THE

BARRIE SWITCH.

A BRIEF STATEMENT

OF A MATTER IN DISPUTE BETWEEN

THE CORPORATION OF THE TOWN OF BARRIE

AND THE

THE NORTHERN RAILWAY COMPANY OF CANADA,

WITH AN APPENDIX.

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PRINTED BY D. CREW, AT THE "ADVANCE" POWER PRESS.

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PREFACE.

The following statement of the origin and proceedings of a matter in difference between the Corporation of the Town of Barrie and the Northern Railway Company—commonly known as the "Barrie Switch" question—is compiled with the view of enabling persons interested as stock or bondholders of said Company, or otherwise, to form an opinion on the merits of the question, founded on a reference to transcripts of, and extracts from, original documents, the authenticity of which is not denied, and without the evidence of which an impartial judgment between the contending parties cannot properly be arrived at, either by the general public, or by those who, although having an interest in the matter, have had no opportunity of acquiring a full knowledge of the transaction, and of the grounds on which the Corporation of Barrie rest their demand, and the Company refuse compliance therewith.

The narrative here given of the Switch question will be found to be borne out in all its details and statements by reference to letters and other documentary evidence, given in full, or quoted from, in an appendix hereto.

THE BARRIE SWITCH.

In the year 1849 application was made to the inhabitants of Barrie and the other parts of the County of Simcoe, respectively, to aid the building of a line of Railway, to be called the Ontario, Simcoe and Huron Union Railroad, by a subscription of stock.

To induce the inhabitants of the Town to forward the undertaking and use their influence with the rest of the County in this behalf, the Managing Director, by the authority and with the sanction of the Board of the Railway Company, represented to the inhabitants of the Town that the Road should pass into and through the Town; and this advantage was that chiefly dwelt upon by the officers and agents of the Company—on the faith of which the inhabitants exerted themselves successfully to get stock to the amount of fifty thousand pounds, to be taken by the County Council.

When it was urged upon the County Council to take the said stock, it was well understood by the Ratepayers of the County of Simcoe that the main line, in accordance with the Company's Act of Incorporation, should run into and through the Town of Barrie.

The said subscription was the first subscription of stock in the said Company; and, had the same not been obtained, the Road would not have been proceeded with.

Afterwards, and in pursuance of the said understanding, the said Company surveyed and staked out that portion of the main

line running into and through the said Town, and entered into *contracts for the grading and building of the same.* Subsequently, during the year 1852, the Company having adopted Collingwood for the Northern terminus of their Road, they determined to divert the main line from the Town, and stopped any further work being performed under the contracts entered into by them for grading and building the same within the Town.

Upon hearing that the works were so stopped, and that the main line was about being changed, *a public meeting* of the inhabitants of the said Town was called to consider the subject; and at this meeting a resolution was adopted appointing a deputation to wait upon the then Directors of the Company, with the view of remonstrating with them for attempting to divert the main line from running through Barrie.

According to the instructions of the said meeting, the deputation visited Toronto in January, 1853; and in the interview had between them and the Directors of the said Company, it was alleged that to take the main line through the Town would cost about ten thousand pounds more than a branch line into the Town. And it was, therefore, verbally agreed, and a direct pledge was given by the Directors that, in consideration of the Town of Barrie *foregoing any claim, or any attempt through Parliament or otherwise,* to have the main line carried through the Town, the Company would, in lieu thereof, lay down, at their own cost and charges, a Branch Road or Railway from the main line into Barrie, and build a first-class Station, with other necessary buildings for a depot at the terminus of the branch in Barrie, such as would secure to the Town of Barrie all the *advantages of the main line,* with the exception of running Express Trains—upon condition, however, that the Town of Barrie should grant the right of way free of cost to the Company.

Accordingly, on the 27th of January, 1853, the Company passed a resolution for the construction of the branch line, provided suitable land and water frontage for a terminus, with

right of way thereto from the main track, could be had in the said Town free of cost to the Company.

This resolution was communicated by the Company to the Corporation, and its terms were accepted by them.

In pursuance and part performance of this agreement, the Company, at the request of the Corporation, procured a Line, to be run under the instructions and superintendence of Frederick William Cumberland, their then Chief Engineer, from their Station in the Township of Innisfil, to the Town of Barrie, and a plan thereof was drawn out by Mr. Cumberland and adopted by the Company, shewing the right of way required by the Company to the Corporation, that they might proceed to procure the Land and right of way required.

To enable them to do so, they thereupon raised the sum of £3000, and duly procured the land and water frontage, and right of way required by the Company, and the conveyances from the proprietors thereof were accepted by the Company as being complete in every respect for the purposes of the said Road.

Afterwards, about the 28th of May, 1856, the Company advertized in the public newspapers for Tenders to build the said Branch, and upon the investigation of the Tenders sent in by various parties, the Company awarded the contract to one, A. A. McGaffey, and agreed to pay him *Six Thousand Pounds* for constructing and building the same, which contract did not include Depot Buildings, which would have cost Five Thousand Pounds more.

However, the Company did not proceed to build the said Branch Line, though they had come under a legal and binding obligation to do so, and in consequence, disputes arose between the Company and the Corporation on the subject, and continued for several years, the Corporation on their part insisting on the performance by the Company of their obligation to build the said Line, and the Company on their part alleging, sometimes with expressions of regret, that they were without funds to do so, but not questioning the obligation itself.

After the passing of the several Relief Statutes for the bene-

fit of the Company, the allegation was set up on behalf of the Company that said Statutes had created an entirely new Company under the same name as the old Company, and that the obligation of the old Company in respect of the said Branch Line, was not transferred to the new Company, but was extinguished by the said Statutes.

This was not the intention of the said Statutes, which were passed with a full knowlege by Parliament of the claim, and were considered and intended not to interfere therewith.

Doubts nevertheless existing on the subject, in the year 1861 the Corporation petitioned Parliament for an Act to remove any doubt on the point, and a Bill for this purpose passed the Assembly, and was in progress before the Legislative Council, when Mr. Cumberland, who had been unsuccessfnlly opposing it up to this time, on behalf of the Company, proposed on their behalf, that if the Bill was withdrawn, the claim of the Corporation should be left to arbitration, and settled as the arbitrator should award.

An instrument was executed to carry out this agreement, and the Bill was duly withdrawn on the faith thereof.

The object of providing in this instrument, that no reference should be made to the Acts and order in Council, was merely that the Company might not take advantage of the said Statutory Release, if by a slip the said Statutes gave such release of the claim, such a release being undeniably the reverse of the intention of Parliament in passing the said Act, and of the Government in adopting the said order in Council.

The authority of Mr. Cumberland to enter into the stipulation was not repudiated by the Company until long after they had obtained the full benefit thereof, nor until after the award hereinafter mentioned had been made, and the agreement itself is in Mr. Cumberland's hand-writing, who, at the time of executing the same on behalf of the Company, not only asserted that he had authority to do so, but pledged himself to Mr. Angus Morrison, M.P., who had charge of the Bill before the Legisla-

ture, that it should be carried *out in good faith*, and that payment of any award given in favor of the Town would be made, *whatever might be the amount.*

The agreement referred to was executed by Mr. Cumberland, as Manager of the Road, in the presence of the Honorable P. M. Vankoughnet, the Hon. G. W. Allen, the Hon. James Patton, who were requested by Mr. Morrison to be present and become subscribing witnesses to the agreement, so as to prevent any misunderstanding in the future; with all this precaution Mr. Cumberland has not only shewn no desire to fulfil it, but has ever since continued strenuously to oppose a just settlement of the claim.

The Honorable S. B. Harrison, of Toronto, was named in the agreement, with the consent of all parties, as the arbitrator, and after a full investigation, he awarded that the Company should pay the Corporation £5000, as damages for the loss sustained to the Town of Barrie, in consequence of the Railway Company refusing to build the Switch.

A clerical error in the award gave rise to a question as to whether the Company could avoid payment of the £5000 by building the Switch, and although the context plainly showed that such was not the arbitrator's intention, and a reference to the arbitrator himself was suggested by Mr. Morrison, still the Company refused payment, and moved to have the award set aside before the Court of Queen's Bench in Term. The Court, however, after argument, upheld the finding of Judge Harrison, and as the whole evidence on both sides relating to the matter was produced before him; and the application to the Court of Queen's Bench was stated by the Company's Managing Director to be solely for the purpose of settling a doubt arising upon the wording of the award, it was supposed that a settlement of the claim would at last be made.

The spirit of litigation by which the Company's officers seemed to be possessed, was not however to be so easily overcome, for no sooner had the Court of Queen's Bench given judgment, upholding the award, than, at the instigation of the

Honorable J. H. Cameron, who was retained by the Company as counsel to set aside the award, a Bill was filed in the Court of Chancery on behalf of himself and two other Bond-holders of the Company to restrain the Company from paying the award, on the ground that certain claims against the Company took precedence of all others, and should be first annually satisfied before the award or any portion of it could be legally paid.

The suit thus commenced is still pending, and as both parties profess a desire to avoid litigation and an anxiety to have this long disputed question, as to the liability of the Company either to build the Switch or pay the damages awarded against them, finally settled, the solicitor of the Corporation (having first offered to accept the Switch in lieu of the damages awarded, and thus end the dispute) gave notice of his intention to introduce a Bill on the subject during the next Session of Parliament.

The County Council of the County of Simcoe, as well as the Town Council of Barrie, shortly after the publication of this notice, memorialised His Excellency the Governor General and both branches of the Legislature, praying for Legislative interference to settle a dispute now of over ten years standing.

APPENDIX.

EXTRACTS

From the Minutes of proceedings of the Directory of the Northern Railway Company, relating to the Switch question, from 1853 to 1859, taken from Company's books.

January 27th, 1853.

Mr. Brunel produced a comparative estimate of the cost of constructing the Railway through the Town of Barrie, and of the constructing of the direct route, making a branch from it to serve the trade in connection with the wharves at Barrie.

The difference by the estimate in favor of the direct route, with branch, was £10,543.

Ordered, That provided suitable land and water frontage for a terminus, with right of way thereto from the main track, can be had free of cost in the town of Barrie, a branch line, as suggested by the Engineers, shall be laid down for the service of the Town, and that the Chief Engineer be instructed to survey the locality and report what will be required for the service of the road at that point.

March 17th, 1853.

Resolved, That the Secretary be directed to write to Mr. Lount of Barrie, and inform him that the Board will allow till 31st day of March instant, for the inhabitants to make their arrangements, upon which the Company will carry the line to the Town; and to remind him that the right of way thereto and borrowing land must be provided, free of cost to the Company, and on the non receipt of an unqualified acceptance of this proposal, at the board meeting, on the 31st March, the board will proceed with the location of the line, under the advice of their

Engineer, so as to proceed with the Road without further delay.

July 28th, 1853.

Read a letter from Messrs. McConkey, McWatt, Lane and Sanford, respecting the proposed branch line into Barrie, and upon it the following minute and resolution were made. Whereas, by resolution, adopted 17th March last, this Board stands pledged to construct a branch from the main Line into the Town of Barrie, provided suitable land and water frontage for a terminus with right of way and borrowing ground (on such location as may be approved by the Chief Engineer) be furnished to the Company, free of cost. And, whereas, a letter from Mr. McConkey and others, dated 28th July, 1853, implies some misconception on the part of the inhabitants of Barrie, as to the conditions upon which such pledge was made,

Resolved unanimously, That Mr. McConkey and others, signers of the said letter, be notified for the information of the inhabitants of Barrie, that the conditions above quoted are those upon which alone this Board will act in the matter, and that they be recommended further to appoint a Solicitor to act on their behalf, with the Solicitor of the Company, in regard to the legal steps necessary to secure the said land, the Board consenting to instruct their Solicitors to render them every facility under the power of the Act, which may be given consistent with a full and complete indemnity to the Company from all costs, &c., charges, legal or otherwise, in regard to the matter, it being understood that the inhabitants agree, and are prepared to meet the same.

November 5th, 1853.

Read a letter from Mr. Cumberland, submitting a plan and profile of the proposed branch line into the Town of Barrie, for the information of the Board and the Barrie Committee.

The Secretary to send a copy of the plan to be supplied by the Chief Engineer.

Read the Report of the Committee on the Barrie Switch

Tenders, stating acceptance of Mr. A. A. McGaffey's offer. The Board confirmed the same.

March 30th, 1854.

Read a letter from the Reeve of Barrie, with copy of a resolution of the Council passing a By-Law authorizing the raising of £3,000 for the purpose of the extension of the line into that Town.

October 5th, 1854.

Resolved, That the Secretary inform the Municipality of Barrie that as soon as the right of way is secured and the deeds sent to him, the Company will make every exertion to proceed at an early day to build the Switch leading into their Town.

January 18th, 1855.

The Secretary to instruct the Chief Engineer to report on the practicability of constructing the Barrie, Switch by the water's edge into the Town of Barrie, and to estimate the cost thereof.

April 26th, 1855.

The Secretary laid on the table for the use of the Directors printed copies of a Bill to enable the Company to construct the Barrie Switch, received from Mr. Angus Morrison, M.P.P.

May 25th, 1855.

Resolved, That the Chief Engineer be instructed to locate the line of road, map and stake out the land required for the Barrie Switch, and that it be an instruction to the Engineer to adopt the plan already submitted to the Directors along the lake shore; and that immediately thereafter tenders be advertized for by him in the Barrie *Advance* and the *Daily Colonist,* to be submitted for the further action of the Board.

June 21st, 1855.

The President submitted the Barrie Switch Tenders. Referred to a Committee consisting of the President, Messrs. Drummond

and Angus Morrison, with power to accept Tenders and enter into a contract.

July 21st, 1855.

Moved by Mr. Cumberland, seconded by Mr. Brunel—That, in the opinion of this meeting it is inexpedient to construct any branch line at present; and that no such works, excepting necessary sidings, should be undertaken, or responsibilities incurred in respect thereof, except with the express sanction of the Stockholders in general meeting.

March 13, 1856.

Read communication from Reeve and Councillors of Barrie, a deputation now here for the purpose of asking for such information in relation to the construction of the Barrie Switch, as may enable the Council to satisfy the ratepayers.

The deputation was informed, verbally, by the Vice-President that the subject of the communication would be taken up at a special meeting, and the result communicated to them.

November 10th, 1859.

Read a letter from T. D. McConkey, of Barrie, enquiring the intentions of the Board relative to the construction of the Barrie Switch.

Ordered, That Mr. McConkey be informed that his letter has been under the consideration of the Board, who possess no present authority or means for the construction of that work; the Warden dissenting.

December 22nd, 1859.

Read communication from Angus Morrison, Esq., M.P.P., accompanying letter of the Reeve of Barrie and report of the Town Council, having reference to the Barrie Switch; the letters of Angus Morrison, Esq., and the accompanying papers relative to the Barrie Switch, being under consideration.

Ordered, That with reference to the resolutions of the Town Council of Barrie, of the 2nd of December, 1859, and the letters of the Reeve, Mr. McConkey, and Mr. Solicitor Morrison,

the President and Secretary be requested to refer to the minutes and memoranda with respect to the subject, and to report to the Board what they find to have been the obligations of the Company, and whether it is in the power of the Company, as newly constituted, to fulfil the same.

TWO LETTERS

Of Company's Engineer, as to right of way of Switch.

ENGINEER'S OFFICE,
ONTARIO, SIMCOE, & HURON RAILROAD.
Toronto, 5th November, 1853.

SIR,—Herewith I beg to submit a plan and profile of the proposed Branch Line into the Town of Barrie, prepared for the information of the Board and the Barrie Committee. The width of right of way will be four rods, with privilege of slashing through timbered lands, to a further width of three rods on each side. Provision must also be made of such an area of land as will admit of a borrow of 24,000 cubic yards, in the positions shewn.

I have the honor to be, Sir,
Your obedient serv't,
(Signed) FRED. CUMBERLAND,
CHIEF ENGINEER.

WM. SLADDEN, ESQ., &c.

ENGINEER'S OFFICE,
O. S., & H. R. R. Company,
Toronto, January 30, 1855.

SIR,—In pursuance with the Board's order, I hand you copy of the plan for the Barrie Branch, adopted by the Directors at their last meeting.

The right of way required, is indicated by the dark red line, which will be the centre line of track; with a width from that

centre line, 30 feet and landward the land towards the Bay, all lying between said centre line to the water's edge, and in the water to necessary distance.

I have further to direct Town attention to the necessity of procuring land privileges sufficient for borrowing 14,000 yards of material for embankments.

I am, Sir,
Your obedient servant,

FRED. CUMBERLAND.

WM. SLADDEN, ESQ.

LETTER

Of Honorable P. M. Vankoughnet as to liability of Company to build the Switch.

Toronto, 26th August, 1856.

SIR,—I have the honor to acknowledge the receipt of your communications on the subject of the Barrie Switch. I have not been able yet to see what power the Government can exercise in the matter. It is a matter rather for the action of the Shareholders and the Board of Direction, who seem to me to have bound themselves to make the piece of road you advocate, and I don't very well understand on what pretence they avoid this obligation.

If the affairs of the Northern Road come under the consideration of the Government, I shall not fail to invite the action of the Council upon the subject to which you refer.

I have the honor to be,
Your obedient serv't,

(Signed) P. M. VANKOUGHNET

A. MORRISON, ESQ., M.P.P.

ADVERTISEMNET.

Published by O. S., & H. R. R. Company for Tenders to build Barrie Switch.

ONTARIO, SIMCOE AND HURON RAILROAD—TO CONTRACTORS.

Tenders are required for the construction of a Branch Line (about one and a quarter miles in length) from the Company's present Station, on Kempenfeldt Bay, into the Town of Barrie. Plan, Profile, &c., may be seen, and full particulars obtained on applicaiion at this office, on and after Monday, the 4th of June.

Tenders sealed, endorsed and addressed to the President, to be sent in on or before Wednesday, the 31st June, at noon.

Full security will be required, and the acceptance of the lowest Tender not to be deemed obligatory.

By Order,

FRED. CUMBERLAND,
CHIEF ENGINEER.

ENGINEER'S OFFICE, O. S. & H. R. R.
Toronto, 28th May, 1855.

LETTER

From Mr. Morrison to Mr. Cumberland, regarding the Barrie Switch, and answer thereto.

Toronto, 6th December, 1859.

DEAR SIR.—In the absence of the President I enclose you for the consideration of the Directors of your Company, a copy of a resolution adopted by the Town Council of Barrie, together with a letter from the chief magistrate, respecting the Company's liability to perform an unqualified contract entered into some years ago, to build a branch line of road into the Town of Barrie. As the subject matter of the contract is equally as familiar to you as those more particularly interested, I

see no use in referring to records or documentary evidence to justify the present application, but as the resolution refers and places the whole matter entirely in my hands, I do hope in requesting a specific performance that the plea of want of means will not now be urged or entertained by the Company, inasmuch by the recent Act of Parliament, and the Executive Council orders the relief money, when obtained, is to be applied in repairing the road, paying debts, and carrying out all *obligations* of the Company.

Having been instrumental in obtaining the Government to grant the present relief bill, I can say, without the fear of contradiction, that if I had been disposed to clog the relief bill or the order in Council with a *condition* that the Company's agreement to build the branch should be carried out, *most assuredly such would have been the case*, but believing that such a condition would have had the effect of delaying an immediate arrangement with the English Bondholders, I withdrew the application which was in the hands of the Government at the time, feeling satisfied that so soon as means were obtained, all obligations of the Company would be carried out in *good faith*. I merely mention this fact to ask the Directors to consider the present applications with candour and consideration. I am willing to meet you or the Directors at any time for the purpose of discussing the best mode of settling this long pending controversy, so that the works contemplated may be constructed in as economical a manner as possible, your Company having the title deeds of the right of way, which compelled the Municipality of Barrie to borrow $12,000.00. Many of the parties from whom the right of way was obtianed, having been paid, no difficulty on this point can possibly arise at this distant period. Hoping to hear from you (officially) at your earliest convenience,

I have the honor to be,

Your very obd't serv't,

A. MORRISON.

F. W. CUMBERLAND, ESQ.,

Vice-President, N. Ry., Toronto.

OFFICE OF THE SECRETARY AND TREASURER,
SIMCOE AND HURON RAILROAD COMPANY,
Toronto, 9th December, 1859.

To ANGUS MORRISON, ESQ.

SIR.—I have the honor to acknowledge the receipt of your letter of the 6th inst., with enclosures, having reference to the construction of a branch line from the Railroad in the Town of Barrie.

The matters to which you allude not having occurred since I have had the honor of being a Director of this Company. I have thought it due to the Council of Barrie that the subject should await the return of the President, who is conversant with the details of the question, and from whom I have no doubt it will receive the respectful attention which it merits.

I have the honor to be, sir,
Your very obedient serv't,

FRED. CUMBERLAND,
Vice-President.

TELEGRAM

From Mr. Morrison to Reeve of Barrie, as to submission of Switch question to arbitration, and reply thereto.

Quebec, 15th May, 1861.

To T. D. MCCONKEY, ESQ, REEVE,
BARRIE, LAKE SIMCOE.

Barrie Switch Bill passed this House. Cumberland offers to withdraw all legal points, and submit claim for compensation to opinion of Judge Harrison, Toronto, or three other parties. Will your Council agree? Answer immediately.

ANGUS MORRISON.

Quebec, 15th May, 1861.

BY TELEGRAM FROM BARRIE.

To ANGUS MORRISON.

Council will not interfere. Leave Switch matter entirely in your hands.

THOS. D. McCONKEY.

MEMORANDUM

Of agreement between the Company's Managing Director, Mr. Cumberland, and Mr. Morrison, to refer all matters in difference to arbitration.

The undersigned for, and on behalf of the Corporation of the Town of Barrie and of the Northern Railway Company of Canada, respectively, and acting under respective authority of the same in relation to matters in dispute, arising out of a claim of the said Corporation against the said Company in connection with the construction of a branch line into the Town of Barrie, hereby mutually agree and are bound as follows:—

1. That the said claim shall be referred to arbitration as hereinafter provided, and that in such reference no appeal shall be made to the Act relating to the Northern Railway of Canada, passed in 1859, or to the order of the Governor General in Council, of 11th May, 1859, or to the Act in relation to the Railway aforesaid, passed in 1860; so far as "to prevent or release the said Company constituted by those Acts from being "bound by any obligation contracted by the Northern Railway

"Company of Canada with the Corporation of the Town of "Barrie, before the passing of the said Acts;" but the arbitration shall proceed, be heard and determined, and award made, as though the said Acts had not been passed.

2. That the Honorable Samuel Bealy Harrison, the Judge of the County Court of the United Counties of York and Peel, shall be, and is hereby appointed, sole arbitrator to hear and determine upon the matters and claim in dispute between the parties as aforementioned; and that the award of the said Samuel Bealy Harrison shall be final and binding upon the parties respectively.

3. That in the event of the said Samuel Bealy Harrison declining to act as arbitrator, then, within one month from the date hereof, the Corporation of the Town of Barrie shall appoint one arbitrator, the Northern Railway Company of Canada shall appoint another, and the two so appointed shall agree upon and appoint a third, and the three so appointed shall proceed to hear and determine upon the matters and claim in dispute between the parties as aforementioned, and the award of any two of the arbitrators so appointed, shall be final and binding upon the parties respectively.

4. That the Corporation of the Town of Barrie and the Northern Railway Company of Canada shall accept, obey and fulfil any award so made as aforesaid, and shall pay, or cause to be paid, any sum or sums of money as by such award they or either of them may be hereby ordered or directed to pay either to the other, or as costs, or otherwise.

5. That for the purpose of giving due and legal effect to these presents, proper bonds for arbitration in accordance with this agreement shall be prepared and entered into between the said parties, and the reference shall be made a Rule of Court.

That the Bill now before the Legislature, entitled "An Act "to amend Act 23, Vic., Chapter 105, so far as relates to the "construction of the branch line into the Town of Barrie, and

"other matters therein mentioned," shall be withdrawn on the signing of these presents.

Signed at Quebec, this sixteenth day of May, 1861.

(Signed) A. MORRISON, } For the Corporation of the Town of Barrie.

(Signed) FRED. CUMBERLAND, } For the Northern Railway Company of Canada.

WITNESSES:

(Signed) P. M. VANKOUGHNET,
(Signed) JAMES PATTON,
(Signed) G. W. ALLAN.

LETTER

Of the Company's Managing Director, enclosing Bond of submission, and stating the Company's willingness to proceed with the arbitration.

NORTHERN RAILWAY OF CANADA,
Toronto, 26th September, 1861.

BARRIE *v.* N. R. C.

MY DEAR SIR.—Herewith I transmit submission Bond from this Company to the Corporation of Barrie, observing that we are prepared to enter upon the case whenever the arbitrator may name an appointment for the purpose.

I am, my dear sir,
Faithfully yours,
FRED. CUMBERLAND,
Managing Director.

ANGUS MORRISON, ESQ., TORONTO.

LETTER

Of Honorable A. T. Galt, as to meaning of order in Council, and showing recognition and knowledge of Switch claim by Government, and by representative of English Bondholders.

Quebec, 26th Sept., 1861.

MY DEAR MORRISON.—I regret that it will not be possible for me to be in Toronto on Saturday, though I shall probably be there about 3rd or 4th October, and can then be examined if necessary about the Barrie Switch. Perhaps, however, if I now state all I know about the matter, it may be accepted by Mr. Cumberland, and save me the trouble of an examination.

In the first place, I have no personal knowledge of the merits of the claim. When the case of the Northern Railroad was before the Government, the Barrie Switch claim was urged upon me repeatedly by yourself and also upon Mr. Jackson. Not desiring to pronounce upon the justice of the claim, *the Government decided that such general terms should be used in the O. in C. as would cover your claim, and it was so stated to Mr. Jackson.*

It was never intended to wipe out this cause by Legislation, and our expectation was, that a compromise would take place if it were not considered possible to build the Switch. Such Compromise should have taken place within the time limited by the O. in C. for debtors, but I understood from your evidence before the Committee last session that on this point an agreement had taken place with the Company.

In the position in which the Company's affairs stood, the Government did not intend to compel the expenditure of capital in a useless work, if it be so, but only to protect the Municipality of Barrie from pecuniary loss.

Yours faithfully,

A. T. GALT.

A. MORRISON, ESQ., M.P.P.

JUDGE HARRISONS AWARD,

(After the usual introductory remarks, proceeds as follows:—)

I DO FIND AWARD, AND DETERMINE,

1st. That there was, in 1853, a valid and binding agreement made by the then Railway Company, with the Corporation of the Town of Barrie, to construct a branch line of Railway from the main track in Innisfil into the Town of Barrie, provided that suitable land and water frontage for a terminus with right of way thereto, from the said main track, was procured by the said Corporation of the Town of Barrie, free of cost to the said Railway Company.

2nd. That such suitable land and water frontage for a terminus with right of way thereto, from the said main track, was procured by the said Corporation of the Town of Barrie, free of cost to the said Railway Company, and to the satisfaction of the said Railway Company, at very considerable expense and trouble to the said Corporation of the Town of Barrie.

3rd. That the said Railway Company did not, nor did the said Northern Railway Company of Canada at any time since construct the said branch line, and that the claim of the said Corporation of the Town of Barrie to have the same constructed, has never been abandoned or given up at any time, but on the contrary, has been always since, upon all convenient occasions, urged and pressed for performance.

4th. That reference being had to the agreement in the said memorandum of agreement, (by which this award is to be made as though the several Acts of Parliament therein referred to had not been passed).

I award, adjudge and find, that the said claim of the said Corporation of the Town of Barrie to have the said agreement performed, is still subsisting, and if not performed, their right to

compensation in lieu thereof, ought to be awarded. And

5th. As compensation for the non-performance of the said agreement, and in full satisfaction of the said claim of the said Corporation of the Town of Barrie against the said Northern Railway Company of Canada, in respect thereof, as by the said reference I am empowered to do; I do hereby order, adjudge and determine, that the said Northern Railway Company of Canada, and their successors shall, and do well and truly pay, or cause to be paid, to the said Corporation of the Town of Barrie, or their successors, on the Tenth day of March next, ensuing the date of this my award, between the hours of Twelve of the clock at noon, and Two of the clock in the afternoon of that day, at the Office of Messrs. Morrison and Sampson, in the City of Toronto, the sum of Five Thousand Pounds of lawful money of Canada, and that the sum be received by the said Corporation of the Town of Barrie, in full satisfaction and discharge of, and for all the said matters in difference to me referred, as aforesaid.

6th. And I do further award, order, adjudge and direct, that the said Northern Railway Company of Canada do, when requested so to do, by the said Corporation of the Town of Barrie, make and execute to them, a valid deed of conveyance, in fee of all certain lands and tenements mentioned, and comprised in a certain Indenture of Bargain and Sale, made by one John Boon, to the said Company, and dated the Eighteenth day of August, 1855, and shall, and do further, when so requested, as aforesaid, make and execute a general release of all claims in respect of the land and right of way conveyed to them, or agreed to be conveyed to them, by the several parties over whose lands the said branch line from the main track into the Town of Barrie was to pass.

7th. And seventhly, and lastly, I do further award, order, adjudge and determine, that the said Northern Railway Company of Canada do bear and pay the costs and charges of this reference, as well their own costs and charges as also the costs and charges of the said Corporation of the Town of

Barrie, (the same to be duly taxed in the usual manner) and also the costs of this my award, which I assess at the sum of Forty Pounds, in witness whereof, I, the said Samuel Bealy Harrison, the arbitrator aforesaid, have to this my award in writing, set my hand and seal this Thirty-first day of January, A.D. 1862.

(Signed) S. B. HARRISON. (L.S.)

Signed, sealed and delivered in the presence of

(Signed) HENRY AGNEW, JR.

JUDGMENT

Of Court of Queen's Bench, confirming the award of Judge Harrison, in the matter of the arbitration between the Corporation of the Town of Barrie and the Northern Railway Company of Canada.

Burns, J., read the judgment prepared by the late Chief Justice of the Court in which he concurred.

As the reference was by way of compromise and led to the withdrawing of a bill relating to the matter which was before the Legislature, neither party should be countenanced by the Court in refusing to abide by the award on account of any objection not really applying to the merits of the matter in dispute. There is no complaint of any improper conduct on the part of the arbitrator; no affidavits are filed; and the defendants have confined themselves to exceptions which they contend shew the award to be invalid on the face of it. If these objections are well founded the defendants can have the advantage of them in resisting performance by whatever means it may be attempted to be enforced, and as the Court has always a discretion in declining to set aside an award on application, is

not this a case in which the party complaining, only on such grounds as he contends are apparent on the face of the award, should be left to oppose any remedy for enforcing payment?

But in regard to the objections, it seems to me there is nothing in the first, though the award happens to be so expressed as to leave some appearance of ground for it. We must give a reasonable construction to the award. The arbitrator has found that the Company have not yet done what they had agreed to do eight years before, though they had been in no way absolved from doing it. The words "if not performed" may, when all is taken together, be understood to mean the same thing as "since it has not been performed." The arbitrator says in effect, "if the Company has not made the branch line, they should make compensation: they have not made the branch line, and therefore I award," &c.

If the Company would rather make the branch line than pay the compensation, they have it in their power to contend that an option is given to them, and to move to stay proceedings on the award till a certain day, to give them an opportunity to make the branch line. The Court could then determine whether they had such an option.

But the arbitrator could have never intended to give an option. "If not performed," he says "their right" (that is the right of the Town) "to compensation in lieu thereof, ought to be awarded." "If not performed," may be reasonably taken to mean if they have hitherto not performed their undertaking, not if they shall not hereafter perform it, for he proceeds immediately to award "compensation for the non-performance of the agreement," thereby deciding that it had not been performed; and he awards that the compensation shall be paid at a certain fixed day, little more than two months from the date of the award, and this without any reservation to the Company of a right to make the branch line, instead of paying the money. What follows, too, respecting the Company conveying back the land, is all consistent with the construction that the £5000 was positively to be paid.

The third objection seems to be immaterial. It should be assumed that the arbitrator determined that the Company, having refused to make the line, should not keep the land which had been conveyed to them in the confidence that they would make it. It does not appear on the face of the award why the land which Boon had conveyed to the Company should be made over by the Company to the Town of Barrie, instead of being re-conveyed to Boon; but all that can be said is, that the facts which may have made that a just and reasonable direction are not set out in the award, as they need not be. The circumstances may be such as to account satisfactorily for the award in this respect; and we should assume that there were good grounds for it, in the absence of information to the contrary. The Town may have paid Boon for the ground and directed him to convey it to the Company; and if so, they should have it back again, since the Company have declined to make use of it for the purpose for which they got it.

It should be assumed that the arbitrator made allowance in his award for the Town getting back this land, and thought it just to award the £5,000 after taking that into his consideration. Besides, if the direction respecting Boon's conveying this land to the Corporation of Barrie were on any ground void, the only consequence would be that they would lose the benefit of that direction in their favor. It could not interfere with their right to get the compensation awarded.

And so in respect to the fourth objection to that part of the award which directs that the Company shall execute a general release of all claims in respect of the lands and right of way conveyed to them, or agreed to be conveyed to them by the several parties over whose lands the branch line was to pass. So far as the Town is concerned, that release was evidently intended to be something in addition to the pecuniary compensation. If from any defect in that part of the award the direction should fail of its intended effect, that would be no reason why they should not be paid the pecuniary compensation

awarded. But is there, in truth, any difficulty as regards that part of the award?

It was a matter on which the arbitrator had a right to give the direction he did, if we suppose that his intention was that, besides paying the £5,000, the Company were to give up the land which they had not applied to the purpose intended. And as to the objection that it is not stated to whom the release is to be given—could not the Company release all right of action and claims against the Corporation of Barrie, or any other person or persons whomsoever, in respect of the land and right of way conveyed to them, or agreed to be conveyed to them, by the several parties over whose lands the said branch line was to pass? Besides, the release is only to be executed "upon request," which request would point out who it was that requested the release.

As to the sixth objection, it must be assumed that the arbitrator had good grounds on the evidence before him for making the estimate of damage which he did. The Court has not the grounds before it and cannot go into the merits. If it were correct to assume that the arbitrator could give no damages beyond what the Town had disbursed in acquiring land, then it ought to be assumed that he did so confine himself rather than that he did not.

The damages may be excessive, but that does not appear; and the case must be an outrageous one in that respect before any interference could be justified on such a ground.

It was argued that the Company could not consistently with their charter and the law of the land expend their funds in paying the damages awarded. If that be so, it may follow that they cannot be compelled to obey the award. But this is no application to the Corporation for that purpose, but an application by the Company to set aside an award for a reason which, if it be a reason, must have existed at the time of the submission as well as now; and after a compromise had been made, and the application to the Legislature withdrawn on the faith

of the arbitration, which was agreed to, it does not lie in the mouth of the Company to object to the award on the ground that no such compensation could be legally awarded. They cannot at least make it the ground of an active interposition at their instance.

The rule should be discharged with costs.

McLean, C.J., having been absent during the argument, gave no judgment.

Rule discharged with costs.

EXTRACTS

From a letter of Company's Solicitor, offering to pay £3000 in settlement of claim.

Toronto, 2nd July, 1862.

ANGUS MORRISON, ESQ.,
Barrister, &c.

DEAR SIR :—

MUNICIPALITY OF BARRIE, *vs.* NORTHERN RAILWAY OF CANADA.

In this matter I have received instructions to make a proposal to you for its final settlement, and as you request it, I put it in writing.

Without prejudice, the Railway Company are prepared to pay £3000 and the costs, to buy their peace, the same being paid as hereinafter mentioned, in full discharge of any claim of the Municipality.

I have no doubt of the assent of the Bondholders to my proposal, because the Company can carry out the arrangement without materially interfering with, or embarrassing their present engagements, and therefore I do not hesitate to make it.

I will thank you to give this your early consideration, and if you cannot make up your mind to recommend your clients to accept it, have you any objections to my going to Barrie and seeing them myself: of course I would not do so without first acquainting you of my desire to do so.

Yours truly,
C. GAMBLE,
Solicitor, N.R.C.

SEVERAL LETTERS

Of Solicitor of Corporation and Company's Managing Director, relative to building Switch in lieu of paying award, which clearly show the insincerity of the latter in professing to desire a settlement of the dispute.

Toronto, 18th December, 1862.

DEAR SIR—I am instructed by the Municipality of the Town of Barrie to ask your Company's co-operation in the passing of a Bill during next session of Parliament, to remove the infinitessimal existing doubts as to the Company being liable to pay out of the earnings of the road, or otherwise, the amount of Judge Harrison's award "in a Switch."

As notice of such application will be inserted in the public newspapers on Monday next, your immediate reply will oblige,

Yours, very truly,
A. MORRISON,
Solicitor for the Town of Barrie.

F. W. CUMBERLAND, ESQ.,
M. D. N. Railway, Toronto.

NORTHERN RAILWAY OF CANADA,
Toronto, 22nd December, 1862.

DEAR SIR.—Your letter of the 8th inst., was duly submitted to the consideration of the Board, at a meeting held on the 19th, and I am instructed to say that in view of the proceedings in Chancery, relative to the Barrie Switch, the Directors abstain from any active course in regard to it, and whilst regretting the apparent impossibility of an amicable settlement between the parties, which they have always been anxious to promote, they hold themselves free to adopt such course from time to time, as the exigencies of the case and the interest of the Company may dictate.

I am further instructed to avail of this opportunity for again bringing to your notice the resolution adopted by the Board, on 7th February, 1862, and copy of which is attached.

I am, dear sir,
Your ob'dt serv't,
FRED. CUMBERLAND,
Managing Director.

ANGUS MORRISON, ESQ.,
Solicitor for Town of Barrie.

Extract from minutes of 7th February, 1862.

"*Ordered,* That all proper steps be taken to test the validity of the award, and further, that if in the opinion of the Managing Director and standing Counsel, such a course should seem expedient, they be authorized to declare the willingness of the Company to proceed without delay with the construction of the branch line into the Town of Barrie, assuming that the titles to the right of way be first duly completed."

Toronto, 30th December, 1862.

DEAR SIR.—I have the honor to acknowledge the receipt of your letter of the 23rd instant, in which you advise having placed my communication of the 8th instant, before the Board

of Directors, and, that after due consideration, you were instructed by them to say :—First, " That the Directors, in view of the proceeedings in Chancery relative to the Barrie Switch, abstain from any active course in regard to it. Second, they regret the apparent impossibility of an amicable settlement between the parties, which they have always been anxious to promote. Third, they hold themselves free to adopt such course from time to time, as the exigencies of the case and the interests of the Company may dictate ; and, finally, they accept the opportunity of referring me to the following Board Resolution, dated 7th February, 1862." " *Ordered*, That all proper steps be " taken to test the validity of the award, and further, that if in " the opinion of the Managing Director and standing Counsel, " such a course should seem expedient, they be authorized to " disclose the willingness of the Company to proceed without " delay with the construction of the branch line into the Town " of Barrie ; assuming that the titles to the right of way be first " duly completed."

In reply thereto, I am directed by the Town of Barrie to say, that, in their opinion, the first, second and third paragraphs of your instructions are so undetermined, and if taken unitedly, so inconsistent, it is impossible to understand whether or not the Board of Directors intend co-operating with the Town of Barrie in the passing of a Bill next Session, to remove alleged existing doubts as to the Company being liable to pay £5000, together with costs, awarded by Judge Harrison, for not building the Switch, according to agreement.

With respect to the last paragraph, it is equally uncertain, inasmuch as you do not allege that the condition precedent in the Resolution specially referred to, has been considered by you and standing Counsel, since the Court of Queen's Bench gave judgment confirming the award. However, to test the meaning of the Resolution, and the sincerity of the Directors, many verbal public offers and apparent willingness at this date to build the Switch, the Town of Barrie are prepared, within twenty-four hours, to hand over to the Company's Solicitor, free

of costs, deeds, under seal, of the entire right of way, provided the Company pay all costs of suits, disbursements and liabilities, incurred by the Town of Barrie, in urging and defending their claim, "except right of way," and in good faith agree, within six months, to build and construct the branch line in accordance with the true intent and meaning of the original Board order, dated 27th January, 1863, which is as follows:—"Mr. Brunel "produced a comparative estimate of the cost of constructing "the Railway through the Town of Barrie, and of the con-"struction of the direct route, making a branch line from it to "secure the trade in connection with the wharves at Barrie. "The difference between the estimate, in favor of the direct "route with branch, was £10,543."

"*Ordered,* That provided suitable land and water frontage, "for a terminus with right of way thereto, from the main track, "can be had, free of costs, a branch line as suggested by the "Engineer, shall be laid down, for the service of the Town, "and that the Chief Engineer be instructed to survey this lo-"cality, and report what will be required for the service of the "Road at that point." Reference to this plan and profile, dated 25th January, 1855, and countersigned by yourself, as Chief Engineer, and T. D. McConkey, Esq., Reeve of Barrie, will more fully explain the route adopted for the branch line, and the right of way to be obtained. I have only to add, that the Town of Barrie have, upon all occasions, been ready to avail themselves of every reasonable suggestion whereby a speedy and amicable settlement of their acknowledged rights could be arrived at.

Therefore, I do hope you will, at your earliest convenience, place this communication before the Board of Directors. It is understood that this letter is written without prejudice to the Chancery suit, in case a compromise does not take place.

Yours truly,
A. MORRISON.

F. W. CUMBERLAND, ESQ.,
[illegible] N. R. OF C., TORONTO.

NORTHERN RAILWAY OF CANADA,
Toronto, 2nd January, 1863.

DEAR SIR—I have the honor to inform you that your letter of the 30th ult. was laid before the Board on the 31st.

I am authorized by the Directors to say that, having reference to that portion of your letter stating that you are "prepared to tender to the Company's Solicitor deeds under seal of the entire right of way, provided the Company pay all costs, disbursements, and liabilities, incurred by the Town of Barrie in urging and defending their claim, except right of way," before replying to your letter they desire to obtain a statement from you of the amount of such costs, disbursements, and liabilities, and the suits and services they represent, as, in the absence of such statement, they are unable to determine the effect of the proposals you make.

I am, dear sir, yonrs very truly,
FRED. CUMBERLAND,
Managing Director.

ANGUS MORRISON, ESQ.,
Solicitor for Town of Barrie.

Toronto, 3rd Jannary, 1863.

DEAR SIR.—In reply to your letter received this morning, on the subject of your request to furnish a statement of the probable amount of the costs, disbursements and liabilities, incurred by the Town of Barrie, in urging and defending their claim against the Company. I beg to say that it would occupy much valuable time to make up a detailed statement of the costs, disbursements and liabilities referred to; but on reference to the arbitrations had before T. Galt, Esq., and Judge Harrison, the Chancery suit, travelling and Parliamentary expenses, postage costs, between Solicitor and clients, for seven years, together with the liability of the Town of Barrie to the Government, being balance of interest over due on the loan of £3000, I would say the amount will not exceed £700. I feel certain no difficulty will arise as to furnishing a correct detailed state-

ment, in case your Company are desirous to act in good faith, and build the Switch or branch line in accordance with the Board order, lastly referred to in my former letter.

Yours &c., very truly,
A. MORRISON,
Solicitor for Town of Barrie.

W. F. CUMBERLAND, ESQ.
M. D., N. Railway, Toronto.

Toronto, 12th January, 1863.

DEAR SIR.—I wrote you on the 3rd instant, on the subject of your enquiry, but as yet no reply. I will wait until Wednes day next, 4 p.m., before giving notice of the Bill referred to in my last letter of the 8th ultimo.

I am yours, &c.,
Very truly,
A. MORRISON,
Solicitor for Town of Barrie.

F. W. CUMBERLAND, ESQ.,
M. N. R., Canada, Toronto.

MANAGING DIRECTOR'S OFFICE,
NORTHERN RAILWAY OF CANADA,
Toronto, 15th January, 1863.

DEAR SIR.—Your letters of the 3rd and 12th instant were laid before the Board at a meeting held yesterday.

On consideration of your letter of the 8th ult., reply to which had been suspended for further information from you, the Directors authorized me to express their regret that the information asked for has not been supplied; and I am further to state that in view of the proceedings in Chancery by the Bondholders, and of the injunction of the Court issued thereupon the Board does not at present feel competent to engage in any active measures; but with a view to their guidance they will refer the

matter to their standing Counsel, for the purpose of ascertaining the present legal position of the Company in the matter.

I am, dear sir,
Yours most faithfully,
FRED. CUMBERLAND.

ANGUS MORRISON, ESQ.,
Solicitor for Town of Barrie, Toronto.

Toronto, 16th January, 1863.

DEAR SIR.—In reply to your letter, received this morning, I beg to say that it is useless for me to advise the Municipality of Barrie further to continue negotiations in regard to a reasonable compromise of the difficulties existing between them and the Railway Company.

I feel satisfied from the tenor of your letter, that the Company are not disposed to build the Switch, or pay the amount of the award without the immediate assistance of an Act of the Provincial Parliament. The notice for the Bill will be given in the London *Times*, (England) and the local papers forthwith.

I am, &c.,
Very truly,
A. MORRISON,
Solicitor for Town of Barrie.

F. W. CUMBERLAND, ESQ.,
M. N. R. Canada, Toronto.

THE BARRIE SWITCH.

HISTORY OF A MILE AND A HALF RAILROAD. NOT BUILT.

From the Leader.

Who has not heard of the celebrated Barrie Switch? If there be such a mortal in Western Canada, he knows nothing of the Northern Railway, and his eyes have never been feasted by a sight of Kempenfeldt Bay. But of those who have been obliged to listen to stories about the Barrie Switch, few have

anything, more than a vague idea. As the question has, within a short time, been before Parliament, been the subject of arbitration, been before the Court of Queen's Bench, and is about to get an airing in Chancery, its interests must be judged by the noise it makes and not by the length of the unbuilt Road.

And now for the history of this bore of a Switch, that has kept all Barrie and the half of Simcoe in hot water for the last ten years. The first charter of the Northern Railroad, then called by a name a good deal longer than we should like to write, required that the Road should touch at the Town of Barrie. At that time, the question of the Northern terminus was open. The mouth of the Nottawasaga River, Collingwood and Penetanguishene, were all regarded as competitors for the Northern terminus. Collingwood was selected. To take the main line to Barrie would be out of the way, and as it was necessary to touch at that, the Company decided to construct a branch. According to the report of Mr. Brunel, the Company's Engineer, (Jan. 27, 1853) there would be a saving of £10,543 by adopting this alternative, provided the right of way from the main line to Barrie could be secured to the Company, free of cost.

Barrie set to work to secure the right of way, and make a gift of it to the Company. But three property owners—Messrs. King, Miscampbell and Boon—refused to come to terms. The people of Barrie, believing that the Company could use compulsion where they could not, raised £2,000 by private subscription, and offered it to the Company, with which to purchase the Road. The Company refused to undertake to secure the land necessary for the right of way. On the 29th March, 1854, the Corporation of Barrie passed a By-Law, enabling them to raise £3000 by loan, with which to purchase the right of way. The Railway Company, however, fancied that it had discovered a means by which it could evade the statutory obligation by which it was bound to build this branch. The pretence was set up that the main line went to Barrie already, though it was a mile and a half distant from the Town, and beyond the ex-

treme limits of the Corporation. As they professed to have fulfilled the requirement of their charter, by once touching at Barrie, they pretended to have divested themselves of the power of compelling individuals to surrender a right of way, for the purpose of going a second time. When a Company or an individual desires to evade some obligation, it is always necessary to be borne out by a legal opinion. And when was any one so unfortunate as to be unable to obtain a legal opinion of the precise shape and make that he required? Mr. C. Gamble soon furnished the Company with such a legal opinion as they desired.

But this objection was not very enduring. It was removed by an Act passed in 1853, removing any doubt that may have existed in the imaginations or desires of the Company. Matters now progressed at a hopeful rate. On the 5th of February, 1855, an instrument was executed, securing the right of way from all the proprietors, excepting the three obstinate ones just mentioned. With these three the Company above could deal. The Corporation of Barrie, therefore, remitted to the Company a sum of money to pay into the Court of Chancery, as the law directs in such cases, as a means of compelling the obstructionists to surrender the right of way. The Company kept the money for some three years, but never paid it into Court.

However, on the 20th May, 1855, another step in this slow business was taken. The Company authorized Mr. Cumberland, their engineer, to issue advertisements inviting tenders for the construction of the branch. They were to be given in by the 13th of June. The contract was awarded to Mr. McGaffey, on the ground we believe of his tender being the lowest—at £6,000. It was duly executed, signed by the President, and had the Company's seal attached. But the work did not go on, and the people of Barrie began to be impatient to know what was the cause of delay. Dr. Beatty, the Company's secretary, in reply to an inquiry from Mr. David Morrow, of Barrie, a municipal Councillor, on the 2nd of April, 1856, expressed the regret of the Board that "the financial position of

the affairs," (for in this style did the well paid secretary murder the Queen's English) "of the Company precludes the possibility of proceeding at this time with the construction of the Barrie switch." He added very jauntily, like an oft dunned debtor who has become impudent and careless, that it was impossible to name a time when the work could be proceeded with.

Want of funds being the Company's difficulty, Mr. Morrison, representing North Simcoe, brought in a bill to relieve it of its embarrasments, in May, 1858, and a relief bill was passed in 1859. It enabled the bondholders to raise £250,000. In August of the same year, an Order in Council, based on the authority of this bill, handed over the road to the bondholders, on condition of their raising the money. All debts and "obligations" of the Company were to be discharged by the 31st of December, 1859. The word "obligations" was inserted both in the Act and the Order in Council, for the express purpose of covering the Barrie Branch. The pretence was now set up on the part of the Company that the Act of 1859 wiped out the claim of Barrie, though it had been specially constructed with a view to its preservation; that a new company had been created which was not bound to discharge the obligations of its predecessor.

In May, 1860, another Act was passed, confirming the Order in Council. Eleven days before it passed into law, Mr. Cumberland, Vice-President and Managing Director of the company, with the view of preventing opposition to the Bill, proposed to refer the matter of the Barrie Branch to Mr. Thos. Galt for his opinion. Mr. Angus Morrison, who was acting in the interest of the Town of Barrie, not being aware that Mr. Galt was solicitor to the Railway Company, consented. After a delay of nine months, Mr. Galt gave his opinion that the Council Order Confirmation Act wiped out the claim of Barrie? And yet this was the Act to forego opposition to which, in its passage through the Legislature, the Town of Barrie had consented to the reference to Mr. Galt's opinion. The question when the reference was made was, what were the rights of the Town of

Barrie under the original charter of the Company? And it would have been clearly contrary to good faith to have legislated away these rights in the interval.

The Legislature being in session when Mr. Galt's opinion was given, Mr. Morrison, the member for North Simcoe, introduced a bill to rectify the alleged inadvertance of the Act of 1860, and compel the Railway Company to fulfil its obligation to build the Barrie Branch. A trinity of lobbying power was set in motion against this bill. Mr. Vice-President Cumberland, Mr. Secretary Beatty, and Mr. Grant, Manager, were all engaged in the serious duty of buttonholing members of the two branches of the Legislature. Finding that their measure of success was not very great, Mr. Cumberland proposed terms of accommodation. On the 16th May, 1861, he, acting under the authority of the Company, signed a reference of arbitration to Judge Harrison, by which both parties were bound that "The award of the said Samuel B. Harrison shall be final "and binding upon the parties respectively"—the Railroad Company and the Town of Barrie. The Company fully endorsed what their Vice-President had done. On the 26th of Sept., 1860, the directors caused a bond to be executed, binding the Company in a penalty of £10,000 to carry out whatever award Judge Harrison might make. On the 10th March, 1862, the award was made, giving £5000 damages to the Town of Barrie—which had made a detailed claim of nearly £20,000—with costs.

Did the Company accept this award according to the agreement of Mr. Cumberland and his own bond ratifying that agreement? On the contrary—Mr. Cumberland was the prominent actor all through—it appealed to the Court of Queen's Bench to set aside the award, in the term during which the award was given. It is proper to state that there had been some change in the Directors, in the interval. The appeal did not proceed upon the ground of excessive damages, but upon an alleged verbal uncertainty as to whether the award gave the Company the option of paying the money or building the

Switch. Mr. J. H. Cameron appeared as advocate for the Company; and after argument the award was confirmed. The Court decided that the Company had no option, but was bound to pay the amount of the award.

And now the case has entered on a new phase. The Counsel employed by the Company to argue in favor of setting aside the award, has signified his intention to file a bill in Chancery to attempt to secure an object in which Mr. Cumberland has been defeated at common law. The lawyers are not to blame of course. But it is true that no ultimate benefit can accrue to the Company from such disgraceful shuffling and contemptible trickery as are displayed in the narrative. The quarrel is likely to entail greater expense than would have sufficed to build the Switch; and after all it looks as if Judge Harrison's award would have to be paid.

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