is accompanied by a report of the Government Engineer having charge over the subject.

That before submitting to competition the construction of works by the said Department or the supply of material to be used therein, an official estimate shall be prepared concerning the value of each item, on which prices are to be asked.

That in cases where inconsistency in prices would be likely to lead to a material increase or loss of profit to the contractor, according as particular items should after the contract be proportionately increased or diminished, then prices shall be affixed by the Department to the respective items in the bill of works, and competition shall be invited only as to a general percentage above or below the prices at which the contract will be taken.

That all tenders in such public competitions shall be made on forms to be supplied by the Department.

That with each tender the party making it shall be required to furnish such security as may be designated in the form, his tender containing a covenant under seal, that such security shall be forfeited if he fail to fulfil his offer, by entering into a contract and furnishing the requisite security.

That in each case the amount of security with the tender shall be fixed without relation to the amount of the tender, and shall be such sum or sums as may be stated in the form.

That the security with the tender may be in cash or debentures, or bank or other valuable stocks, or personal covenants from responsible parties, or partly one and partly the other, as shall be mentioned in the form, which shall also enumerate the companies whose stock will be accepted.

That in no case, unless specially directed by an Order in Council, shall the security with the tender be less than [one] per cent. of the probable total outlay according to the official estimate before mentioned. That if the security be given by a personal covenant instead of by any other of the prescribed methods, then it shall be [two] per cent., unless otherwise specially directed by Order in Council.

That the receipt of such security with a tender shall be qualified by a condition, that in no case shall it be forfeited to an extent beyond the difference between the amount of that tender, and the one next above it, which shall have been accompanied by the necessary security, and received and opened as regular.

That each tender shall be placed in a sealed envelope by itself, which together with the documents necessary to comply with all preliminary conditions, shall be enclosed to the Department in another outer envelope.

That it shall be the duty of the Departmental officials not to open the inner envelope, until it be decided that all preliminary conditions have

been fulfilled, and if these conditions be not fulfilled then to transmit forthwith the inner envelope unopened, to such address as may be given for that purpose in the outer envelope.

That if this duty be neglected so that the inner envelope cannot be returned unopened, then the tender shall be entertained as if all necessary preliminary conditions had been complied with.

That the receipt of each tender shall be recorded in a book kept by the Department for that purpose—the entry showing the time of its receipt, and a number or distinguishing mark by which it may be known—the same number or mark being put on the envelope of the tender.

That tenders, after their receipt and before their opening, shall be kept as valuables in some sufficient safe or vault.

GENERAL CONCLUSIONS.

As far as concerns the period over which our enquiry has extended, the evidence as a whole leads us to the following conclusions :—

That the construction of the Canadian Pacific Railway was carried on as a Public Work at a sacrifice of money, time and efficiency.

That in this work numbers of persons were employed as Government officials who were not efficient in the positions to which they were appointed, having been selected on party grounds, irrespective of the question whether their engagement would be advantageous to the public interests.

That during the progress of the undertaking, delays occurred which would not have occurred, but for the necessity of staying operations from time to time until the necessary appropriations were made by Parliament.

That the examination of the country over which the line was located was inadequate, failing to give to the Government that information which could have been given, and which was necessary to enable the Government to estimate, with reasonable accuracy, the probable cost of the railway.

That large operations were carried on and extensive purchases made with much less regard to economy than would have happened under similar circumstances in a private undertaking.

That the practice which permits a Department to originate and enter upon transactions involving the expenditure of large sums of money, and, without other authority, to award the contracts under which such expenditure is intended to take place, is a disadvantage.

That the system under which the contracts were let was not calculated to secure the works at the lowest price or the earliest date ; it pledged the Department to treat with tenderers irrespective of their good faith or financial strength, upon the single test of a deposit of money, so small as to be useless as a guarantee, the possible efficacy of this being neutralized by the invariable practice of returning his deposit to each defaulter. Such a system promises to every tenderer a position which he risks nothing to procure, and which he may at his option abandon, or retain, or sell if he can.

GEO. M. CLARK,
SAMUEL KEEFER,
EDWARD MIALL.

OTTAWA, 8th April, 1882.

APPENDIX.

STATUTORY DECLARATION OF ALBERT H. CLARK.

"COUNTY OF SELKIRK, }
 "To Wit: }

"In the matter SIFTON, GLASS & Co's Telegraph Contract.

"1, Albert H. Clark, of the City of Winnipeg, in the County of Selkirk, do solemnly declare that I was foreman on the contract for building the telegraph line from Winnipeg to Fort Pelly.

"2. I have been over all the line except a small piece from Shoal Lake to Lake Manitoba. I superintended all the work from Pelly to within a few miles of Mossy River, and I am quite sure that in no single instance were poles set in the snow and frost alone, but in every instance the poles were the best that could be obtained in the different localities, and they were well sunk in the ground, and in wet or boggy places were always well braced.

"3. Mr. Sifton gave me the most positive instructions to have the work well done, and those instructions were carried out always to the best of my ability.

"4. I have seen it stated that the line was carelessly built, and that was the reason it was so hard to keep it in repair, but I am quite sure that those making such statements must have known that they were drawing upon their imaginations; for, indeed, some who have so spoken have never even seen the line.

"5. I have seen a great many telegraph lines, but have never seen one as difficult to build as this, and have never seen a place where it was so difficult to keep a line in repair; and I very much doubt if there has ever been a line built in such an unfavourable place, when all the swamps and water-stretches are taken into consideration, together with the fact of the country through which the line passes being so thinly settled. No person can form any idea of the difficulties except he has been on the ground. Having had the care of part of the line for some time, I am sure Mr. Sifton did all in his power to keep the line in order, his instructions being to keep communication open, no matter what the expense might be, if it were at all possible.

"And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign, intituled 'An Act for the suppression of Voluntary and Extra-Judicial Oaths.'

"A. H. CLARK.

"Declared before me, at Winnipeg, }
 in the County of Selkirk, this }
 22nd day of October, A.D., 1880. }
 "J. A. M. ATKINS, }
 A Commissioner." }

"STATUTORY DECLARATION OF WILLIAM M. SIFTON.

"I, William M. Sifton, of Lake Manitoba Narrows, of the North-West Territory, do solemnly declare that I have now, and for over two years have had, under my charge the Telegraph Line from Shoal Lake, fifty miles east of Lake Manitoba, to Duck Mountain. My instruc-

tions from Mr. Sifton are to spare no cost in keeping the line in repair, and I have followed these instructions to the best of my ability; I have read the statement of John Conners before the Royal Commission, I had this man on the line and had to discharge him for neglect of duty. The statement made by him as to my going away trading and neglecting the line is false, as also is the statement about the way in which the line is built. I have been over the line from one end to the other, and in every case, the poles put in were the best that could be procured in the locality; and they were put in to a depth of not less than three feet, sometimes greater. I consider that the work on the line was well done throughout. As to the work assigned to Conners, if he was dissatisfied, he could have left at any time. The fact of his remaining until discharged, shows conclusively that the work was not unreasonably difficult. When found necessary extra hands were always put on to assist. I think I can explain why there has been so much difficulty in keeping the line in proper repair. The principal trouble has been in and about Dog Lake; at this place there are miles of swamp, and from Duck Mountain to Selkirk the water has been rising for the last two years, and now, I am quiet safe in saying, that in all the swamps the water is from one to two feet higher than it was when the line was built. Owing to this rise of water there are districts, many miles in extent, entirely covered with water, which were quite dry at the time of the construction of the line. Much of the line has been re-built. I am at present renewing poles, and next summer I am sure that the whole of the line will have been renewed and in good order. If it were not for the increase in the amount of water, I would have no difficulty in keeping the entire line in perfect repair, but at present, taking the whole line into consideration, I know of no other line of equal extent which offers such great difficulties to the repairer. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of an Act passed in the thirty-seventh year of Her Majesty's reign, intituled 'An Act for the suppression of voluntary and extra judicial oaths.'

"WM. SIFTON.

"Declared at the City of Winnipeg this eighteenth day of October, in the year of Our Lord 1880, before me,

"JOHN H. BELL,

"Justice of the Peace."

"STATUTORY DECLARATION OF HENRY W. WYNNÉ.

"COUNTY OF PROVENCHER. }
"To Wit: }

"In the matter of Sifton, Glass & Co's Telegraph Contract.

"I, Henry W. Wynne, of the Town of Dominion City, in the County of Provencher, do solemnly declare that I was foreman for Sifton, Glass & Co. when they were building the line west of the Narrows of Lake Manitoba.

"2. That I have full knowledge of the manner in which the line was built.

"3. That I had written instructions from Mr. Sifton as to the manner in which the work was to be carried out

"4. That the work was performed according to instructions in a good and substantial manner, the poles were well sunk in the ground, and in wet places were properly braced, and were of the very best material that could be secured in the locality.

" 5. I have heard that statements have been made to the effect that the poles were only put down in the snow and frost and as soon as spring came they fell down, and I have no hesitation in saying that such statements are base falsehoods and could only be made for the purpose of injuring Mr. Sifton.

" 6. I completed the line about thirty miles west from Lake Manitoba, and from what I saw of other parts of the line I am satisfied that the work was as well done as was possible with the poles that could be obtained in the respective localities.

" And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign, intituled An Act for the suppression of voluntary and extra-judicial oaths.'

"HENRY W. WYNNE.

" Declared before me in the County of Provencher, this 11th day of November, 1870.

"MARK WHITLEY,

"Justice of the Peace."

STATEMENT OF MR. BELL.

"LEE'S FERRY, ARIZONA, U.S.A.,

" 26th July, 1881.

"DEAR SIR,—As I believe that evidence which I can give to the Commission upon the subject of contract No. 25 is very important ; and as the absence of Mr. Miall has prevented his brother Commissioners from taking my evidence in regular form ; and as I have had to leave Ottawa suddenly for work here in the Western States, where I shall probably remain for a long time, I feel it my duty to take the only means at my disposal for putting my evidence on record, and, therefore, I beg leave to submit to the Commission the following statement :—

" In the summer of 1879, with the assistance of Mr. A. J. Hill, now in charge of part of the works on the Canadian Pacific Railway in British Columbia, I made, under the directions of Mr. Sandford Fleming, a re-measurement of the earthwork, rockwork and ballasting executed under contract No. 25, of the Canadian Pacific Railway. My instructions were contained in a letter from Mr. Fleming, dated about 20th May, 1879.

" My measurements were almost all made in excavation, and not in embankment, as has been intimated in other evidence. The contents of line cuttings were ascertained by means of cross-sections of the finished work, the form of the original surface being transferred from the cross-sections taken of it before the contract work was commenced. The same means of measurement were used in such borrow-pits as could not be measured closely by ordinary tape measurements. The quantity of excavation in ditches was ascertained by a tape for the width, a levelling rod for the depth, and by chaining along the line for the length, where the the engineers' working stakes were not regularly and satisfactorily found. In taking the depths of the ditches, the tape was stretched across the ditch along the original firm surface, the rod was then driven down with considerable force into the soft mud and water to the firm bottom, and the depth was read off the rod where the tape crossed it. Particular care was always taken to ascertain the full depth, and in cases where, from the presence of much water, or from any other cause, there could be an uncertainty about the exact depths being ascertained, two or more soundings were made.

"The original firm surface was always easily found, for though there had been fire almost all along the sides of the railway, there were always portions of unconsumed sods, patches with the unburned roots of grasses, or charred fragments of the stems of small shrubs, which showed plainly the level down to which nothing but the green growing moss, shrubs and grasses had been destroyed, and at which the true excavation had been commenced, and in no case where measurements were made, as given in my returns, was there any difficulty in ascertaining the correct dimensions of the work as executed. In some cases it was impossible for me to ascertain beyond doubt the correct quantity of excavation, though the embankments were measurable and were measured, and in other cases neither embankment nor excavation could be measured; but in both such cases, which, in the aggregate, had a length of only about two miles out of the eighty of the length of the whole contract, I adopted the quantities returned by the engineer in charge.

"There is only one embankment of large size the contents of which was ascertained by measuring the embankment itself. The measurement was effected by means of cross sections from the original firm surface on one side of the embankment, to the same surface on the other side; and the amount of compressibility of the material in the embankment, which was almost entirely sandy loam and boulders, was carefully ascertained by direct experiment.

"In every case in which there was a possibility that the digging of ditches might have caused a subsidence in its immediate neighbourhood, cross-sections were taken to the extent of 100 yards or more on each side of the railway, but, except in the cases mentioned above, where I adopted the engineer's quantities, and one other case (that of an off-take drain of considerable extent) there was no appreciable change of surface which could have caused the apparent excavation to be anything less than the real. In all such places, excepting those just mentioned, the sides of the ditches were plumb and firm, and the bottoms were also so firm that a man could walk on them without sinking more than through the few inches of mud and water lying on them. There was therefore no evidence whatever of any bulging of the sides or blowing up of the bottoms. In the case of the off-take above mentioned the sides of the excavation were plumb and very firm—the bottom also was generally firm, in many many places very firm—but in some places it appeared as if a firm stratum had been cut through into a comparatively fluid mass underneath. Long cross-sections were taken at several points, showing that at the time of the off-take there was a depression of about two and a-half feet. As the stuff which was taken out of this off-take was deposited in heaps alongside the ditch, I selected a portion of the ditch, about 200 feet long, and measured carefully the excavation and the stuff taken from it and deposited alongside. The deposited stuff was in low, flat heaps; it had not been subjected to any compression or to any shrinking agency except the draining out of water and the drying by the air. The volume of the deposited stuff was very much less than the volume of excavation, and I am fully of opinion that no more stuff was excavated than what the present size of the excavation shows; also I am of the opinion, from examining the ditch and the surrounding ground, that there is in this place a surface layer of comparatively solid peat four or five feet thick; that underneath this there is semi-fluid peat, and that as the excavation proceeded water and semi-fluid peat were drained away but not excavated, and that thereby the surface layer sank down, making the depression of between two and three feet that I have mentioned.

"In connection with the excavation of this ditch, I may mention here that in several places short poles, about three inches in diameter, are laid across the bottom and stuck by

their ends into the two sides. These are said to be for the purpose of keeping the bottom from blowing up. But inasmuch as they are laid in many places where there is no sign of a tendency to such blowing up, in fact in places where the bottom may be called solid; as they are laid fifteen to eighteen inches apart, and consequently could not possibly be of any influence to prevent the bottom from blowing up had it been so inclined; and as even if the bottom had blown up, the emptied stuff, semi-liquid in itself, would simply have been washed away by the stream through the ditch and done no harm to anything,—I have not allowed anything for them, as they are utterly valueless for the purpose pretended, and in fact are only a make-believe.

“Also in connection with this ditch, the clearing done is nearly 100 feet wide, nine-tenths of which is ostensibly for the purpose of providing clear ground on which to deposit the stuff from the ditch. But as the ditch is only $8\frac{1}{2}$ feet wide and $4\frac{1}{2}$ feet deep (and the waste heap's have a less cubic content), a clearing of nearly 90 feet wide gives an extremely and uselessly large area of spread ground. In fact the trees were small and stunted and *very thinly* scattered over the swamp, and all the wasted stuff could have been, without the least difficulty, deposited among them without cutting a single tree, except what was growing on the exact site of the ditch. The ditch and clearing are about a mile long.

“From some notes which I saw in the books of the engineers in charge at out moss, from my having seen on the works a certain use to which moss was frequently applied, and from a conversation which I had with one of the assistant engineers, Mr. Wicksteed, I believe the chief cause of the difference between my quantities and the quantities of the engineers in charge is owing to the engineers having measured all the green living moss on top of peat as if it were solid earth, instead of, as it very often was, (according to Mr. Wicksteed, unless I completely misunderstood him), a frozen mass of snow water and moss, cut with an axe and generally thrown into the embankment. Mr. Wicksteed at first objected to this system, but he afterwards complied with the rule that had been adopted on other sub-sections. In my measurement, I made no allowance for the moss growing on the solid peat, except in a few places where the depth of the moss was so great, that a considerable portion might be said to be partly converted into peat, though by no means of the same consistence as peat, and in those places I made what I intended to be, and I believe to be, a very full measurement as if of all solid peat.

“In the last paragraph, I have said that from a certain use to which I had seen moss frequently applied, I had come to the opinion that the engineers had measured moss, as solid peat. The circumstances are as follows:—Notwithstanding that for a great portion of the contract the moss lying on the firm peat had, at the time of my measurement, been consumed by fire, there were very many cases when it was evident that the first sods of moss or peat had been laid carefully along the sides of the ditches, and so dressed that they appeared to be in their natural position. This gave to the ditches an apparent depth considerably greater than the true, and I believe this false depth was in very many cases, if not almost in all, undetected by the engineers. I have been told that it was detected by some of the engineers, and that former measurements were corrected accordingly. But I believe from the appearances presented at the time of my measurement, that many cases were never detected by the engineers. In one case that came under my own observation, the falsification was so skilfully done, by what I may call “underpinning,” that it was not detected by any of my party until an accident brought it to light to myself, and after this several cases of the same kind were discovered on other parts of the line.

"But besides the difference in the total quantity of work executed according to my measurement, and according to that of the engineers, I make a very serious difference in the value of the work done, owing to what I consider a very wrong interpretation of the specification relative to loose rock and solid rock in boulders. In my report on my measurement, I alluded to this difference under the word "classification." As far as I have seen the evidence taken before the Commission, I do not see that any one has taken this point up, and I consider this a very serious matter, as it involves the payment of about \$30,000.

"The specification for loose rock seems to me very distinct, explicit and easily understood. It says that rock *in situ*, that is rock in the place in which nature formed it, which has been so broken up by the action of the weather or the convulsions of nature, but still lying in its original place, relative to its immediate surroundings is to be called loose rock, and besides that, all boulders of a size between 14 and 40 cubic feet, taken out of excavations are to be classified as loose rock, while all boulders of over 40 cubic feet are to be classified as solid rock, and all under 14 cubic feet are to be classified as ordinary earth. There seems to me to have been so very little true loose rock *in situ*, that I could not say there were more than a very few yards altogether, and consequently I classified all rock *in situ* as solid, and all the loose rock which I give in my return is made up of boulders alone.

"It was evident to me, in examining the works, that during the progress of excavation such boulders as could not be readily loaded like ordinary clay or gravel into the carts or waggons, were dropped down into the bottom of the cutting, and when the cutting was required to be cleared out they were loaded on "stone boats," hauled out, and dumped in the most convenient places, generally on the sides of the adjacent embankments within the first 300 or 600 feet of length. In this position they were easily examined and their gross cubic contents ascertained. If I noticed in these boulders that a large proportion were, or had been before being broken up, of a much less cubic content than 14 cubic feet, I assumed that no boulders of a greater size than 14 cubic feet had been buried in the embankments, and I made my estimate accordingly. In many cases I adopted another plan of estimating when such plan appeared to be more suitable. I supposed the cutting from which the boulders had been taken to be divided longitudinally into slices of six feet thick. I estimated by careful inspection of every large boulder appearing in the two slopes of the cutting, down to much less than 14 cubic feet, the gross cubic content of all such boulders, and I assumed that so much occurred in each longitudinal slice of six feet thick; and I made my estimate accordingly. Sometimes I used both methods of estimating and adopted the more liberal result.

"It does not appear from the books of the engineers in charge that the boulders in cuttings were ever actually measured, even to test the correctness of the principle on which the engineers' estimates were made. A certain percentage was assumed, in fact guessed at, in each case. One of the assistant engineers, Mr. Middleton, told me of one case where he had estimated the quantity of loose rock in boulders as 25 per cent. of the whole cutting. His superior, Mr. McLennan, instructed him to change his estimate from 25 per cent. to 35 per cent., and then the district engineer, now dead, instructed Mr. Middleton to retain the estimate of 25 per cent., though, in his opinion, it should have been only 20 per cent. This cutting is a short distance westwards from a very high viaduct, about four miles from the east end of the contract. My estimate is very much less than the lowest above given. This is one of at least two cuttings where it may be seen by Mr. Middleton's books, that besides paying for 25 per cent.

of rock in boulders supposed to be taken from the cuttings and deposited in embankments, there is a charge in the form of a large amount of additional rock excavation, for hauling out these self-same boulders in the final clearing up of the cutting. The second cutting where a similar charge will be seen is a few miles further west, at a heavy embankment over the Oskondago River.

"In both these cases the quantity of boulders actually hauled out, (and most likely this was the true total quantity of loose and solid rock boulders), could very easily have been ascertained, and in both these cases the hauling out was twice paid for; but the second payment was under the guise of an increased quantity of work in rock cutting which was never done.

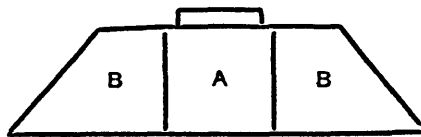
"At a ballast pit, about ten miles west of Savanne Station, there is a cutting, the quantity of which I do not exactly remember, but it is about 15,000 cubic yards, of which the engineers say 40 per cent. was loose rock. The material is a coarse, loose, clayey gravel, and there is not in the slopes of the cutting or of the embankment made up from it a single indication, that there can have been more than a very few cubic yards of boulders, such as should be classed as either loose or solid rock. The usual rule of leaving the heavy boulders for the last is here missing, except in the case of a very few which still lie at the side of the cutting, and which I took account of in my estimate. It is impossible for me to believe that 6,000 cubic yards of such boulders can have been so disposed in that hill, as that so little sign of their having ever been there is visible now, or that they can have been so disposed in the adjoining embankment, as that they should be completely hidden by smaller stuff.

"I have stated above that the difference between me and engineers in charge relative to the classification of loose rock in boulders, is due to what I consider a very wrong interpretation of the specification on that point. The specification says that rock *in situ* that can be taken out by a pick without blasting is to be loose rock. But from a conversation which I had with Mr. Middleton, in which I asked him to explain his reason for having retained such a large amount of loose rock in boulders on one of his sections where I was then working, it appeared to me that the specification was rather perverted to mean that stuff of a stony nature which had to be excavated or broken up by a pick should be classified as loose rock, as he endeavoured to prove that the specification would bear such a construction.

"But besides the line cuttings there are numerous portions of ditches, even bog ditches, from which the engineers say by their books that a very large quantity amounting to tens of thousands of yards of boulders, classified as loose rock, were taken and deposited in the embankments, or elsewhere out of the ditches. In these cases also there was no measurement of the boulders, though the true quantity could have been easily ascertained—the same system of a percentage varying from 5 per cent. to 25 per cent. of the whole contents of that portion of the ditch in which they lay having been carried out. These boulders were deposited by icebergs, or some other natural agent, in a comparatively uniform layer on a kind of quicksand or silt under peat, and lay sometimes almost closely together, and sometimes considerably separated one from another, but were always capable of actual measurement. As there is scarcely anywhere the slightest trace of any boulder from such ditches of a size so great as even one cubic foot having been deposited in embankments; and as in very many cases there is no appearance of the boulders now lying in the ditches having ever been moved since they were deposited there by nature, and as in general, if not universally, boulders of a size much smaller than fourteen cubic feet and down to less than half a cubic foot are still lying in the

ditches evidently undisturbed; where the engineers have returned 'loose rock' boulders to the extent of 10, 15 or 20 per cent. of the full size of that part of the ditch, it is impossible for me to believe that any boulders of a size approaching to nearly fourteen cubic feet, are hidden in the embankment (as one of the engineers gave it in his evidence, when he said it was impossible for him to know what was in the embankment), and that the little ones are left behind in the ditch where they can still be seen. This system of paying for loose rock in bog ditches where the boulders still lie undisturbed was carried out not simply in a few isolated cases, but almost all over four-fifths of the length of the contract.

"There is still another case in which too large an amount of loose rock in boulders has been allowed by the engineers. Some portions of embankment, where enough ordinary earth or peat was not readily obtainable, were made up of boulders gathered in the immediate vicinity, and the amount was calculated by means of the cross-sections for the completed embankment. One of these portions I remember particularly well. A very large area of ground was covered with boulders, and there was within an easy distance much more than enough of boulders less than fourteen cubic feet to make the required embankment, and as the boulders used were undoubtedly carried on hand-barrows (one of which was lying at the slope of the embankment at the time of my measurement) which was the only practicable means of carrying them, it is not likely that the workmen searched for stones of a ton weight (thirteen cubic feet) and left smaller ones lying convenient to the work. But I had occasion to cut into the embankment at several places within four hundred feet long, and from the examination then made I do not believe there were any 'loose rock' boulders put into the embankment. But the cutting into this embankment laid bare the fact that though the quantity of loose rock returned by the engineers in charge was for the embankment completed to its full cross-section, the boulders formed merely a core in the middle just big enough to support the sleepers and track, the rest of the cross section being filled up with ballast. I had better illustrate this by a sketch:



"The portion 'A' is all that was made of boulders, the portions 'B B' were made up of ballast. The full size of the embankment 'A' and 'B B' was estimated by the engineers as made up of loose rock and paid for as such, while the portions 'B B' being made of ballast, which was paid for according to the measurement of the quantity that was taken out of the pits, without reference to where it was deposited, were thus doubly paid for, first as loose rock at 90 cts. per cubic yard, and second as ballast at about 30 cts. per cubic yard. This portion of embankment is near the second diversion of the Oskondaga River.

"In several cases the engineers have allowed a large quantity both of loose and solid rock for boulders lying partly above the general surface of the ground. To ascertain as nearly as possible the true quantity to be allowed in each of such cases I measured, individually, all the boulders above the general surface of a large area of the adjoining ground, and I made my estimate accordingly, arriving at a quantity vastly less than that allowed by the engineers.

"There are two kinds of work called by the name of rip-rap—one, rip rap proper for protecting the slopes of embankments from the action of water; and the other, the material

used to fill stone drains (trenches filled with stones). As far as the *quantity* of the latter class is concerned, I have nothing of importance to say, but inasmuch as the specification says that when any material taken from a cutting is used and paid for in a higher class of work its value in the cutting is to be deducted; as I believe that all the stones used in these stone drains were undoubtedly taken out of the cuttings and paid for as rip-rap in the drains; and as there is not in the books of the engineers an instance of the value of the stones in the cuttings being deducted; I believe a very large deduction should be made on this account from the estimates of the engineers; but I did not feel that I could positively affirm that the stones, or what part of them had been taken out of the cutting, and therefore I did not make the deduction.

"In the other kind of rip-rap—namely, that for the protection of embankments from water—I believe I deducted all that the engineers had returned, as the work was practically worthless, and as there was not in any case more than the slightest attempt at building up the stones, which were merely dumped over the sides of embankments in the same way as in numerous cases boulders and solid rock from cuttings were dumped over as waste. In one short piece about 100 feet long, the stones which were taken from an adjoining rock cutting seemed to have been laid with some care, but in reality they are part of the embankment within the regular dimensions; and they are now covered with ballast put over them so as to make the top of the embankment of the proper width, and the ballast, which is sand, runs out into the water, from which rip-rap was supposed to protect the embankment. In another place not far from that just mentioned, a piece of so-called rip-rap is returned by the engineer in charge of that section as having been built twice because it had been washed down and rebuilt, but when I saw it it was merely a loosely-built plumb wall, built about under the ends of the sleepers, barely sufficient to retain the inner filling of the embankment and support the road. After my inspection of it and before my leaving the work it was covered over with sand ballast and stumps which, as in the last mentioned case, ran out unprotected into the waters of Hay Lake.

"In very many cases, petty perhaps in detail but of considerable importance in the aggregate, and clearly indicating the system pursued on the contract, the contractors were paid by a suppositious quantity of rock or earthwork for work done of a totally different nature—such, for instance, as that already given where a certain number of cubic yards of rock were allowed by the engineers for hauling out the boulders from cuttings, the removal of which boulders having been already allowed for in their measurement in excavation; the "fighting of fires" paid for by a number of yards of earthwork, the fires having been caused by sparks from the contractors' engines and men, the contractors by their contract being solely responsible for such damage; the paying by a certain quantity of rock excavation for the building up, with stones from a neighboring rock cutting, of the burned ends of a wooden culvert, burned, undoubtedly, through the agency of the contractors' workmen; the paying by a certain quantity of rock excavation for the removal of large blocks of rock from a ditch into which they had been thrown by the blasting in a neighboring rock cutting, which blocks, however, it was plain to be seen were never removed, but a small trench, in fact, was cut to let the water of the ditch pass them—even if the blocks had been removed the contractor should have removed them at his own cost.

"My instructions were to measure the work done, so as to test the accuracy of the engineers' returns; but in doing this I could not avoid taking notice of great extravagance in the

amount of work done; and I think it right to call the attention of the Commission to what I have to say.

"The contract required the contractors to haul all stuff in the line-cuttings as far as it was required in the embankments, to an ultimate length of 1,200 feet, without any charge for extra haul; but the haul seldom or never was allowed to reach half the ultimate length before the contractors began to waste the stuff out of the cuttings, and to borrow other stuff to make up for the deficiency caused by the waste. As a rule, nearly all the boulders in clay cuttings and all the rock in rock-cuttings were wasted—that is, they were generally dumped out on the sides of the embankments, frequently outside of the specified width of embankments; but sometimes they were scattered over a wide area of the adjoining lands. One cutting of 7,000 cubic yards, at Hay Lake, could have all been put into the adjoining embankments without the haul exceeding 600 feet, and it could all have been put into one of the embankments, and still the haul would not have reached the limit of 1,200 feet; but the stuff in the cutting was all wasted, and other stuff was borrowed to take its proper place.

"Of off-take drains there are very many which, in my opinion, are utterly uncalled for. Off-take drains are not necessary, except when a great accumulation of water in the ditches would be injurious to the works. Vast numbers of these off-takes are in places such as flat, boggy ground, where no such accumulation could occur; yet in such flat, boggy ground (flat as shown by the length to which it was necessary to make the off-takes to obtain a few feet of fall,) off-take drains are made of lengths up to nearly a mile for the purpose of lowering the water in the railway ditches a foot or eighteen inches.

"In one place, at the deepest part of a little clay cutting, there is a large off-take drain made on each side of the railway, where a small culvert would have rendered the cost of one unnecessary.

"In several cases the deepest part of a rock cutting is selected as the proper place for cutting through the slopes of rock and making an expensive off-take, when all the water that can possibly pass through it, could be conveyed down the water-tables in the sides of the rock-cutting for a very small fraction of the expense incurred.

"In one case, where it is impossible that any but a very small quantity of water can ever pass through a stone drain built there, an excavation was made 80 feet long, 15 feet wide and 5½ feet deep, and double measurement was allowed for the excavation on the plea that water had to be contended with in the excavation—and this excavation was filled up with large and small boulders from an adjoining gravelly cutting, which boulders were paid for as rip-rap; all which excavation and rip-rap were unnecessary as the embankment there is made of such material as would allow all the water that can ever be there to readily pass through it without the slightest injury to anything; and the weight of the embankment on a soft bed was sufficient to make enough of depression without any excavation. This drain cost, as well as I remember the prices, very nearly \$1,000, an unnecessary expenditure.

"In another place a borrow pit, 500 or 600 feet long, was made on the high side of the railway. The bottom of the pit could, for a few dollars, have been easily drained, so that any accumulation of water in the pit would have been perfectly harmless to everything; but no less than three stone drains (the stones paid for at \$3.50 per cubic yard) have been built under the embankment, and short off-takes made from them; and, besides, there is a catch-water drain about 800 or 1,000 feet long, made round the borrow-pit so as to prevent all water from getting into it. One end of this catch-water drain leads into the ditch of the adjoining embankment, while the other end is made through about 100 feet of solid rock, and then

across the railway by a box culvert built in solid rock, for the excavation of which double measurement was allowed, because, as said, of water having to be removed during the excavation; with regard to this removal of water, the engineers and contractors must have selected a very wet time for the excavation, for at the time of my measurement, then (June) there was little more than a trace of water in the culvert and approaches to it.

"In another plan where extensive borrow-pits of peat have been made, and a great deal of the rock from a rock cutting has been wasted on the sides of the peat embankment, whereby the embankment is made about twelve feet wider than what the specification requires, a stone drain has been built, through which water from the borrow-pits flow and spreads out over the swamp on the other side of the railway; a second culvert has been built about 100 yards off, draining the same borrow-pits, but there is a long off-take from it beginning in a cutting of slippery clay, eight or ten feet deep at the deepest, and about thirty or forty feet wide at the top, and carried down many hundred feet in length. The fact of the first mentioned culvert doing the same work, carrying the water across the railway, and then letting it spread out through the bush without any possible injury to anything, shows that at least the expensive and troublesome off-take at the second culvert is unnecessary.

"In another place a long, deep ditch has been made alongside the track, and several thousand cubic yards of easily excavated coarse sand taken from it and wasted. This ditch is said to have been made for the purpose of drawing off the water from a lighter portion of the same ditch. It can be plainly seen that the natural cause for this drainage is in the opposite direction from that adopted, and that by an expenditure of not more than two dollars the ordinary railway ditch would have been made to carry the required drainage by its natural course, more effectually than this large ditch, which cost over \$1,000.

"In addition to these cases of unnecessary extravagant expenditure, I may mention the tunnel—though any one may see by the profile there was a useless waste of money there. For this tunnel there was no price in the contract, but it was paid for by private arrangement at \$9 per cubic yard, amounting to about \$70,000 altogether. The price for solid rock cutting is given in the contract at \$1.50 per cubic yard; and the cost of an open cutting, instead of the tunnel would have been about \$35,000 or \$40,000, so that there was there an expenditure of at least \$30,000 that could have been saved to the country.

"I made no estimate of the work which I class as unnecessary and extravagant, but I am inclined to believe that it, including the tunnel, has amounted to between \$80,000 and \$100,000, besides the \$245,000, which I say is a correct estimate of the excess, due to the engineers' measurements and classification over what is right and just.

"I am sorry I have not kept a copy of any of my memoranda, which, as written in the field, are deposited in the Department of Railways and Canals. The cases mentioned are only a few that I can now quote from memory. There are hundreds given in my memoranda, but these will no doubt be sufficient to show the system pursued on this contract, and though I cannot now locate the cases, I feel sure the engineers in charge will have no difficulty in locating them from my description. I am sorry also that the circumstances which I have mentioned at the beginning prevent my giving my evidence in the usual way, when the matters referred to could be thoroughly examined, but I trust the Commissioners will accept my evidence in the only way in which I can now give it, and accept it as a true and unbiassed statement, as it is.

"I have the honour to be, Sir,

"Your obedient servant,

"To N. F. DAVIN, Esq., Secretary,
"Canadian Pacific Railway Commission, Ottawa."

"LEONARD G. BELL.

EXHIBITS.

The exhibits put in during the examination of witnesses, up to No. 324, are sufficiently described in the evidence, and all not hereinafter more particularly accounted for, have been returned to the Department of Railways and Canals.

Those which have been sent to the Department of the Secretary of State have S placed over against them in the right hand column; that an exhibit has been returned to the witness who put it in, is indicated by the letter R.

No. of
Exhibit.

85.	Copy of agreement between Whitehead, Sifton & Ward.....	S.
86.	Rowan to Carre, June 22nd, 1877.....	S.
87.	“ “ 30th, “	S.
88.	“ August 8th, 1876.....	S.
89.	“ July 31st, 1878.....	S.
90.	Carre to Fleming, Nov. 9th, 1874.....	S.
91.	Carre's statement of quantities.....	S.
92.	Rowan to Carre, July 22nd, 1878.....	S.
93.	Whitehead to Hon. D. McDonald (mortgage).....	R.
94.	Statement of advances made by Hon. D. McDonald.....	R.
95.	“ account between Hon. D. McDonald and J. Whitehead... ..	R.
96.	Smith to Whitehead, Sept. 20th, 1880.....	R.
97.	Articles of agreement, J. Whitehead and Fraser & Grant.....	R.
99.	Letters of Nixon to Molloy (claim).....	S.
102.	Moberly's Private Report to Fleming.....	S.
103.	Advertisement Weekly Mail, Nixon's Purveyorship	S.
110.	The <i>Free Press</i> , Dec. 19th, 1878.....	S.
114.	Carre to Fleming.....	S.
115.	“ Rowan.....	S.
136.	Whitehead's release to Mackintosh.....	S.
137.	Letter of Whitehead to Mackintosh as to sums paid.....	S.
218.	Tender B, Contract 42.....	S.
221.	Memorandum of agreement, Andrews, Jones & Co. and Morse.....	S.
222.	Telegram, Jones to McDougall.....	S.
226.	Agreement, Morse to Close.....	S.
227.	“ Morse & Co. and P. G. Close.....	S.
228.	Telegram, Fleming to Waddle.....	S.
229.	Waddle to Hon. A. Mackenzie.....	S.
230.	Fleming to Waddle.....	S.
231.	Agreement between Waddle and Perry.....	S.
232.	Glass to Waddle, telegram.....	S.
243.	Copy of agreement between Manning & Shields and P. G. Close.....	S.
286.	Telegram, J. N. Smith to J. D. Morse.....	R.
287.	“ “ “	R.
288.	“ Morse & Co. to J. N. Smith.....	R.
289.	J. D. Morse to A. J. Thompson.....	R.

ALPHABETICAL LIST OF WITNESSES EXAMINED.

Alloway, W. F.

Bain, John F.

Bannatyne, A. G. B.

Birrell, James.

Boulton, Alfred.

Bowie, Alexander.

Bown, Walter R.

Braun, Frederick.

Brown, George.

Brown, P. J.

Burpé, T. R.

Caddy, John S.

Campbell, George.

Campbell, H. M.

Carre, Henry.

Chapleau, S. E. St. O.

Clark, Albert H.

Close, P. G.

Conklin, Elias G.

Conners, John L.

Cooper, James.

Currie, D. S.

Davidson, Joseph.

Drope, T.

Drummond, Henry M.

Fairman, Frederick.

Fellowes, G. R. L.

Fleming, Sandford.

Forrest, H. F.

Fraser, James H.

Fuller, Richard.

Goodwin, James.

Haggart, John.

Hespeler, William.

Horetzky, Charles.

Jarvis, Edward W.

Jennings, Wm. T.

Kavanagh, Joseph.

Kavanagh, Timothy.

Kelly, Patrick.

Kirkpatrick, Wm. W.

Little, Wm. B.

Luxton, Wm. F.

Lynskey, Thos. J.

Macdonald, A. P.

Mackenzie, Hon. A.

Mackenzie, Chas.

Mackintosh, C. H.

Manning, Alexander.

Marpole, Richard.

McCormick, Andrew.

McEwen, Alex.

McDonald, John J.

McIlvaine, Samuel.

McLennan, Roderick.

McNicol, Edmund.

McRae, Wm.

McTavish, George L.

McQueen, A.

Mills, D. O.

Moberly, Walter.

Molesworth, Arthur N.

Molloy, John.

Morse, J. D.

Mulholland, John H.

Murdoch, Wm.

Nicholson, Frank.

Nixon, Thomas.

Nolin, Augustin.

O'Donnel, Hugh.

O'Loughlin, Macroy.

Farr, John.

Pepe, Hon. J. II.

Reynolds, Thomas.

Rowan, James H.

Ruttan, Henry N.

Ryan, James.

Ryan, John.

Ryan, Hugh.

Schreiber, Collingwood.

Schultz, John.

Shields, John.

Sifton, John W.

Smellie, W. B.

Smith, Col. W. O.

Smith, J. W.

Smith, Marcus.

St. Jean, Dr.

Stephenson, Rufus.

Strang, Andrew.

Stronach, John.

Sutherland, Hugh.

Sutherland, James.

Sutherland, Peter.

Sutton, R. T.

Thirtkell, John.

Thompson, M. M.

Trudeau, Toussaint.

Tupper, Sir Charles.

Tuttle, Charles R.

Waddle, John.

Whitehead, Charles.

Whitehead, Joseph.

Wilson, G. M.

The evidence of the above witnesses was given under oath, and reported at the time in shorthand by either Mr. A. Holland, or Mr. G. C. Holland, both sworn reporters.