

THE MONTREAL AND EUROPEAN
 SHORT LINE RAILWAY CO. AND
 JOHN J. MCCOOK, (AND BY THE
 ADDITION OF PARTIES, WILLIAM
 STEWART AND WILLIAM H.
 CHISHOLM, TRUSTEES UNDER AN
 INDENTURE DATED 27TH JULY,
 1883.)

PLAINTIFFS ;

1890
 ~~~~~  
 Mar. 24.  
 \_\_\_\_\_

AND

HER MAJESTY THE QUEEN.....DEFENDANT.

*Expropriation of a railway by the Crown—Special Act therefor, 50-51 Vic.  
 c. 27—Construction—“Present value of work done”—Allowance for  
 capital expended in railway.*

The plaintiff company had entered into an agreement with the Dominion Government to construct, in consideration of a certain subsidy per mile, a line of railway between Oxford and New Glasgow, N. S. They entered upon the construction of the railway, but when it was partially completed abandoned active work upon it for lack of funds. The Government, having previously obtained from Parliament authority to pay all claims standing against the company on account of their partial construction of the line, and to set the same off against the company's subsidy, was empowered by 50-51 Vic. c. 27 s. 1 to acquire “by purchase, surrender or expropriation the works constructed and property owned by the said company” paying therefor the amount adjudged by the court “for the present value of the work done on the said line of railway by the said company.”

*Held*, that the statute contemplated the taking of all the works constructed by the company and not a portion thereof; and where a portion only was taken compensation should be assessed in respect of the total value of the works.

2. That the words “present value of the work done” as contained in section 1 of the said Act, should, in view of the preamble and surrounding circumstances, be construed to mean the value of the works constructed and the property owned by the company at the time of the passing of the Act.
3. That the word “value” as used in the Act must be taken to mean the value of the property to the company and not to the Govern-

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY

*v.*  
 THE QUEEN. *Held*, that the company were entitled to compensation therefor.

Argument  
 of Counsel.

- ment ; and that compensation for the taking should be assessed at the fair value of the property at the time contemplated by the Act.
4. The company were in possession of a right of way that had been acquired by proceedings taken under certain provincial statutes not applicable to the case, and for which the County Councils of Cumberland and Colchester had, in aid of the company's undertaking, paid the proprietors whose lands were situated in such counties.
5. *Held*, that the company were entitled to an allowance for the use of capital expended in the enterprise.

THIS was a claim arising out of an expropriation of a railway in the Province of Nova Scotia by the Crown in pursuance of a special Act of the Parliament of Canada,—50-51 Vic. c. 27.

The facts of the case are fully stated in the judgment. September 9th to 24th and November 18th and 19th, 1889.

*Henry, Q. C., Ross and Sedgewick* (with whom was *P. F. Greene*, of the New York Bar) for the plaintiffs :

(1) The Crown must take all the works constructed, and not part.

(2.) The Act contemplates reimbursement and not compensation, otherwise Parliament had no reason to pass the special Act. Mere compensation would not be adequate or equitable in view of the fact that the Act, by its use of the phrase "present value of work done," bars any claim for compensation for the future value of the work to the company. We are entitled to be reimbursed for the value of the right of way, of the works constructed at the date of the passing of the Act, and for all necessary expenditure incidental to the construction of the works and the management and maintenance of the company.

*Graham, Q. C., Borden, Ritchie and Gregory* for the defendant :

The expression "present value of the work done"

indicates that the legislature had in view the probable depreciation of the works between the time of their construction and the passing of the Act. The value must be determined upon the evidence of the engineers who have examined the works for the purposes of this case, and not upon the cost of their construction to the plaintiffs. The company are not entitled to compensation for the right of way because, 1st, the Act only contemplates compensation for "work done," and the right of way does not fall within the meaning of those words; 2ndly, the municipal councils of the counties through which the right of way ran paid for it and not the company; 3rdly, the company proceeded in an irregular manner to get the right of way, and, consequently, have never properly acquired any property in it. Again, no allowance should be made to the company for the expenses of organization. That is clearly not within the contemplation of the Act which only speaks of compensation for the value of the work done on the railway itself.

With regard to the basis upon which damages are to be assessed here, in view of the authorities the case, after all, resolves itself into the simple exercise by the Crown of the right of eminent domain. The value of property taken in this way must be held for the purposes of compensation to be its market value. The company cannot be allowed anything that does not strictly enter into the value of the works in the market. The standard of its value is its means of producing pecuniary returns in the markets of the country (1).

BURBIDGE, J. now (March 24th, 1890) delivered judgment.

This case comes before the court on a reference by the Minister of Railways and Canals. By their state-

(1) *Cooley's Constitutional Limitations*, 5th ed. s. 565.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Argument  
 of Counsel.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.

Reasons  
 for  
 Judgment.

ment of claim the plaintiffs, the Montreal and European Short Line Railway Company, and John J. McCook, claim from the defendant six hundred thousand dollars as compensation for the value of a line of railway, partially constructed by the company, between Oxford and New Glasgow, in the Province of Nova Scotia, with a branch to Pugwash, and for railway materials and other property of the company expropriated by the Crown.

By the Act of the Parliament of Canada, 45 Vic. c. 14, provision was made for a subsidy not exceeding \$3,200 per mile, nor in the whole \$224,000, for a railway from Oxford to New Glasgow in the Province of Nova Scotia.

By the Act of the Parliament of Canada 45 Vic. c. 73, "The Great American and European Short Line Railway Company" was incorporated with power, amongst other things, to lay out, construct, equip, maintain and work a continuous double or single track iron or steel railway, and also telegraph and telephone lines throughout the entire length of the said railway, with the proper appurtenances, from a point at or near Cape North, in the Island of Cape Breton, to the Strait of Canso, and from New Glasgow to a point at or near Oxford, Amherst, or some other suitable point of intersection with the Intercolonial Railway of Canada; and for the purpose of making the railway line and connection with the City of Montreal more direct, the company was empowered in so far as might be consistent with the laws for the time being in force in the State of Maine, and other States in the United States of America, through which the said line, or any branch thereof might pass, intervening between the Province of New Brunswick and the Province of Quebec, to hold, acquire and maintain a part of such railway across any part of the State of Maine, or of the said in-

tervening States. The company was also authorized to build, purchase, lease, charter, possess and operate steam or other vessels or ships for the purpose of transporting freight or passengers across the Strait of Canso, and between the terminus of the said railways in the Island of Cape Breton and the Island of Newfoundland, and between the said Island and Europe; and to acquire by lease, gift or purchase, or by amalgamation with any other railway company or companies, any railway projected, in course of construction or constructed, either in the United States or in Canada, in the general direction of the lines authorized as mentioned.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

On the 28th day of July, 1882, an agreement was entered into between The Great American and European Short Line Railway Company of the one part and Her Majesty the Queen, represented by the Minister of Railways and Canals, of the other part, by which for the subsidy therein mentioned, the company undertook to construct, in accordance with the terms thereof, a line of railway from Oxford Station on the Intercolonial Railway to New Glasgow, with branches from said railway to Pugwash, Wallace, River John, Tatamagouche and Pictou. The company made surveys of the lines between Oxford and New Glasgow and commenced work in the summer of 1882, and continued its operations until about the 26th of July, 1883, when there was a complete cessation of work. By the 1st of September of that year, speaking generally, the outstanding accounts of the company had been adjusted, but not paid, and thereafter the company's expenditure in Nova Scotia was limited to maintaining its organization and the works theretofore constructed by it; in looking after its interests and rights; and in making efforts to secure other terms and arrangements with the Government, and the capital necessary to enable it to proceed with its works.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

During the session held in the year 1884, the company obtained from Parliament an Act (47 Vic. c. 55) by which its name was changed to "The Montreal and European Short Line Railway Company," and some alteration was made in the description of its line through the Provinces of Nova Scotia and New Brunswick. This Act was followed by negotiations between the company and the Minister of Railways and Canals, which, so far at least as the case under consideration is concerned, were without results.

By the Acts 48-49 Vic. c. 41, (Acts of 1885, vol. 1, p. 78) Parliament appropriated \$125,000.

"in aid of the Short Line Railway in Nova Scotia, for settling the unpaid claims of sub-contractors and others for labor, board, &c., in the construction of the said railway between Oxford and New Glasgow, and for acquiring their rights in the railway, and in the said claims, the expenditure to be under order-in-council, and to be a first charge on the subsidy for such railway, under 45 Vic. c. 14 ;

and by 49 Vic. c. 1 (Acts of 1886, vol. 1, p. 9) and 50-51 Vic. c. 1 (Acts of 1887, vol. 1, p. 8) Parliament appropriated the further sums of \$25,000 and \$397.35, respectively, for the same purpose.

And by 50-51 Vic. c. 27, the Minister of Railways and Canals was authorized to construct, as a public work, a railway from a point on the Pictou Town Branch of the Intercolonial Railway, or from a point on the Pictou Branch at or near the East River Bridge, to a point at or near Oxford Junction on the main line of said railway. The preamble and first section of the Act last referred to are as follows:—

Whereas by the Act passed in the forty-fifth year of Her Majesty's reign, chapter fourteen, the sum of two hundred and twenty-four thousand dollars was granted by Parliament as a subsidy for a railway from Oxford to New Glasgow, both in the Province of Nova Scotia, and the Great American and European Short Line Railway Company with whom an agreement was entered into for the construction of the said line of railway, in accordance with the provisions of the said Act, failed to carry the said agreement into effect ; and whereas the sum of

one hundred and fifty thousand dollars was subsequently granted by Parliament to constitute a first charge on the subsidy granted as aforesaid, and to be expended in settlement of unpaid claims of sub-contractors and others for labor, board and like matters, in the construction of the Short Line Railway between Oxford and New Glasgow, and for acquiring their rights in the railway and in the said claim; and whereas the company with whom an agreement was entered into, as aforesaid, for the construction of the said line of railway having represented that they had expended a considerable sum of money in prosecuting the said work prior to failure in carrying out the agreement, it is desirable that they should be reimbursed such sum, if any, as they shall establish in court that they are entitled to for the present value of the work done on the said line of railway by the said company, or such sum as may be awarded by arbitrators and approved by the Governor-in-Council, subject to the deduction hereinafter mentioned; and whereas in view of the construction of a line of railway in Cape Breton as a Government work it is desirable that, for the purpose of completing the line of railway hereinbefore mentioned, the portion thereof from a point on the Pictou Town Branch of the Intercolonial Railway, or from a point on the Pictou Branch at or near the East River bridge, to a point at or near Oxford Junction on the main line of the said railway should be constructed and completed as a Government railway, and that the unexpended balance of the grant hereinbefore mentioned, and an additional sum of five hundred thousand dollars should be applied to such construction: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The Minister of Railways and Canals may lay out, construct, equip and work a branch line of railway from a point on the Pictou Town Branch of the Intercolonial Railway or from a point on the Pictou Branch at or near the East River bridge to a point at or near Oxford Junction on the main line of the said railway, and such branch line shall be a part of the Intercolonial Railway; and the Minister may, if he sees fit, acquire by purchase, surrender or expropriation, the works constructed and the property owned by the said company, its assigns or legal representatives, in connection with the said line of railway between Oxford and New Glasgow, and may pay to the said company, its assigns or legal representatives, the amount adjudged by the court or by arbitrators, less the amount already expended out of the one hundred and fifty thousand dollars above mentioned, for the present value of the work done on the said line of railway by the said company.

In pursuance of the authority given him by this Act

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.

**Reasons  
 for  
 Judgment.**

(50-51 Vic. c. 27), to which I shall hereafter refer as the Special Act, the Minister of Railways and Canals, in July, 1887, took possession of a portion of the company's line and works and proceeded to construct the line of railway thereby authorized. From Oxford Junction to Pugwash the Government line is identical, substantially, with the company's line; but from Pugwash Junction, easterly, only four miles of the latter have been followed and utilized in constructing the former. This fact and the circumstance that a large part of the materials provided by the company for the construction of the road were not used by the Minister, give rise to an important question whether, under the Act last referred to, the Minister could acquire by expropriation a portion only of the

"works constructed and the property owned by the company in connection with the said line of railway between Oxford and New Glasgow;"

or whether if he took part he was not bound to take, or at least to pay for, the value of the whole of such works and property.

Under the general expropriation Acts, the Minister could undoubtedly have taken part only of the company's works and property; but in that case the company would have been entitled to compensation not only for the part so taken but also for damages for injuriously affecting the portion that was not taken. The Special Act, however, makes no provision for compensation for any injurious affection, but limits the compensation to the then value of the work done on the said line of railway by the company, less the amount expended out of the one hundred and fifty thousand dollars voted for the settlement of unpaid claims of sub-contractors and others for labor, board and like matters in the construction of the railway. There are, it will be seen, no words in the Act expressly authoriz-

ing the Minister to take part of the company's works, making due compensation to the company therefor. The authority is to acquire the company's works and property, paying for the value of the work done, not on part of the line of railway, but on the line of railway. It appears clear to me, therefore, that whether the Minister made use of all the works constructed and the property owned by the company, in connection with the line of railway between Oxford and New Glasgow, or not, the compensation to which it is entitled is in either case to be determined by the value in 1887 of the work done on the line of railway.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

This leads us to consider what the company is entitled to under the words "present value of the work done." Mr. Henry and Mr. Ross, for the company, contended that, looking at the Special Act and the surrounding circumstances, something more than compensation, or the mere value of the work done, was intended; that such compensation would be inadequate and inequitable, and that the Special Act contemplated reimbursement. But while I readily agree that a narrow construction should not be given to the words "work done," I do not think that it was the intention of Parliament to reimburse the company for all its expenditure upon the railway between Oxford and New Glasgow, irrespective of the question as to whether or not such expenditure had contributed to, or was then represented in, the value of the company's works and property. That appears to be clear from the preamble in which we find it recited that the company

"having represented that they had expended a considerable sum of money in prosecuting the said work prior to failure in carrying out the agreement, it is desirable that they should be reimbursed,"

not the sum so expended, but

"such sum, if any, as they shall establish in court that they are entitled

1890 "to for the present value of the work done on the said line of railway  
 "by the said company,"  
 THE  
 MONTREAL AND EUROPEAN SHORT LINE RAILWAY COMPANY  
 v.  
 THE QUEEN.  
 Reasons for Judgment.

and the words quoted are followed as will be seen in the enacting clauses of the Act. I think that it is reasonable and proper to conclude that the words "work done" are used in as large a sense as the words "works constructed and property owned by the said company," but that the duty devolves upon the court of determining the value thereof in the year 1887.

There are two ways in which such value may be determined, the one by taking the actual cost of the works and property, making proper deductions for depreciation and for any moneys uselessly or wastefully expended, and the other by taking the value of such works and property as estimated by competent witnesses. The evidence affords the materials, not in either case wholly satisfactory, of proceeding in either of the two ways mentioned, and of comparing to some extent the results of such methods.

In the first place it will, I think, be found convenient to examine the evidence in respect of the money expended in the undertaking and ascertain the conclusion to which it leads. Now as to this, with one exception to which I shall refer, the evidence as to the amount of money expended is satisfactory, and there can, I think, be no doubt that on the whole the prices paid by the company for labor and materials were fair and reasonable. But the evidence as to the amount of labor done and materials furnished for the work is open to the serious objection, made by Mr. Graham for the respondent, that the engineers immediately in charge of the different branches of the work were not called to testify to the correctness of the measurements and returns that they rendered to the Chief Engineer, and on which he made the estimates and gave the certificates that constituted the authority and evidence for

the payments made both by the company and His Honor Judge Clark, the commissioner appointed by the Government to expend the appropriations made by Parliament for settling the unpaid claims of sub-contractors and others for labor, board, &c., to which I have referred. That omission is the more unfortunate seeing that there can, I think, be no doubt that the company in some cases, of which Dewar's Bridge is an example, failed to get value for the money expended by it because of the neglect, if nothing worse, of the officer in charge of his duty to see that all work was done in a proper manner in accordance with the contract and specifications. There appears to be no doubt that in some instances the engineers immediately in charge passed work not properly done; and this fact tends to weaken the probability that their measurements and the reports made by them to the Chief Engineer were faithfully and honestly made. It is only fair, however, to observe that almost all of the contractors were called, and that their evidence, so far as the opinion of men who made no measurements but who had experience in such work and matters could do so, sustained the measurements and quantities which the Chief Engineer certified; and in the cases in which such contractors were not called there is no occasion for any suspicion that their evidence would have taken a different direction. With reference to the timber account it should also be added that Mr. Salter, the company's inspector of timber, was called as a witness and that he produced his books.

Attached hereto, marked "A,"\* is a statement of the moneys expended by the company and by the Government in respect of work done and liabilities incurred by the company up to September, 1883. From this statement it will be observed that in some cases the Government, through Judge Clark, paid balances due

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

\* REPORTER'S NOTE.—See page 187.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.

**Reasons  
 for  
 Judgment.**

for work done and materials supplied in respect of which the company had paid part, and in other cases the whole amount was paid by the Government, the company not having paid anything, and it might at first sight appear reasonable to conclude that after making such payments it would not be open to the Government to contend that the measurements or quantities were not correct. But more consideration of the circumstances under which payments were made by the Government leads, I think, to a different conclusion. The appropriation was made by Parliament to settle claims against the company, and when the commissioner was furnished by the claimants with certificates from the Chief Engineer, given at the time when the company was expecting itself to pay such claims, and before the intention of Parliament to make the appropriation was disclosed, and for that reason free from suspicion, I do not see that he was called upon to carry his investigation any further, or to go to the great expense of examining into the correctness of the measurements and returns upon which such certificates had been given. The company admitted the liability ; there was nothing to suggest collusion between it and any of the claimants, and there was no occasion to pass upon the measurements referred to, and therefore it appears to me that it would be unreasonable to conclude that in this enquiry the Government are precluded by what was then done from contesting their accuracy. There is another matter in reference to the final estimates given by the Chief Engineer of the company to which I ought to refer. It appears that he told Judge Clark that he had estimated quantities amounting in value to about \$20,000 more than he would have certified for if the company had gone on with the work ; but he explained that materials had been provided by the contractors and

work had been done by them which would have been taken up in the monthly estimates if the company had continued its operations, but which, as work had stopped, the engineers were instructed to include in the final estimates. For instance there were, he stated, stone on the line and in quarries, timber at the mill, cement and other materials and work. The engineers, he added, were instructed to give a full estimate of these in the sense of a final estimate, and not in the sense of an excessively liberal estimate, and the quantities returned did not, he states, exceed the amount of work done.

But to return to the examination of statement "A" of money expended, as mentioned, on the undertaking by the company and the Government, and to the deductions to be made therefrom, to ascertain the value, in 1887, of the works constructed and property owned by the company,—assuming the measurements and quantities given in the certificates of the Chief Engineer to have been correct.

The total amount expended for engineering and instruments and camp equipage (\$37,158.22) is no doubt very large. Mr. Burpee, one of the witnesses says, that for a road such as this he has been accustomed to allow \$500 per mile for a complete railway; and at that rate the sum expended ought not to have been exceeded had the railway been finished. There were, it appears, more trial lines surveyed than is usual; but I cannot, under the evidence, say that, looking to the arrangements of the company with the Government, and all the circumstances of the case, any of them were unnecessary. The same is true, I think, of the surveys at Pictou Harbor, which involved a very considerable expenditure. The items now under consideration include a sum of \$6,144.23 alleged to have been expended by Mr. W. S. Green, who was the Chief

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

Engineer of the company when the first preliminary surveys were made. Strictly speaking, there is no legal evidence before the court that this amount was disbursed, no witness with any personal knowledge thereof having been called. It is clear, however, from the evidence, that Mr. Green was at work on these preliminary surveys, and that he had assistant engineers and others employed under him, but that their surveys were not conducted with prudence and economy. In a letter to the secretary of the company, of September 26th, 1882, he mentions the criminal extravagance of two engineers who had been discharged, and elsewhere in his correspondence he explains the causes that led to such large expenditure for this service.

With reference to the expense incurred for instruments and camp equipage, Mr. Snow says that the amount of \$225 represented by voucher 40 for instruments for Brett, was refunded and should not appear anywhere, and it is a question whether any part of this expenditure which seems to have been rendered necessary because of the employment, during the early part of the company's operations, of engineers from the United States who had no instruments, should be allowed. In addition to the deduction of \$225 the following deductions should be made in respect of the items under consideration, as the expenditure was not incurred on account of the Oxford and New Glasgow Railway, but on account of other enterprises of the company:—

|                                                                                                                             |          |
|-----------------------------------------------------------------------------------------------------------------------------|----------|
| Part of amount of voucher 244 paid to C. L. Snow<br>in respect of starting surveys in Cape Breton<br>and New Brunswick..... | \$240 00 |
| Part of amount of voucher 245 paid to Snow in<br>respect of surveying party in New Brunswick...                             | 90 00    |
| Part of amount of voucher 248 paid C. L. Snow to<br>reimburse balance paid moving Cushing's camp<br>to Port Hawkesbury..... | 5 00     |

|                                                                                                                                                                   |          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Amount of voucher 247, certain expenses of engineers at Port Hawkesbury.....                                                                                      | 97 83    |
| Amount paid by Conant to one McLellan for services as axeman in Cape Breton.....                                                                                  | 14 00    |
| (Conant also advanced \$206 to Cushing, but that was charged against the latter by Judge Clark in settling up the accounts of the Oxford and New Glasgow branch.) |          |
|                                                                                                                                                                   | —————    |
|                                                                                                                                                                   | \$446 83 |

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

The total expenditure for superintendence, stationery, printing, advertising, telegraph bills, and sundry and general expenses amounted to \$16,127.18. At the hearing of the case, on objection taken by counsel, I expressed the view that legitimate and proper disbursements of the classes mentioned were represented in the value of the work done by the company, and I have since seen no reason to change the opinion I then expressed. It is obvious, I think, that no company or person can construct a railway without being at some charge for such services, and that such expenditures increase the cost and must, if prudently made, be represented in the value of the works constructed.

With reference to the amount of such charges in the present case, it appears to me that some ought not, under any circumstances, to be allowed, and others are referable to the larger enterprises of the company, and not to the Oxford and New Glasgow Railway. I shall, therefore, make the following deductions:—

|                                                                                                                                                                  |          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Part of amount mentioned in voucher 11 paid to Charles L. Snow, for certain expenses at Pictou.                                                                  | \$ 18 00 |
| Part of amount mentioned in voucher 50, to Charles L. Snow, for expenses at New York, Toronto, Ottawa, Montreal, and Halifax.....                                | 142 80   |
| Part of amount mentioned in voucher 51 paid to Charles L. Snow, for expenses at Halifax, getting legislation in regard to Eastern Extension and Cape Breton..... | 82 85    |
| Amount of voucher 197 paid to C. L. Snow, in                                                                                                                     |          |

|                                                                                               |                                                                                                                                     |                  |
|-----------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------|
| 1890                                                                                          | respect of expenses incurred in April and May, 1883, relative to obtaining legislation at Ottawa.                                   | 1,056 57         |
| THE<br>MONTREAL<br>AND<br>EUROPEAN<br>SHORT<br>LINE<br>RAILWAY<br>COMPANY<br>v.<br>THE QUEEN. | Amount of voucher 208 paid to Burland Lithographic Company, Montreal, in May, 1883, for pamphlets, maps, &c. ....                   | 99 50            |
|                                                                                               | Part of amount of voucher 244 paid to C. L. Snow, in respect of expenses of getting subsidy in New Brunswick (evidence p. 280)..... | 100 70           |
|                                                                                               |                                                                                                                                     | <hr/> \$1,500.42 |

**Reasons  
for  
Judgment.**

The furniture for which a charge is made in the accounts has been retained by the company and is still in its possession. It appears from the evidence of Mr. Snow that its value at present is not considerably less than when it was new. In the nature of things, however, there must have been some depreciation, and as any company constructing the railway in question would, I think, have been at some charge in this respect, I shall allow \$100 for the use of furniture during the time that the company's operations on the railway were in course of progress.

The charge for claims paid is made in respect of the price paid for a steer killed by one of the surveying parties, and should be deducted.

The horses, waggons, sleighs, harness, and things of that class, representing the expenditure of \$474.50, have either been sold or retained by the company. I think, however, that a sum say of \$100 should be allowed for the use made of them by the company's officers during the construction of the works in question.

In addition to the sum of \$104.50 paid for legal expenses, the company incurred a liability for the salary of a solicitor at Halifax for three years at \$1,000 per year. For the year during which the company was engaged on the works in question this salary constitutes, I think, a proper charge against such works.

I do not think the item of \$71.86 for cutting ice

around piling should be allowed. The expenditure may have been very necessary to preserve or protect the piling, but it could not have added anything to its value.

The track cars and trolleys have, with Mr. SNOW'S consent, been used by one of the contractors under the Government, under an agreement to pay the Government or the company according as to which is determined to own them. I think they were part of the company's property that the Government were under the Act bound to pay for if they acquired any of such property, and I shall therefore allow the charge made in respect of the same.

It will be observed that in the amounts indicated in statement "A" as having been paid by the Government, are included several items, aggregating \$7,756.79, which are connected with the distribution of the appropriation made by Parliament to which I have referred and which cannot be said to be represented in the value of the works. To these, the last five items in the statement, I shall have occasion to refer at greater length in discussing another branch of the case.

The result of the present examination of statement "A" is indicated in the paper attached hereto marked "B,"\* showing the cost of the works and property of the company, without the right of way, to have been \$271,070.85, of which the company disbursed the sum of \$129,991.85, and the Government the sum of \$141,079.

In the autumn of the year 1887, the Minister of Railways and Canals, desiring to procure a fair and reasonable estimate of the then actual value of the work done by the company, instructed Messrs. E. R. Burpee and Richard C. Boxall, two engineers of standing and experience, to make an examination of the company's works and to report to him. Neither Mr.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

\* REPORTER'S NOTE.—See page 190.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.

Reasons  
 for  
 Judgment.

Burpee nor Mr. Boxall was able to be present at the examination of witnesses before the court, but their report was put in evidence, and both were examined by commission, and stated the manner in which they carried out the instructions of the Minister. I have, for convenience of reference and comparison, attached hereto, marked "C," a copy of Mr. Burpee and Mr. Boxall's evidence \*, and a statement giving an analysis of their report, showing the amount of work done and the average prices allowed; from which it will appear that they found the value of all the work done to be less than the amount paid by the Government in respect thereof, to say nothing of the amount disbursed by the company. It is obvious, however, that they have not made any allowance for many things in respect of which the company incurred expenses, and which, in the view I entertain of the matter, ought to be taken into consideration. But it will be seen that, having regard only to works constructed, there is a large and, in some cases, I think, an unaccountable difference between the quantities of such works as indicated by the certificates of the company's Chief Engineer and by the measurements and calculations made by Messrs. Burpee and Boxall. To take a single instance: the company paid for 462,812 cubic yards of earth, while Messrs. Burpee and Boxall return only 303,340 cubic yards, showing the large difference of 160,000 cubic yards. Making every allowance for waste, this difference cannot be explained on any other theory than that either the measurements and returns which the Chief Engineer of the company took as the basis of his estimates, or those made or used by Messrs. Burpee and Boxall, or both, were not correct. It appears from

\* REPORTER'S NOTE: The evidence of Messrs. Burpee and Boxall has not been printed here, but the analysis of their report will be found on page 191.

their evidence that Messrs. Burpee and Boxall relied considerably upon measurements that had been previously made by Mr. Cushing and Mr. Dickie. Both of the gentlemen were witnesses in this case, and it must, I think, be conceded that, so far as Mr. Cushing's measurements were concerned, they appear to have been as carefully and accurately made as was possible under the circumstances in which they were made. On the other hand, Mr. Burpee says that in certain cases in which he verified Mr. Dickie's measurements he found them too small.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

Now, I confess that the difficulty of deciding as to whether I should follow the measurements returned during the progress of the work by the company's engineers, and accepted and certified by the company's Chief Engineer, or those subsequently made by the gentlemen to whom I have referred, appears to me very great, but it is one from which I cannot escape. And on the whole, looking to all the circumstances of the case, I have concluded to adopt the former, making what appears to me proper allowance and deductions for defective work, extravagant or unnecessary expenditure, and for depreciation in value of the works constructed. But while I do not adopt Messrs. Burpee and Boxall's report, I desire to say that I think it entitled to the greatest consideration, especially in determining such allowances and deductions.

By reference to the Act 50-51 Vic. c. 27, already cited, it will be seen that the court is to adjudge

"the present value of the work done on the line of railway by the  
 "company."

At the date when that Act became law nearly four years had elapsed since the company had ceased to prosecute its works of construction, and Parliament, in the use of the language I have quoted, had, without doubt, in view that the value of the works and pro-

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

perty of the company had, during the interval, depreciated to a very considerable extent. That would be in the nature of things, and the evidence shows clearly that such was the fact. Now, it is obvious that all of such works and property would not have deteriorated equally, but it would, I think, be found difficult, if not impossible, to adopt any mode of determining such deterioration, except that of ascertaining some fair percentage of deduction applicable to the whole expenditure.

But before discussing that question I wish to say a word or two with respect to the word "value," as used in the Act. If this word should be construed as indicating the value to the Government, I should, of course, be obliged to make much larger deductions than I propose to make, and it might be that, so far as the works only are concerned, the value, as given by Messrs. Burpee and Boxall, would not be far out of the way; for, it is very clear that much of the work done and property acquired by the company was of no use or value to the Government. But the general rule in cases of expropriation is to allow the value of the property expropriated to the person from whom it is taken, and I see nothing in the present case, or in the Act, to lead me to depart from that rule; and I shall endeavor to ascertain, as well as I can, what would have been the fair value in 1887 of the works and property of the company, to itself, if it had then been in a position to resume work, or to any company that might have been in a position to purchase them and continue the undertaking upon the same grades and standard as that upon which the company had proceeded, for I think that it is possible that a company would have utilized some of the works that the Government, rightly enough according to the grades and standards adopted by them, condemned.

To return, then, to the question of what would, in ascertaining the value of the company's works and property, be a fair percentage of the whole cost to deduct for the reasons I have mentioned, let us examine briefly a number of the larger items of expenditure mentioned in statement "A."\* The expenditure for engineering, superintendence, &c., cannot, of course, be referred to any particular part of the company's work that could be examined, and the deterioration thereof determined. Such expenses are referable to the work generally, and share, I think, any general depreciation in the value of the whole. Besides, we have seen that some of the expenditure for engineering was incurred extravagantly and without useful practical results to the company.

With reference to the earth work, the apparent quantity thereof would be lessened by both sinkage and shrinkage, but this would occur in any case, and does not, so I understand it, lessen the value of the work. But apart from this, the embankments would, I fancy, be subject to some waste from the wash of water during seasons of rain. There is evidence of such waste, but I am not prepared to conclude that it would be represented by the percentage of cost that I propose to adopt as the measure generally of depreciation and loss in the present case. But this consideration, taken in connection with the large discrepancy between the quantities of earth work certified to by Mr. Snow on the statements and returns of persons whose evidence is not before me and the quantities returned by Messrs. Burpee and Boxall, satisfies me that the course I am about to adopt is not an unfair and unreasonable one. A deduction of 20 per centum from the quantity of earth for which the company paid still leaves them nearly 67,000 cubic yards more than Messrs. Burpee and Boxall report that they found upon the ground.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 ———  
**Reasons  
 for  
 Judgment.**  
 ———

\*REPORTER'S NOTE.—See page 187.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.

Reasons  
 for  
 Judgment.

With reference to the masonry, I think, as I have before intimated, that the conclusion is inevitable that much of it was not properly laid in the first place, and it is clear that it deteriorated much during the four years that it was exposed to the weather, especially the portions of it that were in course of construction at the time the company stopped work. I am of opinion that its value as a whole was not in 1887 more than two-thirds of its first cost; and the same, I think, was true of the timber and other materials of wood and works constructed of wood, taking them as a whole. It is of course obvious that all would not decay equally, as that would depend largely upon the character of such materials, the position in which they were placed, and the exposure to which they were subjected.

I think that all payments for materials not delivered were made, not by the company, but by Judge Clark for the Government, and I have had some doubt as to whether or not the rights acquired by such payments could properly be taken to fall within the term "works constructed and property owned by the company." Under the agreements with the contractors the company acquired no title, and were not bound to pay for any such materials until they were delivered. They were included in the final estimates because the work on the railway had ceased, and they represented labor expended by the contractors. Seeing, however, that the Government, having knowledge of the settlements between the contractors and the company, paid the amounts agreed upon between the former and the latter in respect thereof, and took assignments of the contractor's claims, they were, I think, in a position when they took possession of the railway to get the benefit of the work so done and paid for.

Then, too, it seems to me that if the company had been a going concern when the Government expro-

priated its property, it would hardly have occurred to any one to think that the preparation of materials in the woods or quarries, whether this were done directly by the company or through contractors, was not part of the work done by the company, and I do not see that the case under consideration differs very greatly in principle from that suggested. There would, of course, be an equal, or perhaps a greater deterioration in the value of materials of wood so situated, but subject to this, I am of opinion to allow the items.

I am of opinion, therefore, under all the circumstances, to deduct from the cost of the company's work and property, as given in statement "B," twenty per centum, as being a proper allowance to make on the whole for extravagant or useless expenditure, bad or defective work, and for depreciation.

The company organized under the charter obtained from the Parliament of Canada. The persons who constituted the company had also obtained legislation from the Legislature of Nova Scotia, but no organization ever took place thereunder. It happened, however, that by the laws of Nova Scotia provision was made whereby municipal bodies could aid railway enterprises by procuring for them the right of way, the cost thereof being assessed against the county. Either through inadvertence or in order to obtain the aid of the county councils of Cumberland, Colchester and Pictou in the acquisition of its right of way, the company proceeded to acquire the same according to the provincial laws, and not in accordance with the laws of the Dominion which they should have followed. The right of way was staked out through the three counties, and the company went into possession thereof, the county council of Cumberland paying to the proprietors in respect of that part thereof which was situated in that county the sum of

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.

Reasons  
 for  
 Judgment.

\$3,144.47, and the county council of Colchester paying for a like purpose in respect of the portion of the line traversing Colchester the sum of \$5,397. Nothing was paid in respect of the right of way in Pictou county. It was strongly urged by counsel for the Crown at the trial, that no allowance ought to be made to the company in respect of its right of way. I am unable, however, to take that view. The irregular proceedings do undoubtedly present difficulties, but I cannot overlook the fact that the company was in possession of a right of way for which the sum of \$8,541.47 had been paid. I do not see that the county councils of Cumberland and Colchester could make good any claim upon the Government to be reimbursed the amounts so paid by them respectively. That, it appears to me, is a matter to be settled between the municipal councils interested and the company; and, besides, the company's possession was worth something. I shall allow the company in respect of its right of way the sum of \$10,000.

In addition to the moneys expended in connection with the construction of the works, and the acquisition of the property to which reference has already been made, the company has disbursed \$42,479.38, as per statement "D,"\* in the maintenance of its organization and works, in its attempts to secure concessions from the Government, and in looking after its interests generally. With reference to this expenditure, however, I have no hesitation in agreeing with the contention made by Mr. Graham at the trial, that it in no way added to the value of the company's works or property; even the portions of such expenditure that were more immediately incurred for the preservation of the company's works from damage by ice, added nothing to the value of such works.

The company also claimed to be reimbursed for a fair proportionate part of the expenses incurred at

\* REPORTER'S NOTE.—See page 192.

the head office at New York. Statement "E"\* is a copy of the particulars of the whole of such expenditure, some \$20,000 of which represent, speaking generally, money paid and liabilities incurred to third parties; and the balance the salary of the president of the company, for which he took stock of the company. So far as the construction of the Oxford and New Glasgow Railway was concerned, the services rendered at New York were those which are rendered by the person or company that supplies the money for and promotes the undertaking, and it appears to me that while a reasonable amount should be allowed in respect of such services, that they are of the class that fall within and are covered by any allowance that is made for the use of money expended in the undertaking.

As to that, it appears to me reasonable to make an allowance for the use of the capital expended in the enterprise, which should, I think, be sufficient to cover the risks incurred by the company, and any profit to which it is entitled. Especially do I think that a proper course to adopt in a case of compulsory sale, such as results from the expropriation in this case. In coming to that conclusion I do not overlook the fact that it might be said that the expropriation in this case differs from ordinary expropriations, and that looking to the chance that the company might never have been able to use or dispose of its works and other property to advantage, the Special Act, to which I have referred, was to some extent a measure of relief to it. I cannot from the evidence, however, think that the company so regarded it, although I may entertain somewhat strongly the view that the difficulties in the way of its resuming its work, or of making an advantageous disposition of its property, were in 1887 very great.

Had the company disbursed the money representing

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

\* REPORTER'S NOTE.—See page 193.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

the total cost of the works, I should not have thought it unreasonable to have allowed a sum of \$20,000 or \$25,000 in respect of the matters now under consideration. But of the capital expended upon the works the Government provided more than one-half, besides incurring an expense of \$7,756.79 in closing up the company's business and settling with the contractors. Of the amount of \$7,756.79 a sum of \$4,727.81 was paid to the contractors to indemnify them for losses sustained by the breach by the company of its contracts. The amount paid was small, but it saved the company, I have no doubt, a great deal of money, trouble and litigation. Mr. Snow, the company's Chief Engineer, had in his final estimates included interest, but this Judge Clark did not pay. He thought it fair, however, in certain cases to make to the contractors the allowance amounting to  $3\frac{1}{4}$  per cent. of the estimates to which reference has been made. When Mr. Snow was first asked in respect of this allowance he said that he had, at the time when it was paid, no knowledge that Judge Clark was paying it, but it appears that on the 23rd of August, 1886, he wrote Dr. Norvin Greene that, as he had telegraphed him, all their contractors had been settled with in full, had given full and final releases and assignments, and for all claims for damages for stoppage of work had been paid  $3\frac{1}{4}$  per cent. on the face of their estimates, and that the company was thus saved \$40,000, which he (Snow) considered good work.

It appears to me reasonable, therefore, to take these matters also into consideration in determining the allowance to be made on this branch of the case, which, in view of all the circumstances of the case, I fix at the sum of \$15,000.

The result, then, of the whole matter, according to

the views I have expressed, may be briefly stated as follows:—

|                                                                                            |              |
|--------------------------------------------------------------------------------------------|--------------|
| Total cost of works and property.                                                          | \$271,070.85 |
| Deduct 20 per centum for extravagant expenditure, bad work and depreciation.....           | 54,214.17    |
|                                                                                            | <hr/>        |
|                                                                                            | \$216,856.68 |
| Add for right of way.....                                                                  | 10 000.00    |
| Add for use of money, expenses at Head Office, &c., and in respect of compulsory sale..... | 15,000.00    |
|                                                                                            | <hr/>        |

Total value of works and property  
in 1887..... \$241,856.68.

Of this sum of \$241,856.68 there was expended by the Government, out of the appropriation of \$150,000 made by Parliament, the sum of \$141,079 in settlement of unpaid claims of sub-contractors and others for labor, board and like matters in the construction of the Oxford and New Glasgow Railway.

I am of opinion, therefore, and I adjudge that the value of the work done on the said line of railway by the said company, construing the words "work done" in as large a sense as "works constructed and property owned by the company," was, on the first of July, 1887, \$241,856.68. From that sum, if I may properly express an opinion in respect of the matter, the Minister of Finance should, I think, deduct the sum of \$141,079, leaving the sum of \$100,777.68 to be paid to the company, or to whomsoever is entitled thereto. On the latter sum, interest should, it seems to me, be allowed from the date last mentioned (July 1st, 1887).

A number of other questions were discussed during the progress of the case arising out of the transaction between Snow and the trustees, to whom he purported

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
**Reasons  
 for  
 Judgment.**

to give an assignment of the company's property in Nova Scotia, and to confirm which the Legislature of Nova Scotia passed an Act; and out of the assignments given by the creditors of the company to the Crown, the relation of the construction company to the plaintiff company and other like matters. It appears to me, however, that the important question is the one of value, and that it is unnecessary at the present to determine the others. I shall, therefore, reserve them, giving any party the right to apply for further directions.

The original plaintiffs are entitled to their costs.

*Judgment for plaintiffs with  
 costs to original plaintiffs.\**

Solicitor for plaintiffs: *William B. Ross.*

Solicitor for defendant: *Wallace Graham.*

---

\* REPORTER'S NOTE :—On the pages immediately following will be found the Statements referred to by the learned Judge in the above reasons for judgment.

**A**  
**CONSOLIDATED STATEMENT OF DISBURSEMENTS FOR SHORT LINE RAILWAY, OXFORD AND NEW  
 GLASGOW, NOVA SCOTIA.**

| Particulars.                                 | Quantities.                                   | Amounts paid by Company. | Amounts paid by Comm'r, Judge G. M. Clark. | Total Paid.  | Average Cost.                 |
|----------------------------------------------|-----------------------------------------------|--------------------------|--------------------------------------------|--------------|-------------------------------|
| Engineering.....                             |                                               | \$30,457 21              | \$ 6,282 88                                | \$ 36,740 09 |                               |
| Superintendence.....                         |                                               | 10,198 55                | 2,087 94                                   | 12,286 49    |                               |
| Stationery, printing and advertising.....    |                                               | 1,390 35                 | 110 55                                     | 1,500 90     |                               |
| Sundry and general expenses.....             |                                               | 2,205 79                 | 32 97                                      | 2,238 76     |                               |
| Telegraph bills.....                         |                                               |                          | 101 03                                     | 101 03       |                               |
| Furniture.....                               |                                               | 461 71                   |                                            | 461 71       |                               |
| Instruments and camp equipage.....           |                                               | 418 13                   |                                            | 418 13       |                               |
| Legal expenses.....                          |                                               | 104 50                   |                                            | 104 50       |                               |
| Claims paid.....                             |                                               | 40 00                    |                                            | 40 00        |                               |
| Wagon, sleigh, harness, etc.....             |                                               | 261 50                   |                                            | 261 50       |                               |
| Horses.....                                  |                                               | 213 00                   |                                            | 213 00       |                               |
| Clearing.....                                | 2,184 <sup>75</sup> / <sub>100</sub> stations | 1,826 37                 | 6,512 31                                   | 8,338 68     | \$3.81 per sta.               |
| Close Cutting.....                           | 121 <sup>25</sup> / <sub>100</sub> "          | 171 00                   | 273 30                                     | 444 30       | 3.66 "                        |
| Grubbing.....                                | 786 <sup>20</sup> / <sub>100</sub> "          | 1,615 90                 | 3,714 72                                   | 5,330 62     | 6.78 "                        |
| Earth.....                                   | 462,812 cu. yds.                              | 37,869 12                | 55,823 29                                  | 93,692 41    | \$0.20. <sup>3</sup> cu. yds. |
| Loose rock.....                              | 27,744 "                                      | 6,253 95                 | 8,047 70                                   | 14,301 65    | 0.51. <sup>5</sup> "          |
| Solid rock.....                              | 2,297 "                                       | 421 89                   | 1,487 25                                   | 1,909 14     | 0.83. <sup>1</sup> "          |
| Fencing.....                                 | 7 <sup>4</sup> / <sub>16</sub> miles.         | 774 59                   | 1,222 00                                   | 1,996 59     | 269.81 per mile.              |
| Extra work (sundry work not classified)..... |                                               | 1,191 51                 | 1,771 56                                   | 2,963 07     |                               |
| Culvert masonry.....                         | 2,646 <sup>2</sup> / <sub>10</sub> cu. yds.   | 8,353 17                 | 5,509 20                                   | 13,862 37    | \$5.24 per cu. yd.            |

1890  
 }  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORE  
 LINE  
 RAILWAY  
 COMPANY  
 ?  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

1890  
 THE  
 MONTREAL  
 AND  
 EUROPEAN  
 SHORE  
 LINE  
 RAILWAY  
 COMPANY  
 OF  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

CONSOLIDATED STATEMENT OF DISBURSEMENTS, ETC.—*Concluded.*

| Particulars.                            | Quantities.                                 | Amounts paid by Company. | Amounts paid by Comm'r Judge G. M. Clark. | Total Paid. | Average Cost.                                                               |
|-----------------------------------------|---------------------------------------------|--------------------------|-------------------------------------------|-------------|-----------------------------------------------------------------------------|
| Riprap .....                            | 2,819 <sup>75</sup> / <sub>100</sub> "      | 1,675 35                 | 4,167 40                                  | 5,842 75    | 2.07 " "                                                                    |
| Wooden drain .....                      | 9                                           | 64 35                    | 7 96                                      | 72 31       | 8.03 a piece.                                                               |
| Piles on line.....                      | 72,456 lin. ft.                             | 2,693 88                 | 1,345 08                                  | 4,038 96    | 0.05 <sup>5</sup> per lin. ft.                                              |
| Bridge masonry.....                     | { 520 7 cu. y. m. y. }<br>{ 736 " d. stne } | 8,193 22                 | .....                                     | 8,198 22    | { M. y. \$9.50 c. yd.<br>Stone \$4.26c. "                                   |
| Arch masonry.....                       | 274 <sup>5</sup> / <sub>10</sub> cu. yds.   | .....                    | 708 06                                    | 708 06      | \$11.00 per cu. yd.                                                         |
| First class masonry.....                | 810 <sup>4</sup> / <sub>10</sub> "          | .....                    | 7,319 23                                  | 7,319 23    | 9.02 " "                                                                    |
| Second class masonry.....               | 16 <sup>3</sup> / <sub>10</sub> "           | .....                    | 131 20                                    | 131 20      | 8 00 " "                                                                    |
| Cross ties.....                         | 89,265                                      | 6,248 61                 | 8,445 77                                  | 14,694 38   | 0.16 <sup>4</sup> per tie.                                                  |
| Cross ties, not delivered .....         | 6,811                                       | .....                    | 953 54                                    | 953 54      | 0.14 " "                                                                    |
| Extra haul.....                         | 96,343 cu. yds.                             | 506 72                   | 488 70                                    | 995 42      | 0.01 per cu. y.                                                             |
| Rough stone on line.....                | 259 "                                       | .....                    | 823 00                                    | 823 00      | 3.17 " "                                                                    |
| do in quarries.....                     | 592 "                                       | .....                    | 1,619 00                                  | 1,619 00    | 2.74 " "                                                                    |
| Dressed stone on line.....              | 999 "                                       | .....                    | 6,993 00                                  | 6,993 00    | 7.00 " "                                                                    |
| do in quarries.....                     | 766 "                                       | .....                    | 3,830 00                                  | 3,830 00    | 5.00 " "                                                                    |
| Broken stone for riprap.....            | 110 "                                       | .....                    | 55 00                                     | 55 00       | 0.50 " "                                                                    |
| Sand, delivered.....                    | 17 "                                        | .....                    | 6 80                                      | 6 80        | 0.40 " "                                                                    |
| Cement.....                             | 89 <sup>1</sup> / <sub>2</sub> barrels      | .....                    | 447 50                                    | 447 50      | 5.00 barrel.                                                                |
| Fence poles.....                        | 7,087 poles                                 | .....                    | 141 75                                    | 141 75      | 0.02 per pole.                                                              |
| Telegraph poles.....                    | 600 "                                       | .....                    | 642 00                                    | 642 00      | 1.07 " "                                                                    |
| Bridge superstructure and trestles..... | .....                                       | 8,060 17                 | .....                                     | 8,060 17    | .....                                                                       |
| Cutting ice around piling .....         | .....                                       | 71 86                    | .....                                     | 71 86       | .....                                                                       |
| Piles, in place, driven.....            | 5,266 lin. ft.                              | .....                    | 473 88                                    | 473 88      | 0.09 per lin. ft.                                                           |
| Trestle timber, put up.....             | 92,450 ft. b. m.                            | .....                    | 739 59                                    | 739 59      | 8.00 per M.                                                                 |
| Truss timber, do .....                  | 13,577 " "                                  | .....                    | 135 77                                    | 135 77      | 10.00 " "                                                                   |
| Bridge iron and blacksmithing.....      | .....                                       | .....                    | 372 19                                    | 372 19      | 2 <sup>1</sup> / <sub>2</sub> to 4 <sup>1</sup> / <sub>2</sub> c., and h'g. |

|                                                     |                                |              |              |                |
|-----------------------------------------------------|--------------------------------|--------------|--------------|----------------|
| White pine timber.....                              | 49,166 " "                     | 1,438 02     | 1,438 02     | \$29.25 per M. |
| Hemlock timber.....                                 | 67,454 " "                     | 544 53       | 544 53       | 8.07 "         |
| Hardwood pins.....                                  | 280                            | 5 60         | 5 60         | 0.02 "         |
| Track cars and trolleys for laying rails.....       | { 5 Push cars.<br>1 Track car. | 264 77       | 264 77       |                |
| Cattle guard timber.....                            | 30,720 ft. b m.                | 215 04       | 215 04       | 7.00 "         |
| Heavy slabs for matting, in place.....              | 77,875 " "                     | 311 50       | 311 50       | 4.0 "          |
| Heavy slabs for matting, delivered.....             | 140,000 " "                    | 420 00       | 420 00       | 3.00 "         |
| Work and expenses on hemlock timber in woods.....   | \$50,000 " "                   | 2,550 00     | 2,550 00     | 3.00 "         |
| Work and expenses on logs for cross ties.....       | 370,000 feet.                  | 925 00       | 925 00       | 2.50 "         |
| Tools, &c. on Sec. D.....                           |                                | 108 60       | 108 60       |                |
| Laborers on Sec. A.....                             |                                | 738 98       | 738 98       |                |
| Test piles, driven.....                             |                                | 50 70        | 50 70        |                |
| Extra quantities allowed.....                       |                                | 105 60       | 105 60       |                |
| Sundry accounts not classified.....                 |                                | 242 94       | 243 94       |                |
| Sundry accounts not classified, no assignments..... |                                | 599 37       | 599 37       |                |
| Compensation 3.75 per cent.....                     |                                | 4,727 81     | 4,727 81     |                |
| Wallace Graham.....                                 |                                | 393 45       | 393 45       |                |
| Wm. Stewart.....                                    |                                | 1,000 00     | 1,000 00     |                |
| Expenses of commission.....                         |                                | 683 53       | 683 53       |                |
| G. M. Clark.....                                    |                                | 952 00       | 952 00       |                |
| Totals.....                                         |                                | \$132,012 17 | \$280,847 96 |                |

1890  
 THE  
 MONTRÉAL  
 AND  
 EUROPEAN  
 SHORT  
 LINE  
 RAILWAY  
 COMPANY  
 v.  
 THE QUEEN.  
 Reasons  
 for  
 Judgment.

1890

## B.

THE  
MONTREAL  
AND  
EUROPEAN  
SHORT  
LINE  
RAILWAY  
COMPANY

DEDUCTIONS FROM AND ADDITIONS TO AMOUNTS PAID  
BY THE COMPANY.

v.  
THE QUEEN.

Reasons  
for  
Judgment.

|                                              |             | Amt. Paid.  | Deductions | Additions. |
|----------------------------------------------|-------------|-------------|------------|------------|
| Engineering.....                             | \$36,740 09 |             |            |            |
| Instruments and camp<br>equipage.....        | 418 13      | \$37,158 22 | \$671 33   |            |
| Superintendence.....                         | 12,286 49   |             |            |            |
| Stationery, printing and<br>advertising..... | 1,500 90    |             |            |            |
| Telegraph bills.....                         | 101 03      |             |            |            |
| Sundry and general ex-<br>penses.....        | 2,238 76    | 16,127 18   | 1,500 42   |            |
| Furniture.....                               |             | 461 71      | 361 71     |            |
| Claims paid.....                             |             | 40 00       | 40 00      |            |
| Horses, sleigh, wagon, &c.                   |             | 474 50      | 374 50     |            |
| Legal expenses.....                          |             | 104 50      |            | \$1,000 00 |
| Cutting ice around piling.                   |             | 71 86       | 71 86      |            |
|                                              |             |             | \$3,020 32 | \$1,000 00 |

DEDUCTIONS FROM AMOUNTS PAID BY THE GOVERNMENT.

|                                              |              |            |            |              |
|----------------------------------------------|--------------|------------|------------|--------------|
| Compensation $3\frac{1}{2}$ per<br>cent..... |              | \$4,727 81 |            |              |
| Wallace Graham.....                          |              | 393 45     |            |              |
| Wm. Stewart.....                             |              | 1,000 00   |            |              |
| Expenses of commission...                    |              | 683 53     |            |              |
| G. M. Clark.....                             |              | 952 00     | \$7,756 79 |              |
|                                              |              |            | \$7,756 79 |              |
|                                              |              | Deductions | Additions. | Balance.     |
| Amount paid by the Com-<br>pany.....         | \$132,012 17 | \$3,020 32 | \$1,000 00 | \$129,991 85 |
| Amount paid by the Gov-<br>ernment.....      | 148,835 79   | 7,756 79   |            | 141,079 00   |
| Total cost of works, &c.                     |              |            |            | \$271,070 85 |

C.

1890

This statement contained the evidence in full of the witnesses Burpee and Boxall, which has been omitted, and the following :—

ANALYSIS OF MESSRS. BURPEE AND BOXALL'S REPORT.

THE  
MONTREAL  
AND  
EUROPEAN  
SHORT  
LINE  
RAILWAY  
COMPANY  
v.  
THE QUEEN.

Reasons  
for  
Judgment.

|                               |         | Quantities. | Rate.   | Amount.             |
|-------------------------------|---------|-------------|---------|---------------------|
| Clearing .....                | Acre.   | 458         | \$11 40 | \$ 5,227 00         |
| Grubbing.....                 | do      | 25½         | 64 92   | 1,639 00            |
| Earth excavation.....         | C. yds. | 303,340     | 0 22    | 67,000 00           |
| Rock do .....                 | do      | 460         | 0 67    | 308 00              |
| Loose rock excavation.....    | do      | 6,636       | 0 53    | 3,542 00            |
| Riprap.....                   | do      | 150         | 1 00    | 150 00              |
| Broken stone.....             | do      | 567         | 1 00    | 567 00              |
| Quarried stone delivered..... | do      | 474         | 2 00    | 948 00              |
| Ashlar do do .....            | do      | 285         | 5 00    | 1,425 00            |
| Stone from Doherty Creek Bay. | do      | 180         | 4 00    | 720 00              |
| Paving.....                   | do      | 3           | 2 00    | 6 00                |
| Culvert masonry.. ..          | do      | 1,437       | 4 84    | 6,960 00            |
| Masonry in cement.....        | do      | 1,346       | 9 86    | 13,274 00           |
| Timber in cattle guards ..... | B.M.    | 7,000       | 5 00    | 35 00               |
| Pine timber.....              | do      | 15,875      | 10 00   | 159 00              |
| Hemlock timber.....           | do      | 34,250      | 5 00    | 171 00              |
| Hemlock ties.....             | No.     | 57,400      | 0 10    | 5,740 00            |
| Spruce ties.....              | do      | 11,577      | Nil.    |                     |
| Pole fencing.....             | Rods    | 1,095       | 0 22½   | 245 00              |
| Box drains.....               | No.     | 6           | 10 00   | 60 00               |
| Pile bridging.....            | L. Ft.  | 1,970       | 5 32    | 10,480 00           |
| Telegraph poles.....          | Each    | 413         | 0 50    | 207 00              |
| Cofferdams and pumping.....   |         | 300         |         | 300 00              |
| Examining and locating.....   |         | 18,000      |         | 18,000 00           |
| Not classified.....           |         |             |         | 477 27              |
|                               |         |             |         | <b>\$137,640 27</b> |

1890

## D.

THE  
MONTREAL  
AND  
EUROPEAN  
SHORT  
LINE  
RAILWAY  
COMPANY  
v.  
THE QUEEN.

EXPENDITURES IN CANADA BY EUROPEAN AND MONTREAL  
SHORT LINE RAILWAY CO., SEPTEMBER, 1883, TO  
NOVEMBER, 1885.

| LEDGER<br>PAGE, L. 4. | PARTICULARS.                                                                                                         | AMOUNT.            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------|--------------------|
|                       | Expense.—Voucher No. 245.....                                                                                        | \$232 11           |
|                       | “ 250.....                                                                                                           | 34 45              |
|                       | “ 251.....                                                                                                           | 57 28              |
|                       |                                                                                                                      | <u>\$323 84</u>    |
|                       | Less \$4,16 already credited.....                                                                                    | \$4 16             |
|                       |                                                                                                                      | \$ 319 68          |
| 68                    | Maintenance, Road Bed.....                                                                                           | 679 39             |
| 73                    | “ Organisation .....                                                                                                 | 1,061 73           |
|                       | Advances on account of salaries and rent:—                                                                           |                    |
| 23                    | R. H. Cushing.....                                                                                                   | \$ 13 00           |
| 38                    | B. A. L. Huntsman .....                                                                                              | 175 00             |
| 64                    | R. F. Boyd.....                                                                                                      | 5 00               |
| 29                    | J. H. Black.....                                                                                                     | 50 00              |
| 29                    | Alex. McLellan.....                                                                                                  | 14 00              |
| 56                    | W. Conant.....                                                                                                       | 1,422 08           |
| 58                    | C. L. Snow, (Snow charges himself with<br>\$14,652.96 for this).....                                                 | 14,630 42          |
| 65                    | J. R. Salter.....                                                                                                    | 930 33             |
|                       |                                                                                                                      | <u>17,239 83</u>   |
|                       |                                                                                                                      | <u>\$19,300 63</u> |
| 67                    | Amount sent up by Dr. N. Greene.....                                                                                 | \$19,255 63        |
| 21                    | “ for which horse “Ned” was sold.....                                                                                | 45 00              |
|                       |                                                                                                                      | <u>\$19,300 63</u> |
|                       | Since Statement of Sept., 1883:—                                                                                     |                    |
| 4                     | Voucher No. 252, P. P. Dickinson, \$35.00 had been<br>credited to him and charged to Engineering<br>Survey.          |                    |
| 35                    |                                                                                                                      |                    |
| 46                    | Also Voucher No. 253, J. R. Eaton, \$15.50 had<br>been credited to him and charged to En-<br>gineering Construction. |                    |
| 64                    |                                                                                                                      |                    |
|                       | The totals of expenditures, however, are not<br>changed by these transfers.                                          |                    |
|                       | Disbursements by W. Conant, (see above).                                                                             |                    |
|                       | “ by C. L. Snow, Nov., '85, to July,<br>1887.                                                                        | 19,255 63          |
|                       |                                                                                                                      | <u>12,779 32</u>   |
|                       | Disbursements by C. L. Snow, July, '87, to Oct.,<br>1889.                                                            | \$32,034 95        |
|                       |                                                                                                                      | <u>10,444 43</u>   |
|                       |                                                                                                                      | <u>\$42,479 38</u> |
|                       | See Snow Voucher, ex: P. 7, P. 8, P. 9, P. 10.                                                                       |                    |

**E.**

EXPENDITURES OF THE NORTH AMERICAN CONSTRUCTION Co.,  
EXECUTIVE OFFICE, FROM OCTOBER, 1882, TO DECEMBER, 1888.

1890  
THE  
MONTREAL  
AND  
EUROPEAN  
SHORT  
LINE  
RAILWAY  
COMPANY  
v.  
THE QUEEN.  
Reasons  
for  
Judgment.

| OFFICE FURNITURE.                    |                                                                       |            |             |
|--------------------------------------|-----------------------------------------------------------------------|------------|-------------|
| Oct., 1882.....                      | Carpets, desks, chairs, presses, &c ..                                | \$500 00   | \$ 500 00   |
| OFFICE RENT.                         |                                                                       |            |             |
| From Oct., 1882,<br>to May, 1885...  | 31 Months, at \$100 per month.....                                    | \$3,100 00 |             |
| From May, 1885,<br>to May, 1887...   | 24 Months, at \$28 per month.....                                     | 672 00     | 3,772 00    |
| EXECUTIVE SALARIES.                  |                                                                       |            |             |
| From July, 1882,<br>to Dec., 1888... | President's salary, at \$7,500 p. annum                               | 47,500 00  |             |
| From Oct., 1882,<br>to Nov., 1885... | Secretary's salary, at \$500 p. annum.                                | 1,500 00   |             |
| From Oct., 1882,<br>to May, 1885...  | Clerk (Stenographer), at \$40 p. mth.                                 | 1,240 00   | 50,240 00   |
| STATIONERY.                          |                                                                       |            |             |
| From Oct., 1882,<br>to May, 1887...  | Stationery, Postage, Copying, &c...                                   | 280 00     | 280 00      |
| LEGAL SERVICES.                      |                                                                       |            |             |
| Oct., 1882.....                      | F. S. Joline, (procuring certificate,<br>&c.).....                    | 100 00     |             |
| From Mar., 1883,<br>to Nov., 1887... | Wm. McDougall, (advice drawing<br>papers, &c.).....                   | 900 00     |             |
| Oct., 1882. }<br>Sept., 1884. }      | Alexander & Greene, (drawing two<br>sets of bonds and mortgages)..... | 1,000 00   | 2,000 00    |
| PRINTING AND ENGRAVING.              |                                                                       |            |             |
| Aug. 30, 1884....                    | John Polhemus, (printing pamphlet)                                    | 87 50      |             |
| Dec. 1, " ....                       | " " " " " " " "                                                       | 15 38      |             |
| Sept. 3, " ....                      | Snyder and Black, (engraving map).                                    | 103 50     |             |
| March, 1883.....                     | Franklin Bank Note Co., (engraving<br>bonds).....                     | 1,200 00   |             |
| Dec. 2, 1884.....                    | " " " " " " " "                                                       | 2,600 54   | 4,006 92    |
| TRAVELLING EXPENSES.                 |                                                                       |            |             |
| From May to<br>Sept., 1883.....      | Norvin Greene, Agent, (in London)..                                   | 2,000 00   |             |
| From July, 1884,<br>to Feb., 1885... | P. F. Greene, Agent (in London)...                                    | 3,500 00   |             |
| From July, 1885,<br>to Nov., 1887... | P. F. Greene, Prest. (in Canada)....                                  | 750 00     |             |
| From Feb., 1884,<br>to Nov., 1887... | N. Greene, (in Canada)....                                            | 500 00     |             |
| From March 1883,<br>to Nov., 1887... | Erastus Wiman, (in Canada)....                                        | 250 00     |             |
| Sept. 3, 1885.....                   | Edward Kamper (in Canada)....                                         | 500 00     | 7,500 00    |
| TAXES.                               |                                                                       |            |             |
| 1882 to 1888, in<br>clusive.....     | 7 Years' Taxes, at \$22 per annum...                                  | 154 00     | 154 00      |
| TOTAL.....                           |                                                                       |            | \$68,452 92 |