

REPORT OF SELECT COMMITTEE.

CLAIMS OF MESSRS. McNAMEE & CO.

To the Honourable the Speaker and Members of the Legislative Assembly of British Columbia.

Your Committee appointed to enquire into the claims of McNamee & Co., contractors for the Graving Dock at Esquimalt, report as follows:—

That they have taken for granted that Messrs. Kinipple & Morris, Engineers of Greenock, Scotland, entered into an agreement with the Government of British Columbia, to select a site and furnish plans and specifications for all the work connected with the construction of a Graving Dock at Esquimalt, British Columbia.

That, in pursuance of said agreement, said graving dock site was selected and located by said Engineers at Thetis Cove, Esquimalt, aforesaid, and that metes and bounds were defined and established, showing where and whereon said Graving Dock should and would be constructed.

That accurate measurements of quantities and careful tests of quantities of stratas by boring, &c., was made by and for the said Engineers, within, and upon the site of the said Graving Dock.

That plans and specifications for the construction of said Graving Dock were drawn and furnished by said Engineers to and for the Government of British Columbia, as per agreement with said Government.

That said plans and specifications were based upon, taken from, and had reference to the site chosen, and the metes and bounds established for the location and construction of said Graving Dock, and no other.

That McNamee & Co., of Montreal, in the Province of Quebec, Contractors, tendered for and were awarded the contract for the construction of the said Graving Dock, for certain sums of money, and upon such conditions as are in the terms of their contract with the Government of British Columbia set forth.

That the tender of McNamee & Co. was made and the contract entered into by them, had reference to and was governed by the plans, specifications and estimates made and furnished by the said Engineers, Kinipple & Morris, and that such plans, specifications, tests, borings, etc., were drawn from and had reference to the site chosen and established by the said Engineers, and no other.

Your Committee respectively submit that the facts hereinbefore set forth are matter of parliamentary history, and cannot be controverted or gainsaid in the whole or in part; and they further find from evidence given before them, and report,—

That John Nicholson, John Huntington, and the late John Johnston Robertson, acquired an interest and became partners with McNamee & Co., of Montreal, aforesaid, in the contract and for the construction of the said Graving Dock at Esquimalt, and were known as the local partners of the said firm.

That work was commenced by the said local partners on Dry Dock construction on or about the 1st day of September, 1880, upon a site and within metes and bounds indicated and established by William Bennett, Resident Dock Engineer.

That after prosecuting the work of construction for about four months, the said local contractors first came into possession of a copy of the graving dock plans, and then and there for the first time ascertained that the location of the whole dock site had been changed by removing the quay wall 43 feet 6 inches south or inland from the location selected by the said Engineers-in-Chief, thereby increasing the cost of construction, deranging the plans drawn and adopted, making their estimates of costs and quantities utterly valueless, and taking a new departure from the contract entered into by McNamee & Co. for Graving Dock construction,

That the said local contractors continued to prosecute the work under great disadvantage and considerable loss in consequence of such change of dock site until on or about the 20th of April, 1882, when they ceased to carry on the work of construction.

That the said local contractors sustained losses in money and damages to their credit by and through the Government of British Columbia, or the Chief Commissioner of Lands and Works, neglecting or evading to make prompt payments on Engineer's certificate when issued from time to time as the work progressed.

That under the terms of the contract entered into by McNamee & Co., the Government of British Columbia agreed and were bound to furnish all the cement required for and in graving dock construction at the works, and that when the local contractors suspended operations the Government was wholly destitute of cement on the ground, and it was impossible for them to furnish the whole or the greater part of the cement required within the time indicated for the completion of the work in said contract.

That the Government of British Columbia took possession of the plant, property, and material of the contractors, on or about the 27th of June, 1882, while they were owing the said contractors \$13,187.25, which was not paid until the 11th of July, 1882.

That the Government of British Columbia after undertaking to prosecute the work of construction, in a short time suspended operations, thereby making manifest their inability to carry on the work after wresting it out of the hands of the contractors under the pretence that it was not prosecuted by them with sufficient energy and dispatch.

That the Government of British Columbia, after suspending operations, sold the plant, property, and material of the contractors that they had taken from them to the Dominion Government and received pay therefor, without indemnifying or agreeing to indemnify said contractors for the same.

Your Committee therefore respectfully submit that, from facts and figures brought before them in this enquiry, they are of opinion that McNamee & Co. have just cause of complaint, and they suggest that the Government give an opportunity to the said McNamee & Co. to state their complaint and to make good their cause before some properly constituted tribunal, by bill or rights, arbitration or otherwise.

All of which is respectfully submitted.

JAMES ORR,
Chairman.

EVIDENCE.

JANUARY 21ST, 1884.

MR. BENNETT, examined:—

I have been acting as Resident Engineer of the Graving Dock; took charge in 1875; was not Engineer when Dock site was selected; the work on Cofferdam was not commenced when I assumed the charge; think the site was selected by Kinipple & Morris; the boring plans and estimate of cost was made on the site selected by Kinipple & Morris; am aware that a contract was entered into by McNamee & Co. to construct the Dock according to the plans and specifications and on the site selected by Kinipple & Morris; the Dock was not constructed on the exact lines as shown on the drawing, but the coping line of quay wall was moved south or inland 33½ feet; by moving the coping it moved the whole Dock the same distance to the south; the change was made after the contract was signed, and as soon as the work commenced the contractors are responsible for the laying out of the work; the work was laid out by Mr. Mahood, the contractor's engineer, and myself; do not know whether the Chief Commissioner of Lands & Works was aware of the change at the time; do not think the Chief Commissioner was consulted when the change was made; it was not my business to lay out the work; no person made application to me to move the Dock site to the south; the contractors were responsible for the change; there were no new contract drawings made of the increased quantities which would be made by removal of the site; the whole of the site was cross-sectioned before the work was commenced; the moving of the Dock did not increase the labour of construction; all the work done by the contractors has been measured and paid for less the 10 per cent.; think the whole amount paid the contractors was about \$47,600; I was Resident Engineer when the work was taken possession of by the Government; think about 4,000 tons of cement would be required to complete the work when the Government took possession; there are about 700 tons on hand now.

W. BENNETT,
Resident Engineer.

THURSDAY, 31ST JANUARY, 1884.

ARTHUR STANHOPE FARWELL, examined.

I became connected with the Esquimalt Graving Dock by being engaged by the contractors as their engineer, in the latter part of August, 1881. The site of the Dock was, I believe, moved 43 feet 6 inches to the south of the position shown on the contract drawings. The coping line, or the line of the front of the Dock, was laid out before I was engaged by the contractors—I think in September, 1880. I found in a level book, left in the contractors' office, at Esquimalt, a memorandum to the effect that the coping line had been moved back 43½ feet (book produced). The memoranda, &c., are in the handwriting of Mr. James A. Mahood, the engineer first employed on this work by the contractors. The memorandum shows, with a sketch, the Naval coal sheds on Thetis Island. The "Original line coping of seawall, as per contract drawings," is shown as being 31½ feet south from the north-west corner of the buildings. The "Coping of seawall laid out by Mr. Bennett, September, 1880," is shown 76 feet from the north-west corner of the building, or 43½ feet south of its proper position. The date in the front of the level book, is April 14th, 1881, and there is nothing to show any entries were made by Mr. Mahood prior to that date. I believe the contractors had great difficulty in obtaining a copy of the contract drawings. They had to give a bond for \$500 before the Chief Commissioner of Lands and Works would give them a copy. The work, I think, commenced in September, 1880. The bond was dated December, 1880. Messrs. Kinipple & Morris provided the Government with three sets of plans—the original drawings on mounted paper and two complete copies on tracing cloth. Mr. Beaven, as Chief Commissioner of Lands and Works, took possession of the works on the 27th June, 1882, and the only cement on hand at that time was some few tons of damaged material dug out of the ruins of Selleck's warehouse, destroyed by fire on the 12th May, 1882. This cement was not fit to use in the works. Moving the dock site greatly increased the cost of the work in every item. The depth of the rock to be excavated for the caisson chamber on the original site would have averaged about 10 or 11 feet (speaking from memory). The rock to be excavated on the site laid out was about 50 feet high. The contractors were only paid for nett measurements, that is to say, the exact space occupied by the caisson chamber and its casing. They had therefore to blast enormous quantities of material down so as to get the proper width at the bottom of the chamber; the rock strata pitched to the harbour, and made it still more awkward to get out; this extra amount of rock seriously impeded the work by blocking up the site of the west quay wall; if the site had not been changed the amount of rock to be excavated in the caisson chamber could have been used up in the entrance works and east quay wall, and the site of the west quay wall left clear; the excavations in clay have been largely increased, especially outside the entrance works; this portion will cost very much more to remove than it otherwise would; all the material used in the work had to be moved a longer distance, and the general conditions of the contract entirely upset; the plant on the works and elsewhere seized by the Government was the property of the contractors, with the exception of pumping machinery and the concrete mixers; they have not been paid for this plant or the material on the ground; the value is, I believe, about \$25,000; the contractors were paid a portion of a sum set down in the Bills of Quantities for contingencies not detailed; it covered coal bills for the pumping engines, building and furnishing the Resident Engineer's office, etc.; I don't remember the amount paid.

A. S. FARWELL.

JOHN NICHOLSON, examined.

I believe the account presented is a correct statement of the claims of McNamee & Co., with the exceptions named in statement; all the plant belonged to McNamee & Co.; the Government took possession of the plant and have not paid the contractors for any portion of the plant; did not get the plans of Dock site until about four months after the work was commenced; was not aware any change had taken place in the Dock site; Mr. Bennett gave the lines of the Dock; the change caused a large amount of additional work; pacing the Dock back 43 feet 6 inches gave us a large amount of rock to blast that would not have been required by adhesion to the original site; the greater the depth of rock to blast the harder it is, and consequently more expensive; the moving of the site reduced the area of dumping ground, causing us to relay the track; have always acted as full partner of McNamee & Co.; Mr. Bennett was the person who fixed the site of the Dock; if the certificates of the engineer had been paid promptly and the Dock site not been changed I believe I could have completed the work with profit to myself and partners; the first certificate was unpaid for more than four months; when the Government took possession of the works and plant they were in our debt to the amount of over \$14,000, for which they gave us a certificate.

JOHN NICHOLSON.