

THURSDAY, May 21st, 1903.

The Committee met at 2:30 P.M., pursuant to adjournment.
Present, the full Committee.

HON. E. G. PRIOR, being duly sworn, testifies as follows:—

MR. DUFF: Col. Prior, you became a member of the Government about what date? A.—
On the 11th of March, 1902.

Q.—And therefore, of course, you had nothing whatever to do with the Order in Council under which these grants were issued at all? A.—No.

Q.—Now this matter was first brought to your attention when? I mean the question of these grants, as between the Railway Company and the Government. A.—On the 14th or 15th of March, 1902.

Q.—By whom? A.—Mr. Prentice.

Q.—What occurred? A.—We were walking over the bridge going to lunch, either on the Friday or the Saturday, the 14th or 15th, and Mr. Prentice told me he had heard something from Mr. Wells about what had taken place in Montreal.

Q.—Did he tell you what it was? A.—He did.

Q.—Well, what was it? A.—Well, he told me that Mr. Wells had told him that when he was in Montreal he had been approached by Mr. Jack Taylor, of the firm of Eberts & Taylor; and that Mr. Taylor had told him there was a company formed to take over these coal and oil lands, and that there was a certain number of shares to go to some of the members of the House, and he had also offered him a share.

Q.—Then, did you know, were you able to identify the lands in any way at all? A.—No, I didn't know anything about them; nothing at all.

Q.—Did you understand that they were being dealt with, or had been dealt with, as part of the British Columbia Southern or Columbia and Western subsidy? A.—At that time I didn't know anything about any subsidies whatever.

Q.—But it was explained to you by Mr. Prentice what the lands were, and so on? A.—
Yes.

Q.—And you understood that these were, then, the lands that had been dealt with by the Government in connection with the Columbia and Western? A.—I don't know whether he said Columbia and Western; I suppose he did; but he said they were some lands that had been given to the C. P. R. in connection with some subsidy.

Q.—Then, when did you next hear of it? A.—Well, Mr. Prentice also told me that he had told Mr. Dunsmuir, and he thought something should be done about it.

Q.—That Mr. Prentice did or Mr. Dunsmuir did? A.—That Mr. Prentice thought that something should be done about it.

Q.—Did he make any suggestion as to what should be done? A.—Well, he made a suggestion.

Q.—What suggestion? A.—That we should go out and see Mr. Dunsmuir.

Q.—Did you go? A.—I went on the Sunday with Mr. Prentice.

Q.—That would be the 15th, would it? A.—The 16th.

Q.—With Mr. Prentice? A.—With Mr. Prentice; we drove out together.

Q.—Was anybody else present? A.—No.

Q.—What happened between you there? A.—Well, we saw Mr. Dunsmuir; Mr. Prentice took me in, and he told Mr. Dunsmuir that he had told me what he had told him, and we talked the matter over.

Q.—Did you arrive at any conclusion at all? A.—Well, Mr. Dunsmuir said that—agreed with us that a stop should be put to it at once.

Q.—What do you mean? Did you learn the facts then that Mr. Wells had taken the grants to Montreal and had brought them back? A.—Yes.

Q.—And do you mean, by putting a stop to it, was it agreed there and then that the Order in Council would be rescinded? A.—Well, I don't know—

Q.—I don't mean to say as an Executive act at all, but was that suggestion concurred in there and then? A.—Yes; Mr. Prentice said that unless the Crown grants were cancelled that he would resign from the Government.

Q.—Mr. Prentice said? A.—And Mr. Dunsmuir and we all agreed with the same thing, that it must be cancelled at once.

Hon. Mr. Prior—*Continued.*

Q.—Now, at that time, what was the ground upon which you arrived at that determination? A.—Well, I told them then that I knew something about those lands, when they explained to me what lands they were, as I had known a good deal about that country at that time; and I told Mr. Dunsmuir that, of course, knowing something about coal as I did, having been brought up in the coal, you might say, that those lands were extremely valuable lands. And when they explained to me how these lands had been given, I stated then and there that I did not believe that the Government had any right to give these lands, and that I did not think that the C. P. R. had any right to them; and if there was any business, as Mr. Wells suggested, I thought it was another reason why they should be cancelled.

Q.—Now, I suppose they explained to you that that matter had been up for consideration; I mean to say the question as to whether the lands were within the power of the Government to give? Were you told anything about Mr. Hunter's opinion at that time? A.—No.

Q.—You were not. You were not told that the Government had considered that before the grants had been issued? A.—I was not told then.

Q.—When did you subsequently learn that? A.—On the 18th.

Q.—That would be before the rescinding Order was made? A.—The same day, yes.

Q.—Then there is no doubt about it, Colonel Prior, so far as you are concerned, that your action was dictated, to a certain extent at all events, in dealing with the matter, by the circumstance of this conversation which was said to have taken place in Montreal? A.—Well, I don't think that my action was dictated so much by that as what they told me about how it was given.

Q.—What I mean is this; you learned, of course, that the Government had considered the matter before? A.—Yes.

Q.—Do you think, if a decision of that kind had been arrived at on legal advice, on the advice of the Attorney-General and the advice of Mr. Hunter, that it was within the power—A.—I didn't know that then.

Q.—Well, you knew that they had considered it, though, and that they had arrived at a determination? A.—Do you mean on the 16th or the 18th?

Q.—On the 18th. A.—On the 18th? I knew then, yes.

Q.—Do you think that if you had it present to your mind that the Government had considered that question and had decided, after considering it, that they had power to give them, and that they would give them, and the grants had been issued—do you think that on that ground alone, that in view that you thought they had not power, that you would have concurred in the rescinding Order? I mean on that ground alone? A.—Well, I could not go so far as saying that.

Q.—That is, assuming that you believed the transaction to be perfectly free in every way, on everybody's part, from any question of improper dealing, would you have pressed upon the Government the rescision? A.—I think I would.

Q.—You think you would in any event, simply upon the ground of the incompetency and the improvidence of the transaction? A.—After I was shown the Act and I read through the Subsidy Act, and the condition that it should be contiguous and it was to be taken out of the reserve set apart for that railroad, I certainly felt very strongly and expressed myself strongly to my colleagues.

Q.—And that was quite sufficient for you? A.—I think so; that alone, I think, would have been sufficient.

Q.—I see. The matter, however, that moved action, undoubtedly, was the circumstance of this conversation that was mentioned? A.—Yes. I believed Mr. Wells as my colleague.

Q.—And you accepted that story, and you acted on that, so far as you were concerned? A.—Yes.

Q.—That was regarded by you as an additional reason, I understood you to say? A.—Yes.

Q.—And you were quite clear with regard to that condition in the Act, that the lands were to be contiguous to the railway? A.—I am no lawyer, but I could see.

Q.—I am not asking you for a legal opinion; but you, as the Government, felt clear that on the terms of this Act the Government were not justified in granting these blocks of land to the Company? A.—I thought so at the time, and I think so strongly now.

Q.—And you think that alone is sufficient to cause you to correct it by a rescinding Order? A.—Yes.

Q.—And you feel strongly that way now? A.—Yes.

Hon. Mr. Prior—*Continued.*

Q.—The Order in Council was passed. Now, before the passing of the Order in Council, are you aware of whether the question as to the power of the Government to grant these lands was discussed with Mr. Eberts at all? Was he consulted on that point? A.—Before the 18th of March?

Q.—Yes, I mean at that time, or on the 18th of March. Was his opinion taken upon that point? A.—Well, I don't know that his opinion was taken upon it; but he stated certainly very plainly that the Government had the power.

Q.—It was clearly understood, at all events, what his opinion was, that he had advised originally that the Government had the power, and that he still remained of that opinion? A.—Yes.

Q.—Was any other advice taken at that time? A.—None that I know of.

Q.—In so far as the action of the Government was dictated by that, it was in opposition to the opinion of Mr. Eberts? A.—Yes.

Q.—Now, are you able to say anything about the grounds upon which Mr. Wells and Mr. Dunsmuir and Mr. Prentice acted? A.—Well, Mr. Dunsmuir was very emphatic in saying that he would have nothing to do with monkey business; he said that three or four times.

Q.—And there is no doubt what that referred to; he said that in connection with the transaction supposed to have taken place in Montreal? A.—Yes.

Q.—What about the others? A.—Mr. Prentice said he fully believed what had been told him. Before he would do anything of that kind he would resign.

Q.—Yes; and that was the ground on which Mr. Prentice stated to you first that the Government should act? A.—Yes.

Q.—And what about Mr. Wells? A.—I don't remember what Mr. Wells said, except that he fell in with the rest and said he thought they should be cancelled.

Q.—And, of course, Mr. Eberts opposed the Executive? A.—Well, that was in Executive.

Q.—Well, he said so here. A.—Mr. Eberts has always opposed it.

Q.—His action has been quite consistent with regard to it on the stand? A.—Yes, quite consistent.

Q.—Did you have any talk yourself with Mr. Brown at any time with regard to the matter, prior to the interview referred to in these notes that Mr. Brown has produced, of the 24th of March? A.—Never a word.

Q.—Did you talk with him afterwards about it? A.—Never.

Q.—I gather from a statement in one of Mr. Brown's telegrams that you, some time subsequently, had a conversation with Sir Thomas Shaughnessy with regard to it. Do you remember where that was? A.—In Montreal.

Q.—When? A.—On the 31st of January, 1903.

Q.—What occurred at that time? A.—It was during the time that I went with Mr. Eberts to interview the Dominion Government on better terms for British Columbia; and I went to Montreal to see—I went down first one night to attend a banquet given to Mr. Monk in Montreal; and the next day I went to see Messrs. Mackenzie & Mann and the Grand Trunk people about the railroad across to the Coast. And I went and called on Sir Thomas Shaughnessy, too, at his office in the C. P. R.

Q.—Was Mr. Eberts with you? A.—No, nobody.

Q.—You were alone? A.—Yes.

Q.—What occurred then? A.—Well, I saw Sir Thomas Shaughnessy; he asked me into the Board room, and we talked about several matters.

Q.—It is only about this matter that I want to ask you. A.—Well, I asked him if there was not any chance of getting the Spence's Bridge Railroad built, and I told him that I thought it was a most important road; that I had been through the valley and that I knew the valley, and I knew the coal was there, and the mines were opening up in Similkameen, and I thought it would pay them well to put a road in there. And he walked to the large map alongside, and he showed me all the roads they had to build in Manitoba and the North-West, and he also told me of the large amounts they were expending in plant and one thing and another to get the wheat out of the North-West, and he said he didn't see how it was possible for them to do anything in British Columbia at the present time, as all their energies were required in Manitoba and the North-West. He also said that they would build that road to Spence's Bridge in a short time, he thought, and he had a man in there looking up the coal

Hon. Mr. Prior—*Continued.*

propositions there; if they found there was good coal they would, perhaps, hurry themselves up to get in there. Then he mentioned about the Crown grants for section four, and in rather a chaffing way; and I told him that we had done what we thought was right. I told him the Company had lost nothing, because they never had any right to it; the Government of the day had exceeded their powers, as I thought, in giving it to them at all; and he said, "Well, we are going to get them, anyway." I said—I cannot remember the exact words, but I remember perfectly well what the import of the conversation was—I said, "Well, you will have to fight the Government, then, for all you are worth." And then I asked him if he ever had had possession of the Crown grants, and he said no, he never had them in his possession; and I think he said—I couldn't swear to it, but I have always been under the impression until I heard him deny it; and I have heard so much evidence that it is almost impossible to tell what you heard here and what you heard in Montreal—but, so far as I can recollect, Sir Thomas said, "Well, I am given to understand that we have had possession of them, that they were in our possession." I feel perfectly certain that he did, but I cannot swear positively to it. But I certainly went away with the impression from him that he had the impression, that he was informed, that they had had possession of them. He also told me that Mr. Wells had asked him to retain them—to be allowed to retain them for thirty days; and that he had allowed him to do so, expecting they would be returned in thirty days. And then we talked about labour strikes, and shortage of coke, and one thing and another.

Q.—Did you say anything to him about this occurrence in Montreal between Mr. Taylor and Mr. Wells? A.—I just mentioned it to him.

Q.—What do you mean by that? A.—Well, I told him that there were rumours around that Mr. Taylor had made proposals to Mr. Wells.

Q.—Yes; what did he say? A.—He said he did not believe a word of it.

Q.—Did he say whether Mr. Taylor had anything to do with them or not? A.—No; I didn't ask him. I asked him if he knew of any company that had been formed, and he said no, it was all nonsense.

Q.—That he didn't know of any company? A.—No.

Q.—Now, then, you had an interview with others of the Executive with Mr. Brown, on the 24th of March? A.—That was some days after the Order in Council was rescinded.

Q.—Now, I don't know whether you have read that memorandum that has been produced here by Mr. Brown as being a memorandum made at the time? A.—I have.

Q.—In substance it would appear from that memorandum that it was conceded that the reason why the grants were cancelled at that time was political expediency, that is, the difficulties that the Government were in. What have you to say with regard to that? Perhaps I will put it to you in this way: Is there anything in this memorandum the accuracy of which you care to impugn? A.—Well, I think there are a good many things in it that are not correct.

Q.—But I mean to say, of any importance? A.—Well, Mr. Brown was very excited about the matter, and he did not behave as some of us thought he should behave before any Executive, and some of us told him so.

Q.—That seems to appear there more or less. He appears to have been rebuked as to his manner. A.—As to the matter of its being expediency for the Government to cancel those grants, I certainly do not remember anything with regard to that; and it was not the idea of the Government, so far as I knew. I never mentioned such a subject in my life up to the present time.

Q.—At this interview was the reason for the Government's action explained to Mr. Brown? Do you remember whether it was or not? A.—Well, I don't think it was explained fully; I think Mr. Dunsmuir hinted to him that he knew very well what the reason was.

Q.—That he himself knew very well what the reason was. Are you able to say whether, at that time, there was anything said as to the grants exceeding the Act? A.—You mean to say the Government having no power?

Q.—Yes. A.—Yes, I think there was.

Q.—You think that was mentioned to him? A.—Yes.

Q.—By whom? A.—Well, I think I did.

Q.—You think you yourself did? A.—Yes.

Q.—Now, Mr. Brown says that on that occasion each Minister was interrogated in turn by him as to whether there was any imputation upon Sir Thomas Shaughnessy or himself;

Hon. Mr. Prior—*Continued.*

and generally the effect of the memorandum is that the Ministers agreed that there was not. Do you remember what occurred with regard to that? A.—I think Mr. Brown asked us if we suspected him at all, and I think we all said no.

Q.—But, Colonel Prior, it would strike one, you know, if you were acting upon a statement of that kind as against the Canadian Pacific Railway Company, that you must have been convinced that this impropriety of conduct was attributable to somebody in connection with the Canadian Pacific Railway Company? A.—No, I don't see that.

Q.—Well, why should they be punished, then, by the cancellation of the grants on ground of that sort, unless they were in some way implicated? A.—I don't think it was punishing them; I don't think they had any right to those lands.

Q.—But I am leaving that part outside altogether; I can quite understand that you may say, if that was the sole ground or influence. But why should the Government be influenced at all by misconduct of any person connected neither with the Government nor with the Canadian Pacific Railway Company? A.—I think the idea was, if there was a company going to be formed, the company would take over the lands from the C. P. R.; I don't see that the C. P. R. were to—

Q.—But, therefore, the C. P. R. would in some way or other be connected with the transaction? A.—Well, that is how we could not make out how it could be done.

Q.—Then there was no doubt whatever that you were all thoroughly convinced that something of that kind was on foot? A.—Well, most of us were.

Q.—I mean outside of Mr. Eberts. At what quarter did it occur to you that that was striking? I mean to say, how would you act on an independent scheme of Mr. Taylor's, we will say, in which neither the Government nor the Canadian Pacific Railway Company were implicated? A.—I would not act at all if it was a private scheme.

Q.—Well, was it Mr. Taylor's connection with the Attorney-General that you thought brought it too close to the Government? A.—Well, I don't think I should answer that question.

Q.—I don't want to ask you any unfair questions.

Mr. McPhillips: Perhaps we had better consider it a moment before Colonel Prior is asked to answer it. As far as I am concerned, for the moment I do not say that the question ought or ought not to be answered; but I notice the point that Mr. Duff wants to make, and I think it is an important one in this investigation, and that is this: that you must connect this transaction with the Canadian Pacific Railway in some way or other, or else it is foreign to the matter, as far as the Government is concerned, and why should the Government have acted upon it?

Mr. Duff: It is material, because it is clear, of course, that they did act on it. I don't want to withdraw the question; but if Colonel Prior says he would prefer not to answer that question, I think that, perhaps, I have gone as far as I should with a Minister of the Crown.

The Witness: Mr. Chairman, I don't want to keep anything back at all that I can fairly be asked.

The Chairman: We understand that.

Mr. Duff: I quite understand that, too. I don't mean it in that way; but, at the same time, I don't want to press it beyond the legitimate line. It seems to me it is quite a legitimate thing for the Committee to consider what was the ground on which the Government acted, and I think that that line of question naturally leads in the direction of opening up that subject.

Mr. McPhillips: Certainly the Government must have thought that some party to this proposition, which was either made by Mr. Wells or Mr. Taylor—you had the two stories before you, I suppose? A.—We had no story from Mr. Taylor at that time.

Mr. Duff: They had Mr. Wells' statement; that they accepted.

Mr. Helmcken: Mr. Dunsmuir accepted Mr. Wells' statement. A.—We all accepted Mr. Wells' statement as our colleague.

Mr. McPhillips: I suppose Col. Prior could very well say, without answering that, that he considered that the honour of the Government was at stake in the matter and something had to be done.

Mr. Duff: I am not asking Col. Prior for an opinion as to whether Mr. Eberts was implicated in the matter; I do not mean to ask him that for a moment. I do not think that would be fair to ask, because the Committee have the evidence, and the Committee has to

Hon. Mr. Prior—*Continued.*

decide on any suggestion, if there is any suggestion, of that kind. What I meant was, whether it was because of Mr. Taylor's close connection with a Minister of the Crown that this statement made to him by Mr. Wells was regarded as a ground on which the Government ought to act. A.—Well, I think it was.

Q.—Now, did you mean, Colonel Prior, when you exonerated Mr. Brown and Sir Thomas Shaughnessy, that there was nothing before you to connect him personally with it, or that you had really, on any kind of investigation, formed an opinion on the subject as to whether he might or might not be connected with it? A.—No; we had no evidence; that was the reason.

Q.—And all you meant was that, so far as the facts that you had before you were concerned, you would not be justified in making any suggestion as against Sir Thomas Shaughnessy or Mr. Brown? A.—Yes; that was all.

Q.—Now, at that time, Col. Prior, there were some questions before the House, which have been mentioned here. On the 3rd of March there was a motion for a Return of all Orders in Council, all correspondence between the Government or any member thereof, or any person or company, relating to the reservation of lots 4,593 and 4,594, South-East Kootenay, or in the granting of those lots or any part thereof to the Columbia and Western Railway Company or to the Canadian Pacific Railway Company. Now, that Return was brought down, and it is to be found in the Sessional Papers of 1902, at page 1,245. I call your attention to this, that Return was brought down on the 5th of May, 1902, and that that Return contains a copy of Order in Council dated the 11th of August 1890, a copy of a report of a Committee approved on the 4th of September, 1901; a copy, also, of the recommendation of the 18th of March, 1902, recommending the cancellation. You will notice that the descriptions of the land are not there. However, that is a point I do not think I will press you on. But I call your attention to the fact that the letters which we have before us here which, prior to that time passed between Mr. Brown and Mr. Wells, were not produced on that Return. Was there any reason for that? A.—None that I know of. I never saw that Return until a very short time ago.

Q.—You never knew anything about it? A.—I never knew anything about it.

Q.—Was that a matter entirely in the charge of Mr. Wells himself? A.—Yes.

Q.—And in the ordinary course the Executive would have nothing to do with it? A.—Nothing at all.

Q.—There is no doubt in the world that that correspondence ought to have been included in the Return? A.—If it was in the department it should have been.

Q.—Of course it was in the department? A.—I have not seen it yet.

Q.—It was not in your department. Haven't you seen it? A.—No. I have not seen any of the exhibits.

Q.—That correspondence, unfortunately the originals have disappeared, but copies of it are here, produced by Mr. Brown. (Showing letters to witness); and the letter written by Mr. Brown to Mr. Wells on the 31st of July, and the replies to that. An order of that kind from the House would naturally include all correspondence relating to the subject? A.—All, unless it was marked private and confidential.

Q.—Take a letter of this kind which is marked personal by Mr. Brown, but signed by him as executive agent, and addressed to the Hon. the Chief Commissioner of Lands and Works, and deals with this matter, which is a public matter, between the Company and the Government—that would be a letter, wouldn't it, that would naturally appear in any Return of correspondence on that subject? A.—Well, I have my own opinion about those kind of letters.

Q.—You mean that letters of that sort marked personal, with regard to subjects of that kind, should not be retained? A.—Yes.

Q.—And should not be received? A.—I do.

Q.—That if a man wants to make a communication of that kind he should either send it in a public way or the letter should be sent back to him? A.—Yes, I do.

Q.—One can understand that. But the letter being received by the Minister in his public capacity, if a Return is asked for— A.—In his public capacity?

Q.—Yes, being received by him dealing with the subject. A.—Well, I know in my experience in Ottawa, if a letter is marked personal or private it is never returned in the House, unless the Minister chooses. It is put on a separate file altogether.

Hon. Mr. Prior—*Continued.*

Q.—It is put on a separate file altogether if it is confidential or private? But an official letter like this, on official business, addressed to “The Hon. the Chief Commissioner of Lands and Works, Sir,—Re Columbia and Western Railway Subsidy 3rd section,” and signed, “I have the honour to be, Sir, your obedient servant, George McL. Brown, executive agent”—
A.—That is not a personal letter.

Q.—It is absurd to mark that a personal letter? A.—Yes.

Q.—And it would not be marked personal? A.—It was marked personal in pencil after.

Q.—Oh, no; this is a copy; we had the original. Undoubtedly the original was marked personal in Mr. Brown’s handwriting. But here is one that is marked personal in type-writing, you see, the same sort of thing. A.—Well, if you ask me, I should say that it ought to be put on the ordinary file.

Q.—And, therefore, would naturally be produced. Now, there were also these questions asked, on the 21st of March, which would be two days after the cancellation of the Crown grants—you might look at all of these questions and answers (handing document to witness). Now, you see here the question is, which was answered on the 8th of April, “For how many acres have Crown grants been issued to the Columbia and Western Railway Company?” The reply is, “722,020.” “For how many acres have Crown grants been prepared, but not yet issued?” The reply is, “There are no additional Crown grants prepared.” Now, at the time those questions were asked and answered, it was within the knowledge of the Chief Commissioner of Lands and Works that these Crown grants for 600,000 acres, which he had taken to Montreal with him, had been prepared; it must have been? A.—Yes.

Q.—That statement, therefore, was not an answer to that question, or rather, it was a misleading answer, was it not? A.—No, I think it was all right. They had been cancelled. And a thing that is cancelled does not exist.

Q.—Do you mean to say that you could say that those Crown grants had not been prepared? A.—I think so, if they have never been issued, but cancelled.

Q.—But they had been issued. “For how many acres have Crown grants been prepared, but not yet issued?” There is no doubt these Crown grants were prepared, is there? A.—Well, I think that a Minister has a perfect right to give an answer like that under the circumstances, when the Crown grant has been cancelled.

Q.—You think it was fairly stating to the House the facts? A.—Well, that is a matter of opinion. I have seen a good deal of that done everywhere.

Q.—The real fact is, there is no doubt in the world about it, that the Government did not want the House to know at that time what the facts were with regard to this transaction? A.—I really don’t know. Mr. Wells never had any instructions not to tell the House, that I know of.

Q.—Well, Mr. Wells, then? A.—I don’t know what his opinion was. If you ask me, under the circumstances, whether that was a fair answer, I think it was, from one party to the other in the House; from the Government to the Opposition.

Q.—You think it was? A.—Yes, I do. I have seen hundreds like that.

Q.—Do you mean by that that a Minister of the Crown, making a statement to the House in answer to a question, is justified in giving an answer which is only half the truth? A.—No; that was the truth, because—

Q.—You could not really say that that was the truth, could you? There is no doubt about it, those grants had been prepared; there is no question about that? A.—There is no question they had been cancelled.

Q.—But that does not take away the fact that the grants had been prepared? A.—That is a difference of opinion. I think it does.

Q.—But could there be any real difference of opinion on the construction of that language? A.—Yes, I think there could.

Q.—Then I gather, Colonel Prior, that so far as you are concerned, you consider that that was a fair answer, under the circumstances? A.—Yes, as the Crown grants had been cancelled, I think it was.

Q.—And it is an answer that you would have given yourself? A.—I don’t think so.

Q.—Is it an answer you would have concurred in if you had known that that answer was being given, with the facts before you? A.—No, I won’t say that.

Hon. Mr. Prior—*Continued.*

Q.—It is not an answer you would have given yourself under the circumstances? A.—I have always stated that I thought it was best, whether it hurt the Government or whether it did not—better tell the whole truth, and save trouble afterwards.

Q.—If you had been Minister of that Department there is no doubt that you would have disclosed the facts? A.—Well, they tell me that I do too much.

Q.—Well, it would have probably saved a lot of trouble if they had been disclosed? A.—I don't know.

Q.—You don't know whether it would have saved trouble or made trouble? A.—No, I don't think it would have made trouble; I don't see how it could have made any trouble.

Q.—Now, you remember that Bill, Col. Prior, I suppose (handing Bill 87 to witness)? A.—Yes.

Q.—Mr. Eberts stated, I think, that he explained the purport and intention of this Bill, prior to the introduction of it, to the members. Were you in the House at that time, or was that before the election? A.—The purport of this Bill?

Q.—Rather, I should say, the purport of a Bill that the Government was to introduce to implement the promise of Mr. Dunsmuir, made the previous year, that a Bill would be introduced to restore the subsidy for the fourth section? A.—He stated at the caucus the reason why a Bill should be introduced. It was not this Bill.

Q.—When I say this Bill in the meantime, I am not referring to a Bill in the exact terms of this; I mean a Bill generally with respect to restoring the fourth section. A.—Yes.

Q.—He explained the reason; and is that the reason which is set up in the preamble, namely, that there had been an agreement in the summer of 1898 between the Turner Government and Sir Thomas Shaughnessy? A.—Yes, except that it was a verbal agreement.

Q.—Well, this does not purport to state that it is anything but a verbal agreement. But the reason was the existence of a verbal agreement? A.—Yes, he stated to the caucus that an arrangement was come to between Sir Thomas Shaughnessy and Mr. Mann and Mr. Turner and Mr. Eberts, and I forget who else, the Government anyway at that day, that if Mackenzie & Mann were to build from Penticton down to Midway the C. P. R. would be released from their obligation to build from Midway to Penticton. And that being the case, that they were, therefore, entitled to get their land grant for section four, which they did build.

Q.—Yes; that is, there was this agreement by which the Company had been relieved from its obligation to build, and by which, on the other hand, they had given up their right to build? A.—Yes.

Q.—And that was acted on. And I think, during the progress of the Bill, while it was in the House, a letter was written by Mr. Eberts to Mr. Wells, which was brought down, in which the whole facts were fully stated by Mr. Eberts? A.—I really could not say.

Q.—Well, we have that here. You said that one very strong reason—in fact, a reason or element that would have been quite sufficient to induce you to consent to a rescission of the grants—was that, under the Act of 1896, the Company were confined to lands practically contiguous to the railway? A.—Yes.

Q.—Now, looking at this Bill 87, as it now stands, I suppose you would not have any doubt, as a member of the administration, that under that Bill the Company would be entitled to select lands anywhere in Yale and Kootenay? A.—Yes.

Q.—And I do not suppose you would have any doubt either that, if this Bill had gone through and the Company had selected these two blocks of land, you would have been bound to obey the mandate of the Legislature and give them the lands they selected? A.—That was never the intention of the Government.

Q.—I am not asking that. But supposing the intention of the Government had not been expressed in the Bill, as far as that is concerned; supposing the Bill had carried; I want to put this to you, apart from what the Council agreed to with regard to rescission, apart from the question of Government policy altogether; supposing this Bill had gone through and the Columbia and Western Railway Company came to the Government of which you are a member and said, "Now, we have, in accordance with the provisions of that Bill, selected two lots," and these two happened to be 4,593 and 4,594, or any other two lots—but supposing it to have been those two lots—as a member of the Government, would you have felt that you would be justified in departing from the express language of the Act, the mandate of the Legislature, to give to the Company such lands anywhere in Yale or Kootenay, as they might select? A.—Well, if you carried out this Bill as it is brought down, as I see it before me here, the Government should have given it to them.

Hon. Mr. Prior—*Continued.*

Q.—To refuse would have been to sit in judgment on the Legislature? A.—Yes.

Q.—But I quite understand what you say, that, so far as you are concerned, it never was the intention of the Government to give the Company an opportunity to get those lands under this Bill. Had you any idea at all of enlarging the powers of the Company with regard to selection, when this Bill was introduced? A.—None at all.

Q.—The only idea was that the provisions with regard to the fifth and sixth sections, contained in the original Subsidy Act, should be modified so that the Company should get the subsidy for section four notwithstanding the failure to build sections five and six? A.—Yes. As a matter of fact, I don't think I saw, I don't think some of the Government saw, that Bill before it was laid on the table in the House.

Q.—Who was the Government whip at that time? A.—I think Price Ellison was; but I don't think he was acting then.

Q.—What was the ground on which the Government withdrew the Bill? It was no doubt because the Government saw it would not get the support of the House? A.—Well, I couldn't say for all the members of the Government.

Q.—I will not put it that way, You became aware of that, didn't you? A.—Well, I did not see the Bill personally; I did not see the Bill until two or three days after it had been brought down; and one of the members of the House came to me and pointed this out—

Q.—Which is that? A.—With regard to the Company being allowed to select their own—that under this Bill they could take it anywhere.

Q.—Yes. Two or three days after the Bill was brought in? A.—Well, it was some time after the Bill was brought in. It was Mr. Oliver who came to me.

Q.—Mr. Oliver went to you personally? A.—Mr. Oliver came across to me in the House that time and showed me, as he seemed a little harried; and I told him that I had never seen that before, that it certainly was not the intention of the Government that anything of that kind should take place; because we had cancelled the Crown grants for those two blocks, and we thought that was sufficient, we thought it was safe then from the C. P. R.

Q.—Well, did you call Mr. Eberts' attention to that, then, the Attorney-General? A.—No, I turned around and went to Mr. Wells and called Mr. Wells' attention to it at his desk.

Q.—What did he say? A.—He said it was the language of the Subsidy Act.

Q.—He said this was the language of the Subsidy Act? A.—Yes.

Q.—Did he in your presence consult Mr. Eberts? Mr. Wells says he had some doubt about the matter and he consulted Mr. Eberts, and Mr. Eberts advised him that that was not the construction. Did that occur in your presence? A.—I don't remember whether Mr. Wells went to Mr. Eberts. Mr. Eberts was in the House at the time, I remember.

Q.—But, at all events, he said it was the language of the Subsidy Act? A.—Yes, he did.

Q.—That it was no departure from the Subsidy Act? A.—Yes, as far as I remember.

Q.—But at that time you knew they were limited in the Subsidy Act to lands that were contiguous, didn't you, because you acted on that? A.—Yes, I did.

Q.—Well, did you accept that assurance as satisfactory, or what? A.—No, I did not accept it as satisfactory.

Q.—Well, what course did you take then? A.—I remember we talked it over with three or four people—three or four members.

Q.—You talked it over; do you mean to say that you went outside the Cabinet and pointed that out to supporters of the Government or members of the House? A.—Yes, two or three members.

Q.—And what, generally, was the effect? A.—Well, Mr. Eberts advised us all that it was simply a question of policy with the Government; the Government had the right to refuse it.

Q.—I see; that it was entirely a question of policy? A.—Yes.

Q.—And then that the effect of the Bill would be, according to Mr. Eberts' advice, that although the Company would not be in a position to force the giving of those lands against the Government, yet at the same time the Government would have the power to give them? A.—Well, I asked Mr. Eberts one day in regard to subsidies as a whole, and he said that different Acts that passed, the Government were not obliged to give them; even if the Company had built a road and earned them, the Government was not obliged to give them.

Q.—But the application, at all events, of that advice would have been that the Government would have had power to give lands which were not practically contiguous to the line of railway? A.—Yes.

Hon. Mr. Prior—*Continued.*

Q.—Well, that would have been enlarging; you knew that there was an enlargement then to that extent of the powers under the original Act? A.—Well, I don't know whether I knew that or not.

Q.—That would be the natural inference, wouldn't it? Because, as I understand you to say, on the 18th of March your mind was chiefly affected not so much by what had occurred in Montreal between Mr. Taylor and Mr. Wells, but by the fact that the Government had gone beyond its power? A.—Yes, I think so.

Q.—So that you would undoubtedly be impressed by that? A.—I was, yes. I knew it at the time.

Q.—It must have been present in your mind in discussing this matter in the House, that power was given beyond the Subsidy Act? A.—I never did discuss it beyond what I have told you.

Q.—But to the extent you have mentioned? A.—That is so.

Q.—Now, on that question of policy you did not agree with Mr. Eberts, did you? A.—No, I did not.

Q.—I mean to say, you would not take the position that—supposing the Company had no legal remedy against the Government—as a member of the administration you would not take the position that the Government would be justified in withholding something that the Statute had given somebody, if the consideration had been fulfilled? A.—Well, that would be against my ideas of what a Government should do.

Q.—And you have not any doubt about that, have you? A.—Well, after seeing Mr. Chief Justice Hunter's opinion, I began to doubt whether I knew much about it or not.

Q.—But you would not regard that as a matter for lawyers, would you? A.—Yes, I think I should. If Mr. Hunter said anything with regard to a Statute, I should feel that I was pretty well bound to follow it.

Q.—But I don't mean as to the meaning of the Statute; what I mean is, that supposing the Statute plainly said the Government shall give to A a certain lot, and yet at the same time the law did not give A any remedy against the Government to get the lot, because it was the Government he was dealing with and not a private individual, you would not, as a member of the Government, say, "It is true the Statute gives it to you, it is true you have got a right to it, but you have no legal remedy to get it, and we shall withhold it." You would not do that? A.—Well, I don't think it would be carrying out the intention of the majority of the Legislature.

Q.—It would not be carrying out the intention of the majority of the Legislature, therefore it would not be the right thing to do? A.—It would not be the right thing to do.

Q.—It would absolutely be the wrong thing to do? A.—Yes.

Q.—So that these considerations, then, were discussed among you then; the very points that are now mentioned were discussed among you before the Bill was withdrawn? A.—No, I don't think amongst the Government.

Q.—I don't mean amongst the Government; I did not mean to put it that way; but between you and some members of the House, and Mr. Eberts was consulted on the subject? That is what you have said, Colonel Prior. A.—I said I spoke to some of the members about it and pointed out—

Q.—And discussed the scope of the Bill? A.—Pointed that out, yes.

Q.—And these points came up and Mr. Eberts was consulted about it? A.—Yes.

Q.—And he said, "Well, that is a matter of policy, anyway"? A.—Yes.

Q.—And on that it was allowed to go? A.—I don't know whether it was allowed to go.

Q.—Well, I mean to say, no amendments were suggested, were they? A.—Amendments suggested?

Q.—You did not bring it up in Executive, did you? A.—No; that Bill never was in Executive, never.

Q.—Wasn't it, really? A.—No.

Q.—Here is an Order in Council signed by— A. (Interrupting)—Not while I was present, anyway.

Q.—I will get the date of the Order in Council; what we have here is a recommendation signed by the Premier, that it be brought in on a Message. You mean that that might occur without the matter being before the Executive? A.—Oh, yes.

Hon. Mr. Prior—*Continued.*

Q.—It might be done by the Premier alone? A.—No, the head of the Department; the Minister at the head of the Department would sign it and hand it to the Premier, and the Premier would sign it.

Q.—I don't think this is. A.—It is signed by the Premier, that is all; but that is handed to him by the head of the Department.

Q.—That would be the practice? A.—Yes.

Q.—The head of the Department would hand it to the Premier? A.—Yes.

Q.—It would not be in the ordinary course for the Deputy Attorney-General to do that? Would he be the proper person to put it in train for Message? A.—Yes, he does.

Q.—After consultation with the head of the Department, it would be; it would not be a proper thing for him to do that without consulting the head of the Department and making the head of the Department know what was going on? A.—Well, I couldn't tell you what the practice is in the Attorney-General's Department. But, on general principles, it would not be right, I think.

Q.—The recommendation is signed by Mr. Dunsmuir on the 20th of May, apparently (showing document to witness). Would that really go through without having some consideration before the Council itself? A.—That did.

Q.—But I mean, in the ordinary course, would it not be submitted to the Council for consideration? In the usual course, would a recommendation like that be signed by the Premier alone? A.—Well, if the head of any Department came to me as Premier, now, and said he wanted to bring in a Bill and bring it in by Message, I think I would sign it.

Q.—But you are quite confident that there is no doubt about it that this Bill did not come before the Executive at any time? A.—So far as I know.

Q.—I mean to say, when you were present? A.—And to the best of my knowledge, I never saw that Bill before the Executive or heard of it being before the Executive, and never saw it until it had been on the table two or three days in the House.

Q.—Now, what steps did you take to ascertain, or how did you become aware of the fact, rather, before the Bill was withdrawn, that the Bill was not likely to receive the support of the House? A.—Well, I don't know that I did. I spoke to two or three members and I pointed this out.

Q.—Well, why was the Bill withdrawn, then? A.—I could not tell you; it was not in my Department; it was not my Bill.

Q.—What did you find the feeling of the House on the Bill? Did you find any opposition to it? A.—Yes, I did.

Q.—Among members of the Government side? A.—Yes, there were members on both sides that were against it, and members on both sides that were for it, I think.

Q.—Didn't you come to some opinion as to where the balance of— A.—(Interrupting) I don't know of my own knowledge; I only spoke to two or three members about it, I think, after Mr. Oliver showed me that.

Q.—But you got information as to the state of the members in the House about it? A.—Well, I don't remember exactly; it is pretty hard to remember. I did not take much interest in it; it was not my Bill.

Q.—Weren't you at that time, as a matter of fact, acting as the Government whip? A.—No, sir.

Q.—About that time? A.—No, sir; I never heard of a Minister acting as a Government whip yet.

Q.—I suppose that is so, and that expression should not be used. But weren't you largely performing duties that would be performed by a Government whip? A.—No.

Q.—Whom would it be? A.—Mr. Ellison was.

Q.—But you say he was not acting? A.—I did not say that; I said Mr. Ellison was the whip, but whether he was acting at that time or not I don't remember.

Q.—That is as far as you can say? A.—Yes; because I don't know. I don't believe I ever asked a single member to vote for that Bill.

Q.—No; I am not suggesting that. A.—Not a single member.

Q.—Please understand that I am not asking you as to whether you canvassed the House in regard to this matter as to asking members to vote for it. That is not my suggestion at all. What I want to get at is as to whether you took steps to ascertain what the view of the members was with regard to the Bill? A.—No, I never did.

Hon. Mr. Prior—*Continued.*

Q.—You said that you spoke to some of the members; how many? A.—Well, I forget; I think it was two or three; I don't remember who at the time; but I remember Mr. Oliver came to me; he made a considerable impression on me; I thought it was quite a curious Bill when he pointed that out. When we cancelled the Crown grants and we thought everything was safe, and a Bill was brought before the House and we had never had an Executive, and Mr. Oliver brought the Bill and said they can get those lands under that Bill, and he was very emphatic about it. I suppose Mr. Oliver remembers it, standing close to the Premier's chair. And I showed it to Mr. Wells; I don't think Mr. Wells read it at the time, but he says, "It is the language of the Subsidy Act." I remember those were his words.

Q.—And then you called the attention of some other members? A.—Yes, I did; I called their attention, and then I don't think I did anything more about it. There was a caucus.

Q.—Was there a caucus on the question as to whether the Bill should be withdrawn or not? A.—I don't think it; I don't remember. I don't think so; no, I am sure there was not.

Q.—And that is all you did about it? A.—And that is all I did about it.

Q.—The Bill was withdrawn, and you don't know anything about the reason why? A.—I don't know who withdrew it, and don't know the reason why.

Q.—I draw your attention to this, Colonel Prior, that the Bill was withdrawn on the 19th, and that just prior to the withdrawing of the Bill there was a notice of motion given by Mr. Oliver, in which the facts were pretty well recited with regard to that; do you remember that? A.—No, I do not—any different facts from what he had given me before?

Q.—Well, what I mean is this, that Bill was based upon a supposed agreement? A.—Yes, as Mr. Eberts stated.

Q.—Which Sir Thomas Shaughnessy now practically says never was made. A.—Well, Mr. Dunsmuir understood like I did, that that agreement was made with them.

Q.—I can understand, Colonel, that that is perfectly clear, that it was stated to you and to the House that that agreement had been made—that an oral agreement of that kind had been made; it is quite clearly stated in Mr. Eberts' letters and in Mr. Brown's letter, and in the preamble of this Bill. But Mr. Oliver, on the 18th of June, brought before the House very cogent facts to show that such an agreement as that never could have been made. Now, were those facts brought to your attention at the time of the withdrawal of that Bill? A.—No, it was not.

Q.—At that time your attention was not called to this, for example, that at the very time when this alleged oral agreement was said to have been made, the Canadian Pacific Railway Company on this very subject had presented to the Government a written agreement, carefully prepared in Montreal, and that that agreement contained no reference whatever to the matters in this preamble? A.—No, I never heard of that until a short time ago.

Q.—When did you hear of that first? A.—You mean that they had never asked for an extension of time?

Q.—Yes, the written agreement not containing any provision with regard to the extension of time. A.—The first I heard of it was in this room, listening to the evidence.

Mr. McCaul: Colonel Prior, in regard to the question of including letters marked personal with the Returns asked by the House; I understand that that is not the usual practice at Ottawa? A.—Personal letters?

Q.—Yes. A.—No; I have heard that discussed a hundred times in the House in Ottawa; any letters marked personal and private the Ministers keep on a different file; and, unfortunately, they get on the wrong file and they are brought up.

Q.—But, in the ordinary practice, they would not be sent in with a Return asked such as this, for correspondence? A.—Never.

Mr. Helmcken: Mr. Brown explained that the word personal was put on there just because he wanted it to go to the Minister; not that it was personal in any other respect.

Mr. McCaul: That would not be in the mind of the person receiving the letter; but that was the person writing the letter. A.—It seems to me that the subject-matter of the letter tells whether it should be on the private file.

Q.—Your complaint, then, is that, as a matter of fact, this apparently got on the wrong file? A.—I am not complaining; I have made no complaint.

Hon. Mr. Prior—*Continued.*

Q.—But, as a rule, letters marked personal would not be returned in connection with such an Order of the House as this, according to your experience of practising in Ottawa?
A.—If I asked a clerk in my Department to get out a Return of everything in a matter like that, I would say he would not be at liberty to send a personal letter up in a matter of that kind.

Q.—And in preparing a Return of that kind you would not attend to the details of it?
A.—No, certainly not.

Q.—It would be some one in your office. Now, with regard to the answers that Mr. Wells gave in response to questions; those answers were approved by the Executive before they were presented to the House? A.—Not that I remember. They might have been, but I don't remember. It is very often that a Minister, just before the answers are given, hands them to his colleagues and says, "Are those answers satisfactory"—or something of that kind.

Q.—And probably this was done in this instance? A.—I really couldn't tell you.

Q.—In regard to Bill 87, Mr. Wells told you that was in the language of the Subsidy Act? A.—As far as I remember, those were his exact words to me, as he stood at his desk.

Q.—Well, did you send for the Subsidy Act and turn it up? A.—No, I did not.

Q.—You did not do it at that time? That would very speedily settle it, wouldn't it, if you had got the Subsidy Act and compared it with the Subsidy Act, you would have no doubt?
A.—Well, I think I have intelligence enough to tell the difference.

Q.—Quite so; and I suppose you did, as a matter of fact, refer to the Subsidy Act almost immediately? A.—No, I never did.

Q.—You did not, not after Mr. Oliver had called your attention to what he thought was a departure from the Subsidy Act? A.—No, it was Mr. Wells' Bill.

Q.—I quite understand it was Mr. Wells' Bill, he had charge of the Bill, but at the same time it was a Bill which the Government was responsible for as a whole? A.—But if every Minister had to go and look up Acts for another Department, no business would be carried on; you have to trust your colleagues or you will never do any business.

Q.—I quite understand that. The Bill came down, as a matter of fact, from the Attorney-General's Department, did it not? A.—I couldn't tell you, I am sure.

Q.—You don't know about that at all? A.—No.

Q.—Now, was not the real reason of the withdrawal of the Bill on account of the fact that it was very late in the Session, and you understood that it would provoke a long discussion lasting over a fortnight or something of that kind, two or three weeks? A.—I couldn't tell you.

Q.—Do you recollect that being discussed at all? A.—I do not.

Q.—You don't know whether that was the operating idea with Mr. Wells at that time?
A.—I do not.

Q.—As a matter of fact, it was very late in the Session and members were getting restive, and anxious to get away about that time? A.—Yes.

Q.—And was it not intimated to you that if the Bill were gone on with there would be a very long discussion and it would delay the Session on for two or three weeks? A.—I think there would have been; there is no doubt about it.

Q.—There is no question it would have been, as a matter of fact? A.—Yes, a pretty big debate.

Q.—And that would be in itself a very good reason to withdraw the Bill at that stage?
A.—Well, I won't say that.

Mr. Helmcken: There seems to be some doubt about the reasons for the withdrawal of this Bill 87. If you look over this side of the hall you will see two gentlemen who have something to do with the withdrawal of that Bill. Does that recall anything to your mind?
A.—I see two gentlemen on that side of the table.

Q.—Yes. A.—Well, I don't know which two.

Q.—Do you not recollect a resolution being put on the morning of the day when that Bill was discharged, that the order for the reading should be discharged and the Bill withdrawn? A.—Mr. Helmcken, I don't remember it. It may have been; I don't remember it.

Q.—Well, as a matter of fact, that is the case. A.—I don't doubt it; I would not say no for a moment; but I don't recollect it.

Hon. Mr. Prior—*Continued.*

Q.—Yesterday, or the day before, Sir Thomas Shaughnessy stated that you had some connection with the Crow's Nest Coal Company at the time that they had some dealings with the Company; do you recollect that? A.—At the time they had some dealings with the Company?

Q.—Yes. A.—Yes, I have had connection with the Crow's Nest Coal Company for twelve years; eleven or twelve years.

Q.—And is the introduction of the present Bill—if it became law, now, has your connection with the Company anything to do with the Bill? A.—No, certainly not.

Q.—You have not been actuated with regard to it by feelings of hostility in connection with it? A.—Not at all; I have never had a single word to say with any of the Crow's Nest Coal Company or any of the directors, nor has it influenced me at all in that way. I am a shareholder of the Company, the same as hundreds of other people are. I draw my dividends from it, and that is the only thing I have to do with them.

Q.—And this Bill, the Act which is now in force, is simply carrying out your policy, and, as you consider, validating a certain act which had been done in the interests of the people? A.—Yes. The Crow's Nest Coal Company have got enough coal to last them for thousands of years, without wanting any more.

Mr. McPhillips: Previous to becoming a Minister of the Government of the Province of British Columbia you had been a Privy Councillor for Canada, had been a member of the Federal Government of Canada? A.—Yes.

Q.—You have heard the remarks upon these questions that were answered by Mr. Wells, and referred to in the Journals of the House? A.—Yes.

Q.—You have been present here? A.—Yes.

Q.—Now, from your experience, does the practice here differ from that in the Federal Government, in the case of the preparation of facts, passing on these questions? A.—I don't understand you, Mr. McPhillips.

Q.—Is the responsibility an individual one or a Government one? You look upon it in what way? A.—Every Minister of his own Department prepares his own answers in Ottawa.

Q.—They are not passed upon by the Government? A.—No. I never heard of any questions being brought up in an Executive there to answer.

Q.—Still, you would not be prepared to say that the Government should not take responsibility for the answers given? A.—Oh, no; they are responsible for the act of each Minister.

Q.—The Government would be responsible? A.—Yes, certainly.

Q.—In the case of these particular questions referred to in this inquiry, you don't remember whether any of them were submitted to the Executive at all, or passed on? A.—I don't remember at all. Sometimes a Minister, when he has a question he thinks he ought to ask his colleagues about, will bring it up in Executive or ask them in the House about it. But I don't remember whether these were or not.

Q.—I don't know how these questions struck the Government at the time, but when we consider the inquiry, and the very momentous matter the questions are dealing with, one would rather think that the questions would be carefully scanned and passed on by the Executive. But you don't remember that it was done? A.—No; I never heard of such a thing being done regularly, unless the Minister of the Department wishes it.

Q.—And you say, so far as you know, there was no advice taken from the Attorney-General as to how far the Government could go in making these answers? A.—Not that I know of. It may have been, but I don't recollect.

Q.—Colonel Prior, were you ever aware of the fact, until, perhaps, it is now brought clearly to your notice, that the Legislature, as a matter of fact, was kept unadvised of the fact that the Crown grants for these two particular blocks, 4,593 and 4,594, had been prepared, were signed, and were cancelled? Do you know now, when this inquiry has been proceeding here and the evidence that has come out, that, as a matter of fact, the Legislature was kept unadvised of those facts? A.—Yes.

Q.—Because the Return which I have before me, to be found at page 1,245 of the Sessional Papers of 1902 which Return was brought down on the 15th of May, 1902, merely sets forth the Order in Council rescinding the previous Order in Council; but there is no advice to the Legislature at any time of the fact that there were Crown grants prepared and signed and cancelled. That advice was not given to the Legislature, apparently? A.—No.

Hon. Mr. Prior—*Concluded.*

Q.—I call your attention to the fact, too, that we have no evidence here of this letter of November 8th, 1901, signed by Mr. W. S. Gore, the Deputy Commissioner of Lands and Works, in which he says to Mr. Armstrong, the Government Agent at Fort Steele: "Sir,—In reply to your letter of the 29th ultimo, I beg to advise having forwarded to your address, by even mail, the plan referred to in my letter to you of the 19th ultimo, showing lands in your District granted to the Railway Company." We have asked for a copy of that plan, but, unfortunately, we cannot get it; the Deputy Commissioner of Lands and Works says he never kept a copy of it; but we have his statement that it was a plan such as other plans we have here, showing these two blocks, 4,593 and 4,594. A.—Yes.

Q.—Now, being advised of these facts, don't you think that in this Return that was brought down there should have been brought down that letter and that information? The Return is, "To an Address to His Honour the Lieutenant-Governor, asking him to cause to be laid before the House copies of all Orders in Council and correspondence between the Government, or any member thereof, and any other person or company, relating to the reservation of Lots 4,593 and 4,594, South-East Kootenay District, and to the granting of such lots, or any portion thereof, to the Columbia and Western Railway Company or Canadian Pacific Railway Company." Now, as a matter of fact, there would not appear to be any correspondence brought down, and particularly this that I refer to is not brought down. A.—I don't know whether that applies.

Q.—Well, you may take it from me; it says the lands of that District granted to the Railway Company; I can call Mr. Gore, but I have his statement that it was these particular blocks 4,593 and 4,594; there is no question about it. But I suppose all you have to say about it is that this Return was prepared by the Lands and Works Department and you did not pass upon it as an Executive? A.—We did not pass upon it. It was not prepared by the Chief Commissioner personally, but by some of his clerks; but he is responsible for it.

Q.—You would not say that he was not responsible for it? A.—We are all responsible for it.

Q.—The Government is responsible for it. I want to make it clear, in justice to the Legislature as a whole, that the Legislature was not advised of these facts that Crown grants were actually prepared and signed and sealed, and subsequently cancelled. A.—Up to what date weren't they?

Q.—Well, when would you say that they had been advised of the facts? Is there any official advice that you can turn to? A.—No, but I think every member of the Legislature knew, just the same.

Q.—I would like to know when, Colonel Prior? When do you think that there was any advice of this fact to the Legislature? A.—Well, before Bill 16 was passed.

Q.—What really was said at the time Bill 16 was passed? I will call your recollection to that. We had the statement of the Chief Commissioner of Lands and Works that the Crown grants never left his possession, hadn't we? A.—Yes. I think he is right, too.

Q.—But, speaking for myself, I think that is the first time I ever knew that there were Crown grants prepared. We knew of the rescinding Order, because it was brought down in this Return. A.—Yes.

Q.—But, speaking for myself, at any rate, I never knew until then that there ever had been Crown grants prepared and cancelled. The Legislature, it seems to me, up to that time, stood merely advised that the Order in Council was set aside. Because, in answer to my learned friend, Mr. Duff, you said you considered that the Minister was entitled—you may or may not be right in that, of course—to say that there were no Crown grants in effect, because they had been cancelled? A.—Yes.

Q.—I merely want to draw your attention to the fact that, as a matter of fact, in a concrete way, at any rate, the Legislature never was advised of the Crown grants having been prepared and signed and sealed, and cancelled, until in so far as the Chief Commissioner of Lands and Works made that known in regard to Bill 16. I don't know of any public advisement on the subject, or in the Journals or Sessional Papers to that effect. A.—No, I do not.

Q.—Now, turning to Bill 87, Colonel Prior; for the reason that that Bill, I presume, passed muster before the Attorney-General, you assumed that you need make no inquiries one way or the other? A.—I certainly expected that the Attorney-General drew up all Bills. If I have a Bill to draw for my Department I certainly send it up to the Attorney-General to draw.

Hon. Mr. Prior—*Continued.*

Q.—After its introduction, when did it first come to your notice? Did the Bill strike you as being anything different from what you had expected it to be, or was your mind brought to bear on that at all? A.—I don't think I ever read it until Mr. Oliver came to me and pointed it out to me.

Q.—But then, when he did come to you and point it out, did it strike you then that the Bill was not quite in accordance with what you would have expected? A.—It was not in accordance with what I understood as the policy of the Government.

Q.—As to what you believed would be the policy of the Government? A.—Yes, and what I believed was the policy of the Government.

Q.—That is, it did not seem in accordance with what you knew was the policy of the Government? A.—Well, when it was pointed out to me that under this Bill the C. P. R. could take up these lands, I knew that was not the policy of the Government to give them a chance to get them.

Q.—You say the Attorney-General always met you upon that subject anyhow, though, by saying, "Well, the Government can never be called upon to give lands except they see fit to do so." A.—That was his advice to us.

Q.—He always advised in that way? A.—Yes, and does yet. He stated so in his evidence the other day, I believe.

Q.—Now, Colonel Prior, of course you were not aware, as you came into Provincial politics later, but members of the Legislature are familiar with the fact that a Return was brought down on the 24th of January, 1900—"Papers in relation to the British Columbia Southern Railway Company land grant, by command, Alexander Henderson, Attorney-General," affecting really this same matter more or less. A.—I never heard of it.

Q.—However, we have it; appearing in the Sessional Papers of 1900, page 439. And in connection with those papers, at page 454, may be found an opinion of Mr. Christopher Robinson—who is well known to you? A.—I know him.

Q.—A King's Counsel, Mr. R. B. Osler, K. C., since deceased, and Mr. Lefroy, an able writer of constitutional law of Canada. A.—Yes.

Q.—Now, turning to page 455, in a portion of that opinion we find this language: "But assuming the Statutes as to the land grant to be permissive only, and to leave it discretionary with the Lieutenant-Governor in Council to complete the grant"—that is practically what the Attorney-General was telling you, of course—"we have the Order in Council of May 6th, 1891, setting apart certain lands to be conveyed to the Company on compliance with the statutory conditions"—and I may tell you that those lands are practically 4,593; you remember 4,593 ran up Morrissey Creek, then across to the mountain, and down— A.—Yes.

Q.——"and described as an initial block of the lands granted to the B. C. Southern Railway Company under the Act of 1890, as an inducement for the construction of the said railway; and the further Order in Council of July 15th, 1897, setting out that on the eastern section the Company will be entitled to a grant of the lands as described in section 16 of the Aid Act of 1890, with another Order in Council of November 1st, 1897, recognising this Order in Council and relating to the method of carrying it out. There are also two other Orders in Council of February 25th, 1890, and August 11th, 1890, reserving from sale or settlement the land mentioned in section 16 already referred to, and the 400,000 acres afterwards reserved for this railway specifically by the Order in Council of May, 1891. Looking only to the legislation of British Columbia, and the action of the Provincial Government thereon, we conclude that the B. C. Southern Railway Company, on building the road in accordance with the Statutes, would be entitled to the grant." Now, this is the opinion signed by Christopher Robinson and Mr. Osler, gentlemen whose standing would not be questioned. "We have not overlooked the case of *Clarke v. The Queen*, 1 Ex. Ct. Rep. 182 (1886), which, as reported, decides that a petition of right will not lie to compel the Crown to grant a patent of lands; but this is opposed to the decision of the present Chief Justice of the Supreme Court, not cited in it, of *Canada Central Railway Company v. The Queen*, 20 Gr. 273 (1873), and is observed upon in *Peterson v. The Queen*, 2 Ex. C. R. 67 (1889). See also, Clode on *Petition of Right*, pp. 70-72, and the cases there cited of *James v. The Queen*, L. R. 17 Eq. 502 (1874); and *In re Brain*, L. R. 18 Eq. 389; and *Peck v. The Queen*, 1 B. C. Rep. (pt. 2), 11 (1884). Upon the whole, we do not think the jurisdiction can be successfully questioned, especially under the wide terms of the British Columbia Crown Procedure Act, R. S. B. C., 1897, c. 57." So you see, right on this very subject-matter is an express opinion of Christopher

Hon. Mr. Prior—*Concluded.*

Robinson and R. B. Osler that the Crown can be compelled, even by petition of right, to grant lands. A.—How can they get a petition of right if the Government don't allow it?

Q.—Well, of course, it is assuming a petition of right; as Chancellor Boyd once said, invariable justice always resides in the Crown; it is not to be assumed that a Government would absolutely refuse a petition of right, and not allow a matter to be adjudicated; you would not say that? A.—Doesn't the Dominion Government do it?—when I applied myself.

Q.—But do you know that Dominion legislation now is that the Crown can be sued in the Exchequer Court of Canada, without its being necessary to get a fiat? A.—Well, it was not, in those days.

Q.—But, then, you may take it from me, practically, at any rate, that it is an admitted principle of law that Governments should grant a petition of right if there is any reasonable ground to be alleged. A.—Yes, I believe that.

Q.—But your attention has not been drawn to any such opinion as that? A.—No, never.

Q.—And you took it for granted that when the Attorney-General advised you that, that the Crown would be sufficiently protected? A.—Naturally, that is what we believed.

Q.—That is, you could have prevented the Railway Company, even though Bill 87 was passed, from getting these blocks 4,593 and 4,594, if the Government should so see fit? A.—That is what he advised us. Whether he thought it was enough or not is a different thing.

Q.—Now, Colonel Prior, on this question of the rescinding of the Order in Council of the 4th of September, 1901, which authorised the issue of these two particular Crown grants 4,593 and 4,594, did the question come up, one way or the other, as to whether this Order in Council should not in terms say that the Crown grants be and the same are hereby cancelled? Did that question ever come up? A.—1901?

Q.—No, the 18th of March, cancelling the Order of the 4th of September, 1901. Did the question come up one way or the other as to whether you should not, in the Order in Council of the 18th of March, also declare that the Crown grants be cancelled? A.—No, I don't remember of that coming up; we intended to cancel the Order in Council.

Q.—And you thought that that would be effectual in cancelling the Crown grants? A.—Well, Mr. Wells stated that he had cancelled the Crown grants; he had written cancelled across them.

Q.—But, still, it is very questionable whether that would mean much. A.—And I know when I came in as Premier, it was one of the first things we did; we had an Executive and the Crown grants were brought in and we put our pens over the signatures.

Q.—But, if you will observe, Colonel Prior, there is no Order in Council, as I understand it, up to date, which, so far as an Order in Council is concerned, cancels the Crown grants. A.—I see.

Q.—The Order in Council cancels the Order authorising the preparation and issuance of the Crown grants. A.—I see.

Q.—But, of course, Bill 16 accomplishes that end now. A.—Yes.

Q.—You say you had no advice then that the Order in Council should extend in that way? A.—No, never.

Q.—The Attorney-General gave us some information, but very little, as a matter of fact, about the occasion upon which this cancelling Order was passed, the 18th of March, 1902; he states that he found that there was an Executive meeting taking place in the office of the Chief Commissioner of Lands and Works, and he had not been advised of it. Do you know anything as to that, Colonel Prior, as to whether he had or had not been advised? We assume, I suppose, that he had not been advised? A.—I couldn't say, I am sure; I was advised, and all the others were advised.

Q.—However, he did come in? A.—Yes.

Q.—I suppose you remember his coming in to the meeting? A.—Oh, yes.

Q.—Do you remember whether it was early or late in the proceedings? A.—I think he was there most of the time.

Q.—Well, would you say that the Executive act accomplished at that meeting was done within or without his presence? A.—The decision come to?

Q.—Yes. A.—I should say in his presence, as far as I remember. But he has never tried to hide that he has always been against it; he has always been against that rescinding Order. He is the same yet.

Witness stands aside.