

BETWEEN :

THE QUEBEC CENTRAL RAIL- } SUPPLIANT;  
WAY COMPANY ..... }

AND

HIS MAJESTY THE KING.....RESPONDENT.

1936  
Jan. 21 & 22.

1937  
Nov. 3.

1938  
Jan. 12.

*Crown—The Railway Subsidies Act, 2 Geo V, c. 48—Time of the essence of the agreement—Claim for services rendered pursuant to statute.*

Supphant was incorporated by an Act of the Legislature of the Province of Quebec with powers to construct a railway in that province. Some time prior to 1912 suppliant had begun the construction of a branch line from a point on its main line of railway and which it was proposed to extend for a distance of 150 miles. Aided by subsidies paid it by the Government of Canada suppliant constructed three continuous extensions of this branch line for a distance of 40.34 miles in length. By the Railway Subsidies Act (1912), 2 Geo V, c. 48, the Governor in Council was authorized to grant a subsidy to suppliant for an extension of this branch line "not exceeding 50 miles" in length.

Supphant and the Minister of Railways for Canada entered into certain agreements in writing which provided for the construction of the railway extension, for payment of the subsidy in the manner and time therein set forth and in accordance with s. 11 of the Railway Subsidies Act, for the completion of the whole extension by August 1, 1916, declaring time "to be essential and of the essence of the agreement," and providing that "in default of completion thereof within such time the company shall forfeit absolutely all right and title, claims and demands, to any and every part of the subsidy or subsidies payable under this agreement, whether for instalments thereof at the time of such default earned and payable by reason of the completion of a portion of the line, or otherwise howsoever."

Supphant received payment on account of subsidy for the completion of ten miles of the road. On August 1, 1916, 24.17 miles only of the line had been built, no further mileage ever having been constructed.

Supphant claims payment of the subsidy upon the line of railway so far completed and also payment for services rendered in accordance with s 8 of the Railway Subsidies Act which provides that every company operating a railway, or portion of a railway, subsidized under the Act "shall each year furnish to the Government of Canada transportation for . . . mails . . . over the portion of the lines in respect of which it has received such subsidy and, whenever required, shall furnish mail cars properly equipped for

such mail service," and that in or towards payment for such charges the Government of Canada "shall be credited by the company with a sum equal to three per cent per annum on the amount of the subsidy received by the company under this Act."

*Held.* That since time was material and of the essence of the agreement, suppliant, having failed to complete the railway extension by the date fixed in the agreement, is not entitled to recover any subsidy whatever

2. That with regard to the payment for services rendered in accordance with s. 8 of the Act, the continuous extensions of the suppliant's branch line, upon which subsidies have been paid, must be treated as a single line of railway and as if constructed under one subsidy contract.
3. That the annual credits of interest upon subsidy as provided for in the Act are not cumulative.

PETITION OF RIGHT by the suppliant claiming payment of a subsidy alleged due it from the Crown and for the rendering of certain services in accordance with the provisions of the Railway Subsidies Act, 2 Geo. V, c. 48.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

*W. N. Tilley, K.C.; E. P. Flintoft, K.C., and D. I. McNeill* for suppliant.

*F. P. Varcoe, K.C.,* for respondent.

The questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, now (January 12, 1938) delivered the following judgment:

The suppliant is a corporation duly incorporated by an Act of the Legislature of the Province of Quebec, with authority to construct and operate a railway in that province, including the line or lines hereinafter to be mentioned. Prior to the time material here the suppliant had commenced the construction of a branch line, known as the Chaudiere Valley Extension, from a point on its main line of railway, and it was proposed eventually to extend this branch line eastwardly, a distance of over 150 miles, to a point known as Cabana, on the Temiscouata Railway.

In 1907, the suppliant constructed an extension of this branch line, 9 miles in length, from St. Francis to St. George; later, another extension, 30 miles in length, was constructed from St. George to Ste. Justine; and later still a further extension was constructed, 1.34 miles in length,

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from Ste. Justine to an unnamed point which we shall designate as Ste. Sabine. In the case of each of these three continuous extensions of this branch line of railway, the Government of Canada agreed to pay, and did pay, the suppliant a certain subsidy in aid of the construction thereof, under authority of certain Railway Subsidies Acts.

The Railway Subsidies Act of 1912, hereafter to be referred to as "the Subsidy Act," authorized the Governor in Council to grant a subsidy to the suppliant in aid of the construction of a further extension of the line, from Ste. Sabine to an unnamed point in the Township of Dionne, in the County of L'Islet, "not exceeding 50 miles," and it is this proposed extension with which we are immediately concerned. Under authority of that Subsidy Act, in June, 1914, a contract in writing was entered into between the Minister of Railways and the suppliant, by the terms of which the Crown was to pay the suppliant a certain subsidy, and the suppliant was to construct the railway extension in question, and to perform other conditions. Sec. 6 of the Subsidy Act required that construction of any railway therein subsidized be commenced within two years from the first day of August, 1912, and that the same be completed within a reasonable time, not to exceed four years from the said first day of August, 1912, to be fixed by the Governor in Council. The contract provided that the railway extension was to be completed on or before the ninth day of March, 1916. No explanation was given as to how this date came to be fixed, and, I think, it must have been an error because the Order in Council authorizing the contract named August 1, 1916, as the date for completion. However, it was agreed by Mr. Varcoe that the date for completion of the contract might be assumed to be August 1, 1916. By clause 5 of the contract, time was declared "to be material and of the essence of the agreement," and it provided that "in default of completion thereof within such time the company shall forfeit absolutely all right and title, claims and demands, to any and every part of the subsidy or subsidies payable under this agreement, whether for instalments thereof at the time of such default earned and payable by reason of the completion of a portion of the line, or otherwise howsoever." Construction of the railway extension was commenced in

the latter part of 1914 and carried on continuously as far as Lake Frontier, a distance of 24.17 miles, and it was completed to that point before August 1, 1916, and it is upon that total length of constructed line that the suppliant now claims payment of subsidy; construction of the balance of the subsidized extension was never commenced, and apparently any idea of doing so was for the time abandoned.

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The subsidy to be paid the suppliant under the contract, as authorized by s. 2 of the Subsidy Act, was \$3,200 per mile, not exceeding fifty miles, if the cost of construction on the average did not exceed more than \$15,000 per mile, and "a further subsidy beyond the sum of \$3,200 per mile of fifty per cent on so much of the average cost of the mileage subsidized as is in excess of \$15,000 per mile, such subsidy not exceeding on the whole the sum of \$6,400 per mile." Section 5 of the Subsidy Act prescribed how and when the subsidy should be paid, and it reads as follows:—

5. The subsidies hereby authorized towards the construction of any railway or bridge shall be payable out of the Consolidated Revenue Fund of Canada, and may, unless otherwise expressly provided in this Act, at the option of the Governor in Council, on the report of the Minister of Railways and Canals, be paid as follows:—

(a) Upon the completion of the work subsidized; or,

(b) By instalments, on the completion of each ten-mile section of the railway, in the proportion which the cost of such completed section bears to that of the whole work undertaken; or,

(c) Upon the progress estimates on the certificate of the chief engineer of the Department of Railways and Canals that in his opinion, having regard to the whole work undertaken and the aid granted, the progress made justifies the payment of a sum not less than thirty thousand dollars; or

(d) With respect to (b) and (c), part one way, part the other.

Section 11 of the Subsidy Act is the basis of the claim advanced by Mr. Tilley on behalf of the suppliant, and it is as follows:—

11. Whenever a contract has been duly entered into with a company for the construction of any line of railway hereby subsidized, the Minister of Railways and Canals, at the request of the company, and upon the report of the chief engineer of the Department of Railways and Canals and his certificate that he has made careful examination of the surveys, plans and profile of the whole line so contracted for, and has duly considered the physical characteristics of the country to be traversed and the means of transport available for construction, naming the reasonable and probable cost of such construction, may, with the authorization of the Governor in Council, enter into a supplementary agreement, fixing definitely the maximum amount of the subsidy to be

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paid, based upon the said certificate of the chief engineer and providing that the company shall be entitled to be paid, as the minimum, the ordinary subsidy of \$3,200 per mile, together with sixty per cent of the difference between the amount so fixed and the said \$3,200 per mile, if any, and the balance, forty per cent, shall be paid only on completion of the whole work subsidized, and in so far as the actual cost, as finally determined by the Governor in Council upon the recommendation of the Minister of Railways and Canals, and upon the report and certificate of the said chief engineer entitles the company thereto. Provided always:

(a) that the estimated cost, as certified, is not less on the average than \$18,000 per mile for the whole mileage subsidized,

(b) that no payment shall be made except upon a certificate of the chief engineer that the work done is up to the standard specified in the company's contract;

(c) that in no case shall the subsidy exceed the sum of \$6,400 per mile.

In pursuance of s. 11, and the authority of a certain Order in Council, a supplementary contract was entered into between the parties herein, in January, 1915, and therein it was agreed: "(1) That the maximum amount of subsidy to which the company shall be entitled under the said Subsidy Contract is hereby fixed at \$6,400 per mile for 50 miles. (2) That the minimum amount of subsidy to which the company shall be entitled under the said Subsidy Contract shall be \$3,200 per mile for the said 50 miles, together with sixty per cent of the difference between \$6,400 per mile so fixed and the said \$3,200 per mile. (3) That the balance, forty per cent, shall be paid only on completion of the whole work for the said 50 miles, and in so far as the actual cost, as finally determined by the Governor in Council, entitled the company thereto." The effect of the supplementary contract was that the minimum subsidy payable to the suppliant was to be \$5,120 per mile, the chief engineer having certified that the probable and reasonable cost of the construction per mile would be \$26,000. The supplementary contract also provided:—

(a) That no payment shall be made to the company under these presents and the company shall not be entitled to any payment hereunder except in compliance with the provisions of the statutes in each case made and provided and upon the certificate of the Chief Engineer that the work done is up to the standard specified in the company's contract no. 20825.

(b) That these presents shall be read with and taken to form part of the said subsidy contract no. 20825, and the line of railway therein mentioned shall be constructed, completed and operated by the company and the subsidies authorized shall be paid by His Majesty subject to and in accordance with all the provisos, covenants, agreements and conditions in such subsidy contract contained, except in so far as the said

provisoes, covenants, agreements and conditions may be inconsistent with or varied by these presents.

On the authority of an Order in Council, dated May 4, 1915, based upon a report of the Chief Engineer of the Department of Railways that the first ten-mile section of the line had been completed up to the standard specified in the contract and was ready for operation, and that the estimated cost of the line when completed was \$26,000 per mile, a payment on account of subsidy was made to the suppliant in the sum of \$43,161.60 in respect of the first ten-mile section. In this connection the chief engineer certified as follows: "As required by the provisions of the said Act, I certify that in my opinion, having regard to the whole work undertaken and the aid granted, and that the work done is up to the standard specified in the company's contract, the progress made justifies the payment of 16.86 per cent of \$256,000 (the total amount of subsidy available prior to completion, being a total of \$3,200 per mile ordinary subsidy plus 60 per cent of \$3,200 per mile further subsidy or \$5,120 per mile for 50 miles) or \$43,161.60, from which should be deducted all previous payments on account of this subsidy." It would appear therefore that the amount of subsidy available to the suppliant was computed pursuant to the terms of s. 11 of the Subsidy Act, and the corresponding provision of the supplementary contract; and it seems that both parties were agreed, or it was so decided by the Governor in Council, that the subsidy should be paid by instalments, on the completion of each ten-mile section of the railway, in the proportion which the cost of the completed section bore to that of the whole work undertaken, as provided by s. 5 (b).

Considerable documentary evidence was adduced pertaining to the matter in controversy, to which perhaps I should make a brief reference, even though in my view of the case the same may not be of importance. On June 9, 1916, Mr. Ferguson, Inspecting Engineer, reported to the Chief Engineer of the Department of Railways that the extension to mileage 17.5 was completed, and that from mileage 17.5 to mileage 23.8 only some ballasting was required to finish the work; Mr. Ferguson also called attention to the fact that the whole line subsidized could not be completed within the time fixed by the Subsidy Act.

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On June 28, 1917, the Assistant Engineer, Mr. Henry, reported to the Chief Engineer that the total length of line then completed was 24.17 miles, but he does not state the date of completion; that the same had been completed up to the standard specified in the subsidy agreement; that the reasonable cost of the same was "sufficient to entitle the company to the full subsidy of \$6,400 per mile provided the necessary authority is obtained for the payment of a subsidy upon the portion of the line completed"; and he pointed out that the time fixed by the Subsidy Act for the completion of the whole 50 miles was August 1, 1916. On August 14, 1917, the Chief Engineer, Mr. Bowden, submitted a memorandum to the Minister, wherein he certified that a total length of line of 24.17 miles had been completed, up to the standard specified in the subsidy contract, by August 1, 1916, and that the cost per mile was sufficient to entitle the company to the full subsidy of \$6,400 per mile "provided the governing condition of the statute as to time of completion for the full mileage subsidized had been complied with." He stated that he was unable to certify that any further payments on account of subsidy were due the suppliant as the terms of the Subsidy Act were not complied with, in respect of the completion of the whole work. It may therefore be assumed that 24.17 miles of the line had been completed on or before August 1, 1916.

Subsequent to August, 1916, the suppliant kept pressing for payment of any subsidy due it, upon the line of railway so far completed, and it never abandoned its alleged right or claim to payment of the subsidy in question. Further payment of subsidy was refused upon the ground that by reason of the failure to complete the whole work on or before August 1, 1916, there was no authority to pay the same without a revote of the subsidy by Parliament, which was never done; and that for the same reason any right or claim to payment of any subsidy earned, in respect of the portion of the line completed, had been forfeited under the terms of the contract. It was also represented to the suppliant that owing to the demands upon the treasury during the war, payment of the subsidy claimed could not be considered. Ultimately the position was taken definitely by the Crown that the suppliant

was not legally entitled to the payment of any further subsidy, owing to its failure to complete the whole work, on or before the time stipulated in the contract.

At the trial, Mr. Walsh, the manager of the suppliant company, gave evidence, and he mentioned several reasons why construction work was discontinued. In answer to a question put by Mr. Varcoe as to whether there were any understanding that the suppliant was to be relieved of its obligations under the contract, Mr. Walsh stated: "Not in the sense you represent but there was certainly a desire on the part of the Government not to spend any more money during the war years, to discontinue that development, and we were so advised and we stopped there." And he further stated that the Government never requested the suppliant to continue the work, which, I may say, has been amply established; and that about the time construction ceased it was impossible to secure sufficient labour to complete the work. It would require but little evidence to convince one that, sometime in 1916, or earlier, an informal understanding had in some way been reached, between the Minister of Railways and the suppliant, that the work was to be temporarily discontinued. It certainly would not astonish any one, in view of all the circumstances of the time, if such an understanding had been reached, in the interest of all concerned. The provision of the contract, as to the time for the completion of the whole work, would not likely be regarded as a serious obstacle in reaching such an understanding. What might be the legal effect of such an actual understanding or agreement between the Minister of Railways and the suppliant, but not formally concurred in by the Governor in Council, I do not propose discussing. That issue was not raised and the case was not put to me on that footing. It was not contended by the suppliant that by reason of the war the contract became impossible of performance.

Having stated what appears to be the salient facts disclosed by the evidence, and having mentioned the important provisions of the Subsidy Act, and the principal and supplementary contracts, I turn now to a consideration of the major point for determination, that is, whether the suppliant is entitled to any payment on account of subsidy, for the 14.17 miles of railway completed on or before

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August 1, 1916, and in respect of which no subsidy has been paid. The contention of Mr. Tilley was, that upon a true construction of sec. 11 of the Act, and the supplementary contract made thereunder, the suppliant was entitled to be paid the subsidy of \$5,120 for each mile of railway completed according to the standard specified in the contract, that is, to the ordinary subsidy of \$3,200 per mile, and sixty per cent of the difference between the amount fixed as the maximum subsidy, which was \$6,400 per mile, and the said \$3,200 per mile, and that the only penalty for non-completion of any balance of the whole work under the contract, was the loss of any claim to the forty per cent of the maximum subsidy which was retained until completion of the whole work. The chief contention of the Crown is that, by the express terms of the subsidy contract, it was agreed that in default of completion of the whole work by August 1, 1916, the suppliant forfeited absolutely any claim or demand to any instalments of subsidy then earned and payable by reason of the completion of any portion of the line.

The conclusion I have reached is that the clause of the contract making time material and of the essence of the contract is fatal to the suppliant's claim. I think it is clear that the chief purpose in enacting s. 11 of the Subsidy Act was to make subsidy contracts more responsive in financing railway undertakings, and to eliminate or reduce the uncertainty of the initial and ultimate subsidy payments under such contracts, by definitely fixing in advance the minimum subsidy payable, and also the maximum subsidy; it, I think, provided for the payment of a greater initial payment of subsidy on completed sections of a railway undertaking, pending the completion of the whole work, and the receipt of the full subsidy earned. This would tend to facilitate the initial and permanent borrowing operations of a company, with the best possible results, in order to provide a portion of the immediate capital required for the undertaking. This section of the Subsidy Act required the Chief Engineer to examine carefully the surveys, plans and profile of the whole line contracted for, to study the physical characteristics of the country to be traversed and the means of transport available for construction, and to name and certify the reason-

able and probable cost of construction; and this was something not required to be done under s. 2 of the Act. In this particular case, while it was known that the total subsidy payable could not exceed \$6,400 per mile, it was not known definitely whether it was likely to reach that amount, but the considered and certified estimate of the cost of construction, made by the Chief Engineer, rendered practically certain the fact that the maximum subsidy of \$6,400 per mile would be earned and paid, on the completion of the whole work.

This would be, at the start, or pending the completion of the whole work, of more practical value and assistance to a company, in its financial operations, than if the contract were subject to the terms of s. 2 of the Subsidy Act, and the initial subsidy payments on constructed sections, or on progress estimates, would, I think, be greater, and at least it was definite and ascertained. That would appear to be a considerable advantage to a company embarking on any railway construction project. In this particular case the effect of the supplementary contract was to fix definitely the minimum subsidy at \$5.120 per mile, and practically, if not definitely, to fix the maximum subsidy. Section 11 of the Subsidy Act is not quite clear as to the balance of the maximum subsidy, that is, the forty per cent to be retained until completion of the whole work. It speaks of the maximum subsidy as being fixed "definitely," but it also states that the balance is to be paid on the completion of the whole work, "in so far as the actual cost is finally determined by the Governor in Council." I assume the last quoted words were intended as a safeguard in the final accounting, against contingencies of one kind or another. At any rate a minimum subsidy payment of \$5,120 per mile was definitely fixed for completed sections of the railway, and that is all that is claimed here.

Now, the inclusion of the provisions of s. 11 in the supplementary contract did not disturb any section of the Subsidy Act, or any provision of the principal contract, other than s. 2 of the Act, and paragraph no. 9 of the principal contract. Sec. 5 of the Subsidy Act remains as it was, that is, as to time of payment of instalments of subsidy, which evidently was a matter to be arranged between the parties, or finally at the option of the Governor

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in Council. I would assume from the documentary evidence, and the conduct of the parties, that it had come to be understood that the terms of s. 5 (b) of the Subsidy Act would constitute the rule, though flexible, respecting the time or times of subsidy payments. And the clause of the principal contract, paragraph 5, making time the essence of the contract, and providing certain penalties and forfeitures in default of completion, was not disturbed or varied by the supplementary contract. A draft form of subsidy contract, in respect of railway subsidies authorized by the Subsidy Act of 1912, was approved by the Governor in Council, and the executed subsidy contract followed that form, and it included the clause just mentioned. Now that clause is very clear and definite, and I have already quoted it precisely as found in the text. It says in part ". . . . the company shall forfeit absolutely all right and title, claims and demands, to any and every part of the subsidy or subsidies payable under this agreement, whether for instalments thereof at the time of such default earned and payable by reason of the completion of a portion of the line, or otherwise howsoever." Section 11, and its corresponding provision in the supplementary contract, was not, in my opinion, intended to eliminate or vary in any way paragraph 5 of the principal contract. Section 11 of the Subsidy Act was intended merely to fix definitely in advance the minimum and maximum subsidy, otherwise the contract remained as it was. It did not waive or vary the suppliant's obligation to complete the whole work within the stipulated time, or the penalty and forfeiture provisions for failure to do so. The supplementary contract provided that the railway "shall be constructed and completed" in accordance with "all the provisoes, covenants, agreements and conditions in such subsidy contract contained," which, I think, are not inconsistent with any of the terms of the supplementary contract, except as already mentioned. It would be altogether improbable that the supplementary contract was intended to mean, for example, that the suppliant might construct, say only five miles of railway, prior to August, 1916, and become entitled to the minimum subsidy, and escape entirely the penalty and forfeiture provision of the contract. It is quite likely that experience had shown that the inclusion

of paragraph 5 of the principal contract was desirable and necessary, even though in many cases it would probably never be enforced.

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There is another point in the case for decision. Sec. 8 of the Subsidy Act requires that every company operating a railway, or portion of a railway, subsidized under the Act, "shall each year furnish to the Government of Canada transportation for . . . mails . . . over the portion of the lines in respect of which it has received such subsidy and, whenever required, shall furnish mail cars properly equipped for such mail service," and in or towards payment for such charges the Government of Canada "shall be credited by the company with a sum equal to three per cent per annum on the amount of the subsidy received by the company under this Act." Pursuant to this provision, and a similar provision in other Subsidy Acts, the suppliant has furnished to the Crown adequate transportation for mails, at the rates in effect from time to time, over the three sections of railway constructed and subsidized prior to the railway extension in question, also over the first ten-mile section constructed under the Subsidy Act of 1912, and upon which some subsidy was paid, and since February, 1916, or thereabouts, upon the balance of the completed extension, that is 14.17 miles, in respect of which it has received no subsidy. The suppliant claims that there is a balance still due it in respect of such carriage of mails, the amount depending upon whether or not the subsidy is payable in respect of that portion of the railway extension upon which no subsidy has been paid; and depending on whether or not the Crown is entitled to apply towards payment of the charges for mail services owing, an amount equal to one year's interest at three per cent on the subsidy paid in respect of each subsidized extension of the railway, or, to put it in other words, the suppliant claims that the calculation of the amounts due it for mail services, and the interest upon subsidies to be credited in respect of such mail services, are to be made separately in respect of each extension of the subsidized line. It is the contention of the Crown that in computing the credit of interest upon subsidy against mail services, all the subsidized extensions of the suppliant's branch line are to be treated as a single line. Further, it is the con-

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tention of the Crown that the annual credits of three per cent upon subsidies paid are cumulative, and do not lapse from year to year, and that the suppliant is not entitled to any payments on account of mail services until such accumulation of credits is exhausted.

The rates agreed to be paid any railway company on account of mail services are, I assume, in force for a year, or a period of years, and at any rate the amount earned under such rates are capable of calculation on an annual basis. The obligation upon the railway is that it "shall each year" furnish the necessary transportation and facilities for mail services. I think it is clear that the credit of three per cent upon subsidies received, is only to be applied annually against the sum payable annually, for the mail services which the railway "shall each year furnish." The annual charges for mail services are to be credited annually with the prescribed annual interest, upon subsidies paid. To say that the annual credit of interest upon subsidy was to be cumulative would seem to me to be something that the legislature never contemplated, and I do not think that is what the statute says, or what it was intended to mean. Failing express language to the effect that the yearly credits of interest upon subsidy are to be cumulative I do not think the contention of the Crown to be a tenable one. It is hardly necessary to say that it is only upon any "portion of railway subsidized" that there can be any credit of interest upon subsidy to apply against mail services.

I do not think the suppliant's contention, if I understand it correctly, that the charges or earnings for mail services, and the credits to be applied thereto on account of interest upon subsidies paid, are to be reached or calculated, upon each extension of the suppliant's line constructed under the several subsidy contracts. A provision similar to sec. 8 of the Subsidy Act of 1912, is to be found in all the other Subsidy Acts under which the suppliant received subsidies in aid of construction of its branch line. I see no reason for calculating the charges or earnings for mail services, and the interest credits, on the basis of each subsidized extension. I do not think the Subsidy Acts contemplated that cumbersome method of accounting, in the case where the subsidized railway extensions form part

of a larger scheme, and are being extended in one continuous line in consummation of that projected larger scheme. In this case, I think the continuous extensions of the suppliant's branch line, upon which subsidies have been paid, must be treated as a single line of railway, and just as if constructed under one subsidy contract. This, of course, would not apply to the railway extension in question here, and upon which no subsidy has been paid.

I was led to believe by counsel that, with this expression of opinion on my part, any other difficulties pertaining to this particular issue might be adjusted between the parties. In case counsel be of the opinion that what I have said does not sufficiently dispose of the issue, I may be spoken to further, on the settlement of the minutes. There will be judgment therefore in accordance with the conclusions which I have expressed. There will be no order as to costs.

*Judgment accordingly.*

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