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EXTRACTS

FROM DOCUMENTS,

—AND ALSO—

LETTERS AND EVIDENCE,

RELATING TO THE RIGHTS OF THE

GRAND TRUNK RAILWAY COMPANY  
OF CANADA,

BETWEEN QUEEN STREET AND THE EAST END OF  
THE ESPLANADE, IN THE

CITY OF TORONTO.

THE EXTRACTS ARE TAKEN FROM THE DEEDS  
IN THE ORDER OF THEIR DATES.

BELLEVILLE :

PRINTED AT THE INTELLIGENCER OFFICE, BELLEVILLE, ONTARIO.

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AGREEMENT  
BETWEEN THE CITY OF TORONTO  
AND THE  
GRAND TRUNK RAILWAY COMPANY  
OF CANADA.

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DATED, 21ST JANUARY, 1856.

THIS agreement, made the 21st day of January, in the year of our Lord 1856, between the Mayor, Aldermen and Commonalty of the City of Toronto, of the first part, and the Grand Trunk Railway Company of Canada, of the second part.

WHEREAS, by certain articles of agreement, bearing date the 4th day of January, in the year of our Lord one thousand eight hundred and fifty-four, the party hereto of the first part contracted with Casimir S. Gzowski, D. L. Macpherson, L. H. Holton, and A. T. Galt, for the construction of an Esplanade along the front of the City of Toronto, upon the terms and conditions in the said articles of agreement mentioned; and whereas the said C. S. Gzowski, D. L. Macpherson, L. H. Holton, and A. T. Galt, commenced operations under the said contract, and have performed part of the work therein contracted to be performed, and have certain claims and demands against the said party hereto of the first part, under the said contract:

AND whereas the said party hereto of the first part has declared the said contract at an end; and whereas the said party hereto of the second part have agreed to assume the settlement of all claims and demands by the said Casimir S. Gzowski, D. L. Macpherson, L. H. Holton, and Alexander T. Galt, against the said party hereto of the first part, and to relieve and indemnify the said party hereto of the first part from all the said claims and demands:

And whereas, under the provisions of an act of the Legislature of this Province, entitled "An Act to authorize the Grand Trunk Railway Company of Canada to change the location of their line in and near the City of Toronto," the said party hereto of the first part are authorized and empowered to contract with the party hereto of the second part for the construction of the said Esplanade, or of any portion thereof. And whereas the said party hereto of the first part are desirous of contracting with the said party hereto of the second part, for the construction of the works hereinafter mentioned.

Now these presents witness, that the party hereto of the first part, for themselves and their successors, and the party hereto of the second part, for themselves and their successors, mutually covenant, promise and agree, the one to and with the other, as follows :—

First.—The party of the second part agree to assume the settlement of all claims existing between C. S. Gzowski, D. L. McPherson, L. H. Holton, and A. T. Galt, and the party hereto of the first part, and to indemnify and relieve the said party of the first part of and from the same.

Second.—The parties hereto agree forthwith to submit the said claims, as matters in dispute between them, to the award, final end and determination of A. M. Ross and T. C. Keefer, Esqrs., and of a third arbitrator, to be chosen by the persons so named before proceeding with the said arbitration, and the parties hereto mutually covenant the one with the other, for themselves and their successors, that they will well and truly stand to, abide by, perform, fulfil and keep any award which may be made by the arbitrators so named and chosen or by a majority of them. Provided that such award be made in writing, ready to be delivered to the said parties, on or before the first day of March next, the said arbitrators, or a majority of them, to have the power to enlarge the time for making their award by writing, under their hand, and to examine all persons and witnesses upon oath. Provided always, and it is hereby agreed, that the said party of the first part shall be at liberty, before the said arbitrators, to dispute the quantity and prices of work, and materials charged for, by the said C. S. Gzowski, D. L. Macpherson, L. H. Holton, and A. T. Galt, and each and every claim made by them in like manner, as if such arbitration had been made between the said C. S. Gzowski and his said partners and the party of the first part.

\* \* \* \*

Fourth.—The party of the second part covenant as aforesaid forthwith to proceed with the construction of a Railway Track or

Way forty feet in width, with all necessary slopes in cuttings, in the proportion of one-and-a-half horizontal to one perpendicular, along the front of the City of Toronto, on the line and in the direction marked, on the plan hereto attached, and which shall be taken to be part of the contract.

Fifth.—The party of the first part covenant as aforesaid, that in consideration of the sum of £10,000 of lawful money of Canada, to be paid to the party of the first part by the party of the second part they shall and will guarantee the exclusive right of way for the said forty feet track, along the said line, from Brock Street to Parliament Street, as shewn on the said plan, to the said party of the second part and their assigns, and shall and will indemnify and save harmless the party of the second part and their successors, of, from, and against all claims and demands whatsoever, of or by all person or persons whomsoever, for or by reason of the construction of the said forty feet tract, and the said slopes, and shall and will pay and discharge all claims for land, damages, and all costs and expenses of any arbitration or other legal proceedings which may be necessary, or may be incurred in consequence of the construction of the said tract of forty feet and slopes. It being expressly declared and agreed between the parties hereto, that the party of the second part shall not for or by reason of the construction of the said Railway Track and Slope, be subjected to the payment of a larger sum than £10,000, for any cause whatsoever.

\* \* \* \*

Seventh.—The said Railway Track of forty feet in width, with the said slopes, to be constructed by the party of the second part, in such manner as may be considered necessary by the Engineer appointed by them to superintend the construction of the same. Provided always, that no alteration in the line so marked on the plan hereto annexed shall be made without the consent of the party of the first part, and that the proportion of one-and-a-half to one be observed.

Eighth.—The party of the second part covenant as aforesaid, that in the construction of the said Railway Track they shall not and will not obstruct the escape of the present public Sewerage of the City.

\* \* \* \*

And the party hereto mutually covenant the one with the other for themselves and their successors, that they will well and truly stand to, abide by, perform, fulfil and keep any award which may be made by the arbitrators so named and chosen, or by a majority of them, or by such arbitrators as may be hereafter named and chosen, as hereinafter provided, so that their award may be made

in writing, under the hands of the said arbitrators or of a majority of them.

\* \* \* \*

Fourteenth.—The party of the second part further covenant as aforesaid, that they shall and will well and truly pay to the said party of the first part the said sum of £10,000, upon the said party of the first part assuring to the said party of the second part and their assigns the exclusive right of way over, upon, and along the said railway track of 40 feet.

\* \* \* \*

Seventeenth.—And whereas, doubts have been entertained as to the liability of the party of the second part, to make and erect bridges and crossings over and upon the said tracks for and by reason of the occupying and using the same by the party of the second part as a Railroad Track. It is hereby expressly declared and agreed, that the party of the first part shall not require the said party of the second part, to build, find, or procure any Bridges, Ramps, Crossings, or any other approaches whatever, over, along, or to the said Railway Track; but shall provide all such, if and whenever required, at their own expense; it being the intention of the parties to these presents, that the party of the first part, for and in consideration of the said sum of £10,000, so to be paid as aforesaid, do guarantee and indemnify the party of the second part of, from, and against all claims and demands whatever, for or by reason of the Railway of the party of the second part being placed on said track of 40 feet.

Eighteenth.—The party of the second part do further agree, that they shall and will assist the party of the first part, in so far as may be necessary in contracting for, or constructing the Esplanade along the front of the City of Toronto, under the second section of the Act passed in the 18th year of Her Majesty's reign, Chap. 175; and fixing upon and determining the plan and site of the said Esplanade, and in taking any other benefit under the said act for the purpose of conferring upon the party of the first part the powers mentioned in the said act concerning the said Esplanade, if the party of the first part shall deem it advisable to require such assistance; the party of the first part agreeing to pay all costs and expenses thereby incurred. And the party of the first part agree that they shall not let to contract nor construct the Esplanade, or general earth-filling until after the party of the second part shall have completed the said Railway Track and Slopes. Provided always that the party of the second part shall use all reasonable expedition to finish the said Railway Track during the present year. It is also mutually agreed that the party of the first part shall not interfere unreasonably with the party of

the second part, nor shall the party of the second part interfere unreasonably with the party of the first part, either in the formation of the Railway Track, or after the construction and occupation of the said Track by the said party of the second part, or in the construction of the said Esplanade; but each shall and will afford all proper facilities to the other.

And whereas the track of the Ontario, Simcoe and Huron Railroad Company passes upon that part of Front Street aforesaid, which will be required for the slope in the construction of the said track of the party of the second part, and it is necessary that some provision should be made in reference thereto:

Now these presents witness, that it is mutually agreed between the said parties of the first and second parts, that if the said party of the first part shall at any time within one calendar month from the execution of these presents desire to make any deviation from the location of said track of the party of the second part, as laid down upon the said plan, so as to prevent interference with the said track of the Ontario, Simcoe and Huron Railroad Company, then that the said party of the second part, on notice thereof within the period aforesaid, shall proceed to execute their said track upon that part thereof lying between Brock and Bay Streets, on such part of the frontage of the said city as shall not be further south than twenty six feet from the southern line of the said forty feet, as laid down on the said plan; and all the covenants, agreements, and provisions herein contained and applicable to the said forty feet track, as laid down on the said plan, shall be applicable to the said substituted track as fully and effectually to all intents and purposes as if such substituted track had been the track originally laid out on the said plan, and had been specially referred to in all the provisions of these presents.

AS witness the hands and seals of the said parties, the day and year first above written.

(Signed) G. W. ALLAN,  
Mayor.

[L. S.] (Signed) JOHN ROSS,  
President Grand Trunk Railway  
Company of Canada.

(Signed) A. T. McCORD,  
Chamberlain.

Signed, sealed and delivered in  
presence of

(Signed) C. GAMBLE.

(Signed) W. SHANLY.

Toronto, 21st January, 1856.

SIR,—

At your request I hereby consent and agree that the track of the Northern Railway, along the south side of Front Street, between Bay and Brock Streets, shall continue to be left where it is until the 15th day of June now next ensuing; and further, that we will construct our forty feet track for the City, and accept it under an agreement with the City (if notice be given by the Corporation within one month from this date desiring us so to do), along the outside line of the proposed Esplanade, as shown and pointed out by Mr. Shanly in pencil, on the plan which we have signed; and further, where the said forty feet track touches the old line of Esplanade, the line to be carried along the south side thereof, subject to all the conditions, covenants and provisoes contained in the agreement this day executed between the City and ourselves, if the City desire such change within one month from date.

(Signed)

JOHN ROSS,

Pres. G. T. R. Company.

To G. W. ALLAN, ESQ.,

Mayor of Toronto.

P. S.—The covenant in our agreement with respect to the patent for the property embraced in the license of occupation of 29th March, 1853, I shall endeavor to get carried out as speedily as possible. Mr. Wilson requested Mr Attorney-General Macdonald, in my presence, to get it ready as speedily as possible, and I have no doubt that this is being done according to the terms read over by you in presence of Mr. Macdonald and Mr. Cayley, when we met to agree upon the terms embraced in our present contract.

(Signed) JOHN ROSS.

Council Chamber, Toronto, Feb. 11th, 1856.

RESOLVED.—That the Solicitor of the Corporation be instructed to give notice to the Grand Trunk Railway Company of Canada, pursuant to the agreement of the 21st January last, that they are required to remove their forty feet track from the foot of the slope, so much farther south as will prevent interference with the track of the Ontario, Simcoe and Huron Railroad Company.

Communicated by the City Solicitor to

The Hon. John Ross, President G. T. R. Co. of Canada.

February 19th, 1856.



Award. Dated April 21st, 1856.

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TO all to whom these presents shall come. We, Alexander McKenzie Ross, of the City of Montreal, Esquire, and James Cobby Street, Esquire, send greeting.

WHEREAS by a certain agreement bearing date the twenty-first day of January, in the year of our Lord one thousand eight hundred and fifty-six, between the Mayor, Aldermen, and Commonalty of the City of Toronto, of the first part, and the Grand Trunk Railway Company of Canada, of the second part, it was among other things witnessed that the said parties thereto did mutually covenant, promise and agree the one to and with the other that they the party of the second part would forthwith proceed with the construction of a Railway Track or way forty feet in width, with all necessary slopes in cuttings in the proportion of one and a half horizontal to one perpendicular along the front of the City of Toronto, on the line and in the direction marked on the plan attached to said agreement, which it was agreed should be part of the said agreement.

AND whereas by the said agreement the parties thereto did agree to submit certain matters in dispute between them to the award, final end, and determination, of Alexander McKenzie Ross and Thomas C. Keefer, Esquires, and of a third arbitrator to be chosen by the persons so named before proceeding with the said arbitration, the said parties thereto of the first part did covenant and agree that they should and would pay to the party of the second part for the construction of the said Railway Track and slopes as follows : The prices and quantities of all works and materials to be fixed by the arbitrators thereinbefore named, within one month from the date of the said agreement, meaning thereby of the said Alexander McKenzie Ross and Thomas C. Keefer, and of the said arbitrator to be chosen by the persons so named before proceeding with the said Arbitration.

AND the said parties did mutually covenant one with the other for themselves and their successors, that they would well and truly stand to, abide by, perform, fulfil, and keep any award which might be made by the arbitrators so named and chosen or by a majority of them, or by such arbitrators as might be thereafter named and chosen as in the said articles of agreement is

provided, so that the award be made in writing under the hands of the said arbitrators or a majority of them.

AND whereas before proceeding with the said award, the said Alexander McKenzie Ross and Thomas C. Keefer chose the said James Cobby Street as the third arbitrator.

AND whereas the said, the Mayor, Aldermen and Commonalty of the City of Toronto, and the said the Grand Trunk Railway Company of Canada under their respective corporate seals duly enlarged the time limited in the said agreement for the arbitrators to make their award of the prices and quantities of all works and materials until the 21st day of April instant.

NOW know ye that we the said Alexander McKenzie<sup>r</sup> Ross and James Cobby Street being a majority of the said arbitrators having taken upon ourselves the burthen of the said reference and having weighed and considered the matters and things thereby referred to us, do award and find :

THAT in the said Railway Track of forty feet wide the necessary slopes on the line in front of the City of Toronto, according to the plan attached to the said agreement, there will be required the quantity of two hundred and forty-six thousand cubic yards of earth-work measured in excavation. There will be required for passages for escape of the sewerage of the City through the said Railway Track, thirty thousand cubic feet of timber, and a brick drain near the Parliament Buildings, will in our opinion also be required, and as in our opinion other brick culverts will be necessary for conveying the drainage of the City across the Railway, we do award that the sum of one pound and fifteen shillings per cubic yard shall be paid for the brick work in the same, including the necessary excavations, and we do award and find that the sum of two shillings currency per cubic yard measured in excavation be paid for all earthwork lying to the westward of the east side of Beard's Wharf, as shewn on the said plan, which we estimate at one hundred and sixty thousand cubic yards, and that the sum of two shillings and three pence currency per cubic yard be paid for all earthwork lying to the eastward of Beard's Wharf, as shewn on said plan, which we estimate at eighty-six thousand cubic yards.

AND we do award that the sum of one shilling and six pence per cubic foot be paid for the timber required for the passages for escape of the sewerage of the City through the said Railway track.

AND we do award that the sum of one hundred pounds be paid for the said brick drain near the Parliament Buildings.

AND we assess our charges as arbitrators for preparing this our award at the sum of one hundred and five pounds, which we direct to be divided equally between the said the Mayor, Aldermen and Commonalty of the City of Toronto, and the said the Grand Trunk Railway Company.

IN WITNESS whereof we have hereunto set our hands this 21st day of April, 1856.

Signed, published and delivered in presence of }	ALEXANDER M. ROSS, JAMES C. STREET.
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WILLIAM KINGSFORD.

Agreement between the City of Toronto and the  
Grand Trunk Railway Company of Canada.  
Dated August 30th, 1856.

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THIS indenture made the thirtieth day of August, in the year of our Lord one thousand eight hundred and fifty-six, between the Mayor, Aldermen and Commonalty of the City of Toronto, of the first part, and the Grand Trunk Railway Company of Canada, of the second part.

WHEREAS by certain articles of agreement bearing date the twenty-first day of January, in the year of our Lord one thousand eight hundred and fifty-six, and made between the said parties hereto of the first and second parts, after reciting a certain contract made between the said parties hereto of the first part, and certain parties doing business together under the firm of "C. S. Gzowski & Co.," for the construction of an Esplanade in front of the City of Toronto, according to a certain plan or specification to the said contract annexed, and that the said parties hereto of the first part, had declared such contract at an end, it was agreed among other things that the claims of the said C. S. Gzowski & Co. should be treated as claims by and on behalf of the said parties hereto of the second part, and shall be referred to arbitration as in the said agreement is mentioned and set forth.

AND whereas the arbitrators therein mentioned made their award of and concerning the matters thereby referred to them, which award is to be and remain in full force and virtue, notwithstanding the execution of these presents.

AND whereas in a certain other portion of the said agreement, it was provided that the said parties hereto of the second part should construct a Railway Track or way forty feet in width along the front of the said City of Toronto, according to a plan and specification thereto annexed, and upon certain terms therein set forth, and that the said parties hereto of the first part for the consideration therein mentioned should guarantee to the said parties of the second part the exclusive right of way for the said forty feet track according to the line upon the said last mentioned plan laid down.

AND whereas since the execution of the said last mentioned agreement, it has been discovered that an error was made in locating the said Railway Track of forty feet, and that the said parties of the first part had not the power to authorize any such location of the said forty feet track, and it has been agreed between them to cancel the said agreement of the twenty-first of January, one thousand eight hundred and fifty-six, so far as relates to the construction of the said forty feet track and the guarantee of the right of way thereon, and to substitute these presents therefor.

NOW this Indenture witnesseth that the said parties of the second part do hereby for themselves and their successors, covenant, promise and agree to and with the said parties of the first part, their successors and assigns, in manner following, that is to say :—

\*                     \*                     \*                     \*

Sixth. That they the said parties of the second part, shall and will well and truly pay or cause to be paid to the said parties of the first part the sum of ten thousand pounds of lawful money aforesaid for a right of way of forty feet in width over, upon, and along the southern or front line of the said Esplanade as laid down on the said plan, and which said track shall be used exclusively for Railway purposes, and which said sum shall be paid to the said parties of the first part upon the completion of the said Esplanade according to the terms of this contract and the guaranty of the said right of way to the said parties of the second part. Provided always, that before the said work or any part thereof shall be commenced or proceeded with, a schedule of prices by which the monthly estimates hereinafter mentioned shall be governed shall be agreed upon between the Engineers of the parties hereto of the first and second parts, which said schedule shall be based upon the quantities of work to be performed, and the said price or sum of seventy thousand pounds it being expressly agreed and understood that such schedule and estimates thereon based are only for the purpose of guiding the Engineer in forming the monthly estimates and are not to be held or taken in any respect to alter or vary the contract.

Seventh. And the said parties of the first part do hereby covenant, promise and agree to and with the said parties of the second part, that they the said parties of the first part shall and will upon the execution of these presents forthwith give possession of the land upon which the said Esplanade is to be built, according to the said plan, to the said parties of the second part, and upon payment of the said sum of ten thousand pounds as aforesaid, they the said parties of the first part shall and will guaranty

to the said parties of the second part the exclusive right of way of the same width from Brock Street westward over, upon and across the Station ground of the Ontario, Simcoe and Huron Railroad Union Company to the Queen's Wharf, on the line laid down on the plan hereto annexed free of charge to the said parties of the second part, except the expense of preparing the same for a Railway Track, which is to be at the expense, cost and charges of the said party of the second part, and also that they the said parties of the first part shall and will hold harmless and indemnified the said parties of the second part of, from and against all claims and demands whatsoever of all persons whomsoever for or by reason or arising out of the construction of the said Esplanade, or of the works hereby contracted to be performed under this agreement. It being expressly declared and agreed by and between the parties hereto, that the said parties of the second part shall not for any reason whatsoever be subjected to the payment of a larger sum than ten thousand pounds, for or on account of the said right of way along the line of the said Esplanade.

\* \* \* \*

AND lastly for the performance of all the covenants and undertakings herein contained on the part of the said parties of the second part, they, the said parties of the second part bind themselves and their successors to the said parties of the first part and their successors in the sum or penalty of one hundred thousand pounds of lawful money aforesaid, and for the performance of all the covenants and agreements herein contained on the part of the said parties of the first part, they, the said parties of the first part bind themselves and their successors to the said parties of the second part, and their successors in the sum or penalty of one hundred thousand pounds of lawful money aforesaid.

IN witness whereof the said parties have hereunto set their corporate seals, the day and year first above written.

Signed, sealed and de- }  
livered in presence of }

C. GAMBLE,  
W. SHANLY.

JOHN BEVERLEY ROBINSON,  
Mayor of the City of Toronto.

{ Seal. }

JOHN ROSS,  
President G. T. R. Co. of Canada.

{ Seal. }

The City of Toronto never constructed the Esplanade west of Brock Street nor through the grounds occupied by the Northern Railway; and, as the section of the Grand Trunk line west of Toronto terminated at the Queen's Wharf—which is west of the Northern grounds—the Grand Trunk had no connection between their line east of Brock Street and west of Queen's Wharf.

Various temporary arrangements were made by which the passenger trains of the Grand Trunk from the West, in the first place, came down Front Street, the trains from the East stopping at the Don. Afterwards arrangements were made by which passenger trains from the East and West came to the temporary station at York Street, but the freight business of the Grand Trunk was done at the Queen's Wharf and the Don.

This was found by all concerned to be expensive and inefficient, and, as the City did not wish to go on with the work west of Brock Street, and the Northern Railway Company objected to the Grand Trunk going through their freight sheds and grounds, and the Government of the day, in the public interest, desired to have the question of the railway service passing into and through the Corporation of the City of Toronto, settled on a permanent footing, they, at the instance of the City of Toronto, the Northern Railway, the Grand Trunk and the Great Western Railway Companies, caused conferences to be held, and reports were made, which, in the end, led to the following arrangement:—

The Grand Trunk did not insist on the City giving them the right of way from Brock Street west, as agreed in the deed of August, 1856.

The Northern withdrew from the claims then made by them to the piece of ground between Brock Street and Bathurst, or a point near, but east of that street, and north of the present fence of the Northern Railway, between the points named above.

It was agreed that the bank should be cut down and that the lines of the Grand Trunk and Great Western should pass in that way into the City, the ground to be divided as it now is amongst the Companies. The Northern paid one part of the cost of this and the balance was divided and paid by the Grand Trunk and Great Western in the same proportions as the land was divided, viz:—two parts by the Grand Trunk and one part by the Great Western.

As this did not connect the eastern and western divisions of the Grand Trunk, and it was desirable to avoid the complaints of the Northern Railway, and to meet the wishes of the City, which then regarded that company with especial favour, it was further

arranged that the Grand Trunk track should be extended westward to Queen Street, over the hundred feet then enclosed by the Northern, and the Northern gave up to the Grand Trunk the south fifty feet and kept the north fifty for their purposes. This was brought about in 1861 or early in 1862, and as has been stated at the urgent instance of the Government of the day, the City of Toronto and the Northern Railway Company. Also it may be added at an exceedingly large outlay to the Grand Trunk in excess of what they had paid to the City for the right of way to Queen's Wharf.

These matters being so arranged the Grand Trunk Railway Company on the 3rd of December, 1862, bought from the City of Toronto the Walks and Gardens property in Toronto, "situate south of Front Street, west of the Rees property, next Simcoe Street, east of Peter Street, and north of the general line of the "Water Lots," in front of the City, containing about six acres, for \$16,500, and subsequently the City conveyed the lands to the Company in fee.

On the 23rd of December, 1862, the Grand Trunk Railway Company entered into an agreement with the City, which is as follows :—

### Agreement for Sale, Dated December 23rd, 1862.

THIS AGREEMENT made this twenty-third day of December in the year of our Lord one thousand eight hundred and sixty-two, BY AND BETWEEN The Grand Trunk Railway Company of Canada of the first part, and the Corporation of the City of Toronto of the second part.

WHEREAS the party of the first part have purchased, and the party of the second part has sold to them the lands and tenements in the said City situate between the property known as Dr. Rees', immediately adjoining Simcoe Street on the east, Front Street on the north, Peter Street on the west, and the northerly general boundary or line of the Water Lots as laid down on the original survey by the Crown on the south.

AND whereas the party of the first part are now in possession of and have the right of way forty feet in width on the Esplanade and that north of said forty feet there is a space sixty feet wide called Esplanade Street ;

AND whereas north of said forty feet and sixty feet (in all one hundred feet) there is a piece of land extending from the north line of said one hundred feet in a direction northerly to the said boundary or general line, north of the said Water Lots as laid down on the original survey of the Water Lots as aforesaid and which is immediately south of the said above mentioned purchase and adjoining the same except on the west where it is bounded by the Furniss Lot now owned by the said Company ;

AND whereas the fee of the said piece of ground so situate south of said general line of the said Water Lots as laid down as aforesaid and north of the said one hundred feet is vested in the Crown. And the said party of the first part require the same for their purposes and desire to get the Patent therefor from the Crown or the title thereto in fee simple ;

And whereas the party of the second part claim compensation for the filling done by them on the space so described and required as aforesaid.

THEREFORE this Agreement Witnesseth that the said parties hereto have and do agree as follows each with the other, namely :

THAT the parties hereto shall at once proceed to ascertain what the filling done by the party of the second part on the said piece of land bounded on the east by the property known as Dr. Rees' property next adjoining Simcoe Street on the south by the said northerly line of the said one hundred feet made up of the said forty feet and sixty feet as aforesaid, on the west by the said lands owned by the party of the first part and on the north by the northerly general line of the Water Lots as laid down on the original survey made by the Crown of the said Water Lots as the northern boundary of the said Lots should have cost that is what it should have been done for. And if the same cannot be agreed upon that then each party shall choose a disinterested engineer, that these two shall choose a third, and that the award of the said three or any two of them fixing the amount calculating on the basis of what the same should have been done for, that is, should have reasonably cost, shall be final, provided however if the parties can agree on one engineer as sole arbitrator and that they do so, his award made on the basis aforesaid shall be final.

THAT immediately on this being fixed and the amount ascertained what the Company are to pay for the said filling the Company will consent to the Patent then issuing for the said piece of land to the party of the second part upon the terms and conditions however that the party of the second part do immediately on the Patent issuing grant in fee by the usual deed of bargain and sale and free from all incumbrances and charges the said piece of land so described as aforesaid by the boundaries aforesaid as being required as above mentioned. And that on the execution of the said deed of bargain and sale to the Company they the Company will for the amount so ascertained as the sum to be paid as aforesaid for the said filling as above mentioned give to the party of the second part a mortgage in fee on the said lands and on the property purchased by the Company from the party of the second part north of the property covered by this

agreement, such mortgage to be conditioned that so long as the Company pay to the party of the second part the interest on the said principal money at the rate of six per cent. per annum half-yearly from the date of the mortgage they the Company shall have the right to retain in their own hands the said principal money, but that if the payment of the interest shall be at any time one calendar month in default the City may proceed for the said principal if they think proper. The option of paying off the principal at any time to remain with the Company.

THAT the Company on this agreement being carried out consent to the Crown granting to the City the land covered with water immediately south of the lands covered by this agreement to the Windmill Line, that is to the southern line of said Water Lots.

THAT the City agree that the Company may cross the said Esplanade Street at any point and in such manner and as often and with as many tracks as shall be necessary for proper ingress and egress to their Station and Elevator at Toronto.

THAT both parties agree to carry out this agreement with the utmost despatch by every means in their power.

THAT nothing contained in this agreement or any concession made on either side shall affect either party further than in so far as the same relates to the subject matter of this agreement and the matters mentioned and referred to therein. And that nothing in this agreement contained shall affect, prejudice or interfere with the rights of either party in respect of or to any matter or thing not included in this agreement or mentioned therein it being the intention of both parties that the rights of each shall be in every respect as to all and every right matter and thing not mentioned in this agreement and intended to be arranged by it as if it never had been made.

PROVIDED ALWAYS and it is understood by both the parties hereto as to the land by these presents agreed to be sold that the Corporation of the City of Toronto in agreeing to this sale made by this agreement to the Grand Trunk Railway Company does not intend to give to the said Company nor does the said Railway Company expect to receive the said lands agreed to be conveyed under this agreement or any of them for any other purposes than those contemplated in the several Orders in Council relating to the said lands.

IN WITNESS WHEREOF the said The Grand Trunk Railway Company of Canada and the said The Corporation of the City of Toronto have hereunto caused the Corporate Seals of the said respective Companies to be affixed to these presents on the day and year first above written.

Seal of City }  
of Toronto. }

J. G. BOWES,  
*Mayor.*

THE GRAND TRUNK RAILWAY COMPANY OF CANADA,  
 A. T. McCORD, by JOHN BELL,  
*Chamberlain. Their Attorney and Solicitor.*

ON THE 4TH OF JULY, 1864,

At the instance of the City of Toronto and the Grand Trunk Railway Company, the Government issued the following Patent :—

Patent for Lands or Water Lots between Rees Lot and Peter Street. Dated 4th July, 1864. Registered 4th July, 1864.

Seal of Province } MONCK.  
 of Canada. }

PROVINCE OF CANADA, }  
 VICTORIA, by the grace of God }  
 of the United Kingdom of Great }  
 Britain and Ireland, QUEEN, De- } *To all to whom these presents*  
 fender of the Faith, etc., etc., etc. } *shall come, Greeting.*

KNOW YE, that among the Rolls and Records in the Registrar's Office of the Province of Canada, in Lib. I. K., Folio 163, it is thus contained, to wit :

MONCK.  
 PROVINCE OF CANADA, }  
 VICTORIA, by the grace of God }  
 of the United Kingdom of Great }  
 Britain and Ireland, QUEEN, De- } *To all to whom these presents*  
 fender of the Faith, etc., etc., etc. } *shall come, Greeting.*

WHEREAS, the Corporation of the City of Toronto, in the County of York, in our said Province, did, under certain orders of our Governor in Council, of our said Province, and a certain license of occupation, bearing date on the twenty-ninth day of March, in the year of Our Lord one thousand eight hundred and fifty-three under the hand and seal of our then Governor, or under the authority conferred upon them in and by certain Statutes of the Parliament of our said Province, enter into possession of certain lands and premises in the said city, (whereof the lands hereby intended to be given and granted form part,) for the formation of an Esplanade. And, whereas, the Corporation of the City of Toronto, in pursuance of the said Statutes, or of some or one of them, and of the authority thereby

conferred, proceeded to the construction of an Esplanade in and upon the said lands intended to be hereby given and granted, or some part thereof. And whereas, the Grand Trunk Railway Company of Canada, subsequently, for the purpose of their said Railway, entered into possession of a certain portion of the lands and premises hereby intended to be given and granted to the Corporation of the City of Toronto.

And, whereas, it is represented to us, that in and by a certain Deed of Agreement made on the twenty-third day of December, in the year of our Lord one thousand eight hundred and sixty-two, by and with the Grand Trunk Railway Company of Canada, of the first part, and the Corporation of the City of Toronto, of the second part, it is recited that the party of the first part had purchased, and the party of the second part had sold to them certain lands and tenements in the said city, in the said recital particularly described. And it is further recited, that the party of the first part were then in possession of a deed of right of way, forty feet in width on the Esplanade, and north of which said forty feet there is a space sixty feet wide, called Esplanade Street. And it is further recited, that north of the said forty feet and sixty feet (in all one hundred feet), there is a piece of land extending from the north line of said one hundred feet in a direction northerly to the boundary or general line north of the Water Lots as laid down on the original survey of the Water Lots by the Crown. And it is further recited that the fee of the said piece of ground so situated south of the said general line of the said Water Lots as laid down as aforesaid, and north of the said one hundred feet is vested in the Crown. And that the party of the first part required the same for their purposes, and desired to get a patent therefor from the Crown, or the title thereto in fee simple.

And further, that the party of the second part claimed compensation for the filling done by them on the space so described and required as last aforesaid. It is by the said agreement witnessed, and the parties thereby agreed each with the other that the parties thereto should at once proceed to ascertain what the filling done by the party of the second part, on the said piece of land, bounded on the east by the property known as Dr. Rees' property next adjoining Simcoe Street; on the south by the said northerly line of the said one hundred feet, made up of the said forty feet and sixty feet as aforesaid; on the west by the said lands owned by the party of the first part; and on the north by the northerly general line of the Water Lots, as laid down on the original survey made by the Crown of the said Water Lots as the northern boundary of the said Lots, should have cost, that is, what it should have been done for; and that if the sum could not be agreed upon, that then each party should choose a disinterested engineer, and that those two should choose a third, and the award of the said three or any two of them, fixing the amount calculated on the basis of what the same should have been done for, that is, should have reasonably cost, should be final; provided, however, if the parties could agree on one engineer as sole arbitrator, and that they did so, then his awards made on the basis aforesaid should be final.

And further, that immediately on the same being fixed, and the amount ascertained which the Company were to pay for the said filling, the Company would consent to the Patent then issuing for the said piece of land to the party of the second part, upon the terms and conditions, however, that the party of the second part, should immediately on the Patent issuing grant in fee, by the usual deed of bargain and sale, and free from all encumbrances and charges, the said piece of land so described as aforesaid, by the boundaries aforesaid, as being required as therein mentioned.

And that on the execution of the said deed of bargain and sale to the Company, they, the Company would for the amount so ascertained as the sum to be paid for the said filling as therein mentioned, give to the party of the second part, a mortgage in fee as therein mentioned, to be conditioned, that so long as the Company should pay the party of the second part the interest on the said principal money at the rate of six per cent. per annum, half yearly from the date of the mortgage, the Company were to have the right to retain in their own hands the said principal money, but that if the payments of the interest should be at any time one calendar month in default, the City might proceed for the said principal sum if they thought proper; and that the option of paying off the principal sum at any time should remain with the Company.

And further, that the Company on the said agreement now in recital being carried out, consented to the Crown granting to the City, the land covered with water, immediately south of the lands covered by this agreement, to the Windmill Line, that is, to the southern line of said Water Lots, as on reference to the said deed now in recital will more fully appear.

And, whereas, it is further represented to us, that in pursuance of the said agreement hereinbefore recited, Sanford Fleming, of the City of Toronto, in the County of York, Civil Engineer, was appointed sole arbitrator for the purpose in the said agreement mentioned. And that by his award, dated on or about the seventeenth day of February, one thousand eight hundred and sixty-three, he did award and determine that the cost of the filling done by the Corporation of the City of Toronto, that is what it should reasonably have been done for, on the said piece of land bounded on the east by the property known as Dr. Rees' property next adjoining Simcoe Street; on the south by the said northerly line of the said one hundred feet, made up of the said forty feet and sixty feet, in the said deed mentioned; on the west by the said lands owned by the said Railway Company; and on the north by the northerly boundary line of the Water Lots, as laid down on the original survey made by the Crown of the said Water Lots as the said northern boundary of the said Lots, is the sum of three thousand seven hundred and fifty-five dollars, which sum was thereby fixed and ascertained as the amount to be paid by the Grand Trunk Railway Company of Canada, to the Corpor-

ation of the City of Toronto, for the said filling, pursuant to the said reference.

And whereas, it is further represented to us that in pursuance of the said agreement and award, the following agreement was entered into between the Grand Trunk Railway Company of Canada, and the Corporation of the City of Toronto, as follows :

QUEBEC, August 25th, 1863.

“It is agreed that all questions between the City of Toronto and the Grand Trunk Railway Company, respecting the purchase of lands and payment for filling shall be finally settled by the latter agreeing to the sum of thirty-five thousand dollars, as the price for the Round House Lot and Water Front, in front thereof for the Elevators, &c. The previous agreement for Wharves and Harbours to be at once completed at the amount fixed by Fleming’s award, and the sum of thirty-five thousand dollars to be secured by mortgage in the way, and on same terms as Wharves and Harbor agreement. The Grand Trunk Company to have the right to lay down tracks on and across Esplanade Street, between Peter and Brock Streets, to the full extent that their business may from time to time render necessary. This agreement settles all matters in dispute for lands and filling done between Brock Street and Dr. Rees’ property, adjoining Simcoe Street. The Patent for the Round House Block on the above conditions to issue to the City, the deed to the Grand Trunk to be the usual deed of bargain and sale, and to convey the lands in question free from all charges, that is, by a clear title. The usual mortgage to be made in return on the same terms as mentioned above. The above agreement only includes the filling done on the Round House Block, and on the lands covered by the agreements of the 3rd and 23rd of December, 1862, and no others, and the words ‘on and across Esplanade Street,’ shall extend only to the right to cross the Esplanade Street as the business of the Grand Trunk Railway Company may require.”

AND whereas, we are willing and desirous that the said deed, award, and agreement should be carried out. NOW THEREFORE KNOW YE, that in consideration of the premises, and in aid of the furtherance of the hereinbefore recited deed, award and agreement, WE, of our special grace, certain knowledge and mere motion have given and granted, and by these presents do give and grant unto the Corporation of the City of Toronto, their successors and assigns, all those certain tracts and parcels of land or Water Lots, and land covered with water, situate in the said City of Toronto, and bounded on the north by the northerly general line of the Water Lots, as laid down on the original survey, made by the Crown of the said Water Lots ; on the south by the line known as the Windmill Line ; on the east by the western limit of the Water Lot known as Dr. Rees’, and situate west of Simcoe Street, and granted by our Letters Patent in the year of our Lord one thousand eight hundred and forty-six, to one Joseph Beckett ; and on the west by the eastern limit of the Water Lot granted to the Honorable J. Masson and A. Furniss, on the east side of Peter Street produced and containing twenty-eight acres, more or less. To have and to hold the

premises hereby given and granted, and every part thereof, unto the said, the Corporation of the City of Toronto, their successors and assigns forever ; saving, excepting and reserving, nevertheless, unto us, our heirs and successors all mines of gold and silver, and the free uses, passage, and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found on, or under, or be flowing through or upon any part of the said tracts or parcels of land hereby granted, subject, however, to and upon the express trusts and conditions following, that is to say :

First. That no claim or demand of any kind or nature whatsoever shall be made or preferred by the Corporation of the City of Toronto, their successors or assigns, or by the Grand Trunk Railway Company of Canada, their successors or assigns, or by any party claiming by, from, through or under them or any or either of them, upon or against us, our heirs and successors, in respect to the said lands, land covered with water, Water Lots and premises, hereby given and granted, or in respect of any work, labor or money, made, expended, or laid out, or liabilities incurred in respect thereof by them or either of them, in or upon the lands, land covered with water, Water Lots and premises hereby given or granted ; or any levelling, excavating or filling up of the same or any part thereof, whether in the construction of an Esplanade in, upon, or adjoining the same premises, or in the appropriation of the same for Railway purposes or otherwise, howsoever. And further, that the grant made by these our letters patent, is, and shall be held and taken in full release and discharge of any alleged or possible claim or demand of any nature or kind whatsoever, as aforesaid, which might or may be made by the Corporation of the City of Toronto, or the Grand Trunk Railway Company of Canada, or either of them.

Secondly. That nothing in these our letters patent contained, shall authorize, or be considered to authorize the Grand Trunk Railway Company of Canada to close up or interfere with the southern end of John Street, running through the said premises intended to be hereby granted, released and confirmed, as aforesaid, further than is provided by "the Railway Act," or to authorize the Corporation of the City of Toronto, to close up or interfere with the said southern end of John Street, running through the same premises.

Thirdly. That they, the Corporation of the City of Toronto, do, and shall in pursuance of the hereinbefore recited deed, award and agreement, with all reasonable despatch, execute and grant in fee, by the usual deed of bargain and sale to the Grand Trunk Railway Company of Canada, their successors and assigns, free from all encumbrances and charges, and for the considera-

tion of the sum of three thousand seven hundred and fifty-five dollars, to be secured by mortgage as hereinafter mentioned, all that piece or parcel of land being a portion of the lands hereby given and granted, and which may be known and described as follows, that is to say : extending from the north line or boundary of Esplanade Street in a direction northerly up to the said boundary or general line north of the said Water Lots, as laid down in the original survey of the Water Lots, and bounded on the east by Dr. Rees' property immediately adjoining Simcoe Street, and granted by letters patent, in the year one thousand eight hundred and forty-six, to one Joseph Beckett, and on the west by the Water Lot heretofore granted to the Honorable J. Masson and A. Furniss. And further, that upon execution and delivery of such deed and bargain of sale, as aforesaid, they, the Grand Trunk Railway Company of Canada, do and shall execute and deliver to the Corporation of the City of Toronto, their successors and assigns, and that the Corporation of the City of Toronto shall accept and receive from the Grand Trunk Railway Company of Canada, a deed of mortgage in fee on the said lands and premises, so to be conveyed to them as lastly hereinbefore mentioned to secure payment to the Corporation of the City of Toronto, of the sum of three thousand seven hundred and fifty-five dollars, and that so long as the said Company pay to the said City of Toronto, the interest on the last mentioned principal sum of money, at the rate of six per cent. per annum, half yearly from the date of the mortgage, the Grand Trunk Railway Company of Canada shall have the right to retain in their own hands the said principal money ; but that if the payment of the interest shall be at any time one calendar month in default, the Corporation of the City of Toronto may proceed for the recovery of the said principal sum of money to be thereby secured, and that the option of paying off the principal at any time shall remain with the Company.

Fourthly. That nothing in these our letters patent contained shall be taken as affecting any agreement heretofore made between the Grand Trunk Railway Company of Canada, and the Corporation of the City of Toronto, respecting right of way on the said Esplanade.

Given under the great seal of our Province of Canada.

Witness our right trusty and well-beloved cousin, the Right Honorable Charles Stanley, Viscount Monck, of Ballytrammon, in the County of Wexford, Governor-General of British North America, and Captain-General, and Governor-in-Chief in and over our Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, etc., etc., etc. At Quebec, this fourth day of July in the year of our

Lord one thousand eight hundred and sixty-four and in the twenty-eighth year of our reign.

By command of His Excellency in Council.

G. POWELL,

ANDREW RUSSELL.

Act'g Ass't Secretary.

Ass't Com. of Crown Lands.

All which we have commanded to be exemplified.

Given under the great seal of our Province of Canada. Witness our right trusty and well beloved cousin, the Right Honorable Charles Stanley, Viscount Monck, Baron Monck, of Ballytrammon in the County of Wexford, Governor-General of British North America, and Captain-General and Governor-in-Chief in and over our Provinces of Canada, Nova Scotia, New Brunswick and the Island of Prince Edward and Vice Admiral of the same, etc., etc., etc. At Quebec this thirteenth day of July, in the year of our Lord one thousand eight hundred and sixty-four, and in the twenty-eighth year of our reign.

Examined,

By Command,

WM. KENT.

E. A. MEREDITH,

Assistant Secretary.

On the 18th of July, 1864, the Corporation of the City of Toronto did convey the lands so mentioned in said patent to the Grand Trunk in fee simple.

The lands known as the Round House Block, between Peter and Brock Streets, being in possession of the Grand Trunk, an agreement was made for the purchase thereof by that Company for \$35,000. This agreement is fully set out in the patent issued by the Crown at the instance of the City and the Grand Trunk on the 13th of June, 1864, which patent is as follows :

Patent for Round House Block. Dated June 13th,  
1864. Registered June 14th, 1864.

Seal of Province }  
of Canada. }

MONCK.

PROVINCE OF CANADA, }  
VICTORIA, by the Grace of God }  
of the United Kingdom of Great }  
Britain and Ireland, QUEEN, de- }  
fender of the faith, etc., etc., etc. }

*To all to whom these presents  
shall come, Greeting.*

KNOW YE, that amongst the Rolls and Records in the Registrar's Office of the Province of Canada in Lib. I. K., Folio 150, it is thus contained, to wit :

MONCK.

PROVINCE OF CANADA,	} <i>To all to whom these presents shall come, Greeting.</i>
VICTORIA, by the grace of God	
of the United Kingdom of Great	
Britain and Ireland, QUEEN, de- fender of the Faith, &c., &c., &c.	

WHEREAS, the Corporation of the City of Toronto, under certain orders of our Governor in Council of our said Province, and a certain license of occupation being dated on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and fifty-three, under the hand and seal of our then Governor, entered into possession of certain lands and premises in the said city (whereof the lands hereby intended to be given and granted form part) for the formation of an Esplanade.

And whereas, the Corporation of the City of Toronto, in pursuance of the authority conferred upon them, in and by certain statutes of our said Province proceeded to the construction of an Esplanade in and upon or adjoining said lands.

And whereas, the Grand Trunk Railway Company of Canada, subsequently entered into possession of the lands and premises hereby intended to be given and granted, and erected certain buildings on the same, or on some part thereof for the purpose of the said Railway.

And whereas, divers negotiations and transactions, have from time to time been entered into between the Corporation of the City of Toronto and the Grand Trunk Railway Company of Canada, in respect to matters arising out of or connected with the said lands and premises hereinafter described and intended to be hereby given and granted.

And whereas, it is represented to us, that for the purpose of settling long pending disputes between the Grand Trunk Railway Company of Canada and the Corporation of the City of Toronto, respecting the lands hereinafter described, and other matters affecting the same, the following agreement was entered into between the said parties, in these words :

“QUEBEC, August 25th, 1863.

“It is agreed that all questions between the City of Toronto and the Grand Trunk Railway Company, respecting the pur-

"chase of lands and payment for filling, shall be finally settled  
 "by the latter agreeing to the sum of thirty-five thousand dollars,  
 "as the price for the Round House Lot and water front in front  
 "thereof for the elevators, &c. The previous agreement for wharves  
 "and harbours to be at once completed at the amount fixed by  
 "Fleming's award, and the sum of thirty-five thousand dollars to  
 "be secured by mortgage in the way and on same terms as  
 "Wharves and Harbour agreement. The Grand Trunk Com-  
 "pany to have the right to lay down tracks on and across Es-  
 "planade Street, between Peter and Brock Streets, to the full  
 "extent that their business may from time to time render neces-  
 "sary. This agreement settles all matters in dispute for lands  
 "and filling done between Brock Street and Dr. Rees' property  
 "adjoining Simcoe Street. The patent for the Round House  
 "Block on the above conditions to issue to the city. The deed  
 "to the Grand Trunk to be the usual deed of bargain and sale,  
 "and to convey the lands in question free from all charges, that  
 "is, by a clear title; the usual mortgage to be made in return  
 "on the same terms as mentioned above. The above agreement  
 "only includes the filling done on the Round House Block, and  
 "on the lands covered by the agreement of the third and twenty-  
 "third day of December, 1862, and no others, and the words  
 "'on and across Esplanade Street' shall extend only to the right  
 "to cross the Esplanade Street as the business of the Grand  
 "Trunk Railway Company may require."

And whereas, we are willing and desirous that the said  
 agreement should be carried out. Now therefore, know ye, that  
 in consideration of the premises, and in aid and furtherance  
 of the hereinafter recited agreement, We of our special  
 grace, certain knowledge and mere motion, have given and grant-  
 ed, and by these presents do give and grant unto the Corpora-  
 tion of the City of Toronto, their successors and assigns, all that  
 certain tract and parcel of land in the above recited agreement  
 mentioned and described as "the Round House Block," that is  
 to say, all that tract or parcel of land situated in the said City  
 of Toronto, and bounded on the north by the south side of  
 Front Street; on the south by the line known as the "Windmill  
 Line;" on the east by the south side of Peter Street; and on the  
 west by the east side of Brock Street, and containing by admea-  
 surement ten acres, be the same more or less, saving and excep-  
 ting thereout, and reserving to the Great Western Railway  
 Company of Canada, their successors and assigns, (upon pay-  
 ment to the Grand Trunk Railway Company of Canada, of such  
 sum of money as compensation therefor, as may be ascertained  
 as hereinafter provided,) a right of way in, through and upon the  
 piece or parcel of land hereinbefore mentioned, and hereby  
 given and granted for the purposes of a railway track. And

which said right of way is hereby defined and prescribed to consist in a width of six feet, produced on either side from the centre of the Railway track, as heretofore laid down between Peter Street and Brock Street, hereinbefore mentioned, by the Great Western Railway Company of Canada, and now occupied and used by the last mentioned Company for such purposes, and a plan of which said Railway track, whereof such right of way is hereby reserved, shall be made and certified by a duly qualified land surveyor, and filed or deposited within a period of six months from the date of these our letters patent in the office of our Provincial Registrar, and in the Registry Office of the City of Toronto aforesaid, and which said right of way, as herein defined and prescribed, shall be liable from time to time, to be varied by the substitution of a right of way, to the same extent as aforesaid, to the said Company for Railway purposes, in, through and upon such other portion of the said piece or parcel of land between Peter Street and Brock Street, hereinbefore mentioned and hereby given and granted as may be agreed upon between the Grand Trunk Railway Company of Canada, their successors or assigns, and the Great Western Railway Company of Canada, their successors and assigns, or as in case of disagreement may be determined by arbitration as hereinafter mentioned, and which said right of way (upon payment therefor as hereinafter mentioned) whether as hereinafter defined and prescribed, or if varied as hereinbefore mentioned, shall be held, used and enjoyed by the said the Great Western Railway Company of Canada, subject to the right, condition and power of the Grand Trunk Railway Company of Canada, to cross such right of way, and the track of the said the Great Western Railway Company of Canada, thereon existing, as often and in such manner as may be necessary for the purposes of their business. And also subject to payment by the Great Western Railway Company of Canada, their successors and assigns, to the Corporation of the Grand Trunk Railway Company of Canada, their successors and assigns, of such sum of money as shall be reasonable and adequate compensation therefor. And as to which right of way, hereinbefore reserved, whether the same be that defined and prescribed or varied as hereinbefore mentioned or the crossing thereon by the Grand Trunk Railway Company of Canada, or upon the track thereon existing, or the points or manner of such crossing or the amount of compensation to be paid by the Great Western Railway Company of Canada, as aforesaid, any disagreement shall be determined by arbitration and award, to be originated and conducted under, and in pursuance of the sixty-sixth Chapter of the Consolidated Statutes of Canada, entitled "An act respecting Railways," to have and to hold the same and every part

thereof unto the said the Corporation of the City of Toronto, their successors and assigns forever, saving, excepting, and reserving, nevertheless, unto us, our heirs and successors all mines of gold and silver, and the free uses, passage and enjoyment of, in over and upon all navigable waters that shall or may be hereafter found on, or under, or flowing through or upon any part of the said piece or parcel of land hereby granted as aforesaid; subject, however, to and upon the express trusts and conditions following, that is to say :

Firstly. That no claim or demand of any kind or nature soever shall be made or preferred by the Corporation of the City of Toronto, their successors or assigns, or by the Grand Trunk Railway Company of Canada, their successors or assigns or any party claiming, by, from, through or under them, or any or either of them, upon or against us, our heirs and successors in respect of the said lands and premises hereby given and granted, or in respect of any work, labor or money made, expended and laid out, or liabilities incurred in respect thereof by them or either of them, in or upon the lands and premises hereby given and granted, or the levelling, excavation or filling up of the same or any part thereof, whether in the construction of an Esplanade in, or upon, or adjoining the said lands and premises, or in the preparation of the same for Railway purposes or otherwise howsoever.

And further, that the grant made by these our letters patent is and shall be held and taken in full release and discharge of any alleged or possible claim or demand of any nature or kind soever as aforesaid which might or may be made by the Corporation of the City of Toronto, or the Grand Trunk Railway Company of Canada, or either of them.

Secondly. That they the Corporation of the City of Toronto, do and shall with all reasonable dispatch carry out the agreement hereinbefore recited, and do upon the terms therein expressed for the purposes of their Railway convey to the Grand Trunk Railway Company of Canada, their successors and assigns all the lands hereinbefore described and hereby given and granted, except the Esplanade of one hundred feet in width as constructed and extending through the said lands hereby given and granted, and also saving and reserving, out of the said lands hereby given and granted the easement or right of way to the Great Western Railway Company of Canada, herein reserved in such express manner and terms as the same is hereinbefore saved and reserved, and that such deed of conveyance so to be given by the Corporation of the City of Toronto to the Grand Trunk Railway

Company of Canada, their successors and assigns shall be given on the terms and for the consideration in the agreement hereinbefore recited, expressed, and in pursuance thereof.

Thirdly. That nothing in these our letters patent contained shall be taken as affecting any agreement heretofore made between the Grand Trunk Railway Company of Canada, and the Corporation of the City of Toronto respecting right of way on the said Esplanade.

Given under the great seal of our Province of Canada. Witness our right trusty, and well beloved cousin, The Right Honorable Charles Stanley, Viscount Monck, Baron Monck of Ballytrammon, in the County of Wexford, Governor-General of British North America, and Captain-General, and Governor-in-Chief in and over our Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c., &c., &c., at Quebec this thirteenth day of June in the year of our Lord one thousand eight hundred and sixty-four, and in the twenty-seventh year of our reign.

By command of His Excellency in Council.

JOHN SIMPSON,                      ANDREW RUSSELL,  
Secretary.                      Ass't Commissioner of Crown Lands.

All which we have commanded to be exemplified.

Given under the great seal of our Province of Canada. Witness our right trusty and well beloved Cousin, the Right Honorable Charles Stanley Viscount Monck, Baron Monck of Ballytrammon, in the County of Wexford; Governor-General of British North America, and Captain-General and Governor-in-Chief in and over our Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, etc., etc., etc., at Quebec, this eighteenth day of June, in the year of our Lord one thousand eight hundred and sixty four, and in the twenty-seventh year of our reign.

By Command.

(Signed)                      JOHN SIMPSON,  
Secretary.

On the 25th of June, 1864 the City, in accordance with the trusts and agreements set out in the patent, conveyed to the Grand Trunk Railway Company in fee, the consideration being \$35,000.

*(Here see Appendix, Page 67.)*

On the 15th day of May, 1866, an agreement was made for the purchase of the lands on which the Union Station now stands. This agreement is as follows :

**Agreement. Dated May 15th, 1866.**

THIS AGREEMENT made this fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-six.

BY and between the Corporation of the City of Toronto, of the first part, and the Grand Trunk Railway Company of Canada, of the second part.

WITNESSETH that the said parties have agreed as follows, that is to say : That the party of the second part, hereinafter called the Company, have agreed to purchase, and the party of the first part, hereinafter called the City, have agreed to sell and convey, and hereby do agree to sell and convey, subject to the contingency hereinafter mentioned : All that part of the Water lots in the City of Toronto, north of Esplanade Street, and situate between Simcoe and York Streets, the north line to be a parallel line to Front Street, and to be fixed about one hundred and fifty feet south thereof, upon the terms and subject to the conditions following, that is to say :—

THAT the price for the said lands shall be twenty thousand dollars; that the City will surrender to the Crown if necessary the present grant which they hold of the said Water Lots in so far as it relates to the above described lands, on condition that the Crown will grant the said lands in fee to the City or the Company as may be thought best.

THAT in case the patent issues to the Company direct, then the Company will execute and deliver to the City a mortgage in fee with the usual covenants, but conditioned for payment in all respects the same as the mortgage heretofore granted by the Company to the City for the lands bought by the Company from the City, and known as the Round House Block, that is, that the Company paying the interest at the rate of six per cent. per annum half yearly, the principal money shall not be payable in the option of the Company until they elect to do so, the conditions, provisions, and stipulations in this respect to be the same as in the mortgage referred to, the patent to contain conditions that the land in question is only to be used for a Passenger Railway Station for the City of Toronto.

In case the new grant issues to the City, they are to give a deed free from incumbrances, and take a mortgage as provided above similar in all respects. The company are to procure the said grant which they undertake to do on said surrender being made.

THAT the Company may at once take possession, and that from this date the said interest shall be payable and the Company may at once proceed with their works upon the said premises.

THE effect of this agreement shall be, that upon and after the execution hereof the Company will hold under this agreement only.

THE Company agree to surrender to the City any lease or leases they now hold, and that the covenants respecting said premises now held by both parties hereto, and to said lease or leases are by this agreement ended, and all liability on either party thereunder is by this agreement also determined and ended.

EACH of the above parties hereto covenants and agrees with the other to abide by, perform and keep the other agreement in all respects, and to perform the same.

IT is agreed also that the above described land is to be used for the purpose of a passenger station, that the Company and those Companies who may use the said station may and shall have the right to cross Esplanade Street with their tracks as often and in the manner required for the proper working of the traffic in and out of the said station in the most safe and convenient manner.

THE Company agree that they will permit and allow any other Railway Company to enter upon the station to be erected upon the said premises for the purpose of making the same a terminal station at Toronto; the privilege to be given on such terms as to rent and otherwise as said Company and such other Company or Companies may agree upon, or on failure of agreement as may be fixed by arbitration.

PROVIDED always, and it is expressly declared and agreed that while the City will by all reasonable acts assist in obtaining the said patent from the Crown in the form necessary to the carrying out of the said agreement in its true spirit and meaning, still the Company assume the whole trouble and expense of getting the new patent from the Crown, or of such legislation as may be found necessary in case legislation has to be resorted to, and that in case of failure to get the patent in a form to authorize the carry-

ing out of the sale in the manner above agreed upon, or of legislation authorizing a conveyance in accordance with the terms of this agreement, that in such case this agreement shall cease and be void, and each party shall revert to their former position as it was before this agreement was made.

AND further that the provisions of this agreement shall be carried out with all reasonable despatch.

AND further that nothing in this agreement contained shall be taken as conveying the idea that the mortgage now held by Mrs. Hancox, of Bath, in this Province, or any other person on one of the Water Lots, a part of which is covered by this agreement, is to be paid by the Company, or that the said mortgage forms any part of the said consideration money, or that the City are directly or indirectly, or in any way liable for the said mortgage, or any part thereof, or that they directly or indirectly assume any responsibility in respect thereof or of any part thereof. But nevertheless the Company covenant with the City to save the City harmless against the said mortgage and all monies payable thereunder or any mortgage on said premises whoever may have the same.

AND also that before this agreement is delivered the Company do pay all rents upon any part of said lands held by them as tenants to the date hereof.

IN witness whereof the said parties hereto have hereunto affixed their respective corporate seals the day and year first above written.

Signed, sealed and delivered in presence of } A. T. McCORD, { Seal of City  
Chamberlain. } of Toronto.

In pursuance of the above agreement a deed in fee was made by the City conveying the lands above described to the Grand Trunk Railway Company and in that deed is contained the following Covenant on the part of the City.

“ And further that they the parties of the second part ( the  
“ G. T. R. Co.) their successors and assigns shall have the full  
“ right power and authority to lay down, upon and across Es-  
“ planade Street in the City of Toronto west of the east side of  
“ York Street aforesaid all, and as many railway tracks as they  
“ may think necessary and as may from time to time be required  
“ by them or any other Railway Company using the station to be  
“ erected upon the said premises for the purposes of the

“ convenient and safe and easy ingress and egress to and from  
 “ their said station so to be built thereon as aforesaid. That  
 “ the parties of the second part covenant to indemnify and save  
 “ harmless the party of the first part from the Hancox mortgage  
 “ in said agreement mentioned.

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### Memorandum.

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WHEREAS the Grand Trunk Railway Company of Canada have this day executed a mortgage to the Corporation of the City of Toronto upon certain lands therein described, situate between York and Simcoe Streets in the City of Toronto, and north of the Esplanade. It is hereby declared and agreed that at any time after the construction of the station in said mortgage mentioned, and on payment of the consideration money in said mortgage named, and all interest then unpaid thereon the Corporation of the City of Toronto shall discharge the said mortgage by certificate in the usual form or otherwise as the said Company may require.

IN witness whereof the said Corporation of the City of Toronto have hereunto set their official seal this twenty-ninth day of February, in the year of our Lord one thousand eight hundred and sixty-eight.

In presence of }  
 CHAS. W. COOPER. }

JAMES E. SMITH, Mayor.  
 A. T. McCORD, Chamberlain.

} Seal of City  
 } of Toronto.

On the lands so purchased as appears above, the Grand Trunk Railway Company have caused an Elevator and Wharves to be constructed, also two large Engine Houses, with various other buildings, freight sheds, some seven hundred feet long and the Union Station ; also the vast mass of tracks to meet the requirements of their freight and passenger business, including local and through. And besides it is crossed by the Great Western and the Toronto, Grey & Bruce. Also their double tracks to Queen Street, and sidings. And east of York Street they have laid down all the tracks contemplated by the agreement with the City, dated the 19th day of April, 1865, and which is given above, and they are now in use.

The total expenditure of the Grand Trunk in the City of Toronto, is over half a million dollars.

The above shews first as regards the Esplanade east of York Street, that the Grand Trunk hold not only by grant from the City, but by agreement afterwards made under Act of Parliament, and under the act of 1865. As regards the lands between York and Brock Streets, the Grand Trunk hold them in fee mainly under patents issued at the instance of the City, and under stipulation by the Crown, that they should be conveyed to the Grand Trunk for their purposes ; and from Brock Street to Queen Street the Grand Trunk hold by agreement of all the Companies and of the Crown, and in exchange for the right of way paid for by them through the Northern grounds, and which they gave up for the lands now occupied by them, with the consent and at the instance of the Government and all the parties interested, including the City of Toronto ; and all this is in fact confirmed by the act and agreement of 1865, in which the Grand Trunk abandon all their claims to cross the Northern grounds.

These lands the Grand Trunk Railway require for the purposes of their Railway,—the Crown and the City admit this,—the Company's business is still increasing. Nevertheless, it is proposed to take from them the lands they require and give them to another Company, only because that other Company insist that they require them, and that they must and shall use and do with these as they please, no matter what the loss or detriment to others may be.

To shew the feeling of the Grand Trunk Railway Company towards other lines, it may be mentioned that they have given every facility in their power to the Toronto, Grey and Bruce, and the Toronto and Nipissing Railways ; and the Grand Trunk in the same way have offered to deal with the Credit Valley Railway as will appear from the following letters.

“ GRAND TRUNK RAILWAY OF CANADA,  
 “ GENERAL MANAGER'S OFFICE,  
 “ AT TORONTO, JUNE 6, 1879.”

“ DEAR SIR,

“ I was sorry that I could not see you when you called at the Queen's Hotel yesterday morning. I was just in the act of dressing and when I got down stairs I found you had left. I sent up to your office to-day to see if you or Mr. Ross could come down and have a conference with me respecting terminal accommodation in this city and I found that you were both out of town. I also enquired for Mr. Campbell, the Vice-President of your Company and I found that he was out of town also. I rather regret this because I intended to take up the subject which we proposed to discuss in a general way with you, and to determine whether it is possible for us to make a satisfactory arrangement with your Company for an exchange of business and terminal facilities in this city.

“ I may say to you that we desire to give your Company accommodation in our station here, and to afford you all the facilities which we reasonably can on fair terms.

“ If you do not return to Toronto before I leave I hope that you will run down to Montreal in order that we may talk the matter over.

“ I may in this letter indicate generally the sort of arrangement which I think we could enter into.

“ 1st. That you shall run your freight and passenger trains to our stations in this city making use of our track from the neighbourhood of Bathurst Street.

“ 2nd. That we afford you accommodation for the working of your freight and passenger traffic on and in our premises.

“ 3rd. That so far as your traffic in and out of this city is concerned we do the work with our staff of booking, billing and handling for you on terms agreed upon.

“ 4th. That as regards rates and other arrangements strictly pertaining to your business our staff are to carry out the instructions of your officers.

“ 5th. Your trains and employes when on the premises of the Grand Trunk Company to be subject to our regulations and under the control of our officers.

“ 6th. In consideration of our giving you rates and facilities for traffic from the line of your road to points east

of Toronto, you are to co-operate with us in developing such traffic and not to enter into competition with us so as to injure our business eastward.

"7th. Your Company to have the right to send traffic to and from our Elevator and as far as we are able to give that right to you, to receive and deliver traffic along the Esplanade.

"8th. The agreement to be for such term of years and such compensation to be paid as we may hereafter agree upon.

"In a general way I have indicated the basis on which I think we can make an arrangement with you. If this basis will be satisfactory to you I will at once consider the question of the compensation to be paid to us and have prepared a draft agreement for the consideration of your Company.

"I am

"Yours truly,

"J. HICKSON."

"GEO. LAIDLAW, ESQ.,

"President,

"Credit Valley Railway Co.,

"Toronto,

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"GRAND TRUNK RAILWAY OF CANADA,

"GENERAL MANAGER'S OFFICE,

"MONTREAL, JUNE 27, 1879."

"GEO. LAIDLAW, ESQ.,

President Credit Valley Railway Company, Toronto."

"DEAR SIR,

"You are probably aware that I have been almost continually from home since the date of your letter of June 9th in reply to my communication addressed to you on the 26th ult. That is the reason why you have not had an earlier reply.

"I very much regret to see the persistent efforts which are made to misrepresent this Company, and I think I have cause to complain that a letter addressed to you in the ordinary course of business should have been, without my permission, published in the newspapers. \* \* \*

“Your Company have sought to arrange with us for accommodation for its business in the city of Toronto. I have explained to you very frankly the nature of the arrangement which we can make. You evidently entirely misapprehend what I have written, and we are again misrepresented as monopolists and obstructionists.

“The Grand Trunk Railway has not sought to pool traffic with the Credit Valley Railway Company, nor has it in any way sought to exercise undue control over the business of the Credit Valley Railway line. As I have already advised you, the Grand Trunk Railway Company are willing to afford your Company facilities for traffic going east of Toronto, and this without any limit as to where the traffic originates, although a portion would undoubtedly come from places where, as you yourself represented, the Credit Valley Railway would be in competition with the Grand Trunk Railway. Does this look at all like an attempt to fetter the action of the Credit Valley Railway Company?

“Whatever sum the city of Toronto may have expended on the Esplanade, it is a well known fact, of which you must be personally cognizant, that the Grand Trunk Railway has spent an immense sum of money, not only in the construction of works on the Esplanade, but in maintaining them for many years past. The relations of the city to the Esplanade, and to the railway companies who occupy it are all settled by agreement and in a manner which, I think, is perfectly intelligible.

“It is not for me to enter into any controversy as to the right of the city to interfere and upset existing agreements. I shall very much regret if any such interference takes place, because I believe your Company can acquire all the facilities and accommodations which are necessary for its business on terms which cannot but be considered reasonable, and ought by a reasonable people to be considered satisfactory.

“I notice that you say in your letter that you cannot consent ‘to sign or become parties to an agreement which would determine the rates of freight from points on the line of the Credit Valley Railway westward to points eastward on the Grand Trunk Railway.’ Can you point out a single sentence in my letter previously addressed to you which indicates any intention or desire on my part to force you into any such arrangement? Are you not simply, in writing in this way, setting up men of straw for the pleasure of knocking them down?

“ As regards the working of the traffic of this Company's stations at Toronto I can only say that it will be utterly impossible for us to provide accommodation in our stations where the work of your line could be done separately by a separate staff, and independent of the staff of the Grand Trunk Railway Company.

“ If we make an arrangement with you for your passenger trains to run into the Union Station it will necessitate some change in our arrangements with the Toronto, Grey & Bruce Railway Company. Whilst there is, I believe, ample accommodation for the business of your line, if it is worked in connection with the Grand Trunk Railway Company and by the Grand Trunk Railway staff, I am sure there is not space enough in which to set up independent establishments.

“ I was careful to point out to you in my last letter that our employes would act as if they were in the service of the Company in all matters relating to rates, charges and arrangements appertaining purely to our own business, and I say now that we should not, an arrangement being made, desire in any way to interfere in these matters.

“ Such arrangements as I have indicated respecting terminal accommodation are not novel. They are frequently resorted to both in this country and in Europe. The business of the Grand Trunk Railway at Buffalo, for instance, is done in the depot of the New York Central Company, and is attended to by the employes of that Company. In a similar way the greater part of the work connected with our passenger business in Detroit is attended to by the employes of the Michigan Central Company, and we are not even allowed to run our own engines into that Company's depot.

“ We desire only friendly relations with the Credit Valley Company. If you force another state of affairs upon us we will endeavor, of course, to protect our own interests, and especially to guard our own property. You have sought to make an arrangement with us. If our terms are not such as you think you can expect, it is not compulsory upon you to accept them.

“ You must concede that we have some right to a voice in the matter, especially looking at the enormous sum of money which we have had to expend in order to provide terminal facilities for the business of the Company in Toronto.

“ It will be no fault of the Grand Trunk Railway Company if satisfactory arrangements are not made and friendly relations do not exist in the future between the two Companies.

“ I am, dear Sir,

“ Yours very truly,

“ J. HICKSON.”

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“ GRAND TRUNK RAILWAY OF CANADA,  
 “ GENERAL MANAGER'S OFFICE,  
 “ MONTREAL, 29TH DECEMBER, 1879.

“ GEORGE LAIDLAW, ESQ.,

“ President Credit Valley Railway, Toronto.

“ DEAR SIR,

“ I find that misrepresentations still continue to be made in Toronto on the subject of the attitude of the Grand Trunk towards the Credit Valley Company. The latest which has come under my notice is that traffic is being offered along the line of the Credit Valley Railway which cannot be brought into Toronto in consequence of obstructions placed in the way of your Company by the Grand Trunk, and that the public are thereby not only seriously inconvenienced but heavy losers.

“ I confess I cannot understand why you should, in face of the facts which are known to you, persist in this line of policy. From the Grand Trunk Company, ever since you commenced to construct the Credit Valley Line, you have met with more liberal treatment than from any neighboring Company. All your crossing arrangements have been secured without the slightest trouble or inconvenience. When you asked us to connect the Grand Trunk with the Credit Valley at the Wilson House, your request was promptly and willingly complied with. A short time ago when you asked us to remove this connection we were prepared to do so, but left it there in consequence of a later request from your Company that it should be allowed to remain. The materials which you have required to receive and to send by way of this connection have been carried by this Company on the most liberal terms and conditions. We have stood ready to take your business to and from Toronto at any time on terms which, if not in your opinion satisfactory

to you as a permanent arrangement, were, it cannot be denied, such as to enable you to transact any business there has been to do, and to enable you to avoid inconvenience to the public if you desired to do so.

“ In order to avoid further misrepresentation on this point, I beg to advise you that we are prepared to take the traffic of the Credit Valley to and from our stations in Toronto via the Wilson House switch on the following terms, viz :

“ For each loaded car to or from the Shedden Company's elevator, or the freight station of the Grand Trunk, or the esplanade, the contents of which have not to be handled by us, \$3.

“ For traffic handled by the staff of the Grand Trunk Company, actual expenses divided by the tonnage of both companies handled, or if preferred a fixed rate of twenty cents per ton additional.

“ For traffic carted in Toronto, the charge paid for cartage by the Grand Trunk Company additional.

“ For grain sent into the elevator, in addition to the charge for hauling the cars between the Wilson House switch and the elevator, the charges of the Shedden Company for elevating.

“ *Note.*—The Grand Trunk Company will use their good offices to procure same terms and conditions as apply to their own traffic.

“ For empty cars passing between the elevator, the esplanade, or the freight warehouses of the Grand Trunk and the Wilson House switch, 50c per car.

“ For passenger cars containing passengers between the Wilson House switch and the Union Station, \$3.50 per car.

“ For express, freight or baggage cars, \$3 per car.

“ In addition to these charges if the cars are to be cleaned, lubricated, &c., by the staff of the Grand Trunk Company, the actual cost of doing the work.

“ Of course no mileage is to be charged by your Company on cars passing between the Wilson House switch and the elevator, the esplanade, the freight warehouses, or the Union Station in Toronto.

“ As regards through traffic we are prepared to supply our fair share of the cars required for its transportation on the usual conditions, namely, a payment of three-fourths cent. per car per mile when the cars are off our own line, and we shall be prepared to allow your Company on its cars which may come upon the Grand Trunk Railway, a similar rate.

“ We are prepared to book passengers to all your stations from Toronto at such fares as you may desire to charge.

“ A list of rates for traffic to or from places on the Credit Valley and places on the Grand Trunk Railway, which has been prepared by the General Freight Agent of this Company is attached, and a table showing the percentage divisions of such rates is in course of preparation.

“ These rates we are ready to at once put into operation for traffic, to be exchanged between the Credit Valley and the Grand Trunk system.

“ If the rates are not found to be satisfactory, the General Freight Agent of this Company will be prepared to meet any officer of your Company who may be charged with the duty of considering them, and to agree upon such modifications as are necessary to meet the requirements of the business.

“ I shall send a copy of this letter to the Mayor of Toronto and to the President of the Board of Trade, in order that it may be clearly understood if there is any interruption to business between the section of country served by the Credit Valley Railway and the metropolis of Ontario, that it does not result from any obstruction on the part of this Company, but simply from causes wholly within the control of your Company to remedy.

“ I am, dear sir,

“ Yours truly,

“ J. HICKSON,

“ General Manager.”

It would appear, however, that the Credit Valley, and, to some extent, the City of Toronto, never seem to think that the question is, not, how can this new railway get in with the greatest advantage to itself and its neighbors, but, how can it, in getting into the City, do the greatest amount of injury to the other Companies, irrespective of whether it, as a Company, is benefitted or not ; in other words, how can the Credit Valley shew the greatest hostility to existing interests ?

The Grand Trunk have on the faith of deeds and statutes, expended large sums of money, and they have done this on the faith of the Acts of the Crown and agreements with the City. They, therefore, cannot but feel surprised to see Parliament asked to disregard all these when no adequate reason exists for such a high-handed and extraordinary course.

Herewith is a statement which appeared in the *Mail*, and also a judgment of the Court in the suit now pending :—

The following statement on behalf of the Grand Trunk and Northern Railways of Canada, explains the nature of the dispute between these companies and the Credit Valley Railway Company relative to the attempted entry into Toronto by the latter Company over the lands of the Grand Trunk and Northern Railways.

For months past the Grand Trunk and Northern Railways have been accused and denounced by various persons and newspapers for attempting (as was alleged) to crush the Credit Valley Railway and prevent its access to the Bay in the City of Toronto.

It has been stated repeatedly in the public press that neither the Grand Trunk Railway nor the Northern Railway is entitled to the lands claimed by them, and public feeling has been persistently aroused against these companies by adherents of the Credit Valley Railway Company, by means of newspaper articles and municipal resolutions.

Acting under advice of counsel, these railways have hitherto refrained from replying to these attacks, awaiting the final decision of the Courts.

That decision having been rendered in favor of the Grand Trunk and Northern Railways, these companies desire now to put the facts of the case before the public, relying upon their fair judgment to justify the course adopted by them in defending their rights.

The land in question is a strip of land of one hundred feet in width, extending from Queen Street on the west to Bathurst Street on the east.

In the month of June last the Credit Valley Railway Company applied to Sir John A. Macdonald, the Minister of the Interior, for a license of occupation for a portion of this strip.

The land in question formerly belonged to the Ordnance Department, forming a portion of what was known as the Ordnance Reserve.

By an Act passed in the year one thousand eight hundred and fifty-six, the Ordnance lands became vested in the Crown, and it was contended by the Credit Valley Railway that the land in question, meaning the strip of one hundred feet, became vested by virtue of that Act in the Crown, and in consequence the application was made to the Minister of the Interior, the control of the Ordnance lands being in his Department.

Sir John A. Macdonald accorded a patient and considerate hearing to the claims of the different railways, but on the 19th day of July, one thousand eight hundred and seventy-nine, granted a license of occupation to the Credit Valley Railway.

Sir John A. Macdonald, however, while granting the license, was careful to protect the interests of the Grand Trunk and Northern Railways.

On the application for the license he pointed out to the Counsel for the Credit Valley Railway that only a limited right would be granted, and he used the following language:—"If the Northern Railway or the other railways have any legal or equitable title the Government cannot interfere with that, and no matter what the Government might do, the Court would override any decision they might arrive at as to getting across this Ordnance Property. No grant, or patent, or license of occupation will be of any value if the title is elsewhere, either legally or equitably.

Following out this statement, and with a due regard to the rights of these Railways, the Order-in-Council on which the license was based expressly saved the rights of these Railways. The Credit Valley Railway, therefore, accepted the license with the full knowledge that it might be of no effect.

It appears, from the Order-in Council, that the license of occupation was granted on a representation that there was no other entrance into Toronto except over this one hundred feet strip.

But for this mis-representation the Minister of the Interior would not, it is fair to assume, have granted the license.

With the view of explaining the unfairness of the proposed attempt by the Credit Valley Railway Company, and that it was

not even justified by necessity, we insert the evidence of Frank Shanly, Esq., given in the suit between the parties.

From reading this examination it appears that to the south of the strip of one hundred feet there is vacant land almost to Bathurst Street owned by the Government, and over which the Credit Valley Railway might be laid. Between the wall of the Central Prison and the south fence of the one hundred feet strip there is a space of fifty feet. It appears from this examination how easily the Credit Valley Railway could construct their railway, if disposed to expend in construction a portion of what has been spent in litigation.

Q. Have you measured the land south of this one hundred feet all to Bathurst Street?

A. I haven't measured it specially.

Q. How many feet is there between the Prison wall and the fence to the south of the one hundred feet at present?

A. I can't tell you from memory but I think there is something like twenty paces, there would be in the neighborhood of from fifty to sixty feet?

Q. Running from Queen Street down to the prison wall I am told it is clear south of the one hundred feet?

A. Yes, I think so; there is a large space of vacant ground?

Q. Roughly considered, more than one hundred feet in width?

A. Yes, considerably more than one hundred feet.

Q. And that land is owned by the Government?

A. It is where the present brick-yards are, from Queen Street to the corner of the prison wall, I should say would be about 2,800 feet; a little over half a mile.

Q. And in that half mile there is ample space to the south of this one hundred feet owned by the Government?

A. Yes, there is plenty of space; it is just the same land as the rest—the same level.

Q. And with fair engineering talent, there is no difficulty in constructing a railroad over that land?

A. It would hardly require an engineer to put a railway there if you had the land; all you would have to do is to widen out the rest of the tracks; it is all the same level.

Q. You see no difficulties at all in constructing a track there ?

A. No.

Q. Is there any fence blocking up the land between the prison wall and the one hundred feet strip ?

A. I am not sure about that ; I rather think there is a wooden fence, but I don't know.

Q. Then you go on and there is about 50 or 60 feet south of the one hundred feet strip between the southern fence and the prison wall ?

A. Yes ; that space extends you may say down to Strachan Avenue, or very nearly so at all events ; of course after you pass the prison wall you come into Central Prison grounds, where there is a plantation and garden.

Q. After you pass the easterly Prison wall, that is the brick wall of the Prison, you come then into the Prison grounds which are not fenced off except by the railway fence.

A. Yes.

Q. And from Queen street right down to Strachan avenue the ground is all open ?

A. Yes.

Q. And a railway constructed from Queen street to Strachan avenue could be laid right down without knocking any fence down ?

A. That is my impression, except the fence on King street.

Q. There is no reason why a railway shouldn't be built from Strachan avenue to the south of this 100 feet ?

A. No reason at all if you had the ground ; I have always understood that the ground to the west of the prison wall belongs to the Government ; the land to the east of the prison wall to Strachan avenue is a garden and plantation ; the prisoners are not confined there at all ; I think the Government own that ; it is about 4,700 feet from Queen street to Strachan avenue—nearly a mile.

Q. And you see no reason why a railway shouldn't be constructed on that strip ?

A. No reason at all, provided they got the ground.

Q. When you go east of Strachan avenue what obstructions are there?

A. You come right into the emigrant shed; I didn't measure the space between the emigrant shed and this 100 feet; the emigrant shed is not over 25 feet from Strachan avenue.

Q. Between the emigrant shed and the southern fence of this 100 feet strip there is about 21 feet open, I suppose?

A. Yes.

Q. Where one track might be run along?

A. Yes, by excavating and removing the emigrant shed platform; after that you would come on to the platform of the Great Western railway and Northern railway before you would meet with any other obstructions; that is about the eighth of a mile from Bathurst street.

Q. So that with these exceptions you could lay a track from Queen street to within the eighth of a mile of Bathurst street without removing anything?

A. I am under the impression you couldn't do that without coming into the grounds claimed by the Great Western, but I don't know of my own knowledge what the boundaries are.

Q. On the face of the ground, irrespective of title or whatever difficulty there might be in acquiring the land, you could come down within an eighth of a mile of Bathurst street simply by removing the platform of the emigrant shed.

A. Yes, and building a retaining wall.

Q. There is no engineering difficulty in the way?

A. Not at all; you just have to excavate the same as the Northern railway and the Grand Trunk railway did; it wouldn't be very expensive; the most expensive part would be after you passed the emigrant shed; the Great Western railway and Northern railway platform is within an eighth of a mile of Bathurst street; they would have to be removed, and then you could get to Bathurst street, but there the tracks would have to be adjusted or the new track would have to have running powers over the other tracks under the statute.

Q. Looking at the third paragraph of your affidavit you said "that the said strip furnishes practically the only approach etc., that is to say the only constructed approach?"

A. Of course I am speaking of the 100 feet strip alone ; I have no reference to any other land ; I am speaking of the approaches contained within the 100 feet strip.

Q. There is another approach to the south of this 100 feet strip ?

A. Yes, if you get the ground.

Q. Do you know of any difficulty in getting the ground ?

A. No, but when I made this affidavit I had only this 100 feet in view.

Q. And there is no engineering difficulty in constructing the line to the south ?

A. No.

Q. What you meant was that there was no other approach within the 100 feet strip ?

A. Exactly.

Q. But you didn't mean to say that there wasn't an approach outside the 100 feet ?

A. No, I didn't mean that ; because any body coming along there can see that if you get the land and move the emigrant platform there is plenty of room.

It may be asked what motive the Credit Valley railway would have in attempting to appropriate the lands of the Northern and Grand Trunk railways when they might have constructed their railway over land to the south ; The answer is obvious. The Grand Trunk railway and Northern railway have expended over fifty thousand dollars in making this strip available for their railways. The license of occupation requires the Credit Valley railway to pay the large (!) sum of one hundred dollars a year to the Government for a portion of this strip, extending from Queen street to Bathurst street, one mile and a quarter in length. They would merely have to lay their rails on land prepared by the Grand Trunk railway and Northern railway.

Looking to the great increase of traffic on the Grand Trunk railway and the Northern railway, of this year, and the further increase which may be anticipated for the future, it is confidently asserted that one hundred feet cannot be considered by any impartial person too wide an extent of land for the uses of two-railways, such as the Grand Trunk railway and the Northern. The Act of Incorporation of the Northern entitles them to take

one hundred and twenty feet in width for their own purposes. The Act of Incorporation of the Grand Trunk railway authorizes them to take ninety feet in width for their railway. The two railways are therefore entitled to a width of two hundred and ten feet although only in occupation of one hundred feet.

It is confidently hoped that a perusal of the foregoing statement will satisfy all right-minded persons that the course pursued by the Grand Trunk railway and Northern railway, in protecting their rights against unjust aggression, has been a course not actuated by motives adverse to the completion of the Credit Valley railway, but required in the interest of their stockholders.

The judgment given by the learned judge who heard the cause, and which was reported at length in *The Mail and Globe* of 8th of January, shows that the action of the Grand Trunk railway and Northern Railway was justified by their legal rights.

## Grand Trunk Railway vs. Credit Valley Railway.

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Judgment of Vice Chancellor Proudfoot, after hearing the Cause and taking time to consider.

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The following is the Vice Chancellor's judgment in full :—

The evidence that was supposed to be in existence when the motion for the injunction was made has been sought for, and the search has resulted in the discovery and proof of a large mass of documents, establishing the actual position of the Ordnance Department, the original owners of the land in question, in regard to the Northern Railway Company, and the action of the Department upon the application of the Company for the acquisition of the right of way.

There is a voluminous correspondence between the various officers of the Ordnance here and in Britain, references from one office to another, notes by the persons to whom they were addressed, minutes of the Board, matters brought under notice of the Secretary of War and of the Secretary for the Colonies, communications from the Inspector General of Fortifications and from the Military Superintendent of Pensioners—all valuable as showing that the application of the railway company had received the fullest and most intelligent consideration, that the possible effect upon the military defences, and the injury that might result to the just claims of the pensioners, had all been carefully weighed, and that the final action of the Department was based upon a perfect comprehension of the facts, and with the deliberate intention of doing what appears in the correspondence.

With these observations I shall not think it necessary to refer further to much of the correspondence, and shall only notice what appears to me most material for the decision of the matters now at issue between the Companies.

The nature of the suit and of the pleadings appears in the report upon the application for an injunction, and of the re-hearing of the order made upon it, to be found 26 Gr., 572. The bill

has, however, been amended since the hearing of the motion by stating the license relied upon by the Credit Valley Railway, and stating reasons why it should not affect the position of the plaintiff; and by setting out in detail the particulars of the title under which the plaintiffs claim, through the dealings of the Ordnance Department, and under the statutes of the Province.

I shall not repeat what was held by this Court upon the re-hearing of the motion, viz :—That the Northern Railway Company are affected by the General Railway Act, and that the Company was authorized by the statutes to take Ordnance lands.

On the 27th October, 1851, Mr. Boulton, the then President of the Ontario, Simcoe, and Huron Railway, now represented by the Northern Railway Company, applied by letter “for certain portions of the Military Reserve in Toronto, which the Company require as well for a portion of their line, as for convenient sites for stations, workshops, and other appurtenances necessary for so important a work.” And Mr. Boulton also stated that “the Company propose on their part to offer to your honourable Board as a consideration for the accommodations sought, to transport in all time coming Ordnance and all other military stores along the whole line of road to Lake Huron at the lowest rate at which the heaviest and most bulky articles will be carried, and Her Majesty’s troops at the lowest rate which will be charged for any passengers.” He then referred to the sections of the Company’s charter authorizing the acquisition of the property, though belonging to the Crown or otherwise, and added a suggestion as to the obvious importance of the road in a military point of view.

After much correspondence between different officers of the Ordnance Department and others, the Master-General and Board of Ordnance authorized a letter to be written by the Secretary, Mr. Butler, on the 9th January, 1852, to Mr. Merivale for the information of Earl Grey, which I quote at length as containing the final conclusion of the Department :—

WAR OFFICE,

9th Jan., 1852

SIR,—I have the honour, by command of the Master-General and the Board of Ordnance, to acknowledge the receipt of your letter dated the 12th and 27th ult., relative to the appropriation of a part of the Ordnance Reserve at Toronto to the purposes of the Toronto, Simcoe, and Lake Huron Railroad Company, and I am to acquaint you, for Earl Grey’s information, that reports on the subject have also been received from the Inspector-General of Fortifications, the Commanding Royal Engineer in Canada, and the respective officers at Montreal. The Master-General and

Board have also availed themselves of the assistance of the Ordnance Solicitor, and of Mr. Elliott, the Ordnance storekeeper at Montreal, now in this country serving on the Commissariat Committee at the Treasury, and the Inspector-General of Fortifications. The reserve reports of these parties are herewith transmitted, Nos. 1, 2, and 3.

It seems from these reports there is no doubt that under the provisions of the 10th clause of the Act to incorporate the Toronto, Simcoe, and Lake Huron Railway the Company cannot be considered to have acted illegally in entering upon the reserve without previous consent, and that the Department can only insist upon compensation in the manner prescribed by the Company's Act, which will be to demand of the Company such a sum as may be considered the fair value of the land taken, and if refused to have the price fixed by the Chairman of the General Quarter Sessions and the Justices, as provided by the 17th section of the Railway Act, allowing whatever sum may be so recovered to be paid into the military chest to the public credit, and leaving it to Her Majesty's Government to decide what proportion of the money should be granted as compensation to the pensioners by improvements upon the adjoining allocations, in which proposition the Master General and Board request the acquiescence of the Secretary of State, and through his Lordship, of the Secretary of War.

I have, &c.,

G. BUTLER.

The report of the Ordnance Solicitor referred to in that letter is dated Dec. 31, 1851, which I also quote at length :—

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OFFICE OF ORDNANCE,  
31st December, 1851.

SIR,—By the 10th section of the Act to incorporate the Toronto, Simcoe and Lake Huron Railway, the Company are empowered to enter upon lands of the Queen's Majesty and all other persons, and to appropriate the same to the making a railroad, and the 16th and 17th sections prescribe the mode of ascertaining the value, if the parties disagree.

By the 7th Vict., cap. 11, passed 9th Dec., 1843, (the Canada Vesting Act,) the 15th section provides that nothing in that Act shall prevent or restrain the Parliament of the Province from authorizing the construction of any canal or railway over lands set apart for military purposes.

It appears to me that the only course to be taken is to demand of the Company such a sum as may be considered the fair value of the land taken, and if refused, to have the price fixed by the Chairman of the General Quarter Sessions and of the Justices, as provided by the 17th section of the Railway Act.

I have read over the papers with Mr. Elliott, the Ordnance storekeeper at Montreal, now in England, serving on the Commissariat Committee at the Treasury. He has made the minute which I enclose, in all of which I agree, excepting the recommendation in par. 6—that the Ordnance should at once take steps to restrain or eject the Company.

On the pointing out to Mr. Elliott the clause in the Railway Act, he agrees with me that his suggestion cannot be adopted.

I am, Sir,

Your obedient servant,

THOMAS CLARKE,

Solicitor Ordnance.

31st December, 1851.

Submit to the Master General :—

The Board regret to have occasion to trouble his Lordship so frequently on this subject, but at the moment they were about to act upon his Minute of the 29th inst., (E. 1,813,) Mr. Merivale's letter dated the 27th (S. 168,) came to hand, the reference upon which to the Ordnance Solicitor has led to this report from him.

The Board therefore propose to acquaint the Secretary of State (explaining the nature of their intended communication to him on the Master-General's Minute above mentioned,) with the purport of the Solicitor's report, and to request if it meet his (Lord Grey's) concurrence, that the Secretary of War may be apprised of the facts and suggestions submitted by Mr. Clarke and Mr. Elliott, so far as they agree, with a view of obtaining the acquiescence of both these authorities in the mode of proceeding, which appears to be the only alternative left.

C. F.

The M.-G. concurs.

C. P., Jan. 5th, 1852.

C.

9th January, 1852.

Ordered, that the communication contemplated by the foregoing Minute be now made to the Secretary of State.

C. F.

Wrote Mr. Merivale, 12th.

A part of the report of Mr. Elliott, the Ordnance store-keeper in Montreal, then in England, has been preserved, in which he says:—"It seems to me a point of doubt whether, under the provisions of the 10th clause (of the Company's Act), the Company can be deemed to have acted illegally in entering upon the reserve without previous consent, but I apprehend the reservation of Her Majesty's rights provided in the 52nd clause would enable the Ordnance, under the Vesting Act 7 Vic., c. 11, to restrain or proceed against the Company for the trespass. If the Department have no such power, then it can only insist upon compensation in the manner presented by the Company's Act," and the part of the letter objected to by Mr. Clarke, the Solicitor, is this, "I think the better course would be for the Ordnance at once either to take the necessary steps for restraining or ejecting the Company if it be deemed advisable not to concede the ground," or, on the other hand, to claim compensation.

From these papers it appears that the Board of Ordnance had adopted the opinion of their Solicitor, although it is stated as doubtful by Mr. Elliott that the Company were acting within the powers conferred upon them by this Act, and that all the Department could require was compensation for the land taken.

Before this decision had been arrived at, the respective officers of the Ordnance in this Province became aware that the Company had taken possession of the land, and not only commenced operations by grading, but persisted in proceeding with the work, notwithstanding repeated remonstrances from officers of the Department, and they instructed Mr. Kirkpatrick, their solicitor in Kingston, on Dec. 15, 1851, to take immediate action to compel the Railway Company to desist from their trespass, and also asked his opinion as to the right of the parties to take such steps.

On the 24th Dec., 1851, Mr. Kirkpatrick gives his opinion upon the questions submitted to him, and expresses it to be "from a perusal of all the Acts, that the Ordnance land in question is not exempted from the operation of any acts which may have passed the Provincial Legislature, authorizing the construction of railroads, provided the Companies take the necessary legal steps to procure the land or make compensation therefor." He also

says that by their Act, in the first instance, the Company have only the right to enter upon and survey the lands and mark out what is required for the work, \* \* \* and the Company must agree with the owners, and in case of disagreement lodge the supposed value in the Court of Chancery before they can take possession of the lands for the purpose of making the railroad.

On the 6th January, 1852, the respective officers at Montreal report to the Board of Ordnance the proceedings they had directed to be taken and transmit copies of the correspondence, and trust the Master-General and Board will approve of the instructions given to the Solicitor for the assertion of the Ordnance rights and for resisting to the utmost the encroachments of the Company.

The Board of Ordnance, on the 2nd February, 1852, having before them Mr. Kirkpatrick's opinion and the letter of the respective officers of the 6th January, direct the respective officers to be informed that the Board approved of their proceedings, but to apprise them at the same time of the purport of the Board's communication of the 9th January to the Secretary of State in answer to a reference from His Lordship on this subject. This was accordingly done by a letter of 2nd February from the Secretary of the Board, and he enclosed an extract from the letter of the 9th January.

Meantime, on the 27th January, the respective officers at Montreal transmit copies of a further correspondence with Mr. Kirkpatrick, and as the Company had engaged to discontinue their operations until the arrangement was effected with the Ordnance Department, all further proceedings were stayed for the present, and the respective officers were awaiting the decision of the Board upon the Company's application. This was received by the Board on the 10th February, and on the 18th it was read and the respective officers were referred to the Board's communication of the 2nd February.

The Board has thus twice confirmed its action of the 9th of January, after becoming aware of the proceedings taken to assert the rights of the Department and to restrain what was considered the high-handed proceeding of the Company in taking possession, without permission, of the land for the road. They had before them the opinion of Mr. Kirkpatrick, that until compensation was made the Company had no right to appropriate the land, but they do not think proper to interrupt the progress of the work until the amount be ascertained and paid. They, indeed, approve of the course of the respective officers in taking proceedings to assert the rights of the Department, but refer them to their

letter of the 9th of January. This approval, so far from implying a direction to the respective officers to prosecute such proceedings, as it has been argued, when coupled with that significant *but*, seems to me to amount to an approval of what had been done before a decision had been arrived at—now that the decision had been made, they should cease.

The only further record, I think, in regard to the compensation is an extract from the Treasury Minute of the 17th Dec., 1852. "And lastly they should take immediate steps (to recover) from the Toronto, Simcoe, and Lake Huron Railway Company the value of the 34 acres of the reserve, with the buildings upon it, which the Company appropriated under their Local Act." This was sent to the Board of Ordnance by the Secretary to the Treasury on the 20th of Dec., 1852. But there is no evidence to show that any action was taken upon it. To this further period it seems then that the only claim the Board considered they had was one for compensation.

It is said the Board were acting under a mistake of the law—that the Company could acquire no right, and did not acquire any, because the payment of the compensation was a condition precedent to acquiring it—and that the Acts of Parliament did not authorize the taking of Ordnance lands at all.

This latter point scarcely seems open for my consideration since the opinions given on the rehearing of the motion. Were it still open, I see nothing to induce me to alter the view I took when the motion was before me, and which coincides with that held by the Solicitor of the Ordnance, by Mr. Kirkpatrick, and by this Court on the rehearing.

In regard to the former, that payment was a condition precedent, I think I may assume for the purposes of this case that *Johnson v. The O. S. & Huron Railroad Co.*, 11 B. R. 246, correctly states the law as to the powers of this Railroad Company, and that an owner of an estate might prevent the Company from taking possession until compensation was made—although if an occasion should call for it, it may be found necessary to consider what effect the General Railway Act, to which this Company was also subject, may have upon it—a subject not noticed in that case, nor in the opinion given by Mr. Kirkpatrick. But the Board had the conflicting opinions of Mr. Clarke and Mr. Kirkpatrick and the doubt of Mr. Elliott before them when they came to the decision of the 2nd of February. They, must, therefore, have known that it was at least doubtful if the Com-

pany had the right they were asserting, yet they deliberately adopt the view that the Company could enforce this right, and leave them only the subject of compensation to deal with. Now, a condition precedent is not an iron rule forming an insuperable obstacle not only to the action of one, but of both parties to a transaction. When found in a contract it can be waived, modified, or treated as non-existent, by the person in whose favor it is inserted. And when found in a statute it is inserted for the benefit of those affected by the enactment, and they may equally abandon its protection. It is an elementary rule that *Aliquis potest renunciare juri pro se introducto*, or as it is otherwise expressed *Liceat sui juris persecutionem, aut spem futuræ perceptionis, deteriores constituere*, Dig. 2, 14, 46, or *Omnes licentiam habere, iis quæ pro se introducta sunt, renuntiare*, Cad. 2, 3, 29. The rule that private persons may not agree to anything derogatory to the public interest—*Privatorum conventio juri publico non derogat*, D. 50, 17, 45-1, has no application here, for two reasons:—Because one of the parties was a public body, having the care of the public interest, and because it was after considering the interest of the public, and being satisfied it would not be prejudiced, that the resolution was adopted. In so far as the right to the money was concerned, there was no act of the Board of Ordnance derogatory from the right of the public to recover it; if not paid, a lien from it remained, and if it has been abandoned it rests upon the action of a body whose acts I have no right to call in question, the Parliament of the Province.

The Company proceeded with the work in the spring of 1852. The evidence is not very clear as to whether the Company then had a copy of the letters of the 9th of January and 2nd February. The Company's offices were destroyed by fire and their papers burnt, but Mr. Cumberland says he believes there was among them a letter from the Ordnance Board of the 9th of January or 2nd February; recollects a paper of the Master-General to the effect of the order of the Board of Ordnance. They are quite familiar to him. They were in the custody of Sladden the Secretary. It was always regarded as an express assent of the Ordnance to the proceedings of the Company. Taking that in connection with the agreement of the Company not to proceed with the work till the decision of the Board was arrived at, and which would naturally be presumed to be communicated to the Company, I have no difficulty in determining, as a matter of fact, that the letters of the 9th January and 2nd February, or the purport of them, were in the possession of the Company in the spring of 1852, and that the work was prosecuted under that sanction. During the progress of the work it was frequently

inspected by officers of the Ordnance Department in their official capacity. They were witnesses to the fencing it up from the rest of the Ordnance property, to the expenditure of large sums of money in the construction of the road, and I must assume that they performed their duty in keeping the Department informed of what was being done on their property—though it is scarcely necessary to assume it, as the Board knew what the Company wanted—that they only stayed work until the decision of the Board should be made, and when that was made that the work would be resumed and prosecuted. Before this the action of the Company was resisted; after it all opposition was withdrawn, and the Company was allowed to go on and perfect their work in peace. That being so, I apprehend the Board would not be permitted to prevent the occupation of the land by the Company; that they would be restrained from doing more than realize their lien.

I now proceed to consider the Act 19 Vic., c. 45, transferring the reserve at Toronto to the province. The 6th sec. enacts that the lands in the reserved schedule, which had been vested in the principal officers of Her Majesty's Ordnance, and which had been used or occupied for the service of the Ordnance Department, or for military defence, shall be and become absolutely in Her Majesty the Queen for the benefit, use and purposes of the Province, \* \* \* \* but subject, nevertheless, to all sales, agreements, lease or leases, already entered into with or by the principal officers, and the 7th section that the Act should affect the rights of any parties claiming any of these lands. The Act was assented to on the 19th June, 1856. On the 5th November following a schedule was prepared by Mr. Walkem and Mr. Pilkington, and sent to the Inspector-General of Fortifications on the 15th November, showing more distinctly than the schedule to the statute, the several properties transferred to the Provincial Government. This schedule states that the Ontario, Simcoe, and Huron, or Northern Railway, had been permitted to occupy a portion of the reserve, but that no deed had been executed to them. And on the 5th December, 1856, in reply to enquiries of Colonel Coffin, the Ordnance Land Agent of the Provincial Government, Captain Galway, of the Royal Engineers Department, informs him that the Ontario, Simcoe, and Huron Company took possession under authority of their charter, 12 Vic c. 196, and the legality of the proceeding was recognized by the Master-General and Board order of 2nd of February, 1852. These documents are only a repetition of what has already been established, but are valuable as a recognition of the right of the Company down to that period, and a notice of it given to the Provincial Government. And it seems to me of little importance what Captain Galway's powers were, for without any authority to do so he could

have notified the Government of the existence of the right, which is established by other evidence, and if this were done in answer to an application by the agent of the Government, they could not complain of his having no authority to give them the information they sought. I think that the Northern Railway Company had an equitable right, at least, under their dealings with the Board of Ordnance, and that the Government took the land subject to that right.

I have not forgotten the argument resting upon the 7 Vic., c. 11, s. 15, that the power of the Parliament to authorize the construction of railroads upon any lands which may have been reserved or set apart for military purposes applied only to such reserved lands, and that it was not proved that these lands were so reserved. But the evidence does seem to me to establish that they were reserved, not purchased. The title is deduced on the map prepared by Mr. Fleming—the very name of the “Garrison Reserve” indicates it—the action of the Board of Ordnance recognizes it—and during the whole course of the correspondence on the subject there is no hint, no suggestion, of any doubt that the lands were such as the Parliament could deal with.

By the Act of 1859, 22 Vic., c. 89, the road and line of the Northern Railway Company were vested in the Crown; and by the Act of 1860, 23 Vic., c. 105, the whole was re-vested in the Company, upon conditions which have been complied with or waived. By a clause in the Order-in-Council recited in this Act, the Governor-in-Council reserved the complete control and direction of the station and other ground in the City of Toronto occupied by the Company, as well as of the alignment and disposition of the track of the railway leading into and within the city, with the view of completing such arrangements as may be deemed expedient by the Government for effecting proper connections with the other Provincial railways in the City. It appears that for some years proceedings had been pending before the Railway Commissioners on the application of the officers of the several railways coming into the City, with a view of enabling the Grand Trunk Railway to connect the eastern and western sections of their road, and of definitely settling the allowance of the three railroads passing into and through the City. These resulted in a report of the Commissioners to the Governor-in-Council in 1858, in which they recommended that the Grand Trunk Railway should make all the necessary arrangements with the two other roads, without charge to the Government, for a more convenient approach to the City, &c., and that so much of the Garrison Reserve as was then occupied by the three roads should be surrendered to the Government for the purposes there indicated. The Companies had not yet acted upon this. The Grand Trunk Railway was straitened for means, and could not then conveni-

ently carry out the arrangement. Knowing these facts, the circumstances existing when the Act was passed, it is probable that the reservation in the Order-in-Council was intended to apply to the existing roads, to enable the pending arrangements for the location of the lines to be finally adjusted. The language seems to refer to existing roads, and betrays no design to embrace future undertakings. Whether it is permissible to have regard to these circumstances in limiting the operation of the Act, when the Incorporation Act (31 Vic., c. 1, s. 6., s. s. 2) says that the law is to be considered as always speaking, and whenever anything is expressed in the present tense, the same is to be applied to the circumstances as they arise, I shall not stop to enquire, as the Act was repealed in 1875, as we shall immediately find. Within a month after the passing of this Act the three railway companies agreed to carry out the recommendations of the Commissioners, with some modifications; the work was placed under contract, and completed at a cost of about \$70,000. This contract is described by the witnesses as being the outcome of what took place before the Commissioners—though all that was recommended in their report was not carried out. It was contended that the action of the Commissioners was in excess of their powers—that they only had authority to deal with crossings. I am not prepared at present to assent to this limitation of their powers, but it is not necessary to decide the general question, for I think that to deal properly with crossings in a complicated network of railways entering a populous city the proper location of crossings may, and in this instance did, involve the alignment of the roads within the City, and that it was within the powers of the Commissioners. A perusal of the proceedings before the Commissioners satisfies me that the chief matter before them was that of the crossings, and that anything further was dealt with as incidental to that subject. The Commissioners recognized the right of the Northern Railway Company to their location on the Reserve, and in recommending that it be surrendered, implied that they had the estate to surrender, and the statute of 1860, by reserving a right in the property vested in the Company, implies that everything not reserved is granted. From 1860 till the present time, the arrangements then made have been carried out, the Government has never sought to interfere with them, the Railway Company have been publicly using and enjoying the rights then acquired, and if any assent of the Government were required to render them unassailable, that assent ought to be implied. *Weland v. Buffalo*, 31 B. R., 539, is an authority for this.

It is said, however, that though the Government may be bound not to disturb the Grand Trunk Railway Company in the use of the 27 feet assigned to them by the arrangements of 1860, there was still land enough left upon which again to exercise this re-

served power in favour of the Credit Valley Railway Company. But the Order in Council was repealed by the Act of 1875, four years before the license to the Credit Valley Railway Company. This Act, it is argued, being a private Act, could not affect the rights of the Crown. The right of the Crown in this instance was created by an Order-in-Council, confirmed by an Act of Parliament (1860), and the same power that had the authority to confer the right had the power to put an end to it. It can be done either by a public or a private statute, and where a prerogative of the Crown is concerned, it may be affected, not only by the express words of the Act, but by necessary implication. And, assuming the exercise of this authority to be a prerogative, or in the nature of a prerogative, it could only be extinguished by express language or by necessary implication. There appears to me to be that necessary implication here. The authority was reserved to the Governor-in-Council by an Order-in-Council. When the Parliament repealed the Order-in-Council, what stronger indication of intention could there be that this power should no longer be exercised. Sir Peter Maxwell (Interp., of Stat., 116) says:—"The Crown, however, is sufficiently named in a statute within the meaning of the maxim, when an intention to exclude it is manifest."

The rule commented on by Sir Peter Maxwell is "that the Crown is not bound by a statute unless named in it." The Interp. Act, 31 Vic., c. 1, s. 7, s. s. 33, says that no provision in any Act shall affect in any manner the rights of Her Majesty, unless it is expressly stated therein that Her Majesty shall be bound thereby. The rule is more specific than the law, for it says *named*; but to take a case out of the rule necessary implication suffices, and so it should to take it out of the law. Webster, under the verb "to express," explains it to mean to utter, to declare in words, to speak, and also to show or make known, to indicate—a downcast eye or look may *express* humility, shame or guilt. Whence it would seem that if the intention may be inferred from the terms used, the language of the Act would be complied with, or as it has been stated, "expressum dicitur, quod conjecturis colligitur," and "illud est expressum quod continetur mente legis, quod evidentibus signis colligitur."

The only distinction between public Acts and local or personal enactments, applicable to this subject, seems to be that the latter are to be construed more strictly when they confer privileges and powers interfering with the property or rights of others. Maxwell, 268. But where the intention of the Legislature is clear it does not matter whether it be expressed in a public or private Act.

In 1875 the lien of the Government upon the road amounted to nearly £600,000 sterling, and by the Act of 1875, c. 65, passed to re-arrange the capital of the Company, and to consolidate the various Acts relating to it, the undertaking of the Company is declared (s. 26) to consist, among other things, of "its main line of railway as the same now exists." And by another Act of the same session, c. 23, the Government compromised its lien for £100,000 sterling, which has since been paid.

When the Ordnance property was transferred by the Act of 1856, subject to any agreements, &c., that phrase was for the benefit of the persons who had agreed with the Ordnance Department. It did not mean to reserve to that Department the benefit of the agreements; that benefit was transferred to the Province, and therefore any lien for purchase money that existed passed to the Province.

When, therefore, in the Act of 1875, c. 23, it was recited that the lien of the Dominion on the railway and property of the Northern Railway Company amounted to the sum of £570,000, that must be taken to include all the claims of the Dominion in whatever manner they might have accrued, and to have been settled by the compromise. It would be impossible to hold that any lien was retained—it would have been a breach of faith with the creditors of the Company, and there is no difficulty in supposing that when parting with £470,000, they would hesitate to extinguish the comparatively trifling sum representing the value of the 34 acres of this reserve nearly thirty years ago.

I conclude, therefore, that the Northern Railway Company, under the dealings with the Board of Ordnance, and under the various statutory enactments noted above, acquired a title, free from any lien for purchase money, to the 34 acres of the reserve taken by them.

The estate that a railway company takes in the land required for its road is not of the absolute untrammelled nature of the fee simple of a private individual, it is obtained for a particular purpose; and while that purpose is served, it will not be permitted to assert rights that a private owner might; and that is the effect of the decisions to which I was referred; of *Bostock v. North Staffordshire Railway Co.* (5 DeG. & S, 584, 3 L. & G. 291, 4 E. & B., 798,) *United Land Co. v. Great Eastern Railway Co., L. R.*, (17 Eg., 158, 10 Chy., 589,) *Norton re London and North Western Railway Co.* (9 Ch. D., 623,) *Mulliner v. Midland Railway Co.* (11 Ch. D., 611.) But there is nothing in these cases to establish that another railway company, on account of this peculiar quality of the title, may treat it as if no title existed, and take possession for its own purposes of the location of the line,

with no better right than that of the strong hand. By their charter the Northern Railway Company had a right to take 120 feet in width. They only took 99. And under the General Railway Act other railway companies were empowered to use the line if before 30th June, 1858, without, and if after with, the assent of a department of the Government. And if that could be done contrary to the wish of the owner of the line, it certainly might be done by the agreement of the parties. The Judge has expressed his opinion to this effect in the judgment upon the rehearing, to which I then assented, and now assent. Such an agreement is wanting in the characteristics of an ordinary alienation or abandonment, because it was not needed for railway purposes. The first agreement between these Companies was as early as 1856 or 1857. It had expired before the 8th January, 1858, and on that day a new agreement was made for the use of the track of the Northern Railway Company by the Grand Trunk Railway Company for a part of the distance, and for laying a separate track for the remainder, to continue for a year, but in view of a permanent location of the Grand Trunk Railway tracks in the rear line laid down on a plan exhibited by Mr. Fleming. The permanent location was not made, I think, till 1860, but ought to be treated as made in pursuance of this agreement of January, 1858, and therefore not requiring the assent of the Government. If it is to be considered as made later than June, 1858, then under the circumstances already detailed, and upon the principles enunciated in *Welland v. Buffalo*, 31, B. R., the assent of the Government ought to be presumed, and especially considering the long time that the user under the agreement has been permitted without interruption, and its recognition in various ways by the Government. But this answer of the Credit Valley Railway is not an information for intrusion at the suit of the Crown—the Crown has taken no steps to have the right declared forfeited for abandonment or alienation—the license to the Credit Valley Railway was made under an Order in Council expressly reserving the rights of the other companies, and it is not competent for the Credit Valley Railway to intervene and claim a forfeiture. Besides, if the alienation or agreement between the Grand Trunk Railway and the Northern Railway was an improper use of the right of ownership, the result would not necessarily be forfeiture; it might have the effect of depriving the Grand Trunk Railway of the use of the line and restore the Northern Railway to their old dominion. In that case it would not benefit the Credit Valley Railway; but it would be impossible for the Crown, after all that has occurred, to treat the permission to the Grand Trunk as a thing that ought not to have been granted. It would be barred by its acquiescence, by its recognition of the existence of the actual condition of the compan-

ies, and by its endeavour to secure a proper connection over this 99 feet for the sections of the Grand Trunk.

And further, the Northern Railway Company are parties to the suit, and pray for the same relief as the Plaintiffs. Indeed, I do not see why they may not be treated as Plaintiffs; they have throughout contested the right of the Credit Valley Railway, and all the evidence affecting the questions now attainable having been given, there can be no injustice done in treating them as Plaintiffs, in administering relief as between co-defendants. The Northern Railway Company do not contest the right of the plaintiffs, they admit it, and seek its enforcement, as well as the enforcement of their own.

I think the plaintiffs entitled to a decree restraining the Credit Valley Railway, &c., from trespassing on the lands in question, and to a declaration that no title passed to them under the license of occupation, and to an enquiry as to the damages sustained by the trespass with costs.



## APPENDIX.

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The Grand Trunk Railway, after the transactions mentioned on page 31 and preceding pages, bought and obtained a deed in fee, from the grantees of Dr. Rees', the land on which the Betz Tavern stood, on the Corner of Esplanade and Simcoe Streets, also the property spoken of as the Rees Lots, on Simcoe Street, and the lands north of this up to Front Street.

In the meantime, questions having been raised by the City and Great Western Railway Company as to the validity of the agreement between the City of Toronto and the Grand Trunk Railway Company respecting the Esplanade right of way, an agreement was entered into between the parties for the final settlement of all these disputes, and this agreement was confirmed by an Act of Parliament. The agreement and the Act were prepared by the present Mr. Justice Cameron, at the request of all parties; the agreement is given as a schedule to the Act, and the Act and agreement are as follows:—

### CAP. XXXIV.

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AN ACT to legalize and confirm an agreement made between the Grand Trunk Railway Company of Canada, the Great Western Railway Company and the Northern Railway Company of Canada, relating to the Toronto Esplanade, and for other purposes therein mentioned.

*[Assented to 18th March, 1865.]*

WHEREAS an agreement, bearing date the twenty-second day of December, in the year of our Lord one thousand eight hundred and sixty-four, has been made between the Grand Trunk Railway Company of Canada, the Great Western Railway Company and the Northern Railway Company of Canada, for the settlement of differences, and to define the rights, privileges and obligations of the several Companies towards each other in respect to the Esplanade in the City of Toronto, and the use thereof, and for other purposes therein set forth, which said

agreement is set out in the schedule to this Act; and whereas the said Companies have petitioned that the said agreement may be confirmed, and it is expedient to grant the prayer of the said petition: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The said agreement, bearing date the twenty-second day of December, in the year of our Lord one thousand eight hundred and sixty-four, and which forms the schedule to this Act, is hereby confirmed, and all and singular the provisions, stipulations, covenants and agreements, and other matters and things in the said agreement contained, shall be valid and binding upon the said several Railway Companies according to the tenor and effect of the said agreement.

2. Esplanade Street shall be deemed a public highway, and it shall and may be lawful for the Corporation of the City of Toronto, to grant to the said several Railway Companies, a right of way over, upon and along twelve feet six inches of the south part thereof for railway purposes, as in the fifth clause of the said agreement provided; and the said right of way of twelve feet six inches, and of the twelve feet six inches off the north part of the south forty feet of said Esplanade, shall be thereafter used and enjoyed by the said Railway Companies for railway purposes as in the said agreement mentioned.

3. It shall and may be lawful for the said Railway Companies to exercise, have and enjoy, in and upon the Toronto Esplanade, all and singular the rights, easements, privileges and powers in the said agreement mentioned; but the south twenty-seven feet six inches of the said south forty feet of said Esplanade shall, for railway purposes, be exclusively used and enjoyed by the said Grand Trunk Railway Company, as in the said agreement mentioned; provided that nothing in this Act or in the said agreement contained, shall be understood or construed to grant or convey to the said Railway Companies or any of them, an estate in fee in the said Esplanade or any part thereof.

4. It shall, from time to time, as the same may be required for public use, be the duty of the said Railway Companies, at their own expense as hereinafter specified, so to construct the spaces between the rails and between the tracks, and all the spaces on and over the southerly fifty-two feet six inches—(the Grand Trunk Railway Company as to the south twenty-seven feet six inches, and the said three Companies as to the twenty-five feet north thereof)—as shall be proper and sufficient for crossing the said rails and tracks at any point, and shall so construct the same as to the level at which the same shall be, relatively to the

said rails and otherwise, and as to the materials to be used, such as ballast, broken stone, paving or planking, and as to the manner in which the same shall be so constructed, as the said Corporation of the City of Toronto shall approve, and shall always thereafter keep and maintain the same in an efficient state of repair upon notice from the said Corporation of the City of Toronto.

5. The said companies shall not, nor shall either of them leave standing upon the said tracks or upon the switches, or upon the said twenty-five feet, any trains, cars, engines, materials, appliances, stock, freight, goods, or other things, other than those cars, engines and trains required for the purposes of their trade with the City of Toronto in loading or discharging freight and for passenger traffic, nor for any longer time nor more frequently nor otherwise than shall be necessary for such purposes, nor shall they discharge or unload their cars on any street crossing.

6. In the event of differences arising at any time between the Corporation of the City of Toronto and the said Railway Companies as to the loading, unloading, or discharging of freight, or the alleged inconvenience of the places where the same is conducted, or the times and manner of doing so, or any other obstructions arising out of any of the matters or causes in the last preceding section mentioned, the same shall be settled by reference to the Railway Inspector appointed or to be appointed by the Railway Commissioners.

7. It shall not be lawful for any or either of the said Railway Companies to run their engines or trains over or along said Esplanade at a greater rate of speed than four miles an hour, unless permitted so to do by by-law of the said Corporation of the City of Toronto, but in no case to exceed the rate of six miles an hour.

8. In case the Corporation of the City of Toronto shall refuse to grant the said twelve feet six inches of the south part of Esplanade Street to the said Railway Companies, the agreement in the schedule to this Act and this Act shall become inoperative, and the said Corporation of the City of Toronto and the said Railway Companies shall severally be remitted to the position in which they severally were before the making of the said agreement first hereinbefore mentioned, notwithstanding anything in the said agreement or in this Act contained.

9. This Act sha'l be a public Act.

## SCHEDULE TO THE FOREGOING ACT.

ARTICLES of agreement had, made, entered into, and fully agreed upon, the twenty-second day of December, in the year of our Lord one thousand eight hundred and sixty-four, by and between the Grand Trunk Railway Company of Canada of the first part, the Great Western Railway Company of the second part, and the Northern Railway Company of Canada, of the third part :

WHEREAS differences have arisen between the said Railway Companies parties hereto as to their respective rights upon the Esplanade, in the City of Toronto :—For the settlement of these differences and clearly to define the rights, privileges and obligations of the said several Companies towards each other in respect to the said Esplanade, and the use thereof, they have mutually and respectively agreed to become parties to these presents, and to be bound by the covenants, provisions and stipulations, hereinafter contained.

Firstly. It is hereby declared and agreed by and between the several companies, parties hereto, that it shall and may be lawful for the said Northern Railway Company, and their successors, and they are hereby fully authorized and empowered at any time when judged expedient by the said Company so to do, to lay down, construct, maintain and keep on the north twelve feet six inches of the south forty feet of the said Esplanade, a track or tracks extending from their present railway station easterly to a point a short distance west of the lot known as Dr. Rees' lot, being the point where the main line of the Grand Trunk Railway now crosses Esplanade Street, near Rees' Wharf and at the said point to join and connect with the said Grand Trunk main line, and to run the trains, locomotives, and cars of any description of the said Northern Railway Company, on and over the said Grand Trunk main line, from the said point of intersection to York Street, subject, nevertheless, to the provisions contained in clauses eight and nine of this agreement ; and until such track shall be laid and constructed, it shall and may be lawful for, and the said Northern Railway Company are hereby expressly declared to have the right, easement, privilege and power to use one of the tracks of the said Grand Trunk Railway now laid from Brock to York street aforesaid, for the running of trains, cars and locomotives, and to connect at Brock Street aforesaid with the said Grand Trunk line by means of the necessary switch for that purpose.

Secondly. It is hereby further declared and agreed by and between the said several Railway Companies, parties hereto, that it shall and may be lawful, from time to time, and at all times hereafter, for the said Great Western Railway Company, and they

are hereby declared to have the right, easement, privilege and power to join and connect with the said Grand Trunk Railway Company's main line by means of a switch at a point near Peter Street, and to run the trains, locomotives and cars of any description of the said Great Western Railway Company, on and along the said Grand Trunk line from the point of junction aforesaid, easterly to York Street aforesaid; subject, nevertheless, to the provisions contained in the eighth and ninth clauses of this agreement.

Thirdly. It is hereby further declared and agreed by and between the said several Railway Companies, parties hereto, that it shall be the duty of the said Grand Trunk Railway Company, with all reasonable speed, and on or before the fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-five, if the Act for legalizing and confirming the agreement hereinafter mentioned be passed during the next ensuing Session of Parliament, to make, build and lay a railway track of the proper gauge, and in a substantial and workmanlike manner on the north twelve feet six inches of the said south forty feet of the said Esplanade, extending easterly to the end of the said Esplanade from the point at York Street, where the privilege of running over the said line of the Grand Trunk Railway granted to the said Northern Railway Company and the said Great Western Railway under clauses one and two of this agreement terminates, and it shall and may be lawful for the said several railway companies, parties hereto, to use and enjoy the said track so constructed, in common, for the traffic and running purposes of the said several railways; Provided always, that it shall not be lawful for the said Grand Trunk Railway Company to use the said track in any manner for the through traffic purposes of that Company.

Fourthly. It is hereby further declared and agreed by and between the said several railway companies, parties hereto, that the south twenty-seven feet six inches of the said south forty feet of the said Esplanade, shall for railway purposes be vested in and exclusively used and enjoyed by the said Grand Trunk Railway Company.

Fifthly. It is hereby further agreed by and between the said several companies, parties hereto, that application shall be made on behalf of said companies to the Corporation of the City of Toronto, to grant to the several railway companies, parties hereto, and their respective successors, twelve feet six inches in width of the south part of Esplanade Street, adjoining the northern limit of the said south forty feet of the Esplanade along the whole length of said Esplanade Street, for railway purposes; and the said piece of land so granted shall be vested in the said several

railway companies in common, to be used for sidings for loading and unloading freight, and purposes necessarily incidental thereto; such sidings to be completed on or before the fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-five.

Sixthly. And it is hereby further declared and agreed by and between the said several railway companies, parties hereto, that application on their behalf shall be made to the Parliament of this Province for an Act to legalize and confirm this agreement and the provisions therein contained, and to vest in the said several railway companies in common for railway purposes the said two strips of land of twelve feet six inches each, being the north twelve feet six inches of the said south forty feet of the said Esplanade, and the south twelve feet six inches of the Esplanade Street, together making a strip of land twenty-five feet in width along the whole length of the said Esplanade easterly from York Street, subject nevertheless to the respective rights of the said several railway companies as herein declared in relation to each other; and the manner of working the several trains of the said companies upon the said tracks on the twenty-five feet to be used

common, easterly from York Street to the end of the Esplanade, shall be mutually agreed upon between the said companies, and failing such agreement shall be determined by arbitration in the manner provided for in clause twelve of this agreement; and that upon the said Act being obtained, the grant by the City of Toronto of twenty-five feet of land along said Esplanade to the Great Western Railway Company and the Northern Railway Company shall become and be null and void; provided always, that nothing contained in clauses four, five, and six of this agreement shall be held or taken in any way to interfere with the rights of the public as now existing, to cross for the purposes of ordinary traffic the fifty-two feet six inches used for making tracks, nor to prevent the said Railway Companies in the same manner as and as part of the general public crossing the same, but nothing herein contained shall authorize the crossing the same by means of railway tracks or rails.

Seventhly. It is hereby further declared and agreed by and between the said several Railway Companies, parties hereto, that upon, from and after the passing of the said Act, all claim and right whatsoever which the Grand Trunk Railway Company may have, or pretend to have, to any right of way or easement or privilege upon or through the grounds of the said Northern Railway Company, as now enclosed between Brock Street and Bathurst Street, shall cease, determine, and be wholly void.

Eighthly. It is hereby further declared and agreed between the said several Railway Companies, parties hereto, that from the

points where the Northern Railway and Great Western Railway respectively join the Grand Trunk line to York Street, the use of the said Grand Trunk line shall be in accordance with, and under the running regulations of the Grand Trunk Railway Company, and trains shall have precedence or rights in the following order :—

- 1st. Grand Trunk passenger trains.
- 2nd. Passenger trains of the said other Companies.
- 3rd. Freight trains of the Grand Trunk.
- 4th. Freight trains of the said other Companies.

5th. Special and irregular, and other trains to be run in the same order, Grand Trunk first, and the trains of the same class or denomination as the Grand Trunk, of the other Companies, next in order.

Ninthly. It is hereby further declared and agreed by and between the said Railway Companies, parties hereto, that the switches and signals used in getting on and off the Grand Trunk line, when the said line is used by the said other Companies as well as at other times, shall be under the sole control and management of the Grand Trunk Railway Company, and the servants thereof.

Tenthly. It is hereby further declared and agreed by and between the said Railway Companies, parties hereto, that the line of sidings to be laid and constructed on the said twelve feet six inches of the south part of Esplanade Street, as mentioned in the 5th clause of this agreement, shall be divided among the said several Railway Companies in the manner to be hereafter mutually arranged between said Companies, or in case of disagreement, by arbitration as hereinafter provided.

Eleventhly. It is hereby further declared and agreed by and between the said Railway Companies, parties hereto, that if the Act for the legalizing and confirming of this agreement is passed during the next ensuing Session of Parliament, the present track used by the Great Western Railway Company from Peter Street to the Esplanade, shall be discontinued and removed by the fifteenth day of May in the year of our Lord one thousand eight hundred and sixty-five.

Twelfthly. It is hereby further declared and agreed by and between the said Railway Companies, parties hereto, that the payments or compensation to be made by the said Companies respectively to the others or other of them for the facilities herein provided and exchanged between them respectively in relation to the use of the lines and sidings as set forth in this agreement

shall, in case the same cannot be mutually agreed upon within three months from the passing of the said Act, be settled and determined by the President of the Pennsylvania Central Railroad Company for the time being, and in the event of his refusing to act in the settlement thereof, then such payment or compensation shall be settled and determined by some other person to be mutually agreed upon by the said Companies respectively, and if the said Companies cannot agree upon such arbitrator, then upon application of any of the parties hereto, it shall be lawful for any one of the Judges of the Supreme Court at Toronto to nominate and appoint an arbitrator to determine such compensation : provided always, that any award to be made by the arbitrator under this agreement, so far as the same shall determine any charge (not being a payment for past capital expenditure) to be paid by any of the said companies to the others or other, shall be open to reconsideration and redetermination at the expiration of five years, and at the expiration of every succeeding five years, the arbitrator to be mutually agreed upon or appointed by Judge as hereinbefore determined.

Thirteenthly. It is hereby further declared and agreed by and between the said several railway companies, parties hereto, that all legal proceedings at law or in equity now pending between the said Companies or any of them, in relation to the said Esplanade, or the rights of the said Companies or any of them, to lay down tracks upon, or otherwise use the said Esplanade or any part thereof, or in any manner relating to the matters in this agreement provided for, shall for the present be suspended, and upon the passing of the said Act, shall be absolutely abandoned ; and in case the said Act shall not be obtained, all such legal proceedings whether at Law or in Equity, shall or may be taken up and continued, as if this agreement had never been made ; provided always, that the party who had to take the next step on the twenty-second day of December, in the year of our Lord one thousand eight hundred and sixty-four, shall have two weeks next after the end of the session of Parliament in which the said Act shall be rejected, to take such step.

Fourteenthly. It is hereby further declared and agreed by and between the said several railway companies, parties hereto, that it shall and may be lawful for the said Great Western Railway Company to make the connection of their line with the Grand Trunk line at Peter Street at once ; provided always, that their present line shall remain as it is until the said Act is obtained, or if the said Act be obtained before the fifteenth day of May, one thousand eight hundred and sixty-five, then until the said fifteenth day of May, one thousand eight hundred and sixty-five.

Fifteenthly. It is hereby further declared and agreed by and between the said several Railway Companies, parties hereto, that it shall and may be lawful for the said Great Western Railway Company, and the said Northern Railway Company to use in common with the Grand Trunk Railway Company, the present sidings of the said Grand Trunk Railway Company on the said Esplanade, east of York Street, until the arrangements by this agreement provided for, are carried into effect, or until the said Act shall be rejected.

Sixteenthly. It is hereby further declared and agreed by and between the said several Railway Companies, parties hereto, that each of the said Companies shall and will use every exertion and all fair and legitimate means to procure and obtain the passing of the said Act by the Parliament of this Province to legalize and carry into effect this agreement, and that they shall and will bear the expenses of obtaining the said Act or of the attempt so to do, and all necessary proceedings connected therewith and with this agreement, in equal proportions.

The said Grand Trunk Railway Company hereby covenants to and with the said Great Western Railway Company and the said Northern Railway Company respectively, that the said Grand Trunk Railway Company shall and will from time to time and at all times hereafter well and truly observe, perform, fulfil and keep all and every the stipulations and agreements hereinbefore contained, and which on the part and behalf of the said Grand Trunk Railway Company according to the tenor and effect, true intent and meaning of this agreement ought to be observed, performed, fulfilled and kept; and shall not, nor will wilfully or improperly hinder or prevent the said Great Western Railway Company and the said Northern Railway Company, or either of them, in due and proper use and exercise in accordance with this agreement, of any of the lines, switches, sidings or rights, easements or privileges to which they or either of them are by this agreement entitled, or to which they or either of them shall by the said Act become entitled, and shall and will at all times hereafter do all things necessary on their part to enable the said other Companies to use the said portion of the said Grand Trunk line on which, by the terms of this agreement the said other Companies have the right to run their trains, locomotives, and cars in the manner hereinbefore in that behalf provided, according to the tenor and effect, true intent and meaning of these presents.

And the said Great Western Railway Company hereby covenants to and with the said Grand Trunk Railway Company and the said Northern Railway Company, and each of them, that the said the Great Western Railway Company shall and will

in all things, on their part and behalf, well and truly observe, fulfil, perform, and keep the stipulations and agreements herein contained, and shall not nor will, in the use of the said Grand Trunk line or sidings, or of the tracks and sidings to be constructed or jointly used as aforesaid, wilfully or improperly hinder or obstruct the just and reasonable use thereof by the said Grand Trunk Railway Company or the said Northern Railway Company contrary to the true intent and meaning of this agreement.

And the said Northern Railway Company do hereby covenant to and with the said Grand Trunk Railway Company and the said Great Western Railway Company respectively, that the said Northern Railway Company shall and will in all things on their part and behalf well and truly observe, perform, fulfill, and keep the stipulations and agreements herein contained, and shall not nor will in the use of the said Grand Trunk line or sidings, or of the track and sidings to be constructed or jointly used as aforesaid, wilfully or improperly hinder or obstruct the just and reasonable use thereof by the said Grand Trunk Railway Company or the said Great Western Railway Company contrary to the true intent and meaning of this agreement.

AND lastly, it is hereby further agreed by and between the said Railway Companies, parties hereto, that each Company shall have power at any time hereafter, to establish and work any passenger and freight station on the north side of Esplanade Street, east of Bay Street, that it may select, and shall have authority to purchase land for the same, and shall be at liberty to cross Esplanade Street to such place and in such manner as may be necessary for convenient access to such station; provided always, that no such crossing or access shall, in any way, interfere with or inconvenience any crossing or access to the station grounds of the other.

IN witness whereof, the said several Railway Companies have hereunto set their respective Corporate Seals, the day and year first above written.

Sealed with the Corporate Seal of the Grand Trunk Railway Company by the Hon. James Ferrier, who at the same time and in my presence delivered the same on behalf of the said Company and affixed his signature thereto.

W. WAINWRIGHT.

J. FERRIER, { Corporate Seal of  
Chairman. { Grand Trunk  
Railway Co.

Sealed with the Corporate Seal of the Great Western Railway Company by the Hon. William McMaster, who at the same time and in my presence delivered the same on behalf of the said Company and affixed his signature thereto.

GEO. B. SPRIGGS.

W. McMASTER, } Corporate Seal of  
Chairman. } Great Western  
Railway Co.

Witness to signature of }  
Frederick Cumberland. }  
J. P. MACPHERSON. }

F. CUMBERLAND,  
Managing Director,  
N. R. Co.

} Corporate Seal  
of Northern  
Railway Co.

Witness to the signature of }  
Thomas Hamilton. }  
GEO. R. HAMILTON. }

THOS. HAMILTON,  
Secretary,  
N. R. Co.

On the passing of the above Act the City made the following conveyance :

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**Conveyance. Dated April 19th, 1865.**

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THIS INDENTURE made the nineteenth day of April in the year of our Lord one thousand eight hundred and sixty-five, between the Corporation of the City of Toronto, of the first part, the Grand Trunk Railway Company of Canada, of the second part, the Great Western Railway Company of the third part, and the Northern Railway Company of Canada, of the fourth part.

WHEREAS by a certain act of the Parliament of Canada, passed in the twenty-eighth year of the Reign of Queen Victoria, entitled "An Act to legalize and confirm an agreement made between the Grand Trunk Railway Company of Canada, the Great Western Railway Company, and the Northern Railway Company of Canada, relating to the Toronto Esplanade, and for other purposes therein mentioned," power was granted to the Corporation of the City of Toronto to convey to the parties hereinafter described of the second, third and fourth parts a right of way over, upon and along twelve feet six inches off the south part of Esplanade Street from York Street to the easterly limit of the said Esplanade for Railway purposes, which said right of way the said Corporation is willing and has determined to grant.

NOW this indenture witnesseth that the said Corporation of the City of Toronto in pursuance of the said Act of Parliament doth hereby grant unto the said several Railway Companies, parties hereto of the second, third and fourth parts, a right of way over, upon and along twelve feet six inches in width off the south part of Esplanade Street adjoining the northern limit of the south forty feet of the said Esplanade, and extending along Esplanade Street, from York Street to the easterly limit of the said Esplanade for Railway purposes as in the said agreement mentioned, subject to, and upon the terms and conditions in the said Act of Parliament, and in the said agreement which forms the schedule thereto mentioned.

AND subject also to the further condition, that the said Railway Companies, parties hereto, shall not nor will any or either of them block up or obstruct any of the public streets or crossings leading over the railway tracks to the wharves or water frontage with any trains, cars, engines, materials, stock, freight, or other Railway appliances.

TO have and to hold the same unto the said three Railway Companies, parties of the second, third and fourth parts, their successors and assigns, to and for their own use for ever, subject to, and for the purposes, and upon the terms and conditions mentioned in the said Act of Parliament, and in the said agreement.

AND the said Grand Trunk Railway do hereby covenant and agree with the Corporation of the City of Toronto, that any person or persons owning or leasing a wharf or wharves south of said Esplanade, may at any time lay down and construct from the south side of the Grand Trunk Railway a siding or switch and connect the same with the southerly track of the Grand Trunk Railway.

PROVIDED always, however, that the said siding and switch shall before being laid down and constructed, be submitted to and approved by the said Grand Trunk Railway Company in writing.

AND further that the said siding and switch as to its use, shall be under and subject to the exclusive control of the said Grand Trunk Railway Company.

AND each of the said Railway Companies, parties hereto of the second, third and fourth parts, do hereby covenant with the Corporation of the City of Toronto to observe, perform, and faithfully discharge all the duties, obligations, matters, and things which in and by the fourth, fifth, sixth, and seventh clauses of the said Act, or in and by the schedule thereto, or in and by this Indenture, are required to be done separately or jointly by one or either of the said Companies.

AND each of them doth further covenant to conduct their business with the said City of Toronto upon the said tracks and switches in all respects, so as to produce as little inconvenience to the general traffic on Esplanade Street and other streets leading to the wharves as is practicable or can reasonably be expected from them.

AND the said Corporation of the City of Toronto do hereby for themselves, and their successors, covenant with the parties of the second, third, and fourth parts, respectively, that they the

said parties shall, and each of them shall, for the purposes in the said Act and agreement mentioned, have the quiet possession and enjoyment of the said right and easement hereby granted.

AND that they, the said party of the first part, and their successors will, upon the request and at the costs and charges of the said parties of the second, third, and fourth parts, make such other and further Act and deed, as may be necessary for the full and proper carrying out of the said Act and agreement, according to the true intent and meaning thereof, as they the said parties of the second, third, and fourth parts may reasonably require or be advised to have done.

AND lastly, the said Corporation of the City of Toronto, for themselves and their successors, covenant with the parties of the second, third, and fourth parts respectively, that the time mentioned in the said agreement for the completion of the sidings therein mentioned, shall be extended to the first day of June, now next ensuing the date hereof.

IN witness whereof the said Corporation of the City of Toronto have hereunto affixed their corporate seal, and signed the same by the hand of Francis H. Medcalf, Esquire, Mayor of the said City. Countersigned by Andrew T. McCord, Esq., Chamberlain of the said City. And the said respective Railway Companies, parties of the second, third, and fourth parts, have hereunto affixed their respective corporate seals, and signed the same by the hands of their respective Presidents, on the day and year first above written.

Signed, sealed } and delivered }	F. H. MEDCALF, Mayor.	{ Seal of City of Toronto.
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Statement of Expenditure by the Grand Trunk  
Railway Company of Canada, west of York  
Street, on the Esplanade, for Land and Build-  
ings only.

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The following shews the cost of the land occupied by the Grand Trunk, west of York Street, including the right to run on the Esplanade; also the cost of the buildings now standing thereon, but exclusive of all tracks, super-structure, machinery and appliances connected with the working of the line:—

Land, including right of way . . . . .	\$ 247 000
Buildings, as above . . . . .	345 000
	<hr/>
Total . . . . .	\$ 592 000

### Statement.

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The following is a statement of the number of trains and engines crossing Simcoe Street, for twenty-four hours, on the 5th March, 1880, and may be taken as a fair average of the traffic passing that point:—

PASSENGER.	FREIGHT.	SINGLE ENGINES.
Trains . . . . . 86	Trains . . . . . 43	
Cars . . . . . 301	Cars . . . . . 767	. . . . . 141

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