

Hon. Mr. Eberts—*Continued.*

Q.—Did you know what his opinion was? A.—He had looked partly into the case.

Q.—Did he advise you then, as the Deputy of your Department, what his view of the subject was? A.—I think he did.

Q.—What did he tell you? A.—Well, he told me that if certain things happened it would be favourable to the Company, and if certain other things happened it would be favourable to the Government.

Q.—In other words, it depended? A.—The whole question was upon the delivery of the Crown grants.

Q.—You mean it depended upon the point of fact as to what passed between Mr. Shaughnessy and Mr. Wells at Montreal? A.—As to what constituted delivery. It might turn out finally that it would be considered delivery when the Order in Council had been passed and the grants had been issued.

Q.—Of course, that would be a most important point. Now, on that point, what view did Mr. Maclean express? A.—Expressed an opinion that it ought to be tried in the Courts.

Q.—I know; but he gave you an opinion as to what the law was on the subject, didn't he? A.—Not except in general, talking to him.

Q.—Well, what was his view of the thing? He had a view of the law; you know what it was, don't you? A.—Yes.

Q.—What was it? A.—Well, it is very difficult to say exactly; he did not give a direct opinion on it one way or the other.

Q.—But you know what his view was, don't you, Mr. Eberts, in your general talks with him? A.—His view was that the Company would have a chance of succeeding.

Q.—Yes? A.—But it was a very mooted question.

Q.—It was a very doubtful question. I quite understand that; I did not suppose Mr. Maclean or anybody else would say positively one way or the other on a matter of that kind. Didn't you convey that to the Government and the Government's supporters? A.—I did not convey that to the Government supporters.

Q.—Did you agree with Mr. Maclean that the Company would have a chance of succeeding? A.—That probably their contention was right?

Q.—No, no; I did not ask you that. You said that Mr. Maclean said if the matter went into the Court the Company would have a chance of succeeding? A.—That means their contention would be right if they succeeded.

Q.—Is that what you meant, that Mr. Maclean said they would probably succeed? I understand you to say that what Mr. Maclean said was that they would probably succeed if they went into Court? A.—No, I don't know that.

Q.—What was his view? You said his view was that the Company would have a chance of succeeding; now, did he go beyond that? Was it his view that there was a probability that they would succeed? A.—Mr. Maclean, in talking the matter over, spoke in reference to certain facts, as to the execution of a document under seal and notwithstanding the fact that there had not actually been manual delivery, still, in law, it might be held as delivery.

Q.—And he thought the Company might succeed? A.—I don't know that he said that exactly.

Q.—Well, not expressly said that, but wasn't that the view that Mr. Maclean expressed to you? A.—I would not say that.

Q.—Didn't he convey to you that they would have a good fighting chance of success? A.—I think that was his view, from the facts he had before him.

Q.—Now, then, the chances, as between the Province and the Company, must have been discussed between you and your colleagues to some extent before this Bill was introduced? A.—Oh, I think the matter was discussed.

Q.—Did you, or did you not, convey to them the view which had been expressed to you by your Deputy? A.—Well, I don't—whatever I said was talked in Executive.

Q.—It was talked in caucus? A.—I don't think I said it in caucus. I don't think I ever spoke in caucus about the Bill.

Q.—Did any other members of the Administration concur in the opinion with you? Did Col. Prior concur with you in your view that this matter should be referred to the Courts? A.—I don't know that I have got to say anything about that, in the Executive.

Q.—I think you can say that. Well, what was the question, Mr. Eberts, that came before the supporters of the Government? A.—One question was with reference to the introduction of this Bill.

Hon. Mr. Eberts—*Continued.*

Q.—Exactly. And the Bill is framed upon certain recitals. What were the considerations which were before the members upon the question as to whether this Bill ought to be introduced? A.—Well, I don't know whether the Bill was there at the time.

Q.—Perhaps not. Wasn't the question before the supporters of the Government this: whether the question should be referred to the Courts or whether this Bill should be put through? A.—If I remember rightly, what took place was, there was a general talk amongst the members with reference to this Bill, or a Bill of this nature; and I think, if I remember rightly, it was agreed to do nothing with the Bill until this Committee reported.

Q.—Until this Committee reported? A.—Yes.

Q.—That would be the first discussion. When was this Committee appointed? A.—And I think it was also spoken of in there that the Premier would introduce the Bill and read it a first time and let it lie until further action.

Q.—And let it lie until this Committee reported; would that be correct? A.—I don't know whether it was until this Committee reported; until further talk over the matter.

Q.—Well, then, was there a subsequent meeting of the supporters of the Government, Mr. Eberts? A.—I think there was.

Q.—And as a consequence of that meeting the Bill was pressed on? A.—There was a meeting on a Saturday morning.

Q.—What date? A.—Well, I have not got the date.

Q.—Could you not refresh your memory? A.—I think it was the Saturday before the Monday when the Bill was moved the second time—the second reading.

Q.—On the Monday the Bill was read the second time, and carried through all its stages on one day? A.—I think it was—no, I don't know; I don't remember that.

Q.—Mr. Gilmour objected? A.—Oh, yes.

Q.—But it went through in about two days? A.—I think it went through in two days.

Q.—Two or three days; and was assented to immediately? A.—I don't know exactly the date it was assented to.

Q.—At the meeting of the Executive held on the Saturday morning, I suppose it was agreed that the Bill should be introduced and pressed on? A.—There was no meeting of the Executive on Saturday morning.

Q.—I mean the meeting that you referred to of the Government supporters? A.—I believe that is so.

Q.—Were you there? A.—I was there.

Q.—Now, what led to that change? Now, Mr. Eberts, was it not this, that there was conveyed to the Government supporters the view, which was also the view of your Deputy, Mr. Maclean, that the C. P. R. had a good fighting chance to win if the case went on in the Courts? A.—On the Saturday morning?

Q.—Yes. A.—I don't think there was any talk of that kind there at all.

Q.—Well, when was it then? when was that conveyed to them? A.—Oh, I did not know that was conveyed to them.

Q.—Of course, I don't know anything about it; that is a suggestion to account for the change. What did happen? A.—The meeting was a very short meeting on Saturday morning.

Q.—Yes; but as a result of that meeting the Bill was pressed on? A.—I think it was.

Q.—Was that the only subject considered? A.—I think it was.

Q.—Now, what were the reasons, then, that led to that change, or that led to the Bill being pressed on? A.—I don't know what the reasons were.

Q.—Well, what were the reasons stated then? A.—There were no reasons stated.

Q.—What was the argument used? A.—I don't think there was very much argument used.

Q.—There was something, though, wasn't there? A.—I don't just remember now exactly what was said.

Q.—Now, Mr. Eberts, you know; you yourself were favourable to the view of this case going to the Courts, as you said. Now, who else in the Government were favourable to that view too? You were not alone in that view, were you, at the outset? A.—I don't think I was.

Q.—Who of the others were with you on that? Was Colonel Prior with you? A.—Well, I don't know that I am entitled to say anything about that.

Hon. Mr. Eberts—*Continued.*

Q.—I think you are. As a matter of fact, this matter was talked about a great deal, wasn't it, among you; it must have been, surely? A.—Yes it was, in the Executive.

Q.—Well, on occasions when there was no Executive meeting? How many Executive meetings did you have from the time this Bill was introduced down to the time when it was read a third time? A.—I could not say.

Q.—There were many occasions on which this matter was discussed that were not Executive meetings; isn't that so? A.—Well, I don't know that there were Executive meetings called specifically for this.

Q.—No, and there were many occasions on which the members of the Government were together, or one or two of them together, on which the matter was discussed without there being any formal meeting; isn't that so? A.—I think there were expressions of opinion from a number of the Government at that time.

Q.—Now, what were the expressions of opinion, and who was the member of the Government? A.—I think Mr. McInnes at one time expressed himself.

Q.—Did he? How? A.—At a meeting of the supporters of the Government.

Q.—Which meeting was that, Mr. Eberts? A.—I think that was the first meeting.

Q.—Favourable to the Bill or favourable to submission to the Courts? A.—Well, I don't think he spoke of either question; he spoke of the general system of legislation of that kind he thought not favourable.

Q.—It strikes me that this is a sort of matter that must have come up among you outside of Executive, that this sort of legislation dealing with a subject which was before the Courts was a kind of thing which would not likely be carried on, and that you would very carefully consider the thing before you would agree to it. Now, when Mr. McInnes was advising the supporters of the Government, did he advise them against legislation of this kind generally? A.—I think he said they ought to think very seriously before they brought in legislation of this kind, or something like that.

Q.—Now, don't you privately know, from Mr. McInnes, outside of what he said to the supporters, that he was favourable to submission to the Courts? A.—I think Mr. McInnes thought it ought to be submitted to the Courts.

Q.—Now, did Colonel Prior take that view at the outset, or at any time? A.—I don't remember of speaking with Colonel Prior outside of the Executive.

Q.—Did Mr. Prentice take that view? A.—I don't think I spoke to him with reference to it.

Q.—Did Mr. Wells take that view? A.—I think I once spoke to Mr. Wells about it, and Mr. Wells brought up the question with me with reference to the claim of the C. P. R.—or, at least, the action of the C. P. R. against Rogers.

Q.—And what happened with regard to that between you and Mr. Wells? A.—And he thought that Rogers ought to be protected.

Q.—In other words, he thought the Government ought to take the matter up in the Courts? A.—He thought Rogers ought to be protected.

Q.—The object of Mr. Rogers' asking for protection was that the Government would take the matter up in the Courts? A.—Yes.

Q.—So that the protection of Mr. Rogers would mean that the Government would take up the case favourable to one side or the other in the Courts? A.—I thought so from him.

Q.—Yes; that is what you understood from him? A.—In order to get the matter finally settled. I think this was before the Bill was introduced.

Q.—Oh, yes. Now, it cannot surely be that the Government and the supporters of the Government decided on introducing and carrying this Bill through without knowing something about what the law officers of the Crown thought of the rights of the party? That is not so, is it; it could not be so? A.—I never gave an opinion.

Q.—I have not asked you that. But it cannot be, surely, that this matter was dealt with without advice being given by the law officers of the Crown or somebody as to what the actual legal rights of the parties were? The Government and its supporters did not act on a matter of that kind without something of that sort, surely? A.—I think there was an opinion of Mr. McCaul, who is here.

Q.—On this subject? A.—I think on that subject, yes.

Q.—Do you mean that he gave and the supporters of the Government acted on Mr. McCaul's opinion? A.—Mr. McCaul appeared before the supporters of the Government.

Hon. Mr. Eberts—*Continued.*

Q.—Oh, did he? A.—And read an opinion.

Q.—And Mr. McCaul's opinion was what? A.—Mr. McCaul's opinion was that there had not been a concluded contract, if I remember rightly.

Q.—There had not been a completed contract, and no title passed? A.—I have not read his opinion.

Q.—We have it here, and I think we all know pretty well what Mr. McCaul's opinion was. You can look at it if you like; I don't want to cross-examine you on it (handing document to witness). When did Mr. McCaul appear before the supporters of the Government? A.—I think he appeared before them the first time they met.

Q.—And on that occasion, notwithstanding Mr. McCaul's opinion, it was decided that both the Bill should be introduced and it should be proceeded with? A.—So I understood.

Q.—Now, in opposition to Mr. McCaul's opinion, I suppose they had before them the opinion of the Chief Justice, hadn't they, on the same subject? A.—I don't think they had.

Q.—Was it not explained to the supporters of the Government that the Chief Justice and yourself had advised that grants of these lands could properly be issued under the Subsidy Act of 1896, in opposition to Mr. McCaul's opinion? A.—I am not quite sure, but I think that Mr. Wells did mention that fact, that Mr. Hunter had given an opinion; I am not positive about that.

Q.—But, at all events, they did not act on Mr. McCaul's opinion in such a way as to press the Bill through, but it was decided that the Bill should be introduced and the prosecution of it delayed. Now, what I should like to get, Mr. Eberts, is what happened which decided the Government and the supporters of the Government to press the Bill on to its completion? A.—I don't know; I cannot say.

Q.—Was it not the fact that it became known that your view and Mr. Maclean's view was that the C. P. R. had a fighting chance in the Courts? A.—I couldn't say that.

Q.—Well, will you say it was not that? A.—I cannot say it was not; I don't know anything about that.

Q.—Well, was there any reason at all given for it? A.—At the second meeting?

Q.—Yes, why it was decided to press the Bill through? A.—I don't remember that there was.

Q.—Well, do you know of any sort of pressure that was brought to bear, or any influence that was brought to bear, for the purpose of pressing it on? A.—I don't know that I do.

Q.—You never heard of any? And you don't know what it was? Of course, you were personally of the opinion that this Bill should not be pressed through; there is no doubt about that? A.—Yes, I was of the opinion, honestly of the opinion, that it was a matter that should be decided in the Courts. And my argument throughout the whole thing was this, that if the Government had wrongfully passed the Order in Council of the 10th of August, that the Company could not succeed. And if it were so, that the Government had the power, that it was taking away from the Company a right that had come to them; and that, I said, was against true principles that have always existed.

Q.—When was it you expressed this opinion, Mr. Eberts? A.—I expressed that opinion to the Premier.

Q.—And the supporters of the Government? A.—I don't think I did; I did not speak to the supporters of the Government.

Q.—Now, what changed Mr. Wells' opinion, and Mr. McInnes' opinion, do you know? A.—I do not know.

Q.—You don't know what changed their opinions? A.—I don't know whether their opinions are changed.

Q.—Now, this is the Act that passed its third reading (handing Bill 16 to witness). There is a recital in that, isn't there, to the effect that the issue of those Crown grants was outside of the purview of the Subsidy Act of 1896? A.—“And whereas the lands described in the Crown grants were not lands within the scope of the ‘Columbia and Western Railway Subsidy Act, 1896.’”

Q.—And, of course, you did not concur in that view? A.—I could hardly concur in that view when I had given an opinion that the giving was in the scope of the Act.

Q.—Yes; you have stated that several times. Now, that, I think, was not in the Bill as introduced (handing document to witness)? A.—No, it was not in the Bill as introduced.

Hon. Mr. Eberts—*Continued.*

Q.—And, as a matter of fact, the effect of that recital was, in your view, a decision by the Legislature upon a legal question which was then before the Courts? A.—I did not draw this Bill.

Q.—I know you did not. But that is the effect; your view would be that that was a legal question, in the first place? A.—This is a recital, it is not an enactment.

Q.—That recital deals with a legal question, doesn't it, as to whether those lands were within the Subsidy Act; isn't that so? A.—Yes.

Q.—That question was then before the Courts in that action? A.—That question was before the Courts in certain actions.

Q.—Yes. That recital by the Legislature would be conclusive on that question; that amounts to a declaration of the Legislature on that point of law? A.—I suppose it would.

Q.—And, therefore, that was a decision by the Legislature on a disputed question of law which was then before the Courts? A.—Well, you cannot construe it any other way.

Q.—There is no doubt about that, whatever. And it was opposed to the opinion that you have given. Now, that recital was introduced, I think, at the instance of Mr. McPhillips? A.—I don't know who put in that recital.

Q.—At all events, it was introduced by amendment? A.—It was not in the Bill as originally drafted.

Q.—And diametrically opposed to your view of the whole matter? A.—It was not my view of the matter, because I had given an opinion the other way. I was not there; I don't know who introduced it.

Mr. McPhillips: It did not come in by way of amendment. A.—I didn't say it did; I don't know.

Mr. Duff: I was under a misapprehension on that.

Mr. McPhillips: The Premier adopted it and put it in.

Mr. Duff: Now, Mr. Eberts, with regard to this whole matter; in the first place, if Mr. Wells' story is correct, a condition was substituted with regard to the delivery of these Crown grants behind your back? A.—I never understood that there was such a condition; you mean as to the building of the line?

Q.—Yes. A.—As the building of the line as a *sine qua non* of their getting the Crown grants.

Q.—And there were only four members of the administration at that time; and there were three of them present—accepting Mr. Wells' story—if that condition was imposed and you were not present? A.—I was not present when the condition was imposed.

Q.—Then, when the recision Order was passed you had no notice of the meeting? A.—I had no notice of the meeting.

Q.—You happened there accidentally? A.—I happened at that meeting accidentally.

Q.—And your view was, as obtained from the Premier, that it was passed by reason of a charge made by Mr. Wells that Mr. Taylor, your partner, had made a corrupt proposal to him with reference to those Crown grants? A.—Corrupt proposal of Mr. Taylor.

Q.—Now, Mr. Eberts, if you believed that to be the real reason for the recision of those grants, can you explain, on any reasonable theory of Ministerial responsibility, your remaining in the Cabinet after that action?

The Chairman ruled this question improper, Mr. McPhillips dissenting.

Q.—It has been stated here by Mr. Wells that a telegram was shown to him by you some time prior to the 27th of July, 1901, from Mr. Taylor, the general effect of which was that Mr. Taylor asked you if these two blocks of land could be transferred from the British Columbia Southern to the Columbia and Western; have you any recollection of that occurrence, or what can you say about it? A.—I got a notice from the Committee on that subject, I think, immediately upon the matter being brought up before this Committee; and I caused a search to be made throughout the time there, for years before and since, with reference to any telegrams that had passed between Mr. Taylor and myself. Speaking myself, with reference to that telegram, I have no recollection of that telegram at all; I have no recollection of the telegram at all. I found a telegram from Mr. Taylor, dated at New York on the 21st of June—

Q.—1901? A.—I think it was 1901. I have kept all my telegrams. I had some other telegrams here which I sent in by Mr. Bass to the Committee; I think he explained those.

Q.—They were seen by Mr. Clifford. I did not see them. (Witness produces telegram). Is there anything in that? A.—No, there is not. I did not know the whereabouts of Mr. Taylor at all.

Hon. Mr. Eberts—*Continued.*

Q.—Pardon me, Mr. Eberts, for pressing you a little on that ; because I understood you to say that, so far as you knew, Mr. Taylor had never acted for the Canadian Pacific Railway Company or the Columbia and Western Railway Company ? A.—I had no notice that Mr. Taylor did.

Q.—No knowledge of that. A.—I think I may take the liberty here of saying something on my own behalf.

Q.—Certainly. A.—I have been attacked in the House, and I have heard rumours about—and no later than yesterday—about some scandalous remarks about my having received money from the Canadian Pacific Railway. I may say that I never had a retainer from the Canadian Pacific Railway or Columbia and Western Railway, and I never received a cent myself from either of those corporations or any person in connection with those corporations. You will remember almost the last day the House sat there, or, at least, a few days before the House adjourned, I was attacked from the opposite side of the House in a very strong manner indeed. And I have never had the opportunity until the present time of stating that I never had a dollar from the Canadian Pacific Railway, the Columbia and Western Railway, or from any officer of either of those railways, nor the promise of a dollar.

Q.—Since you are on that, Mr. Eberts, I think perhaps the ground might be thoroughly covered. Have you ever acted professionally for any of the officials of the Canadian Pacific Railway Company ? A.—I have not.

Q.—Did you ever act for the British Columbia Southern Railway Company ? A.—I have not ; well, I have acted, but without fee, when Colonel Baker—

Q.—(Interrupting.) I mean since you were a Minister ? A.—Since then, I have not. I don't know anything about them.

Q.—I don't want to refer to anything before you were a Minister. A.—I have not.

Q.—Nor for any of the subsidiary companies in connection with the Canadian Pacific ? A.—No. The only connection I had was in 1896 or 1897, when Mr. Taylor acted for August L. Heinze relative to some claims made against parties—not particularly against the Columbia and Western Railway.

Q.—Mr. Taylor explained that ; and you need not go into that. With regard to this telegram, I want to put this to you—that you are quite clear that Mr. Taylor not having acted for any of these people, neither yourself—I understand you to say, that is correct ? A.—What ?

Q.—Mr. Taylor not having acted for the Columbia and Western or any of these people— A.—I believe he has not.

Q.—If you had received a telegram of that kind from Mr. Taylor under those circumstances, don't you think the fact would be impressed on your memory ? A.—I should think so.

Q.—Did you ever receive any communication from Mr. Taylor with regard to the settlement of these subsidies ? A.—I have not. The fact of the matter is, I did not know where Mr. Taylor was.

Q.—Are you able positively to contradict Mr. Wells on that point ? Or is the furthest that you can go to say that you simply do not recollect ? It is important, Mr. Eberts ; really, I would like you— A.—I know it is very important ; and it is quite a serious thing also. I accept my responsibility, that I never got any such telegram from Mr. Taylor that I have any knowledge of at all. I did not know Mr. Taylor's whereabouts ; that is, the first intimation I had of Mr. Taylor's whereabouts is when he was in New York ; and the fact of the matter is, looking at this telegram, when I found it on my files—immediately upon this I took Mr. Bass and went through my files ; in fact, I was from six o'clock until ten o'clock that night looking through my files ; and Mr. Bass arrived there about eight o'clock—he studies every evening—and he came in and went through the files carefully. And that was all the telegram I had. I did not remember this telegram at the time ; of course, I receive numbers of telegrams. When I found that telegram I did not even remember what the purport of that telegram was, and I asked Mr. Taylor, and then he reminded me that a friend of his by the name of Mortlock, who lived in London, was coming to British Columbia *via* New York, and that Mr. Taylor had been down to New York, and he wished me to look after Mr. Mortlock when he was here. I did not know Mr. Taylor's whereabouts after that until he got back to British Columbia.

Q.—Did you ever tell Mr. Wells that you had received any request from Mr. Taylor to to that extent ? A.—I did not.

Hon. Mr. Eberts—*Continued.*

Q.—You did not. A.—I have no recollection of it at all.

Mr. McCaul: That is what I understand you to say, that you have no recollection on the subject at all? You have no recollection, either one way or the other, on that subject? A.—I have no recollection of it.

Q.—One way or the other; is that what I understand? Do you wish that statement to be made in respect to the telegram and the answer which Mr. Wells says that he saw you send, that you have no recollection about it, one way or the other? A.—I don't think Mr. Wells says he saw such telegram.

Q.—Yes, Mr. Eberts, he says he saw the telegram, and he discussed with you the form which the telegram should take? A.—I beg your pardon, Mr. Wells said I either read a telegram or told him of it.

Q.—I am speaking of the telegram from Mr. Taylor; but your reply—he says he discussed with you the form your reply should take; that you drafted one or two telegrams, and finally sent the telegram in one word, "Impossible"; and he said he saw that telegram. Now, what you state with regard to that is that you have no recollection, one way or the other; is that correct? A.—I have no recollection of any such telegram, nor have I any recollection of Mr. Wells interviewing me on the subject.

Q.—And you would not like to pledge your oath positively that no such conversation occurred? A.—Well, Mr. McCaul, that is going a very great distance, when a man has got to pledge his oath specifically about a matter which occurred two years ago. But I have no recollection of any such telegram; I have made careful search; I keep all my telegrams, and I have no such a telegram, and I think Mr. Wells must be mistaken with regard to it.

Q.—That is how you want the statement to go, that you have no recollection, and that you think Mr. Wells must be mistaken. I want that clear, that is how you want it to go, Mr. Eberts; is that correct? A.—You have heard what I said.

Q.—Now, Mr. Eberts, there is one thing I would like to ask you, and I think it is well within my province as counsel: I don't suppose, Mr. Eberts, that you would willingly sit in the same Cabinet with a blackguard, would you—a man you thought was a blackguard?

The Chairman: That is an extraordinary question. I think it goes without saying. It is quite unnecessary. You will have to put it a little more euphemistically, I think.

Q.—You would not willingly sit in the Cabinet with a man whom you thought would deliberately mislead you or his colleagues, Mr. Eberts, would you? Or give false information on an important matter? A.—Well, explain what you mean. I don't know what you mean.

Q.—I don't think it is necessary to explain it any further; I am putting an ethical question to you, a matter of common every-day ethics: would you be willing to sit in the same Cabinet with a man that you thought was capable of giving deliberately false information and misleading his colleagues? A.—With reference to what? Tell me what you mean.

Q.—With reference to any matter of discussion before the Cabinet? A.—You must particularise.

Q.—No, I don't think I will particularise any further; I will put it in that way. A.—I don't propose answering a general question of that kind.

Q.—Then I will put it in a little more particular way. If you believed, Mr. Eberts, that there was absolutely no element of truth in the statement that Mr. Wells made in regard to his conversation with Mr. Taylor in Montreal, how do you account for your continuing to sit in the same Cabinet with a man who would be guilty of such an action as that? A.—I am not the Premier of the country.

The Chairman: I think that is practically the same question as Mr. Duff asked. I don't think you have any right to ask that question at all. I don't see what bearing it has on the inquiry.

Mr. McCaul: I think it has a very specific bearing upon the question as to the credit to be attached to the contradictory stories told by Mr. Wells and by Mr. Taylor. You must remember that Mr. Taylor is Mr. Eberts' own partner; and if there was no element of truth in the statements made by Mr. Wells, how is it conceivable that Mr. Eberts should continue in the same Cabinet with Mr. Wells?

The Chairman: That may not be conceivable to you, but I don't think you have a right to ask that question. It is a question for Mr. Eberts himself to decide whether he remains in the Cabinet; I do not think that it is a question that he should be asked here.

Hon. Mr. Eberts—*Continued.*

Mr. McPhillips: I do not think it is without the province of Mr. McCaul, in cross-examining, to put that question to Mr. Eberts in some such way as this: You, Mr. Eberts, cannot really believe, then, that Mr. Wells, in making that statement, was making a statement that he now, after the statement that you have made, will adhere to? Mr. McCaul is entitled to know from Mr. Eberts virtually what weight he, Mr. Eberts, has put upon Mr. Wells' statement.

The Witness: I don't know whether or not he is entitled to ask me a question of that kind at all. He is not entitled to ask—

The Chairman rules that the question cannot be asked.

Mr. McCaul: Mr. Eberts, I understood you to say, or have you said, that at the time the Order in Council was in course of discussion, changing the grant of the lands from the British Columbia Southern to the Columbia and Western, you had no knowledge of the agreement between the British Columbia Southern and the Crow's Nest Pass Railway? A.—I had not. I was never asked that question before.

Q.—And, as a matter of fact, you had not? A.—I had not.

Q.—Have you got any knowledge of it now? A.—Specific knowledge of it?

Q.—Yes. A.—I have not.

Q.—Well, do you know that, as a matter of fact, if these lands had been granted to the British Columbia Southern—or, rather, if they had been retained by the British Columbia Southern—that the Crow's Nest Coal Company would have been entitled, under their agreement with the British Columbia Southern, to insist upon a selection of 10,000 acres of coal lands out of that grant? A.—Well, I have seen that in the evidence.

Q.—And that the effect of the transfer to the Columbia and Western of those lands would be to change what was a legal obligation of the Railway Company into what Sir Thomas Shaughnessy speaks of as a moral obligation on the part of the Columbia and Western to let the Crow's Nest Coal Company have those lands? A.—Well, it might be; I don't know.

Q.—Consequently, that transfer would open room—I don't say that it would have been perpetrated, but it would open room for a fraud on the Crow's Nest Coal Company? A.—I don't know; I don't know what the tenor of the contract is; I don't know anything about it.

Q.—Well, taking the tenor of the contract to be what I have just stated, and taking that to be the effect, that it changed a legal obligation to a moral one, it would open the door to fraud, to defrauding the Crow's Nest Coal Company of 10,000 acres, that is if the C. P. R. were allowed to switch the grant from the British Columbia Southern to the Columbia and Western? A.—Well, if they did that for the exact purpose of that.

Q.—It would open the door to that? A.—Well, it might be considered that way; it might be construed; I don't know.

Q.—If those facts had been called to your attention at that time would you have supported the proposed transfer from the British Columbia Southern to the Columbia and Western? A.—I cannot say what would have taken place, because those facts were not before me.

Q.—I know they were not before you; but if they had been before you; if they had been called to your attention, then you would have gone very slow— A.—As a member.

Q.——before you would make yourself a party to a transfer from the British Columbia Southern to the Columbia and Western? A.—I think, probably, we would have thought over it very seriously.

Q.—And, consequently, if that fact came to the knowledge of the Government before the Crown grants were delivered, the Government would have thought very seriously about delivering those Crown grants under those conditions, for it might be claimed that the Government were a party to a fraud upon the Crow's Nest Coal Company; don't you think so, Mr. Eberts? A.—Well, I don't know.

Q.—You did not consider that phase of it? A.—Well, I did not consider that phase of it, because I did not have that before me.

Q.—I quite understand. As a matter of fact, you say that you thought it would be a matter for very careful consideration before the Government would consent to pass an Order in Council changing the grant from the one Company to the other. I ask you now, don't you think that if there was a *locus penitentie* to the Government after the Order in Council was passed and before the grants were delivered, and that fact came to their knowledge, that they

Hon. Mr. Eberts—*Continued.*

would be entitled to give very serious and careful consideration to that fact? A.—I cannot answer that; I don't know the facts in connection with it, and the matter was not brought up before us.

Q.—Now, Mr. Eberts, you spoke of being present at the Executive meetings on the 31st of July and the 2nd of August, 1901? A.—The 30th and 31st of July and, I think, the 2nd of August.

Q.—The 30th and 31st of July and the 2nd of August, 1901; now, prior to those meetings, were you not aware of the fact that it was proposed to transfer these two blocks from the British Columbia Southern to the Columbia and Western? A.—I don't remember.

Q.—You would not like to say that you were not aware? A.—Well, it is a very hard thing, Mr. McCaul, to pin one's memory down to a matter of that kind to a day or two, unless you know exactly what took place and you had a memorandum of what took place on those different occasions.

Q.—Well, what were you giving opinions about prior to this meeting? A.—I did not say that I gave opinions prior to the meeting.

Q.—Did you not give an opinion prior to the 10th of August, 1901? A.—I never said that I did.

Q.—Opinion on the question of these lands? A.—I never said I did.

Q.—Well, did you? A.—I don't think I did.

Q.—Will you swear you did not? A.—I don't think I did.

Q.—Was your opinion before the meeting of the 10th of August, 1901, and discussed? A.—I think my opinion probably was between the 2nd of August and the 10th of August.

Q.—And what were you giving an opinion about? A.—I was asked for an opinion, and I think I expressed myself, as I said, three or four times before the Executive with reference to the power of the Government to make a grant of these two blocks of land.

Q.—So that before the meeting of the 10th August, 1901, it was clearly understood by you, and the Executive must have known, that you were dealing specifically with the transfer of these two blocks of land from the British Columbia Southern to the Columbia and Western? A.—I don't know that.

Q.—What on earth would be the sense of your opinion being before the meeting of the 10th of August, 1901, dealing with that subject? A.—I cannot say that my opinion was given before the 10th of August.

Q.—You have shifted your ground now; you said that you thought your opinion was before the meeting of the 10th of August, 1901. Haven't you stated to Mr. Duff, as a matter of fact, that your opinion was before the 10th of August, 1901? A.—I have not.

Q.—I understood you to say so. Well, you don't know, as a matter of fact. Now, Mr. Eberts, as a matter of fact, didn't the Government clearly understand at that meeting of the 10th of August, 1901, that that was the subject of discussion, the transfer of these two blocks; those lands outside the lands contiguous to the railway? A.—I think probably they did. The only way that I can place my memory with reference to any connection of the matter as to when exactly the Executive sat was by refreshing my memory as to the date of the Order in Council.

Q.—But, at any rate, whenever the Executive sat to consider the subject-matter of that Order in Council of the 10th of August, 1901, that is what they were considering, the transfer of blocks which were afterwards called 4,593 and 4,594? A.—Not only that, but the question with reference to the British Columbia Southern subsidy.

Q.—Yes, and the question with regard to the British Columbia Southern subsidy; and considering also, incidentally, the question of changing these two blocks from the British Columbia Southern to the Columbia and Western? A.—It is impossible to make a hard and fast rule with reference to a particular date except what you see before you.

Q.—I am not trying to pin you down to that particular date. A.—You are trying to pin me down to the day and hour when I gave an opinion with reference to that.

Q.—I am trying to pin you down to the fact that your opinion was before the meeting of the 10th of August. A.—I cannot possibly answer that. And it might have been possible that it was agreed upon to give that without an opinion.

Q.—Have you a specific recollection of what occurred and did not occur on the meeting of the 2nd of August, 1901? A.—I have not a very clear recollection of what took place on the 2nd day of August.

Hon. Mr. Eberts—*Continued.*

Q.—You base your recollection of what occurred by having refreshed your memory by looking at the minutes—some memoranda? A.—No; that would not refresh my memory as to the 2nd of August, because that memoranda that I speak of had no date on it.

Q.—Had no date on it? A.—No.

Q.—Then you cannot say, from having looked at that memoranda, what actually did occur at the meeting on the 2nd of August; and you don't recollect? A.—I don't know exactly what took place at the meeting on the 2nd of August. I refreshed my memory from what I saw in the records.

Q.—But you tell us now that that would not refresh your memory. A.—(Looking at memo.) The 2nd of August; yes, I said that I refreshed my memory by looking at the records, and on the 2nd of August I mentioned the fact; and I do remember, because I took the memorandum down, that there was a deputation waited upon the Executive with reference to the purchase of gold, and that all the members of the Executive were there except Mr. Wells. I remember particularly the two meetings of the Executive before that date because —

Q.—(Interrupting)—Are you prepared to go as far as to say that no question or discussion as to the transfer of these lands took place at either of these meetings, the meetings of the 31st of July or the 2nd of August? A.—Well, I could not say that; on the 30th or 31st of July I can probably say that nothing of that kind—the meeting of the 31st of July there is no record, but I took a memorandum in my book, on which I refreshed my memory as to the 30th and 31st of July.

Q.—Now, you had at the meeting of the 10th of August the recommendation of Mr. Wells, when the Order in Council was passed? A.—Yes.

Q.—You are quite sure that the recommendation was down there in some sort of draft form, from the Minister? A.—I see one here.

Q.—Was that before you on the 10th of August? A.—I cannot swear to that.

Q.—But you recollect that there was a memorandum, some accompanying recommendation? A.—I could not swear it was on the 10th of August. But I think this matter was up for discussion on the 10th of August, but I could not swear that that memorandum was brought down before the meeting of the 10th of August.

Q.—What did you mean in your former evidence by saying that you relied altogether upon the recommendation which was sent down by the Commissioner on that date? A.—Well, I don't think I said we relied on that, but we relied on the information that had been brought before the Executive as to the sections of land and the acreage of land, and the amount of land that would be saved in the transaction.

Q.—That was a pretty important matter to come before an Executive meeting, wasn't it, Mr. Eberts—a fairly important subject? A.—I think so.

Q.—And if the inference you would draw from the importance that you put upon the minutes of the 2nd of August, the fact that the discussion of this subject was not mentioned on the 2nd of August, is correct, it would equally apply to the minutes of the 10th of August, I presume? A.—There would seem to be, from the minutes, a discussion; from the minutes I spoke of there was a discussion.

Q.—On the 10th of August? A.—I don't know what date prior to the 10th of August.

Q.—Didn't you say the minutes of the 10th of August? A.—I don't think I have.

Q.—Didn't you say on your cross-examination that you looked for the minutes of the 10th of August and could not find them? A.—I will just tell you (looking at memo.). Yes; I don't think I saw any minutes of the 10th of August.

Q.—My point is this, Mr. Eberts; if you base your assertion that this subject was not discussed on the 2nd of August on the fact that there is no mention in the minutes, then it would be an equally fair inference, as far as the minutes go, that this subject was not discussed at all on the 10th of August, because there is no minute of the 10th of August? A.—No, but I have refreshed my memory from some letters that are produced here which I never saw before, of date the 31st of July.

Q.—Yes. A.—And there was a meeting on the 2nd of August, and I find no other notice of a meeting after the 2nd day of August, and I see there, by the recommendation, that on the 10th of August there was a recommendation came down from the Minister.

Q.—At which meeting of the 2nd of August Mr. Turner was instructed to give further instructions to Mr. Wells in regard to the matter; is that not it? A.—I gave evidence of that kind.

Hon. Mr. Eberts—*Continued.*

Q.—That is what it was ; Mr. Turner was to instruct Mr. Wells. I want to ask you, Mr. Eberts, whether you have carefully read the evidence given by Mr. Wells and the evidence given by Mr. Taylor? A.—I only had the “Colonist” newspaper ; I have not had the copies of the evidence given.

Q.—You have not had copies of the evidence? A.—I have had copies of my own evidence.

Q.—But not of the others? But you have read the newspaper accounts of the evidence given by both Mr. Wells and Mr. Taylor? A.—I have the morning “Colonist” newspaper.

Q.—Now, this matter of the grants to the Columbia and Western had been considered in the Executive meeting twice prior to the meeting of the 31st of July? A.—And it was considered the prior year.

Q.—Considered the prior year? That was in connection with the Order in Council of the 10th of September and the 19th of December? A.—Yes.

Q.—And it had been considered during the summer of 1901, had it not? Mr. Brown was out here pressing you constantly, and other Ministers, wasn't he, for a settlement? A.—I think he was. I think he talked to the Premier about it.

Q.—And you knew his proposition with regard to that, did you not? A.—I did not know his proposition at that time.

Q.—You did not know that he wished to have a transfer from the B. C. Southern to the Columbia and Western of these two blocks of land? A.—I did not.

Q.—Did you inquire when the thing came up what was the object of this transfer? A.—I don't know that I did.

Q.—Didn't it strike you as there being—to use a vulgarism—a nigger in the fence—after these lands had been granted to the British Columbia Southern— A.—They had not been granted.

Q.—The Order in Council of the 19th of December appropriated them to the British Columbia Southern ; didn't it strike you that there might be some hidden motive on the part of the Canadian Pacific Railway Company in wanting them transferred to the Columbia and Western? A.—It did not ; and what came before the Executive at the time was that there would be a saving of three or four hundred thousand acres of land.

Q.—And you considered it entirely a matter of domestic concern, as to the Canadian Pacific Railway Company, which way it went? A.—What?

Q.—You considered it purely a matter of domestic concern to the Canadian Pacific Railway Company as to whether they took them under the B. C. Southern or the Columbia and Western? A.—Well, I understood there would be a saving of three or four hundred thousand acres of land. And I know the question was also spoken of as to the Columbia and Western and the British Columbia Southern, that they were one and the same corporation.

Q.—Quite so, and, therefore, it would make no difference? A.—We did not think it would at the time. In fact, it was argued that it would be a saving to the Province.

Q.—Did you tell Mr. Wells that at the time ; do you remember mentioning that to Mr. Wells? A.—I think Mr. Wells brought forward that argument.

Q.—You think Mr. Wells brought forward that argument? A.—I think so.

Q.—And you agreed in that position? A.—I think we thought so.

Q.—Yes, quite so.

The Committee here adjourned until Saturday, May 16th, at 10 A. M. (to-morrow).

SATURDAY, May 16th, 1903.

Committee met at 10 a. m., pursuant to adjournment from yesterday.
The minutes of last two previous sessions were read and adopted.

HON. MR. EBERTS, in the witness-box, was further cross-examined by Mr. McCaul :—

Q.—Mr. Eberts, you remember that Order in Council of the 10th of September, 1900 ; I am speaking about the one when the British Columbia Southern first applied for these blocks of land and they were refused, an Order in Council being passed giving them a block running way up north (Order in Council and map handed to witness). Those were the two blocks, Mr.

Hon. Mr. Eberts—*Continued.*

Eberts, which were given as deficiency blocks then to the British Columbia Southern, those blocks marked "Deficiency Blocks A and B." You recollect that, do you? A.—I don't say that I recollect it; I never saw the Order in Council until I saw it on my examination here. I think that I was in the meeting of the Executive of the 10th of September.

Q.—You recollect that those two blocks were appropriated to the British Columbia Southern subsidy? A.—I have reason to believe that must be correct, because the papers inform me.

Q.—Now, was that changed afterwards; do you recollect that Order in Council being rescinded and a new Order in Council passed on the 19th of December following, by which the two blocks now in question were appropriated to the British Columbia Southern? A.—Well, I have seen the Order in Council here since I came.

Q.—Have you no recollection of that being done? A.—I have refreshed my memory with reference to this matter, and I find I was not there on the 15th of December.

Q.—Did you know at the time that these two blocks had been appropriated to the British Columbia Southern? A.—I cannot say that I did.

Q.—You cannot say that you did? A.—I don't know of any meeting of the Executive after that where the matter was ever brought up at all.

Q.—What was the reason of the change? A.—Well, I could not tell you what was the reason.

Q.—Had you seen Mr. Brown with regard to that at all? A.—I did not.

Q.—You did not see him personally with regard to it? A.—With a view of getting this change?

Q.—Yes. A.—I did not.

Q.—Did he see you with a view of getting this change? A.—Well, he did not, certainly. The converse proposition must be true.

Q.—You have no recollection, then, of the facts leading up to the Order in Council of the 19th of December, 1900? A.—Well, you mean between the 10th of September, 1900?

Q.—Yes. A.—You mean to say, specifically asking for this thing?

Q.—No, anything that led up to these two blocks being substituted for the blocks which were provided for in the Order in Council of the 10th of September? A.—Of course, Mr. McCaul, that is a long time ago, and to remember every conversation and who applied, it is a very difficult thing for me to do. I remember something in connection now since it has been brought to my recollection by the Order in Council, as to Mr. McPhillips appearing before the Executive; and I am told that that is with reference to—that was prior to the 10th of September.

Q.—And pressing on behalf of the Company for the two blocks in question now? A.—I think so.

Q.—Which at that time was refused? Now, who, after that Order of the 10th of September—does your recollection carry you back to any occurrence in regard to this matter? A.—No, it does not at the present time.

Q.—You have no recollection of that at all? A.—I have got a very hazy recollection of the matters in connection with this thing in the year 1900 altogether.

Q.—As a matter of fact, there is no doubt it was done at the instance of the Railway Company? A.—I couldn't say that.

Q.—You knew that they were pressing for it before; but you cannot say now at whose instance it was done? A.—I might say this, that I think when Mr. McPhillips was before the Executive he was pressing for these two blocks—I don't know whether both of the blocks—yes, I think, both of the blocks.

Q.—He was acting on behalf of the Railway Company? A.—He was acting, I understood, on behalf of the Railway Company.

Q.—That was on the 5th of September, prior to the meeting of the 10th of September, when the Order was passed? Well, Mr. Brown was active at this time in pressing these matters on the Government, was he not? A.—I think he was.

Q.—Mr. Eberts, you spoke to Mr. Duff of a meeting of the Executive having taken place in your room, when you were laid up with rheumatism. When was that? A.—I could not say. I cannot remember.

Q.—Was that prior to the— A.—(Interrupting)—I cannot remember the date, Mr. McCaul; I can just remember the occurrence; I cannot remember the date.

Hon. Mr. Eberts—*Continued*

Q.—Well, you said that at that meeting the maps and plans in connection with the Columbia and Western Railway were all produced? A.—I think maps and plans with reference to British Columbia Southern matters, and, my hazy recollection of it is, in connection with this whole matter, were produced.

Q.—In connection with this whole matter? A.—Yes.

Q.—Then that would show the blocks which had been granted to the British Columbia Southern on the 19th of December, and the reserve, I presume, that had been made for the Columbia and Western Railway? A.—It was rather a checker-board at the time. I remember the time; I was lying on the sofa in my room.

Q.—At any rate, that was prior to the meetings of the 31st of July and the 2nd of August? A.—Well, I cannot say that.

Q.—Well, it must have been prior to the meeting of the 10th of August; when the Order in Council was finally passed there would be no sense in having such a meeting in your room after that? A.—Well, it might have been.

Q.—You recollect the meeting of the 31st of July and the 2nd of August; were you laid up in your room between the 2nd of August and the 10th of August? A.—I don't remember that.

Q.—At any rate, it appears that there was a meeting of the Executive in which this matter was discussed, and plans produced before you showing— A.—That was in 1900, you say?

Q.—No, 1901, Mr. Eberts. A.—Oh.

Q.—You told Mr. Duff that it was hard for you to tell when you first had knowledge of the proposed change of these lands from the British Columbia Southern to the Columbia and Western; that is right, isn't it? A.—I think it is right.

Q.—In regard to the Order of the 19th of December, 1900, for the substitution of those two blocks for the other blocks which had been granted to the British Columbia Southern, do you know what the consideration was to the Government in making that change? Was there any saving in acreage that you know of? A.—I cannot remember just now; I think there was.

Q.—Do you recollect that that was the inducement held out to the Government to make the change? A.—I think—I was told that there was a saving.

Q.—Did Mr. Brown tell you that there was a saving? A.—I don't think I got any information from Mr. Brown on the subject.

Q.—You don't think you had any information from him? A.—I know that in the general talk in connection with these matters, whenever the matter came up, that was one thing; the inducement to make the change of any kind at all in 1901, I remember particularly, was the saving in the acreage.

Q.—Can you suggest any inducement to the Government in making the change of those lands from the land subsidy of the British Columbia Southern to the Columbia and Western, other than the saving in acreage? A.—I cannot.

Q.—If my interpretation of that Crow's Nest Pass agreement was correct, that might be a very considerable inducement to the Railway Company to make the change? A.—Well, as I tell you, I never saw the agreement, and don't know what it is.

Q.—Well, I say that would afford a probable reason, at least, for the Railway Company making the change? A.—Well, it would not have the effect of, I imagine, disturbing the Crow's Nest Company in any rights they would have under the agreement.

Q.—Well, if that object was in view with the Railway Company, might not that account for the desire of Mr. George McL. Brown to have it come in the shape of a proposition from the Government instead of in the shape of a proposal from the Company? A.—You are putting a hypothetical case to me now; I cannot answer hypothetical cases.

Q.—But if that object were in view, that would be a very likely thing to occur? A.—How can I give an answer? I don't know anything about the agreement; I have never seen the agreement; I don't know anything about the arrangements between the companies, and how can you expect me to answer a hypothetical question that you propound?

Q.—I don't want to press you to answer it. Then, before Mr. Wells left for Montreal with the grants, you do recollect a meeting when the plans and everything were produced, and the whole situation explained to Mr. Dunsmuir? A.—The plans were brought down, yes.

Hon. Mr. Eberts—*Continued.*

Q.—Yes, and was it pointed out to him then that there were ample lands within the reserve of the Columbia and Western out of which their deficiency earned on section three could be made up? A.—Well, I couldn't say; I couldn't say that; I wasn't in a position to know that either. At least, I did not know.

Q.—Well, that was true, as a matter of fact? A.—Well, Mr. Gore says there were lands there.

Q.—Available lands there? A.—I never had the descriptions of the matter placed before me.

Q.—Had you considered the question as to whether these lands within this reserve were valuable or valueless? A.—Had I considered the question?

Q.—Yes. A.—No, but I had heard from time to time, and I had read reports that there were in that locality evidences of coal.

Q.—Oh, no; I am not talking now of the lands which were granted; I say the lands within the Columbia and Western reserve. You are aware of the fact that there was a large reserve, about 126 miles long by 60 miles broad? A.—I didn't know of that reserve at the time.

Q.—You didn't know of that reserve at the time? A.—I didn't know of that reserve at the time.

Q.—Suppose those lands were practically valueless, do you think it would be morally fair to the Railway Company to tie them down to the strict letter of the bounds and force that land upon them? A.—Well, that might or might not be so. If the Railway Company had fairly carried out its conditions and opened up a country which all the Governments, besides Mr. Dunsmuir's Government, had tried to open up, I should imagine that probably the feeling would be to treat them as fairly as possible under the circumstances.

Q.—Quite so. And it would not, as a matter of fact, Mr. Eberts, be morally right, or the decent thing to do, to force them to accept practically valueless lands for their subsidy? A.—They expected, I suppose, when they got lands they would get value.

Mr. McPhillips: It is quite well known in the history of land subsidies, when a particular kind of land is intended it is described as arable land, for instance, agricultural land. I don't think it follows, with all respect. A.—I don't say it does, Mr. McPhillips. I say they would probably be guided by the Statute.

Mr. McCaul: I was asking you what you thought was the moral and decent thing to do with any railway company, on the part of the Government; I suppose it would be the proper thing to give them lands of some value, at any rate, would it not? Don't you think so, Mr. Eberts? A.—I should think the Government would be entitled to give them that which they were entitled to under their Subsidy Act.

Q.—Now, Mr. Eberts, did I understand you to say that it was a mere coincidence that Mr. Wells happened to be going to Montreal and that was the reason he took down these Crown grants with him? A.—If my memory serves me correctly, there was no talk of Mr. Wells taking the grants when the Order was finally passed.

Q.—No, but you know that he did take the grants? A.—Well, I don't know of my own knowledge he did; but he said he did.

Q.—You suggested to Mr. Duff, though, that at the time he went down he was going down for private business reasons. A.—I understood from Mr. Wells—in fact, I think Mr. Wells mentioned that fact to members of the Government—that he was going down to Montreal and he would take the grants down.

Q.—Quite so. And at the same time it had been discussed in the Executive that it would be a very advisable thing to induce the Railway Company to build to Spence's Bridge? A.—I think Mr. Wells mentioned that fact, that with reference to that matter it would be a very wise thing to induce the Company to build, or to get a promise from them that they would build.

Q.—Yes; and consequently, when the question would come up as to the delivery of these grants, that would be rather an opportune time to press that upon the notice of the Railway Company, would it not? A.—Well, I suppose that would be a contemporaneous thing, if he was down there about the same subject, or if he was going to speak of the same subject; he could only speak of it when he was there.

Q.—But you, in your own mind, did not connect and understand those two facts together, the building to Spence's Bridge and the question of the delivery of the grants? A.—I did not. I did not understand Mr. McCaul, that it was a condition.

Hon. Mr. Eberts—*Continued.*

Q.—Quite so; you did not understand it, but your recollection is that the matters were discussed at the same time; but you did not think that was a condition. Now, you said, Mr. Eberts, to Mr. Duff that this conversation with Mr. Dunsmuir, when these plans were produced and the whole matter explained to him—you gave one reason for it, that Mr. Dunsmuir had not seen the grants at that time. A.—Had not seen the grants?

Q.—Do you recollect stating that to Mr. Duff? A.—I did not state that, because not only Mr. Dunsmuir, but I don't think any of us, ever saw the grants.

Q.—Mr. Duff asked you how this conversation came up, and you gave in your evidence, as one of the reasons, that Mr. Dunsmuir had not seen the grants. A.—I never said that.

Q.—Do you say you did not say that? A.—I could not have said that; because at that conversation the grants were not produced.

Q.—Will you say now, Mr. Eberts, that you did not say to Mr. Duff that Mr. Dunsmuir had not seen the grants? A.—Well, I state positively I could not state Mr. Dunsmuir had not seen the grants.

Q.—In giving your evidence here day before yesterday, I have an absolute distinct note here; the question I have got here, "How did it come up?" and your answer to that, "Mr. Dunsmuir had not seen the grants." Of course, it is possible that I might have got it wrong. A.—I could not have said that, because—or else my memory must be in a very peculiar state—because I never saw the grants, and those grants were not produced at that time.

Q.—You say that you did not say that in cross-examination to Mr. Duff; that is what I understand you to say? A.—I quite say that I could not have said that; because I never saw the grants, and the grants were not produced then?

Q.—Were you here in December and January, 1901? A.—I think I was.

Q.—Do you recollect whether Mr. George McL. Brown was here then? A.—In December, 1901?

Q.—In December, 1901, and January, 1902? A.—I don't remember.

Q.—You would not like to say he was not here during that time? A.—I say I don't remember. That is as far as I can go.

Q.—When did he first complain to you of the non-delivery of those grants? A.—The first recollection I have is after the House sat, I think.

Q.—And do you recollect whether he was here before the House was sitting? A.—I cannot swear to that.

Q.—You cannot recollect that? He might have spoken of it to you before? A.—I don't make memos. of when George McL. Brown arrives in town. There are thousands of people coming and going.

Q.—You say you don't recollect when you first knew the Crown grants were not delivered, but you think George McL. Brown mentioned it to you when the House was sitting. He might have mentioned it to you long before? A.—I could not swear to that; he might have, if he was here.

Q.—Well, when he did mention it to you, why didn't you go to Mr. Wells straight to inquire about it, instead of going to Mr. Dunsmuir? A.—Well, I don't know. I went to the Premier. I don't know that I went to the Premier on account of what Mr. Brown told me. I don't know whether or not the Premier did not speak to me with reference to it.

Q.—You stated to Mr. Duff that Mr. Brown was pressing for the delivery of those grants, and that you saw Mr. Dunsmuir with regard to it? A.—I think that is so. And I think probably Mr. Dunsmuir also saw me in regard to it.

Q.—Was not Mr. Wells the natural person to go to to ask why the grants were not delivered? A.—He was for the Premier. I did not know why the grants were not delivered.

Q.—And wasn't it the natural place for you to go? A.—It was the natural place for Mr. Brown, probably.

Q.—Why wasn't it for you? A.—I was in closer touch at that time with the Premier than I was with Mr. Wells; our offices are very far distant; and when Mr. Dunsmuir came over in the morning he sat in my office usually.

Q.—At any rate, you did not go to Mr. Wells for the delivery until the meeting of the 18th of March, when the grants were cancelled? A.—I didn't go to Mr. Wells about it then.

Q.—No, you did not go to him at all, from the time you first got the information that these grants had not been delivered, up to the 18th of March, when that matter was finally disposed of by the Order in Council rescinding? You did not inquire personally from Mr.

Hon. Mr. Eberts—*Continued.*

Wells about it? A.—Yes, and the proposition is also true that Mr. Wells did not come to me and tell me he had not delivered the grants. You did not ask me that.

Q.—No, I did not; you suggested that before. When did you first hear from Mr. Dunsmuir about Mr. Wells' statement as to what occurred between Mr. Taylor and himself in Montreal? A.—Well, I understood it a day or two before the recision.

Q.—And you did not tell Mr. Taylor then? You did not go straight to Mr. Taylor and tell him? A.—I don't know whether I did; Mr. Taylor may not have been here; I don't know. The recision was, I think, on a Tuesday, and if Mr. Dunsmuir had told me the Saturday before, I probably would not have seen Mr. Taylor, because he is not in town on either Saturdays or Sundays.

Q.—But he is on Monday? A.—Sometimes he is and sometimes not.

Q.—Don't you think that if a statement of that sort, making such grave reflection on your partner, were made, that the first thing you would do would be to go straight to your partner and tell him? A.—When I charge my memory to a day or a day and a half with a matter of that kind, and a question arising, I cannot charge my memory with reference to having seen Mr. Taylor at that time.

Q.—But you stated, though, that you did not speak to Mr. Taylor about that until after the meeting of the 18th of March? A.—I say I don't recollect speaking to Mr. Taylor until Mr. Dunsmuir spoke to me about it.

Q.—Quite so. It seems to me that if any statement of that sort were made to my partner reflecting upon me, I would feel very much annoyed if I was not told about it very promptly, immediately; it seems to me that that was the natural thing to have done. However, you did not do it? A.—Don't put it that way, Mr. McCaul; just wait; perhaps you don't know the circumstances. I say I saw Mr. Dunsmuir a day and a half or two days before, altogether. And in those two days there is a Saturday and Sunday, in which Mr. Taylor is never in town, and he sometimes is not in on Monday until late. Now, I don't where he was on those days; and I cannot say whether I told him or not, but I don't think I did.

Q.—I don't want to get into Executive secrets, Mr. Eberts, but how long were you present at that meeting of the Executive of the 18th of March, 1902? A.—How long was I there before they concluded to make the Order?

Q.—I did not say that; I said how long were you present? You said you had been there about half a minute when Mr. Dunsmuir said to Mr. Wells, "Tell Eberts what you told me." From the time you got there until you left the room, how long were you there? A.—Oh, it probably might be half an hour.

Q.—About half an hour. There was quite a long and heated discussion, as a matter of fact? A.—Well, I don't think there was, Mr. McCaul; there was not any very heated discussion with reference—I don't want to go into the—

Q.—I don't want to press you in that. A.—There was an Order made, the recision Order, and I know we waited there until the recommendation was drawn up, because there was no recommendation there when I went in.

Q.—Quite so. A.—The recommendation had been drawn up and, I think, was brought into the meeting.

Q.—So that, although you did not actually have special notice of this meeting, you were present and took part in the Executive act? The recommendation was brought down and the Order in Council passed while you were there; that is correct, isn't it? A.—I didn't have anything to say about it.

Q.—You have nothing to say about it? A.—I didn't have anything to say about it.

Q.—That is all right; it was passed while you were there? A.—It was passed in the usual way by the Executive.

Q.—While you were there, was it not? I think I am entitled to an answer to that question. While you were present at the Executive, an Order in Council was passed; that is correct, is it not? A.—I think, probably, the motion to cancel the other Order in Council was passed while I was there.

Q.—So that you had an opportunity of being heard if you wanted to be heard on the subject? A.—There was very little talk after that. The arrangement made to pass the Order in Council was made from three to five minutes after I went in there.

Mr. Helmcken: Made within five minutes? A.—Yes.

Hon. Mr. Eberts—*Continued.*

Mr. McCaul: You told us that what occurred when you came in was—you said this before—Mr. Dunsmuir said, “Mr. Wells, tell Mr. Eberts what you told me.” That is correct, isn't it? A.—Or words to that effect.

Q.—Yes. And Mr. Wells proceeded to tell? A.—Mr. Wells proceeded to tell; that you know. You are acting for him, and if you want me to tell, all right.

Q.—Then there was not much sense in Mr. Wells afterwards telling you, if he did so, that he had not made the statement to Mr. Dunsmuir, was there? A.—I said that Mr. Wells said he had not made the statement to Mr. Dunsmuir; yes.

Q.—There was not much sense in his saying that? A.—I don't know whether there was any sense or not, but that was what he told me.

Q.—It would not appear to be a very sensible thing for him to say, if you have given a correct account of what occurred at the Executive? A.—Well, I am trying to give you the best account I can.

Q.—Now, at the meeting of the Executive after the 18th of March, when Mr. Brown appeared to protest against the action of the Government, I think you said that Mr. Brown asked each Minister separately whether he believed that Mr. Shaughnessy was implicated in that transaction between Mr. Taylor and Mr. Wells? A.—I thought so.

Q.—What? A.—I thought—that was my memory.

Q.—And each of them said no? A.—I didn't say that each said no; I said that each said no, or did not answer.

Q.—They said no, or nothing? A.—No, or nothing.

Q.—And was Mr. Brown also pressing as to whether he, Mr. Brown, was implicated in the matter or not? A.—I think he mentioned that fact too.

Q.—You think he did mention that fact? A.—I think so.

Q.—So that he thought there might be some possible reflection upon himself, then, in connection with it? A.—Well, I suppose, if he were saying that, he thought possibly there might be some reflection upon himself.

Q.—As a matter of fact, no person had suggested that Sir Thomas Shaughnessy was implicated in this transaction? Mr. Wells never suggested that, did he? A.—I think it had not come up that way in the Executive.

Q.—I am not talking about the Executive. Was there any suggestion made that Sir Thomas Shaughnessy was implicated in this? A.—I never heard that there was.

Q.—Now, in regard to Bill 87, that was framed in the Attorney-General's office, was it not, Mr. Eberts? A.—Well, I cannot tell you.

Q.—Well, you have no doubt, I presume, that Mr. Maclean's account of the transaction is correct? A.—Well, I don't think Mr. Maclean, in his evidence, said it was framed in his office—framed in my office.

Q.—What Mr. Maclean said was this, that the Bill was handed in to him in draft form, either by Mr. McNeill or Mr. George McL. Brown, and that he afterwards put it into shape by adding the marginal notes, and put it into proper form, and then gave the directions to have the Bill printed. A.—I don't know whether he put it in that way or not.

The Chairman reads from pages 556 and 557 (p. ccliv. of printed report), Mr. Maclean's evidence.

Q.—I suppose it was never the intention of the Government, in introducing that Bill, to enable the Railway Company to claim these two particular blocks of land? A.—I never heard it so.

Q.—You never heard it so? A.—I never heard it so.

Q.—And Mr. George McL. Brown has admitted here that he practically prepared or had prepared the Bill in question. Now, if that sinister motive can be imputed to any person in that Bill, it would be to the Railway Company and not to the Government? A.—I never understood that that matter was discussed in the Government.

Q.—Did Mr. Wells speak to you in the House as to the departure in Bill 87 from the terms of the Subsidy Act, 1896? A.—I don't remember; I don't remember his speaking about it.

Q.—If Mr. Wells states that he did, you would not be prepared to contradict? A.—No, I would not like to contradict it.

Q.—Your impression all the time in regard to that Bill was that the Government would still have control over what particular blocks were to be given to the Railway Company?

Hon. Mr. Eberts—*Continued.*

A.—Well, Mr. McCaul, if you remember, I had a great number of Bills in my hands at the time; there are some Bills that Ministers have in their hands that other Ministers don't know a great deal of except the general principle.

Q.—The whole object of the Bill was to reinstate the Railway Company in regard to the subsidy for section four? A.—Nothing more.

Q.—Nothing more. And you state you had not studied the phraseology of the Bill to see if it went any further? A.—I did not understand that it had gone any further than that.

Q.—You did not understand that it had gone any further than that? A.—My recollection of the Bill was that it was a Bill to give them their lands for section four; and it would be, in my mind, rather a wild sort of a thing if the Government which had a few days before deprived the Company of that land, should then intend, by another Bill, to give them that land.

Q.—And any Minister having a bill brought to him from the Attorney-General's office has a right to assume that it is clearly carrying out the general policy of the Government? A.—Well, I don't know that you could put it that way; Ministers sometimes bring matters into the Attorney-General's office and have things drawn by the Deputy that the Attorney-General does not see.

Q.—Well, why are they drawn in the Attorney-General's office? A.—I suppose for the fitness of the person to draw Bills of the kind.

Q.—Precisely. A.—In many cases—

Q.—The Attorney-General and his Deputy are skilled draftsmen? A.—Are supposed to understand technicalities of statute-drawing.

Q.—And are supposed, in framing an Act which is amending another Act, to see that the one amending does not make a substantial departure from the original Act? A.—But all Bills are not drawn in the Attorney-General's office.

Q.—But when such a Bill comes before the Attorney-General or his Deputy to frame, it would be his duty, would it not, to see that the Bill did not exceed the intentions of the Government? It would not be the duty of the Minister who was going to introduce the Bill, it would be the duty of the draftsman of the Bill? A.—It depends on what instructions he got.

Q.—As a rule, Mr. Eberts, it would be the duty of the Attorney-General or his Deputy to scan Bills in that light? A.—I suppose it would be his duty when it was brought down to him; but the practice here—all Bills of the Government are not drawn in the Attorney-General's Office. I have seen Bills from the Lands and Works Department not drawn by the Attorney-General's Department at all; because people in the Land Department are men skilled in the wants of the Land Department with reference to certain amendments to the Land Act which arise out of particular conditions arising before them which cannot be arranged except by an amendment of the Act.

Q.—But they are not skilled in drawing Statutes? A.—Well, they draw Bills.

Q.—And then they come to the Attorney-General to be revised? A.—Sometimes they do and sometimes they do not.

Q.—Well, this particular Bill did? A.—Evidently, from the evidence of Mr. Mclean, this Bill came into his hands.

Q.—Yes, for that purpose. Mr. Eberts, was any application made to you by the Railway Company for petition of right with regard to this matter? A.—No, there was no application made to me.

Q.—Would it come to you or to the Provincial Secretary? A.—I think it would come through His Honour the Lieutenant-Governor.

Q.—It would come to him addressed as a petition? A.—Oh, I think so; under the Petitions Act.

Q.—But through your own office would it come, the Attorney-General's office? A.—The Provincial Secretary's office.

Q.—But it would come to you eventually to pass on? A.—I think it would come to me to advise whether it was good grounds.

Q.—Whether it was a proper case to grant. And you have no recollection of any such application coming before you? A.—I have no recollection of any such application coming to me.

Hon. Mr. Eberts—*Continued.*

Q.—You said that there was an application made that the Government should intervene in certain pending litigation between the Railway Company and individuals who were in possession of lands in the disputed tract? A.—Yes.

Q.—How was it suggested that the Government should intervene? Were they to be made third party, parties defendant, or how were they going to intervene? A.—I suppose they would intervene in the usual way, an application to the Government to be made parties to the action.

Q.—Could the Crown be made party to an action in that way, between subject and subject? A.—I think they could, if they so desired.

Q.—In an ordinary action in the Supreme Court? A.—I think they could, if they so desired. I really did not give that question of intervention as to the practice, the procedure, very much consideration; I thought they could do it.

Q.—I don't know, Mr. Eberts; really, I have not considered the question very particularly myself. A.—I think, under the circumstances, if an application were made by the Government to a judge, that he would make an order to join the Government as parties.

Q.—When you say the Government, of course it would have to be the Crown? A.—The Province, yes.

Q.—The Crown? A.—The Crown, certainly. And the Crown probably through the Attorney-General.

Q.—And your impression then is that the Crown could have been made a party plaintiff or a party defendant in an action of that sort? A.—I think they could.

Mr. Helmcken: The Crown makes its own application for leave to intervene? A.—That is what I said; the Crown would have to make an application to the Court, and the Court could make an order, and the Crown could intervene.

Mr. McCaul: In regard to the correspondence between Mr. Brown and Mr. Wells, when that is found I would like to reserve the right of showing it to Mr. Eberts and asking him about it. It is understood, Mr. Chairman, when that correspondence is found I can examine on it?

Mr. McPhillips: Mr. Eberts, I would like you to look at the Journals of the House, 1902, page 51. The question is asked there, "For how many acres have Crown grants been prepared, but not yet issued?" and the answer is, "There are no additional Crown grants prepared." Now, that was on the 8th of April, 1902. A.—Yes.

Q.—Did you know, or did you not know, of that answer being given by Mr. Wells, or did you pass on it one way or the other? A.—I don't remember whether I was in the House when the answer was read; I probably was; I cannot say.

Q.—Did you pass on it as one of the Ministry at all, one way or the other? A.—I did not.

Q.—It did not come up before you for approval? A.—I did not see it.

Q.—That answer? A.—I don't remember of seeing that answer.

Q.—Well, now, in a matter of that kind, Mr. Eberts, wouldn't it have been a very proper thing for the Government to have acted together in a united way in answering a question like that? As the facts have developed to us, they would not appear to support that answer. You see it says explicitly, "For how many acres have Crown grants been prepared, but not yet issued?" Now, that is putting this question as to blocks 4,593 and 4,594 in its lowest form. It is quite evident that Crown grants were prepared. A.—Well, the Minister may have thought, in drawing that answer, that a decision order having been made, that these grants were not prepared; they were out of existence.

Q.—But he did not take the Attorney-General's opinion on that; he did not take your opinion? A.—He did not take my opinion on that, no.

Q.—Would you say that the answer is correct now, according to the facts within your knowledge? A.—Well, I would not say what went through the mind of the Minister when that answer was made. But he may have thought that that answer was correct at the time.

Q.—But would you say now that that answer, as given to the House, is correct, upon the facts as you know them? A.—I think it could have been made clearer.

Q.—Don't you think you could put it even more explicitly than that; that the answer was not in accordance with the fact? A.—I don't know, altogether—what are the other questions there?

Hon. Mr. Eberts—*Continued.*

Q.—I don't think there is anything that elucidates it (handing Journal to witness). A.—Well, I cannot even explain that, because I don't know what this 722,000 acres is, the first answer referred to.

Q.—What is that, Mr. Eberts? A.—The answer is here, answer 1, "There has been Crown grants for 722,020 acres."

Q.—It does not say for where? A.—There are 722,000 acres, and it says here that the balance for section 3—there is a balance still due of 896,000 acres. Therefore, I suppose that the answer of the Minister would be fairly correct relative to that, because if you deducted the amounts in these two blocks you would see that on section three there would be 896,000 acres still due. What I infer from that is this, that in this settlement they were taking two or three hundred thousand acres less than they were entitled to under section three, and you took these lands away from them that you had given to them on a settlement; therefore, the Company would be entitled to have section three to the full amount of lands according to the mileage of the railway built, 20,000 acres per mile. There was something that had been given to them under section three, and there was remaining 896,488 acres.

Q.—But the Government was asked explicitly, "For how many acres have Crown grants been prepared, but not yet issued?" A.—Well, the Minister might have thought that those could not be considered prepared Crown grants, as they had been cancelled.

Q.—Your explanation, Mr. Eberts, really, with all deference to you, would not work out in that way, because question 5 and answer 5 give in detail the descriptions of the block. A.—Yes.

Q.—And these blocks 4,593 and 4,594 are not referred to at all. A.—Well, they would not be referred to.

Q.—But, then, that was plainly withheld from the House, the fact that Crown grants were prepared of those two blocks, and no information given? A.—Well, the Minister may have thought that the preparation of those and the cancellation of them would amount to that there was virtually no preparation of them.

Q.—But, don't you see the effect, Mr. Eberts? The effect—it seems to me that the Government is bound by its statement here, as a Government; and their subsequent contradictory position cannot very well be explained. If it is true that there were no Crown grants prepared, it is an extraordinary thing that we find now there are Crown grants prepared, and it is another very extraordinary thing that a railway company claim they actually own the land. Now, do you say that that was true, and in accordance with facts? In your view of the case. Let the Chief Commissioner stand upon his own responsibility in this matter. And I draw your attention, Mr. Eberts, to the fact that notice was given on the 14th day of March, as appears from the Votes and Proceedings; therefore, the Government would have notice, before those Crown grants were cancelled, that that question was to be asked? A.—Yes, if they were not cancelled until the 18th.

Q.—But on the 14th the Order in Council had not been cancelled? A.—No.

Q.—Therefore it seems to me that the Government had plainly brought to their notice that an inquiry was going to be made relative to these very Crown grants. Now, it is quite evident that that information was not given to the House. But I ask you again, Mr. Eberts, would you say that that answer was in accordance with the facts, on your own responsibility? A.—I think I made a remark here—I said that I thought that the answer was a cloudy one.

Q.—But, Mr. Eberts, you even must, it seems to me, go farther. I will show you Bill No. 16. That Bill, I suppose—was it drafted in your Department as introduced? A.—I think my Deputy drafted that.

Q.—You would not disclaim responsibility for it? A.—Certainly not; I could not disclaim responsibility for it.

Q.—If you will observe, there is a preamble which reads as follows: "And whereas Crown grants to said Company of said deficiency blocks, described as lots 4,593 and 4,594, Group 1, Kootenay District, were duly executed, bearing date the third day of October, A.D. 1901, but were not handed over to the Company." Isn't that a plain statement of fact that there were duly executed Crown grants? That does not fit in very well with that answer at page 51? A.—What does the Bill itself say? I did not give the instructions for that Bill.

Q.—Somebody must have drawn that preamble with "duly executed." If the Crown grants were duly executed, how could it rightly and fairly and properly be said that there were none prepared? It seems to me, Mr. Eberts, that you have to say, in accordance with

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the facts, that that answer was not a correct one of the Hon. the Chief Commissioner on the 8th of April. It has to be one thing or the other, it seems to me. I think I am entitled to have you say that, Mr. Eberts? A.—I think I said in my cross-examination that the answer was not clear.

Q.—But you won't put it any stronger than that? A.—Surely I am not going to put motives in the Chief Commissioner.

Q.—Well, Mr. Wells has made statements here affecting between you and him? A.—Well, I don't care what he does. I have my idea; people look at things in a different light. You make the suggestion here that evidence has been given here to implicate me, or something or other; do you say that?

Q.—Mr. Wells has undertaken to make statements directly contradictory to you? A.—I am here, Mr. McPhillips, to try and tell the truth in reference to the matter.

Q.—I thought you were hesitating to contradict Mr. Wells. I don't see why you should hesitate to contradict Mr. Wells. That is what I mean; I don't mean anything more. But it seems to me this Bill issuing out of your Department, even in 1903, containing a recital like that, "duly executed," must be founded upon fact, or not. Don't you say it is founded on fact; there were Crown grants prepared? A.—I believe there were Crown grants prepared.

Q.—And they were prepared when this answer of the 8th of April was given? A.—But, speaking for myself, I say that I never saw the Crown grants—yes, I did; I saw them in my first examination, in the other room; they were brought in there then. That is the first time I ever saw them, when I was first examined, in the Maple Room.

Q.—I think you said, perhaps inadvertently, that you did not know that any of the Ministers had seen the Crown grants; as a matter of fact, the Crown grants had the signature of Mr. Prentice, Provincial Secretary? A.—That must be, of course, to sign them. I mean to say, they were not produced before the Ministers. After the Order for the Crown grants was made, that is the usual form; I believe that they are signed by Mr. Gore, and he goes to the Provincial Secretary or acting Provincial Secretary.

Q.—Well, you won't go any further than to say that you think the answer was not clear, Mr. Eberts? A.—Well, I think the answer was not clear.

Q.—Well, I think you ought to go further; either that, or else you cannot take the ground later that you say they were duly executed. Do you say that the recital in that Bill 16 was in accordance with the fact, "duly executed?" A.—I did not draw that Bill.

Q.—But you say you would not disclaim responsibility for it. It is drawn in your Department; and it is headed with the Hon. the Premier, isn't it? A.—Yes.

Q.—It is a Government measure? A.—It was introduced by the Government.

Q.—And contained a recital that these Crown grants were duly executed. Now, will you say that that is true, in accordance with the facts, or untrue? A.—Well, I think that is borne out by the fact.

Q.—You think that that recital would be borne out by the fact. They were duly executed? A.—Were duly executed; yes, I suppose, they were duly executed.

Q.—Now, again, I refer you to another question, page 93 of the Journals of the House, 1902. Mr. Curtis asked the Hon. the Commissioner of Lands and Works the following questions:—"1. Why have Crown grants for 896,488 acres said to be earned by the Columbia and Western Railway Company for section 3 not been issued? 2. When is it intended to issue Crown grants therefor? The Hon. Mr. Wells replied as follows:—"1. Because up to the present time no agreement has been arrived at by the Company determining what lands shall be allotted. 2. As soon as the location of the lands is defined." You see that the exact acreage, the exact land subsidy that we are inquiring into here, was being asked about? A.—Yes.

Q.—And the answer of the Hon. the Chief Commissioner of Lands and Works, Mr. Wells, was in no way explanatory of the facts as they have been brought out here, was it? A.—Well, I think—it seems to me that is fairly true.

Q.—"No agreement has been arrived at with the Company determining what land shall be allotted." Do you say that that is in accordance with the facts on the 2nd of May, 1902? A.—With reference to section three?

Q.—Yes. A.—He must have thought so. Why isn't that true?

Q.—I ask you. You bring in a recital in a Bill in 1903, founded upon facts that are previous to the 2nd of May, 1902, and you say that the Crown grants were duly executed? A.—But the Order in Council making those Crown grants was rescinded, and there was a

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balance due under section three of 896,000 acres. I think that there must be some lands for section three which have been Crown-granted, and that there is a balance for section three which has not been granted. As I understand the matter about section three, it would be 896,000 plus some more acres. Just find out how many acres there would be in section three.

Q.—But the fact is this, that you were giving 600,000 acres for 896,000 acres, in giving blocks 4,593 and 4,594? A.—The general principle was that there was a saving of some 300,000 acres.

Q.—Up to this time there were absolutely no dealings with the Company, or there were. But the Chief Commissioner of Lands and Works says there was no agreement. Now, if there was no agreement and nothing completed on the 2nd day of May, 1902, how can it be said to the contrary by the Company, or even in this Statute which was brought down, Bill 16? If there were no duly executed Crown grants, how can it be said that such is the fact? The Government, apparently, would seem to contend that such was not the fact on the 2nd day of May, 1902. How can the Government pretend otherwise in the Session of 1903? A.—Well, I don't know what the Minister thought, what position he took, with reference to the rescission Order.

Q.—I refer you to questions asked by myself appearing in the Journals of the House, page 28, 21st of March, 1902: "1. Is it the intention of the Government to amend the 'Coal Mines Act' so as to provide for the prospecting for petroleum?" Answer, "Yes." "2. Is it the intention of the Government to remove the reserve which covers the oil lands in South-East Kootenay?" Answer, "Yes; as soon as it is considered that the public interests will be served by doing so." "3. Is it a fact that these oil lands are covered by reserves for railways?" Answer, "Yes." And the principal question is this, "4. Have any of these oil lands been Crown-granted to any railway company?" Answer, "No." What do you think as to that, Mr. Eberts; do you say that that was in accordance with the then facts, 21st of March, 1902? A.—The Minister might have thought that there were no Crown grants of those lands at that time.

Q.—Well, as a matter of fact, there were, were there not? A.—Well, papers evidently were drawn up purporting to be Crown grants.

Q.—They were actually signed by the Governor, the Great Seal of the Province affixed, and the signature of the Deputy Commissioner of Lands and Works, and the signature of the Provincial Secretary. A.—Well, he might have thought that the Order cancelling the Order in Council giving those would annul the grant.

Q.—He might have thought that the Order in Council of the 18th of March, 1902, justified him in answering as he did? A.—It might have passed through his mind; I don't know.

Q.—Well, now, what do you say on the facts. Do you say that that answer was a right one in accordance with the facts, as you know them now or knew them then? A.—I think, if you gave a history of the whole thing in that answer, you would make it plainer than it is. But probably not any truer; I don't know. It is just a question.

Q.—Probably not any truer? A.—In so far as the Minister thought at the time.

Q.—As the Minister thought? A.—It is not a usual way, to make great long answers in reference to—

Q.—(Interrupting).—Surely you, as one of that Ministry, are equally responsible for that answer, are you not, with Mr. Wells? There cannot be a divided responsibility in this matter. There was a question of great public import asked and answered. Was it in accordance with the facts then? Would you have made a similar answer, Mr. Eberts, on that day? A.—I cannot tell you, Mr. McPhillips, whether I would or not.

Q.—If you had been asked to advise the Government at that time would you have instructed a similar answer being given? A.—Well, I don't know, Mr. McPhillips, that I can answer hypothetical questions.

Q.—As I conceive it, the Government ought to have been properly advised when it answered that question. It seems to me it was not. Would you have advised the Government to have answered that question in that way if the matter had been submitted to you at that time? A.—I couldn't say what I would have done at that time; I couldn't say.

Q.—Let it be now. Do you now say that that answer was right and in accordance with the facts? A.—All I can say is that Crown grants, from my knowledge of it, were issued and

Hon. Mr. Eberts—*Continued.*

signed in the usual way, and that an Order in Council was passed prior to these answers, which rescinded the Order in Council authorising the issuance of those Crown grants.

Q.—And notwithstanding that, Mr. Eberts, a Bill is brought down which, you say, came from your Department, Bill No. 16, in which you say that the Crown grants were duly executed. A.—I say that it was drafted by my Deputy, that I gave no instructions with reference to it.

Q.—Well, do you say it was right or not on the fact—“were duly executed”? Do you say those Crown grants were duly executed for blocks 4,593 and 4,594? A.—I suppose that is what the Government thought, because they introduced this Bill.

Q.—But the Government changed this Bill? A.—What?

Q.—But the Government changed this recital in this Bill. A.—Changed that recital?

Q.—Yes. I ask you if you say that that recital is correct, as you view the facts? A.—I have gone through the Bill. Give me the other Bill. (Amended Bill, as passed third reading, handed to witness.)

Q.—You will observe, Mr. Eberts, that that preamble is changed, and “were signed and sealed but not delivered” is inserted in lieu of “were duly executed.” A.—Well, what is the difference between them, Mr. McPhillips? What, as a lawyer, is “duly executed”?

Q.—You say that the recital in Bill No. 16, as it passed the House, is not different in terms? A.—I don't know that it is any different.

Q.—One reads “duly executed,” and the other reads, “signed and sealed but not delivered.” A.—Well, duly executed—what do you mean by that?

Q.—It is your Bill, Mr. Eberts; it came from your Department, you see. A.—Well, duly executed means that they were executed in due form.

Q.—Well, you think that “signed and sealed but not delivered” does not cut down the statement of “duly executed,” in any way? A.—Well, I think if you say that Crown grants were signed and sealed, I would say that they were duly executed.

Q.—Without delivery. You say that you see no change? A.—I think you said, Mr. McPhillips, that you proposed that amendment yourself.

Q.—I don't know that that is my amendment; there are some other amendments of mine. But you are giving the evidence on the facts here; I want you to say whether “were duly executed” was more in accordance with the facts than “signed and sealed but not delivered”? A.—Don't you think, Mr. McPhillips, in all fairness, that you should call my Deputy who drew that Bill, and ask him from whom he got instructions and how?

Q.—We cannot get any responsibility, unfortunately, from you for any of these Bills, apparently; we cannot find out who draws Bills, apparently, although they are matters of great importance to the Government. I am compelled to say that on the facts. Who did draw Bill 87? Mr. Maclean says he did not draw it. Did you draw it? A.—I have told you I did not.

Q.—Do you know who drew it? A.—I don't know.

Q.—Isn't that an extraordinary state of affairs that a Bill of such moment as Bill 87 should not be drawn either by the Attorney-General or the Deputy Attorney-General, and that no law officer of the Crown, apparently, passed on it, as far as we know? You say you did not draw Bill 16 either; you think your Deputy drew Bill 16? A.—I think he did. I think that is right, isn't it, Mr. Premier?

Hon. Col. Prior: He handed it to me; Mr. Maclean also made that alteration to it afterwards, when I drew his attention to “duly executed”; he made that alteration in it.

Q.—I think this Committee is entitled to know what the Attorney-General of the Province thinks of these two Bills, contrasting them, as introduced and as passed. Would you say whether “duly executed” is synonymous with “signed and sealed but not delivered”? If you say they are, I pass on to something else? A.—You are asking me for a legal opinion, Mr. McPhillips, with reference to that, and I am not prepared here to give you an opinion off-hand on that question. If you would give notification before-hand that you are going to cross-examine me on that question, I would probably have looked into the authorities on the subject. But I can say, under the circumstances, that I did not draw the Bill and I did not give instructions with regard to the Bill.

Q.—You are unprepared to say, upon the facts as you know them, whether you would have drafted that Bill 16 in the form of “duly executed” or in the form “signed and sealed but not delivered”? A.—Well, I should just from a glance at this time, without looking into the authorities, I would think “duly executed” would just mean what it says, and there is no

Hon. Mr. Eberts—*Continued.*

magic in it at all; that "duly executed" would mean they were executed in due course; that is, that the seal of the Province was attached to them, and that they—well, "duly executed" means that the seal of the Province is attached, because I don't think any other person's signature is required by Statute.

Q.—Would you say "were duly executed" included delivery then? A.—I express no opinion with reference to that.

Q.—You are not prepared at the moment to express an opinion? A.—I am not.

Q.—Do you consider it a legal question? Take it in the ordinary affairs, Mr. Eberts, we will say a transaction between A and B, one the vendor and the other the vendee, A is the vendor and he executes a deed; when would you say the deed was duly executed, prior to delivery or subsequent to delivery? A.—You might say "duly executed and delivered."

Q.—Don't you know, as a matter of fact, Mr. Eberts, that a common form of conveyancing is this—to be found in all deeds, in the left-hand corner usually of a deed—you find the language at the end where he signs, "signed, sealed and delivered"? A.—Yes.

Q.—Do you not see that language there? A.—I have often seen it.

Q.—That is common conveyancing; common to practitioners in England as well as here? A.—Yes.

Q.—Don't you think those words have some meaning, "signed, sealed and delivered"?

A.—I don't think they appear on Crown grants at all.

Q.—Perhaps they do not. A.—If my memory serves me right, I don't think they appear.

Q.—But they have a meaning known to lawyers, those words, haven't they? A.—Well, the mere fact of those words being there does not say that there was a delivery.

Q.—You would not hesitate, Mr. Eberts, to answer at once that to have a complete conveyance there must be delivery? You would not hesitate to state that as a lawyer? A.—What kind of a delivery?

Q.—Well, as lawyers understand delivery. A.—An actual manual delivery, do you mean?

Q.—There must be an intention to deliver and a delivery upon it? A.—And an actual manual delivery?

Q.—Not necessarily manual? A.—No. I think some authorities go so far as to say that a deed that was signed by a party and sealed would constitute a delivery notwithstanding the fact that there was not actual manual delivery of it, if the intention of the parties was carried out.

Q.—But if there was no intention to deliver, there could not be any delivery, could there? Now, what do you say in this case; was there a delivery of those Crown grants? A.—Well, I cannot say in law whether there was or not. It is a question of law altogether.

Q.—Well, do you say there was delivery? A.—I could not say that, Mr. McPhillips; I cannot express an opinion.

Q.—The Committee want to know whether there was a delivery of the Crown grants 4,593 and 5,494 to the Columbia and Western Railway Company? A.—I cannot express an opinion with reference to that.

Q.—Well, but who is going to express an opinion? You are the Attorney-General of the Province. Do you agree with the preamble of Bill 16, as passed? A.—The question has never been decided.

Q.—No; but here is a Government Bill, headed the Hon. the Premier; I show it to you, No. 16; it reads, "were signed and sealed but not delivered." You say you never expressed any opinion on the facts? A.—That was a question at the time that was in the Courts as to whether there was a delivery.

Q.—The High Court of Parliament has said there was none executed. Isn't that what the fact is to day? A.—That is what the House said, certainly.

Q.—I want to know that, Mr. Eberts; you say that the recital is correct in accordance with the facts, "signed and sealed but not delivered"? A.—I am not going to express a legal opinion to you, Mr. McPhillips.

Q.—But I say on the facts? A.—Even on the statement of facts, I could not give an opinion.

Q.—You were one of the Ministers, and you know the facts as well, perhaps better, than this Committee who are endeavouring to find out the facts; and this Committee wants to know

Hon. Mr. Eberts—*Continued.*

whether, upon those facts, there was a delivery of those Crown grants; and I think we are entitled to have that answered? A.—Whether I thought there was a delivery?

Q.—Whether you say, on the facts, there was a delivery of those Crown grants? A.—I am not in a position to say whether there was a delivery or not.

Q.—Have you given an opinion one way or the other to anyone else? A.—I have not.

Q.—Do you contend to-day there was a delivery? A.—Do I contend to-day?

Q.—Yes. A.—I do not; I don't contend one way or the other.

Q.—Do you contend there was no delivery of these Crown grants? A.—I do not.

Q.—Well, now, what is it based on, then? You say that it was going to come up in a Court of law? A.—Yes.

Q.—If it did, what would have been the facts upon which delivery might have been established? A.—Delivery might have been established?

Q.—Yes; what would have been the facts that would have gone before that Court of law? A.—I suppose the whole facts in connection with the grants; I suppose the facts in connection with the Order in Council having been passed; the reading of the Order in Council that a copy was to be handed to the persons who were to receive the land; that the deeds were drawn and duly executed; and there may be some further facts.

Q.—Well, then, you have not formed any opinion one way or the other as to whether there was delivery or not of these Crown grants? A.—I have not formed any decided opinion whether there was delivery or not; because I could not give such an opinion. I don't think any person could, unless the facts were adjudicated on in a Court of law.

Q.—Did you refuse to give an opinion on Bill 16, which has become law? A.—I was not asked for an opinion on Bill 16.

Q.—You did not vote for it, did you? A.—I don't think I did, Mr. McPhillips.

Q.—You did not speak upon it and support it or oppose it, did you? A.—I did not.

Q.—Did you agree with its passage, or do you disagree with its passage? A.—I did not agree with its passage.

Q.—You did not agree. But do you think it was improper legislation on the facts? A.—I thought, under the circumstances, it was ill-timed legislation.

Q.—Ill-timed legislation. There is another preamble in this Bill No. 16, "And whereas the lands described in the Crown grants were not lands within the scope of the 'Columbia and Western Railway Subsidy Act, 1896.'" Do you agree with that preamble, Mr. Eberts? A.—No, I cannot.

Q.—You have formed an opinion upon that as a matter of law? A.—I did form an opinion on that, and always said so, that the Government had the power to give the lands—that the Lieutenant-Governor in Council had.

Q.—Yes; but, as a matter of fact, whatever your legal opinion may be, Mr. Eberts, hasn't it been well known from time immemorial, you might almost say, or at least during the history of parliamentary legislation, that the High Court of Parliament has time and again declared its intention and also declared the law, even notwithstanding judicial decisions, even before decisions and after decisions, Parliament has declared the intention of the Legislature and what is the law? A.—I have always understood that Parliament has supreme power.

Q.—Now, the Legislature has undertaken to say, "And whereas the lands described in the Crown grants were not lands within the scope of the 'Columbia and Western Subsidy Act, 1896,'"—but you say that your legal opinion was to the contrary? A.—I did say so.

Q.—But still Parliament has undertaken to speak contrary to that opinion of yourself; that is all, I suppose? A.—That is all there is.

Q.—But do you say now, in view of the facts that have been brought out in this Committee, as well as otherwise brought to your knowledge, that the Crown grants for blocks 4,593 and 4,594 were within the scope of the "Columbia and Western Railway Subsidy Act, 1896"? A.—I certainly do.

Q.—You do. You will remember Mr. Wells stating here before this Committee that he had an interview with you in your office when the question came up of a proposed change of these blocks of land from the British Columbia Southern to the Columbia and Western Railway; did you hear him make that statement? A.—I did not.

Q.—You know he did make that statement? A.—I saw it in the "Colonist" newspaper.

Q.—And also that there was a telegram before you, received from Mr. Taylor, asking that that should be done; and that, after considerable debate and writing and re-writing of tele-

Hon. Mr. Eberts—*Continued.*

grams in answer, finally you sent the word "Impossible." You have heard that he made those statements? A.—I have heard that he made those statements.

Q.—Now, do you say that no such question came up between you and Mr. Wells? A.—I have said so, Mr. McPhillips.

Q.—But I mean now, more particularly bearing on whether this could have been done—that is, whether these lands did come within the scope of the Columbia and Western Railway Subsidy Act? A.—Oh, that might very well have come up, because the question was spoken of when this matter was adjudicated upon.

Q.—You say that question may have come up? A.—I am perfectly well satisfied I spoke to Mr. Wells and Mr. Wells spoke to me with reference to the power under the Act.

Q.—And you say, then, that you never had at any time the view that it would not be within the scope of the Columbia and Western Railway Subsidy Act? A.—Not after I had given it careful consideration.

Q.—Can you fix the time when you came to the conclusion it would be within the scope of the Act? A.—I cannot, exactly; no. But it was before Mr. Wells went away, I know that.

Q.—It would be before Mr. Wells went away? A.—Yes.

Q.—But it would be before the Order in Council, I suppose, granting these lands, would it? A.—Well, not necessarily, Mr. McPhillips. It might, but not necessarily.

Q.—Do you think you gave an opinion before the Order in Council was made? A.—I cannot exactly state the particular time.

Q.—Well, now, as to Bill No. 16, Mr. Eberts, you say you did not approve of the Bill, either as introduced or as passed; is that what I am to understand? A.—I did not.

Q.—Was that Bill brought down without your being a consenting party to it? A.—I would have to consent to it.

Q.—Did you consent to it? A.—It was brought down by the Government.

Q.—But you are of the Government? A.—I am of the Government.

Q.—You are a member of the Government. Was it brought down as the result of an Executive meeting or the act of the Executive? A.—How do you mean to say, by way of Order in Council, or anything of that kind?

Q.—Of course we know that it came down by Message all right enough; but I want to know whether the Executive, as such, passed on the Bill, and it was introduced following upon an action of the Executive? A.—The matter was discussed in the Executive.

Q.—But did you agree to it? A.—Well, I am not going to say what I said in the Executive.

Q.—You say it was dealt with in the Executive, but you cannot say what your view was in the Executive. I don't wish to press you on that. But we may take it as clear, at any rate, that this Bill No. 16, as introduced or passed, did not meet with your approval, Mr. Eberts? A.—I had expressed a different view.

Q.—You had expressed a different view and you had not concluded to depart from that? A.—I had not concluded to depart from it.

Q.—And you have not departed from that view as yet? A.—I have not. I have an honest view of the matter.

Q.—But you would not say that your view is the view of the Government, would you? A.—Well, no, I would hardly say that.

Q.—But, then, who constituted the Government? A.—The members of the Government.

Q.—And you were one? A.—Supposed to be.

Q.—Do you think that a Government can be united in some things and disunited in others? A.—A Government measure is a Government measure.

Q.—You would not disclaim, then, any responsibility for Bill 16? A.—I have seen members of the Government not to accede to Government Bills. I will quote cases where members of the Government did not vote for Government Bills.

Q.—But I think our case is a little different. Do you disclaim any responsibility for Bill No. 16? A.—I was a member of the Government.

Q.—Do you take full responsibility for Bill 16? A.—I am a member of the Government.

Q.—Well, I want to know whether, as a Minister of the Crown and Attorney-General—and you are before the Committee in that capacity here—I ask you if you take full responsibility for Bill 16 as a Government measure? A.—I am a member of the Government.

Hon. Mr. Eberts—*Continued.*

Q.—Would you take political responsibility for Bill 16? A.—I am a member of the Government. I will give you no other answer.

Q.—As a member of the Government, do you say that that is the logical conclusion, that you take full responsibility for Bill 16? A.—I reply by saying, I am a member of the Government.

Q.—I think I ought to get a better answer than that. I think this Committee wants to know, and I think rightly wants to know, whether this Bill 16 is a Government measure, or they have to view the Government as a divided entity. Of course, it is impossible to divide an entity. But a Government, as you know, must accept responsibility as a whole; you would not dispute that proposition, would you, Mr. Eberts? A.—The Government is bound by its acts.

Q.—And Bill No. 16 was one of its acts, was it not? A.—Introduced by the Government.

Q.—Now, Mr. Eberts, we have two opinions laid before us, one from Mr. Hunter, now Chief Justice, and one from Mr. McCaul; and, without speaking at any great length on the subject, I may say that I think they are diametrically opposed to each other, if you read them both. A.—I have not; I never saw one of them; I never saw Mr. Hunter's opinion until I saw it in the Committee, and I have not had a copy of it; and I have not had a copy of Mr. McCaul's opinion, although I heard it read.

Q.—I may take it that you agree with Mr. Hunter's opinion and disagree with the opinion of Mr. McCaul? A.—Well, I had expressed an opinion some time before on the same lines as Mr. Hunter's opinion.

Q.—If you agree with Mr. Hunter's opinion, you could not very well agree with Mr. McCaul's, could you? A.—Well, no, if it is diametrically opposed to Mr. Hunter's opinion; that would not be logical.

Q.—I don't know that I am quite right in putting it as broadly as that; but Mr. McCaul's opinion, Mr. Eberts, in short, is that there was no delivery of those Crown grants upon the facts. A.—That is a different proposition altogether. Mr. Hunter did not give an opinion as to the delivery of the Crown grants; Mr. Hunter gave an opinion with reference to the power of the Government to grant those lands.

Q.—If this Committee can have the opinion of Mr. McCaul upon whether or not there was a delivery of those Crown grants, why cannot you give us an opinion? You are the Attorney-General of the Province; why cannot you tell this Committee whether there was or not delivery of those Crown grants upon the facts? Surely you know those facts, perhaps even better than Mr. McCaul? A.—I don't know all these facts. I don't know all the facts with reference to what took place between Mr. Wells and Sir Thomas Shaughnessy; I don't know those facts. I have seen by telegrams that certain other things are spoken of as having taken place there. I don't know those facts. They have never been reported to me.

Q.—You have seen his evidence and heard what he said here, haven't you, before this Committee? A.—I saw his evidence in the "Colonist" newspaper.

Q.—Well, isn't it an extraordinary thing that the Government can advise outside counsel more fully upon subjects than they can their Attorney-General, and get an opinion from the outside counsel when they cannot get an opinion from the Attorney-General? Is that what I am to understand? A.—I don't know that.

Q.—That would appear to be the fact. The Government has undertaken, apparently, to advise Mr. McCaul of the facts and get an opinion from him, which we have before this Committee; and do I understand that you are unable to give the Committee your opinion on the facts as to whether there was delivery or not of these Crown grants? A.—I have not had the facts placed before me.

Q.—Don't you think it was an ordinary part of your duty, having regard to the office that you hold, to acquaint yourself with the facts and be able to advise the Government as to whether there was or was not delivery of these Crown grants? A.—I am prepared to advise the Government.

Q.—But the Government has not taken your advice on the subject; is that it? Have you tendered your opinion to the Government on these facts? A.—I have not been asked.

Q.—And you have not given any opinion, then, as to whether there was a delivery or not? A.—I could not give an opinion at all, because I think that is a great deal a question of fact.

Hon. Mr. Eberts—*Continued.*

Q.—Well, you have seen the opinion of Mr. McCaul here, haven't you? A.—No, I have not read it; I have not had a chance to.

Q.—Isn't it an extraordinary thing that this Committee has an opinion from Mr. McCaul, and the Attorney-General of the Province has not read it? A.—I don't know that Mr. McCaul has given an opinion here.

Q.—How are opinions got by the Government of the Province of British Columbia? A.—I don't know that they were got by the Government of the Province of British Columbia.

Q.—Well, who got it? A.—I think the Chief Commissioner got the opinion.

Q.—Is it the practice of this Government for each Departmental officer to get a legal opinion whenever he sees fit? A.—Of course, I hold Mr. Wells perfectly blameless for taking Mr. McCaul's opinion, because Mr. Wells came to me and said: "was there any objection to getting Mr. McCaul's opinion on the subject?" and I said, "Certainly not, so far as I was concerned."

Q.—Do you say it was an Executive act to get Mr. McCaul's opinion, or merely the act of the Chief Commissioner of Lands and Works? A.—I don't know whether it was ever brought up in the Executive or not. I never heard that it was brought up in the Executive.

Q.—It would seem an extraordinary thing that this Committee has before it an opinion of an outside counsel, and we have not the opinion of the Attorney-General, upon a matter that we are inquiring into, whether there was delivery or not of these Crown grants? A.—Well, Mr. McPhillips, I have expressed an opinion with reference to the course to pursue with reference to this matter. I expressed an opinion at the time Mr. Wells brought the question up and spoke to me with reference to intervening on behalf of a man by the name of Rogers, who alleged—and a letter came from the agent at Fort Steele—alleging that the Columbia and Western Railway Company had brought actions in the month of February against Mr. Rogers, claiming an injunction and restraining him from going on applying for his grant, I think, and also an action for trespass. And I expressed an opinion at that time that the proper thing for the Government to do, under the circumstances, if there was any possibility of doubt with reference to it, was to intervene in the matter. And Mr. Wells was of opinion the same way. But, eventually, that opinion was not concluded. And I base my opinion in matters of that kind upon the simple fact, this way, that either the Government had or had not the right to give those lands. If they honestly gave those lands to the Columbia and Western Railway Company, and there was an honest contract between the parties, they should have their lands. If, on the other hand, it could be shown that the Government had exceeded its powers under the Act and had no power to do that, then the Company could not succeed; and the proposition would be simply this: If they were not entitled to the lands there the Courts could not possibly give them to them, and if they were entitled to them they had the right to show whether they were entitled to them. Now, that was my view of the whole subject. And that is the general view; that is the view that I have arrived at after a great deal of consideration and reading up authorities on the subject, because I am satisfied, and always have been satisfied, that the Crown has no right, by way of legislation, to take away a possible right that a subject has, be he ever so humble or ever so great, without compensation. And I can only draw your attention to the fact—although it may be a theory—it may be a theory of law that the Legislature may take, by legislation, the rights of people and trample upon those rights; howsoever that may be, still, as a general principle, and laid down in all authorities—and you will find it in all the authorities—that they are not entitled to do anything of that kind without due compensation or a hearing of parties. Now, that is what I base my opinion on.

Mr. Helmcken: How do you reconcile that with your action on the Kaslo and Slocan Bill of 1901? A.—I can reconcile it very easily with reference to the Slocan Bill. There was nothing taken away from the Kaslo and Slocan Railway. There was nothing taken away from them in the world.

Mr. Helmcken: I will ask you that later on.

Mr. Smith: I don't think that comes up in this case at all.

Mr. McPhillips: It is a fair matter of cross-examination.

The Witness: Then you better take all the members of the House and cross-examine them on that.

Mr. Smith: I don't think it comes up at all.

The Chairman: It has not come up.

Hon. Mr. Eberts—*Continued.*

Mr. McPhillips: Notwithstanding this view you have just now explained, you were not favourable to any intervention on the part of the Crown in those cases? A.—In which case?

Q.—The Rogers case? You were not favourable, after all, to the Crown intervening in those actions? A.—Didn't you hear me say I was in favour of it?

Q.—I understood you were not. A.—I don't think you understood that at all.

Q.—I understand that some request was made of the Government and the Government failed to answer that request favourably? A.—That was not in the Rogers case at all. That was in the case where the solicitors for the Columbia and Western, or the Canadian Pacific Railway Company's solicitors in Vancouver, Davis, Marshall and Macneill, had set out all the facts in connection with, as they said, certain trespasses that had been made upon lands which they held to have been duly granted to them; and they asked the Government to intervene to test the whole question.

Q.—And if your view is such as you express it to be, why didn't you fall in line with that suggestion and advise the Government to intervene in the action? A.—I don't know that I did not do so.

Q.—Well, but did you? A.—I think I said it was a proper course to pursue.

Q.—But they were not answered in that way, were they, Messrs. Davis, Marshall and Macneill? A.—I don't know what the answer is, the answer went through the Provincial Secretary's Office.

Q.—Well, did you give your opinion as Attorney-General to the Government? A.—A written opinion?

Q.—Well, verbally or written? You say you gave a verbal opinion to the end that there should be intervention on the part of the Government? A.—I have said that I always thought it was the proper thing to do.

Q.—But now, Mr. Eberts, you have gone a little afield. I submit, with all deference to you on this subject, when you say the Government should do this and should do that, don't you know, as a matter of fact, Mr. Eberts, that this question as to whether the Columbia and Western Railway Co. was entitled to these lands could never be settled in an action between subject and subject, that the Crown would have to be a party to it? A.—I believe the Crown would not be bound.

Q.—Not only would the Crown not be bound, but the question could not be agitated as to whether or not the Crown grant was valid if the action was merely between subject and subject? Don't you know, as a matter of fact, that the Crown grant would be upheld by the Court unless the Crown moved to set it aside? What right would the Court have to set aside the Crown grant? Would not the presumption be that everything was regular in that respect in an action between subject and subject? A.—Yes, but they would have to have the Crown grant, wouldn't they? A man who seeks in an action of ejectment has to succeed on the strength of his title, and not on the weakness of his adversary's title.

Q.—But the fact that the Crown grant happened to be in somebody's possession would not alter the position of the lawful holder? A.—That might be so.

Q.—Then, if those Crown grants might be in the possession of the Chief Commissioner of Lands and Works here, the facts could be analysed? A.—That might be so. I think this man Rogers applied from the fact of having been given the right to go there he concluded that the Government had to protect him.

Q.—But, as a matter of fact, no question as to the validity or invalidity of Crown grants could come up in a Court of law unless the Crown was proceeding to attack its own grant, could it? A.—I don't know whether it could or not.

Q.—Now, reverting again to this opinion of Mr. McCaul, I thought I understood from you that you were a consenting party to that opinion being given? A.—Mr. Wells spoke to me and said he wanted to get the opinion of Mr. McCaul, on the subject.

Q.—Well, you were not objecting to it? A.—I did not object to any person getting an opinion on the subject.

Q.—Well, would you say it was got with or without your consent? A.—I said I had no objections to their getting the opinion of Mr. McCaul or any person else.

Q.—Then we have this extraordinary matter before us, that an opinion was got from counsel, and that you did not even undertake to read it after it was got? A.—Well, I did not undertake to read it after it was got—the opinion was got and it was read almost before it was cold, I think. I think Mr. McCaul had probably finished his opinion not more than ten minutes before he brought it in and read it.

Hon. Mr. Eberts—*Continued.*

Q.—The change in the preamble of Bill No. 16 from the way it was introduced, “were duly executed” to “were signed and sealed but not delivered,” is a change in accordance with Mr. McCaul’s opinion as the Committee sees it. A.—I don’t know whether Mr. McCaul gives an opinion on that line or not.

Q.—You don’t know because you have not acquainted yourself with the contents of it? A.—I have not perused the authorities nor his opinion.

Q.—So that the change in the preamble of this Bill 16, in striking out “duly executed” and inserting “signed and sealed but not delivered,” is not in accordance with any advice given by you? A.—No, it is not.

Q.—Now, you stated, Mr. Eberts, in your examination, that the Company could not succeed in a Court of law if these lands were not rightly given. The Company, if it had Crown grants, and established that it had Crown grants, would have been entitled to succeed in a Court of law, wouldn’t it? A.—Well, if they had Crown grants probably they might have succeeded. On the view expressed by the Chief Justice, Sir Matthew Baillie Begbie, “How are you going to swear off that seal?”

Q.—But the position this Province was in was this, that possibly the Province might have it determined by a Court of law that these two blocks, 4,593 and 4,594, were—— A.——— rightly given.

Q.——— rightly given. A.—That might be determined.

Q.—Not within the provisions of the “Columbia and Western Railway Subsidy Act, 1896,” but given, perhaps, out of the general power in the Crown to part with Crown lands? A.—No such a proposition could possibly arise, Mr. McPhillips.

Q.—I show you how it could have arisen. A.—I don’t think so.

Q.—If the Government was not a party to that action the Court of law would be disentitled to question the Crown grant. I think that is absolutely true as a proposition of law. And the Company would have succeeded in the Act. A.—You mean to say the parties could not have raised the question as to the Crown grants?

Q.—Yes, that he could not have raised the question at all, and the Company would have succeeded. The only way I can see that you could bring that question up would be by the Crown attacking the grants. A.—Well, the Crown could have attacked the grants.

Q.—But you did not advise the Crown to attack the grants? A.—I never was asked that.

Q.—But you would not, as you understand the facts, advise the Crown to attack the grants? A.—How do you mean advise them?

Q.—As the law officer of the Crown, you would not advise the Government to do so, on the facts as you understand them? A.—Had the Bill not passed?

Q.—Yes. A.—If I were asked for my opinion as to how to get rid of the grants, I would say attack the grants.

Q.—But you would not advise that on the facts, you say? A.—You can get at it in many ways, can’t you?

Q.—Now, Mr. Eberts, the House, and this Committee, as being members of the House, heard the statement of the Minister of the Crown from his place, the Hon. the Chief Commissioner of Lands and Works—I don’t know whether you were present in the House or not—but he rose in his place and stated that those Crown grants were never delivered. Were you present, Mr. Eberts, when he made that statement? A.—Well, I was there every day in the House, but I just forget about that.

Q.—But you know the credence which, under our form of Government, we give to even a statement of honour of the honourable members of the Legislature, and then again the credence that ought to be given to the statement of a Minister in his place in the House? A.—I don’t know—from the tenor of my cross-examination I would be led to believe that you did not have that opinion.

Q.—I don’t know how that bears on this matter, Mr. Eberts; my opinion was not given there. I say, though, that the House had the statement of the Chief Commissioner of Lands and Works, from his place, that these Crown grants were not delivered. Hadn’t the House that statement? A.—I don’t know; I don’t just remember the words.

Q.—Well, do you dispute that the statement was made by a member of the Ministry? A.—Do you mean to say during the discussion of this Bill?

Q.—Yes. A.—I don’t know; I was not there; I did not hear it.

Hon. Mr. Eberts—*Continued.*

Q.—Well, I will put it to you that the statement from the Hon. the Chief Commissioner of Lands and Works made in the House was that these Crown grants were never delivered; and no contradiction of that statement in the House? A.—Well, I don't think that question relative to the delivery of the Crown grants can be positively stated unless there is a judicial interpretation of the contract between the parties.

Q.—No, but what I say is, there was a fact stated in the Legislature that these Crown grants were not delivered? A.—Well, you say that was a fact; I did not hear it.

Q.—And the Legislature has acted on that statement? A.—I don't know what was in the minds of the Legislature at all.

Q.—They have acted on it. I ask you, with a statement from a member of the Government that those Crown grants were not delivered, and that statement passing without any denial, would not the Legislature, in ordinary course, be entitled to act on it as being true? A.—I don't know what the views of the honourable members of the opposition are on the subject.

Q.—Well, you held different views, Mr. Eberts, did you? A.—It seems to me, from what I know of political matters, that all the statements that are made upon the Government side of the House are not always acceded to by the members of the Opposition side of the House.

Q.—But you had different views, Mr. Eberts, and you did not even venture to make them known to the Legislature on that point, did you? A.—I don't know that that is—

Q.—Do you think it was right and proper, Mr. Eberts, if you have these views that you seem to have, that the Legislature should have been left unadvised of them? Might not the Legislature assume, owing to your silence, that the facts were true as stated; that there was no delivery of these Crown grants—there had been no delivery of these Crown grants? A.—I don't think I could state whether there was a delivery or non-delivery of the Crown grants if I had made a statement in the Legislature.

Q.—But if this action is a right action or a wrong action, is not the Legislature entitled to have the aid of your suggestions? A.—We all have our views on these matters.

Q.—At any rate, you did not intend to give the Legislature your views on the subject-matter; you did not, as a matter of fact? A.—I did not speak on the subject.

The Committee here adjourned until Monday, May 18th, 1903, at 10 A.M.

MONDAY, May 18th, 1903.

The Committee met at 10 a. m., pursuant to adjournment.

Present, the full Committee.

The minutes of the last session were read and adopted.

HON. MR. EBERTS in the witness-box; further examined by Mr. McPhillips:—

Q.—Mr. Eberts, you told me that you were favourable to intervention on the part of the Government in the litigation that is now pending, relative to blocks 4,593 and 4,594, as I understood you? A.—I thought the matter could be cleared up that way.

Q.—Now, what was the information within your knowledge at the time you were of that view, or now, as to the delivery or non-delivery of the Crown grants? A.—Well, I thought that was a matter of fact all the time.

Q.—What did you understand to be the fact? We have had the statement of Mr. Wells that he never delivered these Crown grants, that they never were out of his possession; that is one statement of fact. Did you agree that that was one fact? A.—Well, I think that statement was made by Mr. Wells.

Q.—Well, did you have any information which threw some doubt upon whether that was true or not? A.—I had other information except through Mr. Wells?

Q.—Yes. A.—No, I had not.

Q.—Did you or did you not know that it was contended on the part of the Railway Company that delivery had been made? We will now deal with manual delivery. A.—No, I did not.

Hon. Mr. Eberts—*Continued.*

Q.—You know that they put that forward now? A.—Well, I have seen that by the telegrams since this came on. I have no knowledge of that at all.

Q.—But when you said you were favourable to intervention, I want to get at the facts as far as you knew them, as to the extent to which the Government had gone with respect to these Crown grants? What was the extent of your knowledge? A.—Well, Mr. McPhillips, if I might go back a little bit further, I could tell you. From time to time, I think in the year 1902, applications had been made for licences upon this block 4,593, I think it is; and I remember once the Premier and Mr. Wells and myself had a conversation about the matter in Mr. Wells' office. Some parties from Rossland were pressing strongly for these licences, and the question arose as to whether or not the moneys and all the papers should be returned to the parties. And then the question arose with reference to generally getting the whole matter settled up, and adjusting the question as to whether or not—

Q.—Well, how far had this matter proceeded then; had these Crown grants been signed and sealed? A.—Oh, that was only in the year 1902, the fall of 1902, perhaps.

Q.—That would be before the cancelling Order? A.—No, that was after the cancelling Order.

Q.—It was the present Premier? A.—It was the present Premier, yes.

Q.—Colonel Prior? A.—Yes.

Q.—It would be after the rescision Order of the 18th of March? A.—It would be after the rescision Order, some time in the fall.

Q.—You were then favourable to getting this matter dealt with and closed up once for all? A.—I never doubted then that they were not all favourable to that.

Q.—Was there any suggested line of operation mentioned then to accomplish that? A.—Well, it was—

Q.—Were these suits pending then? A.—I couldn't say, Mr. McPhillips; I don't know when the actions arose.

Q.—Was it suggested then that it would be determined in a Court of law what the position was? A.—Well, it was talked over then, although no finality to it at all.

Q.—You were at that time, too, favourable to that disposition of it? A.—I thought that was the true way to settle the whole thing—without giving any opinion as to the result of it.

Q.—Now, Mr. Eberts, I think you have seen this letter of Davis, Marshall and Macneill's that is in here, of the 10th of March, 1903? A.—Yes.

Q.—I draw your attention to one paragraph of it, the second to the last, dealing with these blocks, 4,593 and 4,594: "This means a great deal of litigation, and the Company think it would be much better, in the interests of all parties, if the Government would intervene in the proceedings which we have taken to test the validity of the licences and patents, and be bound by the result." Now, you say you were favourable to intervention in that way, Mr. Eberts? A.—Well, that letter came up, I think, contemporaneously with a letter from the Agent of the Government at Fort Steele, Mr. Armstrong, in which he set out the fact that Mr. Rogers complained that he had been served with a writ by the Columbia and Western Railway people, an action against him for trespass and an injunction for going on lot 4,594—that is the lot west of Morrissey, isn't it, 4,594?

Q.—Yes. A.—And alleging that as he, Rogers, had in the month of December of last year got the right to locate upon this lot, 4,594, that he ought to be protected by the Government. And it was then that Mr. Wells, as I say, when that matter was first brought up, talked intervention. The Rogers letter came up first, I think, and then afterwards this letter came on from Davis, Marshall and Macneill.

Q.—Did that letter come to your Department? A.—I think that letter is in Mr. Maclean's possession.

Q.—I think we ought to get it. A.—I will just send in for it now.

Q.—Did you decide to intervene in that case? A.—No, we did not.

Q.—But you were favourable to intervention in that case too? A.—I was; I thought it was the proper thing to do.

Q.—Now, did Mr. Wells on these occasions point out to you or to the Government that these Crown grants had never left his possession? A.—I think Mr. Wells said that.

Q.—He always said that? A.—I think so.

Hon. Mr. Eberts—*Continued.*

Q.—Well, now, suppose, Mr. Eberts, you had gone on and intervened in these actions, what would have been your position? You would have to take the position to support these Crown grantees, the individuals, or the Company, would you not. A.—Yes.

Q.—You would have to take either one side or the other? A.—Yes; we would intervene on behalf of Mr. Rogers in that case.

Q.—If there had been intervention it would have been on behalf of Mr. Rogers here? A.—Certainly.

Q.—And these other individuals? A.—We did not take up the question of intervening on behalf of the Railway Company.

Q.—Suppose you had intervened in any way with respect to lot 4,593; there had been no grants made there? A.—There was no intention to take steps there at all.

Q.—They speak about it too—“We are acting for the Columbia and Western Railway Company, and have taken proceedings against a number of persons who have applied for purchase of land in the East Kootenay District, for which a Crown grant was issued in favour of the Columbia and Western Railway, and described as lot No. 4,593.” That is in Davis, Marshall and Macneill’s letter of the 10th of March. A.—That may be; I don’t remember the wording of that.

Q.—Suppose you had intervened in any way in respect to block 4,593, would you have taken up the position then of the licensees? A.—There was nothing to intervene on 4,593, because no licences had been granted, as I understand—I am informed that no licences had been granted in 4,593—and it was only in reference to 4,594, the block lying west of Morrissey.

Q.—Now, if you had intervened, then, in these cases, you say you would have taken up the case, not of the Columbia and Western Railway Company, but the case of the other individuals concerned? A.—Yes.

(Witness here produced letter of J. F. Armstrong, sent for.)

Q. (Reading letter)—

“FORT STEELE, 23rd February, 1903.

“*The Deputy Commissioner of Lands and Works,*

“*Victoria, B. C.*”

“SIR,—Mr. R. W. Rogers, of Morrissey, has requested me to call the attention of the Department to the fact that he has been sued by the Columbia and Western Railway in the Supreme Court at Vancouver. The plaintiffs’ claim, as endorsed on the writ, is ‘for damages for trespass and for an injunction restraining the defendant from trespassing upon Lot numbered 4,593 (in lead pencil, “4,594”), Group 1, Kootenay District, and more particularly upon that portion situate on the west bank of Elk River commencing at a post planted at James A. McDonnell’s north-west corner and marked “R. W. Rogers’ N.E. corner”; thence west 20 chains; thence south 80 chains; thence east 20 chains; thence north 80 chains to the place of beginning, and for an injunction restraining the Department from completing his application made to the Crown for purchase of the said lands.’

“Mr. Rogers was allowed to purchase this land by your letter of the 16th of December, 1902, No. 8,947, and he wishes to know whether the Government will protect him.

“I remain, Sir,

“Your obedient servant,

“J. F. ARMSTRONG,

“*Government Agent.*”

I see, in pencil, “4,594” above “4,593.” I fancy the latter is a mistake; I don’t suppose there have been any sales in 4,593? A.—Well, this must have been an error about 4,593, because there is no doubt about it that no person has received a Crown grant for any portion of 4,593.

Q.—No; except they may have got a right to go on. A.—Well, I don’t know that any person had. I am instructed that no person has been.

Q.—However, we can follow this up by getting this from Mr. Wells. A.—I may tell you that, subsequently, Mr. Charles Wilson made an application—appeared here—

Q.—Acting for whom? A.—Well, I don’t know whom he was acting for. He told me he was acting for a number of people who had been served with writs, and that he was acting as agent for a Mr. J. A. Harvey, a barrister, of Fort Steele, and he wanted the matter brought up again before the Executive, with a view of getting the Executive to intervene.

Q.—But, in fact, you say, Mr. Eberts, you were always favourable to intervention; but the Government did not so decide, anyway? A.—The Government did not so decide.

Q.—Would you say that they decided against it? A.—I think that was the decision.

Q.—Now, Mr. Eberts, in this intervention you think that the only facts that you would advance would be the question of delivery or non-delivery; that would have been the question? A.—I suppose it would.

Hon. Mr. Eberts—*Continued.*

Q.—You would not have advised the further question as to whether or not the Crown grants could have validly issued in pursuance of the “Columbia and Western Railway Subsidy Act, 1896”? A.—Whether they could be issued?

Q.—Could have validly issued. A.—That could all be raised in the action.

Q.—You would have advised that point being contested? A.—That never was brought to my attention at the time, Mr. McPhillips. If an intervention took place you would have to set up every defence that the Government had, because on the 18th of March they had passed a rescinding Order.

Q.—But, you see, Mr. Eberts, you would be in this difficulty: as Attorney-General you had given an opinion that these Crown grants could validly issue in respect to the “Columbia and Western Railway Subsidy Act, 1896”? A.—Yes; but I have no reason to doubt that Mr. Rogers could not set up that. The mere intervention of the Government would not oust Mr. Rogers’ right to set that up.

Q.—I think it would, from my point of view; I think that unless the Government raised that point no subject could raise it. But, in your opinion, Mr. Eberts, that the Crown grants for 4,593 and 4,594 could validly issue in respect of the “Columbia and Western Railway Subsidy Act, 1896,” it would be rather difficult for you to raise that point in the Courts, wouldn’t it? A.—I don’t know whether it would be any difficulty to raise it at all; surely I would not be infallible in so far as my opinion is concerned; I only gave my opinion on the subject.

Q.—But that is the way the facts stand, anyhow at present; there is your opinion and the opinion of Mr. Hunter? A.—The idea relative to intervention would be that the whole matter would be sifted and found out whether or not there had been any delivery, and whether there was the right of the Government to make the grant in that locality. However, that is a pure legal question.

Q.—Still, whatever that might be, your opinion is now, I suppose, still that those Crown grants could rightly issue in pursuance of the “Columbia and Western Railway Subsidy Act, 1896”? A.—I have not changed my opinion. As a matter of policy, the Lieutenant-Governor in Council would be entitled to issue them.

Q.—But, in your opinion, as a matter of law, they were entitled to do it? A.—As a matter of policy or a matter of law; it comes to the same thing.

Q.—You could do a thing legally, but you might not consider it wise to do it politically. If I understand it, Mr. Wells laid great stress upon this particular action. He said it was a wrong political action? A.—I don’t see how you can do a thing politically, unless you are legally entitled to do it, to make it valid.

Q.—Mr. Wells has said here he considered that the Government would go if these Crown grants issued; and he said he told you that. Do you deny that? A.—I have no recollection of that. He said that I also told him to let the Government go. I never said that at all. There was no man in the House—and I say it with deference—that worked harder in 1902 to uphold the Government than I did.

Q.—You were acting Premier, I think? A.—I was acting Premier, and I was acting very strenuously, and did everything I could, with my brother Ministers, to uphold the Government, and not suffer defeat.

Q.—But I ask you, being acting Premier, why it was that you permitted one of your colleagues to give answers to the Legislature that were not in accordance with facts? A.—Well, that is your deduction, Mr. McPhillips.

Q.—Well, you yourself considered it might be more clear? A.—There is a great deal of difference between saying that an answer is not in accordance with the facts, that it was an improper answer altogether, and saying that it might be more clear. You draw your deduction; and I suggest that another deduction might be taken of it.

Q.—I think that is a rather more indulgent way of looking at that answer than the way you look at some of the other statements made by Mr. Wells? A.—In what way?

The Chairman: I think you are getting into a political discussion now.

The Witness: I think so, too.

The Chairman: I would like to ask one thing for my own information. Would the fact of the Government intervening, say in Rogers’ case, mean a recognition on the part of the Government of the right of the C. P. R. to oust Mr. Rogers legally? A.—No, it would not. As I understood the question of intervention, it would only mean this, that in any action that

Hon. Mr. Eberts—*Continued.*

the C. P. R. brought against Rogers it would not bind the Government, and the Government could not be bound any way at all unless they went to the Court and intervened and said they would be bound by any judgment the Court gave them on the question.

The Chairman: It would not be a recognition upon the part of the Government of the right of the C. P. R. to oust Rogers? A.—No. On the contrary; it would be a defence. They only intervene for the purpose of defending Rogers.

Mr. Helmcken: The Crown could raise a defence which would not be open to Rogers.

Mr. McPhillips: But the Crown's defence would be only according to the instructions given by the Attorney-General? A.—The instructions of the counsel who acted for the Crown would be to defend Mr. Rogers in his rights.

Mr. McPhillips: To any length? A.—To every length.

Q.—To every length; but consistent with the facts within the knowledge of the Crown, I suppose. For instance, if Mr. Wells were seen by the counsel acting in the matter, Mr. Wells would have undoubtedly told that counsel that there was no delivery of the Crown grants? A.—I think that would be set up, of course.

Q.—Do you think it would be? A.—I should hope so.

Q.—And do you think it would also be set up that the Crown grants were invalid, when your opinion was to the contrary? A.—I think that would be set up. Mr. Rogers could set that up himself, once the Crown had intervened.

Q.—You think Rogers could set that up? A.—Certainly.

Q.—Do you really believe he could, as a matter of fact? A.—Mr. Rogers could not set that up unless the Crown intervened. Once the Crown intervened there is no reason, then, why he should not set it up.

Q.—I don't agree with that. A.—You may be perfectly right, Mr. McPhillips, but I don't know.

Q.—It seems to me that unless the Crown attacked the grant itself, no individual could attack it. A.—That is exactly where you do attack a grant, by the intervention of the Crown; and it is only through the intervention of the Crown that you can attack a grant. I think that case of Farmer and Livingstone goes somewhere to that extent.

Q.—In Farmer and Livingstone the Dominion Land Act comes in, a special enactment dealing with that subject, which we have not got, that the individual can attack a grant. If the Crown came in and said merely no delivery, and did not say that the Crown grants were invalid, the individual could not take it up.

Mr. Duff: The Crown intervenes and takes the whole cognizance of the thing.

Mr. Helmcken: That is the practice, the Crown is the one. A.—The Crown could not blow hot and blow cold. Do you mean to say they could say in one breath, on the 18th of March that they had rescinded this, and on the 20th of December say, "You can take the land"?

Mr. Duff: But the Crown is not bound by the mistakes of its officers. There is where you get back on that.

Mr. McPhillips: Suppose it were that there was no delivery on the one hand; of course, you would not need to go into the other question. But suppose it was that there might have been in law delivery; that is, sufficient to perhaps entitle the Court to so hold, yet, at the same time, if the proceedings were of such a nature between the two parties that it was reasonable that this matter should not be held to be concluded, especially if it was an invalid transaction, I think, in the interest of the people, perhaps, it would be a very proper thing to hold that these Crown grants were invalid. For instance, don't you think that the solicitor of the Columbia and Western Railway Company ought to have been advised as to whether he was getting a good title or not? Wasn't it his duty, just as much as the duty of any solicitor acting for a party receiving a deed, to examine the "Columbia and Western Railway Subsidy Act, 1896," and satisfy himself that these two Crown grants for 4,593 and 4,594, if issued and delivered, would give his clients title? A.—Well, wouldn't he have to show that in an action?

Q.—Wouldn't it be his duty, just as much as in a transaction between individuals? A.—Wouldn't it be clearly his duty to look at the title from the Crown, as it would be to see to a title between individuals?

Q.—Yes. A.—I presume it would. I don't know what his duties are.

Q.—That being so, if it really is that there was no power in the Government to issue those grants, and they could not issue them in pursuance of the "Columbia and Western Railway

Hon. Mr. Eberts—*Continued.*

Subsidy Act, 1896," it would be proper enough for the Legislature to so declare? A.—You would not say the Legislature would have to trust itself to the Court? A.—I make no reference to that at all.

Q.—Now, Mr. Eberts, you were examined as to this question of morally entitled and valueless land. It seems that Mr. Wells has a very strong view on that, and you, apparently, would appear to have some view on that. A.—What question is that?

Q.—That the Columbia and Western Railway Company was entitled to some consideration at the hands of the Government outside the language of the "Columbia and Western Railway Subsidy Act, 1896"; that is to say, that morally the Government was to see to it that they got land that was of some value? A.—I don't see that the Columbia and Western Railway Company had any right or power to get anything except under the Act of 1896.

Q.—Well, Mr. Wells said that if it figured out that they were to get a lot of mountain tops that it would be ridiculous to ask them to take those. You don't agree with that, Mr. Eberts? A.—That would be a question altogether with the Government. If they are entitled to get mountain tops or to go to other places, it is a question for the Government to say which they would give them, if they are entitled to them.

Q.—But the Legislature spoke about that in the Act itself? A.—The Act speaks for itself, Mr. McPhillips.

Q.—It would have been a simple enough thing, would it not, to have put into the Act, if it had ever been the intention of the Legislature to do so, that they were to get coal lands, oil lands, agricultural lands, arable lands, or any well defined lands, wouldn't it? It would have been simple enough to have put verbiage in there which would have conveyed such meaning; but it is not there; you do not find that kind of language there? A.—I do not find that language there, no.

Q.—Therefore, I cannot see what this moral claim is, at all. Mr. Wells seems to think it was a right and proper thing that the Company should go roaming around in the Districts of Yale and Kootenay and select their lands. A.—I don't think Mr. Wells contended that; I don't see that in his evidence at all.

Q.—You do not? A.—No.

Q.—That is the way we understand it here. A.—I read his evidence very carefully in the newspaper, and I never saw that Mr. Wells contended that at all, that they had a right to roam around all over Kootenay and get the lands wherever they could.

Q.—He said that; and he said it would be absurd to ask them to take valueless land; and he said it would not be anything out of the way for them to take coal lands in the Similkameen; he said it would be a good thing if they got coal lands in the Similkameen, they might build a railway there. A.—There are not very many valuable coal lands in the Similkameen.

Q.—There are valuable coal lands in the Similkameen? A.—I don't understand that. I understand there are some valuable coal lands in the Nicola Valley, which have been opened up by the Nicola Coal Company. I understand there are some lands in Nicola that may have coal; but I have not examined it; I am not an expert, and I don't know anything about it.

Q.—But you don't say that the Government of this Province had to go outside of the language of the "Columbia and Western Railway Subsidy Act, 1896," and give the Company other lands if they found that there was a large acreage that was valuable? A.—I am perfectly satisfied that the Government could not go out of the Act of 1896 and give them lands that were valuable; they could not do it; the Act speaks for itself.

Q.—But the contention is that if the lands within the area were valueless, that the Government could morally go outside and give them other lands more valuable? A.—Although incapable of doing so?

Q.—Well, Mr. Wells said that Bill 87 should have rightly passed, because it was unfair to ask the Company to take valueless lands, that is to confine them to the provisions of the "Columbia and Western Railway Subsidy Act, 1896"? A.—I don't know anything about that.

Q.—Well, you don't contend that, Mr. Eberts. Don't you remember on the hustings, Mr. Eberts, at Saanich, contending that the lands of the Columbia and Western Railway Company which they were getting were valueless lands anyhow, so valueless that the Company were willing to sell them back to the Government at 20 cents an acre? A.—I did not say so. I said at Saanich, when you are talking about the great value of some of the lands of the

Hon. Mr. Eberts—*Continued.*

Columbia and Western Railway Company, that an agreement had been arrived by which the Company would take \$4,000 a mile between Midway and Robson; and if you take that at the rate of 20,000 acres a mile between these points, it would amount really to 20 cents an acre for the land.

Q.—Well, Mr. Eberts, you say that you did not make the statement on the hustings at Saanich that the lands that the Columbia and Western Railway Company were getting, after all, were valueless lands, lands that they only valued at 20 cents an acre? A.—I did not make that statement. I said that was particularly with reference to the lands in section four of the Act; and I say that the railway was willing to take \$4,000 a mile for it, which, at the rate of 20,000 acres a mile, would be putting it at the rate of 20 cents an acre. It is easily calculated out. From Christiana Lake to Midway, I think, is 45 miles.

Mr. Oliver.—Forty-five miles.

A.—They would get 900,000 acres for the 45 miles, or, according to the calculation, that would be \$180,000 in cash; that is 20 cents an acre. It was brought up many times before the Government. I never gave any other statement.

Q.—Now, was not this the way you put it, Mr. Eberts, that the lands to which the Columbia and Western Railway Company was entitled, not limiting it to section four or any section whatever, but lands taken over an area of country from which the best lands had been selected, that the consequence was that the Company at any time was ready to surrender them at the rate of 20 cents an acre, and that in the bonds of the Province as well? A.—I did not. It was a question with reference to section four of the railway, and no other portion of the railway was mentioned at all.

Q.—We will deal now with section four. The lands for section four cannot be given except some Statute is passed; isn't that the fact? A.—Because they have not built section five.

Q.—Now, Bill 87 came down with your approval, did it? A.—Bill 87 was brought down.

Q.—Did you draft it? A.—I have told you that four or five times that I did not.

Q.—You did not draft it; it was a Government Bill. Don't you know that under Bill 87 the Company could get lands through the Districts of Yale and Kootenay? A.—Well, so they could under the Act of 1896.

Q.—If you gave them lands in the part of the Districts of Yale and Kootenay, do you mean to tell me that the Company were ready and willing to give those lands up to the Government at 20 cents an acre? Suppose that Bill had passed, do you mean to tell me that the Columbia and Western would have sold the lands for section four which they were at liberty to take in any part of Yale and Kootenay, at 20 cents an acre? A.—It depends on what lands they got.

Q.—Mr. Wells said that they could take any lands—that they might get, perhaps, the best coal lands? A.—Perhaps they might get them.

Q.—I think the country has but one view about a railway company, and that is that a railway company would enforce its contract to the letter. A.—How could they enforce it to the letter?

Q.—They could enforce it against the Government? A.—How could they enforce it against the Government?

Q.—In the Courts. Surely the Government would not prevent justice being done. You are contending now, Mr. Eberts, that the intervention of the Courts should be taken in these cases. Surely you would not have stood in the way and not given them a chance to contest their right? A.—I could never believe that the Government at the time, after having rescinded—having passed that rescision Order—they were not going to give these two blocks. Having passed the rescision Order, they would not turn around and in the next breath give them those two blocks under this Bill.

Q.—We have some evidence of intention of it; we have the letter of Mr. Brown to Mr. Wells that it was the intention of Mr. Wells, when that particular Bill 87 was passed, to turn around and give these two blocks in pursuance of it. Do you know anything of that? A.—I don't know anything about that at all. I never saw those letters until they were produced here.

Q.—Well, what do you think of Mr. Brown writing a letter like that? You have a good opinion of Mr. Brown, haven't you, Mr. Eberts? A.—I cannot speak for Mr. Brown or what his views are at all.

Hon. Mr. Eberts—*Continued*

Q.—Well, would you take Mr. Brown's statement as against Mr. Wells, Mr. Eberts?

A.—Oh, that is not a fair question to put to any witness.

Q.—I don't know but it is. We have to determine here between Mr. Wells and Mr. Brown on many points. I think I am entitled to ask you, Mr. Eberts? A.—I think not.

Q.—You are not in a position to say whether you would believe Mr. Wells as against Mr. Brown, or *vice versa*? A.—I don't think it is a proper question to ask at all. There is no person who knows better than yourself, Mr. McPhillips, that you cannot ask questions of that kind. If you want to prove that a man could not be believed on oath, you go out and bring some one acquainted with his reputation to ask the question if he would believe him on oath. You know the proper procedure in a Court of law.

Q.—I think I would be perfectly right to ask you, as against Mr. Brown's statement contained in his letter and the statement sworn here by Mr. Wells, to which you would give credence, the one or the other? However, if you do not wish to answer it, this Committee will have to draw its own conclusions. At any rate, if Mr. Wells made any such statement to Mr. Brown, Mr. Brown never opened any such matter to you, Mr. Eberts? A.—He did not.

Q.—But it is a circumstance, though, that this Bill 87 would fit in very nicely with Mr. Brown's statement, isn't it? You say you did not draw Bill 87? A.—I did not.

Q.—But the master hand that drew Bill 87 may have been instructed in line with Mr. Brown's letter, may he not? Because it is a singular coincidence that Bill 87 and Mr. Brown's letter coincide. However, you say you did not draw Bill 87. I would like to know, Mr. Eberts, how it is that a Bill of such an important nature as Bill 87 should be brought down in the House and not pass under your notice. Is it a usual or unusual thing to have occurred? A.—There are sometimes important Bills that are brought down that are not referred to the Attorney-General from the Lands and Works Department, and I think from the other Departments too. But I think the Deputy Attorney-General, my deputy, has given you —

Q. (Interrupting)—He says he did not draw it. A.—I don't know anything about that; he has given you his version of the matter.

Q.—And you did not draw it; and, as far as you know, this Bill was drawn by Mr. Brown? A.—Well, I don't know whether he said that, either. Let us see just what he did say. He had received the draft from either Mr. Brown or Mr. McNeill, and from this draft he had the Bill prepared; he told you he had shown the Bill to Mr. Wells before he had prepared the transmitting message.

Q.—You are reading from the "Colonist"? A.—Yes, this is Bill 87.

Q.—That is not authority; this point, perhaps, is a little too fine for the reporters. A.—So far as his recollection was concerned, the Bill came to him in practically the form in which it was presented; he had noticed the contents of the Bill, but had not been asked nor given any advice concerning it.

Q.—I think it may be taken, Mr. Eberts, here that Mr. Maclean's evidence is that he did not draw it? A.—He said he had not considered it necessary to consult the Attorney-General and had not done so.

Q.—Did Mr. Wells ever point out to you that he had got a letter from Mr. Brown on the 22nd of March, 1902, mentioning this matter, which seemed to give him so much offence, that it was the intention of the government to give these two identical blocks under this Bill 87? A.—I never heard of that letter.

Q.—Mr. Wells said he got that letter and that he was very indignant about it? A.—I never heard about it.

Q.—But he was never so indignant as to tell you about it? A.—He never told me about it.

Q.—He never was so indignant as to go and tell you that Mr. Brown had some sinister motive, that he was after these lands, and that there should be great care taken in drafting this Bill? A.—He never told me that.

Q.—There was a lack of vigilance somewhere. I refer to Mr. Maclean's evidence at pages 564 and 565 (reading same). Mr. Maclean said that a Bill of this nature would be laid before the Government. Now, was this Bill 87 laid before the Government before the Message was brought down? A.—Well, I could not say that.

Q.—Do you remember passing on this Bill 87 at all, Mr. Eberts? A.—I do not remember, Mr. McPhillips.