

THE LEGAL HISTORY OF ALBERTA

III. THE LATER TERRITORIAL PERIOD  
1886 - 1905

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## The North-West Territories Act, 1886

This Act is one of the most significant in the legal history of Alberta. Two sources present themselves in supplying a breakdown of the important provisions contained in the Act. Horace Harvey, in his article, *The Early Administration of Justice in the NorthWest*; (1934-35) 1 Alta L.Q. 1, at p. 14:

This was the situation with respect to the administration of justice in the North-West Territories when on the 2nd of June, 1886, the Parliament of Canada by Chapter 25 of that year, provided for the creation of a Supreme Court of the Northwest Territories. ✓

The Court was to consist of five judges, somewhat singularly all being designated "puisne," the qualification being that the appointee should be a judge of a Superior Court of one of the Provinces, a stipendiary magistrate of the Territories or a Barrister or Advocate of 10 years standing. The tenure of office was during good behaviour subject to impeachment as with Provincial judges under the British North America Act. The salary was fixed at \$4,000, the same as in Manitoba and some of the other Provinces. The Court was given the jurisdiction of the Stipendiary Magistrate and of the Superior Courts of England. The Court was directed to sit *in banc* and as such to have jurisdiction to hear all appeals, motions for new trial, all points reserved in civil or criminal cases for the opinion of the Court and other matters that could lawfully be brought before it. The Section of the Act of 1880 giving a right of appeal to a person convicted of a capital offence to the Court of Queen's Bench, was specifically repealed and thereafter such person's right of appeal was in consequence limited to such legal grounds as could be raised in a reserved case. ✓

Section 88 of the Act of 1880 giving the right of appeal in civil cases to the Manitoba court does not appear to have been specifically repealed, but it is omitted from the Revised Statute which came into effect on the 1st of March, 1887, and in the Schedule to the Revised Statutes the whole of the 1880 Statute is declared to be repealed. ✓

The Lieutenant Governor in Council was given authority to pass Ordinances for procedure in civil matters and the procedure in criminal cases was to conform to the procedure in like cases in England as of the 15th of July, 1870, except that there was to be no grand jury. ✓

It was by the same Act that the laws of England as of the last mentioned date were declared to be in force in the Territories. ✓

The Act was to come into force by proclamation and the Statutes of 1887 contain a notice that by proclamation issued in January, 1887, it was brought into force on the 18th of February, 1887, on which date also an Order in Council was passed establishing the five judicial districts which continued during the life of the Court. Alberta and Assiniboia



were each divided into two judicial districts and Saskatchewan formed the fifth. The provisional district of Athabasca was not included in any judicial district.

The Court was constituted by the appointment of three of the four Stipendiary Magistrates, the fourth Judge being a barrister from New Brunswick and two months later an Ontario barrister was appointed as the fifth Judge.

Thus it will be seen that in little more than a decade the Judicial machinery of the Territories had developed from its primitive beginning to become as complete in general character as, and equal in dignity and authority to, that of the Provinces.

Speaking with a personal knowledge of its first members, with all but one of whom I was brought frequently in contact and with one of whom I was subsequently a colleague, I feel no hesitation in stating that in this respect there was no inferiority to the personnel of the Superior Courts of the Provinces. This is also apparent from a perusal of its reported decisions.

Lack of time and space forbid a further continuation of this historical sketch here. In a subsequent number it may be possible to carry it up to a later stage.

HORACE HARVEY.

More recently, P. Ward in his M.A. Thesis, The Administration of Justice in the North-West Territories, devoted a chapter of his work to this Act. His analysis appears below. (The date Mr. Ward wrote this thesis is unavailable as the bound copy is presently at the book bindery. I believe he did his work in the mid-1960's).

## CHAPTER V

### A LOGICAL SOLUTION, 1886 - 87

In 1886 Parliament passed the act which laid the legislative foundations for a judicial system which, when

constructed, could meet the growing needs of the Territories.<sup>1</sup> As an amendment to statutes then in force, it solved the problems which had become a concern since 1880. The Act's most significant contribution was the creation of a "supreme court of record of original and appellate jurisdiction, which shall be called 'The Supreme Court of the North-West Territories'".<sup>2</sup> The bench was composed of five puisne judges, all commissioned by the Governor in Council,<sup>3</sup> and only territorial stipendiary magistrates, judges of provincial superior courts, or barristers or advocates of at least ten years' standing at any provincial bar were eligible for appointment.<sup>4</sup> The judges were given all the powers and jurisdictions which stipendiary magistrates enjoyed.<sup>5</sup> Once commissioned, they were to hold office "during good behavior",<sup>6</sup> therefore gaining greater security of tenure than the stipendiaries. Each judge was to be paid a yearly salary of \$4000,<sup>7</sup> the same as received by judges in Manitoba, Nova Scotia, and New Brunswick.<sup>8</sup> Although they were not allowed

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<sup>1</sup>49 Vict., c. 25.

<sup>2</sup>Ibid., s. 4.

<sup>3</sup>Ibid., s. 5.

<sup>4</sup>Ibid., s. 6. These were higher than the previous requirements.

<sup>5</sup>Ibid., s. 30.

<sup>6</sup>Ibid., s. 9.

<sup>7</sup>Ibid., s. 10.

<sup>8</sup>Order in Council, October 20, 1887, W. E. Hodgins (ed.), Correspondence, Reports of the Minister of Justice and Orders in Council Upon the Subject of Dominion and Provincial Legislation, 1867 - 95 (Ottawa: Government Printing Bureau, 1896), p. 1247.

to hold any other government office for financial gain, they could be appointed as non-salaried members of the North-West Council.<sup>9</sup> The Governor in Council was to name the place of residence for each judge,<sup>10</sup> and also to divide the Territories into judicial districts by proclamation.<sup>11</sup> The judges were given jurisdiction throughout the Territories, although they were usually to exercise it only in their assigned districts.<sup>12</sup> And the Lieutenant-Governor was to appoint a time and place for each court sitting.<sup>13</sup>

The Supreme Court was given all the powers and authorities that superior courts of civil and criminal jurisdiction enjoyed under English law on July 15, 1870.<sup>14</sup> Sitting in banc it was to " . . . hear and determine all applications for new trials, all questions or issues of law, all questions or points in civil or criminal cases reserved for the opinion of the court, all appeals or motions in the nature of appeals, all petitions and all other motions,

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<sup>9</sup>49 Vict., c. 25, s. 7.

<sup>10</sup>Ibid., s. 8. Previously, the North-West Council had enjoyed this power.

<sup>11</sup>Ibid., s. 17.

<sup>12</sup>Ibid., s. 18.

<sup>13</sup>Ibid., s. 19. This authority was thus removed from the hands of the judges themselves.

<sup>14</sup>Ibid., s. 14.

matters or things whatsoever which may lawfully be brought before it."<sup>15</sup> The court was to sit in banc at the territorial seat of government at a time appointed by the Lieutenant-Governor in Council, and any three judges constituted a quorum.<sup>16</sup>

In answer to the Council's request for sheriffs instead of deputy sheriffs,<sup>17</sup> the Act allowed the Governor in Council to appoint a sheriff for each judicial district.<sup>18</sup> The federal government also assumed the responsibility of appointing a clerk of the court for each district.<sup>19</sup> The sheriff was to be paid a salary of \$500 yearly, and both officers were to receive such fees as were prescribed by the Lieutenant-Governor in Council.<sup>20</sup> With the approval of the Lieutenant-Governor, they were allowed to appoint deputies.<sup>21</sup>

This Act also provided that "the laws of England relating to civil and criminal matters, as the same existed on the fifteenth of July, in the year of our Lord one thousand eight hundred and seventy, shall be in force

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<sup>15</sup>Ibid., s. 16. With this clause, the practice of appealing cases to the Manitoba Court of Queen's Bench ceased.

<sup>16</sup>Ibid., s. 15.

<sup>17</sup>Supra, p. 75.

<sup>18</sup>49 Vict., c. 25, s. 20.

<sup>19</sup>Ibid., s. 20.

<sup>20</sup>Ibid., s. 23 and s. 24.

<sup>21</sup>Ibid., s. 25.

in the Territories, in so far as the same are applicable to the Territories, and in so far as the same have not been, or may not hereafter be repealed, altered, varied, modified by any Act of the Parliament of the United Kingdom applicable to the Territories, or of the Parliament of Canada, or by any ordinance of the Lieutenant-Governor in Council."<sup>22</sup> Thus this Act became the first to attempt to clarify the status of Imperial legislation in the North-West Territories. In addition, the criminal procedure of England was applied to the Territories, although the provision remained that no grand jury was to be called.<sup>23</sup> Also, a specific clause in the Act enjoined the Lieutenant-Governor in Council to make ordinances regulating the calling of juries.<sup>24</sup> Finally, it provided that, together with the corresponding territorial legislation, it would come into force by a proclamation of the Governor-General.<sup>25</sup>

The Act earned a burst of enthusiastic applause from the prairie press. To the Saskatchewan Herald, it

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<sup>22</sup>Ibid., s. 3.

<sup>23</sup>Ibid., s. 28.

<sup>24</sup>Ibid., s. 29.

<sup>25</sup>Ibid., s. 35.

foreshadowed the early establishment of provincial governments in the North-West.<sup>26</sup> The Macleod Gazette observed happily that the Territories were slowly receiving the rights to which they were entitled.<sup>27</sup> And the Regina Leader also voiced its satisfaction with the Act, remarking that the first chief justice of the court would probably be Richardson, and he would be a good choice.<sup>28</sup> The prairie editors seemed well-satisfied with these provisions. Indeed, the bill met very little opposition from any quarter. In the Senate, the Hon. Mr. Power objected to the higher cost of the new system,<sup>29</sup> but his protest won no support. In the Commons, the only near criticism came from Edward Blake who reminded the government that it should take care in filling these new offices.<sup>30</sup> One year later, a few other minor objections were voiced in The Canadian Law Times. The author, a resident of Edmonton and most likely a lawyer, protested that no provision had been made for juries larger than six.<sup>31</sup> He also noted that all of

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<sup>26</sup>Saskatchewan Herald, May 3, 1886.

<sup>27</sup>Macleod Gazette, May 11, 1886.

<sup>28</sup>Regina Leader, May 4, 1886.

<sup>29</sup>Senate Debates, May 27, 1886, p. 807.

<sup>30</sup>Commons Debates, May 11, 1886, p. 1203.

<sup>31</sup>Robert Strachan, "Legislation Affecting the North-West Territories," The Canadian Law Times, VII (May, 1887), p. 111.

the judges were termed puisne, and he wondered to what or to whom all of them were subordinate.<sup>32</sup> These petty matters aside, however, he lavished praise on the Act, claiming that it brought "a magnificent system of jurisprudence"<sup>33</sup> to the North-West as well as an up to date code of law which he considered superior to that of Ontario.

Once Parliament passed the Act, changes in existing territorial legislation became necessary. As a result, when the North-West Council met in October, 1886, it passed a new ordinance respecting the administration of civil justice.<sup>34</sup> Adapted from the Judicature Act of Great Britain, and with additions introduced from the laws of Ontario and Nova Scotia,<sup>35</sup> this became the most lengthy and comprehensive ordinance to date. Essentially, it restated and expanded the prevailing body of civil law, adapting it to the needs of the new judicial institutions. The ordinance established all of the procedures and practices which were to be followed in the courts of the Territories, regulating all aspects of the conduct of civil matters, defining the jurisdiction of the court, and outlining the duties of the various judicial officials. And as Lieutenant-Governor Dewdney noted, it

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<sup>32</sup>Ibid., p. 109.

<sup>33</sup>Ibid., p. 110.

<sup>34</sup>Ordinance no. 2, 1886.

<sup>35</sup>Report of the Deputy Minister of the Interior,  
C. S. P. 1887, no. 7, p. xxxvii.

had the effect of assimilating the practice of judicial administration in the Territories with that which obtained in other provinces.<sup>36</sup>

The Supreme Court of the North-West Territories was therefore created on February 18, 1887 when the Act and the Ordinance were proclaimed simultaneously. Together they established a system of courts which had original and appellate jurisdiction and could therefore adjudicate all legal problems. As was expected, Hugh Richardson was appointed judge with rank and precedence.<sup>37</sup> At the same time, Macleod, Rouleau, and a newcomer, E. L. Wetmore, were named. Wetmore was a New Brunswick lawyer who had at one time been mayor of Fredericton and leader of the opposition in the provincial assembly. No mention was made of Travis, and although he declared that he expected to become the fifth judge,<sup>38</sup> he must have realized that this would be impossible. Instead, T. H. McGuire, a Kingston, Ontario lawyer and former newspaper editor, was appointed in April. At the same time, the North-West was divided into five judicial districts, and the judges were assigned

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<sup>36</sup>Report of the Lieutenant-Governor of the North-West Territories, C. S. P. 1887, no. 7, part IV, p. 4.

<sup>37</sup>The Territories Law Reports, I (1885 - 93), pp. v - vi.

<sup>38</sup>Qu'Appelle Vidette, March 3, 1887.



to Battleford, Edmonton, Calgary, Ft. Macleod, and Regina, the major centres in each district.<sup>39</sup> Thus, the Territories' new judicial system was complete.

In evaluating the judicial system which developed in the Territories after 1870, its contribution to the maintenance of law and order must be assessed. By means of the transfer, Canada acquired a vast and sparsely populated land which was without effective judicial institutions at a time when lawlessness and discord were growing on the prairies. The federal government initially failed to combat this problem effectively because it merely revived the moribund judicial system which the Hudson's Bay Company had once employed. After the North-West Mounted Police arrived in 1874, however, systematic law enforcement became possible, and as a result, the disorder of past years was soon checked. But in spite of this development, the administration of justice in the Territories remained relatively unchanged until stipendiary magistrates were appointed in 1876. Only when the courts of the stipendiaries became operational did the judicial system begin to make a significant contribution to the maintenance of an orderly

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<sup>39</sup>John Blue, Alberta Past and Present: Historical and Biographical (3 vols.; Chicago: Pioneer Historical Publishing Company, 1924), I, p. 106 and Edmonton Bulletin, October 30, 1886.

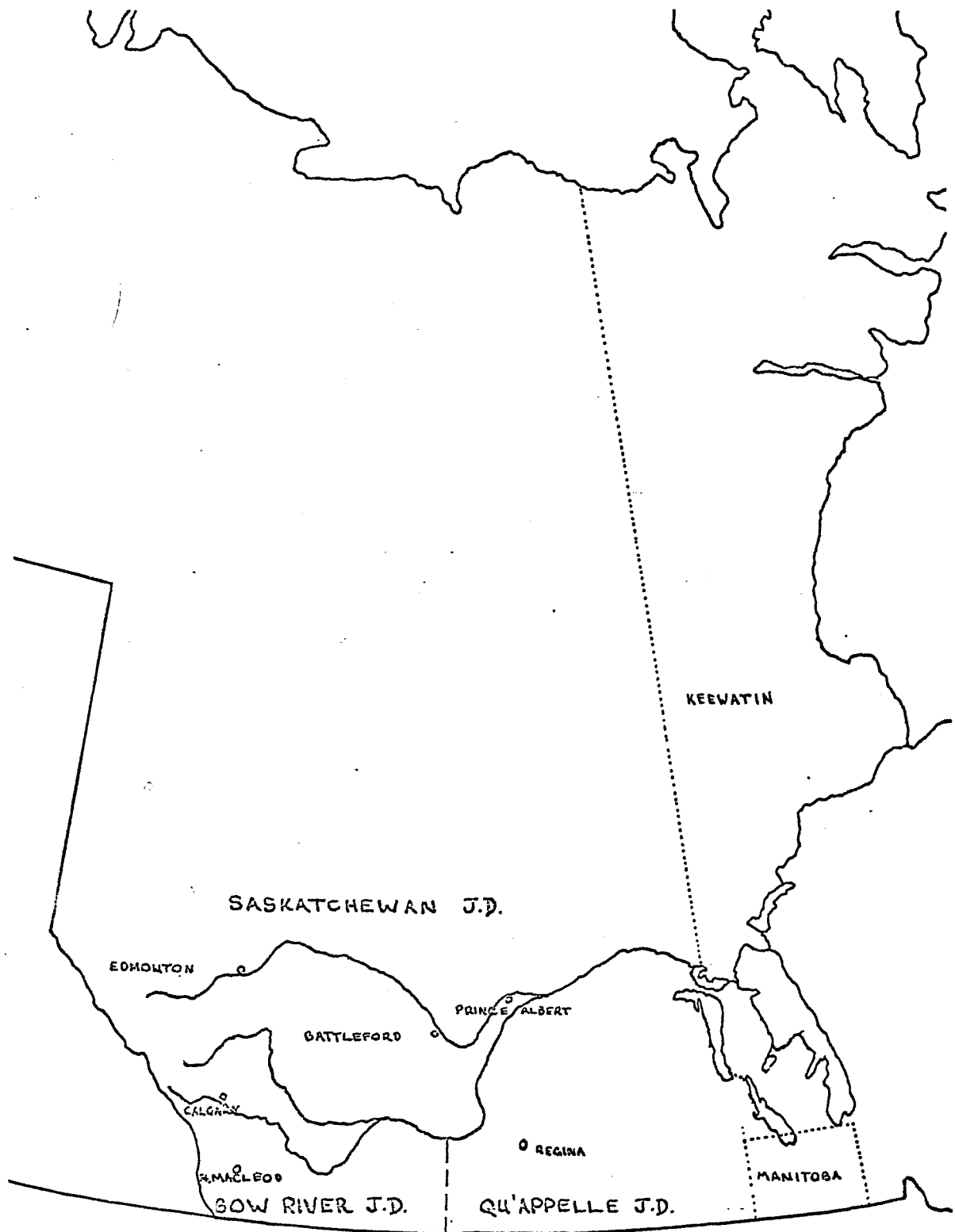
North-West. Evidently, the Mounted Police and the stipendiary magistrates performed their duties effectively, because, except during the period of the North-West Rebellion, lawlessness never became a serious problem on the prairies. And when compared with the state of law which existed in the American West, this success becomes even more apparent, because the latter area was widely regarded as a lawless place. This conclusion was reached by Walter Prescott Webb in his study The Great Plains.<sup>40</sup> In Whoop-Up Country, Paul F. Sharp modified this generalization, recognizing that although the problem of law enforcement did exist on the prairies, it was not as serious as has often been represented.<sup>41</sup> Furthermore, he emphasized that the problem was one which prevailed throughout the United States, not just in the West. Therefore, the western regions of Canada and the United States enjoyed contrasting experiences in the maintenance of law and order. The explanation for this is not a simple one, but it can be said that the presence of a responsible and reasonably efficient judicial system on the Canadian prairies made a significant contribution to the growth and development of the North-West Territories; the American West enjoyed no such luxury.

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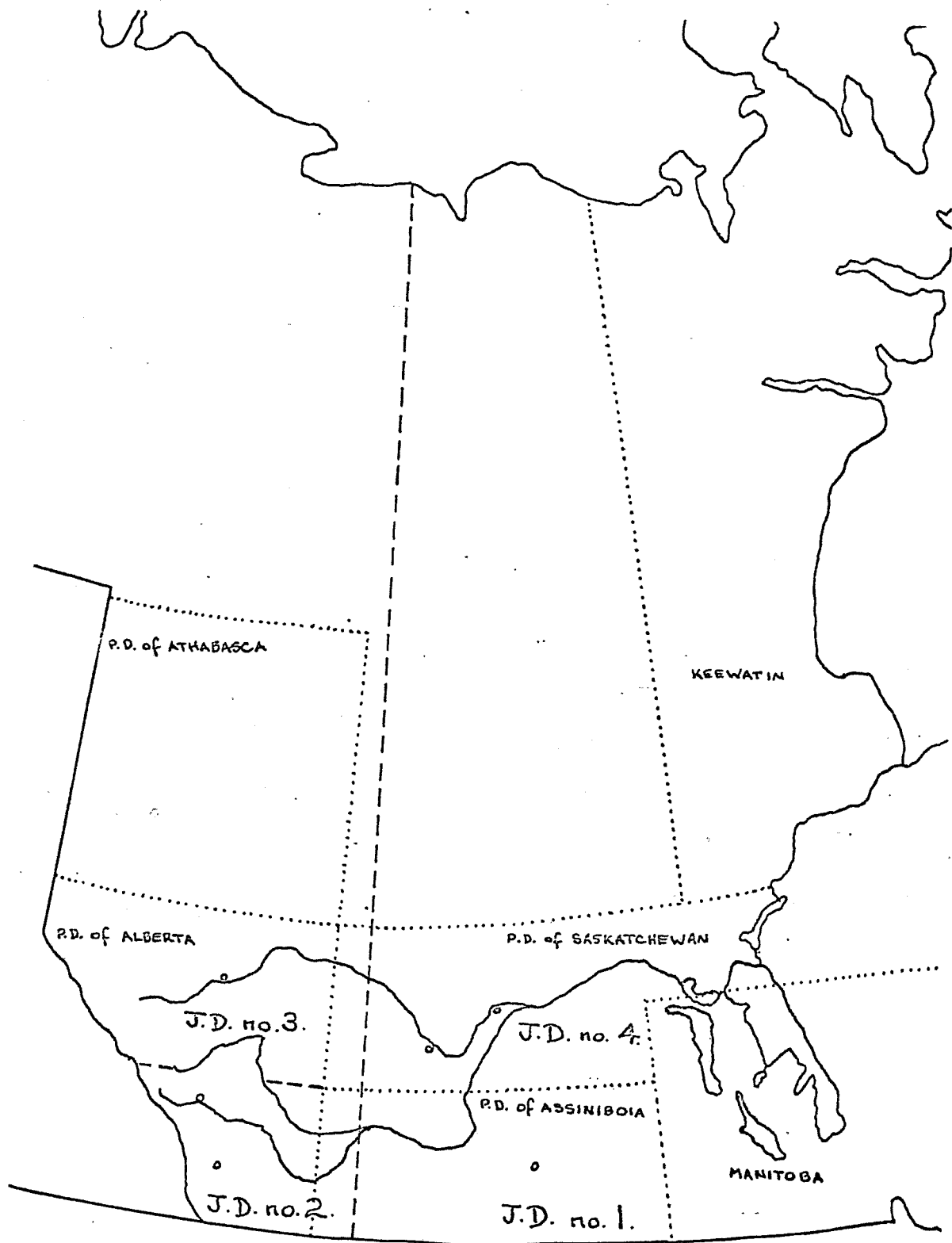
<sup>40</sup> Walter Prescott Webb, The Great Plains (Boston: Ginn and Company, 1931), p. 500.

<sup>41</sup> Paul F. Sharp, Whoop-Up Country: The Canadian-American West, 1865 - 1885 (Minneapolis: University of Minnesota Press, 1955), pp. 107 - 32 passim.

Also, the effectiveness of the judicial system in meeting the needs of the territorial population must be considered. The judicial arrangements adopted from the Hudson's Bay Company's era were inadequate even before the transfer, and despite the slow growth of the territorial population, they remained largely unchanged until 1876. As a result, during these years the need for improvements grew, too. The belated appointment of stipendiary magistrates in 1876 and the extension of their powers facilitated the satisfactory administration of justice, but this satisfaction was only temporary, and after 1880, public criticism denoted basic flaws in the existing judicial institutions. Essentially, the Territories required more magistrates, each of them to sit more regularly, and also a court of appeal. These requirements were met by the legislation of 1886 which created the Supreme Court of the North-West Territories. With this act, the administration of justice on the prairies reached maturity.



MAP I  
JUDICIAL DISTRICTS, 1878



MAP II  
JUDICIAL DISTRICTS, 1883



MAP III

JUDICIAL DISTRICTS, 1884

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<i>See also</i> North-West Territories Representation; Territories Real Property Act.			

Territories Real Property Act, 1886 (Revised Statutes, c. 51)

The Territories Real Property Act is another Act important in Alberta's legal history. However, from an analytical point of view, it is to a large degree overshadowed by the North West Territories Act and the Dominions Lands Act. For this reason, only a brief discussion of the more significant sections of the Act are set out below.

- s.8--Dower abolished; widow's right set-up
- s.9--Tenancy by curtesy abolished; husband's right set up
- s.13--Married woman to have all the right's of a feme sole.
- s.14--Registration districts: Assiniboia; Alberta; that portion of Saskatchewan east of the 3rd meridian shall be the "East Saskatchewan Land Registration District"; and that lying west of the 3rd meridian shall be known as the "West Saskatchewan Land Registration District".
- s.21--Land Titles Office
- s.23--every registrar subsequent to this Act taking force, must be a barrister, or advocate of at least 3 years standing,



s.62--Certificate of title to be conclusive evidence of title

s.138--Appeals from a judgment or decision of the court or judge shall, for the purposes of this Act, be made to the several judges of the Supreme Court of the North West Territories and the several stipendary magistrates of the other territories of Canada sitting together are hereby constituted the Court of Appeal. A majority of such judges and magistrates shall form a quorum.

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Dominion Lands Act, 1886

The Dominion Lands Act must be considered as the most important Act passed in the later territorial period. The Act not only contained tremendous legal implications but more importantly it had immeasurable social consequences.

General Provisions

s.3--application of Act: except as provided in any other Act, this Act applies exclusively to the public lands included in Manitoba and the several territories of Canada

s.4--this Act does not apply to territory the Indian title to which is not extinguished

### Surveys

The system of survey of Dominion land is set out in sections 8 to 21 of the Act(a copy of these sections is annexed). However, the following commentary serves well to explain the application of these provisions

For the prairie provinces of Manitoba, Saskatchewan, and Alberta, the process of subdividing the land into homesteads started at the Red River Settlement near Winnipeg. A short distance west of that town a line was surveyed from the United States border due north to Lake Winnipeg. This line was called the Principal, or First, Meridian. Nearly two hundred miles west of it another north-and-south line was surveyed and called the Second Meridian; and so on. When, in 1905, the provinces of Alberta and Saskatchewan were created, the boundary between the two was placed at the Fourth Meridian. The Fifth Meridian (longitude 114°) passed through Calgary and through a point about twenty miles west of Edmonton.

The land between the meridians was laid out in squares measuring six miles on each side. The extreme south-easterly square of land in Alberta, right in the corner where the Fourth Meridian intersected the U.S. border, was called Township 1, Range 1, West of the 4th Meridian. The square bordering it on the west was called Township 1, Range 2; and so on, with the numbers of the ranges increasing towards the west. The square immediately north of Township 1, Range 1 was called Township 2, Range 1; and so on, with the township numbers increasing towards the north until with Township 126 the north boundary of the province was reached.

Each of these large squares, known as townships, was then divided into thirty-six small squares, called sections. The numbering of the sections began likewise from the south-east corner but continued from west to east along the second tier, and so on alternately west and east until the north-east section in the township became number 36. Under the homestead regulations a settler could file on a quarter-section of 160 acres.

Sections 8 to 21

SURVEYS.

8. The Dominion lands shall be laid off in quadrilateral townships, each containing thirty-six sections of as nearly one mile square as the convergence of meridians permits, with such road allowances between sections, and of such width, as the Governor in Council prescribes:

2. The sections shall be bounded and numbered as shown by the following diagram :—

N.					
31	32	33	34	35	36
30	29	28	27	26	25
19	20	21	22	23	24
18	17	16	15	14	13
7	8	9	10	11	12
6	5	4	3	2	1
S.					

46 V., c. 17, s. 4.

9. The lines bounding townships on the east and west sides shall be meridians; and those on the north and south sides shall be chords to parallels of latitude. 46 V., c. 17, s. 5.

10. The townships shall be numbered, in regular order, northerly from the international boundary, or forty-ninth parallel of latitude, and shall lie in ranges numbered, in regular order, from the principal meridian. 46 V., c. 17, s. 6.

Manitoba, east and west from a certain meridian line run in the year one thousand eight hundred and sixty-nine, styled the "principal meridian," drawn northerly from the forty-ninth parallel of north latitude at a point ten miles, or thereabouts, westerly from Pembina; and in ranges numbered from such other initial meridians throughout the North-West Territories as the Minister, in his direction of the land surveys, orders to be established:

From other meridians.

Designation of meridians.

2. Such meridians shall be styled the second, the third, the fourth meridian, and so on, according to their order in number westward from the principal meridian. 46 V., c. 17, s. 6.

Width on base lines.

11. Townships shall be given their prescribed width on the base lines hereinafter mentioned; and the meridians between townships shall be drawn across such bases, northward and southward, to the depth of two townships therefrom, that is to say, to the correction lines hereinafter mentioned. 46 V., c. 17, s. 7.

Base lines of townships.

**12.** The said forty-ninth parallel, or International boundary, shall be the first base line, or that for townships numbered one; the second base line shall be between townships four and five; the third between townships eight and nine; the fourth between townships twelve and thirteen; the fifth between townships sixteen and seventeen; and so on, northerly, in regular succession. 46 V., c. 17, s. 8.

Correction lines.

**13.** The correction lines, or those upon which the jog resulting from the convergence of meridians shall be allowed, shall be as follows, that is to say: on the line between townships two and three, on that between six and seven, on that between ten and eleven, and so on, that is to say: they will be those lines running east and west between townships and midway between the bases. 46 V., c. 17, s. 9.

Divisions of a section.

**14.** Each section shall be divided into quarter sections of one hundred and sixty acres, more or less, subject to the provisions hereinafter made. 46 V., c. 17, s. 10.

Allowances for deficiency or surplus.

**15.** In the survey of a township, the deficiency or surplus, resulting from convergence of meridians, shall be allowed in the range of quarter sections adjoining the west boundary of the township, and the north and south error in closing on the correction lines from the north or south shall be allowed in the ranges of quarter sections adjoining, and north or south respectively of the said correction lines; but the Governor in Council may order such deficiency or surplus, and such north and south error, or either of them, to be equally distributed among all the quarter sections involved. 46 V., c. 17, s. 11.

Proviso.

**16.** The dimensions and area of irregular quarter sections shall, in all cases, be returned by the surveyor at their actual measurements and contents. 46 V., c. 17, s. 12.

Irregular quarter sections.

**17.** Every given portion of country proposed to be laid out for settlement shall, before it is sub-divided into townships and sections, be laid out into blocks of four townships each, by projecting the base and correction lines, and east and west meridian boundaries of each block:

Blocks of four townships to be first laid out.

2. On such lines, at the time of the survey, all township, section and quarter section corners shall be marked, and such corners shall govern, respectively, in the subsequent subdivision of the block. 46 V., c. 17, s. 13.

Corners to be marked.

**18.** Except as hereinafter provided, only a single row of posts or monuments, to indicate the corners of townships or sections, shall be placed on any survey line thereof; such posts or monuments shall, on north and south lines, be placed in the west limit of the road allowances, and on the east and west lines, in the south limit of road allowances, and in all cases shall fix and govern the position of the boundary corner between the adjoining townships, sections, or quarter sections, on the opposite side of the road allowance:

Posts and monuments at corners.

2. In the case of township, section and quarter section corners on correction lines, posts or monuments shall, in all cases, be planted and marked independently for the townships on either side; those for the townships north of the line, in the north limit of the road allowance, and those for the townships south of the line, in the south limit. 46 V., c. 17, s. 14. As to corners on correction lines.

19. The township sub-division surveys of Dominion lands, according to the system above described, shall be performed under contract at a certain rate per township, per mile, or per acre, fixed, from time to time, by the Governor in Council, or by competitive tender, as the Governor in Council, from time to time, directs: Surveys to be given out by contract or tender.

2. In special cases, where circumstances render it advisable to effect otherwise the survey of a township or townships, the Governor in Council may order the same to be done. 46 V., c. 17, s. 15. Exception.

20. To facilitate the description for letters patent of less than a quarter section, every section shall be supposed to be divided into quarter quarter sections, or forty acres, and such quarter quarter sections shall be numbered as shown in the following diagram, which is intended to show such sub-divisions of a section, which shall be styled legal sub-divisions: Legal sub-division of townships.

51½

N.			
13	14	15	16
12	11	10	9
5	6	7	8
4	3	2	1
S.			

Areas to be more or less.

2. The area of any legal sub-division as above set forth shall, in letters patent, be held to be more or less, shall, in each case, be represented by the exact quantity as given to such sub-division in the original survey. 46 V., c. 17, s. 16.

As to laying out and describing lands in certain sections

21. Nothing in this Act shall be construed to prevent the lands upon the Red and Assiniboine Rivers, surrendered by the Indians to the late Earl of Selkirk, from being laid out in such manner as is necessary in order to carry out the provisions of section two of the "*Act respecting certain claims to lands in the Province of Manitoba*," or to prevent fractional sections or lands bordering on any river, or lake, or other water course, or on a public road, from being laid out and divided into lots of any certain frontage or depth, in such manner as appears desirable, or to prevent the sub-division of sections or other legal sub-divisions into wood lots as hereinafter provided, or the describing of the said lands upon the Red and Assiniboine Rivers, or such sub-divisions of fractional sections or lands bordering as above, or other lots, or wood lots, for patent, by numbers according to a plan of record, or by metes and bounds, or by both, as seems expedient. 46 V., c. 17, s. 17.

### Hudson's Bay Company Lands

The transfer of company lands to the Dominion came about as a result of a three party bargaining process which included the Dominion, the Crown and the Hudson's Bay Company.

The events which led to the embodiment of the provisions relating to Company lands in the 1886 Act may be set out as follows:

B.N.A. Act 1867--s. 146 made provision for the possibility of such a transfer occurring.

Rupert's Land Act-1868-(Imperial Act)-this Act empowered the Queen to admit Rupert's Land and the North West territories into the Dominion of Canada by passing an order-in-council. Of particular interest, is s.5 of that Act, which reads

5. It shall be competent to Her Majesty by any such *Power to Her Majesty by Order or Orders in Council as aforesaid, on Address Majesty by Order in Council to admit* from the Houses of the Parliament of Canada, to declare that Rupert's Land shall, from a Date to be *Rupert's* therein mentioned, be admitted into and become Part *Land into and form Part of the Dominion of* of the Dominion of Canada; and thereupon it shall be *Canada.* lawful for the Parliament of Canada from the Date aforesaid to make, ordain, and establish within the Land and Territory so admitted as aforesaid all such Laws, Institutions, and Ordinances, and to constitute such Courts and Officers, as may be necessary for the Peace, Order, and good Government of Her Majesty's Subjects and others therein: Provided that, until

otherwise enacted by the said Parliament of Canada, all the Powers, Authorities, and Jurisdiction of the several Courts of Justice now established in Rupert's Land, and of the several Officers thereof, and of all Magistrates and Justices now acting within the said Limits, shall continue in full force and effect therein."

Deed of Surrender--(by the Company, November 19, 1869): this was the main document by which the company agreed to surrender its land to the Queen upon conditions and terms set out therein. These conditions and terms were substantially those embodied in the original Dominion Lands Act of 1872.

Order-in-Council-1870--(Imperial): admitting Rupert's Land and the North West Territories into the Dominion of Canada, June 23, 1870.  
(note: a minor point to be mentioned is that in this order-in-council the provisions relating to the Company's land rights was only to have force for 40 years whereas in all of the previous and in all subsequent documentation the provision was for 50 years). (a copy of the Order-in--Council is annexed to this section).

Dominion Lands Act, 1872--this was the first Dominion Act dealing with the transfer of the Company lands (April 14, 1872). This Act was amended and consolidated a number of times between 1872 and 1886 (a reference to these various amendments is included at the end of this section). However, little change was made in the actual provisions dealing with Hudson Bay Company lands. Perhaps, most significant, is the fact that the 1886 Act does not make specific reference to the 50 year time limit set for the force of the provisions. The key sections relating to Hudson's Bay Company land allotment are set out below:

DISPOSAL OF DOMINION LANDS.

*Lands Reserved by the Hudson's Bay Company.*

Certain sections and parts of sections in certain townships to be Hudson's Bay Company's lands.

22. In every fifth township in the territory surrendered to the Crown by the Hudson's Bay Company, and described and designated as the "fertile belt," that is to say: in those townships numbered five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, fifty, and so on in regular succession northerly from the International boundary, the whole of sections numbers eight and twenty-six, and in each and every of the other townships, the whole of section number eight, and the south half and north-west quarter of section number twenty-six, except in the cases hereinafter provided for, shall be known and designated as the lands of the said company:

Company's lands in fractional townships.

2. The company's one-twentieth of the lands in fractional townships shall be satisfied out of one or other or both, as the case may be, of the sections numbers eight and twenty-six as above, in such fractional townships, and the allotment thereof shall be effected by the Minister and the said company, or by some person duly authorized by them respectively:

3. If, when the survey of a township is effected, the sections so allotted, or any of them, or any portion of them, are found to have been *bonâ fide* settled on under the authority of any Order in Council, or of this Act, the company may, if it foregoes its right to the sections settled upon as aforesaid, or any one or more of such sections, select a quantity of land equal to that so settled on, and in lieu thereof, from any lands then unoccupied:

Company may select lands in lieu of any found settled upon by authority.

4. When the sections and parts of sections above mentioned, are situate in any township withdrawn from settlement and sale, and held as timber lands under the provisions hereinafter contained, the same shall form no part of the timber limit or limits included in such township, but shall be the property of the company:

Company's lands not to be included in timber limits.

5. One-twentieth of the revenue derived from timber limits granted in unsurveyed territory within the fertile belt, as hereinafter provided, shall, so long as the townships comprised in the same remain unsurveyed, be annually paid and accounted for to the company; but such one-twentieth shall cease or be diminished in proportion as the townships comprised in such limits, or any of them, are surveyed; and in such case the company shall receive their one-twentieth interest in the lands in such townships in sections eight and twenty-six, as hereinbefore provided:

Company to have one-twentieth of revenue from timber limits in unsurveyed lands in fertile belt.

6. If the said sections, or either of them, when surveyed as aforesaid, prove to have been denuded of timber by the lessee, to the extent of one-half or more, the company shall not be bound to accept such section or sections so denuded, and shall be entitled to select a section or sections of an equal extent, in lieu thereof, from any unoccupied lands in the township:

As to lands found denuded of timber.



7. As townships are surveyed, and the respective surveys thereof are confirmed, or as townships or parts of townships are set apart and reserved from sale as timber lands, the Governor of the company shall be duly notified thereof by the Minister, and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the company is entitled under this clause, as aforesaid, and to vest the same in the company, without the issue of a patent for such lands; and as regards the lands set apart by allotment, and those selected to satisfy the one-twentieth in townships other than the above, as provided in sub-clauses two and three of this clause, returns thereof shall be made in due course by the local agent or agents, to the Dominion lands office, and patents shall issue for the same accordingly. 46 V., c. 17, s. 18.

Title to lands  
to pass to  
company  
without pa-  
tent in certain  
cases.

Issue of pa-  
tents in other  
cases.

I have only reproduced those Acts and Orders-in-Council, or sections thereof, which seemed particularly relevant for the purposes of this study. There were of course other orders-in-council, memoranda, etc., passed on from the Company to the Dominion Government. However, these all substantially reiterate that which is stated above. I refer you to the book, Charters, Statutes and Orders-in-Council Relating to the Hudson's Bay Co. This volume contains all of the relevant material and is an excellent ready source. Of particular interest is the Schedule to the Deed of Surrender (19 Nov. 1886) of the land by the Company. Set out therein is a list of the amount of land retained by the Company in Rupert's Land and the North-West Territories. The Law Library call number for this volume is:

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ORDER IN COUNCIL admitting Rupert's Land and the North-Western Territory into the Dominion of Canada. At the Court at Windsor, the 23rd day of June, 1870.

A.D.  
1870

PRESENT:

The QUEEN's Most Excellent Majesty.

Lord President.

Lord Privy Seal.

Lord Chamberlain.

Mr. Gladstone.

WHEREAS by the British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions in each case as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act. And it was further enacted that the provisions of any Order in Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland:

A.D.  
1870

And whereas by an Address from the Houses of the Parliament of Canada, of which Address a copy is contained in the schedule to this Order annexed, marked A, Her Majesty was prayed, by and with the advice of Her Most Honourable Privy Council, to unite Rupert's Land and the North-Western Territory with the Dominion of Canada, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government upon the terms and conditions therein stated:

And whereas by the Rupert's Land Act, 1868, it was (amongst other things) enacted that it should be competent for the Governor and Company of Adventurers of England trading into Hudson's Bay (herein-after called the company) to surrender to Her Majesty, and for Her Majesty by any Instrument under Her Sign Manual and Signet to accept a surrender for all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever granted or purported to be

granted by certain Letters Patent therein recited to the said company within Rupert's Land upon such terms and conditions as should be agreed upon by and between Her Majesty and the said company; provided, however, that such surrender should not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land should be admitted into the said Dominion of Canada should have been approved of by Her Majesty and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada, in pursuance of the 146th Section of the British North America Act, 1867:

And it was by the same Act further enacted that it should be competent to Her Majesty, by Order or Orders in Council, on Addresses from the Houses of the Parliament of Canada, to declare that Rupert's Land should, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada:

And whereas a second Address from both the Houses of the Parliament of Canada has been received by Her Majesty praying that Her Majesty will be pleased, under the provisions of the herein-before recited Acts, to unite Rupert's Land on the terms and conditions expressed in certain resolutions therein referred to and approved of by Her Majesty, of which said resolutions and Address copies are contained in the schedule to this Order annexed, marked B, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by and on the terms and conditions contained in the herein-before first recited Address, and also approved of by Her Majesty:

And whereas a draft surrender has been submitted to the Governor-General of Canada containing stipulations to the following effect, viz.:—

1. The sum of 300,000*l.* (being the sum herein-after mentioned) shall be paid by the Canadian Government into the Bank of England to the credit of the company within six calendar months after acceptance of the surrender aforesaid, with interest on the said sum at the rate of 5 per cent. per annum, computed from the date of such acceptance until the time of such payment.

2. The size of the blocks which the company are to select adjoining each of their ports [*sic*] in the Red River limits, shall be as follows:—

	Acres
Upper Fort Garry and town of Winnipeg, including the inclosed park around shop and ground at the entrance of the town - - -	500
Lower Fort Garry (including the farm the company now have under cultivation - - - - -	500
White Horse Plain - - - - -	500

3. The deduction to be made as herein-after mentioned from the price of the materials of the electric telegraph, in respect of deterioration thereof, is to be certified within three calendar months from such acceptance as aforesaid by the agents of the company in charge of the depôts where the materials are stored. And the said price is to be paid by the Canadian Government into the Bank of England to the credit of the company within six calendar months of such acceptance, with interest at the rate of 5 per cent. per annum on the amount of such price computed from the date of such acceptance until the time of payment.

And whereas the said draft was on the fifth day of July, one thousand eight hundred and sixty-nine, approved by the said Governor-General in accordance with a report from the Committee of the Queen's Privy Council for Canada; but it was not expedient that the said stipulations, not being contained in the aforesaid second Address, should be included in the surrender by the said company to Her Majesty of their rights aforesaid or in this Order in Council:

And whereas the said company did by deed under the seals of the said company, and bearing date the nineteenth day of November, one thousand eight hundred and sixty-nine, of which deed a copy is contained in the Schedule to this Order annexed, marked C, surrender to Her Majesty all the rights of government, and other rights, privileges, liberties, franchises, powers, and authorities granted, or purported to be granted, to the said Company by the said Letters Patent therein and herein-before referred to, and also all similar rights which may have been exercised or assumed by the said company in any parts of British North America not forming part of Rupert's Land, or of Canada or of British Columbia, and all the lands and territories (except and subject as in the terms and conditions therein mentioned) granted, or purported to be granted, to the said company by the said Letters Patent:

And whereas such surrender has been duly accepted by Her Majesty, by an instrument under her Sign Manual and Signet, bearing date at Windsor the twenty-second day of June, one thousand eight hundred and seventy.

It is hereby ordered and declared by Her Majesty, by and with the advice of the Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament, and from and after the fifteenth day of July, one thousand eight hundred and seventy, the said North-Western Territory shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first herein-before recited

Address, and that the Parliament of Canada shall from the day aforesaid have full power and authority to legislate for the future welfare and good government of the said territory. And it is further ordered that, without prejudice to any obligations arising from the aforesaid approved report, Rupert's Land shall from and after the said date be admitted into and become part of the Dominion of Canada upon the following terms and conditions, being the terms and conditions still remaining to be performed of those embodied in the said second Address of the Parliament of Canada, and approved of by Her Majesty as aforesaid:—

1. Canada is to pay to the company 300,000*l.* when Rupert's Land is transferred to the Dominion of Canada.
2. The company are to retain the posts they actually occupy in the North-Western Territory, and may, within twelve months of the surrender, select a block of land adjoining each of its posts within any part of British North America not comprised in Canada and British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the company and communicated to the Canadian Ministers, being the list in the schedule of the aforesaid deed of surrender. The actual survey is to be proceeded with, with all convenient speed.
3. The size of each block is not to exceed [10] acres round Upper Fort Garry, [300] acres round Lower Fort Garry; in the rest of the Red River Territory a number of acres to be settled at once between the Governor in Council and the company, but so that the aggregate extent of the blocks is not to exceed 50,000 acres.
4. So far as the configuration of the country admits, the blocks shall front the river or road, by which means of access are provided, and shall be approximately in the shape of parallelograms, of which the frontage shall not be more than half the depth.
5. The company may, for forty years after the surrender, claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out. The blocks so granted to be determined by lot, and the company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The company may defer the exercise of their right of claiming the proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their attention [*sic*] to make it.

6. For the purpose of the last Article, the Fertile Belt is to be bounded as follows:—On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the company may take their one-twentieth of any such township, which for the purpose of this Article shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

8. In laying out any public roads, canals, &c., through any block of land reserved to the company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the company's servants access to any river or lake, or as a frontage to any river or lake, they shall pay to the company the fair value of the same, and shall make compensation for any injury done to the company or their servants.

9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the company are to be confirmed.

11. The company is to be at liberty to carry on its trade without hindrance in its corporate capacity, and no exceptional tax is to be placed on the company's land, trade, or servants, nor any import duty on goods introduced by them previous to the surrender.

12. Canada is to take over the materials of the electric telegraph at cost price—such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The company's claim to land under agreements of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the company shall be relieved of all responsibility in respect of them.

15. The Governor in Council is authorised and empowered to arrange any details that may be necessary to carry out the above terms and conditions.

And the Right Honourable Earl Granville, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

*Edmund Harrison.*

#### School Lands

Sections 23 to 25 of the Dominion Lands Act, 1886, make provisions relating to school lands. However, a forecast of the school lands system first appeared in the Order-in-council of 1871. (Canada Sessional Papers, 1871, No. 20). The following year, the Dominion Lands Act, 1872 was passed and provided that "sections eleven and twenty-nine in each and every surveyed township throughout the extent of Dominion Lands, shall be and are hereby set apart as an ednowment for the purposes of education". It was left to future legislation to provide for sale of the land and the investment of the proceeds. No land sales were made until 1883, but advances were made to Manitoba from this prospective fund, in 1878 and in 1884.

It was by the Consolidated Dominion Lands Act of 1879 (42 VICT., c. 31, ss. 22 and 23) that provision was finally made for the administration of the school lands. These provisions were substantially the same as those appearing in the 1886 Act, and in fact these provisions remained practically unchanged until the natural resources were returned to the Prairie Provinces in 1930. The following provisions were therefore in force in substantially the same form from 1872 to 1930:

1. The school lands were to be administered through the Minister of the Interior (s.24)
2. Sections 11 and 29 in every surveyed township throughout the extent of the Dominion Lands were set apart as school lands and not subject to the operation of the clause of the Act relating to the sale of Dominion Lands and to homestead rights(s.23)

NOTE: The 1886 Act makes no provision for the situation where these sections have been settled prior to the survey of the township. However the 1879 consolidation made provision for such and directed that an occupant conforming with the requirements of the Act should be confirmed in possession and the Minister select "a quantity equal to that found to have been so settled on from the unclaimed lands in such township, and shall withdraw the land so selected from sale and settlement, and shall set apart and publish the same as school lands, by notice in the Canada Gazette. Consolidated Dominion Lands Act of 1879 (42 VICT., c. 31, s. 22(2)).

3. All sales were to be made by public auction and an upset price was to be fixed; but in no case was such land to be put up at an upset price less than the fair value of corresponding unoccupied lands in the township in which such lands were situate. (s.25(1))
4. The terms of sale were fixed at one-fifth in cash at the time of the sale, and the remainder in four equal successive annual instalments, with interest at the rate of 6% per annum (s. 25(2)) (this term of interest varied over the years.)



NOTE: the 1879 Act called for terms of payment of one-fifth in cash and the remainder in nine annual instalments.

5. The principal arising from the sales was to be: "invested in securities of Canada, to form a school fund, and the interest arising therefrom after deducting the cost of management, shall be paid annually to the government of the Province or Territory within which such lands are situated, towards the support of public schools therein; and the moneys so paid shall be distributed for that purpose by the government of such province or Territory in such manner as it deems expedient".  
(s.25(3))

I also refer your to "An Act to amend an Act to authorize the granting of subsidies in land to certain railway companies, 1866." (49 VICT., c. 12, s.1). This Act was passed to make further provision respecting the subsidies in land authorized by "An Act to authorize the grant of certain subsidies in land for the construction of the railway therein mentioned." (49 VICT., c. 60). This amending Act of 1886 provided that, notwithstanding anything contained in sections eighteen and nineteen of the "Dominion Lands Act, 1883," the governor-in-council could grant subsidies in land, out of land comprised in townships or fractions thereof, if equivalent lands equal to that reserved for the Hudson's Bay Company and as school lands in the township, was set aside out of other ungranted available public lands.

Further, minor amendments regarding school lands appear in the Dominion Lands Amendment Acts of 1894 and 1897.

## Social Policy

Little has been written about the school lands as a part of the "Dominion Lands Policy". For the purposes of a legal study, information is extremely scarce. Indeed, the Gibson's, in their book, Substantial Justice do not refer to school lands at all.

I consulted with Dr. L.H. Thomas regarding this subject and he confirmed my finding that C. Martin's, Dominion Land's Policy is the only authoritative discussion of the subject. (note: Dr. Thomas edited this book for the Carleton Library series and therefore this edited version of Martin's work is also available.)

Martin devoted a chapter to the topic of school lands and this appears at pp. 335-355 of his book. The following is simply a summary of the basic points raised therein and which seemed relevant to this study. I have annexed Martin's chapter to the end of this commentary.

It should be noted that much of what Martin has to say concerns the later period of 1910-1930 and therefore, although pertinent to the overall study, not overly helpful for a study of the later territorial period (1886-1905). I also add the observation that whereas the school lands were first provided for in the Dominion Lands Act of 1872, and undoubtedly shaped the manner in which townships were settled from that date onward, the strong policy points Martin's making are really only of particular importance in the post 1910 era.

No phase of Dominion lands policy has commanded wider admiration for public schools. (C. Martin, p. 335) In formulating the Dominion Lands Act of 1872 the government was guided by the influence of the United States (where use of

public lands is traceable to earliest colonial days), as well as the experience of their own early attempts at employing a land grant system for, directional purposes in the older provinces of Canada. (i.e. the ordinances of 1787 appears in the official correspondence in the Q series, and a glebe of 200 acres was set apart in Upper Canada in each township for the support of a free school; Public Archives of Canada, noted at p. 338 of C. Martin).

The method of sale of school lands was by auction; a method which proved more than satisfactory. As C. Martin states, "It would be hard to find under any category of public lands a technique of administration which has stood the test of experience so unchangingly for more than sixty years." (at . 542). He adds the following comments at p. 344

From the outset there was a conflict of interest on the part of the provinces between rapid sales in order to alleviate the immediate burdens of the pioneer, and the prospect of a richer permanent endowment in the end by awaiting maximum land values in the process of permanent settlement. Upon the whole the Department of the Interior has followed inflexibly the second of these alternatives. "One of the last things that Sir Clifford Sifton did before leaving the Department", reads a memorandum of February 25, 1916, in reply to a joint memorial from the prime ministers of the Prairie Provinces, "was to place on file a memorandum to the effect that, in his opinion, the School Lands should be disposed of slowly."

School lands were deliberately reserved until neighbouring sections were settled in order to command the maximum price. Sales by public auction were carefully timed, usually after consultation with provincial authorities, to follow good harvests, and to avoid recurring periods of depression. There were charges of collusion at auction sales: lands were knocked down to bidders who failed even to pay their initial deposits, and these lots, once offered by auction according to the regulations, could then be "sold at lower prices to other persons", by private sale.<sup>12</sup> There were further charges of haste in conducting sales and on inadequate upset prices. But compared with the record of school lands administration in Ontario or in the United States, the price itself would seem to carry a vindication of federal policy. Nothing comparable to the evils of variable state policies and self-interested legislation has emerged from the most exhaustive examination before the Saskatchewan and Alberta Resources Commissions.

The fact that the management of school lands was incidental to the administration of nearly a quarter of the

continent by the Department of the Interior, enabled the Dominion to reduce costs of administration to the lowest proportions. (C. Martin at p. 346) (note: the cost of administration in Alberta to 1938 was 2.8 per cent)

A serious defect of Dominion administration was the policy with regard to collections on arrears of deferred payments. This policy was one of leniency. There were precedents for leniency with regard to collections in the policies of the Manitoba Swamplands Commission and the C.P.R.

In one respect at least the Dominion failed for many years to carry out the letter as well as the spirit of the school lands trust; the principal moneys from land sales were allowed to accumulate in the Dominion Saving Bank, drawing bank rates of interest ( 3 per cent) instead of being invested (as the Act prescribed) in "Dominion Securities". It was not until 1917, as the result of a protest from the Provincial Treasurer of Manitoba, that the whole available school lands fund was invested in Dominion debentures at 5 per cent. (C. Martin at p. 350).

Between the general lands policy of the Dominion and the special function of the school lands as an "endowment for purposes of education" in the Prairie Provinces there was a conflict of interest which was not always resolved in favour of the provinces. (C. Martin, p. 350).

Of all the general "purposes of the Dominion" in the retention of Dominion Lands, the chief, undoubtedly, was rapid and permanent settlement--railways and railway land grants to make it possible, and free homesteads to

make it attractive. The reservation of school lands was undoubtedly an integral part of the inducement held out to the prospective settler. "Parliament pledged its faith (read the historic report of the Committee of Council in 1884) that a large portion of these lands should be set apart for free homesteads to all coming settlers, and another portion . . . held in trust for the education of their children." (Sessional Papers of Canada, 1885, No. 61). It is true that settlement was necessary in order to give school lands a market value; even for sound school lands policy it was necessary to "dove-tail it into the settlement policy". But the excessive leniency of the Dominion with regard to inspections, collections and cancellations~~st~~ was obviously in keeping with the Department's major policy of rapid settlement rather than with the fiscal interests of the provinces in the school lands. (C. Martin, p. 350)

Having made the above statements, Martin goes on to explain his view of how settlement of school lands took place. He then adds: (at p. 351)--Thus while the fiscal interests of the provinces in the school lands may have been subordinated in some respects to the free homestead policy of the Dominion in procuring settlers, those interest prospered with the homesteader's prosperity, and the interests of both province and Dominion depended less perhaps in the long run upon 'policy' at all than upon basic factors of physiography, good and bad times and world markets.

#### Sections 23 to 25

##### School Lands.

**23.** Sections eleven and twenty-nine in every surveyed township throughout the extent of the Dominion lands, <sup>Sections 11 and 29 in each.</sup> are hereby set apart as an endowment for purposes of education, and shall be designated school lands; and they are hereby withdrawn from the operation of the clauses of this Act, which relate to the sale of Dominion lands and to homestead rights therein; and no right to purchase or to obtain homestead entry shall be recognized in connection with the said sections, or any part of them. 46 V., c. 17, s. 19.

township set apart;  
And withdrawn from sale or homestead entry.

How to be administered.

**24.** The school lands shall be administered by the Minister under the direction of the Governor in Council. 46 V., c. 17, s. 20, *part.*

Sale, to be by public auction, and upset price.

**25.** All sales of school lands shall be at public auction, and an upset price shall be fixed, from time to time, by the Governor in Council; but in no case shall such lands be put up at an upset price less than the fair value of corresponding unoccupied lands in the township in which such lands are situate:

Terms of payment.

2. The terms of sale of school lands shall be at least one-fifth in cash at the time of sale, and the remainder in four equal successive annual instalments, with interest at the rate of six per cent. per annum, which shall be paid with each instalment on the balance of purchase money, from time to time, remaining unpaid:

Investment of purchase moneys, and disposal of interest thereon.

3. All moneys, from time to time, realized from the sale of school lands shall be invested in securities of Canada, to form a school fund, and the interest arising therefrom, after deducting the cost of management, shall be paid annually to the Government of the Province or Territory within which such lands are situated, towards the support of public schools therein; and the moneys so paid shall be distributed for that purpose by the Government of such Province or Territory in such manner as it deems expedient. 46 V., c. 17, s. 20, *part.*

There have been numerous amendments to the Dominion Lands Act. I include this particular Act as an example because of its relevance to school lands and also to show how the system of alternate sections etc. could be and was altered at various times



58-59 VICTORIA.

# CHAP. 34.

An Act further to amend the Dominion Lands Act.

[Assented to 22nd July, 1895.]

[[ER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Notwithstanding that the lands hereinafter in this section mentioned are school lands within the meaning of *The Dominion Lands Act*, the Minister of the Interior, under the direction of Grant of lands authorized.

the Governor in Council, may grant to the several persons hereinafter named homestead entry for the parcels of such lands set opposite their respective names upon proof to his satisfaction that the said persons respectively were in *bonâ fide* occupation of such parcels prior to the first day of January, one thousand eight hundred and eighty, and that they continued to occupy and cultivate the same in accordance with the requirements of the provisions of the said Act relating to homesteads:—

W. J. Martin, for the N. E.  $\frac{1}{4}$  of section 29, township 15, range 2, east of the 1st principal meridian ;

Samuel Parsons, for the N. E.  $\frac{1}{4}$  of section 11, township 11, range 4, east of the 1st principal meridian ;

W. H. Coverdale, for the S. E.  $\frac{1}{4}$  of section 11, township 15, range 1, east of the 1st principal meridian ;

William Holmes, for the S. E.  $\frac{1}{4}$  of section 29, township 10, range 6, east of the 1st principal meridian ;

Jackson Holmes, for the N. E.  $\frac{1}{4}$  of section 29, township 10, range 6, east of the 1st principal meridian ;

William Guthrie, for the S. E.  $\frac{1}{4}$  of section 11, township 14, range 1, west of the 1st principal meridian ;

P. Martens, for the N. E.  $\frac{1}{4}$  of section 11, township 3, range 5, west of the 1st principal meridian ;

Henry Sutherland, for the S. W.  $\frac{1}{4}$  of section 11, township 13, range 5, east of the 1st principal meridian.

2. It having been established that John Cathcart, mentioned in section one of chapter eighteen of the Statutes of 1893, is dead, and that the parcel for which the said John Cathcart claimed homestead entry was not the N. W.  $\frac{1}{4}$  but the S. W.  $\frac{1}{4}$  of section 11, township 13, range 1, east of the first principal meridian, the Minister of the Interior is hereby authorized, under the direction of the Governor in Council, to grant homestead entry to Isabella Cathcart, widow and administratrix of the said John Cathcart, for the said S. W.  $\frac{1}{4}$  of said section 11, upon proof to the satisfaction of the said minister that the said John Cathcart was in *bonâ fide* occupation of the said last mentioned quarter-section prior to the first day of January, one thousand eight hundred and eighty, and that he or his representatives continued to occupy and cultivate it in accordance with the requirements of the said homestead provisions of *The Dominion Lands Act*. Case of John Cathcart.

Case of George M. Aikman.

3. Notwithstanding that the lands in this section mentioned are school lands, the said minister, under the direction of the Governor in Council, may also, upon proof to his satisfaction that George M. Aikman was in *bonâ fide* occupation of the N. W.  $\frac{1}{4}$  of section 29, township 11, range 6, east of the first principal meridian, prior to the first day of January, one thousand eight hundred and eighty, and occupied and cultivated the said quarter-section in accordance with the requirements of the provisions of *The Dominion Lands Act* relating to homestead entry, grant to the said George M. Aikman a homestead entry for the N. E.  $\frac{1}{4}$  of the said section 29 instead of for the said N. W.  $\frac{1}{4}$ , the latter quarter-section having been otherwise disposed of and not being available for homestead entry.

Other lands  
may be set  
apart instead  
of those grant-  
ed.

2. The said minister may cause to be selectèd in lieu of the school lands described in the next preceding section, for which homestead entries are to be granted, an equal area of vacant and unreserved Dominion lands within the province of Manitoba, for the purposes of school endowment, and withdraw them from the operation of the clauses of *The Dominion Lands Act* relating to sale and homestead entry, and set them apart as school lands by a notice to that effect in the *Canada Gazette*.

Sale of lands  
to Cochrane  
Ranch Co.  
authorized.

3. Notwithstanding anything in *The Dominion Lands Act*, the Governor in Council may, on such conditions as he deems proper, sell to the Cochrane Ranch Company the following school lands, namely:—Section 11 in township 3, range 28, west of the fourth principal meridian, and so much of section 29 in township 3, range 27, west of the fourth principal meridian, as lies north of the Belly River: Provided, that such sale shall not take place until the Minister of the Interior has, by notice in the *Canada Gazette*, set apart as school lands, in lieu thereof, other public lands of equal extent and value as nearly as may be.

1889, c. 27,  
s. 3 repealed.

4. Section three of chapter twenty-seven of the Statutes of 1889 is hereby repealed.

5.

5. As respects every assignment or transfer of a homestead or a pre-emption right held or acquired under any Act relating to Dominion lands, in whole or in part, and every agreement to make any such assignment or transfer, made or entered into before the issue of patent and previous to the date of the passing of this Act, no such assignment or transfer or agreement shall be *ipso facto* null and void, nor shall any forfeiture accrue in respect thereof; but the Minister of the Interior may declare any such assignment or transfer or agreement to be null and void, and such forfeiture to have accrued, or either; and such a declaration shall have force and effect as if herein enacted: Provided, that no such declaration shall have force or effect in any case in which a patent for any homestead or pre-emption land has issued previous to the date of such declaration, unless the patent has issued through fraud, error or improvidence.

Transfers  
heretofore  
made before  
issue of patent  
may be declar-  
ed void.

2. Nothing in the next preceding sub-clause contained shall in any manner have force or effect as respects any lands in relation to which the subject-matter of the said sub-clause has already been adjudicated upon, or is in question in any court of competent jurisdiction.

Pending or  
settled cases  
not affected.



Dominion Land Policy (by C. Martin)

CHAPTER VI  
SCHOOL LANDS

*1. Dominion Policy at its Best*

NO PHASE of Dominion Lands policy has commanded wider admiration than the provision in the Dominion Lands Act of 1872 for setting aside sections 11 and 29 in each township (see Fig. 8) as an endowment for public schools. Here as in the railway land grant system and many other aspects of Dominion Lands the influence of the United States is clearly discernible. But there have been marked differences; and the policy which served so useful a purpose for so many years under federal auspices and still survives under provincial administration is in many important respects distinctively Canadian.

The practice in the United States was necessarily open to wide variations from time to time. The area varied from a single section (number 16, as nearly as possible at the centre of the township) in the original ordinance of 1785 to two sections (16 and 36) after 1848, and in exceptional cases (Arizona, New Mexico and Utah) four sections. A wide variety of pre-emption laws proved necessary to provide for squatters on school lands; and other grants in the form of "swamp lands", university lands, saline lands, "five and three per cent. grants" from the proceeds of the public domain, have been made from time to time to the cause of education in the public land states. In the United States, however, the administration has been turned over uniformly to the several states; and despite the most careful provisions for permanent school funds (1875) and safe investment (1889), the record has been marked by faulty and variable practices, and by no small amount of jobbery and frustration. In Canada on the other hand the school lands were retained from the outset under federal administration until the final settlement of the "Natural Resources Question" in 1930. Policies have been remarkably consistent and uniform, while the whole technique of land sales and investment, with a few significant exceptions in detail, has commanded not only the approval but the admiration of provincial authorities. Details of administration—chiefly leases and the collection of deferred payments—have been subjected to criticism from time to time by provincial officials obsessed with the rapidly increasing costs of education in pioneer communities. It has obviously been impossible, and perhaps undesirable, to remove school lands altogether from their context in general land policy; the results nevertheless have been significant and far-reaching. The revenues from the school lands have been the highest, the cost of administration the lowest, the endowment as a whole perhaps the most praiseworthy and discerning among all the forms of general land policy on either side of the boundary.

## 2. *Precedents in the United States and "Canada"*

In the United States the use of public lands for general purposes of education is traceable to earliest colonial days. While the Cape Cod fishery may claim to have supplied the "earliest actual school fund in America", the practice of reserving lands for common schools was general in New England long before the Revolution.<sup>1</sup> The organization of the public domain after the Revolution carried forward this tradition, and it seems clear that Colonel Timothy Pickering of Massachusetts was chiefly responsible for the provision in the famous ordinance of 1785 reserving "the central portion of every township for the maintenance of public schools". The ordinance of 1787 proclaimed that, "religion morality and knowledge being necessary to good government, and the happiness of mankind, schools and the means of education shall be forever encouraged."

It is not clear whether zeal for education or the stimulation of land sales predominated in federal policy.<sup>2</sup> School lands were exploited more than once as inducements in the search for pioneer settlers "brave enough to conquer the wilderness." For many years the returns were almost negligible. Leasing systems were particularly futile. Certain districts of Ohio are still under lease at an annual rental of twelve cents an acre. It was not until 1826 that Congress authorized states to sell school lands by auction and to invest the proceeds. State administration, however, proved costly and variable. In Ohio the proceeds were lent automatically to the state for other purposes, and thus, in effect, new funds necessary from time to time for education had to be raised by general taxation. Michigan was perhaps "more successful than any other state in dealing with the problem"<sup>3</sup>—one aspect of the "excellent school system" for which that remarkable pioneer in education, John D. Pierce, was chiefly responsible. Graduated sales and an eye to ultimate revenues were the guiding principles of Pierce's policy; and many features have been curiously paralleled in Canadian administration. After the crisis of 1837, for instance, the same problems of revision became necessary which had to be applied to the "boom" prices obtained for school lands in Western Canada during the world war. It was obviously possible to sell school lands too high as well as too low.

In many states, however, the lofty ideals of the Ordinance of 1787 were sadly perverted. In Wisconsin a Commission in 1862 found that "the trust has been most unfaithfully administered." In other states variable legislation with many "loop-holes for fraud" proved "exempt from the operation of the eighth commandment." It has been estimated that "a great part of the educational grants have realized not more than a dollar an acre."<sup>4</sup> Measured by that,

<sup>1</sup> Joseph Shafer, *The Origin of the System of Land Grants for Education* (Madison: University of Wisconsin, 1902).

<sup>2</sup> P. J. Treat, *National Land System* (New York: 1910), p. 265.

<sup>3</sup> George W. Knight, "History and Management of Land Grants for Education in the Northwest Territory," *Report of Amer. Hist. Assoc.*, 1885.

<sup>4</sup> A. B. Hart, "The Disposition of Our Public Lands," *Quarterly Journal of Economics*, 1887, p. 172.

or indeed by any standard, the proceeds and general policy of school lands administration in Western Canada have been phenomenal. In the United States also the net results were praiseworthy and they improved with experience. More than 73,000,000 acres, in twenty-nine public land states of the Union, have been granted for public schools.<sup>5</sup> The numerous other federal grants for education in the United States, moreover, have been conspicuously absent or applied to vastly different purposes in Canada—saline lands, “five and three per cent. grants”, swamp lands, generous grants for Agricultural and Scientific Colleges, and other useful projects in the cause of education. The last alone has been called “the greatest of all landed endowments, in the cause of higher education.” Vetoed by President Buchanan in 1858, the project of Justin H. Morrill of Vermont was forced again through Congress and approved by Lincoln in 1862. Public lands or land scrip equal to 30,000 acres for each senator and representative in Congress were to be granted to each state for a college “to promote the liberal and practical education of the industrial classes in the permanent pursuits and professions of life.” This far-reaching project was amplified by special land grants to no fewer than nine public land states, and finally by the Morrill Act of 1890 which granted to each state from the proceeds of the public domain the sum of \$15,000 (raised by annual increments to \$25,000) “for the more complete endowment and maintenance of colleges for the benefit of Agriculture and Mechanic Arts.” The solitary endowment from Dominion Lands for higher education in Western Canada was the grant of 150,000 acres to the University of Manitoba in 1885; and even this was charged back upon the province at \$2 per acre under the settlement of 1912 for the extension of the boundary.

In 1872 when the first general Dominion Lands Act was passed, the chequered history of land grants for educational purposes in the older provinces of Canada was also available for the guidance of the new Dominion. The ordinance of 1787 appears in the official correspondence in the *Q. Series*,<sup>6</sup> and a glebe of 200 acres was set apart in Upper Canada in each township for the support of a free school. By 1800 some twelve townships containing about 550,000 acres had been “set apart for the endowment of Schools, but not an Acre of these Lands (had) yet been sold.” The vast areas of free grants made school reservations almost valueless, and as late as 1809 it was impossible to fix any limitation to such a prospect. In any event the chief tory concern of those days was for university education to forestall republican influences from the colleges of the United States. It was not until 1849 that the Baldwin-La Fontaine administration, the first in the old Province of Canada under fully responsible government, attempted adequate support for common schools by reserving a million acres of public lands in the counties of Huron, Bruce, Grey, Perth, and Wellington, to provide “a perpetual fund for supporting Common Schools.” The proceeds were

<sup>5</sup> B. H. Hibbard, *A History of the Public Land Policies* (New York: 1924) p. 323.

<sup>6</sup> Public Archives of Canada.

to be invested until the annual revenue amounted to £100,000. Administrative costs of 20 per cent. and a further appropriation of 25 per cent. for local improvements impaired the value of the fund, though sales were brisk until 1856, and continued in diminishing volume until 1880. In 1870 more than a million dollars of deferred payments were outstanding: in many instances with nothing but the initial payment "for 20, 30, 40, and fifty years". A number of "live sales" still survived in 1935 with arrears since 1853.<sup>7</sup> The fund suffered still further vicissitudes at the separation of Canada East and Canada West at Confederation, so that more than one defect of land administration must have been fresh in mind when the first Dominion Lands Act was drafted in 1872.

### 3. *School Lands in Dominion Policy*

A forecast of the school lands system appeared at the outset in the Order-in-Council of 1871.<sup>8</sup>

By the Dominion Lands Act of the following year (35 Vict., c. 23, s. 22) it is provided that "sections eleven and twenty-nine in each and every surveyed township throughout the extent of Dominion lands, shall be and are hereby set apart as an endowment for purposes of education." The sale of the land and the investment of the proceeds were reserved for future legislation. From this prospective fund advances were authorized to Manitoba for three years in 1878 and again in 1884, but no sales were made until 1883. Meanwhile the Consolidated Dominion Lands Act of 1879 (42 Vict., c. 31, ss. 22 and 23) finally made provision for the administration of the school lands in terms which remained practically unchanged until the natural resources were returned to the Prairie Provinces in 1930. The school lands were to be administered through the Minister of the Interior. All sales were to be made by public auction after due advertisement, and at an upset price based upon the fair value of other unoccupied lands in the township. The terms of sale which have since been changed from time to time were fixed in 1879 at one-fifth in cash and the remainder in nine annual instalments with interest at 6 per cent.<sup>9</sup> The principal arising from sales was to be

invested in Dominion securities and the interest arising therefrom, after deducting the cost of management, shall be paid annually to the Government of the Province or Territory within which such lands are situated towards the support of public schools therein,—the moneys so paid to be distributed with such view by the Government of such Province or Territory in such manner as may be deemed most expedient.

<sup>7</sup> Evidence before the Alberta Resources Commission, 1935.

<sup>8</sup> *Sessional Papers of Canada*, 1871, No. 20.

<sup>9</sup> Changed in 1908 to one-tenth in cash and the remainder in nine annual instalments. The interest rate also has varied. It was reduced to 5 per cent. by 1 Edw. VII, c. 20, s. 7, raised to 6 per cent. in 1918, etc.

During the early stages of pioneer settlement in Manitoba the burden of schools and local improvements was felt at its worst. One desperate community after another turned for aid to the provincial government. Denied the control of public lands as a source of revenue, the province in turn resorted to almost perennial pilgrimages to Ottawa. When it became apparent that the transfer of natural resources as a whole to provincial control was impossible, pending the achievement of the original "purposes of the Dominion" in retaining them, the line of least resistance appeared to be the provincial administration of the school lands of which the province, by statute, was already the direct beneficiary. Scarcely a year passed without resolutions of the legislature, memorials to the Governor-General or delegations to Ottawa. Between 1887 and 1900 provincial revenues remained practically stationary while the number of school districts increased by nearly 350 per cent. After the creation of Alberta and Saskatchewan in 1905 joint representations from the Prairie Provinces on school lands administration found their way periodically to Ottawa. It was urged that distance impaired the administration of the trust; that the Dominion had no direct interest at stake; that the educational needs of pioneer provinces were never likely to be more urgent than at the beginning; that arrears of principal and particularly of interest could be collected more expeditiously by provinces under the stress of rapidly increasing taxation than by the Dominion with vastly different interests to serve in the settlement of Dominion Lands; and that the province could be relied upon to "keep the trust sacred and inviolate, and to use only the income arising from the lands and capital."

To many of these representations the Dominion responded sympathetically. In addition to the advances authorized to Manitoba in 1878 and 1884, a measure authorizing the transfer of \$300,000 of the principal was supported by both Fielding and Laurier in 1898.<sup>10</sup> But the bill was thrown out by the Senate, and government after government held inflexibly to the general principles of school lands administration. Sales were arranged after consultation with the provinces; the interest on deferred payments instead of being funded was paid over at once along with the regular interest from the fund; and the proceeds of grazing leases and other casual revenues from school lands were also applied at once to the mounting costs of education.

In the process of transferring the natural resources to provincial control it is a significant fact that no claims have been lodged by any of the Prairie Provinces against the general principles of school lands policy or against the general technique of sales administration by the Dominion.<sup>11</sup>

The statistics of sales and proceeds in Tables XI, XII, XIII, XIV, and XV, compiled from the records of the Manitoba, Saskat-

<sup>10</sup> "The needs of the Schools fund in Manitoba are greater to-day than they are likely to be at any future time."—Fielding. "It is better to take the money lying idle in the Dominion Treasury to assist these schools than that a heavier burden of taxation should be laid upon the settlers."—Laurier.

<sup>11</sup> See, however, below, p. 348ff.

chewan and Alberta Commissions, will be found useful in appraising the results of the system.

#### 4. School Lands Policy and Administration

A number of general conclusions may be drawn from these statistics, and from the evidence submitted before the Manitoba, Alberta, and Saskatchewan Resources Commissions:

TABLE XI—SCHOOL LANDS SALES IN MANITOBA\* TO MARCH 31, 1928

YEAR	ACREAGE	SALE PRICE (dollars)	AVERAGE PRICE PER ACRE (dollars)
Prior to 1905 .....	271,384.45	2,181,066.91	8.04
1905-1906 .....	692.12	8,570.24	12.38
1906-1907 .....	125,086.98	1,526,546.35	12.20
1907-1908 .....	103,091.47	1,066,859.94	10.35
1908-1909 .....	121.11	1,545.22	12.76
1909-1910 .....	80,291.28	773,471.31	9.63
1910-1911 .....	670.41	15,437.53	23.03
1911-1912 .....	203.05	4,208.76	20.73
1912-1913 .....	64,538.67	711,146.80	11.02
1913-1914 .....	39.87	285.09	7.15
1914-1915 .....	14.17	190.40	13.44
1915-1916 .....	141.95	1,675.73	11.80
1916-1917 .....	37,370.10	352,538.52	9.43
1917-1918 .....	16,072.97	182,981.59	11.38
1918-1919 .....	131.94	1,211.64	9.19
1919-1920 .....	86.38	863.80	10.00
1920-1921 .....	10,462.55	130,975.42	12.51
1921-1922 .....	4,065.01	41,565.74	10.22
1922-1923 .....	332.07	4,274.14	12.87
1923-1924 .....	458.20	1,629.38	3.56
1924-1925 .....	117.16	753.01	6.43
1925-1926 .....	32.00	245.00	7.66
1926-1927 .....	450.58	3,443.89	8.73
1927-1928 .....	41.02	296.14	7.22
Gross totals .....	715,895.51	7,011,782.55	9.79
Less cancellations and adjustments .....	78,309.84	893,095.29	11.30
NET TOTALS .....	637,585.67	6,118,687.26	9.60

\*Manitoba Resources Commission.

(a) *Sale and Price of School Lands.* By general agreement the method of sale by auction, practically uniform from the beginning, has been conspicuously satisfactory. It would be hard to find under any category of public lands a technique of administration which has stood the test of experience so unchangingly for more than sixty years.

TABLE XII—SCHOOL LANDS IN SASKATCHEWAN\* TO SEPTEMBER 30, 1930.

Year	Acreage	Sale Price (dollars)	Average Price per Acre (dollars)
Prior to Sept. 1st, 1905.	145,906.40	1,423,086.58	9.75
1905-1906.....	26,662.93	381,714.40	14.32
1906-1907.....	11,801.40	173,155.15	14.67
1907-1908.....	1,388.44	26,324.82	18.96
1908-1909.....	539.68	6,319.55	11.71
1909-1910.....	14,777.40	235,811.09	15.95
1910-1911.....	304,581.46	4,568,721.90	15.00
1911-1912.....	1,517.27	48,421.26	31.92
1912-1913.....	103,593.09	2,003,528.07	19.34
1913-1914.....	700.96	15,154.76	21.62
1914-1915.....	359.45	5,801.52	16.14
1915-1916.....	1,173.93	17,221.55	14.67
1916-1917.....	116,695.29	1,664,233.70	14.26
1917-1918.....	214,743.13	4,154,276.17	19.35
1918-1919.....	535,065.63	12,060,096.00	22.54
1919-1920.....	82.62	947.65	11.47
1920-1921.....	84,404.77	1,234,057.69	14.62
1921-1922.....	35,340.66	475,031.18	13.44
1922-1923.....	4,155.46	54,602.74	13.14
1923-1924.....	356.32	3,997.91	11.22
1924-1925.....	221.52	2,950.65	13.32
1925-1926.....	562.71	7,292.72	12.96
1926-1927.....	481.86	6,611.12	13.72
1927-1928.....	276,800.14	5,446,630.23	19.68
1928-1929.....	357,411.87	4,608,151.44	12.89
1929-1930.....	372,010.73	5,435,353.70	14.61
1930 to Sept. 30.....	293.14	2,239.59	7.64
Gross totals.....	2,611,628.26	43,999,764.29	16.85
Cancelled sales.....	501,851.22	10,995,670.93	21.91
NET TOTALS.....	2,109,777.04	33,004,093.36	15.64

\*Saskatchewan Resources Commission.

From the outset there was a conflict of interest on the part of the provinces between rapid sales in order to alleviate the immediate burdens of the pioneer, and the prospect of a richer permanent endowment in the end by awaiting maximum land values in the process of permanent settlement. Upon the whole the Department

TABLE XIII—SCHOOL LANDS IN ALBERTA\* TO SEPTEMBER 30, 1930

YEAR	ACREAGE	SALE PRICE (dollars)	AVERAGE PRICE PER ACRE (dollars)
Prior to Sept. 1st,	1,791.02	49,940.16	27.88
1905.....	127,705.66	1,491,820.50	11.68
1905-1906.....	.....	.....	.....
1906-1907.....	10,238.79	99,485.08	9.72
1907-1908.....	722.66	10,381.48	14.38
1908-1909.....	235,013.13	2,571,430.16	10.94
1909-1910.....	182,383.90	2,216,911.95	12.11
1910-1911.....	373.07	5,402.54	14.48
1911-1912.....	2,375.02	111,239.70	46.83
1912-1913.....	375.01	10,711.48	28.56
1913-1914.....	72.95	2,152.78	29.51
1914-1915.....	145.95	2,246.28	15.39
1915-1916.....	144,993.03	2,039,037.37	14.06
1916-1917.....	96,859.73	1,906,281.89	19.68
1917-1918.....	90,310.47	1,570,557.19	17.39
1918-1919.....	12.30	127.50	10.37
1919-1920.....	122,536.44	2,165,850.05	17.67
1920-1921.....	4,985.48	75,997.42	15.24
1922-1923.....	145.11	2,390.88	16.47
1923-1924.....	422.02	6,973.60	16.52
1924-1925.....	49.63	1,128.74	22.74
1925-1926.....	271.05	4,606.03	16.99
1926-1927.....	68.76	876.72	12.75
1927-1928.....	210,932.70	3,556,163.55	16.85
1928-1929.....	299,393.34	4,266,712.84	14.22
1929-1930.....	28,676.93	345,992.43	12.06
1930-1931.....	14,674.05	166,886.79	11.37
Gross totals.....	1,575,528.20	22,681,305.41	14.40
Less cancelled sales....	332,493.27	5,013,899.99	15.08
NET TOTALS.....	1,243,034.93	17,667,405.42	14.21

\*Alberta Resources Commission.



of the Interior has followed inflexibly the second of these alternatives. "One of the last things that Sir Clifford Sifton did before leaving the Department", reads a memorandum of February 25, 1916, in reply to a joint memorial from the prime ministers of the Prairie Provinces, "was to place on file a memorandum to the effect that, in his opinion, the School Lands should be disposed of slowly."

School lands were deliberately reserved until neighbouring sections were settled in order to command the maximum price. Sales by public auction were carefully timed, usually after consultation

TABLE XIV—SCHOOL LAND SALES (RECAPITULATION)

	MANITOBA	SASKATCHEWAN	ALBERTA
Gross acreage sold.....	715,895.51	2,611,628.26	1,575,528.20
Cancellations.....	78,309.84	501,851.22	332,493.27
Net acreage sold.....	637,585.67	2,109,777.04	1,243,034.93
	(dollars)	(dollars)	(dollars)
Gross sale price.....	7,011,782.55	43,999,764.29	22,681,305.41
Cancellations.....	893,095.29	10,995,670.93	5,013,899.99
Net sale price.....	6,118,687.26	33,004,093.36	17,667,405.42
	(dollars)	(dollars)	(dollars)
Gross average price per acre...	9.79	16.85	14.40
Price of cancellations.....	11.40	21.91	15.08
Net price per acre.....	9.60	15.64	14.21

with provincial authorities, to follow good harvests, and to avoid recurring periods of depression. There were charges of collusion at auction sales: lands were knocked down to bidders who failed even to pay their initial deposits, and these lots, once offered by auction according to the regulations, could then be "sold at lower prices to other persons", by private sale.<sup>12</sup> There were further charges of haste in conducting sales and of inadequate upset prices. But compared with the record of school lands administration in Ontario or in the United States, the price itself would seem to carry a vindication of federal policy. Nothing comparable to the evils of variable state policies and self-interested legislation has emerged from the most exhaustive examination before the Saskatchewan and Alberta Resources Commissions.

<sup>12</sup> Manitoba Resolution of 1901.

In truth, the record of sales and cancellations would seem to warrant the views of Dominion counsel that by "stage-setting their sales", the Department in many instances get prices for school lands that were too high for sound economic development. From the statistics above (see Tables XI, XII, XIII) it would appear that school lands have been disposed of chiefly at three periods,

TABLE XV—PROCEEDS FROM SCHOOL LANDS

	MANITOBA (dollars)	SASKATCHEWAN (dollars)	ALBERTA (dollars)
PRIOR TO SEPT. 1, 1905.			
Principal (School Fund) . . . .	1,263,126.58	242,223.38	44,758.58
Interest on Fund . . . . .	253,727.31	17,419.63	24,613.84
Total current revenue (in- terest, rentals, etc.) . . . . .	450,025.57	83,874.35	43,575.04
Gross proceeds . . . . .	1,966,879.46	243,517.36	112,947.46
Cost of administration . . . . .	85,315.37	14,683.94	14,772.56
Net proceeds . . . . .	1,881,564.09	228,833.42	98,174.90
SEPT. 1, 1905 TO SEPT. 30, 1930.			
Principal (School Fund) . . . .	4,734,153.84	17,566,815.62	9,519,810.62
Interest on Fund . . . . .	4,805,492.81	9,299,036.94	5,300,883.85
Total current revenue (in- terest, rentals, etc.) . . . . .	2,012,444.24	7,793,233.85	5,828,935.81
Gross proceeds . . . . .	11,552,099.89	34,659,086.41	20,649,630.28
Cost of administration . . . . .	318,792.26	742,810.81	553,508.25
Net proceeds . . . . .	11,870,892.15	35,401,897.22	21,203,138.53
TOTALS TO SEPT. 30, 1930.			
Principal (School Fund) . . . .	5,997,280.42	17,809,039.00	9,564,569.20
Interest on Fund . . . . .	5,059,220.12	9,316,456.57	5,325,497.69
Total current revenue (in- terest, rentals, etc.) . . . . .	2,462,469.81	7,877,108.20	5,872,510.85
Gross proceeds . . . . .	13,518,970.35	35,002,603.77	20,762,577.74
Cost of administration . . . . .	404,107.63	757,494.75	568,280.81
TOTAL NET PROCEEDS . . . . .	13,114,862.72	34,245,109.02	20,194,296.93

each of which represented a peak in the fluctuating values of western lands. During the period 1910-1913—the “boom” just before the war—nearly a million acres were sold for more than \$13,250,000, at average prices ranging from \$9.63 in Manitoba in 1910 to \$46.83 in Alberta in 1912-1913. The total average price for this period was about \$13.38 per acre. Again from 1917 to 1919, under the impulse of war prices for wheat, some 1,253,000 acres were sold for more than \$23,930,000, an average price of over \$19 per acre, ranging from \$9.19 in Manitoba for 1919 to \$22.54 in Saskatchewan for the same year. During the third “boom” period, 1928-1930, nearly 1,550,000 acres were sold for over \$23,709,000, an average of \$15.30 per acre, ranging from \$7.22 in Manitoba for 1928 to \$19.68 in Saskatchewan for the same year. For several other single years, moreover, an exceptionally large acreage of school lands was sold under exceptional conditions. The sales in 1921, for instance—some 217,000 acres for more than \$3,530,000, an average of \$16.24 per acre—were made chiefly to the Soldier Settlement Board for cash. Of total sales of nearly 4,900,000 acres up to 1930, nearly 3,800,000 acres were sold under what may be termed “boom” conditions.

The prices are still more significant. Of a total contract price of nearly \$73,700,000, gross, for the sale of school lands up to 1930, nearly \$60,900,000 belong to the “boom” periods of 1910-1913, 1917-1919, and 1928-1930. The cancellations that followed these “boom” periods, as we shall see, were excessive, but both sale prices and cancellations are commentaries, in a sense, upon the shrewdness and thrift of Dominion officials in taking full advantage of the market in order to secure maximum prices.

(b) *Cost of Administration.* The fact that the management of school lands was incidental to the administration of nearly a quarter of the continent by the Department of the Interior, enabled the Dominion to reduce costs of administration to the lowest proportions.

For the province of Saskatchewan, gross proceeds accruing to the province from school lands (see Table XV) in the form of principal moneys (school fund), interest on the school fund, current interest on deferred payments for school lands, leases, hay permits, etc., have amounted to \$35,002,603.77 up to September 30, 1930. The total costs of administration (deducted annually from current revenues before the net proceeds were turned over to the province) have been \$757,494.75, or a little over 2.16 per cent. Measured by

net proceeds of \$34,245,109.02, the cost of administration has been a little over 2.21 per cent.

For Alberta the total gross proceeds accruing to the province up to September 30, 1930, have been \$20,762,577.74; the cost of administration has been \$568,280.81, or less than 2.74 per cent. Measured by net proceeds (\$20,194,296.93) the cost of administration in Alberta has been less than 2.82 per cent.

In Manitoba the gross proceeds to the province up to September 30, 1930, have been \$13,518,970.35. The cost of management has been \$404,107.63—a little less than 2.99 per cent. of gross proceeds; and a little more than 3.08 per cent. of net proceeds.

For the whole period of Dominion Lands from 1870 to 1930 the total cost of management for school lands has been \$1,729,883.19. The gross proceeds have been \$69,284,151.86, and the net proceeds to the Prairie Provinces \$67,554,268.67. The cost of administering this historic "endowment for purposes of education" has been a little more than 2.56 per cent. of net proceeds and a little less than 2.5 per cent. of gross proceeds from school lands.

Measured by gross sales the costs of management have shown a still lower percentage. For Manitoba, where early sales brought less spectacular prices and where the interest from the school fund, accumulating over many years, has more than equalled the fund itself in total net proceeds to the province, the cost of management has been 5.76 per cent. of gross sales.<sup>13</sup> But for Alberta, gross sales have been \$22,681,305.41 while cost of management has been \$568,280.81—barely 2.5 per cent. For Saskatchewan where gross sales have been \$43,999,764.29 and cost of management \$757,494.75, the percentage has been less than 1.73. For the whole period of Dominion Lands from 1870 to 1930, the total gross sales of school lands in the three Prairie Provinces have been \$73,692,852.25. The cost of management has been \$1,729,883.19 or less than 2.35 per cent.

Meanwhile other selling agencies for western lands were content to spend vastly larger percentages of proceeds from land sales upon costs of management. The cost of administering the Soldier Land Settlement after the war was 19.46 per cent. of gross loans.<sup>14</sup> Evidence before the Saskatchewan Resources Commission indicated that the C.P.R. spent no less than 45 per cent. of gross sales upon administration. It is fair to add, however, that C.P.R. lands were not sold primarily for revenue purposes, since rapid sales, steady

<sup>13</sup> A cost of \$404,107.63 for gross sales of \$7,011,782.55.

<sup>14</sup> Gross loans, \$123,562,776, administrative expenses \$24,045,143. *Saskatchewan Resources Commission*.

immigration, freight from permanent settlement, and other aspects of sound railway development, were kept constantly in view, and undoubtedly warranted a less lucrative policy of land sales with higher costs of administration. For the Hudson's Bay Company estimates for the periods 1921 and 1926 indicated costs of administration amounting to 65 per cent. and 38 per cent. respectively of net sales. For the Manitoba Swamp Lands Commission the costs were over 12 per cent. of sales. For the Canadian Northern and Canadian National Railways, costs of administration, estimated at \$1,310,000, were over 9 per cent. of gross sales and over 23 per cent. of net sales (\$13,781,128 and \$5,660,925 respectively) during the period 1917-1930, corresponding to the period of maximum sales for school lands. The cost of administration allowed by Order-in-Council for school lands in the old province of "Canada", as we have seen, was 20 per cent. It is doubtful if any selling agency in the history of western land sales has ever approached the low costs of administration for the school lands of the Prairie Provinces.

(c) *Defects of Administration.* Certain aspects of Dominion administration, however, have been attacked by the provinces and have exposed the Department of the Interior to drastic criticism before the Saskatchewan and Alberta Resources Commissions of 1934-1935.

The policy with regard to collections on arrears of deferred payments, it was charged, was unwarrantably lenient; the ratio of cancellations in school lands sales was conspicuously high; voluntary cancellations were notoriously easy; while involuntary cancellations were seldom resorted to in order to enforce collections. Serious losses, therefore, to current school lands revenues were charged to the leniency of Dominion policy.

The Dominion, on the other hand, maintained that excessively high prices contracted under "boom" conditions could not be collected during subsequent periods of crisis and depression; it was easy to sell at the crest of the wave but hard to collect at the trough. Indiscriminate cancellations, moreover, would have been unwise without a prospect of resale. Weed infestation alone would have been a serious problem; and the same conditions which were held to warrant cancellation made resale during the depression impossible. In Manitoba where school lands sales before 1905 encountered fewer vicissitudes of world conditions, cancellations were phenomenally low. More than 98 per cent. of gross sales prices were paid in full.

With regard to collections, there were precedents for leniency in the policies of the Manitoba Swamp Lands Commission and the Canadian Pacific Railway. Both these organizations avowed two principles: never to resort to the courts to enforce the personal covenant in the sales contract, and never to cancel the sale so long as the occupant of the land maintained a proper attitude towards his obligation. It was conceded that both organizations maintained more frequent inspections and kept in closer contact with "live sales". For the amendment, however, in the Dominion Lands Act of 1927—"the acme of leniency"—permitting purchasers to cancel part of the contract and apply all payments to the acreage retained, the Dominion was able to file the official approval of all three of the Prairie Provinces in that year.

On the other hand there was little evidence of any "follow-up" system in collections; and no use was made of the "crop-share" system employed by practically every private land agency, and used after the transfer by the Province of Saskatchewan for school lands sales outstanding. In Alberta a total acreage of 332,323 out of gross sales of 1,573,737 acres—over 21 per cent.—was cancelled by the Dominion from 1905 to 1930. On these sales the average tenure of which was  $9\frac{1}{2}$  years, the total principal collected was only 13.4 per cent. of the sales price; and since the initial payment was 10 per cent., only 3.4 per cent. of principal after the first payment was ever collected. All but 12.7 per cent. even of the interest payments went by default. Reduced to a rental basis, the total payments of both principal and interest, including the first payment, amounted to 31 cents per acre per annum over a period of  $9\frac{1}{2}$  years of occupancy. "At 31¢ an acre, the tenure of these lands was cheaper than any agricultural lands in the west under any scheme of holding".<sup>15</sup>

A further area of 190,000 acres of Dominion sales subsequently cancelled by the Province was in occupancy an average of 4.14 years prior to 1930 and thus shared the full benefit of "boom" prices for wheat. On this acreage only two-fifths of one per cent. of principal was ever collected after the initial payment—only one in fifty of the purchasers ever paid the second instalment, and this during a "period in which the west had its best uniform production, the best production per acre and the best price level in its history."

In Saskatchewan the average period of occupancy before cancellation by the Dominion was 7 years. Sales of more than \$2,100,000

<sup>15</sup> M. M. Porter, K.C., Senior Counsel for Alberta.

were cancelled and resold to the same purchasers for less than \$1,525,000.

In one respect at least the Dominion failed for many years to carry out the letter as well as the spirit of the school lands trust: the principal moneys from land sales were allowed to accumulate in the Dominion Savings Bank, drawing bank rates of interest (3 per cent.) instead of being invested, as the Act prescribed, in "Dominion securities". It was not until 1917, as the result of a protest from the Provincial Treasurer of Manitoba, that the whole available school lands fund was invested in Dominion debentures at 5 per cent. It was estimated in 1927 that the Province of Manitoba had lost more than \$500,000 in interest from this source, and a suit in the Exchequer Court awaited only the fiat of the Dominion when the settlement of the whole "Natural Resources Question" was finally arranged. Before the actual transfer of 1930, however, the provincial claims with regard to arrears of interest had been fairly readjusted by continuing a uniform rate of 5 per cent. on the fund despite the fluctuating rates of Dominion securities after 1917.

(d) *Provincial interests versus "purposes of the Dominion"*. Between the general lands policy of the Dominion and the special function of the school lands as an "endowment for purposes of education" in the Prairie Provinces there was a conflict of interest which was not always resolved in favour of the provinces.

Of all the general "purposes of the Dominion" in the retention of Dominion Lands, the chief, undoubtedly, was rapid and permanent settlement—railways and railway land grants to make it possible, and free homesteads to make it attractive. The reservation of school lands was undoubtedly an integral part of the inducement held out to the prospective settler. "Parliament pledged its faith (reads the historic report of the Committee of Council in 1884) that a large portion of these lands should be set apart for free homesteads to all coming settlers, and another portion . . . held in trust for the education of their children."<sup>16</sup> It is true that settlement was necessary in order to give school lands a market value: even for sound school lands policy it was necessary to "dovetail it into the settlement policy." But the excessive leniency of the Dominion with regard to inspections, collections, and cancellations, was obviously in keeping with the Department's major policy of rapid settlement rather than with the fiscal interests of the provinces in

<sup>16</sup> *Sessional Papers of Canada, 1885, No. 61.*

the school lands. The brisk sales of school lands, moreover, and the high prices obtained in 1910-1913, 1917-1919, and 1927-1930, are traceable not only to the general increase of population but to economic world conditions of the first importance. In that sense the price of wheat in world markets may be a better index of school lands sales than the census returns of the Prairie Provinces. Many a Saskatchewan farmer may have been prepared to pay more for an adjoining quarter section of school lands because he had got his original homestead for nothing. Possibly, indeed, he may have settled upon his free homestead in the first place because he had a prospect of buying an adjacent quarter section of school lands or railway lands at attractive prices. But he seldom settled upon school lands in the first instance; and the price he was prepared to pay for them must have depended less upon the number of fellow-homesteaders in his neighbourhood than upon the quotations for wheat and barley upon the Winnipeg grain exchange. It would be easy to demonstrate that school lands sales have followed the fluctuating course of world prices for wheat rather than the steady curve of population in Western Canada. Thus while the fiscal interests of the provinces in the school lands may have been subordinated in some respects to the free homestead policy of the Dominion in procuring settlers, those interests prospered with the homesteader's prosperity, and the interests of both province and Dominion depended less perhaps in the long run upon "policy" at all than upon basic factors of physiography, good and bad times, and world markets.

(e) *School Lands and Provincial Education.* Despite all defects of administration and the inherent difficulties of combining a free homestead policy with an effective policy of land sales, the proceeds from school lands have formed a very creditable and productive endowment. The interest on the school lands fund together with the current revenues from leases, rentals, interest on deferred payments, etc., have gone far to alleviate the heaviest burdens of education for pioneer settlement.

In Saskatchewan where the permanent school lands fund is nearly twice that of Alberta and nearly three times that of Manitoba<sup>17</sup> the total revenues received from 1905 to 1930 from school lands were about \$16,300,000, while the grants of the provincial government to public schools amounted to more than \$33,400,000. Nearly

<sup>17</sup> Approximately \$17,800,000 for Saskatchewan, \$9,550,000 for Alberta, and \$6,000,000 for Manitoba in 1930.



half the provincial grants to public schools thus came from school lands. In Alberta the school lands and school lands fund yielded revenues of about \$10,500,000 from 1905 to 1930, while grants to public schools amounted to more than \$19,600,000, and total grants to education to more than \$36,000,000. More than half the provincial grants to public schools and less than a third of the total grants for education thus came from school lands. In Manitoba the revenues from school lands for the same period (about \$6,500,000) supplied a much smaller proportion of the total provincial grants for public schools. In 1921, to take an average year, the provincial grant was \$1,354,000 while revenues amounting to \$350,000 were derived from school lands—a little more than one-quarter of the provincial grant. Municipal levies for public schools for the same year amounted to more than \$8,120,000—more than 23 times the year's revenues from school lands.

Among all the categories of Dominion Lands, school lands made the nearest approach to administration for purely fiscal purposes. With the exception of town sites and other exceptional classifications no other category has yielded so high a sale price or produced so permanent a revenue.

It would be rash, for obvious reasons, to regard either school lands or Hudson's Bay lands as fair staples of any general land sales policy. But the combination of the two, the one under public and the other under private administration, affords many interesting parallels. Sections 11 and 29 for school lands and sections 8 and 26 for Hudson's Bay lands occupy strategic positions of maximum accessibility in every township.<sup>18</sup> Together they comprise nearly one-ninth the total area of the fertile belt—a little less than the ratio of clergy reserves in the land grants of Upper Canada which Sydenham pronounced to be "the root of all the troubles of the province . . . the perpetual source of discord, strife, and hatred." At least fifteen accessible and evenly distributed quarter sections in every township were thus available for sale to the enterprising homesteader. Within the railway belt and other areas reserved for railway land grants, moreover, all the remaining odd-numbered sections that were "fairly fit for settlement" were also reserved for sale. Within these areas it would not be unfair to say that a sales policy predominated, since nearly five-ninths of every township was excluded from homestead entry. Railway lands, under the Canadian system of "indemnity selection", were of course "fairly

<sup>18</sup> See Fig. 8.

fit for settlement". School lands and Hudson's Bay lands, on the other hand, in both quality and distribution throughout the whole range of the fertile belt, were a fair cross-section or "mine run" of the lands of Western Canada. The general relation between grants and land sales will be discussed in another context,<sup>19</sup> but it is a remarkable fact that at a time when free homesteads were still supposed to form the staple of Dominion Lands policy, the gross sales of Hudson's Bay lands to the value of nearly \$60,000,000 and of school lands to the value of more than \$73,000,000—more than \$133,000,000 in all—have resulted from the disposal of about 9,850,000 acres "of fair average quality" and uniform distribution in the Prairie Province.<sup>20</sup> The average gross sales price has been more than \$13.50 per acre.

The cancellations of school lands sales, as we have seen, have been excessive, but the net results have been ingeniously recapitulated in still another form in the findings of the Saskatchewan and Alberta Resources Commissions. "Although the Dominion record is not without its blemishes it makes, on the whole, an excellent showing."<sup>21</sup> For Saskatchewan the estimate is as follows:

Of the areas of land set apart for school purposes in the Province—about 3,945,000 acres—the Dominion sold about 2,600,000, of which about 500,000 acres were later cancelled and revested in the Crown. The result of those net sales is that the 2,100,000 acres have already yielded—

- (a) current revenue (interest, rentals, etc.), paid to the Province  
year by year, 1905-1930..... \$16,350,000
- (b) principal money on sales (transferred to the Province on  
October 1, 1930)..... \$17,800,000

This is the equivalent of more than \$16 an acre on the net sales, and has all been paid to the Province in cash. Further, on October 1, 1930, the Dominion turned over to the Province many agreements for sale, under which there was outstanding principal of about \$16,000,600. Of this sum only about \$4,000,000 was in arrears. Even making allowances for substantial losses in collection, these outstanding accounts should yield several dollars to be added to the \$16 already mentioned.<sup>21</sup>

For Alberta the results though less imposing in average price per acre on gross sales were substantially on a par with those of Saskatchewan in price per acre on net sales: a significant commentary upon the "effect (in Saskatchewan) of sales at prices which, in view of subsequent conditions, proved to be unduly high." Of 1,570,000 acres sold in Alberta, about 330,000 were later cancelled

<sup>19</sup> See below, Chapter XIII.

<sup>20</sup> Gross acreage Hudson's Bay lands, 4,950,621; school lands, 4,903,051.

<sup>21</sup> *Report*, p. 31.

and revested in the Crown. Net sales of 1,240,000 acres thus produced \$10,570,000 of current revenue to the province year by year, and \$9,500,000 in the permanent school fund. As for Saskatchewan this was "the equivalent of more than \$16 an acre on the net sales, and has all been paid to the province in cash"; while outstanding principal of \$8,000,000 will yet yield "several dollars an acre to be added to the \$16 already mentioned."<sup>22</sup>

Manitoba with \$6,000,000 of principal in the permanent school fund and \$7,500,000 of current revenues for the longer period since 1885, has enjoyed the equivalent of \$21 an acre in cash on the net acreage sold by the Dominion, though the average price per acre on gross sales from the beginning has been only \$9.79 by comparison with \$16.85 for Saskatchewan and \$14.40 for Alberta.

For all three provinces the basic principles laid down by the Dominion more than sixty years ago still remain "sacred and inviolate"; and thus the school lands policy of the Dominion Lands era has become a permanent pattern in the development of the Prairie Provinces.

<sup>22</sup> Report, pp. 32ff.

### Homestead

Sections 32 to 45 of the Act deal with Homesteads. I have included these sections following the brief summary that appears below.

The provisions set out in these sections include:

s. 32-every person who is the head of a family and every male 18 years or over may apply and be entitled to homestead entry for any quantity of land not exceeding one quarter section.

32(2)-a person may at the same time obtain a pre-emption entry for an adjoining unoccupied quarter section or part thereof.

- 32(4)-homestead and pre-emption only apply to surveyed agricultural lands.

s. 35-sets out investigation procedures in a case of dispute between persons claiming entry for the same land.

s. 38-provided when and under what conditions a settler may obtain his patent (e.g. 3 years after perfecting his homestead entry). Furthermore, a patent could not be issued to a person not a subject of Her Majesty by birth or naturalization. Other provisions included the enacting of habitable buildings.

s. 43-set the conditions upon which a patentee could obtain another homestead entry

s. 44-provided that a person or company could apply to the Minister for advancement of money to facilitate settlement.

s. 46-prescribed that pre-emption was to be discontinued after January 1, 1890.

#### Sections 32 to 46

##### *Homestead.*

Entry for  
homestead  
rights; area  
limited.

**32.** Every person who is the sole head of a family, and every male who has attained the age of eighteen years, who makes application in the form A in the schedule to this Act, shall be entitled to obtain homestead entry for any quantity of land not exceeding one quarter section, which is of the class of land open, under the provisions of this Act, to homestead entry:

2. Such person may also, in connection with such homestead entry, obtain at the same time, but not at a later date, a pre-emption entry for an adjoining unoccupied quarter section, or part of a quarter section, of land of the said class: Pre-emption entry there-with.

3. The entry for a homestead and for its attached pre-emption, if any, shall entitle the recipient to take, occupy and cultivate the land entered for, and to hold possession of the same to the exclusion of any other person or persons whomsoever, and to bring and maintain actions for trespass committed on the said land; the title to the land shall remain in the Crown until the issue of the patent therefor, and the land shall not be liable to be taken in execution before the issue of the patent: Effect of such homestead and pre-emption entry. Exemption from execution.

4. The privilege of homestead and pre-emption entry shall only apply to surveyed agricultural lands; no person shall be entitled to such entry for land valuable for its timber, or for hay land, or for land on which there is a stone or marble quarry, or coal or other mineral having commercial value, or whereon there is any water power which may serve to drive machinery, or for land which, by reason of its position, such as being the shore of an important harbor, bridge site or canal site, or being either an actual or prospective railway terminus or station, it is in the public interest to withhold from such entry. 46 V., c. 17, s. 27. To apply only to agricultural and surveyed lands.

**33.** Whenever the survey of any township has been finally confirmed and such township opened for homestead entry, any person who has *bonâ fide* settled and made improvements before such confirmed survey on land in such township, shall have a prior right to obtain homestead entry for the land so settled on, if such right is exercised within three months after the land is open for settlement, and if such land has not been reserved or the right to homestead entry is not excepted under the provisions of this Act:

As to rights of persons who have settled on lands before survey.

2. No homestead entry shall be granted to any other person in respect of such land until three months after notice in writing has been given by the local agent to such *bonâ fide* settler that such land is open for settlement. 46 V., c. 17, s. 28.

As to homestead entry thereafter.

**34.** Every person applying for homestead entry shall appear and make affidavit before the local agent, or, in his absence, the senior clerk performing his duties, according to the form B, C, or D in the schedule to this Act, as the circumstances of the case require; and upon filing such affidavit with such local agent, or senior clerk, and on payment to him of an office fee of ten dollars, such person shall receive a receipt from the local agent, or senior clerk, according to the form E in the schedule to this Act; and such receipt shall be a certificate of entry and shall be authority to the person obtaining it to take possession of the land described in it:

Affidavit to be made by applicant for homestead entry.

Fee.

Further fee on pre-emption entry.

2. If a person who obtains homestead entry applies for and obtains at the same time a pre-emption entry, he shall pay to the local agent, or senior clerk, a further office fee of ten dollars, and shall receive therefor from him a receipt in like form, and having like effect to that prescribed for homestead entry:

How entries are to be made on behalf of another person.

3. The Minister of the Interior or the Dominion Lands Board, upon requisition, may authorize any person named therein to make a homestead entry or homestead and pre-emption entries, on behalf of any person signing such requisition and desiring to obtain such entry or entries:

Application in such case.

4. The person so authorized shall, in order to obtain such entry or entries, make application in the form F in the schedule to this Act, on behalf of each of those whom he represents, and shall make an affidavit before the local agent, or, in his absence, the senior clerk performing his duties, according to the form G, H or J, in the schedule to this Act, as the circumstances of the case require; and shall pay for each homestead entry, and for each pre-emption entry, the office fee of ten dollars hereinbefore prescribed for such entry. 49 V., c. 27, s. 4.

Fees.

Investigation in case of dispute between persons claiming entry for the same land.

**35.** If a dispute arises between persons claiming the right to homestead entry for the same land, the local agent, or any person thereto authorized by the Minister, shall make investigation and obtain evidence respecting the facts; and his report thereon, together with the evidence taken, shall be referred to the Minister for decision, or to the Dominion lands board, or Commissioner of Dominion Lands, or such person as is appointed by the Governor in Council to consider and decide in cases of such disputes:

First settler  
entitled to  
entry, unless  
contrary to  
public in-  
terest.

Provision in  
case contend-  
ing parties  
have made  
valuable im-  
provements.

2. When two or more persons have settled upon and seek to obtain homestead entry for the same land, the one who settled first thereon shall be entitled to such entry, if the land is of the class open to homestead entry, and if it is not in the opinion of the Minister otherwise inexpedient, in the public interest, to entertain any application therefor:

3. When contending applicants have made valuable improvements on the land in dispute, the Minister may, if the application to acquire the land by homestead entry is entertained by him, order a division thereof in such manner as shall preserve to each of the parties to the dispute, as far as practicable, his improvements; and the Minister may, at his discretion, direct that the difference between the extent of the land so allotted to each of them and a quarter section shall be made up from unoccupied land adjoining, if there is any such of the class open to homestead entry. 46 V., c. 17, s. 30.

36. Every person who has obtained homestead entry shall be allowed a period of six months from its date within which to perfect the entry, by taking, in his own person, possession of the land and beginning continuous residence thereon and cultivation thereof; and if the entry is not perfected within that period, it shall be void, and the land shall be open to entry by another person, or to other disposition under this Act by the Minister: Delay for perfecting entry limited.

2. Provided, that every person who obtains entry on or after the first of September in any year, and whose term for perfecting the same expires before the first day of June following, shall be allowed an extension of time to the latter date within which to perfect his entry: Proviso: as to entry obtained after 1st September.

3. Provided further, that in the case of immigrants from elsewhere than the North American continent, the Governor in Council may extend the time for the perfecting of entry to twelve months from the date thereof. 46 V., c. 17, s. 31. Proviso: in case of immigrants from places out of N. America.

37. If a number of homestead settlers, embracing at least twenty families, with a view to greater convenience in the establishment of schools and churches, and to the attainment of social advantages of like character, ask to be allowed to settle together in a hamlet or village, the Minister may, in his discretion, vary or dispense with the foregoing requirements as to residence, but not as to the cultivation of each separate quarter section entered as a homestead. 46 V., c. 17, s. 32. Case of immigrants forming a hamlet or village.

38. At the expiration of three years from the date of his perfecting his homestead entry, the settler, or in case of his death, his legal representatives, upon proving, to the satisfaction of the local agent, or, in his absence, the senior clerk performing his duties, that he or they, or some of them have resided upon and cultivated the land during the said term of three years, shall be entitled to a patent for the land, if such proof is accepted by the Commissioner of Dominion lands, or the land board; but the patent therefor shall not be issued to any person who is not a subject of Her Majesty by birth or naturalization: When and on what conditions a settler may obtain his patent. Must be a subject of Her Majesty.

2. In the case of a settler who obtains homestead entry for land occupied by him previous to survey thereof, in the manner hereinbefore mentioned, residence upon and cultivation of the land for the three years next preceding the application for patent shall, for the purpose of the issue of patent, be held equivalent to that prescribed in the foregoing sub-clause, if such residence and cultivation are otherwise in conformity with the provisions of this Act:

3. Every person who proves that he has resided on the land for which he has homestead entry for twelve months of, may, before the expiration of the three years defined in sub-clause one of this clause, obtain a patent by paying the Government price at the time for the land:

Proof of residence and cultivation in such case.

4. Proof of residence, erection of a habitable house and cultivation, required by this clause, shall be made by the claimant by affidavit, and shall be corroborated by the evidence on oath of two disinterested witnesses, resident in the vicinity of the land to which their evidence relates, and shall be subject to acceptance as sufficient by the Commissioner of Dominion lands or the land board; and such affidavit shall be sworn, and such evidence given, before the local agent, or, in his absence, the senior clerk performing his duties or some other person named for that purpose by the Minister:

Or residing 12 months and performing other duties before the end of three years

Right of settler who has also obtained pre-emption entry and pays the price.

5. If, in connection with the homestead entry, the settler has heretofore obtained, or hereafter obtains, a pre-emption entry, in accordance with the provisions of this Act, he shall, on becoming entitled to a patent for his homestead, be also entitled to a patent for the land included in such pre-emption entry, on payment of the price fixed, in accordance with the provisions of this Act, by the Governor in Council; but such pre-emption right, if not exercised and payment made within six months after the settler becomes entitled to claim a patent under his homestead entry, shall be forfeited, and such pre-emption shall not thereafter be open to homestead entry without the consent of the Minister:

Proviso.

Other conditions on which a patent may be obtained.

6. In addition to the cases hereinbefore mentioned, any person claiming a patent under a homestead entry, or under a homestead and pre-emption entry, shall be entitled thereto, upon proving—

House.

Residence.

(a.) That he has erected upon his homestead a habitable house, and has *bond fide* resided therein for not less than three months next prior to the date of his application for his patent;

(b.) That for the period between the time within which, by clause thirty-six of this Act, it is provided that a person who has obtained a homestead entry shall perfect his entry, and the commencement of his said three months' residence upon his homestead, he has been *bond fide* resident within a radius of two miles from his homestead quarter section;

Breaking land.

The same.

(c.) That within the first year after the date of his homestead entry he broke and prepared for crop not less than ten acres of his homestead quarter section;

(d.) That within the second year he cropped the said ten acres and broke and prepared for crop not less than fifteen acres in addition;

The same.

(e.) That within the third year after the date of his homestead entry he cropped the said twenty-five acres and broke and prepared for crop not less than twenty-five acres in addition, making in all not less than twenty-five acres of the said homestead cropped, and fifteen acres in addition broken and

prepared for crop, within three years of the date of perfecting his homestead entry;

And the residence described in this sub-clause shall be sufficiently fulfilled if the applicant has not been absent from his residence for more than six months in any one year: Residence explained.

7. Any person claiming a patent under a homestead entry or under a homestead and pre-emption entry shall also be entitled thereto upon proving to the satisfaction of the Commissioner of Dominion Lands or the Dominion Lands Board,— Further conditions on which patent may be obtained.

(a.) That he perfected his homestead entry by commencing the cultivation of the homestead within six months from the date of his homestead entry, or if the entry was obtained on or after the first day of September in any year, before the first day of June following; Perfecting entry.

(b.) That within the first year after the date of his homestead entry he broke and prepared for crop not less than five acres of his homestead quarter section; Breaking land

(c.) That within the second year he cropped the said five acres, and broke and prepared for crop not less than ten acres in addition, making not less than fifteen acres in all; The same.

(d.) That he erected a habitable house upon his homestead before the expiration of the second year after his homestead entry, and has *bond fide* resided therein and has cultivated the land for three years next prior to the date of his application for his patent; House. Residence and cultivation.

(e.) That at the commencement of the third year after the date of his homestead entry, or previously, he commenced the residence on his homestead required by the next preceding paragraph of this sub-clause: Residence.

8. Every person who has obtained a homestead entry, and who purposes to apply for a patent for such homestead, shall give six months' notice in writing to the Commissioner of Dominion Lands of his intention to make such application, and shall produce evidence to the officer who is authorized to receive the application, that such notice has been duly given. 46 V., c. 17, s. 33;—47 V., c. 25, ss. 2 and 3.;—49 V., c. 27, ss. 5 and 6. Notice of application for patent.

39. If it is proved to the satisfaction of the Minister that a settler has not resided upon and cultivated his homestead, except as herein provided for, at least six months in any one year, the right to the land shall be forfeited, and the entry therefor shall be cancelled; and the settler so forfeiting his entry shall not be eligible to obtain another entry except in special cases, in the discretion of the Minister. 46 V., c. 17, s. 34, *part.* Forfeiture of right by non-residence.

40. In cases of illness, vouched for by sufficient evidence, or in the cases of immigrant settlers returning to their In case of sickness time may be extended.



native land to bring their families to their homesteads, or in other special cases, the Minister may, in his discretion, grant an extension of time during which such settler may be absent from his homestead, without prejudice to his right therein; but the time so granted shall not be reckoned as residence. 46 V., c. 17, s. 34, *part.*

Sale of homestead of which entry is cancelled.

**41.** Every homestead, the entry of which has been cancelled, may, in the discretion of the Minister, be held for sale of the land with the improvements, if any—or of the improvements only, in connection with homestead entry thereof—to a person other than the person whose entry is cancelled. 46 V., c. 17, s. 35.

Assignments before patent to be void.

**42.** Every assignment or transfer of homestead or pre-emption right, or any part thereof, and every agreement to assign or transfer any homestead or pre-emption right, or any part thereof, after patent obtained, made or entered into before the issue of the patent, shall be null and void; and the person so assigning or transferring, or making an agreement to assign or transfer, shall forfeit his homestead and pre-emption right, and shall not be permitted to make another homestead entry: Provided, that a person whose homestead or homestead and pre-emption have been recommended for patent by the local agent, and who has received from such agent a certificate to that effect, in the form K in the schedule to this Act, countersigned by the Commissioner of Dominion Lands, or, in his absence, by a member of the Dominion Lands Board, may legally dispose of and convey, assign or transfer his right and title therein. 46 V., c. 17, s. 36;—49 V., c. 27, s. 7.

Forfeiture.

Proviso: in case of recommendation for patent by local agent.

Condition on which a patentee may obtain another homestead entry.

**43.** No person who has obtained a homestead patent or a certificate countersigned by the Commissioner of Dominion Lands, or a member of the Dominion Lands Board, as in the next preceding clause mentioned, shall be entitled to obtain another homestead entry:

As to certificates received before 2nd June, 1886.

2. Nothing contained in this clause shall take away the right of any person who, before the second day of June, one thousand eight hundred and eighty-six, had received such certificate or recommendation for a patent. 49 V., c. 17, s. 8.

Minister to sanction plans for advancing money to settlers.

**44.** If any person or company is desirous of assisting by advances in money intending settlers to place themselves on homestead lands in Manitoba or the North-West Territories, and of securing such advances, such person or company may make application to the Minister, stating the plan or project intended to be acted upon, the steps to be taken in furtherance thereof, and the amount to be advanced to such settlers; and the Minister may sanction and authorize such plan or project, or refuse his sanction and authority thereto:

2. If such plan or project is so sanctioned, and such person or company thereupon places any settler upon a homestead, a statement of the expense incurred by such person or company in paying the actual *bonâ fide* cost of the passage and of providing for the subsistence of such settler and his family, of erecting buildings on his homestead (to which purpose at least one-half of the advance made shall be devoted) and of providing horses, cattle, farm implements and seed grain for him, together with an amount in money sufficient to cover the interest on the amount advanced for a time to be agreed upon, to enable such settler to obtain a return from the cultivation of such homestead, shall be furnished to him, and upon his approval thereof, shall be submitted with proper vouchers in support thereof to the local agent, who shall examine and verify the same both by such vouchers and by an examination of such settler, and of such person or company, or their representative,—and shall certify the result of such verification by a writing upon such statement signed by him; and thereupon such settler may make and execute an acknowledgment in writing of the amount so advanced to him, and may by such writing create a charge upon such homestead for the amount of such advance, not exceeding the sum of six hundred dollars, and for the interest thereon, at a rate not exceeding eight per cent. per annum:

Particulars to be furnished to the settler.

And verified by local agent.

Settler may create a charge on homestead for advances.

3. Such acknowledgment and charge shall be in the form L in the schedule to this Act, and a duplicate thereof shall be deposited with the local agent, and thereafter the holder of such charge shall have the right to enforce payment of the amount so advanced and of the interest thereon by ordinary legal proceedings: Provided always, that the time to be fixed for the payment of the first instalment of interest upon such advance shall not be earlier than the first day of November in any year, nor shall it be within less than two years from the establishment of such settler upon such homestead; and provided also, that such settler shall not be bound to pay the capital of such advance or any part thereof within a less period than five years from the date of his establishment upon such homestead:

Form.

Holder's rights.

Payment of interest.

Payment of capital.

4. Upon such acknowledgment and charge being duly executed and duly registered in the registry office for the registration district in which such homestead is situated, the same shall constitute and be and remain a first charge upon such homestead after the issue of the patent or certificate of patent for such homestead, until duly satisfied and extinguished according to law:

Registration.

5. If such settler has not performed the conditions of settlement required to entitle him to a patent for such homestead within the time and in the manner provided by this Act, and has thereby forfeited his right to obtain a patent, the holder of the charge created thereon may apply to the Minister for a patent of such homestead, and, upon establishing

Provision in case the settler forfeits his right to a patent

Right may pass to holder of charge.

Duties of holder in such case.

the facts to the satisfaction of the Minister shall receive a patent in his name therefor; and such patentee shall be bound to place a *bonâ fide* settler on such homestead by the sale thereof to such settler or otherwise within two years from the date of such patent, and in default of so doing within the said period shall be bound and obliged on demand to sell the said homestead, to any person willing to become a *bonâ fide* settler thereon, for such sum of money as is sufficient to pay the amount of such charge and interest, and the expenses incurred by the patentee in obtaining such patent and in retaining the homestead, on pain, in case of refusal, of an absolute forfeiture of the said property and of all claims thereon and of the patent or other title thereto.

Provision when right to patent has been acquired.

But if the settler has acquired a right to receive a patent for the land so charged and does not apply for the issue of the same, the holder of such charge may obtain such patent, or certificate for patent, in the name of the person entitled to receive the same or of his legal representatives, and thereafter the said charge shall become a statutory mortgage on such homestead. 49 V., c. 27, s. 9, *part*.

Certain enactments to apply to such charges.

45. Clause seven of the "*Act respecting Interest*" shall apply to all charges created under the next preceding clause of this Act. 49 V., c. 27, s. 9, *part*.

#### *Discontinuance of Pre-emptions.*

Pre-emption to be discontinued after 1st January, 1890.

46. The privilege of pre-emption, in connection with a homestead entry, shall be discontinued from and after the first day of January, in the year one thousand eight hundred and ninety. 49 V., c. 27, s. 10.

#### *Mining and Mining Lands.*

Mineral and coal lands to be disposed of under Order in Council.

47. Lands containing coal or other minerals, whether in surveyed or unsurveyed territory, shall not be subject to the provisions of this Act respecting sale or homestead entry but shall be disposed of in such manner and on such terms and conditions as are, from time to time, fixed by the Governor in Council, by regulations made in that behalf. 46 V., c. 17, s. 42.

Gold or silver mines not to pass by grant of land containing them.

48. No grant from the Crown of lands in freehold or for any less estate, shall be deemed to have conveyed or to convey the gold or silver mines therein, unless the same are expressly conveyed in such grant. 46 V., c. 17, s. 43.

Rights of discoverers of minerals.

49. Every discoverer of minerals upon surveyed or unsurveyed lands, or his assigns and associates, who had applied for a grant of such lands before the passing of the Act passed in the forty-third year of Her Majesty's reign, chapter twenty-six, shall be held to have the same rights as if that Act had not been passed. 46 V., c. 17, s. 44.

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The Homestead Exemptions Act, 1886

The Homestead Exemption Act was first passed in 1876. The original Act like that of 1886, was intended to cover the various aspects of homestead law in the nature of homestead rights. Sections 3 and 4, set out below, sufficiently indicate the nature of the Act. These sections read

3. Any man who is the owner of an estate in fee simple, or for life, in land situate in the Territories, with a dwelling house thereon occupied by him, may register as a homestead an extent of such land not exceeding eighty acres, if in a rural locality, or the lot on which such dwelling house stands, if in an incorporated city, town or village, in the office for the registry of titles to lands for the place in which the land lies, clearly describing the property in the instrument for effecting such registration: Provided, that if the estate of such owner is only for life, it shall be so stated in such instrument, and in such case the exemptions hereinafter provided shall apply only to such estate, which shall be understood by the word "homestead" when used in this Act. 41 V., c. 15, s. 1.

Who may register a homestead and of what extent.

Proviso: as to estate for life.

4. The homestead so registered shall, while the homestead registration continues under the provisions of this Act, be wholly exempt from seizure or sale under execution; or under any Act respecting insolvency, for any debt of such owner contracted after such registration, if the value of the homestead does not, at the time of such registration, exceed two thousand dollars,—and if its value then exceeds that amount it shall be so exempt to that amount, except for the amount of any mortgage given to secure the purchase, money of the property, or any debt to the Crown on the purchase thereof, or which is a lien thereon, or for the amount of any taxes due thereon. 41 V., c. 15, s. 2.

Duration and amount of homestead exemption.

Exceptions.

Purchase money, &c.  
Taxes.

The Act also provided for a life interest to pass to the widow or issue (so long as they are minors) of a deceased homestead owner (s.5). Provision was made in the case of registration of a homestead by a married man. In such case the wife became a joint owner of a life interest therein. A further proviso caused the wife to forfeit her interest if she were to be found guilty of adultery (s.6). Furthermore the husband could not alienate the homestead without his spouse's express approval in writing (s.7).

Of course many other contingencies were provided for by the Act. The most significant of these were: that every entry of a homestead right had to be registered in the register book and upon the certificate of title, in the words "registered as a homestead"; and that the exemption extended only to eighty acres of land (s.10).

The Homestead Exemptions Act was repealed in 1894.

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Martin, in his book Dominion Lands Policy, provides a concise explanation of the policy and legislation involved in the homestead system. I include this material below

CHAPTER IX

THE FREE-HOMESTEAD SYSTEM FOR  
"DOMINION LANDS"

*1. Free Homesteads Taken for Granted*

THE brief outline of "the purposes of the Dominion" in retaining the control of public lands at the transfer of 1870<sup>1</sup> served to forecast the twin problems of railways and settlement which dominated the sixty-year era of "Dominion Lands". Like most of the problems of nineteenth-century Canadian politics these were attacked in the order of their immediate urgency. Next after the desperate necessity which forced the new Dominion into premature political expansion to the Pacific, came the problem of making good this new empire by means of a transcontinental railway. In the end both these projects and nationhood itself depended upon effective settlement; and the function of the free-homestead system in that process is perhaps the most interesting problem which survives from the era of "Dominion Lands".

<sup>1</sup> See above, Chapter II.

In the federal parliament it was assumed from the outset, without a trace of opposition and almost without debate, that the free homestead was to find a place in Dominion policy. Canada could now indulge a "prairie fever" of its own, with added contagion from the rapidly expanding free-homestead system of the United States. Macdonald himself at the Manitoba Act vindicated federal control of public lands because "the land legislation of the Province might be obstructive to immigration. All that vast territory should be for purposes of settlement under one control and that the Dominion legislature." The Act itself merely stipulated, as we have seen, that public lands should be "administered by the Government of Canada for the purposes of the Dominion"; but McDougall, now a private member after the fiasco at Red River, submitted as an amendment to the Act, the detailed homestead legislation devised as early as 1869 to offset the attractions of the United States. The quarter section, in McDougall's opinion, ought to be 200 acres instead of 160; the fee \$5 instead of \$10; the residence requirements three years instead of five. Formal legislation, however, was deferred until the first Dominion Lands Act of 1872, after nearly two years of investigation and experiment by Order-in-Council. At every stage, the influence, direct or indirect, of the United States is unmistakable. McDougall himself conceded that he had "adopted with modifications, the American Homestead law". Dennis who had confirmed McDougall's system in the field, had consulted the Commissioner-General of the Land Office and the Surveyor-General of Minnesota. Lieut.-Governor Archibald, whose report from the new Province of Manitoba (December, 1870) was the basis of subsequent Orders-in-Council (March 1 and April 25, 1871), urged the 160 acre quarter-section homestead because the American practice was already "known all over the world". Cartier stated in the House that the 160 acre quarter-section homestead "had been adopted after mature consideration of the American system". The Hon. J. C. Aikins who introduced the first Dominion Lands Bill in the Senate, acknowledged his indebtedness to the "principles of a Bill which has just passed its second reading in Congress." Alexander Morris, the only member of the House of Commons to attempt even an exposition of the bill, referred to "the original Act of Congress, after which the Canadian Act was framed." "All along the line from the Lake of the Woods to the Rocky Mountains", wrote Archibald, "the two systems would be coterminous." It will be unnecessary to elaborate the fact. The free homestead like the 640 acre section, the decimal currency, and a score of less significant conventions, was to be an American product adjusted to the solidarity of the North American continent.

The Order-in-Council of March 1, 1871, the first comprehensive measure of Dominion Lands policy, made formal provision for homestead entries upon quarter sections of 160 acres, with fee of \$10 and residence requirements of five years before patent. It is clear, however, that the railway, for the time being, took priority over every other consideration. Within a belt of 36 miles—"three full townships on each side of the line finally sanctioned for the Inter-Oceanic Railway"—it was proposed to suspend, by Order-in-Council, "all existing regulations after May, 1874, and also terminate after the same day the free homestead system." This priority conceded at the outset to the railway as the most imperative necessity of national policy may be said to have remained a feature of Dominion administration until the railway land grant system was finally abandoned in 1894.

When the first Dominion Lands Bill was drafted in 1872, homestead entry on one quarter section with fee of \$10 and residence requirements of three years only, appeared among other regulations for sale, lease, and other forms of land administration. The Act was passed almost perfunctorily, the day before the House prorogued. It was overshadowed from the outset by the Washington Treaty and the first C. P. Railway Bill, the controversial provisions of which threw the whole homestead policy of the Dominion into its true perspective. A belt of 40 miles—20 on either side of the line—was to be set aside for the building of the railway. Within this belt, blocks of railway lands not exceeding 12 miles in width were to alternate with similar blocks of government lands. Within both, the free-homestead system was altogether withdrawn, and even government lands were to be sold at a minimum price of \$2.50 per acre. The American precedent is obvious. But while the grants to the Union Pacific had permitted entry for the full quarter-section homestead on government lands, and even those to the Northern Pacific had permitted homestead entry for 80 acres, the Canadian bill virtually suspended the free homestead altogether except for lands too far from the railway for immediate development. In policy as in literal practice the railway was to have right of way, and the fundamental problem of settlement was still left in abeyance.

The Pacific Scandal and the collapse of the first project for the C. P. R. restored the range of the homestead; but without railways the West was still a wilderness. The age limit for homestead entrants was reduced from 21 to 18 years, and pre-emption rights were granted to reserve the adjoining quarter section for purchase at the government price upon the issue of patent for the original homestead. Already a Canadian technique was being developed to deal with distinctively Canadian conditions. With the organization of the Department of the Interior (36 Vict., c.4) July 1, 1873, the Dominion Lands Branch, "specially charged as it is with the duty of surveying and allotting to settlers the rich and boundless prairies of the west", developed "formidable proportions", but the results



for many years were meagre. The cost to the government of transporting the immigrant over the Dawson Road was \$25 per head: the charge to the settler was \$10. In 1876 the Department reported only 500 homestead entries and a "general depression in business". Up to November, 1880, some 3,750,000 acres had been disposed of; less than 1,820,000 under homestead regulations and nearly 1,930,000 acres under pre-emptions, sales, and scrip. Even under Liberal auspices it was conceded that settlement must wait upon the railway.

With the return of the Conservatives to power in 1878 the doctrine was re-affirmed that the railway must be "built by means of the land through which it had to pass." The new Dominion Lands Act of 1879 was accompanied by the new railway resolutions approving the appropriation of "one hundred million acres of land, and all the minerals they contain . . . for the purpose of constructing the Canadian Pacific Railway."

## *2. Homesteads and Railway Land Grants*

A new impulse to the free-homestead system came not from any doctrinaire Clear Grit principles of free land as in Ontario, still less from any sectional issues like tariffs or slavery as in the United States. It developed from a new technique of coöperation between government and railway for the rapid settlement of the West. It was acquiesced in by a railway-obsessed government, and it was advocated, paradoxically, by the C. P. R. itself in the interests primarily of sound railway policy. The function of the free homestead, under these auspices, seems to have been at any cost to provide as rapidly as possible a pioneer population in Western Canada. An obvious function, in turn, of rapid immigration was to increase the value and expedite the sale not only of railway lands but of government lands reserved for sale in the railway belt in order to provide the cash subsidies for the railway. But for the railway there was another function which remained a distinctive policy of the C. P. R., and forty years of practice demonstrated it to be shrewder and wiser than protracted land sales at higher prices. The free-homestead system could provide traffic from a wilderness at a time when the opponents of the railway claimed the C. P. R. could never earn the axle-grease for its rolling-stock.

This development in the scope and function of the free homestead is to be found between the Order-in-Council of July 9, 1879, under the railway resolutions of that year, and the final regulations of January 1, 1882, to implement the charter of the C. P. R. By the regulations of 1879 the railway belt of 220 miles was divided into nine zones, four on either side of the central railway belt of ten miles. This central "Belt A" was "absolutely withdrawn from the homestead entry, also from pre-emption, and held exclusively for sale at \$6" per acre. Within the adjoining belts B (15 miles on either side), C (20 miles on either side), D (20 miles), and E (50

miles), the odd-numbered sections were to be sold at \$5, \$3.50, \$2, and \$1 an acre respectively. By the regulations of January 1, 1882, a new classification was devised with far-reaching effect upon the scope of the free homestead. The even-numbered sections even within the new C. P. R. railway belt of 48 miles (Class A) were to be thrown open to homestead entry of 160 acres. The government reserved the odd-numbered sections in Class B (within 12 miles of other railways), Class C (south of the C. P. R. railway belt), and Class D (all remaining lands for settlement), for sale at \$2.50 and \$2 per acre; but the significant fact could now be announced broadcast that the even-numbered sections throughout the whole range of Dominion Lands were open free to the pioneer.

The new trend had been forecast by the government itself as early as the regulations of October 14, 1879, before the formation of the C. P. R. syndicate; but there can be no doubt that after 1882 the C. P. R. was collaborating with the government in a general policy which had a profound effect upon the settlement of Western Canada. Relying upon a financial structure of exceptional shrewdness, and avoiding the ruinous bonded indebtedness which swamped so many of the railways in the United States, the C. P. R. was intent from the outset upon transportation: upon building a railway, keeping it, and making it pay. For this, traffic was indispensable; and nothing but rapid settlement could create traffic. Not only, therefore, was there no conflict, as in the United States, between the land grant railways and the free-homestead system<sup>2</sup> but the closest collaboration was developed between government and railway to settle the country. Something of the part played by the C. P. R. in this national enterprise has already been outlined.<sup>3</sup> It is doubtful if any other technique was more successful, in the long run, in effecting permanent and prosperous settlement in Western Canada. The contribution of the free-homestead system under government auspices was to speed up the process. The contribution of the C. P. R., as we have seen, was to subordinate land sales to traffic, and in the interests of traffic, to settle their own lands as soon as possible at prices substantially lower than the market value. School Lands sold for a gross average of \$16.85 per acre in Saskatchewan, \$14.40 in Alberta, and \$9.79 in Manitoba. Hudson's Bay Lands which were also fixed sections in each township throughout the fertile belt and therefore represented the "mine run" of

<sup>2</sup> See B. H. Hibbard, *A History of the Public Land Policies* (New York: 1924), pp. 251 ff., for a very judicious estimate of the relations between the two.

<sup>3</sup> See above, Chap. V., section 3.

agricultural lands, sold for a gross average of \$12.10 per acre. C. P. R. lands which were all "fairly fit for settlement" and located under the widest range of "indemnity selection" on the continent sold for a gross average of \$7.63 per acre.<sup>4</sup> The net proceeds, moreover, instead of issuing in dividends were "ploughed back" into development in the joint interests of sound railroading and permanent prosperous settlement. "No policy did the syndicate press more strongly upon us", said the Minister of Railways in 1881, "than that of settling the land as fast as we could. They said we should be only too glad to plant a free settler upon every acre belonging to the Government."

In effect the railway, by offering choice lands in the railway belt at low prices, was enabling the thrifty settler to pass from the primitive stages of pioneer settlement to prosperity and in some instances to affluence. As wheat became the staple of production and the half section tended to supplant the quarter section as the more profitable unit of production under the new technique of improved machinery and dry farming, the part played by these evenly distributed odd-numbered sections of railway lands became increasingly important. The free homestead offered to the pioneer the prospect of a competence; but combined with adjoining quarter sections for sale at reasonable prices, the free homestead put a premium upon thrift, and offered a reasonable prospect of prosperity.

The early stages of the free homestead during what may be called the railway land grant period brought into play many of the symptoms which had already run their course in the United States—charges of "land-lock" and "monopoly" against the railways, and a long series of protests against the federal control of Dominion Lands. As the railway land grant system developed, the fierce scramble between rival railway companies for eligible reserves gave colour to the popular prejudice. As the tide of settlement began to flow, a hard-driven provincial government in Manitoba found itself unable to cope with its responsibilities. The Dominion could supply the settler with a free homestead, but schools and roads had to come from the provincial treasury. Deprived of the land as a source of revenue, and for twelve years with no "subsidy in lieu of lands", the Province of Manitoba was inclined to trace its fiscal embarrassments in no small measure to Dominion Lands policy. The Dominion could well afford to give the land away for nothing: it was quickly discovered that customs and excise revenues from rapid immigration

<sup>4</sup> Excluding irrigated lands.

attracted by free homesteads could be much more profitable than land sales. The Dominion, as the Hon. Frank Oliver once observed, could "make millions out of the lands of the Northwest and never sell an acre." The increase in customs and excise revenues netted the federal government "a greater profit than it could conceivably have made . . . through the use of the lands for revenue purposes."<sup>5</sup> If free homesteads, by this subtle alchemy, could be made to produce customs and excise revenues for the Dominion and traffic for the railways, the alliance between the two in support of the free-homestead system is easily understood. Even the fiction that railways could be built by means of the land through which they had to pass was abandoned in practice though it lingered on in political currency until the close of the railway land grant era.

In reply to the perennial pilgrimages of provincial ministers to Ottawa in search of "better terms" the federal government now revealed the outlines of a settled policy. The Dominion could well afford to champion the widest application of the free-homestead system and to vote generous appropriations for a vigorous immigration policy:

The success of all the undertakings of the Dominion Government, in and for the North-West, depends largely upon the settlement of the lands. Combined with a great expenditure in originating and maintaining an immigration service abroad and at home, Parliament pledged its faith to the world that a large portion of those lands should be set apart for free homesteads to all coming settlers, and another portion to (*sic*) be held in trust for the education of their children. No transfer (of public lands to the province) could therefore be made without exacting from the Province the most ample securities that this pledged policy shall be maintained. . . .

The great attraction which the Canadian Government now offers, the impressive fact to the mind of the man contemplating emigration, is that a well known and recognized Government holds unfettered in its own hand the lands which it offers free. . . . Your Sub-Committee deem it to be of the utmost importance that the Dominion Government shall retain and control the lands which it has proclaimed free to all comers.<sup>6</sup>

Whatever the goodwill of the railways towards the free homestead, the rivalry for eligible reserves, and the delays, in many instances deliberate, in selecting the acreage actually "earned" by railway construction, must have complicated the "land-lock" which was already charged against the whole railway land grant system. In addition there were conditions at home and abroad during the early nineties which would probably have defeated the most elaborate land policy in Western Canada. There was more than co-

<sup>5</sup> Mr. Porter, Alberta counsel before the Alberta Resources Commission.

<sup>6</sup> Report of Committee of Privy Council, May 30, 1884, *Sessional Papers of Canada*, 1885, No. 61.

accidence, however, in the fact that the last railway land grant was made in 1894, and that the new Liberal administration of 1896, with Clifford Sifton as Minister of the Interior, began to explore the joint virtues of the free-homestead system and of enterprising land companies in speeding up land settlement. For the four years prior to 1897 the homestead entries in Manitoba and the Territories were fewer than 10,000 in number. In 1896 the cancellations were practically equal to the entries. Within four years over 27,000 entries were filed and equal numbers were buying selected areas for the inspection and sale of which enterprising land companies were now providing the most approved modern facilities. With experience gleaned upon the last "frontier" of the United States, railway excursions were organized and expert propaganda was brought to play upon the "saturated" agricultural areas of the middle western states. In many instances free transportation was provided many miles in advance of the railways. By the turn of the century an immigration "movement" was under way. "The land for the settler" was already the watchword of the new administration; but land sales kept pace with homestead entries, and pioneers of the second generation with capital and experience from the settled frontier of the middle west were beginning to penetrate the sub-humid areas of the Canadian territories. Up to this point it was the opinion of the Minister of the Interior that half the settled land of the West had been purchased either from the government or from the C. P. R., the Hudson's Bay Company or the innumerable agencies that were handling the land grants of the "colonization railways":

Settlement has progressed to the extent, and the class of settlers we are getting is improving to the extent, that, I fancy, fully one-half of the settlers that are actually located on the land in the West are located on purchased lands and have not taken up homestead at all. The division, I should say, roughly speaking, would be about one-half.<sup>7</sup>

The same tendencies are still to be traced during the following decade which brought the most rapid development of settlement in Western Canada and the widest application of the free-homestead system in Dominion Lands policy.

### *3. The Staple of Land Policy*

With the passing of the railway land grant system and the rise of enterprising land companies in coöperation with an elaborate immigration policy abroad and in the United States, the free-homestead

<sup>7</sup> Hon. Clifford Sifton, in *Debates of House of Commons*, 1902, vol. II, p. 2981.

system became in fact as well as in theory the staple of Dominion Lands policy. As the time approached for the organization of the western territories into provinces the general principles of land administration were thoroughly canvassed. At the creation of the two new provinces of Saskatchewan and Alberta in 1905 the decision to retain the public lands under federal control was deliberately reaffirmed. By this time the function of the free-homestead system was very clearly conceded and it may be said to have formed until the natural resources were transferred to provincial control in 1930 the standing "purpose" of the Dominion in the administration of Dominion Lands.

Up to 1908 the total acreage of railway land grants "earned" by the railways—about 31,750,000 acres—was "just about the same amount as, up to the present, have been opened up as homesteads."<sup>1</sup> Within a single decade of the Saskatchewan Act of 1905 the area patented for homesteads in that province had risen from 2,780,000 acres to 21,500,000, with over 7,500,000 acres of homestead entries still unpatented: a total of more than 29,000,000 acres in Saskatchewan alone. It was recognized on all sides that the free-homestead system was serving a far-reaching purpose in the settlement of Western Canada.

But the technique of Dominion policy was much subtler than appeared upon the surface:

The interest of the province in the land (the Minister of the Interior stated frankly) is in the revenue it can derive from the sale of the lands; the interest of the Dominion in the lands is in the revenue which it can derive from the settler who makes that land productive. This Dominion of Canada can make millions out of the lands of the Northwest and never sell an acre; it has made millions out of these lands without selling an acre. . . . The increase in our customs returns, the increase in our trade and commerce, the increase in our manufactures, is to a very large extent due to the increase in settlement on the free lands of the Northwest Territories. . . . The interest of the Dominion is to secure the settlement of the lands, and whether with a price or without a price makes little or no difference. It is worth the while of the Dominion to spend hundreds of thousands of dollars in promoting immigration . . . in surveying and administering these lands, and then to give them away.<sup>2</sup>

Thus again at the outset of provincial organization for Saskatchewan and Alberta the alternative was squarely faced between provincial administration for revenue and federal administration "for the purposes of the Dominion". It is true, as the most resourceful

<sup>1</sup> Hon. Frank Oliver, Minister of the Interior, in *Debates of House of Commons*, 1908, vol. VI, p. 11126.

<sup>2</sup> See *Debates of House of Commons*, 1905, vol. II, pp. 3157 ff.

exponents of provincial rights afterwards conceded, that the free homestead in some form would still have continued under provincial administration. "No man in 1905," Sir Frederick Haultain once said (March 16, 1911), "would have dreamt of altering the homestead policy, because it was that which made the province so attractive for settlement. The province would have followed out the same policy." Senator Gillis added that "we never proposed and never will propose to do away with the homestead privileges." It was equally true, however, and conceded before all three of the Natural Resources Commissions, that the provinces would inevitably at some stage have been forced to administer their lands for revenue had the Dominion not retained control of them in 1905 and compensated the provinces by "subsidies in lieu of lands". "If the lands were handed over to the provinces they would have to be used immediately as a source of income; we would have to get revenue out of them"<sup>16</sup>. The Dominion could thus afford to retain the lands "for the purposes of the Dominion" and to meet the fiscal requirements of the new provinces in some other way.

The basis of the "subsidies in lieu of lands" was carefully omitted in the final draft of the Saskatchewan and Alberta Acts, but from the original drafts and speeches in the House there can be no doubt of its origin. An area of 25,000,000 acres in each province, it was estimated, was still necessary for the "purposes of the Dominion" in respect of land settlement. Had fair compensation been paid to the provinces year by year at the rate of alienation, the subsidy would have been most buoyant when the population was still relatively sparse, and would have proved increasingly inadequate with every stage of subsequent development. A flat valuation of \$1.50 per acre was therefore put upon the prospective acreage (25,000,000 acres) to be utilized as Dominion Lands, and upon this "compensation fund" of \$37,500,000 a species of interest at advancing rates was adjusted in accordance with a sliding scale of population: one per cent. or \$375,000 per year up to 400,000 of population, one and one-half per cent. or \$562,500 up to 800,000, two per cent. or \$750,000 up to 1,200,000, and thereafter three per cent. or \$1,125,000. Since these subsidies were in the nature of interest payments upon a "compensation fund" for lands permanently lost to the province for purposes of revenue, the most discerning architects of the terms of 1905 already foresaw in the "subsidy in lieu of lands" a payment in perpetuity, as it has since become, for the system

<sup>16</sup> A. J. Adamson, in *Debates of House of Commons*, 1905, p. 5115.

which the Dominion was now deliberately retaining as the staple of land policy. The partial extension of the Saskatchewan and Alberta terms to Manitoba in 1912 brought all three provinces into similar relations with the federal government. As late as 1916, as we have seen, the federal government still regarded the free homestead as indispensable. It was only when that system had run its course; when neither railway land grants nor free homesteads were longer regarded as indispensable "for the purposes of the Dominion", that the natural resources still unalienated in the Prairie Provinces eventually reverted in 1930 to provincial control. Such has been the price paid by the Dominion for the two major features of "Dominion Lands" policy; and if the period to 1896 may be called the era of railway land grants, that from 1896 to 1930 may fairly be called the era of the free homestead as the staple of Dominion policy.

#### *4. The System at Work: Early Defects*

In function as well as in origin the free-homestead system in Canada developed fewer resemblances than the railway land grant system to its prototype in the United States. It inherited no sectional antipathies such as convulsed the American union in civil war. It involved no revolutionary departure from historic traditions in the administration of public lands. It encountered no opposition from railway interests with vast areas of railway land grants to dispose of: it was advocated from the outset by the C. P. R. itself and integrated with the C. P. R.'s own policy of land sales and land settlement. It supplanted altogether the original sales policy of the government, designed to provide the cash subsidies for the railway. As it was adopted at the outset without opposition in the best interests of the whole Dominion, so also during the entire period of Dominion administration it remained virtually unchallenged as a fundamental feature of national policy.

It is obvious, however, even from what has already been written, that the free homestead was by no means a simple policy designed, like the school lands or Hudson's Bay grants, to discharge a single obvious function. In practice it was associated with so many other characteristic features of Western Canadian development that its influence is scarcely calculable without them. It would perhaps be fair to say that its most permanent results have been found only in its integration with other policies. For the railways it fitted into a technique which the railways themselves developed, for providing



as soon as possible remunerative traffic from the frontier. "The homestead policy", stated one of the officials of the C. P. R. who had grown old in the service of the Company, "was the foundation on which we worked. . . . In the first years our efforts were more directed to the settlement of the homesteads than to the selling of our own lands."<sup>11</sup> For the government it produced revenues almost by necromancy from the abounding customs and excise receipts which accompanied the era of free lands: the Dominion could "make millions out of the lands of the Northwest and never sell an acre; it has made millions out of these lands without selling an acre." And if the government could use the free-homestead system to produce customs revenues, and the railways to produce traffic, both, it is safe to say, depended upon the success of the system in producing rapid and permanent settlement in the interests of the whole Dominion. How far did the free-homestead policy deserve the credit it has almost universally received in Canadian tradition for the land settlement of Western Canada?

From the beginning it was clear that the normal function of the free homestead—a farm of 160 acres adapted to mixed farming and operated by a permanently settled pioneer family—was to be honoured in the breach as well as in the observance. During the railway land grant era before any decided "movement" of population had begun, the regulations were so frequently changed in detail that it would be tedious to attempt a classification. In the competition with the United States conditions were deliberately modified until all sorts of abnormal practices were rampant. By the Dominion Lands Act of 1883 (46 Vict., c. 17, section 37) provision was made for a second homestead entry in order to prevent the drift to the western states of Canadian homesteaders who were disposing of their quarter sections as soon as patent could be issued and repeating the process in the Dakotas. In 1886 (49 Vict., c. 27, section 8) the experiment was abandoned, and homestead rights restricted to a single entry. Up to 1884 at least six months' residence a year for three years (instead of five, as in the United States) was exacted before title could issue. In that year, however, the concern of both government and railway for settlement at any cost was such that even these meagre requirements were modified. Residence was waived, except for three months preceding the application for patent, while the entry could be "proved" by cultivation, building, or stock. The results, until more stringent regulations put

<sup>11</sup> Frank W. Russell before the Saskatchewan Resources Commission.

an end to much of the confusion, have been described by an observer:<sup>12</sup>

The cultivation was done, although only to the amount of thirty acres, in the most perfunctory manner, and in most cases after title was obtained the land was abandoned. The "habitable house" was a shack that could be put on a wagon and drawn any place, one shack would do duty for a dozen different applications for patent. This law enabled patent to be obtained so long as one lived within two miles of his homestead quarter section. This regulation was afterwards extended to any place in the same township, then to any place within six miles, and for cultivation stock to the value of a few hundred dollars was substituted. A homesteader would purchase a small band of stock up to the requisite amount, and give his note for it. After he obtained his recommendation for patent, his note becoming due, the holder of the note took the stock back. The same stock would do to prove title by homestead right to any number of quarter sections.

The worst abuses under these regulations were quickly remedied, but the chronic infirmity of the free-homestead system was already apparent. "Land for the actual settler" may have been the most plausible of policies, but no system of land policy has ever been proof against fraudulent manipulation; and for many years whole districts in the vicinity of every frontier town and village were devastated rather than populated by the free-homestead system. Every moderation of the requirements with regard to residence or cultivation produced its crop of patented but abandoned homesteads; or rather unoccupied homesteads, for such they virtually remained from the time that homestead entry was filed upon them. With every sign of improvement in general conditions—every local "boom" and every railway station added to the network of "colonization railways"—the land speculator was there in advance of the farmer, the village doctor, lawyer, and store-keeper. Only too frequently he was the village lawyer or doctor or store-keeper himself. Railway companies or land companies operating on a large scale had an interest in permanent settlement, and commanded facilities for inspection and sale comparable to the best that the government itself could supply. But the small individual speculator had few facilities for sale except to another speculator; and the names of individuals of every profession and occupation soon appeared among the entries for free homesteads in the vicinity of every prairie town. In three small districts in Saskatchewan after 1905, the homestead entries included the names of the local printer, three grocery clerks, the manager of a lumber yard, two school principals, two barbers, a

<sup>12</sup> Mr. William Pearce.

dentist, a drayman, two carpenters, two tailors, a plumber, a hardware merchant, two sons of the local store-keeper, a harness maker, two hardware clerks; an insurance agent, two garage proprietors, an implement salesman, a druggist, and the local doctor. "I personally knew each one of these people," added this witness before the Saskatchewan Resources Commission, "during my residence in that district."<sup>13</sup>

It is true that the regulations with regard to "commutation" and "pre-emption" (in the American sense of that practice) which wrought such havoc with the free-homestead system in the United States<sup>14</sup> were not upon the Canadian statute books. It will be recalled, however, that the rate of "commutation" in the United States dropped by seventy-five per cent. when the Canadian three-year term of residence for the free homestead was adopted in 1912. The reason is not far to seek: the vicious process of purveying homesteads to the lurking speculator could now be completed as cheaply and almost as expeditiously in broad daylight under the new three-year residence requirements as it could by "commutation" after residence of fourteen months. When it is recalled that the three-year residence requirement had been in the Dominion Lands Acts since 1872, the prevailing drift of the free homestead into the clutches of the speculator is easily understood; and its devastating proportions are to be seen in the acreage of land alienated but still uncultivated in Western Canada (Figs. 35, 36).

It would be unfair to charge too many of the evils of the system upon the speculator as such. Much obviously depended upon the facilities at his command and the scale of his operations. The classic defence of the speculator's function was that he tended to stabilize prices: in buying cheap he tended to send prices up and in selling dear he tended to send prices down. But there can be few commodities in the modern world to which this defence is strictly less applicable than to land upon the frontiers of settlement. Lands upon the frontier are usually to be sold "when the selling is good" or not at all. For sustained "movements" of migration the tide of effective "controls"—physiography and "good times"—may lead on to fortune only when taken at its flood. In any event the great desideratum here was neither price nor profit but occupancy and production. The shrewd observer already quoted for the short-sighted regulations of 1883-1886 has a word to add with regard to this:

<sup>13</sup> C. H. Stockdale for the districts of Maple Creek, Gull Lake, and Shaunavon.

<sup>14</sup> See above, Chapter VII, section 4, sub-section (d).

Those responsible for the Homestead Act . . . seem largely if not wholly to have lost sight of the fact that a homestead was intended as a home, not as a gift of 160 acres to a man for coming into the country. Thus around all our towns and villages . . . all the lands were taken by people who lived in them, not at the homestead. We would have had them without giving them 160 acres, and if that 160 acres had not been given but had been occupied by progressive settlers, these men's livelihood in the towns would have been greatly bettered. The result is today in many portions of the Provinces of Alberta and Saskatchewan in the neighbourhood of villages, towns and cities, there is more production per acre from the lands which have been sold to land companies or others granted as railway land grants than there is from the lands acquired as homesteads. The unfortunate part of it is that a large percentage of these homestead lands are held in small lots, the majority of them not more than one holding to the individual. If they were held in considerable acres by any one interest, it is probable that action could be taken to greatly increase the occupation and production.

Here as in the old Canadas the chaos which attended the free-grant system was due not to lack of good land, or enough land, but to the fact that title was hopelessly tangled in private possession. Some of the best lands in the province were in the hands of "land poor" speculators instead of being at the disposal of the government to be administered in an orderly uniform system, accurate and above all simple and accessible in its operation.

#### 5. *The System at Work: Later Results*

The adoption of the free-homestead system as the dominant policy of the Liberal government after 1896 was more easily avowed than vindicated. The passing of the railway land grant system was by no means, as we have seen, the end of railway land grants. Land subsidies "earned" or still to be "earned" by railway construction remained to be liquidated, and railway land grant reserves remained for more than a decade the spoils of rival factions in politics as well as in transportation. There was much truth in Clifford Sifton's sardonic comment that the railway land grant system had come to an end in 1894 not because it had been supplanted by a new policy but because the government had come to the end of eligible land grants. The truth was that the odd-numbered sections of agricultural lands "fairly fit for settlement" had practically been exhausted except in sub-humid areas which the railway companies were unwilling to accept. In that sense the free-homestead "system" was not, and never had been, more than half a system, applicable at best to scarcely four-ninths of every township.<sup>15</sup> It was not until

<sup>15</sup> Hudson's Bay sections (8 and three-quarters of 26: the whole of 26 in every fifth township) were of course reserved from free-homestead entry. Sections 11 and 29 were school lands, and the remaining odd-numbered sections when "fairly fit for settlement" went to the railways. Normally only about 16 of the 36 sections of each township could thus be "homesteaded". See Fig. 8, p. 233.

1908 that outstanding railway land grants were finally liquidated and the remaining odd-numbered sections made available for homesteads or for the "pre-emption" and "purchased homestead" policy of that year.

With the turn of the century the tide of immigration was very definitely setting towards Western Canada. It was now possible, perhaps, for the first time, to exact rigorously the requirements of the Dominion Lands Acts in "proving" title to the free homestead. In 1905 the Hon. Frank Oliver, successor to the Hon. Clifford Sifton as Minister of the Interior, re-affirmed "a land policy the basic idea of which is the land for the settler." But no effort of legislation or of administration could keep it so. The free-homestead entries already cited for Maple Creek, Gull Lake, and Shaunavon in Saskatchewan illustrate how easily the system could still be exploited by the townsman and villager of every frontier community. Perhaps the best that could happen to this acreage was to fall into the hands of land companies equipped to dispose of it to actual settlers. The usual eventuality, however, was probably the worst: vast areas of land, uncultivated and weed-infested, were held by individual speculators for a rising market. The cancellations in free-homestead entries (more than 57 per cent., as we shall see, in Saskatchewan between 1911 and 1931) were the highest in any category of Dominion Lands; and if these cancellations, representing the gap between entry and patent, may be taken as any index to the later gap between patented homesteads and actual occupancy and production, the total wastage not only of cultivable acreage but of human material must have been truly appalling. Not by these standards was the free-homestead system entitled to the credit of having "peopled the Canadian prairies."<sup>18</sup>

This, however, is but one side of the ledger. Notwithstanding the admitted defects of the system—the excessive cancellations of original entries, the shrinkage which cannot be computed between the patented acreage and actual productive occupancy, the unrecorded wastage of human enterprise, the veritable mortmain which settled down in the wake of the individual speculator—the net results of the system at work during the single generation since the Alberta and Saskatchewan Acts have been truly imposing. The *prima facie* evidence may be somewhat deceptive, since land companies and railways were selling land as easily, it would seem, and almost as fast, as the government was giving it away. The increase in population and in production must be credited to both. The fact

<sup>18</sup> See Chapter X, section 2, *The Passing of the Free Homestead*.

remains, however, that in a single generation the acreage of free homesteads in Saskatchewan increased from 12,488,200 acres in 1905 to 30,729,100 acres in 1930, while the population increased from 257,763 in 1906 to 921,785 in 1931. It was the boast of provincial counsel before the Saskatchewan Resources Commission that "in thirteen and a half years we produced seven billions of dollars." The accompanying table will illustrate this development at five-year intervals.

TABLE XVI—INCREASE OF HOMESTEAD ACREAGE AND POPULATION IN SASKATCHEWAN, 1905-1931

YEAR	POPULATION	YEAR	HOMESTEAD ACREAGE*		
			Patented	Unpatented	Total
1906.....	257,763	1905	2,780,400	9,707,800	12,488,200
1911.....	492,432	1910	11,743,000	10,010,800	21,753,800
1916.....	647,835	1915	21,513,700	7,569,300	29,083,000
1921.....	757,510	1920	26,189,300	2,995,700	29,185,000
1926.....	820,738	1925	27,425,800	2,075,300	29,501,100
1931.....	921,785	1930	28,144,000	2,585,100	30,729,100

\*Including South African Veteran Homesteads.

For Alberta the statistics are almost equally imposing. The homestead acreage (patented) increased from 1905 to 1930 by more than 16,450,000 acres, while the population increased from 185,195 in 1906 to 731,605 in 1931.

The presence of many other factors will be obvious even from these statistics. The single decade from 1905 in Table XVI, for instance, accounts for more than eight-ninths of the increase in homestead acreage and less than 59 per cent. of the increase in population. To the free-homestead system must be added the part played by land companies, railway lands, Hudson's Bay and school lands, and other categories of land sales; and also the growth of cities and towns attendant upon both. In Figure 25 the ratio of free homesteads to population in Saskatchewan may be found still more graphically illustrated. Here again a chart of land sales would be necessary to complete the picture, and there is every indication that the ratio between sales and population would be substantially the same. Beyond these factors again, as we have so frequently emphasized, lay world conditions, physiographical and economic,

more decisive perhaps than any phase of policy, and still more remarkable in their bearing upon land settlement in Western Canada. Even the relation between free homesteads and land sales is not easily determined except by methods to be hazarded in a later chapter.

The free homestead, nevertheless, remains inseparably associated with the "golden age" in the development of Western Canada. Before the Saskatchewan Resources Commission the record of

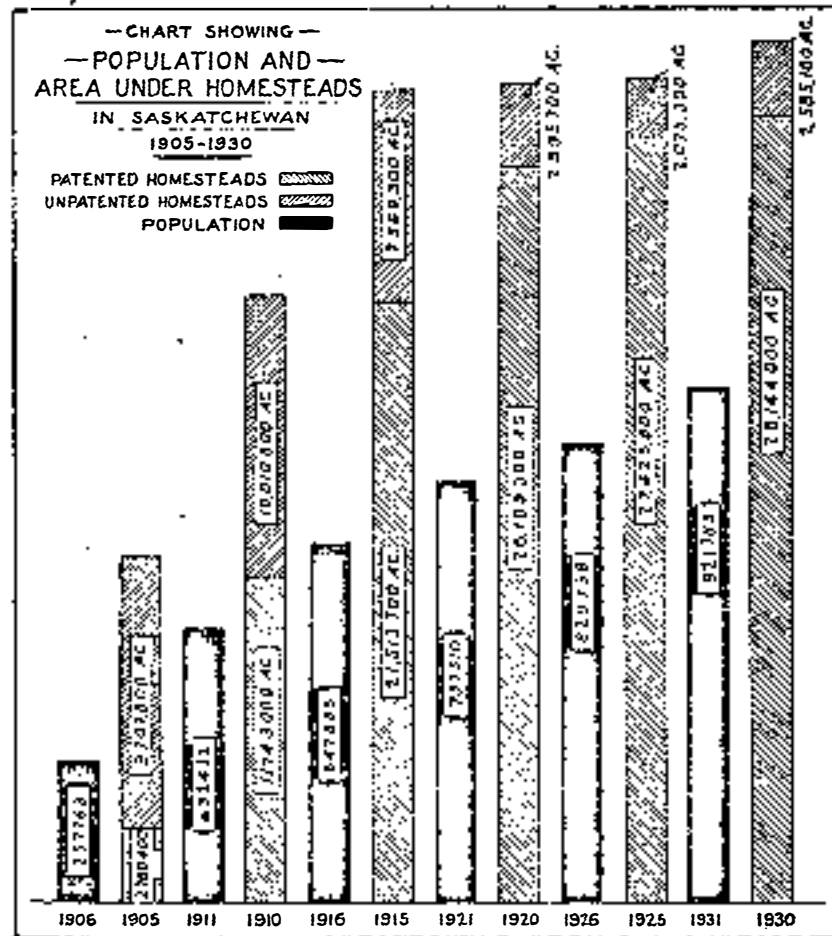


FIG. 25—Chart showing acreage under homestead (patented and unpatented) and population in Saskatchewan, 1905-1930. Sask. Res. Comm.

provincial development claimed by provincial counsel was endorsed by the chief counsel for the Dominion<sup>17</sup> as "the best contribution to Canadian prosperity that was made in those years. . . . I cheerfully admit that. Oh, for a return of those years."

<sup>17</sup> James McGregor Stewart, K.C.

## CANADIAN PACIFIC RAILWAY

### C.P.R. Lands

The story of the Canadian Pacific Railway and the railway land grant system which evolved with it, is a study in itself. The following is an attempt to give a general understanding of what this story is about and more particularly, to highlight those aspects which are of particular interest with regard to the study of the legal history of Alberta.

One need only refer to the following statement by Martin to appreciate the importance of the C.P.R. land grants in the overall concept of the Dominion Lands Policy (at p. 304):

Much of course depended upon the price; and still more, perhaps, upon wide variations in soil and rainfall. In addition to the 31,780,000 acres of railway lands in odd-numbered sections there were more than 6,630,000 acres of Hudson's Bay lands for sale in sections 8 and 26 throughout the fertile belt. School lands, also, in sections 11 and 29 in every township, played a distinctive part, as we shall see, in the same process, with an estimated area of about 9,350,000 acres.<sup>2</sup> There were more than 47,750,000 acres, therefore, for sale in Western Canada, in evenly distributed sections contiguous in every instance (except in the irrigation block) to a free homestead.

While Hudson's Bay lands and school lands account for nearly 16,000,000 acres of this area, railway lands provided at once the largest and the cheapest acreage for agricultural enterprise and expansion. Much of the railway land grant acreage was undoubtedly disposed of, like Hudson's Bay lands and school lands, primarily for purposes of revenue. Many of the colonization railways turned their land grants over to land companies whose sales policies had as little perhaps to do with the parent railways as with their rivals in the field of transportation. There were conspicuous exceptions, however; and it is doubtful if any category of Dominion Lands has contributed more than the land grants of the C.P.R. to the interests of permanent and prosperous settlement in Western Canada.



There can be no doubt that what follows will appear sketchy as a history of the C.P.R.; however it would serve no purpose to attempt a more indepth commentary. For an extensive source of C.P.R. history, I refer you to the following authorities:

Hedges, J.B. The Federal Railway Land Subsidy Policy of Canada

Hedges, J.B. Building the Canadian West

Innis, H.A. A History of the Canadian Pacific Railway

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The first Act respecting the Canadian Pacific Railway was passed on June 14, 1872. However, it was not until almost a decade later on February 15, 1881 that the Act was passed which actually provided the terms upon which the railway was built. J.B, Hedges in his book Federal Railway Land Subsidy Policy of Canada, describes clearly the struggle that ensued in those mine years before the first Act was passed. Hedges deals with this subject in his first chapter and titles it "The Evolution of the Policy". Before presenting Hedges material I include a brief chronology of the Key events that occurred in this period.

- 1872-Macdonald government in power
- charter granted to Sir Hugh Allan's company
- political scandal
- Alexander Mackenzie and the liberals take

over the government. He attempts unsuccessfully to solve railway problem by attempting a government construction thereof

1878-Macdonald returns to power. Like Mackenzie, he continues the government scheme of construction, but by 1880 he realizes that it will never be successful. Therefore in 1880 the contract was signed with Syndicate for construction of the railway.

1881-On February 14, the Act was passed incorporating into law the agreement reached with the Syndicate

(note: the 1872 and 1881 Acts have been included following the below excerpt from Hedges.)

"Evolution of the Policy" (Hedges pp. 3-28)

THE EVOLUTION OF THE POLICY

THE significance of governmental land policies in the settlement and development of the American and Canadian West is well understood. In outward appearance and general form, the land systems of the two countries have several points of similarity. Both governments rejected the revenue point of view in administering their public domains and, through the adoption of the homestead idea, committed themselves to the use of the land as an instrument of national development. Yet at the very moment that they were giving land directly to the individual settler, they were also giving it to railway companies in the form of subsidies. These two lines of action were distinctly at cross purposes, for the grants to the railways removed vast areas from the reach of the homesteader and forced the farmer to pay tribute to the corporation. The justification of these contradictory policies lay, of course, in the generally accepted belief that the building of railways increased the value of the settler's acres sufficiently to compensate for the few extra dollars which he paid for them. Of the soundness of this contention in many instances there can be little doubt. But in both the United States and Canada, before the race for railway subsidies had run its course, millions of acres of the finest lands available were in the hands of the transportation companies; and whatever the merits

or defects of carrying the principle of governmental aid to railways to this extreme conclusion, the subsidies themselves and the manipulation of them by the various companies became important adjuncts of the general land policies.

The subsidy system of the United States has been the subject of frequent investigation, but that of Canada has been less thoroughly examined. This is unfortunate, for the colonization of the western lands of the two countries, which was the by-product of their land grant practices, was, in reality, one great movement rather than two. Settlers in search of desirable lands knew no boundary lines; Americans migrated into Canada and Canadians moved into the United States. The great transcontinental railway companies north and south of the border were managed with the same ends in view, sometimes by men who had been railway promoters on both sides of the forty-ninth parallel. A study, therefore, which assembles the essential features of the Canadian subsidy policy, and attempts to show not only its more obvious similarity to that of the United States, but also the numerous points of striking contrast, may help to serve as part of the basis for a coordinated story of the westward movement in a major portion of the North American continent.

Adopting the land grant idea in the middle of the last century, when the pioneer had but recently crossed the Mississippi, the United States during the next twenty years granted approximately 150,000,000 acres of land to western railways. So great was the popular enthusiasm for railways in this period that no price could have been thought too high for their construction, and it was easy enough to be lavish with the land of which there seemed to be an unlimited supply. Aside from the national importance of the projected lines, which was alleged in support of the grants to the Pacific railways, the chief argument in favor of land subsidies to railways in general was that which represented the Government as a private land-owner wishing to secure the largest possible return from his domain.<sup>1</sup> Much of the government land, however, was far from the settled portions of the country and would not sell unless the country could be developed. If a portion of this were given to a railway which would render the

<sup>1</sup> J. B. Sanborn, *Congressional Grants of Land in Aid of Railways*, is the standard work on the origins of the land grant policy in the United States.

remaining lands salable, the Government would be acting in the enlightened manner of any intelligent landowner. To emphasize this idea, the grants were to be made in alternate sections, with the price of the remaining lands doubled, so that the gain to the Government would be in direct and in exact proportion to the amount of the land granted.

As the building of the railways progressed and settlement advanced, the various transportation companies developed exploitive tendencies which irritated and alarmed the people of the West and culminated in the Granger movement. A general feeling of hostility toward the railways displaced the former manifestations of friendliness, and no amount of argument could convince the rebellious settler of the justice of the land subsidy policy. In the face of this opposition, grants of land to railways became less frequent and by 1871 the practice was discontinued.

The year 1871, which marked the end of the subsidy era in the United States, began it in Canada. In that year the Conservative Government of Sir John Macdonald sponsored a proposal that a railway to the Pacific should be built by private enterprise, assisted by the Government with generous grants of land as well as of money. A series of events in the years just previous had brought the importance of a Pacific railway very much into the public mind. Soon after confederation was effected in 1867, rights to Rupert's Land were obtained from the Hudson's Bay Company. In 1871, British Columbia entered Confederation, but only at a price. Led by the redoubtable Alfred Waddington, the 10,000 inhabitants of that western province had demanded the construction of an overland highway to the Pacific. A greater challenge to a young nation of 4,000,000 souls could scarcely be imagined. To build a railway through the forbidding waste north of Lake Superior, across the uninhabited prairies and over the Rocky and Cascade barriers to tidewater was no mean achievement.<sup>1</sup> As in the United States, the greatest asset in the accomplishment of such an undertaking was the land, and thus the origin of the land bounty system in Canada was inseparably bound up with the plans for the railway across the continent."

The proposal of the Macdonald Government provided, in addition to the grant of land, that construction should begin within two years and be completed within ten, a provision designed to satisfy the demands

at British Columbia for the prompt construction of the railway. While the land grant idea was accepted by the Opposition, they protested that the country was unequal to the task of completing the enterprise in so short a period. But the Government refused to yield this point, although it did agree that the building of the road should not entail an increase in taxes in the Dominion.<sup>2</sup> This stipulation carried with it the implication that land was to be given on a large scale, since in no other way could an increase of the tax burden be avoided.

The Act of 1872,<sup>3</sup> which incorporated this proposal into law, provided for a grant of land not exceeding 50,000,000 acres to be appropriated in aid of the railway to the Pacific. The lands were to be located not more than twenty miles in depth, and not less than six nor more than twelve miles in frontage on the railway, the blocks to be so laid out that each one granted to the Company on one side of the railway should be opposite a block of like width reserved for the Government on the other side of the railway.<sup>4</sup>

The conveying of lands in large tracts was a distinct departure from the American practice of locating railway lands by alternate sections. Although open to the objection that it almost certainly would lead to a less equitable division of the good and bad land between railway and Government, it was thought to be better suited to the conditions prevailing in the Canadian Northwest than the alternate section method. Under the latter system, it was said, there would be such a dispersion of homesteads in a given township as to retard community development and render difficult mutual assistance among the settlers, especially during the years prior to the sale of the intervening railway sections.<sup>5</sup> With large blocks available for homestead, however, compactness of settlement would result in the areas reserved for the Government.

<sup>2</sup> *Journals of the House of Commons of the Dominion of Canada*, Session, 1871, pp. 197, 203, 264, and 268. The House resolved that the railway should be "constructed and worked by private enterprise . . . and that the public aid to be given . . . should consist of such liberal grants of land, and such subsidy in money, or other aid, not increasing the present rate of taxation, as the Parliament of Canada shall hereafter determine."

<sup>3</sup> Entitled "An Act respecting the Canadian Pacific Railway." *Statutes of Canada*, 35 Victoria, Cap. 71, assented to June 14, 1872.

<sup>4</sup> *Ibid.*

<sup>5</sup> As late as 1880-81 this argument was employed against the alternate section method. See *Debates of the House of Commons*, 1880-81, p. 331.

While predicated upon Sir John Macdonald's original plan that the railway be built by private enterprise, the Act carried with it no definite provision for the actual construction of the road. If Canada had little of means and less of experience upon which to draw for such an undertaking, that was not true of the United States. American capitalists, with governmental bounties, had completed one railway to the Pacific and were projecting others. The enormous profits attending their efforts made them quick to recognize chances for similar fortunes elsewhere.

But while the Macdonald Government was not averse to accepting the aid and experience of American capital, political expediency demanded that Canadian interests be equally represented. One of the most prominent Canadian business men of the time was Sir

Hugh Allan, who controlled the Allan Steamship Line. Although primarily interested in water transportation, he had recently entered the railway business through the promotion of the North Shore road along the St. Lawrence, in competition with the Grand Trunk. If the assistance of Jay Cooke and his Northern Pacific associates, who had already indicated an interest in the undertaking, could be secured in cooperation with Sir Hugh, the question of American domination might be less of an issue. The negotiations between the Canadian and American capitalists moved smoothly enough, but before plans could be definitely shaped, strong opposition developed within the Dominion.

In Ontario, the presence of Sir Hugh Allan as one of a company to build the new railway meant that the terminus would be in Montreal rather than in Toronto. Moreover, in this province any suggestion of a possible affiliation with the Northern Pacific group was regarded with extreme suspicion. People there had no faith that the American promoters would not deliberately hamper the building of this Pacific railway to check competition with their own line. In Quebec, Sir George Cartier, a Cabinet member with a strong following among the French-speaking element, used his influence against Sir Hugh. As Cartier was closely associated with the Grand Trunk, the reasons for his position were obvious. With plenty of money available for purposes of propaganda, Allan won over Cartier and his supporters. But the opposition in Ontario was made of sterner stuff. A group of Toronto business men organized the Inter-oceanic Railway Company and petitioned the Government for a charter and aid for



building a line of railway to the Pacific. They felt that their future security and prosperity were too closely interlocked with the Pacific railway to allow the building of it to fall into unsympathetic hands. All attempts which the Government made in the way of mergers and adjustments between the two contending groups were unsuccessful. After the Conservatives were reelected in 1872, an entirely new company, known as the Canadian Pacific, was organized, with a board of directors drawn from the various provinces and with the American capitalists excluded. Of this company Sir Hugh Allan was elected president.

Features  
of first grants  
made to  
Sir Hugh  
Allan's Co.  
(first time  
quality of  
land granted  
was considered)

Important to the story of the evolution of the Canadian land subsidy policy are some of the outstanding features of the charter granted to the Allan Company. Thirty million dollars and 50,000,000 acres of land were offered in aid of the railway, on condition that no American interests should be admitted. The land was to be conveyed in the alternate blocks of the dimensions described in the Act of 1872, with an added provision to the effect that the Company "shall not be bound to receive any lands which are not of the fair average quality of the land in the sections of the country best adapted for settlement."<sup>7</sup> This was the first appearance of the idea that railway subsidy lands were to be of a certain designated quality, an idea which, as subsequent discussion will show, was to grow into a most important factor in the Canadian bounty system. Another clause of the charter, in regard to the price of the alternate blocks retained by the Government, stated that "unless the Company shall sell lands granted to them at a lower price, or shall otherwise agree, the Government shall for and during the term of twenty years . . . retain the upset price of such alternate blocks at an average price of not less than two dollars and fifty cents per acre."<sup>8</sup> It was openly charged in the Canadian Senate at the time that the Allan charter was copied from that of the Northern Pacific.<sup>9</sup> While this statement cannot be justified when applied to the charter as a whole, there can be no doubt that the plan proposed in the clause just quoted was borrowed from the Northern Pacific. It is noteworthy, however, that

<sup>7</sup> For the Charter, see *Sessional Papers* (No. 13), 1873.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, p. 20.

<sup>10</sup> See *Debates and Proceedings of the Senate of Canada*, First session, Parliament, 1873, p. 113. Statement by Mr. Campbell.

while in the United States it was the Government which insisted upon the double minimum as a justification for the land grant policy, in Canada it was the railway company which imposed the condition as a means of preventing the Government from underselling them.

But the terms of the Allan charter were never put into effect. As soon as the charter was granted, with its specific rejection of American participation, rumors purporting to come from disgruntled railway promoters in the United States were circulated to the effect that all was not strictly fair and above-board in the negotiations. There were those in Canada who did not quite believe it wholly fortuitous that Sir Hugh Allan was elected president of the new company, and who were willing to give credence to any sort of story. A steady undercurrent of dissatisfaction prevailed, and when the private correspondence of Sir Hugh was stolen and published, everyone was prepared to believe the worst.<sup>10</sup> The correspondence revealed that Cartier and Macdonald had made liberal use of Allan's money before the election of 1872. Out of this discovery grew the charge that the charter was the reward for services rendered, and that even the high office of prime minister had been degraded to this end. A political storm of the first magnitude resulted, and interest in all other issues was lost in the turmoil. A later and calmer survey of the whole affair reveals great indiscretion surely on the part of the Conservative leaders, but nothing much more than that. Sir Hugh had been a regular contributor to Conservative election funds for years. Moreover, he really gained nothing by the Conservative victory and the resulting charter except the assurance that the work in behalf of the railway would continue. Sir John Macdonald's indiscretion, too, was tempered by the very clear indication that he felt he was acting in the best interests of the Dominion.<sup>11</sup> But neither the Allan Company nor the Conservative Party was able to hold out against the attack at its height. The Company gave up its charter and the party went down to a smashing defeat at the hands of the Liberal Party, under the leadership of Alexander Mackenzie.

No government could have made its debut under more inauspicious conditions than that of Mackenzie. A country torn by political dissension and burdened with financial depression offered little of promise to

<sup>10</sup> For this correspondence, see *Journals of the House of Commons* (1873), Vol. VII.

<sup>11</sup> For Sir John Macdonald's defense of his position, see *Pape Joseph, Memoirs of Sir John Macdonald*, Vol. II, pp. 174-189.

railway promotion, yet the Government showed no disposition to relax its efforts in that direction. As an inducement to private capital, Mackenzie offered \$10,000 in cash and 20,000 acres of land per mile, in alternate blocks of twenty square miles, each block to have a frontage of not less than three nor more than six miles on the line of the railway.<sup>12</sup> Regardless of terms, however, private capital seemed unavailable and every offer went begging.

Mackenzie's  
offer

Discouraged in his efforts to interest a private company in the construction of the railway, Mackenzie resolved that the line should be built by the Government itself. The plan which he formulated with that end in view called for the completion of the links between navigable waterways, the abandonment, for the present at least, of the difficult portion north of Lake Superior, and British Columbia's consent to an extension of time for the finishing of the project. Mackenzie was completely unsuccessful in his attempts to win concessions from British Columbia, but he did make substantial progress in the location and construction of the road.

When the Conservatives were returned to power in 1878, Sir John Macdonald went forward for a time with the policy of government construction. In pursuance of this plan, Parliament adopted resolutions in 1879 appropriating 100,000,000 acres of land in aid of the railway.<sup>13</sup> These resolutions provided that all ungranted land within twenty miles of the railway should be used in satisfaction of this appropriation. If the lands adjoining the line of railway were not "of fair average quality for settlement," a substitute acreage was to be reserved in other portions of the prairie. The lands were to be vested in appointed commissioners, who were authorized to sell the land from time to time, and to invest the proceeds in government securities to be held for meeting the expenses of building the railway.

<sup>12</sup> *Statutes of Canada, 27 Victoria, Cap. 14, assented to May 26, 1878.*

<sup>13</sup> *Proceedings of the House of Commons, 1879, pp. 1803-06, for the vote on them see, ibid., p. 1979.*

Beyond these very general provisions the resolutions of 1879 did not go, and it remained for the Department of the Interior to formulate a complete scheme for describing, setting aside, and selling this immense domain. Sir John Macdonald, in outlining such a plan, made direct reference to American policy, and used it as the basis of his proposal for handling the Canadian grant. In a memorandum of June 25, 1879,<sup>14</sup> after explaining the details of procedure in the United States, he expressed the belief that "a system somewhat similar . . . would be most convenient to adopt in administering the land grant of our own Railway." He would discard the large blocks, contemplated in earlier Canadian legislation upon the subject, in favor of the alternate sections of the United States, and would scrap the idea of reserving exclusively for sale all the lands along the railway, in favor of a system of free grants or homesteads distributed through the railway belt. Such free grants would not only silence the charges of land monopoly, but would also conduce to the sale of the intervening railway lands.

Sir John estimated that in Manitoba and the north-west Territories there were, within 110 miles on either side of the railway, 125,000,000 acres of land, 100,000,000 for the railway and the remainder for free grants. Land on each side of the railway he would divide into five belts: Belt A to extend back from the railway for five miles; Belt B, for fifteen miles beyond Belt A; Belts C and D, each for an additional twenty miles; and Belt E, stretching out for another fifty miles. In Belt A, all lands were to be sold at not less than \$6 per acre. In the other Belts, four eighty-acre homesteads were allowed in the even-numbered sections, the remaining lands in such sections to be sold as pre-emption at \$1 to \$2.50 per acre.<sup>15</sup> The odd-numbered sections in those Belts were railway lands, ranging in price from \$5 per acre in Belt B to \$1 per acre in Belt E.<sup>16</sup> Thus, except for Belt A, where all lands were reserved for the purpose of the railway, the alternate section idea was to prevail: odd-numbered sections for the railway, even-numbered for the Government.

Macdonald's  
Proposal  
(Land to be  
divided  
into 5 belts)

<sup>14</sup> This memorandum is to be found with Order in Council No. 976, June 28, 1879. (These are cited hereafter as O. C.)

<sup>15</sup> O. C. No. 976, June 28, 1879, gave approval to the plan set forth in the memorandum of Sir John Macdonald. With the same Order in Council are to be found the detailed regulations for carrying the plan into effect. The title is "Regulations respecting the disposal of certain Dominion Lands for the purposes of the Canadian Pacific Railway," dated July 9, 1879.

<sup>16</sup> *Ibid.*

This plan had scarcely been formulated, however, when a change in the American policy led to material modification of the Canadian regulations. Congress had increased from 80 to 160 acres the amount of land which could be homesteaded or preempted within the limits of a railway land grant. This change was believed to require "a corresponding alternation in the area of Dominion lands proposed to be homesteaded within the zone embracing Canadian Pacific Railway lands, otherwise the manifestly superior advantages of the United States over the Canadian policy would result in securing to the Western and Northwestern States and Territories of the American Union all European and other immigration for years to come."<sup>17</sup> The need for change was considered the more urgent in view of the exceedingly liberal conditions of sale offered by the Northern Pacific and the St. Paul, Minneapolis, and Manitoba Companies in the Northwest of the United States, whose territory was in direct competition with that through which the Canadian Pacific was to be built. As the Deputy Minister of the Interior expressed it, "a rebate of one-half the purchase money is made to persons who may have placed half the land purchased, or in that proportion, under cultivation within three years of the date of purchase, thus evidencing the value which the Railway Companies attach to actual settlement. It is presumed that the loss in abatement of the purchase moneys under this system is considered by the Companies as more than compensated for by the additional traffic which the rapid settlement of the country would bring to their roads."<sup>18</sup> In view of these facts the Government increased from

<sup>17</sup> "Memorandum (confidential) by J. S. Dennis, Deputy Minister of the Interior, to Sir John Macdonald, Minister of the Interior," July 3, 1879, with Ref. 20,088 on 18,909, Dominion Lands. It will hereafter be understood that the manuscript material used in this study is to be found in the Dominion Lands Branch of the Department of the Interior, Ottawa.

<sup>18</sup> O. C. No. 1422, October 9, 1879; also O. C. No. 1461, October 24, 1879.

80 to 160 acres the homestead and preemption areas within the limits of the railway belts, and allowed in Belt A the same proportion of homesteads and preemptions as in the other belts.<sup>19</sup>

The resolutions of 1879 and the resulting regulations introduced significant changes in the land subsidy policy of the Dominion. The idea of the alternate section became definitely a part of the Canadian system, supplanting the original provision for large blocks. These regulations were devised with the assumption of continued governmental construction of the railway, but before they had received an adequate trial the plan for completion by the Government was abandoned in favor of another effort by private enterprise.

There were those in the Government, and out of it, who had not abandoned hope of having the railway built by capitalists. Sir Charles Tupper, the Minister of Railways and Canals, was one of these, and it was he who urged the Government to turn to a remarkable group of men who seemed to possess precisely the requirements needed for building the railway to the Pacific. These men, George Stephen, James J. Hill, Donald A. Smith, R. B. Angus, and John S. Kennedy, working together, had succeeded in converting the bankrupt St. Paul and Pacific road, in the United States, into a going concern. They had built this line to the Canadian boundary and had negotiated a traffic arrangement beyond to Winnipeg. In addition to this interest in an American company, several of the men were associated with important enterprises in Canada. This combination of successful railway promotion in the United States with a general understanding and knowledge of Canadian business and railway affairs was an ideal one. And the American venture had been a highly profitable one. If, reasoned Sir Charles Tupper, these men were planning to reinvest their profits, it was the part of wisdom for the Government to seek some sort of agreement with them. Tupper's counsel was heeded, negotiations were begun and carried through to a successful conclusion, and on October 21, 1880, the Syndicate Contract, under the terms of which the Canadian Pacific Railway was finally to be completed, was signed.

In December of the same year the contract was placed before Parliament for approval. Besides receiving the lines under construction by the Government, the Company, in return for building about 2,000 miles of railway, was to have a cash subsidy of \$25,000,000 and a land grant of 25,000,000 acres.<sup>20</sup> The Government

Syndicate.

signed

terms.

<sup>19</sup> Ibid.  
<sup>20</sup> For the provisions of the contract, see *Statutes of Canada* 44 Victoria, Cap. 1 (1881).

promised freedom from rate regulation until the annual earnings on the capital of the Company reached ten per cent, with exemption from tariff duties on construction materials, from taxes on lands for twenty years, and from those on other property forever. As a guarantee against encroachments by rivals, no competitive lines connecting with the western states were to be chartered for a period of twenty years.

The terms of the contract were indubitably very favorable to the Company, but neither that fact nor the right and duty of the Opposition to oppose can justify the unreasoning attack which the Liberals launched against every provision of the agreement. So largely did the question become a political issue that it was impossible to consider any individual clause on its merits, and the unanimous disapproval of every item by the Liberals was the signal for an equally unanimous defense by the Conservatives.

Led by Edward Blake, the Opposition lost no opportunity for arousing the country against the contract. Another company, headed by Sir William Howland was hurriedly organized. This group offered to construct the road for \$3,000,000 and 3,000,000 acres less than the Syndicate Contract required, and, as evidence of the genuineness of the offer, deposited a guarantee of \$1,400,000. As further indication of good faith, it was prepared to pay duty on construction materials, and to waive the monopoly clause, the exemption from rate regulation, and the exemption from taxation. While the seemingly less onerous character of the offer of this company served as a strong talking point for the spokesmen of the Opposition, the Government professed to believe that the Liberals had organized the Company solely for political purposes. They could safely bring it forward at the eleventh hour, when there was no possibility that the Government would break the contract already signed.

Among the most pointed of the Liberal criticisms of the contract were those directed at the monopoly clause, which did so much to estrange the West from the East, and the exemption from taxation, which placed such a heavy burden upon the impecunious settlers in the West, a burden made heavier by the interpretation which rendered the lands exempt for twenty

years after the issuance of the patent. If the freedom from regulation until ten per cent had been earned seemed unduly favorable to the Company, it had been anticipated in a clause of the General Railway Act, while the exemption from duties on construction materials was justifiable, even if not consonant with the "national policy" which the Conservatives had recently adopted.

Probably no feature of the Liberal attack upon the contract consumed more time or occasioned more bitterness than their denunciation of the alleged extravagance of the Government in trafficking away the resources of the Dominion, and in this connection it is the debate on the land subsidy which chiefly interests us. Discussion of this subject began formally on December 13, 1880, when Sir Charles Tupper moved that the House go into Committee of the Whole on the following Tuesday to consider resolutions affirming the expediency of granting the \$25,000,000 and the 25,000,000 acres of land provided for in the contract.<sup>21</sup>

The Liberals immediately trained their guns upon the excessively generous provisions of the land subsidy. Blake and his followers emphatically challenged the validity of the Conservative boast of an advantageous bargain with the Syndicate. Pointing out the disingenuous nature of the Government's claim to a saving of from 25,000,000 to 75,000,000 acres, compared with former land grant proposals, the Liberal leader asserted that if the value, rather than the amount, of the land were considered, the subsidy was princely in its proportions. The significant thing, in Blake's estimation, was the location of the land, not the area. Since the Company was entitled to the alternate sections within twenty-four miles on either side of the railway, the value of its land was far in excess of any similar area elsewhere in the west. Ridiculing the Conservative estimate of \$1 per acre as the value of the land, Blake used their own earlier prices to prove that the figure was absurdly low.<sup>22</sup> In terms of the land regulations instituted by the Macdonald Government in 1879, the bulk of the Canadian Pacific land grant would fall in Belts A and B, where the prices were \$6 and \$5 per acre respectively.<sup>23</sup> It was the land sixty miles or more from the railway which those regulations had priced at \$1 an acre.

<sup>21</sup> *Debates of the House of Commons, 1880-81, p. 48.*



Continuing their attack, the Opposition made it of the contrast between the enormous area the Canadian Pacific was to receive and the much smaller grant made to the railways in the United States. One Liberal member had computed the average grant to the American railways, exclusive of the Pacific roads, to be 3,790 acres per mile, while the Syndicate was to have almost 13,000 acres for each mile of construction.<sup>24</sup> Even the Northern Pacific, the most generously endowed of the lines in the United States, might not obtain more than 15,000,000 acres of arable land. Nor did the Liberals fail to stress the adverse effects which such a large subsidy would have upon the whole course of settlement in the West. Canada, it was observed, must compete with the United States for immigrants, which it could not hope to do successfully unless able to "offer conditions at least equal to those offered by the United States."<sup>25</sup> On this point the contract contained no clause satisfactory to the Opposition. Without any reservation whatever, it ceded to the Syndicate 25,000,000 acres of land, the most fertile and best situated in the Northwest. Because of the alternate section plan, not only the railway lands, but the Crown lands as well, would be at the mercy of the Company. Fifty million acres, more than could possibly be sold within a quarter of a century, would be subject to the arbitrary whim of a private syndicate.<sup>26</sup> The latter would have it in its power to paralyze the efforts of the Government to settle and develop the West. If, for purposes of speculation, or for other reasons, the Company should withhold its lands from sale, the Government would be powerless to sell and colonize its own lands. In each of the government sections within the railway belt there were to be two homesteads and two preemptions—in other words, two settlers.<sup>27</sup> Should the railway section not be sold, the occupant of the government section would be forced not only to "keep up his roads and his fences, but the roads and fences of the neighboring lot," and he would be obliged "to pay double municipal and school taxes." As the Opposition viewed the situation, few would be disposed to purchase the government sections unless those of the railway were sold at the same time, and the

<sup>24</sup> *Debates of the House of Commons, 1880-81, p. 72.*  
<sup>25</sup> *Ibid.*, p. 80.  
<sup>26</sup> *Ibid.*, p. 79.

<sup>27</sup> *Ibid.*, p. 738.

<sup>28</sup> *Debates of the House of Commons, 1880-81, p. 738.*  
<sup>29</sup> It was assumed that the homesteader would buy the adjoining preemption lot.

current way to expedite sales by the Syndicate was to set a time limit for the disposal of its lands, thereby rendering it impossible for sections to be deliberately held in the hope that the expenditure of labor and capital by the settler on the Crown lots would enhance the value of the adjoining railway land.

Fortunately for the Liberal argument, there seemed to be ample precedent for the establishment of such a time limit for the sale of railway lands. (The Conservative Government having adopted the Union Pacific Railroad in the United States as a standard for the construction of the Canadian Pacific, there was no reason why the Opposition should not employ the same road as a criterion of land subsidy practice. Accordingly, they seized upon the clause of the Union Pacific charter which required that subsidy lands not sold within ten years after the completion of the road should be open to occupation and preemption like other lands at not less than \$1.25 per acre.<sup>28</sup> The fact that this clause had not been enforced against the Union Pacific in no way diminished its effectiveness as an argument against the land subsidy. But, while making much of the absence of such a guarantee in the Canadian Pacific contract, the Liberals attempted no inclusion of a definite time limit in the document. Instead, they sought to achieve the same end by other means. The Opposition insisted it was only fair that the Government should officially place a price on the land, in order that the entire country might know definitely as to the monetary value of the aid extended to the Syndicate.<sup>29</sup> If a value of \$1 per acre was assigned the land, in accordance with the estimate of the Minister of Railways, then the Company ought to be forced to sell at that maximum. In the event the Company was unwilling to sell the land for less than \$2 to \$3 an acre, it would be the duty of the Government either to give a considerably "less amount than 25,000,000 acres, or take before Parliament and before the people the responsibility of giving to the Syndicate lands valued by the Syndicate and by the Government at \$50,000,000 or \$75,000,000."<sup>30</sup> The Liberals sponsored an amendment,

<sup>28</sup> *Debates of the House of Commons, 1880-81, p. 739.*

<sup>29</sup> *Debates of the House of Commons, 1880-81, p. 739.*

<sup>30</sup> *Ibid.*

therefore, requiring that a maximum price be placed on the land, thereby depriving the Company of every incentive to retard the settlement of the West by holding the land for appreciation in value. But, like all other attempts to change the contract, this was voted down by a strict party vote of 49 to 118.<sup>31</sup>

If the Opposition was unable to see anything good in the terms of the agreement, the Conservatives were equally incapable of finding any defects in it. On their side, much of the burden of defending the provisions of the contract devolved upon Sir Charles Tupper. As Minister of Railways and Canals, it was his duty to expound the document to the House, and, in this case, to expound was but to justify its every clause. Tupper largely anticipated the objections of the Liberals, and he very cleverly sought to confound them out of their own mouths. By presenting an imposing array of their earlier statements in regard to land and land grants, utterly inconsistent with their current comments, he made their criticisms appear patently captious, partisan, and void of sincerity. Replying to Liberal assertions as to the great value of western lands, he quoted Blake as having in 1875 ridiculed the idea that land for the Georgian Bay branch was worth \$2 an acre.<sup>32</sup> Blake had then thought that \$1 per acre was more reasonable. Very appropriately, Tupper could point out that during the six-year interval nothing had happened to increase the value to \$3.18 per acre, the value the Opposition was now attaching to the land in the West. Tupper made equally effective use of earlier speeches of Alexander Mackenzie expressing the belief that the competition of the free lands of the United States would prevent the sale of the Canadian lands at more than \$1 per acre.<sup>33</sup>

No less inconsistent were the Liberal complaints in regard to the amount of land granted by the contract. As the Conservatives pointed out, the Allan charter had called for a grant of 50,000,000 acres, while the Mackenzie Government in 1874 had offered 54,000,000 acres to any company which would build the railway. Thus, as compared with the Opposition proposal, the terms of the contract actually saved the country 29,000,000 acres. Far from being extravagant, the Conservatives were husbanding the resources of the Dominion. The resolutions of Parliament in 1879 had pledged 100,000,000 acres in support of the railway; the Government was using just one quarter of this amount.<sup>34</sup>

<sup>31</sup> *Ibid.*, p. 740.

<sup>32</sup> *Ibid.*, p. 63.

<sup>33</sup> *Debates of the House of Commons, 1880-81*, p. 63.

<sup>34</sup> *Ibid.*, p. 70.

Liberal fears of a great land monopoly in the West the Conservatives alleged, were wholly groundless. Instead of "locking up" 54,000,000 acres in large blocks, as the Liberals had sought to do under the Act of 1874, the contract locked up but 25,000,000 acres in alternate sections. While under the Allan charter the Government was obliged not to sell its lands for less than \$2.50 an acre, the Syndicate agreement made it possible to give away the remaining lands if the public interest so required.<sup>35</sup> "No policy," Tupper said, "did the Syndicate press more strongly upon us than that of settling the land as fast as we could. They say we should be only too glad to plant a free settler upon every acre belonging to the Government."

Nor would the Company withhold its lands from sale for speculative or other reasons. The surest guarantee against such a course was the zeal which the members of the Syndicate had displayed in settling the lands of the St. Paul and Pacific in Minnesota. Fortunate it was for Canada that the experience gained there would now be brought to the colonization of the Canadian prairies. The entire history of railway land subsidies, the Conservatives asserted, was a refutation of the land monopoly charge of their opponents. The Company must sell the land and bring a population into the country in order to sustain the road. The land grant railways of the United States had incurred large expenditures in promoting the sale of their lands, the Atchison, Topeka, and Santa Fe having spent \$.88 per acre for that purpose.<sup>36</sup> The "glass cases and jars

containing wheat, corn and other products of the Western States," which were on exhibition at every railway station, were the work of the railways, not of the United States Government. Surely nothing less was to be expected of the men who were to build the Canadian Pacific through an uninhabited wilderness. The Company would expend from nine to ten millions in the cause of immigration, which, in turn, would relieve the Dominion Government of that expense.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Debates of the House of Commons, 1880-81, p. 537.*

After weeks of debate, in which the contending forces exhausted every argument, and in the course of which the twenty-three amendments offered by the Liberals were voted down with monotonous regularity, the contract with the Syndicate was finally approved by a straight party vote. With that vote, the Canadian Pacific Railway approached one step nearer to reality, while the railway land subsidy policy of the Canadian Government became a fact rather than a theory.

One who compares the political aspect of railway land subsidies in the United States and Canada cannot fail to be impressed by two important differences. Canada was not troubled by the constitutional issue which proved so vexatious in the United States. In the Dominion there could, of course, be no question as to the constitutional right of Parliament to vote land subsidies in aid of railways. In the United States, on the other hand, there were those who had genuine doubt as to whether the Constitution warranted such grants by Congress, and there were many more who seized upon the constitutional argument as a means of cloak-  
ing base and selfish motives. In Canada, likewise, the ~~debaters~~ attending the adoption of the land grant policy fail to reveal the sectional cleavage which bulked so large with her neighbor to the south.

In one respect, however, the political history of land subsidies in the two countries is similar: in neither was the principle of railway land grants a party issue. While it was a Conservative Government which signed the contract with the Syndicate, the subsidy idea had been adopted years before, and the Mackenzie Government in the seventies had been committed to that principle. And, despite the opposition of the Liberals to the Syndicate Contract, their quarrel was with the specific provisions of the grant rather than with the principle. That the Howland Company, which the Opposition supported, offered to build the railway for 22,000,000 acres of land represents a difference in degree rather than in kind.

Canada  
did not  
have  
Constitutional  
issue that  
U.S. was  
forced to  
deal with

CAP. LXXI.

An Act respecting the Canadian Pacific Railway.

[Assented to 14th June, 1872.]

WHEREAS by the terms and conditions of the admission of British Columbia into union with the Dominion of Canada, set forth and embodied in an address to Her Majesty, adopted by the Legislative Council of that Colony, in January, 1871, under the provisions of the one hundred and forty-sixth section of "The British North America Act, 1867," and laid before both the Houses of the Parliament of Canada by His Excellency the Governor General, during the now last session thereof, and recited and concurred in by the Senate and House of Commons of Canada during the said session, and embodied in addresses of the said Houses to Her Majesty under the said section of the British North America Act, and approved by Her Majesty and embodied in the Order in Council admitting British Columbia into the union under the said Act, as part of the Dominion of Canada, from the twentieth day of July 1871,—it is among other things provided, that the Government of the Dominion undertake to secure the commencement simultaneously, within two years from the date of the union, of the construction of a railway from the Pacific towards the Rocky Mountains, and from such point as may be selected, east of the Rocky Mountains towards the Pacific, to connect the seaboard of British Columbia with the railway system of Canada; and further, to secure the completion of such Railway within ten years from the date of the union;—The Government of British Columbia agreeing to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government may deem advisable in furtherance of the construction of the said railway, a similar extent of public lands along the line of the railway throughout its entire length in British Columbia, not to exceed, however, twenty miles on each side of the said line, and may be appropriated for the same purpose by the Dominion Government from the public lands in the North West Territories and the Province of Manitoba, subject to certain conditions of making good to the Dominion Government from contiguous lands, any lands within the said limits which may be held under pre-emption right or Crown grant, and for restraining the sale or alienation by the Government of British Columbia, during the said two years, of lands within the said limits;—And whereas, the House of Commons of Canada resolved during the said now last session, that the said railway should be constructed and worked by private enterprise and not by the Dominion Government; and that the public aid to be given to secure that undertaking, should consist of such liberal grants of land, and such subsidy in money or other aid, not increasing the present rate of taxation, as the Parliament of Canada should thereafter determine; and it is expedient to make provision for carrying out the said agreement and resolution: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Recital:  
Agreement  
with British  
Columbia as  
to Pacific  
Railway.

Resolution of  
House of  
Commons.

Canadian  
Pacific Rail-  
way. Name,  
course and  
line.

1. A railway, to be called "The Canadian Pacific Railway," shall be made in conformity with the agreement referred to in the preamble to this Act, and such railway shall extend from some point on or near Lake Nipissing and on the south shore thereof to some point on the shore of the Pacific Ocean, both the said points to be determined by the Governor in Council, and the course and line of the said railway between the said points to be subject to the approval of the Governor in Council.

How to be  
made and  
worked.

Capital of  
Company.

Time limited  
for construc-  
tion.

Proviso:  
deposit of ten  
per cent of  
capital.

2. The whole line of the said railway shall be made and worked by private enterprise, and not by the Dominion Government, and by one company having a subscribed capital of at least ten million dollars, and approved of and agreed with by the Governor in Council in the manner hereinafter mentioned, and shall be *bond fide* commenced within two years from the twentieth day of July, one thousand eight hundred and seventy-one, and completed within ten years from the said day; and subject to the said provision as to commencement and completion, the company shall further be bound to commence and complete at such time or times as the Government may prescribe, any portion or portions of the railway lying between points on the line thereof to be defined in the Order or Orders in Council to be made from time to time in that behalf: Provided always that ten per cent. of the capital of the company shall be paid up and deposited, in money or Government securities, in the hands of the Receiver General of Canada before any agreement is concluded between the Government and the company, and shall remain in his hands until otherwise ordered by Parliament; but if after the payment into the hands of the Receiver General by any company of the said deposit, such contract should not be finally executed, the Governor in Council shall order the said deposit to be returned.

3. The land grant to be made to the company constructing and working the said railway, to secure the construction of the same, and in consideration thereof, shall not exceed in the whole fifty million acres; but subject to this limitation, it may, in the Provinces of Manitoba and British Columbia and the North West Territories, be equal to but shall not exceed what would be contained in blocks not exceeding twenty miles in depth, on each side of the said railway, alternating with other blocks of like depth on each side thereof to be reserved by and for the Dominion Government, for the purposes of this Act, and to be sold by it, and the proceeds thereof applied towards reimbursing the sums expended by the Dominion under this Act: and the lands to be granted to the company may be laid out and granted in such alternate blocks, in places remote from settlement and where the Governor in Council may be of opinion that such system is expedient, and to be designated in and by agreement between the Government and the company; but no such grant shall include any land then before granted to any other party, or on which any other party has any lawful claim of pre-emption or otherwise, or any land reserved for school purposes; and the deficiency arising from the exception of any such lands shall be made good to the company by the grant of an equal extent from other wild and ungranted Dominion lands: Provided that, so far as may be practicable, none of such alternate blocks of land as aforesaid shall be less than six miles nor more than twelve miles in front on the railway, and the blocks shall be so laid out as that each block granted to the company on one side of the railway shall be opposite to another block of like width reserved for the Government on the other side of the railway:

Land grant.

Extent.

Lands granted  
to be in  
alternate  
blocks.

Proviso.

Proviso: as to  
frontage on  
railway.

And provided further, that if the total quantity of land in the alternate blocks to be so granted to the company, should be less than fifty million acres, then the Government may, in its discretion, grant to the company such additional quantity of land elsewhere as will make up with such alternate blocks, a quantity not exceeding fifty million acres; and in the case of such additional grant, a quantity of land elsewhere equal to such additional grant shall be reserved and disposed of by the Government for the same purposes as the alternate blocks to be reserved as aforesaid by the Government on the line of the railway, and such additional lands granted to the company and reserved for the Government shall be laid out in alternate blocks on each side of a common front line or lines, in like manner as the blocks granted and reserved along the line of the railway: And the Governor in Council may, in his discretion, grant to the company the right of way through any Dominion lands.

Proviso; if alternate blocks granted do not amount to 50,000,000 acres.

Right of way.

In the Province of Ontario, the land grant to the company for the purposes aforesaid, shall be such as the Government of the Dominion may be enabled to make, under any arrangement with the Government of the Province of Ontario.

Lands in Ontario.

The lands to be granted to the company under this section, may be so granted from time to time as any portion of the railway is proceeded with in quantities proportionate to the length, difficulty of construction or expenditure upon such portion, to be determined in such manner as may be agreed upon by the Government and the company.

When and in what proportion lands may be granted.

Subsidy in money to company.

Amount limited.

Loan authorized.

4. The subsidy or aid in money to be granted to the said company shall be such sum not exceeding thirty millions of dollars as the whole, as may be agreed upon between the Government and the company, such subsidy to be granted from time to time in instalments as any portion of the railway is proceeded with, in proportion to the length, difficulty of construction, and cost of such portion:—And the Governor in Council is hereby authorized to raise by loan in the manner by law provided such sum not exceeding thirty million dollars as may be required to pay the said subsidy.

Gauge of railway, grades, &c.

5. The gauge of the railway shall be four feet eight inches and a half, and the grades thereof, and the materials and manner in which the several works forming part thereof shall be constructed, and the mode of working the railway, including the description and capacity of the locomotive engines and other rolling stock for working it, shall be such as may be agreed on by the Government and the company.

Completion and working of sections of the railway.

6. The Government of Canada and the company may agree upon the periods within which any definite portion or portions of the railway shall be completed: and whenever any portion of the railway exceeding twenty miles is completed, the Governor in Council may require the company to work the same for the conveyance of passengers and goods at such times and in such manner as may have been agreed upon with the company or provided in their charter.



Transport of  
Her Majesty's  
officers, war  
material, &c.

7. Her Majesty's naval or military forces, and all artillery, ammunition, baggage, provisions or other stores for their use, and all officers and others travelling on Her Majesty's naval or military or other service and their baggage and stores, shall at all times when the company shall be thereunto required by one of Her Majesty's Principal Secretaries of State, or by the Commander-in-Chief of Her Majesty's Forces in Canada, or by the Chief Naval Officer on the North American Station on the Atlantic, or the Valparaíso Station on the Pacific Ocean, be carried on the said railway on such terms and conditions, and under such regulations as the Governor in Council shall from time to time make, or as shall be agreed upon between the Government of Canada, and one of Her Majesty's Principal Secretaries of State.

Cost of survey  
made by  
Government to  
be part of  
subsidy.

8. The company shall allow as part of the subsidy aforesaid the cost of the survey made in the years one thousand eight hundred and seventy-one and one thousand eight hundred and seventy-two, by the Government of Canada, for the purpose of ascertaining the best line for the said railway.

9. If there be any company incorporated by the Parliament of Canada with power to construct and work a railway from Lake Nipissing to the Pacific Ocean, on a line approved by the Governor in Council under this Act,—then, if such company have the amount of subscribed capital hereinbefore mentioned, and be in the opinion of the Governor in Council able to construct and work such railway in the manner and within the time hereinbefore prescribed, and there be no provision in their Act of incorporation preventing an agreement being made with and carried out by such company under this Act and in conformity with all the provisions thereof,—the Governor in Council may make such agreement with the company, and such agreement shall be held to be part and parcel of its Act of incorporation, as if embodied therein, and any part of such Act inconsistent with such agreement shall be null and void.

Government  
may agree  
with a com-  
pany incorpo-  
rated for the  
construction of  
the railway.

10. If there be two or more companies incorporated by the Parliament of Canada, each having power to construct and work a railway over the whole or some part of the line between Lake Nipissing and the Pacific Ocean approved by the Government, but such companies having together power to construct and work railways over the whole of such line, and having together a subscribed capital of at least ten million dollars,—then the directors of the several companies may at any time within one month after the passing of this Act, agree together that such companies shall be united and form one company, on such terms and conditions as they may think proper, not inconsistent with this Act; and such agreement shall fix the rights and liabilities of the shareholders after such union, the number of directors of the company after the union, and who shall be directors until the then next election, the period at which such election shall take place, the number of votes to which the shareholders of each company shall be respectively entitled after the union, and the provisions of their respective Acts of incorporation and by-laws, which shall apply to the united company; and generally such agreement may contain all such stipulations and provisions as may be deemed necessary for determining the rights of the respective companies and the shareholders thereof after the union.

If more than  
one are so  
incorporated.

Companies  
may unite,  
and in what  
manner.

**11.** Whenever any agreement of amalgamation shall have been made under the next preceding section, the directors of each of the companies which it is to affect shall call a special meeting of the shareholders of the company they represent, in the manner provided for calling general meetings, stating specially that such meeting is called for the purpose of considering the said agreement and ratifying or disallowing the same; and if, at such meeting of each of the companies concerned, respectively, three-fourths or more of the votes of the shareholders attending the same, either in person or by proxy, be given for ratifying the said agreement, then it shall have full effect accordingly, as if all the terms and clauses thereof, not inconsistent with this Act, were contained in an Act of the Parliament of Canada: Provided that no such agreement shall have any effect unless it be ratified as aforesaid within three months after the passing of this Act, and be also ratified and approved by the Governor in Council before either or any of the companies have commenced work upon its railway.

Proviso.

Agreement to unite to be submitted to shareholders of respective companies.

**12.** From and after the ratification of the agreement for their union, the companies united shall be one company, and the subscribers and stockholders of each shall be deemed subscribers and stockholders of the company formed by the union, according to the terms of the agreement, which shall have force and effect, in so far as it is not inconsistent with this Act, or with law, as if embodied in an Act of the Parliament of Canada; and the corporate name of the company shall be such as provided by the agreement, subject to the provision hereinafter made.

United companies to form one company.

**13.** The Government of Canada may in its discretion agree with the company so formed by the union of two or more companies, for the construction and working of the railway in accordance with this Act, in like manner as with a company originally incorporated for the construction of the whole line of the railway:—Provided that with whatever company such agreement is made, the name of such company shall thereafter be "The Canadian Pacific Railway Company," and the chief place of business of the company shall be in the City of Ottawa.

Agreement may be made with company so formed.

Corporate name and chief seat of business.

**14.** The company with which such agreement as aforesaid is made may, with the consent of the Governor in Council, surrender its Act or Acts of incorporation, and accept instead thereof a charter to be granted by the Governor embodying the agreement, so much of this Act, and such of the provisions of its Act or Acts of incorporation and of the Railway Act, modified as mentioned in the next following section, as may be agreed upon by the Government and the company, and such charter, being published in the *Canada Gazette*, with any Order or Orders in Council relating to it, shall, in so far as it is not inconsistent with this Act, have force and effect as if it were an Act of the Parliament of Canada.

Company may surrender its Act of incorporation and accept a charter.

**15.** If there be no company, either incorporated originally for the construction of the whole line of railway or formed out of two or more companies as aforesaid for that purpose, or if the Government cannot or does not deem it advisable to agree with any such company for the construction and working of the whole line of railway under this Act, or is of opinion that it will be more advantageous for the Dominion and will better ensure the attainment of the purposes of this Act, that a company should be incorporated by charter as hereinafter provided,—then, if there be persons able and willing to form such company, and having a capital of at least ten million dollars, secured to the company, the Governor in Council may, after consulting the

If there is no incorporated company, governor may grant a charter.

Conditions on which to be

such agreement,—the Governor may grant to such persons and those who shall be associated with them in the undertaking, a charter embodying the agreement made with such persons, (which shall be binding on the company) and so much of this Act and of the Railway Act (as the said Act is modified by any Act of the present session, with reference to any railway to be constructed under such Act, on any of the lines, or between any of the points mentioned in this Act) as may be agreed upon by the Government and the company; and such charter being published in the *Canada Gazette* with any Order or Orders in Council relating to it, shall, in so far as it is not inconsistent with this Act, have force and effect as if it were an Act of the Parliament of Canada: Provided that one of the conditions of the agreement and of the charter shall be, that at least ten per cent of the capital shall be paid into the hands of the Receiver General, in money or Government securities, within one month after the date of the charter, and shall remain in his hands until otherwise ordered by Parliament.

Publication of charter and its effect.

Proviso.

16. The Government of Canada may further agree with the company with whom they shall have agreed for the construction and working of the said railway, for the construction and working of a branch line of railway, from some point on the railway first hereinbefore mentioned, to some point on Lake Superior in British territory, and for the construction and working of another branch line of railway from some point on the railway first mentioned, in the Province of Manitoba, to some point on the line between that Province and the United States of America,—the said points to be determined by the Governor in Council: and such branch lines of railway shall, when so agreed for, be held to form part of the railway first hereinbefore mentioned, and portions of "The Canadian Pacific Railway:" and in consideration of the construction and working of such branches a land grant in aid thereof may be made to the company to such extent as shall be agreed upon by the Government and the company: Provided that such land grant shall not exceed twenty thousand acres per mile of the branch line in Manitoba,—nor twenty-five thousand acres per mile of the branch line to Lake Superior.

Agreement for construction of branches.

To form part of the railway.

Land grant in such case.

17. The Governor may from time to time appoint such officers or persons as he may see fit, to superintend the construction of the said railway, and the works connected with it, for the purpose of ensuring the faithful performance of the agreement between the Government and the company constructing them, and the observance of all the provisions of the charter of such company.

Officers to superintend construction of railway.

18. The company shall from time to time furnish such reports of the progress of the work, and with such details, as the Government may require.

Reports by the Company.

19. The expression "the Government," or "the Government of Canada" in this Act, means the Governor in Council, and anything authorized to be done under this Act by the Governor, may be done by him under an Order in Council; and any agreement made by the Government with any railway company, may be made with a majority of the directors *de facto* of such company, and being certified as so made, by the signature of the President *de facto* of the company, shall be held to be made by the company and have effect accordingly.

Interpretation.

Agreements with the Government.



## 44 VICTORIA.

### CHAP. I.

#### An Act respecting the Canadian Pacific Railway.

[Assented to 15th February, 1881.]

WHEREAS by the terms and conditions of the admission Preamble.  
of British Columbia into Union with the Dominion of  
Canada, the Government of the Dominion has assumed the  
obligation of causing a Railway to be constructed, connect-  
ing the seaboard of British Columbia with the Railway  
system of Canada ;

And whereas the Parliament of Canada has repeatedly Preference of  
Parliament  
for cons truc-  
tion by a com-  
pany.  
declared a preference for the construction and operation of  
such Railway by means of an incorporated Company aided  
by grants of money and land, rather than by the Govern-  
ment, and certain Statutes have been passed to enable that  
course to be followed, but the enactments therein contained  
have not been effectual for that purpose ;

And whereas certain sections of the said Railway have Greater part  
still uncon-  
structed.  
been constructed by the Government, and others are in  
course of construction, but the greater portion of the main  
line thereof has not yet been commenced or placed under  
contract, and it is necessary for the development of the  
North-West Territory and for the preservation of the good  
faith of the Government in the performance of its obliga-  
tions, that immediate steps should be taken to complete and  
operate the whole of the said Railway ;

And whereas, in conformity with the expressed desire of Contract en-  
tered into.  
Parliament, a contract has been entered into for the construc-  
tion of the said portion of the main line of the said Railway,  
and for the permanent working of the whole line thereof,  
which contract with the schedule annexed has been laid  
before Parliament for its approval and a copy thereof is  
appended hereto, and it is expedient to approve and ratify  
the said contract, and to make provision for the carrying out  
of the same :

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Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

Contract approved.

1. The said contract, a copy of which with schedule annexed, is appended hereto, is hereby approved and ratified, and the Government is hereby authorized to perform and carry out the conditions thereof, according to their purport.

Charter may be granted.

2. For the purpose of incorporating the persons mentioned in the said contract, and those who shall be associated with them in the undertaking, and of granting to them the powers necessary to enable them to carry out the said contract according to the terms thereof, the Governor may grant to them in conformity with the said contract, under the corporate name of the Canadian Pacific Railway Company, a charter conferring upon them the franchises, privileges and powers embodied in the schedule to the said contract and to this Act appended, and such charter, being published in the *Canada Gazette*, with any Order or Orders in Council relating to it, shall have force and effect as if it were an Act of the Parliament of Canada, and shall be held to be an Act of incorporation within the meaning of the said contract.

Publication and effect of charter.

Certain grants of money and land may be made to the company chartered.

3. Upon the organization of the said Company, and the deposit by them, with the Government, of one million dollars in cash or securities approved by the Government, for the purpose in the said contract provided, and in consideration of the completion and perpetual and efficient operation of the railway by the said Company, as stipulated in the said contract, the Government may grant to the Company a subsidy of twenty-five million dollars in money, and twenty-five million acres of land, to be paid and conveyed to the Company in the manner and proportions, and upon the terms and conditions agreed upon in the said contract, and may also grant to the Company the land for right of way, stations and other purposes, and such other privileges as are provided for in the said contract. And in lieu of the payment of the said money subsidy direct to the Company, the Government may convert the same, and any interest accruing thereon, into a fund for the payment to the extent of such fund, of interest on the bonds of the Company, and may pay such interest accordingly; the whole in manner and form as provided for in the said contract.

Conversion of money grant authorized.

Certain materials may be admitted free of duty.

4. The Government may also permit the admission free of duty, of all steel rails, fish plates and other fastenings, spikes, bolts and nuts, wire, timber and all material for bridges to be used in the original construction of the said Canadian Pacific Railway, as defined by the Act thirty-seventh

Victoria, chapter fourteen, and of a telegraph line in connection therewith, and all telegraphic apparatus required for the first equipment of such telegraph line, the whole as provided by the tenth section of the said contract.

5. Pending the completion of the eastern and central sections of the said railway as described in the said contract, the Government may also transfer to the said Company the possession and right to work and run the several portions of the Canadian Pacific Railway as described in the said Act thirty-seventh Victoria, chapter fourteen, which are already constructed, and as the same shall be hereafter completed; and upon the completion of the said eastern and central sections the Government may convey to the Company, with a suitable number of station buildings, and with water service (but without equipment), those portions of the Canadian Pacific Railway constructed, or agreed by the said contract to be constructed by the Government, which shall then be completed; and upon completion of the remainder of the portion of the said railway to be constructed by the Government, that portion also may be conveyed by the Government to the Company, and the Canadian Pacific Railway defined as aforesaid shall become and be thereafter the absolute property of the Company; the whole, however, upon the terms and conditions, and subject to the restrictions and limitations contained in the said contract.

Company to have possession of completed portions of the railway.

Conveyance thereof to company when the contract is performed.

6. The Government shall also take security for the continuous operation of the said railway during the ten years next subsequent to the completion thereof in the manner provided by the said contract.

Security may be taken for operation of the railway.

#### SCHEDULE.

THIS CONTRACT AND AGREEMENT MADE BETWEEN HER MAJESTY THE QUEEN, acting in respect of the Dominion of Canada, and herein represented and acting by the Honorable SIR CHARLES TUPPER, K.C.M.G., Minister of Railways and Canals, and George Stephen and Duncan McIntyre, of Montreal, in Canada, John S. Kennedy of New York, in the State of New York, Richard B. Angus and James J. Hill, of St. Paul, in the State of Minnesota, Morton, Rose & Co., of London, England, and Kohn, Reinach & Co., of Paris, France,

Witnesses:

That the parties hereto have contracted and agreed with each other as follows, namely:—

1. For the better interpretation of this contract, it is hereby declared that the portion of railway hereinafter called the Eastern section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the

Interpretation clause.  
Eastern section.

Western terminus of the Canada Central Railway, near the East end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in course of construction extending from Lake Superior to Selkirk on the East side of Red River; which latter portion is hereinafter called the Lake Superior section. That the portion of said railway, now partially in course of construction, extending from Selkirk to Kamloops, is hereinafter called the Central section; and the portion of said railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the Western section. And that the words "the Canadian Pacific Railway," are intended to mean the entire railway, as described in the Act 37th Victoria, chap. 14. The individual parties hereto, are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.

Lake Superior section.  
Central section.  
O. P. Railway.  
Company.  
Government.

2. The contractors immediately after the organization of the said Company, shall deposit with the Government \$1,000,000 in cash or approved securities, as a security for the construction of the railway hereby contracted for. The Government shall pay to the Company interest on the cash deposited at the rate of four per cent. per annum, half-yearly, and shall pay over to the Company the interest received upon securities deposited,—the whole until default in the performance of the conditions hereof, or until the repayment of the deposit; and shall return the deposit to the Company on the completion of the railway, according to the terms hereof, with any interest accrued thereon.

Security to be given by the company.  
Conditions thereof.

3. The Company shall lay out, construct and equip the said Eastern section, and the said Central section, of a uniform gauge of 4 feet 8½ inches; and in order to establish an approximate standard whereby the quality and the character of the railway and of the materials used in the construction thereof, and of the equipment thereof may be regulated, the Union Pacific Railway of the United States as the same was when first constructed, is hereby selected and fixed as such standard. And if the Government and the Company should be unable to agree as to whether or not any work done or materials furnished under this contract are in fair conformity with such standard, or as to any other question of fact, excluding questions of law, the subject of disagreement shall be, from time to time, referred to the determination of three referees, one of whom shall be chosen by the Government, one by the Company, and one by the two referees so chosen, and such referees shall decide as to the party by whom the expense of such reference shall be defrayed. And if such two referees should be unable to agree upon a third referee, he shall be appointed

Eastern and central sections to be constructed by company described.  
Standard of railway and provision in case of disagreement as to conformity to it.

at the instance of either party hereto, after notice to the other, by the Chief Justice of the Supreme Court of Canada. And the decision of such referees, or of the majority of them, shall be final.

4. The work of construction shall be commenced at the eastern extremity of the Eastern section not later than the first day of July next, and the work upon the Central section shall be commenced by the Company at such point towards the eastern end thereof on the portion of the line now under construction as shall be found convenient and as shall be approved by the Government, at a date not later than the 1st May next. And the work upon the Eastern and Central sections, shall be vigorously and continuously carried on at such rate of annual progress on each section as shall enable the Company to complete and equip the same and each of them, in running order, on or before the first day of May, 1891, by which date the Company hereby agree to complete and equip the said sections in conformity with this contract, unless prevented by the act of God, the Queen's enemies, intestine disturbances, epidemics, floods, or other causes beyond the control of the Company. And in case of the interruption or obstruction of the work of construction from any of the said causes, the time fixed for the completion of the railway shall be extended for a corresponding period.

Commencement and regular progress of the work.

Period for completion.

5. The Company shall pay to the Government the cost, according to the contract, of the portion of railway, 100 miles in length, extending from the city of Winnipeg westward, up to the time at which the work was taken out of the hands of the contractor and the expenses since incurred by the Government in the work of construction, but shall have the right to assume the said work at any time and complete the same, paying the cost of construction as aforesaid, so far as the same shall then have been incurred by the Government.

As to portion of central section made by Government.

6. Unless prevented by the act of God, the Queen's enemies, intestine disturbances, epidemics, floods or other causes beyond the control of the Government, the Government shall cause to be completed the said Lake Superior section, by the dates fixed by the existing contracts for the construction thereof; and shall also cause to be completed the portion of the said Western section now under contract, namely, from Kamloops to Yale, within the period fixed by the contracts therefor, namely, by the thirtieth day of June, 1885; and shall also cause to be completed, on or before the first day of May, 1891, the remaining portion of the said Western section, lying between Yale and Port Moody, which shall be constructed of equally good quality in every respect with the standard hereby created for the portion hereby contracted for. And the said Lake Superior section, and the portions

Government to construct portions now under contract within periods fixed by contract.



portions of the said Western section now under contract, shall be completed as nearly as practicable according to the specifications and conditions of the contracts therefor, except in so far as the same have been modified by the Government prior to this contract.

Completed railway to be property of company.

Transfer of portions constructed by Government.

Company to operate the railway forever.

Company to equip portions transferred to them.

Subsidy in money and land.

Apportionment of money.

7. The railway constructed under the terms hereof shall be the property of the Company: and pending the completion of the Eastern and Central sections, the Government shall transfer to the Company the possession and right to work and run the several portions of the Canadian Pacific Railway already constructed or as the same shall be completed. And upon the completion of the Eastern and Central sections, the Government shall convey to the Company, with a suitable number of station buildings and with water service (but without equipment), those portions of the Canadian Pacific Railway constructed or to be constructed by the Government which shall then be completed; and upon completion of the remainder of the portion of railway to be constructed by the Government, that portion shall also be conveyed to the Company; and the Canadian Pacific Railway shall become and be thereafter the absolute property of the Company. And the Company shall thereafter and forever efficiently maintain, work and run the Canadian Pacific Railway.

8. Upon the reception from the Government of the possession of each of the respective portions of the Canadian Pacific Railway, the Company shall equip the same in conformity with the standard herein established for the equipment of the sections hereby contracted for, and shall thereafter maintain and efficiently operate the same.

9. In consideration of the premises, the Government agree to grant to the Company a subsidy in money of \$25,000,000, and in land of 25,000,000 acres, for which subsidies the construction of the Canadian Pacific Railway shall be completed and the same shall be equipped, maintained and operated, —the said subsidies respectively to be paid and granted as the work of construction shall proceed, in manner and upon the conditions following, that is to say:—

a. The said subsidy in money is hereby divided and appropriated as follows, namely:—

#### CENTRAL SECTION.

Assumed at 1,350 miles—		
1st.—900 miles, at \$10,000 per mile.....	\$ 9,000,000	
2nd.—450 " " 13,333 " " .....	6,000,000	
		\$15,000,000

#### EASTERN SECTION.

Assumed at 650 miles, subsidy equal to \$15,384.61 per mile. ....	10,000,000
	\$25,000,000

And the said subsidy in land is hereby divided and appropriated as follows, subject to the reserve hereinafter provided for:—

CENTRAL SECTION.

1st.—900 miles, at 12,500 acres per mile.....	11,250,000	
2nd.—450 " " 16,666.66 " " " .....	7,500,000	
		18,750,000

EASTERN SECTION.

Assumed at 650 miles, subsidy equal to 9,615.35 acres per mile.....	6,250,000	
		25,000,000

b. Upon the construction of any portion of the railway hereby contracted for, not less than 20 miles in length, and the completion thereof so as to admit of the running of regular trains thereon, together with such equipment thereof as shall be required for the traffic thereon, the Government shall pay and grant to the Company the money and land subsidies applicable thereto, according to the division and appropriation thereof made as hereinbefore provided; the Company having the option of receiving in lieu of cash, terminable bonds of the Government, bearing such rate of interest, for such period and nominal amount as may be arranged, and which may be equivalent according to actuarial calculation to the corresponding cash payment,—the Government allowing four per cent. interest on moneys deposited with them,

When to be paid or granted.

Option of company to take terminable bonds.

c. If at any time the Company shall cause to be delivered on or near the line of the said railway, at a place satisfactory to the Government, steel rails and fastenings to be used in the construction of the railway, but in advance of the requirements for such construction, the Government, on the requisition of the Company, shall, upon such terms and conditions as shall be determined by the Government, advance thereon three-fourths of the value thereof at the place of delivery. And a proportion of the amount so advanced shall be deducted, according to such terms and conditions, from the subsidy to be thereafter paid, upon the settlement for each section of 20 miles of railway,—which proportion shall correspond with the proportion of such rails and fastenings which have been used in the construction of such sections.

Provision as to materials for construction delivered by company in advance.

d. Until the first day of January, 1882, the Company shall have the option, instead of issuing land grant bonds as hereinafter provided, of substituting the payment by the Government of the interest (or part of the interest) on bonds of the Company mortgaging the railway and the lands to be granted by the Government, running over such term of years as may be approved by the Governor in Council, in lieu of the cash sub-

Option of the company during a certain time to substitute payment of interest on certain bonds instead of issuing land grant bonds.

sidy hereby agreed to be granted to the Company or any part thereof—such payments of interest to be equivalent according to actuarial calculation to the corresponding cash payment, the Government allowing four per cent. interest on moneys deposited with them ; and the coupons representing the interest on such bonds shall be guaranteed by the Government to the extent of such equivalent. And the proceeds of the sale of such bonds to the extent of not more than \$25,000,000, shall be deposited with the Government, and the balance of such proceeds shall be placed elsewhere by the Company, to the satisfaction and under the exclusive control of the Government; failing which last condition the bonds in excess of those sold shall remain in the hands of the Government. And from time to time as the work proceeds, the Government shall pay over to the Company : firstly, out of the amount so to be placed by the Company,—and, after the expenditure of that amount, out of the amount deposited with the Government,—sums of money bearing the same proportion to the mileage cash subsidy hereby agreed upon, which the net proceeds of such sale (if the whole of such bonds are sold upon the issue thereof, or, if such bonds be not all then sold, the net proceeds of the issue, calculated at the rate at which the sale of part of them shall have been made,) shall bear to the sum of \$25,000,000. But if only a portion of the bond issue be sold, the amount earned by the Company according to the proportion aforesaid, shall be paid to the Company, partly out of the bonds in the hands of the Government, and partly out of the cash deposited with the Government, in similar proportions to the amount of such bonds sold and remaining unsold respectively ; and the Company shall receive the bonds so paid, as cash, at the rate at which the said partial sale thereof shall have been made.

**Deposit of proceeds of sale of such bonds.** And the Government will receive and hold such sum of money towards the creation of a sinking fund for the redemption of such bonds, and upon such terms and conditions, as shall be agreed upon between the Government and the Company.

**Payments to company out of such deposits.**

**Payment by delivery of bonds.**

**Sinking fund.**

**Alteration in apportionment of money grant in such case.** e. If the Company avail themselves of the option granted by clause d, the sum of \$2,000 per mile for the first eight hundred miles of the Central section shall be deducted *pro rata* from the amount payable to the Company in respect of the said eight hundred miles, and shall be appropriated to increase the mileage cash subsidy appropriated to the remainder of the said Central section.

**Grant of land required for railway purposes.** 10. In further consideration of the premises, the Government shall also grant to the Company the lands required for the road bed of the railway, and for its stations, station grounds, workshops, dock ground and water frontage at the termini on navigable waters, buildings, yards and other appurtenances required for the convenient and effectual construction and working of the railway, in so far as such

land shall be vested in the Government. And the Government shall also permit the admission free of duty, of all steel rails, fish plates and other fastenings, spikes, bolts and nuts, wire, timber and all material for bridges, to be used in the original construction of the railway, and of a telegraph line in connection therewith, and all telegraphic apparatus required for the first equipment of such telegraph line; and will convey to the Company, at cost price, with interest, all rails and fastenings bought in or since the year 1879, and other materials for construction in the possession of or purchased by the Government, at a valuation,—such rails, fastenings and materials not being required by it for the construction of the said Lake Superior and Western sections.

11. The grant of land hereby agreed to be made to the Company, shall be so made in alternate sections of 640 acres each, extending back 24 miles deep, on each side of the railway, from Winnipeg to Jasper House, in so far as such lands shall be vested in the Government,—the Company receiving the sections bearing uneven numbers. But should any of such sections consist in a material degree of land not fairly fit for settlement, the Company shall not be obliged to receive them as part of such grant; and the deficiency thereby caused and any further deficiency which may arise from the insufficient quantity of land along the said portion of railway, to complete the said 25,000,000 acres, or from the prevalence of lakes and water stretches in the sections granted (which lakes and water stretches shall not be computed in the acreage of such sections), shall be made up from other portions in the tract known as the fertile belt, that is to say, the land lying between parallels 49 and 57 degrees of north latitude, or elsewhere at the option of the Company, by the grant therein of similar alternate sections extending back 24 miles deep on each side of any branch line or lines of railway to be located by the Company, and to be shown on a map or plan thereof deposited with the Minister of Railways; or of any common front line or lines agreed upon between the Government and the Company,—the conditions hereinbefore stated as to lands not fairly fit for settlement to be applicable to such additional grants. And the Company may with the consent of the Government, select in the North-West Territories any tract or tracts of land not taken up as a means of supplying or partially supplying such deficiency. But such grants shall be made only from lands remaining vested in the Government.

12. The Government shall extinguish the Indian title affecting the lands herein appropriated, and to be hereafter granted in aid of the railway.

Location of  
railway be-  
tween cer-  
tain terminal  
points.

13. The Company shall have the right, subject to the approval of the Governor in Council, to lay out and locate the line of the railway hereby contracted for, as they may see fit, preserving the following terminal points, namely: from Callander station to the point of junction with the Lake Superior section; and from Selkirk to the junction with the Western section at Kamloops by way of the Yellow Head Pass.

Power to con-  
struct bran-  
ches.

14. The Company shall have the right, from time to time, to lay out, construct, equip, maintain and work branch lines of railway from any point or points along their main line of railway, to any point or points within the territory of the Dominion. Provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government.

Lands neces-  
sary for the  
same.

Restriction as  
to competing  
lines for a  
limited pe-  
riod.

15. For twenty years from the date hereof, no line of railway shall be authorized by the Dominion Parliament to be constructed South of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run South West or to the Westward of South West; nor to within fifteen miles of Latitude 49. And in the establishment of any new Province in the North-West Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.

Exemption  
from taxation  
in N. W. ter-  
ritories.

16. The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion, or by any Province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied shall also be free from such taxation for 20 years after the grant thereof from the Crown.

Land grant  
bonds.

Their nature,  
and condi-

17. The Company shall be authorized by their Act of incorporation to issue bonds, secured upon the land granted and to be granted to the Company, containing provisions for the use of such bonds in the acquisition of lands, and such

other conditions as the Company shall see fit,—such issue to be for \$25,000,000. And should the Company make such issue of land grant bonds, then they shall deposit them in the hands of the Government; and the Government shall retain and hold one-fifth of such bonds as security for the due performance of the present contract in respect of the maintenance and continuous working of the railway by the Company, as herein agreed, for ten years after the completion thereof, and the remaining \$20,000,000 of such bonds shall be dealt with as hereinafter provided. And as to the said one-fifth of the said bonds, so long as no default shall occur in the maintenance and working of the said Canadian Pacific Railway, the Government shall not present or demand payment of the coupons of such bonds, nor require payment of any interest thereon. And if any of such bonds, so to be retained by the Government, shall be paid off in the manner to be provided for the extinction of the whole issue thereof, the Government shall hold the amount received in payment thereof as security for the same purposes as the bonds so paid off, paying interest thereon at four per cent. per annum so long as default is not made by the Company in the performance of the conditions hereof. And at the end of the said period of ten years from the completion of the said railway, if no default shall then have occurred in such maintenance and working thereof, the said bonds, or if any of them shall then have been paid off, the remainder of said bonds and the money received for those paid off, with accrued interest, shall be delivered back by the Government to the Company with all the coupons attached to such bonds. But if such default should occur, the Government may thereafter require payment of interest on the bonds so held, and shall not be obliged to continue to pay interest on the money representing bonds paid off; and while the Government shall retain the right to hold the said portion of the said land grant bonds, other securities satisfactory to the Government may be substituted for them by the Company, by agreement with the Government.

tions of issue by the company.

Deposit with Government; for what purposes and on what conditions.

If the company make no default in operating railway.

In case of such default.

18. If the Company shall find it necessary or expedient to sell the remaining \$20,000,000 of the land grant bonds or a larger portion thereof than in the proportion of one dollar for each acre of land then earned by the Company, they shall be allowed to do so, but the proceeds thereof, over and above the amount to which the Company shall be entitled as herein provided, shall be deposited with the Government. And the Government shall pay interest upon such deposit half-yearly, at the rate of four per cent. per annum, and shall pay over the amount of such deposit to the Company from time to time, as the work pro-

Provision if such bonds are sold faster than lands are earned by the company, and deposit on interest with Government, and payments by Government to company.

ceeds, in the same proportions, and at the same times and upon the same conditions as the land grant—that is to say: the Company shall be entitled to receive from the Government out of the proceeds of the said land grant bonds, the same number of dollars as the number of acres of the land subsidy which shall then have been earned by them, less one fifth thereof, that is to say, if the bonds are sold at par, but if they are sold at less than par, then a deduction shall be made therefrom corresponding to the discount at which such bonds are sold. And such land grant shall be conveyed to them by the Government, subject to the charge created as security for the said land grant bonds, and shall remain subject to such charge till relieved thereof in such manner as shall be provided for at the time of the issue of such bonds.

Lands to be granted subject to such bonds.

Company to pay certain expenses.

19. The Company shall pay any expenses which shall be incurred by the Government in carrying out the provisions of the last two preceding clauses of this contract.

If land bonds are not issued, one-fifth of land to be retained as security.

How to be disposed of.

Substitution of other securities.

20. If the Company should not issue such land grant bonds, then the Government shall retain from out of each grant to be made from time to time, every fifth section of the lands hereby agreed to be granted, such lands to be so retained as security for the purposes, and for the length of time, mentioned in section eighteen hereof. And such lands may be sold in such manner and at such prices as shall be agreed upon between the Government and the Company; and in that case the price thereof shall be paid to, and held by the Government for the same period, and for the same purposes as the land itself, the Government paying four per cent. per annum interest thereon. And other securities satisfactory to the Government may be substituted for such lands or money by agreement with the Government.

Company to be incorporated as by schedule A.

21. The Company to be incorporated, with sufficient powers to enable them to carry out the foregoing contract, and this contract shall only be binding in the event of an Act of incorporation being granted to the Company in the form hereto appended as Schedule A.

Railway Act to apply. Exceptions.

22. The Railway Act of 1879, in so far as the provisions of the same are applicable to the undertaking referred to in this contract, and in so far as they are not inconsistent herewith or inconsistent with or contrary to the provisions of the Act of incorporation to be granted to the Company, shall apply to the Canadian Pacific Railway.

In witness whereof the parties hereto have executed these presents at the City of Ottawa, this twenty-first day of October, 1880.

(Signed) CHARLES TUPPER,  
Minister of Railways and Canals.  
" GEO. STEPHEN,  
" DUNCAN McINTYRE,  
" J. S. KENNEDY,  
" R. B. ANGUS,  
" J. J. HILL,  
" Per pro. Geo. Stephen.  
" MORTON, ROSE & Co.  
" KOHN, REINACH & Co.,  
By P. Du P. Grenfell.

Signed in presence of F. BRAUN,  
and Seal of the Department  
hereto affixed by Sir CHARLES  
TUPPER, in presence of

(Signed) F. BRAUN.

SCHEDULE A, REFERRED TO IN THE  
FOREGOING CONTRACT.

INCORPORATION.

1 George Stephen, of Montreal, in Canada, Esquire; Duncan McIntyre, of Montreal, aforesaid, Merchant; John S. Kennedy, of New York, in the State of New York, Banker; the firm of Morton, Rose and Company, of London, in England, Merchants; the firm of Kohn, Reinach and Company, of Paris, in France, Bankers; Richard B. Angus, and James J. Hill, both of St. Paul, in the State of Minnesota, Esquires; with all such other persons and corporations as shall become shareholders in the Company hereby incorporated, shall be and they are hereby constituted a body corporate and politic, by the name of the "Canadian Pacific Railway Company." Certain persons incorporated. Corporate name.

2. The capital stock of the Company shall be twenty-five million dollars, divided into shares of one hundred dollars each,—which shares shall be transferable in such manner and upon such conditions as shall be provided by the by-laws of the Company; and such shares, or any part thereof, may be granted and issued as paid-up shares for value *bona fide* received by the Company, either in money at par or at such Capital stock and shares. Paid up shares.



The following amendment passed in 1886, exemplifies the high priority given to the railway project.

## CHAP. 12.

An Act to amend an Act to authorize the granting of subsidies in land to certain railway companies.

[Assented to 2nd June, 1886.]

WHEREAS it is expedient to make further provision, as Preamble. hereinafter set forth, respecting the subsidies in land authorized by the Act passed in the session held in the forty-eighth and forty-ninth years of Her Majesty's reign, chapter sixty, intituled "*An Act to authorize the grant of certain subsidies in land for the construction of the railways therein mentioned:*" Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Notwithstanding anything contained in sections eighteen and nineteen of the "*Dominion Lands Act, 1883*," the Governor in Council is hereby empowered to grant the subsidies in land authorized by the Act cited in the preamble to this Act, wholly or in part, in tracts each comprising a township or a fractional part of a township, as he deems expedient; but no such grant shall be made until an extent of land equivalent to that reserved for the Hudson's Bay Company in the township, or fractional part of a township to be so granted, has been set apart for that company out of other ungranted available public lands, and such change has been assented to by the said Hudson's Bay Company; nor shall any such grant be made until a tract or tracts of land equivalent in extent, and as nearly as may be in value, to that set apart as school lands in the township, or fractional part of a township, to be so granted, has been set apart as school lands out of other ungranted available public lands; and the substituted lands so set apart shall stand in place of those reserved for the Hudson's Bay Company and set apart as school lands respectively under the said sections eighteen and nineteen of the "*Dominion Lands Act, 1883*," in the township or fractional part of a township to be so granted.

Subsidies in land under the said Act may be granted in townships or fractional parts thereof; subject to certain conditions as to lands reserved under 48 V., c. 17, for Hudson's Bay Company, or as school lands, for which others shall be substituted.

### Railway Land Grants

SEVERAL features of "Dominion Lands" policy were fore-ordained, as we have seen, by the historic "purposes of the Dominion" in retaining the administration of public lands after the transfer in 1870. Railways and national consolidation became the twin problems of Canadian politics. The settlement of the West and its integration into Canadian national life was of course the ultimate goal of all land policy; but in 1869 the immediate problem of means was more desperately urgent than the mode. The decade from the Homestead Act and the charter to the Union Pacific in 1862 had revolutionized the functions of the public domain in the United States: with ominous possibilities, as many thought, for "the destiny of the British possessions west of the 91st meridian". Lands in Western Canada could never be settled, and perhaps could never be held, without a Canadian railway.

This national factor in Canadian expansion westward has already been referred to; it is traceable at almost every stage of the process. Watkin's mercurial schemes for the Grand Trunk were coloured and sanctified by it. Projects could be destroyed as well as inspired by it. On strictly economic grounds an accommodation between the Grand Trunk and the Northern Pacific may well have been the soundest plan of transcontinental railway development ever devised for that day in Canada. Sir John Rose and Watkin himself both saw the economic advantages. Neither could withstand the national considerations to the contrary.

But if the policy of the United States in their gigantic strides across the continent filled Canadian statesmen with concern, it also supplied them with an example and an incentive. No phase of "Dominion Lands" policy perhaps was so nearly ready-made to their hand as the railway land grant system. It is true that many of the historic origins of that system in the United States were not present in Canada. Like the features of the public domain which received such extravagant praise from Lord Durham<sup>1</sup> when the whole system of "sales policy" was on the point of retreat in the United States, the railway land grant system seemed to be a post-humous development in Canada. When it was first projected it was already passing away south of the boundary, and when it was first applied in Canada it was not only obsolete but discredited in the United States.

For twenty-two years—from the Illinois Central in 1850 to the Chicago and Northwestern in 1873—the railway land grant system had spread devastation in politics and public finance. But the railways had been built. The Union Pacific, the first transcontinental, had been completed, and the Northern Pacific was already under way when the whole railway land grant system in the United States was swept away by a disillusioned frontier. In Canada the system was appropriated just as it was disappearing in the United States, and it took almost exactly the same time to run its course from the abortive C.P.R. charter of 1873 to the last railway grant from "Dominion Lands" in 1894. What was the achievement of the Canadian experiment and what was the price? Was it adopted in defiance or in ignorance of experience in the United States; or were both experiments merely psychological phases in the development of the frontier? Was the cycle, in other words, twenty years later in closing in Canada merely because it was twenty years later in beginning? The total area alienated in railway land grants in Western Canada was about 32,000,000 acres, almost exactly the area of the kingdom which King Richard was ready to give for a horse at Bosworth Field. What kind of a kingdom was granted for the iron horse in this national emergency, and what were the functions of the "land grant railways" (Figs. 9 to 18) in the settlement and development of the Canadian West?

No better authority than C. Martin can be found for a discussion of the railway land grants system. Chapter III of his book is devoted to a discussion of the set up of the railway land grant system and includes comparisons and contrasts of the similar system used in the United States some years earlier.

The Chapter provides very good analysis of the 1881 C.P.R. Charter and includes a breakdown of how much railroad was received in an area, in comparison to the amount of land received by the C.P.R. For example, Alberta secured 805 miles or over 22 per cent of the land grant railway was found to have contributed 13,035,572 acres or over 41 per cent of the land grants.

The following is that part of Martin's discussion

most relevant to our study (pp. 261-276):

### 5. *A "Pacific Railway" for Canada*

With this background of more than 150,000,000 acres of railway land grants in the United States, the first project of the new Dominion for a transcontinental railway was almost foreordained to the use of public lands. The spell of prosperity and optimism following the civil war, the success of the Illinois Central, the fame of Jay Cooke, and the innumerable land "booms" which moved westward with the frontier like the expanding circles from a pebble thrown into a pond, could not fail to react across the Canadian border. The final stages of the Canadian federation itself reflected these influences. Neither the Louisiana purchase nor the Gadsden purchase had added at a single stroke so vast a proportion of new territory to the United States as the transfer of Rupert's Land and the North-Western Territory added to Canada in 1870. A "Pacific Railway" had been accepted as the first corollary of the transfer. While twelve years and two changes of government were to intervene before the project of 1869 entered upon its final stage in 1881, the Canadian Pacific Railway was thus in many respects the post-humous child of the preceding decade. The contemporary revulsion, moreover, which overtook the land grant railways in the United States in the early seventies was largely the revulsion of a disillusioned frontier, and it could scarcely be expected to appear in Western Canada while the new frontier was still a wilderness, clamorous like Missouri or Minnesota in the fifties, for railways at any price. In the press of that day one searches almost in vain for the wisdom which became so articulate after the fact. "If we could get the railway and keep our public land", wrote the *Manitoba Free Press* (May 24, 1873), "we would prefer such a course, but that is impracticable." Seven years later (March 17, 1880) the second project for the Canadian Pacific was held to warrant the same policy: "beyond a doubt the only practicable mode of building the Pacific Railway is from the proceeds of the Crown lands." There is much to be said for the view already advanced that the cycle was more than twenty years later in closing in Canada because it was more than twenty years later in beginning. Clifford Sifton once added the sardonic comment that the railway land grant system came to an end because the government had come to the end of eligible land reserves acceptable to the railways.

At every stage of the transfer railways and railway land grants had been taken for granted. As early as June, 1869, Galt proposed in England to "ascertain whether influential parties could be found to undertake the Red River and Pacific Railroad. . . . I think \$15,000 per mile and 10 or 12,000 acres of land would be

sufficient inducement.”<sup>14</sup> Riel himself had demanded rail connections within five years, “the land grant to be subject to the Local Legislature.” The success of the insurrection in holding Fort Garry up to ransom for nine months was in itself an object lesson in the necessity for reliable access to Red River on Canadian soil. The Wolseley expedition of 1870, with all its unprecedented speed and despatch, was the best of all demonstrations for a railway. During the debate on the Manitoba Bill, as we have seen, both Cartier and Macdonald revealed the most urgent of the immediate “purposes of the Dominion” in retaining control of public lands: “It was of the greatest importance to the Dominion to have possession of it, for the Pacific Railway must be built by means of the land through which it had to pass.” “It must be in the contemplation of the members of the House,” added Cartier, “that these could be used for the construction of the British Pacific Railway from the East to the West.” “It would soon be necessary to construct a railway through Red River, and consequently the Dominion Parliament would require to control the wild lands.” When British Columbia entered the Dominion in 1871 a railway within ten years was the most important condition of the union. The Dominion undertook to pay—and still pays—to that Province \$100,000 a year for conveying to the Dominion “in trust . . . in furtherance of the construction of the said Railway, a similar extent of Public Lands along the line of Railway throughout its entire length in British Columbia, not to exceed however Twenty (20) Miles on each side of said line, as may be appropriated for the same purpose by the Dominion Government from the Public Lands in the North-West Territories and the Province of Manitoba.”

— The Order-in-Council of March 1, 1871, provided for the withdrawal of “three full townships on each side of the line finally sanctioned for the Inter-Oceanic Railway”, and for the termination, if necessary, of the free-homestead system.<sup>15</sup> A resolution during the same session pledged the House to “such liberal grants of land and such subsidy of money, or other aid, not unduly pressing on the industry of the Dominion, as the Parliament of Canada shall hereafter determine.”<sup>16</sup> The measure of the emergency was not only the “liberal grants of land” but the “subsidy of money”—an innovation so radical that not even the Union Pacific had dared to include it in their amended programme of 1864. In this sense Macdonald himself, six months before the transfer, had written to Brydges, general manager of the Grand Trunk, that the Pacific railway “must be taken up by a body of capitalists and not constructed by the government directly. Canada can promise most liberal grants of land in alternate blocks, and may, perhaps . . . induce Parliament to add a small pecuniary subsidy.”<sup>17</sup> From this general purpose there was little deviation in Conservative policy until the last spike was driven in the C.P.R. in 1885.

<sup>14</sup> Galt to Macdonald, *Correspondence of Sir John Macdonald*, ed. Pope (Garden City, N.Y.: 1921) p. 94.

<sup>15</sup> *Sessional Papers of Canada, 1871*, No. 20, p. 5.

<sup>16</sup> *Debates of the House of Commons, Canada, 1871*, p. 1028.

<sup>17</sup> *Correspondence of Sir John Macdonald*, p. 124.

In the preliminary stages of the project the emergency was as obvious as the desperate want of means. The speediest and the most economical plan, advocated by Waddington of British Columbia, was perhaps the nearest approach to Watkin's vision of the early sixties. Canadian lines westward from the Red River to the Pacific by way of the Yellowhead Pass and eastward from the Sault Ste. Marie to Portland, Maine, were to lease running rights on the Northern Pacific for the intervening section south of Lake Superior. The Grand Trunk in the east was already in British control, but there were too many hostages involved in the rest of the project for the national temper of 1871. Waddington's plan fared no better than Watkin's. When the first C.P.R. Bill appeared in 1872 it was found to embody Macdonald's plan for a "railway made and worked by private enterprise and not by the Dominion Government"; but there were innovations so radical as to mark almost a new departure in the railway land grant system of that day.

The first of these was the exceptional size of the land grant—50,000,000 acres, more than the area of the three Maritime Provinces, and the largest hitherto projected for the building of an American railway. A second variation was the location of the grant. It was to be taken up not in alternate sections as in the United States but in blocks "twenty miles in depth on each side of the said railway, alternating with other blocks of like depth on each side thereof to be reserved by and for the Dominion Government." The railway blocks were to be not more than 12 and not less than 6 miles in width, thus ranging from 76,800 to 153,600 acres each; and the corresponding government blocks were to be sold at \$2.50 per acre. This second innovation was accentuated by a third which reintroduced the principle of "indemnity selection" from the state grant phase of the system in the United States. If the area of selected railway lands proved in the aggregate less than 50,000,000 acres the difference was to be made up by grants outside the 40 mile belt. A fourth innovation introduced for the first time into the final charter of 1873 the stipulation that the Company should "not be bound to receive any lands which are not of the fair average quality of the land in the sections of the country best adapted for settlement." A fifth innovation—a cash subsidy not to exceed \$30,000,000—was perhaps the most exceptional of all, and may fairly be taken as an index of the emergency. Even the Union Pacific was nominally mortgaged—a second mortgage, it is true—to the government. Since the intervening public lands within the 40 mile belt were to be sold at \$2.50 per acre or an

average of \$32,000 per mile of railway, it was still held that the cash subsidy could be met from the sale of government lands in the railway belt. The generosity of these terms, contingent as they were upon the exclusion of Jay Cooke and Northern Pacific interests with whom Sir Hugh Allen had originally been negotiating, was a further index of the national temper. The Charter was issued to Sir Hugh Allen and his associates as the first C.P.R. Company in February, 1873. In January of the same year the last railway land grant in the United States had been made to the Chicago and Northwestern. The Granger movement was already a force in the land. Nearly two years and a half had passed since the New York *Tribune* announced what was soon to be the settled conviction of the nation: "the sooner this land-grant business for railroads is now stopped the better."<sup>18</sup> So widespread a movement could not have escaped notice in Canada. The persistence nevertheless of the government was a further proof of the emergency.

#### 6. Trends and Tendencies

The "Pacific Scandal" which destroyed both the railway company and the government during the session of 1873 turned upon Allen's contribution to the election funds of the Conservative party. Beyond a doubt there were subtler forces at work to postpone the enterprise and to take advantage of the "ground-swell" from the contemporary revulsion against the railways in the United States. It is notable, however, that both land grants and cash subsidies appeared in the Liberal programme of 1874<sup>19</sup>—the cash subsidy at \$10,000 per mile and the land grant at 20,000 acres per mile, in blocks alternating (as in the Conservative policy of 1872) with blocks of government land. Thus while the cash subsidy was less, the land grant per mile within the railway belt was more than half as much again. Neither the financial crisis nor the traditional thrift of the Prime Minister—sitting upon the treasury, as he once expressed it, "with a shot gun"—seems to have impaired the lavish generosity of the government with Dominion Lands or the belief that the railway might still be built "by means of the land through which it had to pass." Unable to attract financial interests to so hazardous an enterprise, the government sought to placate British Columbia by an amphibious system of rail and water communications, to be carried forward, in the last resort, by government contract. The line from Winnipeg to the boundary to connect with the St. Paul, Minneapolis and Manitoba Railway was opened in 1878. A cycle of returning prosperity and the first land "boom" in Western Canada synchronized with the return of the Conservative party to power in 1878, but three years were yet to pass before private interests could be induced to attempt the completion of a transcontinental railway on Canadian soil.

<sup>18</sup> New York *Tribune*, June 24, 1870.

<sup>19</sup> *Statutes of Canada*, 27 Vict., c. 14.

The government reaffirmed from the outset the principle of building the railway "by means of land through which it had to pass." The House approved a grant of "one hundred million acres of land, and all the minerals they contain . . . for the purpose of constructing the Canadian Pacific Railway."<sup>20</sup> Between this resolution of May 10, 1879, and the C.P.R. Act the regulations for administering this princely heritage passed through too many variations to be traced here in detail.<sup>21</sup> Certain tendencies, however, are clearly discernible. In the regulations of July 9, 1879, a railway belt 220 miles in width was divided into nine zones. A central "Belt A" of 10 miles, five on either side of the railway, was to be "absolutely withdrawn from homestead entry, also from pre-emption, and . . . held exclusively for sale at \$6" per acre. On either side of this central zone were four other belts, Belt B of 15 miles, Belt C of 20 miles, Belt D of 20 miles, and Belt E of 50 miles in width. Within these zones the odd-numbered sections were for sale at \$5, \$3.50, \$2, and \$1 an acre respectively. Such were the general plans, rapidly modified in detail from time to time, for government construction of the road, to be financed by land sales before private interests could be induced to undertake the venture.

With the formation of the C.P.R. syndicate a radical change of technique became possible. By the regulations of January 1, 1882, the even-numbered sections throughout the whole range of Dominion Lands—even within the new C.P.R. railway belt of 48 miles—were thrown open for homestead entry, while the odd-numbered sections only were reserved for sale. The odd-numbered sections within the 48-mile railway belt (Class A) went directly to the railway unless rejected and replaced by "indemnity selection" elsewhere. Within 12 miles of any other railway (Class B), or south of the C.P.R. railway belt (Class C), the odd-numbered sections were for sale at \$2.50 per acre; elsewhere (Class D) at \$2.00 per acre. The reservation of the even-numbered sections throughout for homestead entry marked a trend of the first importance. The shifting from the sales basis of land policy towards the free-homestead basis is thus discernible even within the realm of railway land grants. The ultimate advantage to the railway itself was obvious. While the sale and immediate prices of railway lands might be impaired, traffic was after all indispensable; and traffic was to be obtained only from rapid settlement, while rapid settlement could be relied upon in the long run to expedite the sale of railway lands and to enhance their value. Since there were no penalties, as for the Union Pacific, in the form of upset prices for land still unsold three years after the completion of the line, rapid sale of railway lands was not obligatory though it was soon recognized to be in the best interests of the Company. The inconsistency which appeared

\* <sup>1</sup> For a comprehensive list, 1871-1882, see *Sessional Papers of Canada, 1896*, No. 30, i.

<sup>20</sup> *Debates of the House of Commons, Canada, 1879*, p. 1895.



in the United States between the railway land grant system and the free-homestead policy is thus scarcely traceable at all in Canada. In both countries the frontiersman was apt to think in terms of "monopoly" and "land-lock" and "railway reserves", all of which seemed to impair "the right of the frontiersman to free land." But in the United States the railways were inclined to insist upon the sale of intervening government lands within their land grants at prices which should not destroy the market for their own lands. In Canada the railways themselves deliberately championed the free-homestead system once their own vast land reserves were securely safeguarded; and the government also, once the national project of a transcontinental railway was achieved, could move instinctively with the temper of the times towards free land. The Minister of Railways himself stated the case in 1881:

We are free to give away every acre that remains in our possession should the public interest warrant it. No policy did the syndicate press more strongly upon us than that of settling the land as fast as we could. They said we should be only too glad to plant a free settler upon every acre belonging to the Government.

While the administration of C.P.R. lands by the Company lies beyond the scope of this outline, much of it is scarcely more than a commentary upon this radical change of policy. To a degree approached perhaps by no other land agency, it came to integrate itself with the free-homestead and immigration policies of the day and to subserve the interests of the nation in land settlement.

Meanwhile the solemn fiction of building the railway "by means of the land through which it had to pass" survived in politics long after it had been dissipated in practice. Until the main line was completed in 1885 cash subsidies had to be paid and land sales were still supposed to defray the expenditure. Sir John A. Macdonald still assured the House in April, 1882, that "not a farthing of money will have to be paid by the people of Canada." The same fiction was pressed into service also against the first concerted movement for provincial rights in the province of Manitoba. As late as 1885 a Minute of Council repeated the specious doctrine of land revenues for railway construction as a reason for postponing indefinitely any prospect of returning the public lands to provincial control:

In 1880 Parliament solemnly set aside one hundred million acres of those lands towards meeting the cost of the work. . . . It was not to be expected that the lands could be made available to meet a cash expenditure until some time after railway construction was had with and through them; and therefore, the

expenditure in construction and in cash subsidy, may be regarded as an advance, to be repaid from the lands.<sup>22</sup>

The practice in the Department of the Interior, as we shall see, scarcely conformed to the theory, for the sales policy was already in retreat before the free homestead as the staple of Dominion Lands policy. With this forecast of contemporary tendencies to be traced elsewhere in greater detail<sup>23</sup> the charter to the C.P.R. in 1881 may now be examined for the features which made it one of the greatest single measures of land policy in the settlement of Western Canada.

### 7. The C.P.R. Charter

Many of the exceptional features forecast in the original Act of 1872 (35 Vict., c. 71) were confirmed in the final construction of the C.P.R., and several others still more exceptional were added. A few were so profoundly modified that they became almost unrecognizable except to the members of the syndicate and their sponsors in the government.

For convenience of reference the chief features of the Charter of 1881 may be listed in terms of their historical context:

(a) The size of the land grant was exactly half the acreage provided in the Charter of 1872—25,000,000 acres instead of 50,000,000—while the estimated acreage for the Liberal project of 1874 had been 54,000,000 acres. Though substantially less than the 39,000,000 acres granted to the Northern Pacific, the “main line” grant to the C.P.R. was still more than twice as large as the amended grant to the Union Pacific (12,000,000 acres) and nearly seven times the acreage inherited by the Great Northern from the old St. Paul and Pacific.

(b) The location of the grant marked a return, in one sense, to the practice in the United States. It was to be taken up not in blocks, as originally planned in 1872, but in alternate sections—the odd-numbered sections “extending back 24 miles deep on each side of the railway from Winnipeg to Jasper House.” Thus the responsibility for settlement, instead of being divided regionally by alternate railway and government “blocks” ranging from 76,800 to 153,600 acres, was evenly shared piecemeal, in the system of alternate sections, by the government and the railway—the one with the free homestead as the staple of land policy, the other with land

<sup>22</sup> *Sessional Papers of Canada, 1886, No. 61.*

<sup>23</sup> See Chapter V, section 3 and Chapter IX, section 2.

for sale contiguous to each quarter section of free land. The value of this arrangement was appreciated only with the development of dry farming requiring a half section for the best results. Since the railway in the interests of traffic and the government in the interests of rapid settlement were now partners in a common task, it was a happy arrangement for them to advance to its solution *pari passu*.

(c) In another sense the general terms of the grant invited a complete departure from precedent in the United States in allocating the acreage stipulated in the Charter. The fact that the Union Pacific had been built through the "public domain" of the United States made possible the rigid alternation of railway and government sections within a railway belt of fixed dimensions without recourse to "indemnity selection". The C.P.R., on the other hand, had to be built through two provinces—Ontario and British Columbia—in which the public lands were under provincial control, as well as through Manitoba and the North-West Territories where "Dominion Lands" were completely at the disposal of the federal government. The temptation to spare provincial lands and to exploit "Dominion Lands" proved irresistible; with costly results that have fallen in glaring disproportion upon the Prairie Provinces.

The land grants to the C.P.R. were originally authorized on the\* basis of mileage: 12,500 acres per mile for 900 miles, 16,666 $\frac{2}{3}$  acres per mile for 450 miles, and 9,615 $\frac{1}{3}$  acres per mile for 640 miles. From the debates, and indeed from the original Act of 1872 (35 Vict., c. 71, s. 3) it was clear that the Province of Ontario was expected to contribute 9,000,000 acres to the construction of the road; while British Columbia, as we have seen, had agreed to transfer in trust to the Dominion a "similar extent of Public lands along the line of Railway throughout its entire length in British Columbia . . . as may be appropriated . . . from the Public Lands in the North-West Territories and the Province of Manitoba." Neither of these provinces, however, eventually contributed to the C.P.R. land grant,<sup>24</sup> and since the British Columbia railway belt, transferred "in trust" for the construction of the railway, had not been used for that purpose, the province as the *cestui que trust* has since succeeded in recovering from the Dominion not only the unalienated lands in the railway belt but those in the "Peace River Block" which the province had agreed to transfer to the Dominion in 1883 in lieu of lands that were "unfit for settlement"

<sup>24</sup> Except for about 1,300 acres taken up in B.C.

in the railway belt.<sup>25</sup> Thus the "main line" grant of 25,000,000 acres, restricted to alternate sections "from Winnipeg to Jasper House", a distance of approximately 1,040 miles, came to average more than 24,000 acres per mile through the Prairie Provinces, or the equivalent of the odd-numbered sections in a belt of 75 miles. While the main line mileage, therefore, has been over 652 miles in Ontario, nearly 208 in Manitoba, a little over 419 miles in Saskatchewan, nearly 336 in Alberta, and 268 in British Columbia, the land grant thus "earned" by the railway has been selected, 2,183,084 acres in Manitoba, 6,216,784 acres within the present boundaries of Saskatchewan,<sup>26</sup> and 9,805,446 acres within the present boundaries of Alberta.<sup>27</sup> The balance of the "main line" grant—some 6,793,014 acres—was surrendered in 1886 to retire \$9,880,912 (with interest) of the government loan for the construction of the line.

(d) This arrangement was made possible only by a feature of the Canadian system which left its origin in the United States almost unrecognizable. The principle of "indemnity selection" for lands already occupied had been applied in many of the railway land grants made to the public land states, but it was carefully excluded from the federal grants to the Union Pacific and the Northern Pacific during the era of the great transcontinentals. In Canada the practice was permitted not only for lands already occupied or precluded by reservations of school lands, but also under other conditions which altered profoundly the avowed function of "indemnity selection" and indeed of the railway land grant itself as an expedient of railway policy.

Not only was the acreage "earned" on mileage in Ontario and British Columbia selected, as we have seen, in the Prairie Provinces, but the tendency to follow the line of least resistance, to select grants in the territories where no provincial criticism was as yet to be encountered, had results which have accumulated disproportionately in the two provinces most recently organized. Out of 3,630 miles of railways subsidized by more than 31,780,000 acres of western lands, less than 886 miles, or about 24 per cent., were located in Saskatchewan, while more than 15,193,000 acres or nearly half the land grants were selected from that province. No fewer than six land grant railways with no mileage whatever in Saskat-

<sup>25</sup> Out of 14,181,000 acres transferred to the Dominion in the railway belt and the Peace River Block, 12,832,400 acres have been returned to the Province.

<sup>26</sup> Over 6,128,000 acres before the creation of the province in 1905.

<sup>27</sup> Over 8,217,400 acres before the creation of the province in 1905.

Saskatchewan selected from that province over 1,330,000 acres of their land grants.<sup>28</sup> Alberta, which secured 805 miles or over 22 per cent. of the land grant railways was found to have contributed 13,035,572 acres or over 41 per cent. of the land grants.

(e) A second variation of "indemnity selection" became necessary for the blocks of land in which the C.P.R. afterwards developed the largest project in irrigation ever undertaken by private enterprise. In these areas even the Hudson's Bay holdings had to be exchanged in order to ensure uniform management, while the sectional survey itself was modified to meet the needs of the new technique.

(f) A third variation of "indemnity selection" had results still more subversive of the original functions of public lands in railway construction. For the Union Pacific railway belt in the United States in the project of 1864, rigid reservation of the even-numbered sections for government sale or eighty-acre homesteads had been devised to build the railway automatically, so far as lands were involved, from the lands through which it had to pass. By 1881 in Canada the technique, as we have seen, had been profoundly modified. The 160 acre free homestead had invaded even the railway belt, and the C.P.R. syndicate could scarcely be expected to give right of way to the government's free-homestead system without some concern for the ultimate value of their own lands. The charter of 1873 had provided that the Company should "not be bound to receive any lands which are not of the fair average quality of the land in the sections of the country best adapted for settlement." Similarly in 1881 in changing to the "sectional" system of locating the land grant it was provided that "if any such sections consist in a material degree of land not fairly fit for settlement, the Company shall not be obliged to receive the same as part of the grant."

There is little evidence that this stipulation was associated at the time with a new function for railway land grants in the settlement of Western Canada, but the history of C.P.R. lands has since made it clear that a radical change of policy was already under way. If it could be made to pay the railway to administer its lands not for revenue from land sales, but in order to secure traffic for the railway and rapid settlement for the whole region, then a new and national function could be found for railway land grants. The

<sup>28</sup> The Pipestone Extension of the C.P.R., the Calgary and Edmonton, the Alberta Railway and Irrigation Company, the Saskatchewan and Western, the Manitoba and Southwestern Colonization Railway, and the Manitoba and South Eastern.

rival crop of "colonization railways" projected during the eighties was a forecast of this doctrine, and it may fairly be said that the C.P.R. itself has discharged this function with conspicuous success. Proceeds from land sales have gone not into dividends, but into development; the price per acre for C.P.R. land sales, despite the widest range of "indemnity selection", has been distinctly lower than that for school lands, or Hudson's Bay lands, or many other classes of lands administered for purposes of revenue only. Without anticipating the discussion of policy in later chapters, the range of "indemnity selection" must be credited with results which are not to be measured in terms of cash proceeds to the railways.

(g) In the application of the system, however, there were features which invited uncompromising criticism. The principle of "indemnity selection" may have been defensible in the House but its application was left to Orders-in-Council and other forms of administrative regulation, where a measure of mutual accommodation, sometimes after violent conflict with rival interests, was the order of the day. The general public, knowing little of these devious proceedings, suspected the worst. Time limits for railway construction or the selection of land grants were seldom enforced or enforceable.<sup>29</sup> More than twenty statutes, authorizing railway land grants to no fewer than ten companies within a single decade, introduced a welter of rival projects into the field. Rival companies, frequently representing not only rival financial interests but opposite camps in party politics, were sometimes in a position to block the development of rival railways as well as expedite their own. The reservation of vast areas pending the final selection of sections "fairly fit for settlement", led railway after railway into regions remote from their own main line or branch line developments. Every prospective move in land settlement became a "battleground for giants". As the larger companies began to devour the small ones and to appropriate their land grants, rival systems bestrode the whole region like a Colossus and divided the community into rival camps.

Long before the era of railway land grants had definitely come to an end eligible reserves of land "fairly fit for settlement" had been explored in all directions. It became obvious at once that the main line "48-mile belt" of the C.P.R. with its southern route and prairie mileage of less than 1,050 miles "from Winnipeg to Jasper House" could supply but a limited acreage of the land

<sup>29</sup> "Never in one single case lived up to." P. A. Gordon, K.C., before the Sask. Res. Commission.

grant. The selection of 25,000,000 acres in odd-numbered sections contiguous to the main line would have required a belt not of 48 but of 75 miles of agricultural lands uniformly "fit for settlement". The first Northern Reserve, set aside by Order-in-Council as early as 1882, included a vast district on the Saskatchewan which became the most productive agricultural area perhaps in Western Canada. The eastern sections of this reserve with land grants of some 6,800,000 acres were surrendered in 1886 to retire the Company's indebtedness to the government, but subsequent reserves were located south of the main line belt in Manitoba (1882 and 1883), in the Lake Dauphin area (1895), as far north as Edmonton (the second Northern Reserve, 1896), and eventually the solid block in Alberta between Calgary and Medicine Hat where the largest project in irrigation ever undertaken by private enterprise was launched in 1903.

Meanwhile no fewer than ten colonization railways had entered the field with chartered land grants between 1884 and 1893. By this time, it would be fair to say, the Canadian system of "indemnity selection" had carried railway land grants far beyond the boundaries of immediately prospective settlement. Within these vast reserves the odd-numbered sections that were "fairly fit for settlement"—nearly half the agricultural land then available in Western Canada—had passed, or were destined, when finally located, to pass into the administration of the railways.

The prototype of the Canadian land grant railway was by far its greatest beneficiary. Though surrendering 6,793,014 acres, as we have seen, in 1886, the C.P.R. retained 18,206,985 acres from its "main line" grant, and procured additional grants of 1,408,704 acres for the Souris Branch (1890-1891) and 200,320 acres for the Pipestone Extension (1894). The last of these was also the last formal grant under the Canadian railway land grant system. In its own name therefore the C.P.R. acquired and retained 19,816,009 acres of Dominion Lands. It also acquired technically the reversion to more than 6,000,000 acres through amalgamation or some other form of association with no fewer than six of its land grant contemporaries: the Alberta Railway and Coal (afterwards "Irrigation") Company with original net railway land grants of 1,101,712 acres, the Calgary and Edmonton with 1,820,685 acres, the Great Northwest Central with 320,000 acres, the Saskatchewan and Western with 98,880 acres, the Manitoba and North-Western with 1,501,376 acres, and the Manitoba and Southwestern Colonization

Railway with 1,396,800 acres. Original C.P.R. grants of 19,816,009 acres and the reversion to 6,239,453 acres from other lines, 26,055,462 acres in all, thus found their way into the orbit of the C.P.R., out of a total net area of 31,783,654 acres of railway land grants from Dominion Lands.<sup>20</sup>

(h) Many other contrasts might be cited with the land grant transcontinentals in the United States. Crown patents for the C.P.R. "main line" grants were issued without reservation of mineral or other rights except for "navigable waters". Those for the Souris Branch, the Calgary and Edmonton, and other land grant railways after a federal Order-in-Council in 1889, reserved mining and mineral rights, but a leading case carried to the Privy Council by the Calgary and Edmonton Railway resulted in the cancellation of these reservations, and the successful reservation of gold and silver only.<sup>21</sup> Patents to other land grant railways reserved "navigable waters" and "fisheries". The national charter of the C.P.R. was seen in the "monopoly clause" which forbade the construction of any other line running northwest and southeast within fifteen miles of the United States boundary. The monopoly clause was safely surrendered in 1888 but not without a contest in Manitoba which threatened the local interests of the Company.

Parallel to the outcry against "monopoly" ran the protest against exemption from taxation "forever"; while the land grants were exempt for twenty years "after the grant thereof from the Crown."<sup>22</sup> Delay in locating the grants "fairly fit for settlement" from the vast railway "reserves", and delay on the part of purchasers in taking out their patents, exempted both railway and purchaser from local taxation, until the Province of Saskatchewan could advance claims before the Resources Commission in 1934 for losses of more than \$2,500,000 in taxes. The claims were "not pressed to a conclusion" but the computation (at the average rate of 19.1 cents per acre) will indicate the range of acreage and time involved in the practice. More than 95,000 acres patented as late as 1928-1929 had been exempt from taxation for twenty-one years.

<sup>20</sup> Compiled by the Department of the Interior from the Railway Land Subsidy Registers. See the C.P.R. system out of a total of 31,781,596 acres. See below, Table III, pp. 280f.

<sup>21</sup> For the Calgary and Edmonton case see below pp. 289f.

<sup>22</sup> *Statutes of Canada*, 44 Vict., c. 1, s. 16 of the Schedule.



upon the function of the land grant, and both stand in sharp contrast to the practice in the United States. In addition to a direct cash subsidy of \$25,000,000 and the land grant of 25,000,000 acres, the government agreed to turn over to the Company free of charge the sections already completed or under construction at a cost of \$35,000,000, including the Pembina branch in Manitoba, the Lake Superior section in the east, and the Kamloops-Port Moody section in British Columbia. The cost of government surveys had been \$3,500,000. A government loan of \$29,880,000 was made in 1884 and a final loan of \$5,000,000 in 1885 at a time when the fortunes of the Company were so near the breaking-point that George Stephen himself was ready to "give up the ghost". More than \$98,000,000 of government capital in subsidies and loans thus went into the building of the road in addition to the land grant of 25,000,000 acres.

The vicissitudes of the C.P.R. from 1881 to its completion in 1885 have passed into tradition, and it is unnecessary to recount them here. Beyond a doubt, however, the desperate straits of 1885 were matched by the faith of the original promoters in the ultimate solvency of the line, and the land grant was a very important ingredient in that faith. While less than \$12,000,000 appear to have been raised by the sale of town sites and land grant bonds during the actual building of the road, the financing of the railway during the lean years of the eighties and early nineties must have responded to the security of the Company's lands. The C.P.R. issue of \$15,000,000 in 1888, for instance, was guaranteed by the government on the security of unsold lands and in return for the surrender of the "monopoly clause". Fortunately the C.P.R. was built not as a contractors' road for profits on construction as in the Union Pacific, but for its ultimate value as a railway. The bonded indebtedness was kept low. Subsequent land sales, as we shall see, were subordinated to rapid settlement, expanding traffic, and the permanent prosperity of the pioneer. Measured by results it would be hard to find any category of Dominion Lands which subserved more effectively the best interests of the nation in land settlement.

The range, nevertheless, of cash subsidy, land subsidies, loans, completed railway in 1881 presented free to the Company, "monopoly clause", tax exemptions, free surveys, and other perquisites accorded to the C.P.R., may fairly be taken as an index of the national emergency. The Minister of Railways himself stated the case with characteristic candour: "Are the interests of Manitoba

and the North-West to be sacrificed to the interests of Canada? I say, if it is necessary, yes."

The C.P.R. is the only one of the great transcontinentals which has never gone into the hands of a receiver; and its function, as we shall see, will stand comparison with that of the government itself in the permanent development of the Canadian West.

### Colonization Railways

Grants to colonization railways formed an important part of the railway land grant system. However, having regard to the digest of this study, it is difficult to decide the extent to which this aspect of the settlement of Alberta should be discussed. For the present, I have selected two important Alberta colonization railways as deserving of comment. The Calgary and Edmonton Railway (because of the landmark case decided concerning mines and miners) and the Alberta Railway and Irrigation Company.

Hedges at p. 105 wrote about Calgary and Edmonton R.R. thus:

Among the last of the colonization railways to be projected was the Calgary and Edmonton, connecting the two most important points on the Prairie west of Winnipeg and opening up one of the choice portions of the western country. Prominent among the promoters of this enterprise were Edmund B. Osler and Herbert C. Hammond, who were also actively connected with the Qu'Appelle and Long Lake Company. By the charter, the Calgary and Edmonton Company was empowered to build a line between the two towns, with extensions to the Peace River on the north and to the International boundary on the south.<sup>108</sup> Provision in the charter for leasing or conveying the property to the Canadian Pacific suggests the possibility that from the beginning the Calgary and Edmonton had been intended as a branch line of the former company.

Shortly after the incorporation of the Company, the usual land grant of 6,400 acres per mile was authorized, the land to be located within a belt of twenty-two miles on each side of the line of railway.<sup>109</sup> While the

<sup>108</sup> *Statutes of Canada*, 53 Victoria, Cap. 84.

<sup>109</sup> *C. C. No. 1655*, June 1900.

Order in Council providing for the subsidy contained no "fit for settlement" clause, subsequent Orders scheduling the lands to the Company specified that they must be of such character. Although the creation of the twenty-two-mile belt along the railway line indicated an attempt to confine the land grant to the region tributary to the railway, as with virtually all the other subsidies, it soon became necessary to reserve other lands to supply the deficiency in the tract first set apart, a deficiency considerably increased by the fact that the twenty-two-mile belt passed through the forty-eight-mile belt of the Canadian Pacific and through the block reserved for the latter company north of the 52nd parallel.<sup>110</sup> For the most part, however, the additional areas were reasonably close to the railway line, in marked contrast with the remote reservations of other companies.<sup>111</sup>

As in the case of the Qu'Appelle, Long Lake, and Saskatchewan, the Government, in order to facilitate the Company in making necessary financial arrangements, agreed in 1890 to pay \$80,000 annually to the railway for transport of mails, men, materials, and supplies; and by way of indemnity, should the services not amount to the sum paid, the Government retained 407,402 acres of the land grant—the lands thereafter being known as the Calgary and Edmonton security lands.<sup>112</sup> When in 1903 the Canadian Pacific purchased control of the Calgary and Edmonton, the former became the successor to the interest of the latter company in the indemnity lands.<sup>113</sup> This area was administered by the Land Department of the Canadian Pacific, while the balance of the 1,888,448 acres earned by the Company was conveyed to the Calgary and Edmonton Land Company.<sup>114</sup>

<sup>110</sup> O. C. No. 1979, July 8, 1893.

<sup>111</sup> O. C. No. 2787, Nov. 19, 1891, and O. C. No. 1979, July 8, 1893.

<sup>112</sup> *Statutes of Canada*, 53 Victoria, Cap. 5 (1890). This agreement was to run for twenty years.

<sup>113</sup> H. C. Hammond, President, Calgary and Edmonton Ry. Company, to J. S. Turriff, Commissioner of Dominion Lands, November 6, 1903. File 234347-7.

<sup>114</sup> Osler, Hammond and Nanton, Agents, Calgary & Edmonton Land Company, to Secretary, Department of the Interior, April 28, 1905. File No. 234347-8.

Later, at p. 115, he discussed the case:

If the foregoing discussion has conveyed the idea that in the administration of railway land subsidies the interests of the railways frequently took precedence over those of the Government, that impression is likely to be strengthened by an examination of the policy with reference to mines and minerals. Some of the land granted as subsidies to the railway companies was valuable for the mineral wealth it contained. Particularly was this true of the grant to the Calgary and Edmonton Railway, which was rich in deposits of coal, oil, and natural gas. While the rights of the Crown to lands abounding in gold and silver had been protected from the beginning, the policy with regard to those containing the baser metals had been less clear. Finally, in 1889, regulations were issued by which the patents from the Crown for lands in Manitoba and the Northwest Territories reserved to the Crown all mines and minerals, with power to work them.

Since most of the subsidies ultimately earned had been authorized prior to the adoption of this rule, the reservation, of course, could not be wholly effective in respect to those grants. The grant to the Calgary and Edmonton, however, was made subsequent to the ruling, and, when the Company claimed all mines and minerals, gold and silver excepted, the Government promptly pointed out that this was contrary to the regulations. There followed litigation, which the railway carried through the Supreme Court of Canada to the Judicial Committee of the Privy Council, where, on August 5, 1904, the decision of the Supreme Court was reversed.

In thus sustaining the contention of the railway, the Privy Council observed that "regulations relating to Crown lands reserved for sale or homesteads, have no application to the lands reserved for the totally different purpose . . . of subsidies for public works. . . . The lands in question are Dominion lands until parted with, but they cease to be so when granted to the Company; and none of the regulations relating to settlement, use and occupation of Dominion lands have any bearing on the present controversy. . . ."<sup>142</sup>

<sup>140</sup> *Statutes of Canada*, 1 Edward VII, Cap. 83 (1901).

<sup>141</sup> O. C. No. 1434, August 22, 1903.

\* <sup>142</sup> For all the documents in this case, see File No. 234347-8.

This decision enunciated a principle of far-reaching importance, of which other companies quickly took advantage. When later in the same year, therefore, the Canadian Pacific insisted upon the application of the principle to their Souris Branch, with the Pipestone Extension, the Department of Justice had no other alternative than to accede to the demand.<sup>143</sup>

As in the United States, so in Canada, railway land subsidies were at first hailed with delight, had their day, served their purpose, and ultimately called forth

<sup>143</sup> E. L. Newcombe, Deputy Minister of Justice, to Secretary, Department of the Interior, November 16, 1904. File No. 775871.

Martin made the following comments about the case at p. 289:

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One feature of the C. and E. land grant supplied a notable "leading case" of general application to the whole Canadian system of contemporary railway land subsidies. Up to 1889, patents to Dominion Lands contained no valid reservation to the Crown of mines and minerals, though prerogative rights to gold and silver were claimed and successfully vindicated. After the land regulations of September 17, 1889, however, Crown patents issued for railway lands as well as other categories specifically reserved mines and minerals.<sup>18</sup> The statutory grants to the C. and E., being subsequent to these regulations, were regarded by the Dominion as entitled only to the regular form of Crown patent.

The shrewd officials of the Company—and particularly E. B. Osler of the Calgary and Edmonton Land Company—thought otherwise. The case went against the Company in the Alberta courts; and the Supreme Court of Canada, which was evenly divided, failed to reverse the finding. The Judicial Committee of the Privy Council, however, drew a clear distinction between lands "granted as a subsidy, i.e., by way of bounty" and "Crown lands reserved for sale, or homesteads." The former "when granted to the Company" ceased to be "Dominion Lands" and were therefore subject not to the general Dominion Lands Act of 1886 and land regulations of 1889 but to the statutory railway land

grant (53 Vict., c. 4) and the subsequent Order-in-Council (No. 1655, 1890) as the "governing documents" of the case.

As a result of this decision supplementary patents to include mines and minerals other than gold and silver became necessary not only for the C. and E. but for the other contemporary land grants to the Canadian Northern and the Souris Branch and Pipestone Extension of the C.P.R.<sup>19</sup> Throughout the whole range of the Dominion railway land grant system, therefore, both surface and mineral rights (other than gold and silver) have come to be recognized in an area almost as large as England—more than 31,750,000 acres—in the attempt to build the railways of a frontier community by means of the land through which they had to pass.

\* <sup>19</sup> "An earlier Order-in-Council of the 31st October, 1887 . . . was never duly promulgated, and . . . should be disregarded." The Privy Council in the Appeal of the Calgary and Edmonton Railway Co., v. the King, Aug. 5, 1904.

Later at p. 323, he added the following comments:

The Calgary and Edmonton which was originally projected from the Peace River district to the international boundary had at least one virtue as a "colonization railway": its acreage was selected almost exclusively from the province which it was supposed to serve, and the bulk of it "within 22 miles of the line of railway on each side thereof". Its function as a subsidiary of the C.P.R. was authorized by statute (53 Vict., c.5) from the outset, and it was built with almost phenomenal regularity and despatch within the space of sixteen months from the date of the land grant. Much of this, no doubt, was due to its association with the C.P.R., and the completion of the line was financed by an issue of C.P.R. debenture stock. There can be no doubt, moreover, that financial support in Great Britain was attracted very largely by the prospects of the land grant. It was the shrewd administration of the C. and E., as we have seen, that defeated the reservation of mines and mineral rights in the crown patents issued by the Department of the Interior. The C.P.R. was a beneficiary of the same "leading case" in respect of its Souris Branch and Pipestone Extension land grants. In truth, it is not easy to surmise where the resourceful counsel of E. B. Osler began and where it was supposed to end. The C. and E. lands were administered by a subsidiary of the railway company—the Calgary and Edmonton Land Company, with the firm of Osler, Hammond, and Nanton as their accredited agents. The gross average price per acre was not conspicuously high—about \$6 per acre—but the district was so largely semi-arid that provision had to be made by Order-in-Council<sup>12</sup> for the location of much of the C. and E. land grant in "alternate townships" in order to conform to the prevailing ranching interests of the district. Grazing leases over this area were terminated by the government in an accommodation between the ranchers and the railway, by which the railway land grant was disposed of to the former leaseholders at prices ranging from \$1 to \$1.50 per acre. The Bar U and Cochrane ranches, and several others equally prosperous in the same district, thus solved one of the perennial problems of the

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rancher, and secured permanency of tenure for a very stable and profitable enterprise.

The Qu'Appelle, Long Lake and Saskatchewan line, though directed by the same financial interests and operated, in fact, during the most critical years of its existence, by the C.P.R., was not so successful in its contest with the Department for eligible reserves. Like the C. and E., it had owed much of its financial support in Great Britain to the promise of its land resources. Like the C. and E., too, it located its land grant in the province, and indeed in the district, which it was supposed to serve. What the result of its suit in the Exchequer Court would have been had it gone to the Privy Council can only be surmised. Incorporated as early as 1883, and endowed with its first statutory land grant two years later, the Company belonged to an earlier generation, so to speak, than the C. and E., and its experience was no doubt useful to its junior associate.

The most distinctive feature of the Qu'Appelle, Long Lake and Saskatchewan land grant, perhaps, was its association with the Saskatchewan Valley Land Company. The wrangle over eligible land reserves had reached its acutest stage, with little prospect of a satisfactory settlement by the suit in the Exchequer Court, when the land company appeared upon the scene and turned what was supposed to be a semi-arid desert, shunned by settler and speculator alike, into one of the most productive districts in Western Canada.

It must be conceded that the railway company had tradition and physiography, as it seemed, upon their side in their contest with the Department. Out of a total land grant of a little more than 1,625,000 acres, the Company had accepted 128,000 acres, and about 500,000 acres had been retained as "security lands" for the performance of the usual mail and transportation contracts with the government. The contest turned upon the location of the remaining million acres, or less; and the Qu'Appelle, Long Lake and Saskatchewan Land Company of London, England—a subsidiary of the railway in administering the land grant—was prepared at one stage to accept a cash settlement of \$1.50 per acre from the government for the surrender of its claims.<sup>12</sup>

<sup>12</sup> No. 1655, June 27, 1890.

<sup>13</sup> The Solicitor for the Company offered orally to accept \$1.25 per acre.

I include the headnote to the case: [1940] A.C. 765

[PRIVY COUNCIL.]

CALGARY AND EDMONTON RAIL- WAY COMPANY AND ANOTHER . . . }	SUPPLIANTS;	J. G. *
		1904
AND		July 20;
THE KING . . . . .	RESPONDENT.	Aug. 5.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

*Canadian Act (53 Vict. c. 4)—Orders in Council thereunder—Construction—  
Grants thereunder include Mines and Minerals.*

*Held*, that the appellant railway company, being entitled under Canadian Act 53 Vict. c. 4 and an Order in Council made in pursuance thereof to grants of Dominion lands as a subsidy in aid of the construction of their railway, were entitled to them without any reservation by the Crown of mines and minerals except gold and silver. The Dominion Lands Act, 1886, and the Regulations of 1889 thereunder, which prescribe a reservation to that effect, do not apply. They relate only to the sale of Dominion lands and to the settlement, use, and occupation thereof. The grants in question were not by way of sale.

The following commentary on the Alberta Railway and Irrigation Company seems sufficient for our purposes: (Hedges pp. 87-95)

Of the various colonization railways probably none was of greater interest or importance than the Alberta Railway and Irrigation Company, which began as a coal-mining venture. At an early date coal had been found at the site of the present Lethbridge, Alberta, and while Sir Alexander T. Galt was Canadian High Commissioner in Great Britain he conceived the idea of mining the coal and transporting it by water to Medicine Hat, in what is now southeastern Alberta. With this in view, in 1882 the Northwest Coal and Navigation Company was chartered in England, with William Lethbridge as president and Elliott T. Galt as manager. It soon became apparent, however, that the idea of steamers pushing coal barges over the sand-bars of the treacherous prairie rivers was most impractical, and that the streams which had been so well adapted to the bateau of the fur-trader were entirely unsuited to the more prosaic purposes of modern in-



dustry. In 1883, therefore, Sir Alexander and his associates proposed that they build a railway from Lethbridge to Medicine Hat. Such a line, they alleged, was justified by the assured traffic in coal,<sup>45</sup> and by the prospect that the road would be the means of diverting to the Canadian Pacific the cattle and mining trade of Montana Territory in the United States.<sup>46</sup> By way of assistance in the execution of their plan, the promoters asked that they be permitted to purchase land at the usual rate of \$1 per acre. Since the railway was to be a narrow gauge affair, provision was made for the sale to the Company of only 3,840 acres per mile, to be found in odd-numbered sections within a belt of six miles on each side of the line.<sup>47</sup> In 1885 the option to purchase the land at \$1 an acre was transformed into a free grant of 3,800 acres per mile,<sup>48</sup> later increased to 3,840 acres.<sup>49</sup> An Act of Parliament in 1889 further increased the grant by 2,560 acres per mile for the 109½ miles between Dunmore and Lethbridge.<sup>50</sup> In the same year the group which was promoting this enterprise was incorporated as the Alberta Railway and Coal Company, authorized to construct a railway from a point near Lethbridge to the international boundary, and to acquire the Northwest Coal and Navigation Company.<sup>51</sup> A land grant not exceeding 6,400 acres per mile was authorized for this line to the boundary, a distance of 64.62 miles.<sup>52</sup>

The Alberta Railway and Coal Company absorbed the Northwest Coal and Navigation Company in 1891,<sup>53</sup> and with the growth of interest in irrigation in the southern Alberta country the sponsors of this company organized themselves, first as the Alberta Irrigation Company, and later as the Canadian North-West Irrigation Company. The corporate develop-

<sup>45</sup> O. C. No. 2147, October 19, 1883. In the memo of the Minister accompanying the Order in Council, the proposals of Sir Alexander Galt are set forth.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.* The Company might also purchase 10,000 acres of coal lands, at the western terminus of the line, at \$10 per acre.

<sup>48</sup> *Statutes of Canada*, 48-49 Victoria, Cap. 60 (1885).

<sup>49</sup> *Ibid.*, 50-51 Victoria, Cap. 22 (1887).

<sup>50</sup> *Ibid.*, 52 Victoria, Cap. 4 (1889).

<sup>51</sup> *Ibid.*, 52 Victoria, Cap. 50 (1889).

<sup>52</sup> *Ibid.*, 52 Victoria, Cap. 4 (1889), and 53 Victoria, Cap. 3 (1890).

<sup>53</sup> See Preamble to 54-55 Victoria, Cap. 77 (1891).

ment of these various companies was completed in 1904, when the Alberta Railway and Coal Company, the Canadian North-West Irrigation Company and the St. Mary's River Railway Company were incorporated in a new organization known as the Alberta Railway and Irrigation Company.<sup>54</sup>

This Company earned a land subsidy of more than 1,000,000 acres by virtue of lines built by its predecessors, the precise figures being:

	<i>Acres</i>
North-West Coal and Navigation Company	
(First) Subsidy: Dunmore to Lethbridge, 109½ miles at 3,840 acres per mile. . . .	420,480
(Second) Subsidy: Dunmore to Leth- bridge, 109½ miles at 2,560 acres per mile . . . . .	280,320
	<hr/> 700,800
Alberta Railway and Coal Company	
(Third) Subsidy: Lethbridge to inter- national boundary, 64.62 miles at 6,400 acres per mile . . . . .	413,568
Total . . . . .	<hr/> 1,114,368

The subsidy of the Company is of more than ordinary significance in relation to the Dominion policy of railway land grants. Unlike the other bounties, that of the Alberta Railway and Irrigation Company contained no stipulation that the lands must be "fairly fit for settlement." Just why that clause should have been omitted is not entirely clear. Perhaps it was because of the assumption that a company so peculiarly identified with the semi-arid portions of the West must necessarily accept lands not suited to ordinary types of farming. Perhaps the interest of the Company in coal-mining, grazing, and irrigation rendered attractive to it lands which did not fall in the category of "fit for settlement." Of even greater interest is the fact that it was in this subsidy that the Canadians first departed from the alternate section method of allotting railway lands, and began to adapt their policy to the needs of particular areas—a departure which, as we have seen, was carried far in the final arrangement with reference to the main line grant to the Canadian Pacific.

<sup>54</sup> *Ibid.*, 4 Edward VII, Cap. 43 (1904).

The Company soon discovered that, although the land for six miles on each side of its line from Dunmore to Lethbridge was reserved for it, the odd-numbered sections therein could not be obtained because they were included in the forty-eight mile belt of the Canadian Pacific—an interesting commentary upon the confusion and lack of planning which so frequently attended Dominion land subsidy policies.<sup>55</sup> It became necessary, therefore, to reserve lands farther to the south and more remote from the railway. Moreover, for lands primarily suited to grazing, the alternate section proved too small a unit to be disposed of advantageously. The Company asked, therefore, that 100,000 acres of the subsidy be conveyed to it in alternate townships rather than in sections, and that in the case of townships fronting on rivers the latter should be the boundaries of the grant.<sup>56</sup> The Hudson's Bay Company was prepared to cooperate in such a consolidation by accepting its lands in that area in compact blocks,<sup>57</sup> and of course the Government could take similar steps with reference to school lands. As there was then an active demand for land in large tracts for grazing purposes, it seemed that the disposition of both railway and government lands in the sub-humid region would be facilitated by setting them apart by townships.<sup>58</sup> When the seal of government approval was placed upon the plan, the first step was taken in the conveying of subsidy lands *en bloc*.<sup>59</sup>

Meanwhile, the growth of irrigation in southern Alberta was preparing the way for further modification

<sup>55</sup> O. C. No. 1033, May 26, 1885.

<sup>56</sup> O. C. No. 1945, October 19, 1885. The Act 56 Victoria, Cap. 4, gave the Governor in Council power to grant railway land subsidies wholly or in part by townships.

<sup>57</sup> O. C. No. 1945, October 19, 1885.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

of the original subsidy policy. Both the Government and the Alberta Railway and Coal Company had become interested in the possibilities of irrigation from the St. Mary's River, and in the summer of 1895 the Department of the Interior had made extensive surveys with reference to a canal for that purpose.<sup>60</sup> It was the consensus of opinion at that time, however, that irrigation on a scale which would secure maximum utilization of the water supply would have to be undertaken either directly by the Government or with some form of governmental encouragement.<sup>61</sup> With millions of acres available in the humid portions of the West, it was unlikely that the Government would attempt such a work at that time. There was the danger, however, that with delay, a number of small and wasteful irrigation projects might be constructed, thereby consuming the water and leaving a large part of the region incapable of irrigation. When, therefore, in 1895 the Alberta Railway and Coal Company made known its desire to have a portion of its lands consolidated into a block of some 500,000 acres, and expressed a willingness to proceed with the construction of irrigation works, it seemed wise for the Government to facilitate so far as possible such a plan.<sup>62</sup> With this in view, an arrangement was effected whereby, through an exchange of townships and parts of townships containing about 247,000 acres, a compact block of the desired size was obtained.<sup>63</sup>

In the face of the depressed conditions of the time the Company at first found it impossible to obtain the means necessary for reclaiming the arid lands. With the first improvement in the business situation, however, officials of the company went to Salt Lake City, where they entered into negotiations with the leaders of the Mormon Church.<sup>64</sup> The belief was that could arrangements be made with Mormon settlers for colonizing the lands, the means might then be found for financing an irrigation program. After numerous conferences a contract was made. The Mormons were

<sup>60</sup> C. A. Magrath, Alberta Railway and Coal Co., to T. M. Daly, Minister of the Interior, October 17, 1895, File No. 172441, in which he refers to the surveys.

<sup>61</sup> Memo by T. Mayne Daly, Minister of the Interior, November 16, 1895, with O. C. No. 207, January 18, 1896.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> E. T. Galt to Clifford Sifton, December 15, 1897, File No. 172441-2.

to construct the canal system, payment for their labor to be half in cash and half in land at \$3 per acre.<sup>65</sup> In consideration of the expense to be incurred in establishing the first settlers, the Company asked for a remission of the survey fee of \$.10 per acre, a request which was readily granted by Ottawa, on the condition that within three years the Company should expend not less than \$200,000 upon the work of reclamation.<sup>66</sup>

The project was pushed with vigor, and, as the canal system approached completion, the Company became desirous of effecting a further consolidation of the lands, with a view to bringing a larger portion of them within reach of the irrigation system. The Government looked with favor upon this proposal, too, and by further exchanges of townships the bulk of the lands of the Alberta Railway and Coal Company were made available *en bloc*.<sup>67</sup>

As the ambition of the Company grew, plans were evolved for the enlargement of the irrigation system. To this end the Government was asked to sell to the Company 500,000 acres of land at the price of \$3 per acre, the figure named by the regulations for the disposal of lands for reclamation purposes.<sup>68</sup> The proposal was that the Company should be allowed a credit of \$.60 per acre on account of previous expenditure for irrigation, and a credit of \$1.40 an acre on account of the additional cost of extending the irrigation facilities, leaving a balance of \$1 per acre—a total of \$500,000—to be liquidated in ten equal annual installments.<sup>69</sup> This plan, approved by the Government, enabled the Company to acquire control of the area commonly known as the 500,000 acre tract of the Alberta Railway and Irrigation Company.<sup>70</sup> The agreement stipulated that the Company should not charge more than \$5 per acre for this land and that any portion of the tract not sold within fifteen years should revert to the Crown.<sup>71</sup> This provision was evidently intended to prevent deliberate holding of the land with a view to appreciation in value, and it undoubtedly contemplated the sale of the land to actual settlers. Like so many government documents, how-

<sup>65</sup> *Ibid.* There is a copy of the contract attached to O. C. No. 3502, January 6, 1898.  
<sup>66</sup> *Ibid.*  
<sup>67</sup> O. C. No. 1905, August 17, 1900.  
<sup>68</sup> O. C. No. 1838, December 12, 1902.  
<sup>69</sup> *Ibid.*  
<sup>70</sup> *Ibid.*  
<sup>71</sup> *Ibid.*

ever, this one was not sufficiently precise and definite to preclude the possibility of conflicting interpretations.

Prior to the expiration of the fifteen-year period the Canadian Pacific acquired control of the Alberta Railway and Irrigation Company through the purchase of a majority of the shares of the capital stock. The two companies remained entirely distinct and separate, however, and in the early part of 1917 the unsold portion of the 500,000 acre tract was conveyed to the Canadian Pacific.<sup>72</sup> When the bona fides of this alleged sale, and its consonance with the spirit of the stipulation in the agreement of 1902, were challenged by the Department of the Interior, the Deputy Minister of Justice, while agreeing that the limitation upon the price of the land was designed to benefit the actual settler rather than the speculator, declared that it was impossible to impart to the clause a condition requiring that the land be sold within the limited period to actual settlers.<sup>73</sup> He was not prepared, therefore, to dispute the legality of the sale to the Canadian Pacific. History offers few better illustrations of clear conformity with the text of the law while doing violence to its spirit.

Few, if any, of the secondary railways showed more promise in the beginning than the Manitoba and North-Western, which began as a Manitoba corporation, under the name of the Westbourne and North-Western Railway.<sup>74</sup> In 1882 the Dominion Parliament declared the projected railway a work of general advantage to Canada, endowed it with a Dominion charter, and changed the name to the Portage, Westbourne, and North-Western Railway Company.<sup>75</sup> The following year the road was acquired by men reported to possess exceptional facilities for directing European immigration to the lands along the railway, and so successfully was this fact exploited in the plea for governmental bounty, that the Company was promptly permitted to

<sup>72</sup> E. W. Beatty to E. L. Newcombe, Deputy Minister of Justice, July 13, 1917, File No. 3820437.

<sup>73</sup> E. L. Newcombe, Deputy Minister of Justice, to Controller, Land Patents Branch, Department of Interior, July 16 and November 27, 1917. File 3820437.

<sup>74</sup> 43 Victoria (Man.), Cap. 41.

<sup>75</sup> *Statutes of Canada*, 45 Victoria, Cap. 80 (1882).

purchase 6,400 acres of land per mile for the entire distance from Portage la Prairie to Prince Albert, the price to be the usual one of \$1 per acre.<sup>76</sup> Shortly afterwards the name was again changed—this time to the Manitoba and North-Western Railway Company of Canada.<sup>77</sup>

Construction of the first eighty miles of the line proved costly, resulting in an expenditure of \$1,600,000. Difficulty was experienced in selling the bonds of the railway, and although the Company was certain that the enterprise would be a profitable one ultimately, since the territory tributary to the line was already well settled by people who had gone into the territory in anticipation of the construction of the Canadian Pacific by the northern route, it was faced with the immediate need of raising funds. Accordingly, it asked that the right to purchase land at \$1 per acre be converted into a free grant.<sup>78</sup> The request

<sup>76</sup> O. C. No. 624, March 15, 1883.

<sup>77</sup> *Statutes of Canada*, 46 Victoria, Cap. 68 (1883).

<sup>78</sup> O. C. No. 1916, October 4, 1884.

There are of course many other sub-topics which form a part of the study of the railway land grant system. These are of course too numerous to be mentioned here. However, the following three topics are deserving of comment.

- I. Advertising the West
- II. Land Boom on the Prairies
- III. The Irrigation Project

A brief discussion of each of the above topics follows in an attempt to present a clear enough understanding for our purposes.

#### Advertising the West:

The concept of actively advertising the West in both Europe and Eastern Canada, originated at the time

Alexander Begg was, General Emigration Agent of the railway. His methods of advertising included pamphlets about the west (i.e. two 1885 publications were "Plain Facts" and another one called "Practical Hints from Farmers in the Canadain Northwest".) This program of seeking settlers saw the C.P.R. set up a London office which was to form the centre or core of their campaign in England. Within a short time the company also appointed W.G. Toe Laer, under Begg's London office, as supervisor of immigration work for the C.P.R. in continental Europe.

Archer Baker took over from Begg and in the late eighties and early nineties expanded and perfected the work organized by Begg. Some key aspects or techniques employed were:

1. window displays of Canadian paintings and photographs were constantly circulated about the country
2. use of a Travelling Exhibition Van
3. large amounts of literature was sent to schools to educate the children about the wonders of the West. Baker was convinced that the school child today was the emigrant of tomorrow.
4. "Return Men" system--employed with overseas immigrants, as well as those from Eastern Canada.

I include a short excerpt from Hedge's book, Building the Canadian West, which sets out quite clearly the techniques employed by the C.P.R. in its endeavors to induce settlement in the West. (pp. 94-106)



## ADVERTISING THE WEST

AS THE largest private owner of land in the West, the Pacific Syndicate assumed, with the Dominion Government, the leading rôle in the promotion of immigration to the prairie and just as the land policy it first adopted showed the influence of American experience, so its early immigration work was based on the example of American railways. Although no less a part on the particular views they entertained on the matter of authority for building the Canadian West. Their knowledge of qualification for building the Canadian West. This evidence as to the particular views they entertained on the matter of recruiting settlers for the Canadian West. Their knowledge of American conditions, however, seems to have told them that for the moment no important movement of settlers from the United States could be expected. The middle western states were as yet immigrant-consuming rather than immigrant-producing areas. This fact, combined with the natural desire of a Canadian syndicate to concentrate upon the British Isles and eastern Canada as the chief people a British Dominion with British people, caused them to Little time was lost in launching an advertising campaign in Great Britain. By the autumn of 1881 an attractive publication, *The Great Prairie Provinces of Manitoba and the Northwest Territories*, had been issued to settlers in the Canadian West.<sup>1</sup> A year later there was available in London for the prospective pioneer the advantages offered to settlers in the written word. He could now behold with his own eyes more tangible than the prospect of prairie products attractively arranged in the company's offices, together with samples of soil taken at different depths and at various points in the territory through which the immigration department of the company in Great Britain and Europe had been organized under the able and energetic direction of Alexander Begg, General Emigration Agent of the railway, and the form and direction which he gave to this work continued without material modification for several years. In May of 1884 Begg submitted to George Stephen, President of the Canadian Pacific, a report of the work of his office for the winter and spring of 1883-84, and the account which he gave but substitutes not only the most complete statement of this activity but also our chief source of information in regard thereto.<sup>2</sup> Intended as it was for the perusal of the high officials of the company, and not for publication, it may be regarded as a faithful summary of the efforts which the railway was then making to arouse British and Continental interest in Canada.

<sup>1</sup> *Manitoba Daily Free Press*, October 24, 1881.

<sup>2</sup> *Manitoba Daily Free Press*, December 21, 1882, quoting from an account contained in the *London Morning Advertiser*.

<sup>3</sup> Report on the work of the Emigration Department of the Canadian Pacific Railway Company, in London, England during the winter and spring, 1883-1884. This manuscript report is found in the archives of the railway in Montreal.

Folder maps and pamphlets prepared in the London office had been published in English, German, French, Dutch, Danish, Finnish, Norwegian, Swedish, Welsh, and Gaelic, and were being distributed through thousands of agencies in Great Britain, and through over two hundred centers in northern Europe. The volume of this literature, advertising "free homes for all," amounted to over a million pieces within a period of six months. Through the London office the company advertised regularly in 167 journals in Great Britain and in 147 continental papers. While the office force answered the thousands of inquiries concerning Manitoba and the Northwest which this propaganda elicited, "travellers" carried the good word into the countryside. They canvassed the remote corners of England, Scotland, Wales, and the North of Ireland, displaying poster maps at hotels, railway stations, and other public places. The islands and highlands of Scotland had been the object of the special attention of a representative "thoroughly conversant with the Gaelic people and their ways." Work of the "travellers" was supplemented by special lecturers, equipped with a new device for the conduct of railway immigration propaganda, the lantern slide. When not used by the employees of the company the lanterns were freely loaned to independent lecturers desirous of advancing knowledge of the Dominion.

In the autumn of 1883 Begg inaugurated a plan for supplying the press of Great Britain and Ireland with the latest Canadian news. These items were carefully collected and compiled each week from the Canadian press and "from clippings received from the Montreal office," and distributed to about 500 leading journals, a large portion of which made regular use of the material. In London a complete record was kept of all publications pro and con with reference to Canada, which enabled Begg's staff "to meet and counteract misstatements." *Along the Line*, a monthly publication carrying the latest items of interest with reference to Canadian Pacific territory in the West, was supplied to the principal hotels and reading rooms and was widely distributed through the company's offices in Great Britain. The *Canadian Gazette*, specifically dedicated to the advancement of knowledge in regard to the Dominion, the railway officials scattered broadcast over the United Kingdom, with results which were very encouraging. Stands of produce from the Canadian Northwest were supplied to about 30 leading exhibitions and agricultural shows during the season 1883-84, while small samples of Canadian grain were actually placed in the hands of representative farmers in attendance at the fairs.

One device introduced by Begg to advertise the Canadian West anticipated a method employed by Clifford Sifton at a later time and for which Sifton has received the credit. With the waning of the initial enthusiasm engendered on the prairies by the assurance that the syndicate was prepared to go forward with the construc-

tion of the Canadian Pacific, there followed a reaction in which optimism as to the future of the West gave way to deep gloom. In the middle eighties slanderous statements about the Northwest were being published both in eastern Canada and in Great Britain. Crop failures, droughts, early frosts, in fact all the vagaries of weather and climate were widely featured, to the distress of those who were trying to people and develop the country. With a view to combating this insidious campaign, Alexander Begg prepared in 1885 two pamphlets bearing respectively the titles *Plain Facts* and *Practical Hints from Farmers in the Canadian Northwest*.<sup>1</sup> They consisted of answers to definite questions which had been put to some 250 settlers in that country, together with the names and addresses of the farmers in full. The contents of these publications would seem to indicate that Begg was seeking to convey an accurate impression of the country to the public, and that, while refuting slanderous statements, he was making no attempt to conceal or minimize the difficulties which beset the pioneer. He was desirous of attracting to the West those persons who were likely to make a success of the venture, who would benefit themselves as well as the Canadian Pacific Railway. For farming, an initial capital of £100 to £150 was strongly recommended. As the *Morning Post* expressed it, "Mr. Begg has made no attempt to deceive or mislead. He has given accurate information from which intending emigrants can draw their own conclusion. . . . All the answers of Mr. Begg's correspondents . . . are more or less favorable, although in one case we are told of wheat sown on May 20th being frozen."

These publications were soon followed by another effort in the same direction, but of a more elaborate and comprehensive character. With the coöperation of the Dominion postal authorities, Canadian Pacific officials sent to every postmaster in the Northwest a circular asking their aid in disseminating among the farmers of the prairie a detailed set of questions concerning their experience in the new land.<sup>2</sup> The replies to the questions, together with the names and addresses of the settlers, were then collected and forwarded to Begg in London, who incorporated them in a new pamphlet under the title *What Settlers Say about Manitoba and the Northwest Territory*.<sup>3</sup> The questions asked for hints to newcomers, data on capital requirements, climate, summer frosts and storms, soil, water, fuel, cattle raising, cost of preparing land, dates of plowing, seeding and harvest, farm houses and fencing, first season's crop, growth of flax, mixed farming, price of provisions, sheep raising, sport in the Northwest, success of settlers, and "how do you spend your winters." The replies to these questions as set forth in the new publication were in general of a satisfactory nature and

<sup>1</sup> *Manitoba Daily Free Press*, August 28, 1885, quoting *London Morning Post*.

<sup>2</sup> *Ibid.*, September 14, 1885.

<sup>3</sup> *Ibid.*, April 28, 1886.

were widely distributed throughout the British Isles. Believing that the farm women of the old country were desirous of seeing the West through feminine eyes, Begg promptly obtained and published testimonial letters from four hundred women living on prairie farms.<sup>1</sup>

In the opinion of Begg the testimony of settlers in the West offered the most efficacious means of promoting a desirable kind of immigration and he strongly urged that the company should maintain an official in the Northwest for the primary purpose of gathering such evidence. As he thought, "a regular supply of favorable letters sent over from settlers to me and judiciously and regularly published here and there throughout Great Britain would disarm the sting of unfavorable criticism and the complaints of grumblers. The latter in the face of the experience of successful and contented settlers would go for naught."

In the conduct of his work in Great Britain Begg had maintained an active correspondence with the St. Lawrence steamship companies, had supplied them with poster bills advertising the West, and had arranged with them for the distribution of Canadian Pacific publications bearing their advertisements. But while these relations with the steamship companies had been very beneficial, the Canadian Pacific was handicapped in its efforts to settle the Northwest by its inability to secure a satisfactory through rate to western Canada by way of New York. This was the more serious, of course, because of the obstruction of the St. Lawrence route during the winter season. Begg recommended, therefore, that while using the all-Canadian route in summer, the company should establish a practical working arrangement with the New York lines for other seasons of the year.

Immigration work of the Canadian Pacific in Continental Europe was carried on by H. H. Toe Laer, under the supervision of Begg's London office. During the winter of 1883-84, Toe Laer had visited 30 important immigration centers in the countries of northern Europe, appointed 196 corresponding agents throughout the continent, and answered 4,000 inquiries concerning Manitoba. This last form of activity was made the more significant as well as more onerous by the prohibition upon the circulation of emigration literature by agents in Norway and Sweden. Although Toe Laer spoke hopefully of the prospects on the Continent, he, too, felt handicapped by the lack of satisfactory inland rates from New York to the Canadian Northwest.

<sup>1</sup> *Manitoba Daily Free Press*, February 4, 1886.

While in no sense unmindful of the difficulties and the keen competition to be encountered in the promotion of emigration to Canada, Begg was convinced that the work was now well organized, that the country was becoming favorably known in England and on the Continent, and that the tide was certain to run more strongly in the future. He observed that while the company had been working mainly in the interest of the Northwest, it had also rendered a valuable service to the entire Dominion. He believed the time was at hand when the railway should devote its efforts almost exclusively to the West, leaving to the government the larger Canadian field.

In the late eighties and nineties the work which Alexander Begg had organized was expanded and perfected under the direction of Archer Baker. Fortunately, Baker, in 1894, submitted to President Van Horne of the Canadian Pacific a comprehensive statement of the work as it was then carried on, and this report constitutes our chief source of information for that period as Begg's account does for the earlier years.<sup>1</sup>

The emigration propaganda was now carried on from handsome new headquarters in London, which, as the report stated,

... for advertising purposes ... is on the finest site in London; taking all the pros and cons into consideration, less people would see it if positions were exchanged with the Bank of England, Mansion House or Royal Exchange. Ask any four persons in the country who have come up to London, say on an excursion ticket, whether they know the C. P. R. London office, and the chances are that three of them will either know the office by that name or as the Canadian Emigration Office near London Bridge. Southern Railway terminals, Tower Bridge, Tower of London, the Monument, Electric Railway, London Bridge, Billingsgate, St. Paul's Cathedral, all playing [sic] into our hands and tending [sic] to direct a stream of persons past our windows either on foot or in vehicle as it would be impossible to parallel anywhere else in the world. No government, corporation or individual interested in colonization occupies an office in a similarly commanding situation, owing partially to official ideas of respectability, to the great expense which would be involved, and partially to the fact that such positions are rarely obtainable at any price.

The large window space in these quarters, containing exhibits of grain and minerals, and photographs of Canadian scenes, varied from month to month, provided a never ceasing attraction to the throngs of passersby, estimated at three-quarters of a million per day. In the language of the report, it was a misnomer to refer to the London "Office"; it really was a shop whose windows were arranged for the attraction of would-be emigrants and in this respect it differed from "the Canadian Government offices in the different towns, which necessarily are located in comparatively un-

<sup>1</sup> Archer Baker, *Report on British and Continental Emigration to Canada, 1883 to 1894*. This manuscript report is in the archives of the company in Montreal.

frequented portions of the City." From morning until night a constant stream of enquirers demanded attention. Books singly and in packets were supplied when asked for, the ordinary distribution in this way and by post amounting to some 2,000 per day. Within the offices a commodious waiting room, equipped with oil paintings and photographs of Canadian scenes, together with files of Canadian newspapers, was so alluring that "it would be difficult to find a better known or more widely talked about Emigration Agency" in any part of the world. The company maintained a branch office in the West End of London, together with well-located quarters in Liverpool, Manchester, and Glasgow.

Correspondence necessarily engaged much of the attention of the London office. About 200 letters were received daily, many of them being merely preliminary enquiries. In order to deal with them satisfactorily and at the same time avoid the clerical work of writing a separate letter to each person, "five seductive standard letters were written and set up by our printers so as to resemble ordinary typewritten letters, leaving us to merely type in the name and address of our correspondent and the date." This work had been systematized to the point where it was impossible to give information about any one Canadian Pacific service without advertising all the others. Nothing was left to the imagination of the enquirer and no opportunity was offered to him to "cool off."

The friendly relations established by Alexander Begg with the 5,000 steamship agents in Great Britain had been maintained and strengthened by Archer Baker's regime. With a profound respect for the influence of these agents in the agricultural areas, it had been his policy to further their interest in, and knowledge of, Canada. He constantly supplied them with Canadian Pacific books, pamphlets, and show cards, on which the agent's advertisement was stamped at the railway's expense. They were regularly visited by the travelling agents of the company; many of them had been privileged to visit Canada, at the expense of the Canadian Pacific, with a view to attaining a first-hand acquaintance with the country. Baker believed that once the desire to emigrate was aroused in the individual, his destination was largely determined by the influence brought to bear upon him. It was important, therefore, that Canada should be well and favorably known to the steamship agents in order that they might be disposed to exert themselves in its behalf. In the London office careful record was kept of all persons booked by the agents for Canada, with a view to detecting and preventing subsequent diversion of emigrants to rival routes and countries.

The London office was equally careful to coöperate with philanthropic emigration agencies in Great Britain, such as the Children's Aid Society, the Society for the Promotion of Christian Knowledge, and the Self-help Emigration Society. Emigrants from these organizations had been directed to Canada with "great success."

A large collection of Canadian paintings and photographs was kept in constant circulation about the country through agents, mechanic's institutes, hotels, reading rooms, agricultural fairs, and other centers where they were viewed by the agricultural classes. Local agents traced their Canadian bookings in many cases to the "harvesting scenes" supplied by the London headquarters.

Special importance attached to the advertising conducted by means of photographs at the Imperial Institute, whose "Canadian section should rather more properly be called the Canadian Pacific Section." But the institute was used in other ways to promote the cause of emigration. Since many of those making enquiries at the Canadian Pacific headquarters in London were not willing to accept as "gospel" all that was said to them about Canada, it was convenient to be able to refer the skeptics to the Imperial Institute, where they could secure confirmation of the spoken word through the magnificent exhibits of Canadian products there maintained.

Another means of bringing Canada to the attention of the emigrating classes was through the lecture platform, which provided the principal excitement in the long winter evenings of the countryside. In this work professional lecturers were used to a certain extent, but in the main it was carried on by clergymen and other local notables who in many instances had visited Canada with the aid of Canadian Pacific generosity. So great was the interest in this type of work that numerous sets of lantern slides were kept in constant use throughout the winter season. At these meetings the distribution of pamphlets and other forms of literature made possible the reinforcement of the camera's impression by the printed word.

Convinced that the school child of today is the emigrant of tomorrow, Baker lost no opportunity to propagate the Canadian faith in the schools of the mother country. The Board Schools, some 5,000 in number, were so many centers for filling the youthful mind with information with respect to Canada. They were unceasing in their requests for descriptive literature, which was abundantly supplied by the Canadian Pacific organization. In many cases the better types of such literature were bound by the master and either awarded as prizes or used as "unseen readers," the term applied to unlicensed books.

Because of the belief that an initial interest in Canada could best be stimulated in other ways, it was not Baker's policy to advertise promiscuously in newspapers. Nevertheless, it was recognized that this was the only practicable means of reaching certain classes of people, and could not, therefore, be dispensed with. In the aggregate, the newspapers were extensively used, the advertisements being carefully varied to suit the needs of the class most likely to see them. The preferred papers, of course, were those read by the small farmers, the group from which emigrants were largely recruited.

The clergy were utilized in ways other than as lecturers. Mindful of their prestige among their flock, the company periodically mailed to them descriptive literature, accompanied by lithographed letters urging them to use their influence in the interest of Canada and announcing that similar publications would be sent to their parish-

ioners upon request. The effect of this was to make of every minister a more or less active propagandist in favor of the Dominion. Not only did he use his good offices with his congregation but also with his immediate family and relatives. In this way there was maintained a fairly steady flow of clergymen's sons to the Canadian Northwest.

Important as were the various advertising media thus far discussed, they all left something to be desired, so far as the appeal to certain classes was concerned. Printed material descriptive of the West could be obtained by all elements of the population without difficulty. Thousands examined specimens and samples of Canadian products at the London and provincial offices, at the leading exhibitions, and at the more important agricultural fairs. But there were other thousands of potential emigrants in the more inaccessible portions of the country who were unable to travel to the scene of these exhibits. The exhibits must, therefore, be carried to them, and for this purpose the Canadian Pacific devised a method which appears not to have been employed in Great Britain by any emigration agency, public or private, up to that time.

This innovation in the art of propaganda was the Travelling Exhibition Van, which, figuratively speaking, carried Canada to the most remote corners of the British Isles. The precise date of its introduction is not clear, but in 1894 it had been in use for several years and had become a familiar sight along the country roads of England. In the words of Archer Baker:

. . . the system followed is to be present at the various towns on market days, wherever possible. Handbills are sent on a few days in advance to ministers, and for display in hotels and public houses, announcing the day on which the Van will arrive. On arriving at a town or village a place on the market (if there be one) is obtained. If there is no market the most prominent position available is secured. The Van is opened out and publications are distributed to applicants.

The Travelling Passenger Agent mixes with the crowd, which very speedily gathers, answering questions and explaining the samples. The pamphlets are accepted with the greatest avidity, and, after the largest distribution, it would not be possible to find a single copy mutilated or thrown away. They are undoubtedly taken home to the country farm houses where literature of any kind is by no means plentiful, and there preserved or lent about.

The valuable character of the Van's work is fully appreciated by the Local Agents, who are the best judges of what is likely to promote emigration in their own districts. Applications for a visit are far too numerous for speedy compliance; but those into whose neighborhood the Van has already been, have shown great activity in following it up, and taking the fullest advantage of its presence by distributing their own advertisements and identifying themselves with it. They very rightly anticipate a harvest of enquiries and bookings as a result of the visit. The newspapers regularly chronicle the movements of the Van and have spoken in the highest terms of the quality of the produce exhibited.



While the primary purpose of the van was to enable the rural folk to obtain a first-hand acquaintance with Canadian products, the capable attendants accompanying it served to clear up misconceptions as to climate. Sometimes returned "ne'er-do-wells" were encountered and had to be silenced, since such men would soon prejudice a whole countryside. During 1893 the van visited 513 different places, travelled 1,825 miles, and was inspected by 1,750,000 people.

So convinced was Baker of the efficacy of the van as an advertising medium that he urged the importance of placing additional ones in operation in Great Britain. Because the van must of necessity proceed slowly in order to permit adequate examination of its samples by the rural classes, only an increased number would make possible visits of the frequency which the situation required. The other prime need in connection with emigration work in the British Isles was an increased supply of literature, which Baker thought should be provided by the Dominion Government. Although the annual circulation of such material was well in excess of a million pieces, approximately double that amount was needed adequately to supply the five thousand steamship agents alone. Since the Canadian Pacific was bearing "well nigh the whole burden and heat of the day in this respect," it seemed reasonable that the added cost should be borne by the Ottawa authorities.

Emigration work on the Continent was carried on within limits imposed by restrictions of the various governments. In Germany, due to the prohibition upon advertising and other open forms of solicitation, activity was confined largely to the sending of publications by post to addresses coming into the possession of company officials. Friendly relations were cultivated with Hamburg steamship agents whose efforts in behalf of Canada were also circumscribed by law. Conditions in Scandinavia, however, were somewhat more favorable. In Göteborg, the Canadian Pacific office was situated within close proximity to the emigrants' lodging houses. The agent corresponded with, visited, and supplied publications to the various steamship agents, arranged for the publication of newspaper articles in the Christiana papers, and obtained addresses of relatives and friends of emigrants already booked by the different steamship agencies, with a view to forwarding literature to them by post. The various posting houses and tourist hotels, numbering some three hundred, were regularly provided with illustrated maps and books, as were the rural storekeepers in whose shops the farming classes gathered in the evenings. Special attention was given to the publication by the press of articles written by Scandinavians who had visited Canada through the facilities of the Canadian Pacific. Prospective emigrants were advised that upon application to the Göteborg office information relative to the West would be supplied by men who had actually farmed in Manitoba. In Holland, Canada was at a disadvantage by virtue of the paucity of agents represent-

ing the St. Lawrence lines. While Belgium was more adequately supplied with agents of these lines, little could be done there because the prosperity of the country militated against emigration.

Reference has been made to delegates of prospective settlers sent to Canada at the expense of the railway company to examine the West and to report their impressions to their friends and neighbors. The complement of this procedure was the use of "return men," natives of the old country who had emigrated to the West and become farmers. By reason of their longer experience with prairie conditions these men were supposed to speak more authentically of Canada than the "delegates" whose impressions were formed during hurried trips through the country. As early as 1891 the Canadian Pacific began the experiment with the "return men." In that winter seventeen settlers from the Northwest were sent by the company to London, where they placed themselves in the hands of Archer Baker to be used as his discretion might determine.<sup>1</sup> Much was expected from this departure, but the results seem to have been disappointing. Great discrimination was necessary in the selection of the men. Many were glad to offer themselves for service for no other reason than to obtain a holiday in the home land without cost to themselves, and a trip made in this spirit was likely to be barren of results. Nevertheless, the experiment was continued in England for four years before the company finally decided the accomplishments were not commensurate with the expense involved.<sup>1</sup>

Despite the abandonment of the practice in Great Britain, Archer Baker believed that "a judicious system of return men" promised satisfactory results on the Continent, where emigration propaganda was restricted by law to the less obtrusive forms. Under such conditions quiet, personal work by the "return men" in the communities from which they had emigrated would serve as an acceptable substitute for the more open advertising campaigns carried on in Great Britain. The peasant farmer of Europe was likely to be more receptive to the idea of emigration when presented in his own tongue by an old acquaintance with a first-hand knowledge of Canadian conditions.

The organization of immigration work and the methods by which it was conducted in Great Britain and on the Continent changed but little between 1894 and 1903. In the latter year, however, the company acquired added facilities for directing people of the Old World toward Canada. Traffic arrangements between the Canadian Pacific and the Atlantic steamship lines had never been entirely satisfactory. Both Begg and Archer Baker had felt their work was hampered by this fact. In 1902 President Shaughnessy announced that the Canadian Pacific had offered to establish steamship service from Liverpool to a St. Lawrence port in summer, and to Halifax during the winter months. Realizing the delays which would attend the negotiations with the British and Dominion Governments, however, he proceeded to feel out the existing Canadian steamship lines with a view to purchasing one of them. The result was that early in 1903 the company acquired the Elder Dempster fleet of fourteen vessels. The importance of this venture of the railway into the trans-Atlantic steamship service was cogently expressed by an official of rival interests: "This gives the Canadian Pacific the inside track

<sup>1</sup> *Manitoba Evening Free Press and Sun*, January 30, 1891.

<sup>2</sup> *Manitoba Morning Free Press*, December 16, 1895.

Other features of the C.P.R.'s system of advertisement are deserving of comment.

1. "Homeseeker's excursions"--a method of inducement that could only be employed in Canada. Hedges describes the operation as follows: (at p. 109)

The most efficacious method of inducing emigration from the eastern provinces was one whose use in England and Continental Europe was virtually impossible. With the completion of the line north of Lake Superior, the home-seekers' or land-seekers' excursion quickly took its place as the surest means of educating eastern farmers to the attractions of the West. Conducted in the early spring and late summer of each year, these excursions were largely patronized from the first. While many doubtless availed themselves of the excursions merely as a means of seeing the country at low cost, or to visit friends or relatives already living in the West, large numbers of the excursionists were *bona fide* farmers who came to the Northwest in search of new opportunities.

2. "Harvest Laborers"--Hedges describes this aspect of the C.P.R. system thus: (at p. 110)

Before many years had passed there was a labor shortage on the prairie at the harvest season. Here again the Canadian Pacific took the lead in the solution of the problem. Through the local station agents along the main and branch lines east of Moose Jaw, the Land Department ascertained the labor needs of each locality. As soon as this information was assembled in the Winnipeg office, the colonization agents in the East were instructed to obtain the desired number of harvest workers. When the agents had recruited the full quota of laborers, the company conducted harvesters' excursions on which the workers were carried to the West without charge. The first year these excursions were in vogue about 3,000 harvesters were taken to the wheat fields, 1,300 arriving in Winnipeg in a single day.

He adds, at page 111:

Through the nineties the harvest excursions assumed an ever-increasing importance as a means of advertising the West. Where a thousand or two workers occasioned comment at first, by the end of the decade the arrival of ten thousand harvesters from the East caused no surprise, but elicited from the *Free Press* the observation that "the visitors, a large number of whom are in the West not merely for the purpose of making a few dollars in the harvest field, but with the intention of inspecting the country with a view of taking up homesteads are certainly seeing the country at its best. . . . In the crowds are farmers from all parts of eastern Canada, and in inducing such a large number of people to come West at this time the C. P. R. . . . have secured an advertisement for the West that is sure to be far reaching in its effects."<sup>1</sup>

3. The cultivation of very amiable relations with members of the press was yet another feature of the C.P.R.'s advertisement of the West. Editors were taken to the prairies in groups and these excursions were organized and conducted throughout the Northwest at the expense of the C.P.R. As Hedges states at p. 112, "Editors as a class were not averse to travel, and after enjoying the hospitality of the Company on a holiday trip, they could not well refuse to boost its territory."

4. The 1890's saw the C.P.R. turn greater attention to attracting more immigrants from the U.S., especially from Michigan and the Dakotas (indeed the people of the Dakotas initiated a slander campaign against Manitoba and the Northwest, in an effort to counter this drain on their population).

5. The Canada Northwest Land Company also deserves to be noted. Hedges does so briefly in his book, where at p. 123 he states:

In view of the close relations existing between the Canada Northwest Land Company and the Canadian Pacific, the immigration and colonization work of the former deserves a word in this connection. The executive head and spokesman of the organization in western Canada was W. B. Scarth, who had long been interested in settling Scottish people in the Dominion. At the same time, Lady Cathcart, in Scotland, was desirous of getting rid of the surplus population on her estates. In the course of propaganda carried on in Scotland by the land company, negotiations with Lady Cathcart were begun which resulted in a plan which attempted "to combine sound finance and genuine, clear-eyed philanthropy."<sup>3</sup> Some 50 families were brought over, met at Quebec by an agent of the land company, and accompanied to Moosomin, where another representative of the company had assembled cattle and implements, seed and provisions, which were then distributed among the settlers who

<sup>1</sup> *Ibid.*

<sup>2</sup> *Sessional Papers* (No. 6), 1891, pp. 88 and 101.

<sup>3</sup> *Manitoba Daily Free Press*, January 31, 1885.

were located on homesteads in that vicinity.<sup>1</sup> This assistance, of course, was not charity. The company secured itself by a lien on the homesteads, and hoped and prayed for the success of the enterprise. At the same time its interest in and concern for the undertaking was not that of the ordinary mortgage company. Its own large holdings of land in that district must remain unsold, pending the occupation of the government land. In assisting the Scots it was guided by the intelligent selfishness of the prudent business man.

The following information is taken from a C.P.R. pamphlet (located in Special Collections Library) published in the 1890's and intended to induce settlement in the West.

Farming and Ranching in Western Canada, (Manitoba, Assiniboia, Alberta, Saskatchewan)

A. The pamphlet discusses the following topics:

1. How to Get There
2. How to Select Lands
3. How to Begin
4. How to Make Money

B. The system of survey was set out for the benefit of prospective settlers:

1. Townships: Each township was to be six miles square, and surveyed by the Dominion government. The townships were each to consist of 36 sections of 640 acres, or one square mile per section. Furthermore each section was subdivided into quarter sections. A provision was made for road allowances, one chain wide to be located between every alternate east and west.

of Red Fife wheat on the prairie was general. The third essential was the introduction of farming methods suitable to the prairie environment with its light rainfall. By the close of the century the dry farming technique, developed in the Great Plains area of the States, had crossed the border into Canada. "Just before the turn of the century a coincidence of these favorable circumstances" within the West set the stage for the scene which was to follow.

Fortunately these developments within Canada were contemporaneous with a world-wide economic expansion. Late in 1896 the depression which for several years had gripped the world began to lift. There came an upturn in the price of wheat. New discoveries of gold in South Africa and in the Klondike, combined with the cyanide process for extracting gold from low grade ores, brought a sharp increase in the world's gold supply. As prices advanced, business confidence was restored. The Spanish American War of 1898 produced a short boom in the neighboring republic, whose effects were quickly felt elsewhere. Large demands abroad for American agricultural products brought a marked improvement in the situation of the farmer in the middle western states.

Economic recovery and expansion, combined with rapid technological changes, resulted in far-reaching dislocations among the industrial and agricultural workers of Europe. Better transportation facilities gave to these classes a new mobility and western Canada beckoned to them. Although the United States continued to be the chief beneficiary of this exodus from Europe, the Dominion attracted increasing numbers of the land-hungry folk of the Old World.

But the movement was not merely one between hemispheres. Within the New World itself the migratory tendency was accentuated. People from the Maritime provinces and from Ontario poured into the West of Canada in increasing numbers. Emigration from the middle western states to Canada, hitherto a mere rivulet, broadened into a tide.

There were special reasons for this exodus of farmers from the Mississippi Valley states to the prairies of Canada. Due to the improved price of farm products, to increased settlement and development of the country, and to the fact that the choicest lands had been alienated and occupied, land values in those states steadily appre-

This "land boom" brought in an era of intensive and aggressive advertising by the Dominion government and this was especially directed toward the potential settler from the United States. The Dominion advertised the greatness of opportunity to be found in the Northwest and employed the use of pamphlets, agents etc. as the vehicles for dispersing their propaganda. Hedges had described the importance of this propaganda thus: (at p. 139)

The importance of the propaganda of the Dominion Government agents in giving stimulus and direction to the exodus of American farmers to the Northwestern provinces of Canada cannot be emphasized too strongly. No opportunity was overlooked in an effort to educate the rural folk of the middle western states with respect to the country to the north. Yet it is not too much to say that the campaign of the Ottawa authorities in the United States would have been largely unavailing without the complete coöperation of the Canadian Pacific in the work. That this coöperation was merely enlightened self-interest on the part of the railway in no way diminishes the significance or the vital necessity of its participation in the work which the Department of the Interior was carrying on. In a very real sense the railway and the government were in partnership in the promotion of settlement in the West; had the Canadian Pacific withdrawn from the partnership, the Dominion effort would have collapsed.

2. This period also saw the appearance of colonization companies which developed to promote the sale of land. The following discussion from Hedges book gives on a good basic understanding of the nature and effect of these companies in the development of the West: (at p. 151)

31  
217  
↓ The rush of settlers to the West at the beginning of the century provided an admirable opportunity for the sale of this land. In 1901 the Manitoba Government disposed of 102,294 acres of Manitoba and Northwestern lands at an average price of \$3.10 per acre.<sup>1</sup> As the tide of settlement increased in volume, the sales were correspondingly augmented. In 1902 the provincial government sold 202,776 acres at an average price of \$4.00 per acre.<sup>2</sup> Some of this land

<sup>1</sup> *Debates of the House of Commons*, 1906, p. 3109.

<sup>2</sup> See Memo by A. M. Burgess, Deputy Minister of the Interior, to Clifford Sifton, February 27, 1897, File No. 377232. In this Burgess recounts the history of the land grant.

<sup>3</sup> Memo by R. E. Young to Mr. Rothwell, Department of the Interior, March 16, 1905, File No. 91700-8.

<sup>4</sup> *Manitoba Morning Free Press*, February 25, 1903.

<sup>5</sup> *Ibid.*

doubtless was sold in small tracts to actual settlers, but the bulk of it seems to have gone to speculative land companies. Among these organizations was the Eastern and Western Land Corporation, a Toronto concern, whose managing director was the Honorable George E. Foster, one-time Dominion Minister of Finance. With a capital of \$1,000,000, this company secured an option on 125,000 acres of land in the Big Quill Plains district. It advertised not only the fact that the land had formed part of the land grant of the Manitoba and Northwestern Railway, subsequently acquired by the province of Manitoba, but also that it had been three times selected: first by the railway, then by the Manitoba Government, and finally by the land company itself.<sup>1</sup>

The ink on this advertisement was scarcely dry when the Eastern and Western Land Corporation sold the entire block of land to an American land company.<sup>2</sup> This company in turn had interested a large German Catholic colony near St. Cloud, Minnesota in the land. As thousands of homesteads were available in the alternate sections of government land, a large compact area could be formed for the location of the colony. By May, 1903 several hundred persons had already moved to their new home, the vanguard of a movement which was expected to aggregate not less than 10,000 souls.<sup>3</sup> Having realized a handsome profit from this transaction in an amazingly short time, the Eastern and Western Land Corporation promptly reorganized as the Ontario and Saskatchewan Land Corporation and laid its plans to repeat the performance elsewhere in the West.

Another company which invested heavily in Manitoba and Northwestern Railway lands held by the provincial government was the Manitoba Land and Investment Company. This corporation purchased about 200,000 acres north and west of Langenburg and Yorkton, which it in turn sold to a group of Minnesota speculators.<sup>4</sup> This group then recruited in the states of the Northwest the settlers who were finally to occupy and develop the land.<sup>5</sup> In cases such as this the land reached the farmer by a long and devious route, and then only after several different parties had taken their profit. The margin of profit derived by the various hands through which the land passed varied greatly. One group might immediately dispose of its holdings *en bloc*, without appreciable expenditure of time and money, while those who sold to the actual settler must incur the expense of advertising and administering their domain.

The colonization companies thus far discussed were of the active, aggressive type. Buying land in large blocks, they either sold it quickly to other speculators or secured actual settlers who would purchase it in small tracts. There was, however, the other and more conservative type which conducted no campaign looking toward prompt settlement of the land and which was not greatly interested in early sale of its holdings. Such a company was quite content to advertise in the press. It trusted that the purchaser would come to it; it seldom actively sought the buyer. This passive policy had the distinct advantage of enabling the company to reap the benefit of enhanced prices resulting from the sale and settlement of adjacent lands.

<sup>1</sup> *Manitoba Morning Free Press*, January 7, 1903.

<sup>2</sup> *Ibid.*, April 11, 1903.

<sup>3</sup> *Ibid.*, May 14, 1903.

<sup>4</sup> *Ibid.*, March 8, 1902.

<sup>5</sup> *Ibid.*



An excellent example of this kind of organization is offered by the firm of Osler, Hammond and Nanton, one of the best known business houses in the Dominion. As bankers, brokers, and promoters they had had their hands in the launching of several of the colonization railways, including the Calgary and Edmonton, Manitoba and Northwestern, and the Qu'Appelle, Long Lake and Saskatchewan. Later they served as agents for the sale of the land which the railways earned. In 1903 the land department of Osler, Hammond and Nanton was offering for sale lands owned by the Winnipeg Western Land Corporation, the Ontario and Qu'Appelle Land Company, the Calgary and Edmonton Land Company, and the Qu'Appelle, Long Lake and Saskatchewan Land Company.<sup>1</sup> The lands of the Winnipeg Western Land Corporation had originally belonged to the Manitoba and Northwestern Land subsidy. Obviously none of these land companies represented by Osler, Hammond and Nanton was conducting an active campaign for the sale and colonization of its lands. Moreover, the relation of Osler and his associates to the Calgary and Edmonton Land Company was an anomalous one. They were connected with the railway company which received the land subsidy; they were associated with the land company, organized to exploit the land subsidy of the railway; and they acted as agents for the sale of the holdings of the land company.

The lands offered by Osler, Hammond and Nanton were situated in the best districts on the Calgary and Edmonton Railway, and in the Yorkton, Beaver Hills, Qu'Appelle Valley, Prince Albert, and Carrot River districts. In 1904 they advertised a total of some 800,000 acres, of which 600,000, located in Alberta, formed a part of the Calgary and Edmonton subsidy. They administered these lands in a thoroughly conservative manner. They were in no haste to sell; and their policy was that of the land company, interested chiefly in the financial return, rather than that of a railway company, desirous of the traffic resulting from rapid sale and settlement of the land. Not only did they hold the land at a higher price than Canadian Pacific lands of the same quality, but they sold them on terms distinctly less liberal than those governing the sale of Canadian Pacific land to settlers.<sup>1</sup>

Of the various colonization railways receiving land subsidies from the Dominion, only the Alberta Railway and Irrigation Company pursued a vigorous policy for the sale and settlement of its lands. Not only was it a pioneer in irrigation development in southern Alberta, but it was largely instrumental in the location of Mormon settlements in that area. In 1903 it announced that it had 1,000,000 acres for sale. Of this area, 350,000 acres were classed as irrigable, and were for sale in small parcels of 160 acres at prices ranging from \$10 up. The balance consisted of grazing lands available in blocks up to 50,000 acres at prices from \$3.50 per acre.<sup>2</sup>

<sup>1</sup> *Ibid.*, March 30, 1903.

<sup>2</sup> *Manitoba Free Press*, April 30, 1904.

<sup>3</sup> *Ibid.*, June 6, 1903.

The land and colonization companies, no less than the Dominion Government, depended upon the hearty coöperation of the Canadian Pacific for the success of their work. Low rates and special rates were essential to both, and the railway never failed them. Thus, Osler, Hammond and Nanton were at pains to feature, in the large folders advertising their various landed properties, the announcement that settlers destined for Calgary and Edmonton or Qu'Appelle, Long Lake and Saskatchewan lands could obtain from the Canadian Pacific "all special rates, stop-over privileges, etc., granted by the C. P. R. Co. to intending settlers on their own lands."<sup>1</sup> Settlers coming from the United States were advised to apply to the nearest Canadian Pacific agent for a Canadian land settlement certificate, which enabled the holder to travel at the special immigrant rates over Canadian Pacific lines to any point in the West.

That the propaganda of these land companies in the United States served in a significant degree to supplement the efforts of the Dominion Government and the Canadian Pacific to promote prairie settlement is hardly open to question. As indicated by the discussion above, many of the companies not only sought buyers for their land, but they organized homestead settlement on a large scale. The throngs of Americans who milled about the streets and hotels of Winnipeg in the early years of the century included, along with the homesteader, countless men of capital, seeking from the large companies land for settlement or speculation. This aspect of the American invasions of the West was well illustrated by the *Free Press* when it observed that

. . . numbers of strangers may be seen around the city hotels at present wearing broad-brimmed, grey felt hats, fierce mustaches and goatees, strange cuts of chin whiskers and other characteristics which stamp them as denizens of the neighboring republic. These are land buyers and speculators and delegates from intending colonists from the states of the Union. They hail from the Dakotas, Minnesota, Iowa, Ohio, Missouri and other sovereign states and are forerunners of what will probably be a big movement of emigration from those places. These land buyers, it is said, will purchase large quantities of the provincial lands and will hold them for sale to the people whom they will induce to come up here from the South. The land is not being purchased in homesteads, but *en bloc*, and the buyers and delegates have already been out looking over the lands which they propose to buy. They have also had one or two conferences with local cabinet ministers on the matter and are being taken over the country by government agents. The colonization behind this scheme is said to be a large and important one.<sup>2</sup>

It was in the midst of this atmosphere of feverish activity in the selling of land that the Canadian Pacific was called upon to formu-

<sup>1</sup> See Osler, Hammond and Nanton folders in File No. 5348, Department of National Resources, Calgary. Hereafter referred to as D. N. R.

<sup>2</sup> *Manitoba Morning Free Press*, April 19, 1901.

### III Irrigation Project:

The story of the opening up of a large area of land through the use of irrigation is of course a story in itself. I have included here only a short comment about this subject and the legislation in the form of the Irrigation Act, 1894 which grew out of the advent of this system of land development.

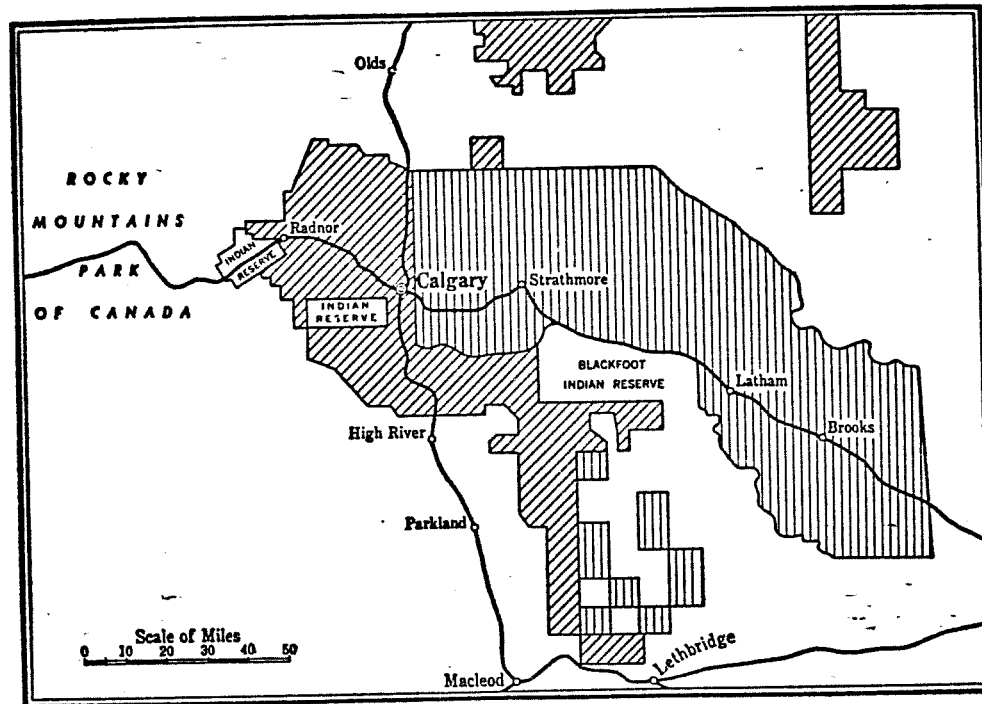
Hedges introduces this subject as follows:  
(at p. 169): (Relevant sections of the Irrigation Act are attached at the end of this section)

## LAUNCHING THE IRRIGATION PROJECT

THE strong tide of settlement pouring into the Northwest at the beginning of the new century made it desirable from the point of view of both the Dominion Government and the railway that the Canadian Pacific lands should be definitely located and the unclaimed land in the great reserves of the West opened up to the settler. The result was the agreement of 1903 by which the railway accepted *en bloc* the large area of dry land tributary to its main line, and stretching from Medicine Hat to Calgary. Having disposed of the bulk of its lands in Manitoba and southern Saskatchewan through the large sales of 1902, the Canadian Pacific was now in a position to concentrate its attention upon the development of its proposed irrigation block.

In finally accepting this area, originally rejected as not "fairly fit for settlement," the officials of the railway were guided by a definite and intelligent plan. They could, of course, demand satisfaction of their claims in the more humid lands of the North, where the settler would contribute little to the traffic of the road, or they could accept the semi-arid lands, incur the great expense incidental to their irrigation, and develop the region to the point where its volume of traffic would far excel that of any similar area in western Canada. Enlightened self-interest plainly dictated the latter course. There was, besides, something appealing about the idea of converting this cattleman's kingdom into a region of intensive agriculture which would contrast sharply with the more extensive grain farming so characteristic of other portions of the West.

Irrigation was not a new thing in that portion of the Canadian prairie.<sup>1</sup> As early as 1879 a feeble beginning had been made toward  
\* The beginnings of irrigation development in southern Alberta are fully dis-



MAP III. CANADIAN PACIFIC LANDS IN SOUTHERN ALBERTA.

The diagonally-hatched areas are those in which the Railway, for the most part, owned the alternate sections. In the vertically-hatched areas the Railway, for the most part, owned both the odd- and even-numbered sections. The large area thus hatched is the Irrigation Block.

irrigating land south of Calgary, while three years later an irrigation ditch was constructed near Lethbridge. Further impetus resulted from the settlement of the Mormons at Cardston in the late eighties. Long accustomed to irrigation in Utah, they were quick to perceive the opportunity for developing it in their new home, where they practiced it on a small scale. In the same period occurred the beginnings of two companies which, when ultimately combined to form the Alberta Railway and Irrigation Company, became a major factor in the growth of irrigation in the West. One of these, the Northwest Coal and Navigation Company, constructed a railway line from Medicine Hat to the coal mines on the Belly River; the other, the Alberta Railway and Coal Company, built a line from Lethbridge to Coutts. As both companies received a land subsidy, the Alberta Railway and Irrigation Company found itself in possession of a land grant of more than a million acres.<sup>1</sup> In December, 1891, the company entered into contracts with two influential Mormons, Charles Ora Card and John W. Taylor, for the sale of something more than 700,000 acres on terms calling for a rental payment of 2 cents per acre for a period of 4 years, followed by the payment of \$1.00 per acre, spread over a period of 8 years.<sup>2</sup> With a view to facilitating the efforts of Card and Taylor to settle the land, application was made to Parliament for the enactment of a law authorizing the construction and operation of irrigation canals in Alberta, south of the 50th parallel. The passage of this act in April, 1893 was followed by the formation of the Alberta Irrigation Company, which was to be the agency for the settlement and irrigation of the land. But the inability of the two Mormon promoters to interest capital in sufficient quantities to carry out their plans led to the cancellation of their contract in 1895. Their efforts, however, had not been wholly in vain. Their failure made clear the fact that the alternate section method of granting railway subsidy lands was a formidable obstacle to irrigation. This difficulty was removed when, after repeated representations by the Alberta Railway and Irrigation Company, Clifford Sifton, in 1896, arranged to consolidate the holdings of the company into a solid block.<sup>1</sup>

Meanwhile, the Dominion Government was giving increasing attention to the problem of irrigation. In 1893, J. S. Dennis, Chief Inspector of Surveys in the Department of the Interior, was commissioned to visit the western states of the United States for the purpose of studying and reporting on the irrigation laws and practices of that country.<sup>2</sup> The following year his report was submitted to Parliament, where his recommendations were made the basis of the Irrigation Act passed by that body in July, 1894. That law has been the legal basis of all subsequent irrigation legislation and development in Canada.

cussed in the manuscript study by Sam G. Porter and Charles Raley, *A Brief History of the Development of Irrigation in the Lethbridge District*. This document is in the archives of the Department of Natural Resources of the Canadian Pacific in Calgary.

<sup>1</sup> For the origin and development of the Alberta Railway and Irrigation Company and its land grant, see J. B. Hedges, *The Federal Railway Land Subsidy Policy of Canada*, pp. 85-92.

<sup>2</sup> Porter and Raley, *op. cit.*, p. 18.

Irrigation Act

With the enactment of this legislation and with the removal of the alternate section hindrance, the Alberta Railway and Irrigation Company addressed itself anew to the problem of irrigation. In 1897 George G. Anderson, an eminent irrigation engineer of Denver, Colorado, was engaged to report on the feasibility and cost of an irrigation system to serve the company's lands.<sup>3</sup> His investigation indicated the practicability of diverting water from the St. Mary's River. The following year the actual construction of the irrigation system began, under Anderson's supervision. The chief contractors for the work were the President and High Council of Latter Day Saints—the Mormon Church—while the sub-contractors, laborers, and teamsters were principally Mormon farmers who came to settle in that part of the Canadian West. These men were paid one-half in cash and one-half in land, the land with water rights being valued at \$3.00 per acre. It was to the settlement of these people that the communities of Sterling and Magrath owed their inception.<sup>4</sup>

Among those who followed the construction of this project with friendly interest were various Canadian Pacific officials, especially President Shaughnessy. Connecting with the Canadian Pacific main line at Dunmore, the Alberta Railway and Irrigation Company was

<sup>3</sup> *Ibid.*, p. 18.

<sup>4</sup> *Ibid.*

Such was the start of irrigation as made by these early companies. However, the C.P.R. launched a project on a scale which was to dwarf all previous undertakings of this nature. Hedges describes the C.P.R. project: (at. p. 174)

While the Alberta Railway and Irrigation Company struggled to make a success of its venture, the Canadian Pacific was launching its irrigation project on a scale which promised to dwarf all similar undertakings in Canada and, perhaps, in the United States. With a compact block of something more than 3,000,000 acres, an area in excess of that of Connecticut, the company was to attempt to develop diversified farming under the more certain conditions which irrigation seemed to guarantee. Here, it was hoped, wheat would yield to alfalfa, stock growing, and intensive farming.

The problem confronting the Canadian Pacific was almost unique in the annals of railway colonization. Not only must it colonize irrigable lands but it must colonize them alone and unaided. Where railway lands were scheduled in alternate sections they in a measure sold themselves. The forces and agencies which drew settlers to the government sections attracted them also to those of the railway. Purchases by farmers living on government lands accounted for large areas sold by the railways. Within the irrigation block, however,

where the railway owned both the even- and odd-numbered sections, there were no government lands to draw colonists, no agencies, public or private, engaged in publicizing the region. The progress of settlement must depend upon the efforts of the Canadian Pacific alone. The company must bring the buyers to Alberta, sell them the land, and teach them to farm.

This block of land was situated between the Red Deer River on the north and the Bow River on the south, and extended from the eastern boundary of Range 11, west of the 4th meridian to the 5th meridian, about one mile east of Calgary.<sup>1</sup> Its maximum extent from east to west was about 180 miles, and it was void of settlement except for the village of Gleichen, a shipping point for the cattle interests.

The Canadian Pacific promptly established in Calgary headquarters for the development of the irrigation project and placed J. S. Dennis in charge, as Superintendent of Irrigation. Dennis had long and varied experience in the West, in the service of both the Department of the Interior and the Hudson's Bay Company. A firm believer in the efficacy of irrigation and possessed of very definite ideas as to how the irrigation block should be developed as an asset to the company and the Dominion, he was well fitted for the task he was about to undertake.

<sup>1</sup> In order to have the lands in a compact block the Canadian Pacific purchased 101,823 acres of Hudson's Bay Company sections within the irrigation block.

### The Northwest Irrigation Act: (assented to 23rd July, 1894)

The Irrigation Act is most interesting for the manner in which it deals with the right to use water and riparian ownership rights. Section 4 to 7 refer to these rights:

Right to use  
waters.

As to rights  
already held.

Rights of  
grantee of  
Crown lands

4. Until the contrary is proved, the right to the use of all water at any time in any river, stream, watercourse, lake, creek, ravine, cañon, lagoon, swamp, marsh or other body of water shall, for the purposes of this Act, in every case be deemed to be vested in the Crown; and, save in the exercise of any legal right existing at the time of such diversion or use, no person shall divert or use any water from any river, stream, watercourse, lake, creek, ravine, cañon, lagoon, swamp, marsh, or other body of water, otherwise than under the provisions of this Act.

5. Except in pursuance of some agreement or undertaking existing at the time of the passing of this Act, no grant shall be hereafter made by the Crown of lands or of any estate, in such terms as to vest in the grantee any exclusive or other property or interest in or any exclusive right or privilege with respect to any lake, river, stream or other body of water, or in or with respect to the water contained or flowing therein, or the land forming the bed or shore thereof.

Right to use  
waters may be  
acquired only  
under this  
Act.

6. After the passing of this Act, no right to the permanent diversion or to the exclusive use of the water in any river, stream, water-course, lake, creek, ravine, cañon, lagoon, swamp, marsh or other body of water, shall be acquired by any riparian owner or any other person by length of use or otherwise than as it may be acquired or conferred under the provisions of this Act, unless it is acquired by a grant made in pursuance of some agreement or undertaking existing at the time of the passing of this Act.

Persons al-  
ready holding  
rights must  
obtain license.

7. Any person who holds water rights of a class similar to those which may be acquired under this Act, or who, with or without authority, has constructed or is operating works for the utilization of water, shall obtain a license or authorization under this Act within twelve months from the date of the passing of this Act.

If license is  
not obtained  
within stated  
time.

2. If such license or authorization is obtained within the time limited, the exercise of such rights may thereafter be continued, and such works may be carried on under the provisions of this Act, otherwise such rights or works, and all the interest of such person therein, shall without any demand or proceeding be absolutely forfeited to Her Majesty and may be disposed of or dealt with as the Governor in Council sees fit.

Application  
for license.

3. The application for such license or authorization shall be made in the same manner as for other licenses or authorization under this Act, and the like proceedings shall be had thereon and the like information furnished in connection therewith.

The following year, on July 22, 1895 an Act to Amend the North West Irrigation Act was passed. I could see no amendments made therein that deserved specific comment. Also, in that year there were a number of orders-in-council passed in relation to the Act. These dealt with such matters as manner and form of surveys of irrigation, plans of works, licenses etc.

The material next included is taken from Chapter 13 of Martin's, Dominion Lands Policy, and is a good general discussion tying together all of the major aspects of the Dominion lands policy.

Index: The Railway Land Grant System (pp. 504-509)  
School Lands (pp. 509-514)  
The Free Homestead System (pp. 514-534)



Township Diagram: e.g. section=640 acres; e.g. quarter section=160 acres (This figure represents 6 miles square)

N

31 C.P.R.	32 GOV.	33 C.N.W. or C.P.R.	34 GOV.	35 C.P.R.	36 GOV.
30 GOV.	29 SCHOOL	28 GOV.	27 C.P.R.	26 H. BAY	25 C.N.W. or C.P.R.
19 C.P.R.	20 GOV.	21 C.N.W. or C.P.R.	22 GOV.	23 C.P.R.	24 GOV.
18 GOV.	17 C.P.R.	16 GOV.	15 C.P.R.	14 GOV.	13 C.N. or C.P.R.
7 C.P.R.	8 H. BAY	9 C.N.W. or C.P.R.	10 GOV.	11 SCHOOL	12 GOV.
6 GOV.	5 C.P.R.	4 GOV.	3 C.P.R.	2 GOV.	1 C.N.W. or C.P.R.

S

W

E

Open for Homestead (that is, for free settlement): sections No. 2,4,6,10,21,14,16,18,20, 22,24,28,30,32,34,36.

Canadian Pacific Railway Sections-Sections 1,3,5,7,9,13,15, 17,19,21,23,25,27,31,33,35.

Sections 1,9,13,21,25,33 along the main line, Winnipeg to

Moose Jaw, can be purchased from Canada North West Land Co. School sections-sections 11, 29, are reserved by the government solely for school purposes.

Hudson Bay Co. sections-sections 8 and 26

## II. Land Boom on the Prairies

1. The year 1896 was a key period in the development of the West. Hedges explains the significance of this year as follows:

IN THE history of the settlement of the Canadian West the year 1896 will ever occupy a conspicuous place. It marked the termination of one era and the beginning of another. It brought to a close a long period of Conservative domination in the Dominion and it inaugurated a term of liberal ascendancy which was to last until 1911. It saw the country reach the depth of the depression of the nineties and emerge again on the threshold of a period of prosperity and expansion. It witnessed the transition from the day of hesitation and uncertainty with respect to prairie settlement to that of rapid occupation of the western domain. It was the date when the government itself began to assume an increasingly vigorous and aggressive attitude toward the problem of filling up the open spaces on the prairie. Without question the creation of a new society in the three prairie provinces was the outstanding feature of Canadian development in the years between 1896 and 1914.

It was in the years immediately following 1896 that certain basic conditions essential to the successful settlement of western Canada became favorable.<sup>1</sup> The first of these was a railway or, more specifically, a "favorable ratio between the price of wheat and the cost of transportation." Although the Canadian Pacific was completed in 1885, it was not until the late nineties that the advance in the price of wheat and the decline in the cost of transportation produced this favorable ratio. The second requirement was a variety of wheat adapted to the short growing season in the West, thereby obviating the recurring damage from frost which had brought sorrow and discouragement to the settlers in the eighties. By 1896 the planting

<sup>1</sup>W. A. Mackintosh, "Some Aspects of a Pioneer Economy," *Canadian Journal of Economics and Political Science*, November, 1936, p. 460. For a fuller discussion see A. S. Morton, *History of Prairie Settlement*.

### 3. The Railway Land Grant System

Next to the transfer of Rupert's Land and the North-Western Territory itself in 1870, a transcontinental railway on Canadian soil was everywhere recognized as the most imperative necessity before the new Dominion. The one project was the corollary of the other. Six months before the transfer, the challenge of the Northern Pacific and the march of "manifest destiny" in the United States brought from Macdonald his pledge of "immediate and vigorous steps to counteract them. One of the first things is to show unmistakably our resolve to build the Pacific Railway."

It is probable that no government after 1900 would have attacked the building of a transcontinental by means of the railway land grant system; but if there was any other resource for the building of the road during the first decade and a half after Confederation it has yet to be demonstrated. Cartier and Macdonald both took it for granted at the Manitoba Act. The federal administration of public lands was indispensable, for the railway was to be "built by means of the land through which it had to pass." With the completion of the Union Pacific in 1869 and Jay Cooke's spectacular foray into the Northern Pacific in the early seventies the national emergency was paramount. Had purely economic interests prevailed Waddington's project for linking the West to the Grand Trunk system by running rights over the Northern Pacific might well have met the requirements of Western Canada for a whole generation; but the risks were too formidable for the national temper of that day. To keep the railway on Canadian soil the first project for the C.P.R. in 1872 was to have been endowed with a land grant of 50,000,000 acres—a principality larger than the Maritime Provinces. Land subsidies still larger were contemplated by the Mackenzie government after "the Pacific scandal"; and the Conservative government after their return to power in 1878 resumed the project by approving a grant of "one hundred million acres of land, and all the minerals they contain . . . for the purpose of constructing the Canadian Pacific Railway." The final grant of 25,000,000 acres to the C.P.R. in 1881 passed, in both east and west, as a national necessity. The most resolute opponent of "monopoly" and "land-lock" in later years, was prepared to concede that to "get the railway and keep our public land" was "impracticable" in 1873. "Beyond a doubt the only practicable mode of building the Pacific Railway", added the *Manitoba Free Press* in 1880, "is from the proceeds of the Crown lands."

It would be easy to criticize in the abstract a technique to which there seemed no feasible alternative in 1873 and 1881. It would be easy also to reconstruct apocryphally a combination of policies designed to preserve the virtues of the railway land grant system without perpetuating its most glaring defects. Government construction and ownership of the railway; a policy of land sales for the odd-

numbered sections like that actually projected in the regulations of July 9, 1879 (see Chapter III, p. 266) before private interests could be induced to undertake so hazardous an enterprise; a general policy, beyond the railway belt, of sales and free homesteads like that which underlay the pre-emption and purchased homestead policy of 1908; these and many other counsels of wisdom are easily reconstructed after the event by ignoring the desperate fiscal problems and prevailing temper of that day. The most glaring defects of the railway land grant system could be listed with equal assurance. Approximately half the best agricultural lands of Western Canada, all "fairly fit for settlement", was a prodigious price to pay for transportation. The Canadian system of "indemnity selection" opened the flood-gates to exploitation by land grant railways so far in advance of settlement that the terms of the land grants could be liquidated only in 1908. "Land-lock" and "monopoly" became chronic grievances for a whole generation; and the "colonization railways", devised as an antidote, merely confirmed them both. The ruthless scramble for eligible reserves bedevilled policies and politics. Land companies, in the wake of the railway land grants, carried on these tendencies into the realm of speculation until recurring "booms" and depressions distorted the growth of systematic settlement, and left a vast legacy of unproductive acreage to complicate the reconstruction which is indispensable if Western Canada is ever to settle down into a stable economy. All these and many other defects could be charged apocryphally against a system which the whole Dominion took for granted sixty years ago.

Measured by ultimate results, however, virtues and defects are not so clearly distinguishable. By a curious turn of events time has transformed some of the gravest initial defects into ultimate advantages. The method of "indemnity selection" which was long regarded as "prodigal and extravagant" has had the effect of reserving, section by section, the acreage necessary for the most approved technique in semi-arid agriculture. Throughout the whole range of the best agricultural lands in Western Canada, free homesteads and railway lands were to be found in contiguous quarter sections, and the successful homesteader could rely upon the prospect of purchasing a second quarter section at rates sometimes substantially below the average market price for his district. In that sense the maligned "land-lock" of the eighties was a blessing in disguise. Without it the contiguous free-homestead settlement to be found west of the 100th meridian in the United States might have produced a "land-lock" of another sort: a barrier to expansion except at the expense of the neighbouring homestead. Precarious as the free homestead has proved to be in vast areas of Western Canada, the casualties might have been greater still, and no improvement in agricultural technique could have repaired the defect. Without the maligned "land-lock" the technique of dry farming might have been strangled in its infancy.

The railway land grant may be credited with a second virtue in Canada. Upon the necessity of providing for larger holdings Sifton and Oliver were agreed; and the prospect of adding a quarter section or more of railway lands to a free homestead was "a great inducement" to settlers with capital and experience in dry farming. Railway land grants supplied the largest proportion of cheap and easily accessible land to be found under one category on either side of the boundary:

The fact that a 320 acre farm could be acquired at a reasonable price by locating a homestead on an even-numbered section and purchasing from the railway company on the odd-numbered section, we believe has been a very great incentive to the settlement of our country by the best class of people, that is, people with means and ability to carry on farming operations on a considerable scale.

So well recognized was this feature of Canadian policy by 1908 that the attempt was made to perpetuate it, as we have seen, in the pre-emption and purchased homestead regulations of that year:

By putting . . . the odd and even numbered sections in one class and offering an adjoining quarter-section at a fair price and on settlement conditions to the homesteader who takes a free homestead we . . . hope to be able to keep up that stream of desirable immigration that has added so greatly to the wealth and prosperity of our country during the past few years. This, I might say, is the important feature of the bill.

A third claim may perhaps be allowed for railway land grants in the practical technique of settlement. If they attracted some of the most prosperous settlers—"the best class of people, that is, people with means and ability to carry on farming operations on a considerable scale"—the ratio of cancellations and revestments would seem to show a remarkable record also for permanency. It would be unsafe to claim too much from the phenomenally low rate of cancellations in the sale of railway land grants. Much of this acreage was sold to settlers already permanently established or requiring only the quarter sections of railway lands to make them so; and both the C.P.R. and the Province of Manitoba in administering the "security lands" of the old Manitoba and North-Western made a practice of selling lands rapidly and reasonably, and of enforcing the personal covenant only in exceptional cases so long as the settler stood by his purchase.<sup>10</sup> Measured nevertheless by the truly appalling ratio of cancelled homestead entries—over 40 per cent. for the whole period of Dominion Lands and 57 per cent. for Saskatchewan from 1911 to 1931—the rate of cancellations for C. P. R. lands was remarkably low. The estimate reached by Dominion counsel before the Saskatchewan Resources Commission was 22 per cent. in acreage and 33⅓% per cent. in price. It is reasonable to suppose also that the purchaser of railway lands scrutinized his purchase more narrowly than the homesteader was apt to scrutinize his homestead, and in periods of depression the railway could be relied upon to exert an encouraging and stabilizing influence. The C. P. R. amortization scheme of 1923, spread over a thirty-four year period, was applied not only to unsold acreage "with a view to their becoming more rapidly colonized", but to payments outstanding on first sales. For the C.P.R. in particular the permanency and prosperity of the settler was so paramount, in the interests of traffic if nothing else, that their land policy may challenge comparison with any other category of land settlement. "I know of no organization in any country", stated the president of the Company after the amortization plan of 1923, "which gives such terms to settlers." C. P. R.

<sup>10</sup> . . . . .

land policy, exclaimed a veteran of the Company before the Saskatchewan Resources Commission, was "the building up for an empire in the West." "We built Western Canada."

How far the interests of permanent and prosperous settlement entered into the land policy of the "colonization railways" is not so easily traceable from the checkered history of those companies (see Chapter IV, and Chapter V, section 4). For many of them, as we have seen, the land grant was a resource to be exploited by methods neither better nor worse than those of the average land company. But despite features that were indefensible there were at times inadvertent virtues which the government itself could not or would not rival in the technique of settlement. Several of the land companies to which the "colonization railways" frequently consigned their land grants for expert administration must be credited with exploits of colonization so resourceful and enterprising that they may be said to have set the vogue in successful land settlement for their day. Two or three of the "colonization railways" made a direct contribution to the economy of their district which went far to redeem the good name of the whole system.

The Manitoba and Southwestern in applying their land grants directly to the building and financing of their railways had at least the virtue of disposing of their lands as rapidly as possible: so rapidly that some 900,000 acres devolved upon the Province of Manitoba as "security lands" under the Railway Aid Act until the line became a subsidiary of the C.P.R. and redeemed its land grant by rapid sales under the Land Commissioner of that company. The Manitoba and North-Western, following the same procedure, issued land warrants for more than 540,000 acres which the province located and disposed of at equally reasonable prices. About 250,000 acres of the Winnipeg and Hudson's Bay land grant devolved also upon the province until they were brought back, as we have seen, by Mackenzie and Mann for \$400,000, and administered to swell the thrifty land sales of the Canadian Northern. Of the "security lands" administered by the Province of Manitoba scarcely more than 40 per cent. found their way directly to the settler; 60 per cent. were disposed of to the speculator or the land company whose functions nevertheless were vindicated by the Deputy Minister of that day. They employed expedients which the government could never rival for the rapid transfer of the land to actual settlers.

The Calgary and Edmonton, and the Qu'Appelle, Long Lake and Saskatchewan land grants, administered by subsidiary land com-

panies, were scarcely distinguishable from the vast acreage acquired and administered by innumerable other land agencies in the development of Western Canada. The success of the Calgary and Edmonton Land Company in consolidating their land grants for the development of ranching in Alberta, and the fabulous exploits of the Saskatchewan Valley Land Company were distinctive features of frontier enterprise. Clifford Sifton once referred to the Saskatchewan Valley Land Company as "the beginning of the success of our immigration work . . . the first indication that we had actually succeeded in attracting the attention" of men and capital in the United States. "I make the statement advisedly", he added, "the coming in of this company was the beginning of the great success of the immigration work in the west." "I can recall no feature of our colonization policy in the Northwest which has been attended with greater success."

The land grants of the Canadian Northern subsidiaries were administered largely through the kindred technique of the Saskatchewan Valley and Manitoba Land Company—a vogue followed even by the C.P.R. for much of its land grant under the North-West Colonization Company after 1902. The solid achievements of these resourceful land companies were not to be disparaged, as Sifton once sardonically remarked, simply because they had made a little money for themselves. The Alberta Railway and Irrigation Company served a remarkable variety of Western Canadian needs and resources, from coal, timber, and transportation, to ranching and irrigation, and the immigration of settlers familiar with both these processes from the United States. Many of the normal expedients used by the land companies subsidiary to the "colonization railways" the government would not and probably could not have employed. Much of the political turmoil of those days was probably indefensible; and the acquisitive temper of the land grant railways ministered in many devious ways to the confusion. The results nevertheless were vital and far-reaching in the settlement of Western Canada. By this discredited system a vast domain of railway land grants nearly as large as the Maritime Provinces passed from government administration into private enterprise and found its way through scores of intermediate agencies towards the ultimate stages of land settlement.

#### *4. School Lands*

The administration of school lands, like their function as an "endowment for purposes of education", was distinctive and unique.

The general policy with regard to them has been simple and direct. Less perhaps than any other category of Dominion Lands was it integrated with other policies or dependent upon the varying exigencies of the day. The one thing it was intended to do was done with conspicuous success. It produced the highest revenues, it was administered at the lowest cost, its function was the most admirable, and the technique of sale and investment the most nearly uniform to be found in the whole range of Dominion Lands policy.

An experiment so consistent and detached has peculiar interest as a type of land policy. School lands were administered for purposes of revenue. The revenue was derived chiefly from land sales, at public auction. These sales were adjusted with rare judgement to good harvests and world markets, and the proceeds were "invested in Dominion securities" yielding a stable and conservative income "towards the support of public schools . . . in such manner as may be deemed most expedient" by the provinces themselves. Administered for provincial purposes in the midst of Dominion Lands "administered for the purposes of Canada", school lands afford some demonstration of the potential fiscal value of western lands under a policy of land sales for purposes of revenue. "The amount of this net income", reads the Report of the Natural Resources Commission for Manitoba, "derived as it is from the administration of only one-eighteenth of the surveyed area of the Province, furnishes a good example of the value of the Crown lands in this area."

Though derived, like so many other features of land policy, from the United States, the school lands policy of the Dominion owed much of its success to the costly experience south of the boundary. Variable legislation and faulty methods of sale and investment under state administration levied a heavy toll in many of the public land states. In the old Province of Canada also the proceeds from school lands had been largely dissipated by excessive costs of administration (20 per cent.) and by the deflection of nearly a quarter of the revenues to "local improvements". By the time of the first Dominion Lands Act of 1872 a vast range of experience was already on record; and the cardinal principles of federal administration, sale by public auction at intervals judiciously adjusted to rising prices, and uniformly safe investment of the school fund under federal auspices, proved to be permanent features of Dominion policy.

That policy (outlined in detail in Chapter VI) it will be unnecessary to review here except in its relation to other categories of Dominion Lands; for despite the detachment from general lands



policy there were mutual influences both good and bad in the relations between them. The reservation of sections 11 and 29 in every township (corresponding to sections 8 and 26 for the Hudson's Bay reserves) ensured the maximum of accessibility (see Fig. 8) for prospective purchasers. The technique of sale by auction, upset price by the Department of the Interior, hay permits, grazing leases, and other aspects of school lands administration became familiar features of every township. Compromises were made with the provinces to meet the straits of a frontier community. Rentals, interest on deferred payments, and other casual revenues were paid over annually with the interest on the "fund" instead of being added to the "fund" itself. More than once the provinces found allies in the House of Commons for an advance of capital from the fund for permanent expenditures on education; but the Senate held inflexibly to "original principles", and those principles remain permanently underwritten by the provinces themselves in the final settlement of 1930.

In some respects at least general policy influenced and perhaps impaired the administration of the trust. Departmental leniency with regard to deferred payments, interest, and in many instances voluntary cancellations, was directed to the general interests of settlement rather than to the immediate purposes of the trust—revenues for indigent provinces for purposes of education. There was no regular "follow-up" system for collections, no effective system of inspection, and no attempt to develop the "crop-share" technique generally employed by private agencies. On the 21 per cent. of gross sales of school lands cancelled in Alberta from 1905 to 1930, only 3.4 per cent. of the principal was ever collected after the first payment, and only about 12.7 per cent. of the interest on deferred payments. Reduced to a rental basis the total payments of both principal and interest on cancelled sales amounted to 31 cents per acre per annum over a period of  $9\frac{1}{2}$  years of occupancy. In an area of 190,000 acres of Dominion sales subsequently cancelled by the Province after the transfer, fewer than one-fiftieth of the purchasers had paid the second instalment, and only about two-fifths of one per cent. of the principal had been collected after the initial payment prescribed by the regulations.

On the other hand, the integration of school lands with general Dominion policy had its virtues as well as its defects. In Manitoba where "boom" prices and other vicissitudes of world conditions had less effect upon early land sales, the cancellations were less than two

per cent. of gross sales. The cost of administration for school lands, incidental as it was to the administration of Dominion Lands in general, was kept phenomenally low. In Manitoba they were less than 2.99 per cent. of gross proceeds, in Alberta less than 2.74 per cent., and in Saskatchewan a little over 2.16 per cent. For the whole period of Dominion Lands less than 2.5 of gross proceeds from school lands have gone to costs of management. Compared with C.P.R. lands and Hudson's Bay lands where the costs of administration were admittedly high, or even with Manitoba swamp lands or the Canadian Northern lands where costs of management were exceptionally low—about 12 per cent. and 9 per cent. of gross sales respectively—the school lands of the Prairie Provinces have been administered so cheaply that cost of management scarcely impaired the proceeds of the trust. In a very literal sense it impaired the school lands fund not at all, for costs of administration were deducted annually not from the capital proceeds from land sales but from the interest on the "fund", rentals, hay permits, and other casual revenues accruing annually to the provinces.

Much of the success of school lands policy was due perhaps to exceptional factors in its administration. The timing of the sales, usually in consultation with provincial authorities to produce the maximum proceeds for the fund; the exceptionally low incidental cost of administration; the technique of sale by auction; the maximum of accessibility to school lands, in sections 11 and 29, for settlers already well established in the township; these were features which no provincial government could hope to reproduce for all categories of public lands under a general sales policy. The purchasers of school lands as a rule were homesteaders or settlers who had bought their holdings from the railways or the Hudson's Bay Company, and were prepared to speculate upon the margin of world prices for the next harvest. More than 77.5 per cent. of sales were made during the "boom" periods of 1910-1913, 1917-1919, and 1928-1930. It is fair, however, to add that other selling agencies realized prices quite as exceptional during the same "boom" periods. While the gross average price for school lands was \$9.79 in Manitoba, \$16.85 in Saskatchewan, and \$14.40 in Alberta, that for C.P.R. lands in Saskatchewan for the period 1916-1930 averaged \$13.71 from main line land grants, \$14.79 from the Souris Branch land grants, and \$15.32 from the land grants of its subsidiary the Great North-West Central. The Canadian Northern land grants for the same period averaged no less than \$16.06. Enough has been cited,

at any rate, to demonstrate the fiscal value of western lands had the provinces been free to administer them for purposes of revenue without regard to railways or other vested interests. Nowhere else in North America, perhaps, during this period, was it possible to sell land so easily and so uniformly, to bring it into cultivation so quickly, and to take advantage so promptly of world conditions.

It would be idle to reconstruct such a hypothetical sales policy in detail; and it would be impossible, of course, to compute with any degree of accuracy the fiscal results for the provinces. By common consent the free-homestead policy would have been continued for some time in Alberta and Saskatchewan after 1905. But had the even-numbered sections been sold at low uniform prices as in the United States (\$1.25 per acre before the Homestead Act); had the odd-numbered sections been reserved, not for railways (as they were uniformly reserved on Dominion Lands up to 1908) but for Crown reserves, for sale at the market value, using the school lands technique of public auction at upset prices; it would be easy for a sanguine exponent of the Gibbon Wakefield school to envisage a general sales policy of lucrative proportions. The limited categories of land cited above (pp. 502f.) were sold for about \$379,000,000 in gross sales. If to this were added the proceeds of land companies, private speculators, "improved homesteads", and innumerable other agencies of private enterprise, it will be conceded that a prodigious sum has been paid, directly or indirectly, for farm lands in Western Canada. It would defy the wit of man to devise a method of engrossing all these proceeds for the government; but in such a context the terms which attended the settlement of the Natural Resources Question seem moderate and reasonable. The public lands of the Prairie Provinces could have been made a fiscal resource of the first importance. Even in combination with the free-homestead system these have been sold for gross prices which dwarf the "compensation fund" of \$37,500,000 for each province improvised in 1905 as the basis of the subsidies in lieu of lands under federal administration. It is fair also to remember that these fiscal resources were administered "by the Government of Canada" to the point where they are practically dissipated as initial sources of revenue to the provinces. The schedule of interest payments improvised in 1905—one per cent. of the "compensation fund" up to 250,000 of population, one and one-half per cent. up to 400,000 of population, two per cent. up to 800,000 of population, and three per cent. thereafter—has now been underwritten by the settlement of 1930 for all three

provinces. Measured by the range of these resources, their exceptional fiscal value, and the ease with which they have been exploited by scores of selling agencies to their own advantage, this schedule would seem to provide a moderate "compensation" for resources withheld, for national reasons of high public policy, from the normal functions of public lands in other provinces of the Dominion.

However imperative the national "purposes of the Dominion" may have been in other respects in the administration of Dominion Lands, the function of school lands stands out as a statesmanlike policy on its own merits. The school fund transferred to Saskatchewan, Alberta, and Manitoba in 1930 amounted to more than \$33,350,000. This was a capital sum derived from the sale of less than half the school lands within the surveyed areas of the Prairie Provinces—less than one-thirty-sixth of the surveyed area of Dominion Lands. In addition to the school lands fund, the interest on the fund from year to year, together with the current interest on deferred payments, rentals from leases, hay permits, and other revenues, have provided annual proceeds almost as substantial in the aggregate as the amount of the school fund itself. In Saskatchewan more than \$16,350,000 have thus been paid to the province in cash from 1905 to 1930—nearly half the provincial grants to public schools (\$33,400,000) during that period. In Alberta current revenues from school lands and the school lands fund from 1905 to 1930 amounted to about \$10,500,000, more than half the grants to public schools (about \$19,600,000) during the same period. Even in Manitoba from 1905 to 1930 the total revenues from school lands amounted to about \$6,500,000. For the whole period of Dominion Lands from 1870 to 1930 more than \$34,000,000 in current revenues from school lands and the school lands fund have been paid in cash. The total net proceeds of current revenues and capital paid or funded in cash or the equivalent up to 1930 reached the sum of \$67,550,000; and if to this be added the outstanding agreements of sale transferred to the provinces in 1930, together with the school lands still unalienated, the aggregate becomes a truly imposing monument to this "endowment for purposes of education" in the Prairie Provinces. After sixty years of Dominion Lands, the basic principles of school lands administration still remain, under provincial as under federal administration, "sacred and inviolate."

##### *5. The Free-Homestead System*

The free homestead, like the railway land grant, was the product

of its North American environment; a recapitulation of its function could scarcely be attempted apart from its historical context and integration with other aspects of Dominion Lands policy. Whatever may be said for a policy of land sales during the decade and a half of maximum immigration into Western Canada at the beginning of the twentieth century, a general sales policy for Dominion Lands was scarcely feasible during the nineteenth century while the Homestead Act of the United States was still at the height of its vogue and popularity. But though the free homestead appeared almost simultaneously on both sides of the boundary, there were historic differences in both origin and function. In Canada it was inseparably integrated with other factors. In that form it was perhaps the least controversial feature of its day in Dominion Lands policy. It has survived to become in many respects the most baffling of all to appraise upon its merits.

On both sides of the boundary its adoption was dictated by ulterior national purposes. In the United States the revolt against the orthodox Hamiltonian doctrine of the public domain was well under way when the basic conflict between north and south cut athwart the issue and completely reversed the traditional alliances of the frontier. The agricultural south which had been supporting Benton's "log cabin bills" for "pre-emption" or "graduation" since 1824 now discovered that the industrial north could outbid them for the control of the public domain. Instead of "cheap land", the abolitionist was prepared to offer "free land" in the West in order to ensure "free" states against the "slave" south. Out of this rivalry came the Homestead Act of 1862, after the traditional friends of the frontier had withdrawn altogether from the Union; and "once adopted", as Donaldson observes, "no person could estimate its moral, social, and political effects."

In Canada national purposes were equally dominant. In New Brunswick and Nova Scotia there were free-homestead laws upon the statute books, but local rivalries with lumbering and other interests still complicated the cause of agricultural settlement. In the old province of Canada the issue of cheap or free land was already a Clear Grit doctrine against the vested interests of the big land companies in order to stay the exodus to the prairies of the middle western states. With the transfer of Rupert's Land to the Dominion in 1870, however, the free homestead became a new creature. An empire of Dominion Lands had to be made good against the most spectacular technique of rapid settlement in

modern history. Whatever lurking opposition might still remain to the free homestead in the old provinces, not a trace is to be found in the federal field. Unlike the United States where the federal government was the last to be convinced—President Buchanan's own veto was the last barrier to the Homestead Act—the new Dominion made the free homestead a fundamental feature of its land policy. It was one of the "purposes of the Dominion" in 1870 in retaining the public lands under federal control. It remained a cardinal federal policy in 1885, in 1905, and in 1916; and when the system had run its course the return of the remaining resources to provincial control became for the first time feasible. If the free-homestead system was designed in the United States to "save the Union" in 1862, it was also designed in Canada after 1864 to safeguard the "national necessity" of westward expansion and to make good a transcontinental Dominion against the march of "manifest destiny" south of the border.

For a time the free homestead was subordinated to a still more imperative necessity. Rapid settlement was not less important than a transcontinental railway, but the one was impossible without the other. Under the necessity of building the railway "by means of the land through which it had to pass", the government was prepared to suspend existing regulations within a belt of 36 miles to be "sanctioned for the Inter-Oceanic Railway", and to "terminate after the same day the free homestead system". In the first C.P.R. bill in 1872 the free homestead was altogether supplanted in a belt of 40 miles—20 miles on either side of the railway. As late as July 9, 1879, the central zone (Belt A) of 10 miles was to be withdrawn altogether from homestead entry, and it was not until the regulations of October, 1879, forecasting the C.P.R. syndicate, that the free homestead reappeared for the even-numbered sections within the new central railway belt (Class A) of 48 miles reserved for the building of the C.P.R.

This integration between free homestead and railway land grant was to become, as we have seen, the most distinctive feature of Dominion Lands policy. By an arrangement peculiar to the Dominion, railway land grants were to be "fairly fit for settlement", and the range of "indemnity selection" thus permitted to the C. P. R. and the "colonization railways" up to 1908 necessitated the reservation by Order-in-Council of the odd-numbered sections throughout the whole range of Dominion Lands as railway reserves for the selection of land grants "earned" or to be earned by the rail-

ways. But side by side with the odd-numbered sections of railway lands went the even-numbered sections of the free-homestead system.<sup>11</sup> The C. P. R. itself avowed from the outset a policy of "settling the land as fast as we could"—of planting a "free settler upon every acre belonging to the Government." "The free homestead policy was the foundation on which we worked." Employing the free homestead to initiate and to speed up pioneer settlement, the railway wisely reinforced Dominion policy by subordinating their own revenues from land sales to the more urgent need of traffic. Their own lands were rapidly settled at prices substantially lower in many instances than their market value.

From this working alliance between the railway land grant and the free-homestead systems many of the most distinctive virtues and a few of the most glaring defects of Canadian policy are indirectly traceable. Since neither a general sales policy nor a general free-homestead policy was feasible for Dominion Lands in 1881, the working compromise between them must be examined in this larger context.

(a) *Dominion Lands policy was obviously not a simple and uniform system of free homesteads.* Under the range of "indemnity selection" accorded to the railways, the railway land grant penetrated every eligible area of agricultural land in Western Canada. Throughout the whole range of Dominion Lands these odd-numbered sections, whether "fairly fit for settlement" or not, were reserved from homestead entry until 1908. The free-homestead policy was scarcely more than half a policy at best, and the net results must be shared accordingly.

(b) *Larger holdings in semi-arid areas.* From this integration sprang one of the most fortunate features of the Canadian system; and the fact that it may have been largely inadvertent in its origin must not conceal its advantages. In semi-arid areas where dry farming and summer-fallowing proved necessary on a large scale, a half section or more was quickly recognized as a much more dependable unit for successful agriculture. Had all Dominion Lands been open to homestead entry the most eligible areas might have been settled contiguously in units too small for the newer technique. The "landlock" of the eighties may have been a blessing in disguise. The development of larger holdings, even when accompanied by tenancy and absentee administration, has been so marked a tendency that no regulations of land policy in the first instance could

<sup>11</sup> Except for the Hudson's Bay lands in sections 8 and 26.

have withstood it. To that extent at least the "half-policy" of free homesteads provided a fair field for the pioneer's own thrift and enterprise. The normal quarter section was contiguous on two sides to other quarter sections "fairly fit for settlement", for sale cheap and on easy terms to the resourceful settler.

How far present holdings have been accumulated directly from railway lands, school lands, and Hudson's Bay lands or from the amalgamation of free homesteads cannot now be computed; but since the average holding in Saskatchewan in 1926 was 389 acres it is obvious that 229 acres—nearly 60 per cent.—of the average farm was acquired from sources other than an original nucleus of a free homestead. That this was a normal and accelerating tendency seems clear from Figures 27, and 28 (p. 427). By 1921 and 1926 this process of "adjustment" on a large scale was fairly under way. Its initial stages, however, were provided for in the Canadian homestead system itself. When the selection of railway land grants came to an end in 1908 and the whole range of unreserved Dominion Lands was thrown open for homestead entry, this feature of the old system which had been credited with attracting "the best class of people, that is, people with means and ability to carry on farming operations on a considerable scale", was thought worth perpetuating in the pre-emption and purchased homestead system. Drought has since played havoc with vast areas of holdings, large as well as small. The ranch as well as the farm has been devastated by it. But for regions of marginal rainfall this flexibility of expansion must have had a part in holding as well as in attracting "the best class of settlers".

(c) *Function of the free homestead in pioneer settlement.* The earliest function of the free-homestead system in Canada was to attract the pioneer: "Parliament pledged its faith to the world that a large portion of these lands should be set apart for free homesteads for all coming settlers, and another portion to be held in trust for the education of their children." The government was to hold "unfettered in its own hand the lands which it offers free". This was the "impressive fact to the mind of the man contemplating emigration." The technique of the government in this enterprise was much less ingenious than it seemed. The Dominion could "make millions out of the lands of the Northwest and never sell an acre." "Customs returns . . . trade and commerce . . . manufactures" all reflected the "increase in settlement on the free lands of the Northwest Territories". "Whether with a price or without a price makes little



or no difference". It was "worth the while of the Dominion to spend hundreds of thousands" upon the administration of these lands, "and then to give them away".<sup>12</sup> For the railways, too, the free homestead was frankly remunerative. Traffic was indispensable for solvency, and settlement was indispensable for traffic. The C. P. R. could well afford to "plant a free settler upon every acre belonging to the Government." It could afford also to practise its own precept by selling its own lands rapidly and on easy terms in order to build up remunerative traffic for the railway. With this self-interested and discerning coöperation between government and railway, Western Canada began at last to compete for immigration with the neighbouring republic as the movement of population reached one frontier after another of the public domain. When the hour of Western Canada at last struck, the free homestead which had "primed the pump" for the pioneering stages of settlement now played a part scarcely less distinctive for the decade and a half at the beginning of the twentieth century.

(d) *Free lands, land sales, and rapid settlement.* The function of the free homestead during the period of maximum settlement has been traced in some detail (see Chapter IX, section 5 and Chapter X, section 2) and the recapitulation here must be very brief. Up to 1902 "fully one-half of the settlers . . . actually located on the land in the West", in the opinion of Clifford Sifton, had "not taken up homestead at all."<sup>13</sup> By 1908 the area under homestead was about equal to the area of land subsidies granted to the railways—a little more than 30,000,000 acres. Within eight years the new homestead entries forged ahead until the total area of railway land grants was almost equalled by the area under free homestead in Saskatchewan alone (29,083,000 acres). An area larger than Vermont was "entered" in free homesteads in 1909; twice the area of Connecticut in 1910; more than Delaware and New Hampshire in 1911; nearly the area of Maryland in 1912; more than Massachusetts in 1913; and more than the area of Wales in 1914. Concurrently with this, it must be added, land sales by the railways, the Hudson's Bay Company, and other selling agencies shot up to unprecedented proportions (see Fig. 34 and p. 502). By 1926 the agricultural lands of the Prairie Provinces had been substantially "occupied" (see Fig. 35), though the ominous gap between occupancy and cultivation is very clearly discernible (Fig. 36).

<sup>12</sup> Hon. Frank Oliver, *Debates of the House of Commons*, 1905, pp. 3157 ff.

<sup>13</sup> "The division, I should say, roughly speaking, would be about one-half." *Debates of the House of Commons*, 1902, p. 2981.

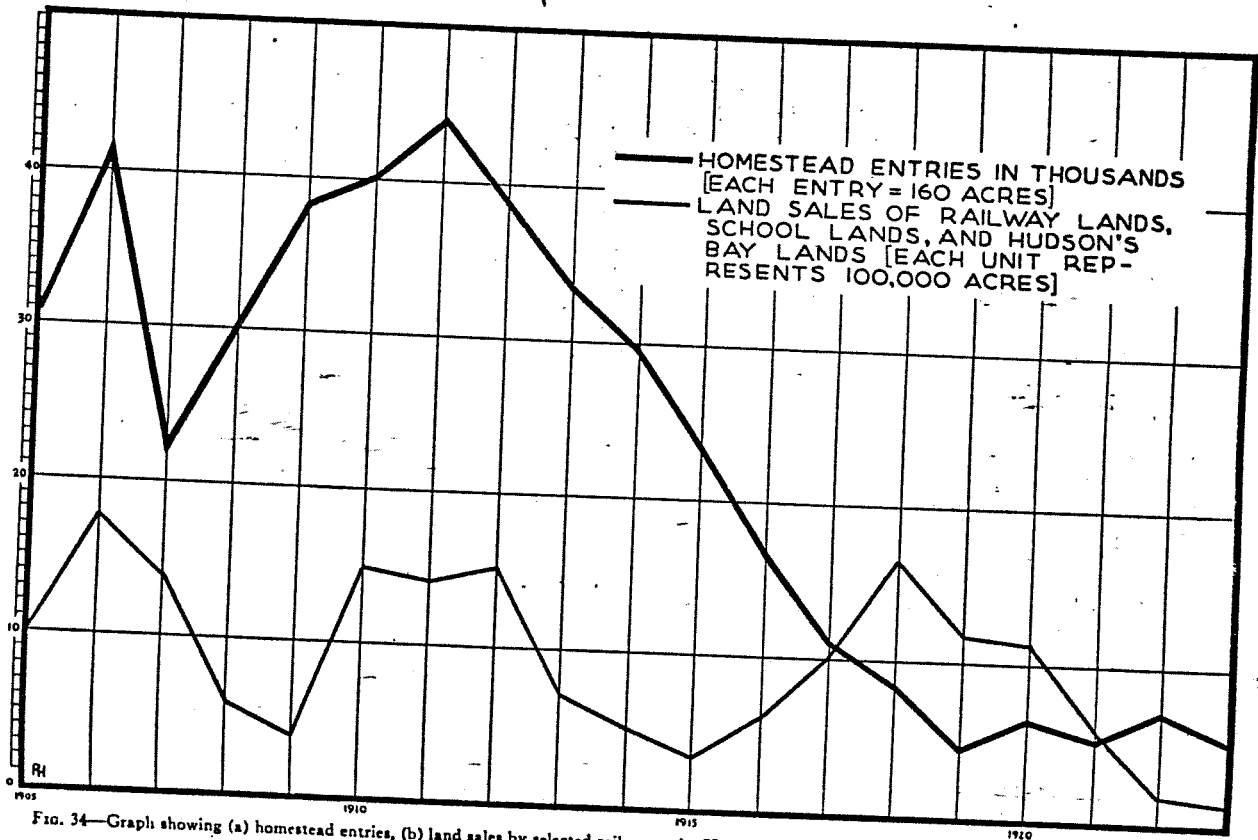


FIG. 34—Graph showing (a) homestead entries, (b) land sales by selected railways, the Hudson's Bay Company and School Lands, from 1905 to 1923.

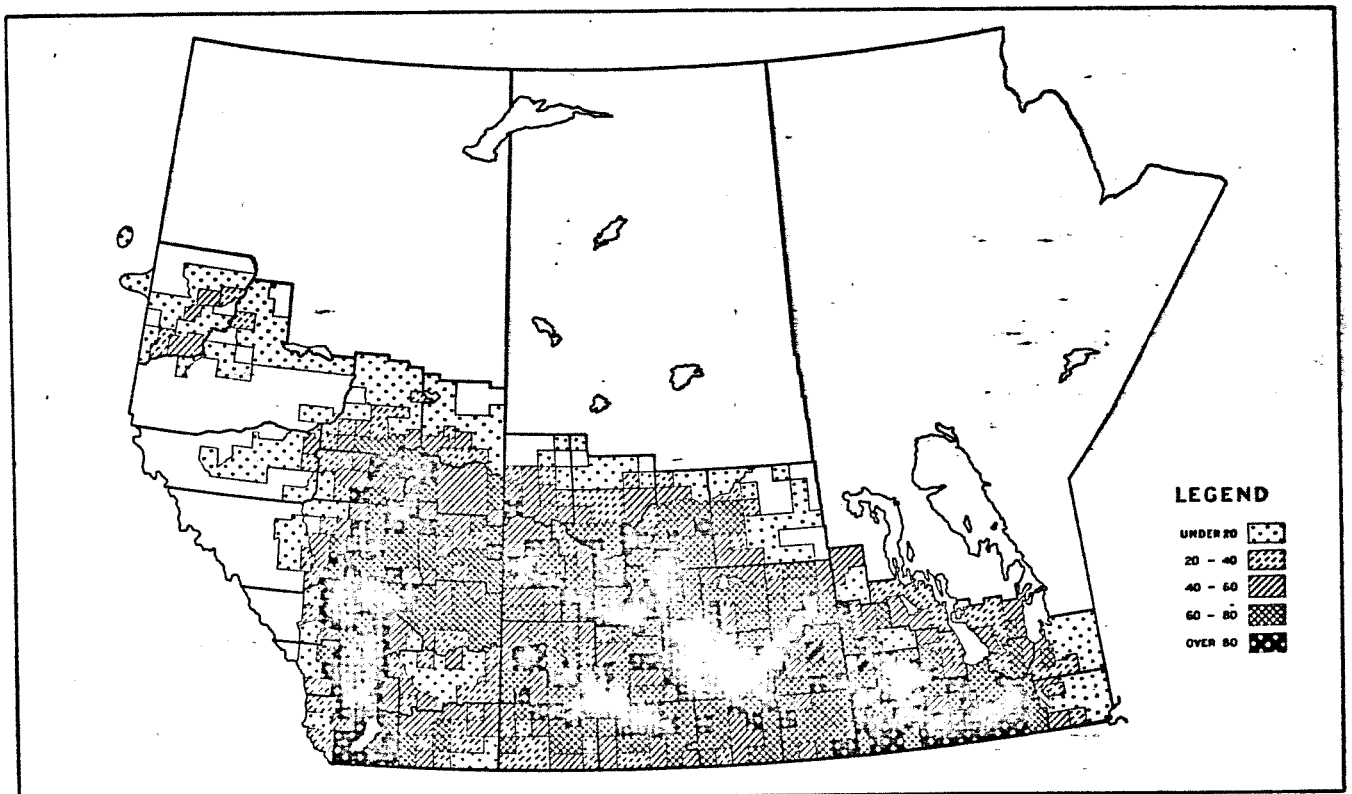


FIG. 35—Percentage of land occupied in the Prairie Provinces, 1926 (based on the census of 1926). The territorial unit is the municipality.

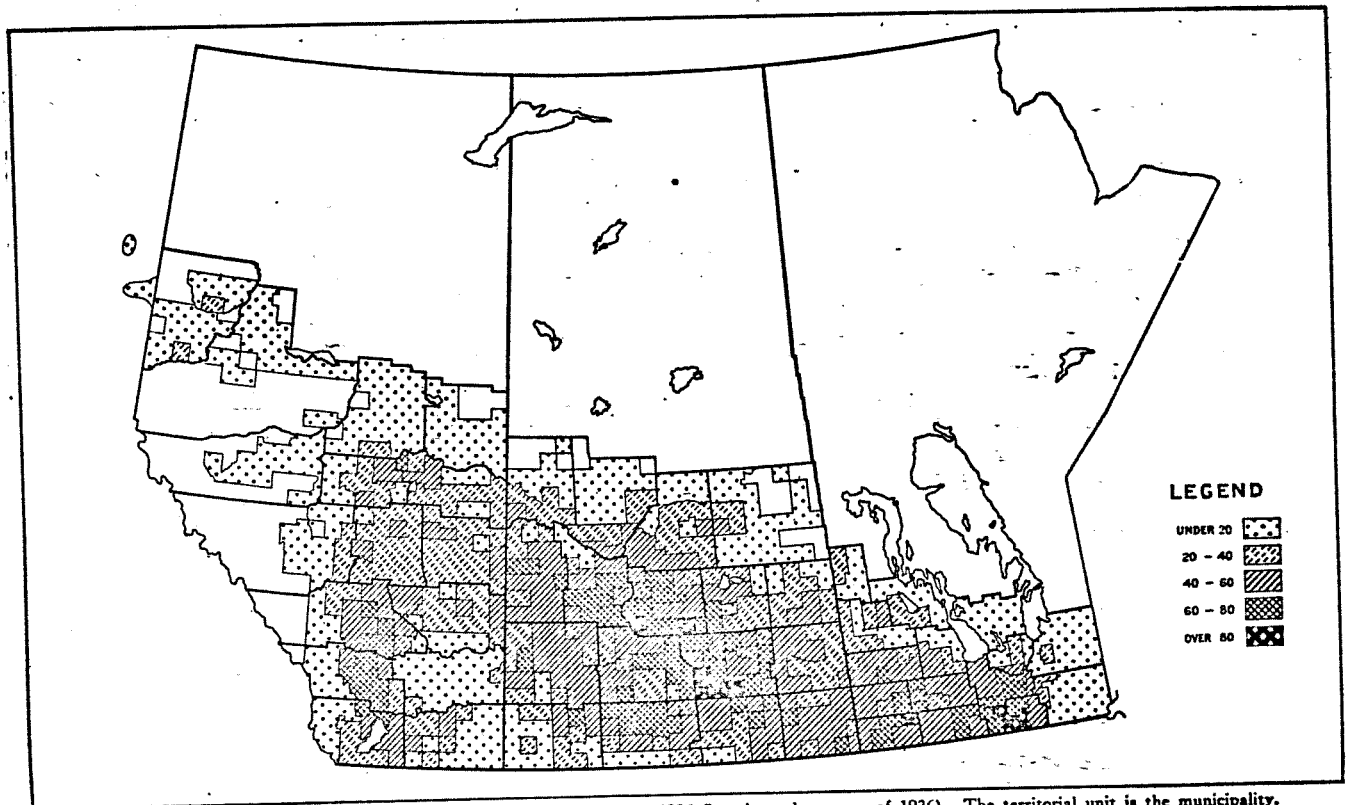


FIG. 36—Percentage of total land improved in the Prairie Provinces, 1926 (based on the census of 1926). The territorial unit is the municipality.

For the earlier stages of this movement the free homestead functioned virtually as a bonus for railway lands, Hudson's Bay lands, school lands, and the ubiquitous land company alike. The sale of 250,000 acres of homestead lands (the even-numbered sections) to the Saskatchewan Valley Land Company inaugurated the classic demonstration of land sales to the actual settler. All sorts of selling agencies adopted a similar technique. Thereafter the free homestead in conjunction with cheap lands for sale proved to be the "great incentive to the settlement of our country by the best class of people". The popular formula was retailed from buckboard and "democrat" for more than a decade: a free homestead of 160 acres with an adjoining quarter section at \$12 per acre provided the resourceful settler with a 320-acre farm at an average price of \$6 per acre. Less reputable land companies "blanketed" the homesteads in the vicinity by fictitious entries "by attorney", to be withdrawn at the convenience of the prospective purchaser. In such a context the free homestead was scarcely more than a bonus from the government which enabled the enterprising land company to sell its acreage for twice the average price which the settler was willing to pay, and enabled the enterprising settler to secure his half section at an average cost per acre of half the price normally charged by the land company. "Ninety per cent. of the Americans that came in bought land", and about half the Canadians. This could scarcely be called a free-homestead policy of land settlement, but beyond a doubt the free homestead contributed in no small measure to its effectiveness.

(e) *The free-homestead system and the simple homesteader.* For many a settler of more limited resources also the free homestead must have opened the door to a modest competence, and in many instances to prosperity or affluence. Even when the "stream of desirable immigration" with ready capital had passed its flood, the humble homesteader still had his chance. Despite the casualties of the free-homestead system—a record of more than 40 per cent. for the whole period of Dominion Lands, and of 57 per cent. for the period 1911-1931 in Saskatchewan—the attack upon the wilderness was not without its victories. For tens of thousands of homestead entries an unrecorded story of thrift and enterprise must have been enacted upon the frontier. The homesteader was able to invest all his available capital in farm machinery and equipment. With characteristic faith he usually invested his first profits in more land: another quarter or half section on easy terms from the railway or

the Hudson's Bay Company, or from the eight available quarter sections of school lands in his township. He prospered because his free homestead gave him his chance. He was able to buy land from the railway in the years of his prosperity because the government with the benediction of the railway had given him his homestead free in the days of his early privation. The vicissitudes of climate and world conditions have been beyond his control. He has known "booms" and depressions, hail and rust and "bumper crops", rainfall and drought; but in so far as industry and courage could command prosperity he has found a fair field for his enterprise. This remains more than a counsel of resignation to thousands who still retain the "western spirit" in adversity after the longest recorded drought in their history.

(f) *The permanency of free-homestead settlement.* Measured by the percentage of cancellations between "entry" and patent, the free-homestead system presents a truly appalling record of casualties.

The relative permanency of land sales has already been outlined (see above, section 3 of this chapter), though the conclusion is not always confirmed in detail.<sup>14</sup> The C. P. R. and several other railways have enviable records for permanent settlement. In so far as settlement was made subservient to traffic, permanency was of the essence of the contract. The personal covenant was seldom enforced so long as the purchaser stood by his obligations. Cancellations and revestments of less than 23 per cent. in acreage and 33 $\frac{1}{3}$  per cent. in price indicate a stabilizing and encouraging oversight on the part of the Company. The amortization plan of 1923 (see Chapter V, section 3) was perhaps the most generous ever devised by such an agency.

By comparison with these results the casualties between entry and patent for the free homestead reach alarming proportions. For the whole period of Dominion Lands 40 per cent. (see Chapter X, section 2) would be a conservative estimate. Of nearly 100,000,000 acres under homestead entry less than 59,000,000 acres were duly "proved" and patented or still remained as unpatented homesteads. For the Province of Alberta nearly 16,000,000 acres out of less than 35,000,000 acres of homestead entries were cancelled from 1905 to 1930—nearly 46 per cent. For Saskatchewan about 57 per cent. of homestead entries from 1911 to 1931 were cancelled. To this must be added the vast area of homestead entries duly proved and

<sup>14</sup> School lands, for instance, which were sold, as a rule, at maximum prices during "boom" periods to settlers already established in the neighbourhood, underwent excessive cancellations during ensuing periods of depression. (See Chapter VI, section 6.)

patented only to be sold at the earliest possible moment to the speculator or land company. More devastating still was the acreage technically "proved" and patented by the urban "professional homesteader" or individual speculator, and held, unproductive and unoccupied, for a rising market. Beyond this again was a more poignant category of desolation. By 1921 the trail of the abandoned homestead—wrecks of *bona-fide* enterprise, homestead, buildings, machinery, and not least of all, the five or six years of the homesteader's life and that of his wife and family—was already traceable in Western Canada. By 1926 whole regions showed a ratio of abandoned farms ranging from 10 to 60 per cent. (see section (g) below, and Figs. 37, 40 and 41). The ravages of drought since 1930 are as yet incalculable, but these are subject to no human computation, and "land policy" becomes almost an empty phrase.

Much of this wastage in the aggregate represents not unforeseen disaster but the normal attrition which has gone on unceasingly upon every frontier. Every prairie city, town, or village, has been surrounded at one time or another by a wilderness of unproductive homesteads, "entered" and in many cases patented by urban homesteaders of every occupation—the local barber, the plumber, the grocery clerk, the school teacher, the lawyer, the printer, and the village doctor (see Chapter IX, section 4). Every expedient known to the "professional homesteader" was resorted to in order to circumvent the residence requirements of the Act. This was wasteful enough when the patented homestead could be transferred to the large land company with facilities—in some cases exceptional—for disposing of it to an actual settler. But the "professional homestead" usually went farther and fared worse. The absentee homesteader frequently left his "habitable house" to dilapidation, while his "improved farm" infested the neighbourhood with weeds—the whole quarter section unprofitable for agricultural settlement and a blight upon the urban community which held it in mortmain. Too often the farmer himself surrendered to the spirit of the times and sold his homestead where he could. Every land "boom" carried farm acreage out of cultivation into speculative currency. The process was not better perhaps and certainly not worse than the practice of "commutation" which invited the scathing protests of the Land Office in the United States. In North Dakota by 1903 about 60 per cent. of homestead entries were being "commuted" to purchase, and "not one in a hundred is ever occupied as a home after commutation."

The most serious wastage of the free-homestead system, however, was not in acreage but in human material. The attrition between entry and patent, as we have seen, had nothing to show for itself but the ominous gaps in the patent registers. Much of this may be traceable to haphazard allocation, without the range of choice or scrutiny enjoyed by the purchaser with a little ready capital to invest. The queues of homesteaders lined up for days at the land offices had to take their chances. Beyond a doubt also there was unwarranted optimism which overrode all official restraint when this mass movement gained momentum towards the Western Canadian frontier. Elementary facts of physiography were too often discounted in haste after a "bumper crop", and repentance came too late to forestall disaster. A small percentage of technical "cancellations" may be attributed to the fraudulent practice of "blanketing" homesteads in the technique of the less reputable land companies: fictitious entries, made by attorney, and obligingly withdrawn to make way for prospective purchasers of the adjoining quarter sections. When all allowances are made, however, the "free" homestead has been a costly feature of land settlement. Could its most serious defects have been forestalled by a different "land policy"?

(g) *Much of the preventable wastage of human material is easily criticized after the fact.* In regions so largely sub-humid or semi-arid, not only success but survival itself depends upon the rainfall. The reservation of certain areas for grazing purposes from the outset might have saved many an unwary homesteader from disaster. When it took the form of a conflict of interest between the rancher and the homesteader, scientific data seldom had the casting vote. When a division was at last attempted in 1905 and in 1913 it was the interest of the rancher that was at stake; and the subsequent pressure of immigration too often carried away the barriers, and left the most difficult decision of the frontier to be made by a process of trial and error, by those least fitted to make it or to face the bitter consequences.

From 1876 (39 Vict., c. 19) grazing leases (see Chapter XI, section 2) were made subject to cancellation at two years notice if the lands were required for settlement. Instead of warning off the homesteader from areas of submarginal agriculture, it was thought necessary to warn off the rancher from encroaching upon the range of the free homestead, and to give the homesteader right of way in case of conflict between the two. From 1887 to 1903 open leases were still the rule, terminable for homestead entry at summary notice.



In 1905 (February 15 and July 27) for the first time closed leases were introduced south of the twenty-ninth township in Alberta and in certain corresponding sections of Saskatchewan; but the open lease still left the function of marginal territory indeterminate. Preliminary inspection and supervision (July 27, 1905) went far to differentiate between the ranch and normal agriculture: the official report of the Inspector of Ranches was now necessary for closed leases, but the precaution was still designed to prevent the rancher from overrunning the homestead and not to save the homesteader from courting disaster upon the range.

These were but feeble barriers to the migration which swarmed out upon the prairies during the decade and a half of maximum settlement. In Canada as in the United States all sorts of pressure could be relied upon to destroy official restraint. Until 1908 the odd-numbered sections at least were still reserved for the "selection" of land subsidies by the railways. When the railway land grant system was liquidated by the Dominion Lands Act of that year, the chief concern of the critics of the bill seems to have been to limit the range not of the homestead but of the pre-emption and purchased homestead privileges associated with it. These were finally restricted to a definite tract (roughly from Moose Jaw to Calgary, and from Battleford to the international boundary) and were prohibited altogether in townships in which the railways had selected 8 sections out of the 36 as land subsidies (Figs. 26 and 43). "The great reservations . . . by which provision was made for land grants to railways" were now released, and the whole range of Dominion Lands, unless specifically reserved for other purposes, was thrown open for homestead entry.

The speed with which eligible agricultural lands now approached depletion is indicated in the statistics of homestead entries (see Table XXI). From about 30,000 entries in 1908, the number bounded up to 38,600 in 1909, about 41,300 in 1910, 44,200 in 1911; receding to 38,800 in 1912, about 33,300 in 1913, 29,900 in 1914, and 23,300 in 1915 (see above, Fig. 34). Receding still more rapidly to 16,600 in 1916, 10,900 in 1917, 8,100 in 1918, it sank to less than 3,500 in 1925 and never substantially recovered. The acreage of pre-emptions purchased by these homesteaders bounded also to 2,230,000 acres in 1909, and 2,400,000 in 1910; receding in 1911 to 1,935,000 acres, 1,428,000 acres in 1912, 1,025,000 acres in 1913, 584,000 acres in 1914, and a little over 200,000 acres in 1915. Meanwhile cancellations gained so rapidly upon pre-emption entries that in

1915 in Alberta they stood about equal at 119,000 acres (see Tables XVII and XVIII, pp. 422-423). By the end of the war years the free-homestead system, with its concomitants the pre-emption and the purchased homestead, had practically come to an end.

While little was done to forewarn the unwary homesteader during the deceptive years of supernormal rainfall, there was a final attempt in 1913 to delimit an area in which the "closed lease" for grazing might permanently be maintained. This area as set aside by the Pope Commission of 1912 (see Chapter XI, section 2, p. 440) is shown in Figure 29. It was already apparent that "lands adjacent to leases and unfit for agricultural purposes have been homesteaded with disastrous consequences both to the homesteader and to the rancher". The homesteader was to be allowed to "sell his improvements to a lessee and be given a right of re-entry outside the restricted area." But the chief concern was still for the rancher rather than the homesteader, and the most depressing aspects of the free-homestead system were yet to come.

During the early twenties the acreage of occupied lands and the rural population of the Prairie Provinces were still both advancing in the aggregate, but there were serious recessions. A process more ominous than the wastage between "entry" and "patent", or the drift of the patented homestead to the speculator, was already discernible; and its ravages under the scourge of drought and economic depression have since reached the proportions of a national disaster. By 1926 the abandoned homestead had become a major problem in southeastern Alberta. Several of the census districts showed more than 50 per cent. of once occupied homesteads given over to desolation (see Figure 37). Elsewhere also the same "abomination of desolation" was now traceable. Between the lakes in Manitoba from 20 to 40 per cent. of farm acreage was now abandoned. In Saskatchewan no census division as yet showed more than 10 per cent. of abandoned farms.

But the quinquennial census of 1936 told a different tale. As late as 1931 increases in rural population for the Prairie Provinces are still effectively maintained (Figs. 38 and 39). But the ominous recessions of 1926 in Alberta and Manitoba (Fig. 40) have now spread to southern Saskatchewan—the beginning of a retreat to which no halt has as yet been called (Fig. 41). The ultimate meaning of this retreat it would be rash at the present time to forecast. A devastating drought over vast regions of Western Canada is apt to obliterate ranch and homestead alike; and to obliterate "land

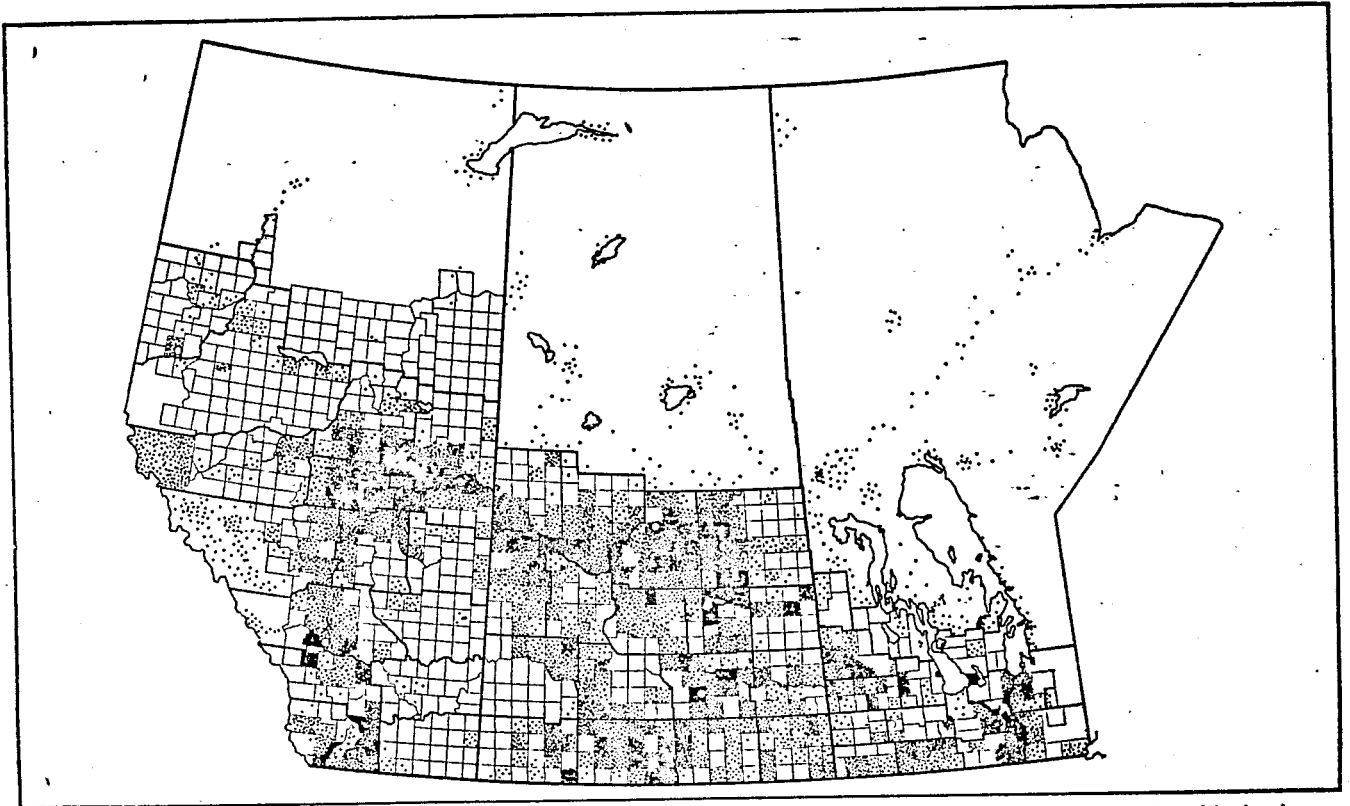


FIG. 38—Increase of rural population, 1921-1926 (*Statistical Atlas*). Each dot represents 10 persons. The territorial unit is the municipality. The dots in unorganized territory have been distributed according to the best information available.

policy" in the process. The most cautious and scientific policy of delimiting the range of the homestead and the ranch in years of normal rainfall—if anything can be called normal in these cycles of abundance and desolation—can scarcely be a permanent remedy for vicissitudes like these.

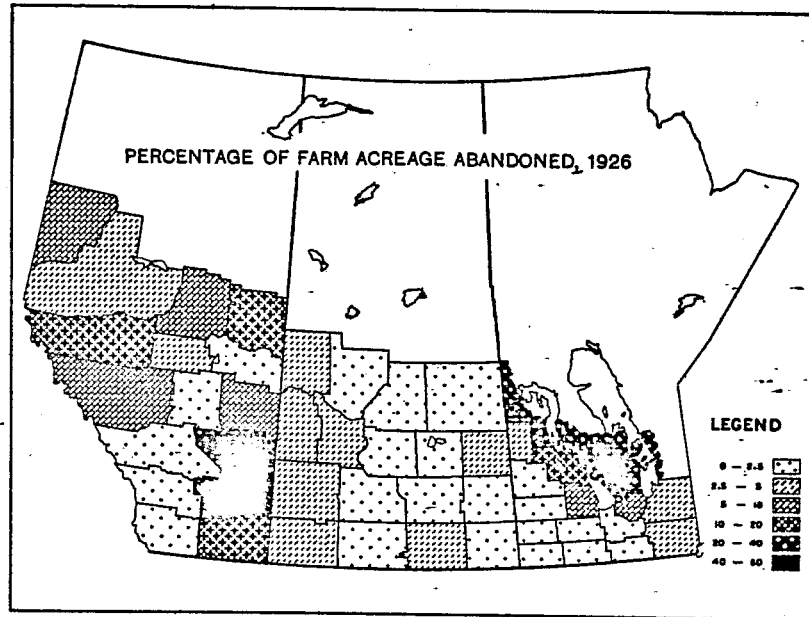


FIG. 37—Percentage of farm acreage abandoned, 1926 (*Statistical Atlas*). The territorial unit is the census division.

It was the boast of provincial counsel before the Saskatchewan Resources Commission that "in thirteen and a half years we produced seven billions of dollars". Dominion counsel (Chapter IX, section 5) conceded this to be "the best contribution to Canadian prosperity that was made in those years. . . . I cheerfully admit that. Oh, for a return of those years!" It is altogether probable that those years will return again with recurring cycles of adequate rainfall. It is equally probable that drought and hail will continue to exact their periodical ravages. Nothing short of a "policy" comprehensive enough to include at least one experience of those vicissitudes can be expected to effect a permanent agricultural economy for Western Canada. There must be a "boom" and a depression, a drought and a season of abnormal rainfall, with its usual consequence, a "bumper crop". Few governments have ever been able

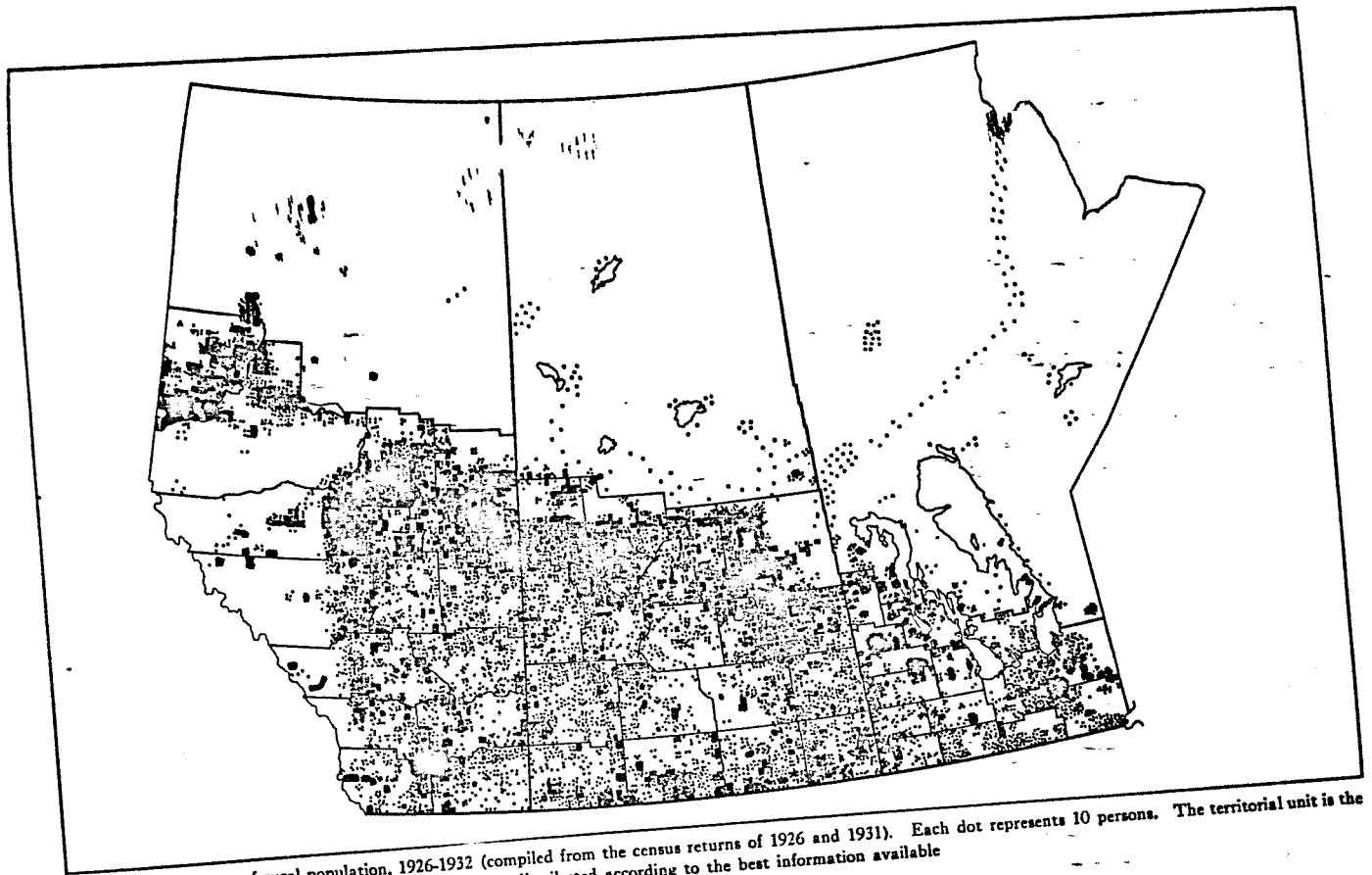


FIG. 39—Increase of rural population, 1926-1932 (compiled from the census returns of 1926 and 1931). Each dot represents 10 persons. The territorial unit is the township. The dots in unorganized territory have been distributed according to the best information available

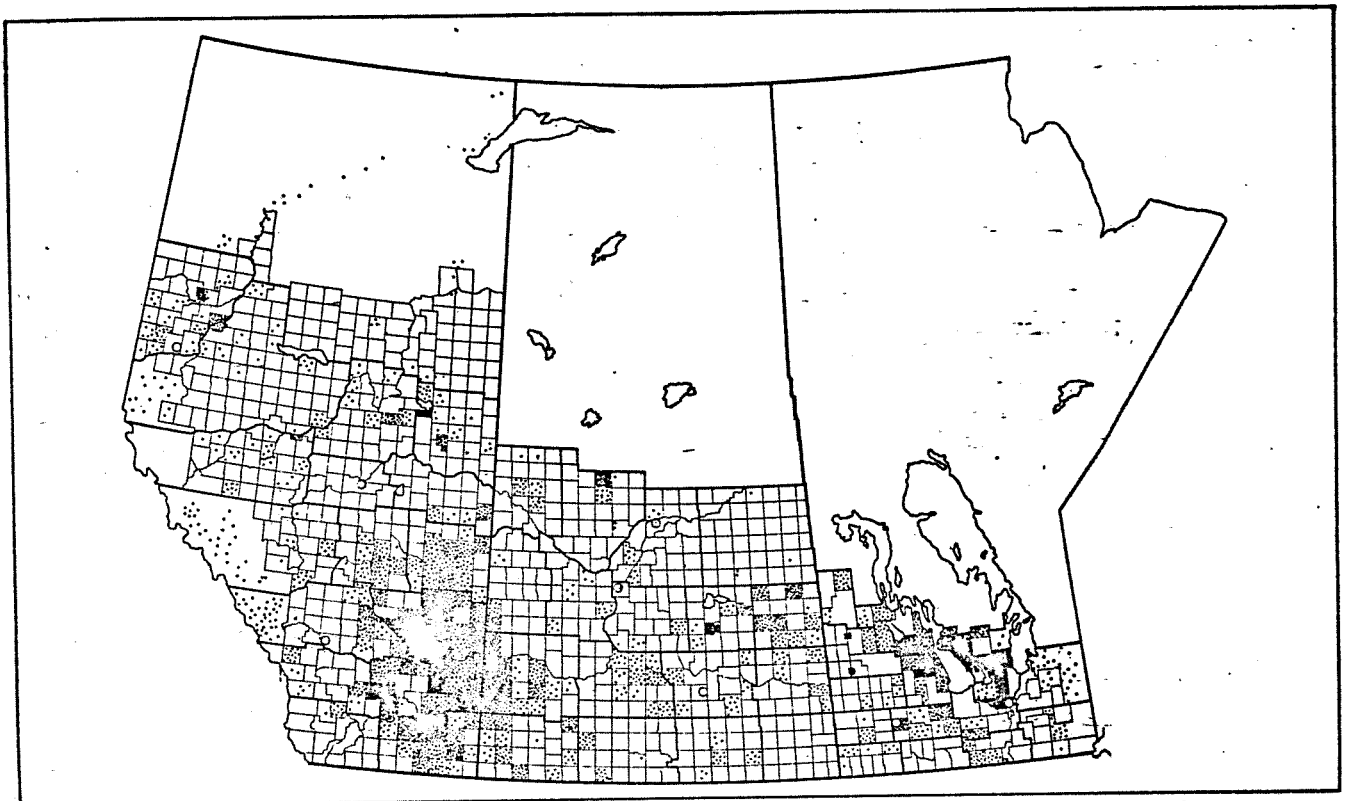


FIG. 40—Decrease of rural population, 1921-1926 (*Statistical Atlas*). Each dot represents 10 persons. The territorial unit is the municipality. The dots in unorganized territory have been distributed according to the best information available.

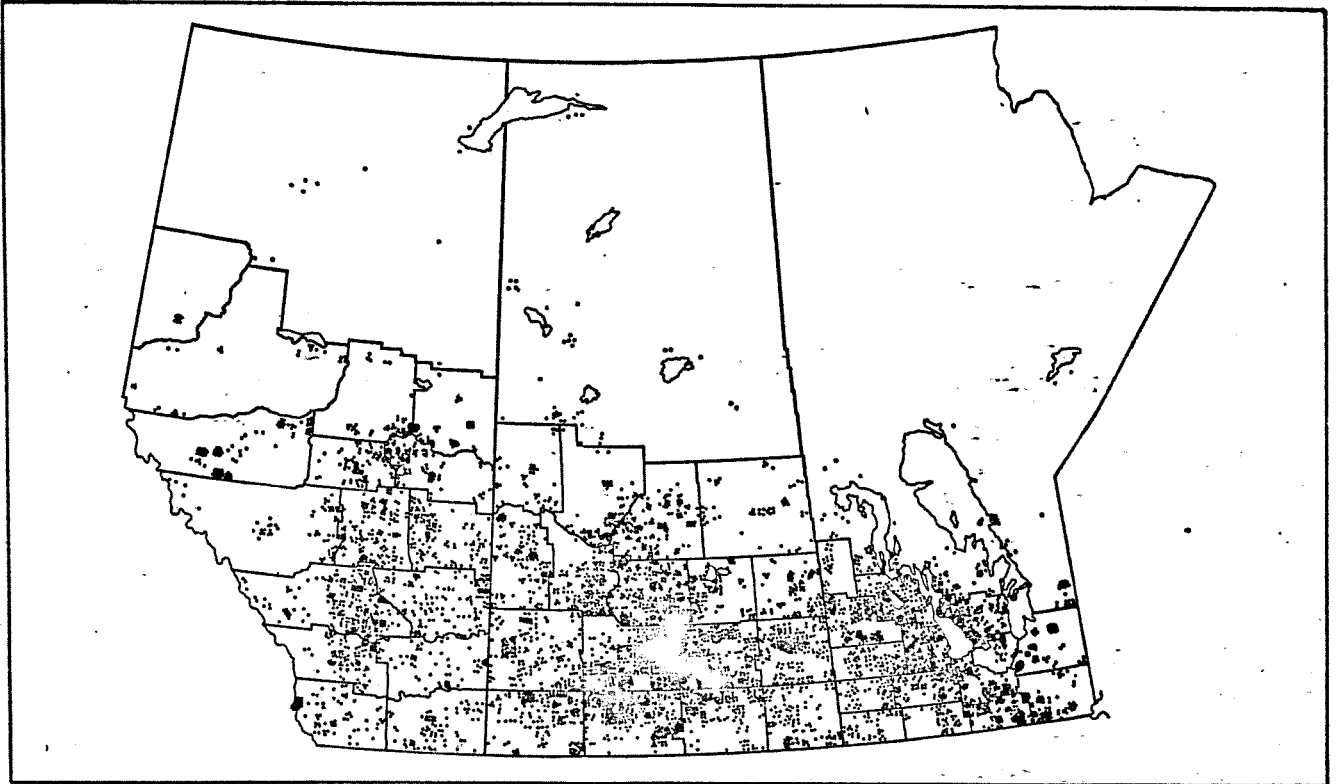


FIG. 41—Decrease of rural population, 1926-1932 (compiled from the census returns of 1926 and 1931). Each dot represents 10 persons. The territorial unit is the township. The dots in unorganized territory have been distributed according to the best information available.

to devise such a "long-distance" technique or to implement it in practice with "men of mortal mould". "Strip farming", improved crop rotation, and summer-fallowing, ten thousand local projects for water conservation, "dug-outs", and a dozen other devices of improved dry farming, will all be indispensable in seasons of sub-normal rainfall. In years of plenty they are all too apt to be dispensed with altogether. Unfortunately the span of human life is too short for many cycles like this. It may become increasingly the task of governments to foresee what cannot be forestalled; to strike a balance between prosperity and depression, and to purvey to the farmer the technique and facilities which he is unable to provide for himself.

#### *6. Provincial Policies and Problems*

This brief recapitulation of Dominion Lands policy might appropriately have concluded with a forecast of provincial policy after the transfer of 1930. Had this survey been published, as originally intended, in 1934, the immediate problems and policies of the provinces might at that time have been stated with considerable precision. Each of the Prairie Provinces had developed strong and efficient administration, recruited as a rule from the Department of the Interior, but intent upon adapting to provincial purposes the technique and experience employed during the cycle of Dominion Lands "for the purposes of the Dominion".

Since 1934 the vicissitudes of drought, shifting markets, and world depression have wrought havoc with Western Canadian agriculture, and have reduced to chaos any attempt to implement permanent land policies. Provincial Land Acts and regulations remain, but the outlook is seriously impaired. The basic problems have long since reached national dimensions, and it will require the closest coöperation between federal and provincial departments to ensure anything like an ordered economy for Western Canada.

It was obvious from the outset that two lines of reorganization would be necessary. One of these was implicit in the altered functions of the public lands themselves: provincial purposes with regard to them were vastly different from "the purposes of the Dominion", and would entail a different technique. The second set of problems was largely a direct inheritance from the Dominion. The federal government, to be sure, had completed its task of settlement in so far as railways and free land could effect settlement, but



In concluding the discussion of land settlement the following excerpt from, The Case for Alberta, seems appropriate.

*The Case For Alberta*

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## CHAPTER IV.

### Land Settlement Policies and Resulting Problems

The present economic and financial problems of Alberta, cannot be fully comprehended or understood without a knowledge of the early history of the Province, particularly with respect to the nature and method of land settlement. The rapidity of settlement and its scattered nature soon made heavy demands upon the limited revenues of the Province in the early years of its history. Governments were encouraged to embark upon enterprises involving large guarantees and heavy borrowings, which have since had serious repercussions on the financial position of the Province. Topography and climate, and settlement in unfavourable areas, have given rise to problems of rehabilitation which are now engaging the serious attention of both the Dominion and the Provincial Governments. A brief review of the manner in which land settlement was promoted and encouraged and the problems which resulted therefrom may serve to give the people of Canada a clearer understanding of the financial disabilities under which the Province now labours.

Inspired from the beginning with a determination to bring the whole of British North America into Confederation, the Dominion, after 1867, promptly undertook to secure control of all the unorganized territory lying outside the boundaries of the original Provinces. In 1870, with the assistance of the Imperial Government, a settlement was finally completed with the Hudson's Bay Company, by which that Company surrendered its rights in all the Northwest Territories and Rupert's Land in consideration for land grants consisting of one-twentieth of the lands surveyed into townships extending from the International Boundary to the North Saskatchewan River. The next major accomplishment was to bring the Crown Colony of British Columbia into the union, and in order to meet the conditions imposed by that Colony, the Dominion agreed to build a line of railway to connect the Pacific Coast with Central Canada. That undertaking to the young Confederation was one of colossal proportions, involving not only the building of two thousand miles of railway across unsettled prairies, and through rough and mountainous country but also the colonization and settlement of the territory through which the railway had to pass. Thus two great problems came into being, firstly, railway construction in the West, and secondly, settlement of the prairies.

Hudson's  
Bay Land.

The Dominion eventually settled upon a policy of building the railway through the instrumentality of a private corporation, the Canadian Pacific Railway, which was aided by generous grants of land. The original land subsidy was 25 million acres, with the mineral rights included. This was subsequently reduced, however, by the Government retaining a substantial acreage to cancel an obligation of the railway company to the Government, on terms which were mutually agreed upon. This settlement had the effect of reducing the total land grant to approximately 18 million acres. Other benefits and privileges were conferred upon the company, including a perpetual exemption from taxation of its main line properties and tax exemption of its land and mineral rights for twenty years after the grant from the Crown. These exemptions proved to be a very great handicap to the Provincial Government, and a much greater one to the Municipal Units which were subsequently established after the formation of the Province.

CPR  
LAND.

As time went on, additional land subsidies were promised to the Canadian Pacific Railway for subsidiary lines and to other railway companies such as the Calgary and Edmonton and the Alberta Railway and Irrigation Company, until more than 55 million acres of prairie lands had been so pledged. Only two-thirds of this acreage was eventually earned by actual construction. Long before 1905, the policy of subsidizing railway construction by land grants had been discontinued, but the process of selecting the lands already earned, and the aftermath of tax exemption, remained for many years to vex the growing communities of the West. It is estimated that the selection of railway lands in Alberta has amounted to about 13,120,000 acres. It should be pointed out that practically the whole burden of providing land for these railway subsidies, not only for the railways within Saskatchewan and Alberta, but as well for the portions of the Canadian Pacific Railway lying in Western Ontario and British Columbia, fell upon the three Prairie Provinces.

As already stated, the task of settling the Prairies with permanent agriculturists became closely linked up with that of railway construction. Immigration and colonization became prominent features of national policy. From 1870 onward, for the next twenty-five years, the Dominion actively promoted land settlement; Canadian agencies were established in London, Dublin, Belfast, Glasgow and Antwerp with travelling agents in other centres of population. The usual publicity methods were adopted. Progress however was comparatively slow. Shortly before 1900 the Dominion Government gave to this colonization policy a greatly increased importance in its national programme,

and this increased effort synchronizing with very favourable world conditions, gave to Western settlement a new and powerful stimulus. In the five years from 1901 to 1905 (inclusive), there were granted in the territory that is now Alberta, about 40,000 homesteads. By 1905 there were sufficient settlers between Manitoba and the Rocky Mountains, to justify the Dominion Government in organizing the two Provinces of Saskatchewan and Alberta, with a population estimated at over 200,000 each.

Thus Alberta commenced its Provincial career on the flood tide of immigration and settlement activity. High rates of interest were demanded and paid, while capital in abundance awaited investment and provided for the construction of railways and communication and public services. These in turn encouraged more rapid immigration. For the first few years after 1905, the progress of colonization and development was so great, as to be almost without parallel in modern history. Since the turn of the century the population within the area that is now Alberta has increased in approximately the same ratio as did the population of England between Queen Elizabeth's day and our own.

When it is remembered that this great settlement took place over an immense area at a time when its climatic characteristics were but imperfectly known, and its soils had not been investigated, the possibilities of error and maladjustment may easily be imagined, and experience was to prove how serious these errors were, both for the individual and for the Government of the Province.

The rapidity and extent of settlement instituted by the Dominion Government resulted in heavy demands upon the revenues of the Province. The Central Provinces had been building highways for at least a generation before Alberta was created a Province, and before the automobile and truck were known. In Alberta the automobile was creating demands for improved roads even while in many parts a rapidly growing and wide spread settlement was clamouring for these primary facilities. Ferries had to be provided and bridges had to be built. The Government, even in the first years of its history, spent more for these purposes annually than it received in subsidies from the Dominion Government. While meeting these demands incidental to widely scattered colonization and settlement, the Government was also called upon to meet the burdens resulting from new conceptions of governmental services. Even the older Provinces with their well settled and well established

populations, which had long since passed the colonization stage, found great difficulty in meeting these new demands out of ordinary revenue.

In addition to the constant pressure of the problem of providing the revenue to meet the steadily increasing demands for governmental services, a number of special problems emerged from these early years all more or less arising from the same basic cause, that is a Provincial Government endeavouring to meet the requirements of an unrestricted flow of immigration. Before considering these special problems, however, it is necessary to appraise more fully the general aim and object of the colonization policies adopted, and the method of land settlement resulting from these policies.

#### 1. SETTLEMENT POLICIES WERE NATIONAL IN SCOPE AND AIM

In the first place, Western settlement was part of a general national policy designed not only to complete the physical basis of Confederation by providing, as far as practicable, continuous settlement from coast to coast, but also to promote the industrial development of the older Provinces. The Imperial Order in Council, following the deed of surrender from the Hudson's Bay Company, transferred the lands of the Northwest Territories and Rupert's Land to the Dominion Government as a trust for the people who would settle therein. The immigration and colonization policies, however, were not designed solely to promote the interests and welfare of the people who might settle in this area but were designed to promote the general welfare for the whole of Canada.

The accuracy of this statement is fully established by a perusal of the debates in the Dominion Parliament on the Autonomy Bills introduced by Sir Wilfrid Laurier in 1905. It is now a matter of common knowledge that, in organizing the two Provinces of Alberta and Saskatchewan, the Dominion Government departed from a principle which, excepting in the case of the Province of Manitoba, had been consistently followed when the privileges of self-government had been accorded the other Provinces of Canada; that is, the control of the public domain was not transferred to these Provinces but was held by the Dominion Government and an annual grant in lieu of lands was paid to the Provinces as compensation for the rights which had been withheld. It is equally a matter of common knowledge that the reason given for withholding the public lands from these Provinces was to insure that land settlement policies would not be adopted by the Provinces which would conflict with the immigration policies adopted by the Dominion Government. In other words

the Dominion Government wished to insure that the efforts then being made to attract immigrants to Canada would not be impeded or thwarted by policies which might be established by the Provincial Governments looking exclusively to the interests of the Provinces. Indeed some of the statements made prior to 1905 and at that time reveal the aim and purpose of the immigration policies of the Dominion.

In 1903 the Honorable Clifford Sifton used these words: "I want the House to understand the policy which this Government is following. It is endeavouring to build up a consuming and producing population in our vast western country *for the purpose of giving legitimate occupation, without excessive duties, on a legitimate business basis, to the mechanics and artisans in Eastern Canada*; and it is not necessary in order to give that occupation that we should have a fiscal policy which is oppressive to the people who are actually furnishing the money to pay for the goods which are produced in Eastern Canada." In passing it is interesting at least to note that the speaker recognized that high protective tariffs would be a burden upon the agricultural settlement of Western Canada.

Again in 1905 the same speaker used these words: "So, Mr. Speaker, I am clear upon that point; and if there is anything I can say to the Members of this House that I think should commend itself to the judgment of both sides, I would say that nothing could be done which would more certainly imperil a successful settlement policy upon which the greatness and increase in the financial strength and resources of Canada depend than, under any circumstances, to allow the public lands of the Prairie Provinces to pass from the control of the Dominion Government."

Again in the same year the Honourable Frank Oliver, then Minister of the Interior, used these words:

"This Dominion of Canada can make millions out of the lands of the North-west, and never sell an acre; it has made millions out of these lands without selling an acre. The increase in our customs returns, the increase in our trade and commerce, the increase in our manufactures is to a very large extent due to the increase in settlement on the free lands of the North-West Territories. The prosperity this Dominion is enjoying to-day is to a very large extent due to the fact that the lands of the North-West Territories have been given away and that people have taken them. I say that the interest of the Dominion is to secure the settlement of the lands, and whether with a price or without a price makes little or no difference. It is worth the while of the Dominion to spend hundreds of thousands of dollars in promoting immigration to that country and to spend thousands and thousands of dollars in surveying and administering these lands, and then to give them away."

These facts, therefore, seem to be clear and indisputable:

1. That the Dominion Government maintained the control of the public lands of the Province in 1905.
2. That the policies adopted in promoting immigration looked to the interests of mechanics and artisans in Eastern Canada, and to the financial strength and general prosperity of the whole Dominion.
3. That the Dominion Government was responsible for the large land subsidies to the railways, and the method of selecting lands granted to these railways.
4. That the Dominion Government is equally responsible for the method of selection allowed the Hudson's Bay Company as already defined herein.
5. That the Dominion Government is responsible for a homestead policy which confined homesteading to the even numbered sections.

Speedy settlement rather than secure settlement was apparently the major purpose at that time. A recent writer tells us. "A vigorous propaganda was instituted in Great Britain, United States and selected European countries; immigration branches were opened, every possible means of advertisement was used, and a bonus was offered to agents for each immigrant secured. During the decade from 1898 to 1908 about seven million dollars was spent by the Immigration Branch of the Department of the Interior."<sup>(1)</sup>

In 1911 Arthur Hawkes was appointed by the Dominion, to make a study of ways to increase the flow of immigrants. He strongly urged the expansion of propaganda to advertise the possibilities in the Dominion. He states, "The report is based on the facts that the ultimate justification for a vast and seemingly endless inflow of capital to Canada must be a producing population on the soil, and that natural increase cannot keep pace with the opportunities that are being opened up."<sup>(2)</sup> Again he states, "The total cost of immigration — \$1,028,000 — does not amount to a stockbroker's commission on the capital brought in by the immigrants; to say nothing of the money invested on account of their coming. Besides, the Dominion Treasury makes a profit on every immigrant from his arrival in the country."<sup>(3)</sup> Propaganda in the United Kingdom took five main lines; distribution of special literature, delivery of lectures, newspaper advertising and publicity, displays of Canadian products, activities of railway companies.

<sup>(1)</sup> L. G. Reynolds—"The British Immigrant: His Social and Economic Adjustment in Canada," Oxford University Press, 1935, p. 38.

<sup>(2)</sup> Report on Immigration, 1910, p. 6.

<sup>(3)</sup> Ibid., p. 32.

The huge grants of land to the Canadian Pacific Railway enlisted the pecuniary interest of a great private enterprise in a greater inflow of immigrants. The Canadian Pacific Railway Company became the greatest colonizing agency in Canada, and its slogan, "Ask the C.P.R. about Canada", was no idle one. By 1923, over 100,000 farms in Western Canada had been settled directly through the efforts of this company according to Sir Edward Beatty.<sup>(1)</sup> These facts are reported not by way of blame, but merely to indicate that national problems have arisen due to a national policy and all our Governments must unite in implementing a solution.

C.P.R.  
Colonization

It is not intended to suggest that the colonization policy of the Dominion Government, was formulated with an entire disregard of the interests of Western Canada. It is suggested that it was designed for the benefit of Canada generally, to increase Canada's export trade by bringing the western plains into production, and to extend a market for the industries of Eastern Canada, and that the disabilities to the Provincial Government resulting from a policy of speedy settlement, were not fully appreciated. From the standpoint of the nation, it has been argued that the policy, of which western settlement was a necessary part, has fully justified itself. If, however, experience has shown that this method of settlement has left a train of difficulties and embarrassments for those who became responsible for Provincial and Municipal Government, and if inequalities implicit in the situation of the West have become manifest, it does seem reasonable to expect that the resulting burdens should be borne mainly by the Dominion Government.

## 2. THE WIDE DISPERSION OF SETTLEMENT

With great rapidity settlement spread over the Province of Alberta, from its southern corners north to the Peace River district, and this Province-wide dispersion of settlement has created insurmountable difficulties for individual settlers, for remote communities, and for government alike. Some of this undue dispersion may be attributed to the settler, to whom far pastures looked green, and who hoped that the railway would soon catch up with him, no matter how far out he went, and that he would gain in time by increasing values. Speculation, venturesomeness, and imprudence doubtless played their part, but the more potent cause is to be found in the general policy of land settlement already discussed, and of this policy the opening of lands for homestead entry was a decisive factor. The land reserved

(1) J. T. Culliton—"Assisted Emigration and Land Settlement," 1928, McGill University, p. 70.

from settlement in every township of 36 sections bulked large. Sections 11 and 29 were reserved for schools; the Hudson's Bay Company was given sections 8 and 26 in every fifth township and section 8 and the south half and north-west quarter of 26 in all other townships, extending from the International Boundary to the North Saskatchewan River. The Canadian Pacific Railway Company was entitled to select odd-numbered sections anywhere in the Province up to the limit of its allotment. The Calgary and Edmonton Railway and the Alberta Railway and Irrigation Company were entitled to select odd-numbered sections within 20 miles of either side of their lines.<sup>(1)</sup> Thus these allotments forced homestead and other settlement largely into the remaining sections and all together contributed to the scattered character of the settlement. The holding of large areas by land companies which naturally sought to settle their own lands, and the extravagant hopes for early railway facilities, even for very remote settlements, all contributed to a seriously wasteful dispersion, with the resulting difficulty of supplying such necessary services as roads and schools. With the passage of years increased railway and highway facilities have lessened the difficulty but in many areas children still travel long distances to school daily, and there is a constant withdrawal from farms of families that can no longer tolerate the isolation from medical aid, or from educational facilities. As an extreme illustration of remote settlement, as late as 1914, it is on record that the first carload of wheat to be shipped out of the Peace River country was grown at Vanrena and hauled by team more than 100 miles over the old trail to the railway at Reno.<sup>(2)</sup>

Township  
LAND  
Breakdown.

When the Province assumed control of its land in 1930, it imposed restrictions on its homestead entries, with respect to distance from a railway and as to the character of the land settled, but before the Province was in a position to exercise any control, the peak of settlement had passed. Serious as the consequences of dispersed settlement have been for the ordinary administration of the Province, they were to prove yet more serious, as remote districts and isolated settlers came to share or to desire to share, in the wider range of social services which governments to-day are under obligation to contemplate.

The scattered character of population places heavy burdens upon the people and the Government. The great distances to adequate shopping centres, schools, churches and places of entertainment is a handicap to a successful and contented farming

(1) Both these lines were subsequently taken over by the C.P.R.

(2) Canadian Frontiers of Settlement, Vol. VI, p. 40, by C. A. Dawson.



population. Alberta has about 20 per cent more miles of telephone wire per station than is the case in Ontario, as indicated in Table I.<sup>(1)</sup> The number of miles of highway per 1,000 population in the several Provinces is also indicated.

TABLE I

	Miles of Highway per 1,000 Population	Miles of Wire per Telephone	Ratio of Occupied Acres To Total Population (Acres)	Ratio of Occupied Acres To Rural Population (Acres)
Prince Edward Island .....	41	1.47	13.53	17.61
Nova Scotia .....	29	2.38	8.39	15.30
New Brunswick .....	28	2.11	10.17	14.87
Quebec .....	12	4.69	6.02	16.31
Ontario .....	20	4.31	6.66	17.10
Manitoba .....	49	5.18	21.61	39.39
Saskatchewan .....	169	5.22	60.40	88.25
Alberta .....	123	5.15	53.28	86.02
British Columbia .....	32	3.39	5.10	11.82
CANADA .....	42	4.30		

Alberta has to maintain 500 per cent more miles of highways per 1,000 people than Ontario, and 200 per cent more than the people of Canada generally. The travelling health clinic, to be discussed later, maintained by Alberta since 1921 at considerable cost, is a direct outgrowth of the sparse settlement. Settlements long distances from the nearest doctors compelled the Province to bring health services within reach. This tabulation also shows that the number of occupied acres per person in the West is much higher than in the central Provinces.

Whether the Province, had it been in control of the land, would have followed a policy which would have proven less burdensome in the long run cannot be dogmatically asserted. However, the Province close to the facts, conscious of the problem of providing schools, roads and other governmental facilities possibly would have been quicker to sense the potential dangers of a too rapid and scattered settlement. Indeed in the late 1920's the Premier of Alberta, fully conscious of the implications of the settlement policy, urged greater selectivity and a reduction in numbers. Had the Province been in control of the natural resources, a sounder settlement policy would probably have been evolved. This difference of interest is well expressed by Honourable Frank Oliver, Minister of the Interior: "One honourable gentleman said that the lands could be better administered by

<sup>(1)</sup> Canada Year Book, 1906, gives Alberta road mileage as 60,000, whereas it should be 10,000.

the Province than by the Dominion because the people of the Province were closer on the ground and the interests of the Province, he said, were just the same as the interests of the Dominion. I beg to differ; their interests are not the same. The interest of a Province in the land is in the revenue it can derive from the sale of the lands; the interest of the Dominion in the lands is in the revenue that it can derive from the settler who makes that land productive . . . But the Province is not in that position. The Province derives no revenue from the customs duties or from the wealth which the settler creates. Every settler who goes on land in the North-west Territories is a bill of expense to the Provincial Government. That settler requires a road made, he requires a school supported, he requires the advantages of municipal organization, and these have to be provided for him out of the funds of the Provincial Government, so that as a matter of fact the tendency of the Provincial Government is to get such money as it can out of the land and to prevent settlement from spreading any further than can be helped. On the other hand, the interest of the Dominion is to get the settlers on the land, to scatter them far and wide so long as they are good settlers and they get good land."<sup>(1)</sup>

These are the words, be it remembered, of the then Minister of the Interior, whose Department of Government was responsible for carrying into effect the immigration and colonization policy of his Government. They can be presumed, therefore, to voice the general viewpoint not only of his Department but also of the Government of the day. It is doubtful if any other words can more clearly indicate the contrast in the effect of the free homestead policy. To the Dominion Government and to Canada generally it was a great boon financially and commercially; to the Province it was a burden of expense that made a constant drain on the financial resources of the new community.

### 3. SETTLEMENT OF MARGINAL AND SUB-MARGINAL LANDS

That, in the settlement of Alberta, large tracts of land were opened for settlement which experience has shown to be unsuited for permanent agricultural use is too well known to call for elaborate statement. The most serious instance is found in what has come to be known as the Palliser Triangle which includes a semi-arid and arid area in the south-eastern portion of the Province and extends throughout a large part of southern Saskatchewan. In the portion of this area lying in Alberta successive periods of drought years led the Government of Alberta to undertake plans of rehabilitation and resettlement, while the disastrous conditions prevailing throughout the entire area in Alberta and

(1) Hansard, 1905, Vol. II, 3157.

Saskatchewan finally convinced the Dominion Government that extensive plans of rehabilitation should be undertaken and these are now being carried forward under the terms of The Prairie Farm Rehabilitation Act. After making every allowance for the greater knowledge and wisdom which experience has brought, nevertheless, from a study of the Sessional Papers of the Department of the Interior and of the reports of surveyors and explorers, it would seem that ample warning had been given of the unsuitability of this area to any other form of agricultural production than that of ranching. Without appearing to be unduly critical, therefore, one may now suggest that if less attention had been given to speed of settlement and more attention to the ultimate success of the settler on the land, large parts of this area would not have been thrown open under a homestead policy.

Viewed from the standpoint of the settler only, it may even be said that it was a mistake to locate the first transcontinental railway across this semi-arid belt rather than through the northern fertile belt as first proposed in Sanford Fleming's Survey. However, national considerations prevailed and the southern route was chosen in order to check the tendency of railway companies in the United States to project branch lines across the International Border to tap Canadian territory.<sup>(1)</sup> The effect of this decision in subsequently forcing all freight traffic to and from this Province over the long route to Eastern Canada will be dealt with elsewhere.

That the Canadian Pacific Railway Company was aware of the doubtful value of lands in the southern part of Alberta and Saskatchewan, is evidenced by the fact that it selected its allotment largely from the more northerly parts of Alberta and Saskatchewan. Very little land was chosen by this company from the territory from Moose Jaw westward to the Rocky Mountains, at least until it was persuaded that irrigation would be successful, when certain lands were selected by the company and were granted in a block. For the most part, the company made its selections in the area between Edmonton and Battleford. Any information possessed by this company as to the nature of the lands in the southerly part of these Provinces was equally available to Departmental officials, and the very fact that this company avoided this area in making selections should at least have aroused the suspicion of Departmental officials.

Previous to 1906 there had been little invasion of the area known as the Palliser Triangle by the grain farmer, but after that year and particularly after 1911 there was a continuous

(1) Cartoons depicting the onrush of mammoth locomotives into Canadian territory from the Great Northern Railway running through North Dakota and Montana appeared in Canadian newspapers.

For the sake of continuity I include Professor William's references to the land grant system (p. 1-6).

LAW AND INSTITUTIONS IN  
THE NORTH WEST TERRITORIES (1869-1905) ✓  
(Continued)

D. COLWYN WILLIAMS\* *Look B Rev*  
*30:51; 31:1 Jan 15, 1906*

It had not been customary for the Lieutenant Governor of the North West Territories to make an annual report of his administration to the Minister of the Interior in Ottawa. Edgar Dewdney felt, however, that the speed of developments in the Territories would be of interest to both the federal authorities and the public and in January, 1884, submitted such an annual report.<sup>1</sup> It was revealed that the fear of water shortage in the new capital of Regina was unfounded. Some half a dozen wells had already been sunk and an abundant supply of pure water was found at a strong pressure at depths varying between 70 and 100 feet. Mr. Scarth, fulfilling "this promise as trustee of the town site", had caused considerable work to be carried out in grading some of the principal streets and by the construction of a dam across the Wascana River, which at that time was one mile south of the town. It has been calculated that the dam would create a reservoir covering an area of 160 acres at an average depth of 5 feet of water which would more than suffice for all ordinary purposes of the residents of the town and vicinity for many years. The report revealed that considerable construction of public buildings had taken place. Additions had been made to Government House, a Council Chamber and two offices had been constructed, North West Mounted Police barracks had been completed, also a Registry Office with a "fine fire-proof vault." Plans were being prepared for a Court House Jail and Lunatic Asylum. All the new buildings

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<sup>1</sup> Sessional Papers, No. 12, 47-Victoria 1884.

were to be constructed of brick, as brick yards were being opened in Regina and already some very good bricks were being manufactured at Indian Head. The former Government House and Council Chamber at Battleford were being used by the Indian Department for the purpose of an Industrial School for Indian children.

The Lieutenant Governor reported that he was paying out of the appropriation of the North West Government, half of the teachers' salaries for ten Protestant and nine Roman Catholic schools. New applications were being received, and the passing of a School Ordinance to deal with such matters was becoming a necessity. The Crow's Nest Pass Trail had been constructed, and some eleven bridges were to be constructed in addition to repairs to nine existing bridges. Improvements to the road from Calgary to Edmonton, the Battleford Trail, the Buffalo Lake Trail to Moose Jaw and the main highway south of Moose Jaw were all being considered.

The problem of peopling and bringing under cultivation the vast prairies of Saskatchewan and other western provinces has involved various experiments of historical interest. On January 1, 1882, there came into force certain land regulations which guided the operations of colonization companies for a number of years.

Any person or company satisfying the government of good faith and financial stability might obtain, for colonization purposes, an unsettled tract of land anywhere north of the main line of the Canadian Pacific Railroad, not being within twenty-four miles of that road or any of its branches, nor within twelve miles of any yet projected line of railway. The even numbered sections were held for homestead and pre-emption purposes, but the odd numbered sections would become the property of the colonization company on payment of two dollars per acre in five equal instalments. The company would also pay five cents per acre for the survey of the land purchased, and interest at six per cent would be charged on all overdue payments.

The contract into which the colonization company entered with the Government required that within five years the company's reserve should be colonized by placing two settlers on each odd numbered section, and also two settlers on each of the free homestead sections. When such colonization was completed the company was to be allowed a rebate of one hundred and twenty dollars for each bona fide settler. On the expiration of five years, if all conditions had been fulfilled, such further rebate would be granted as would reduce the purchase price to one dollar per acre. If, however, the full number of settlers required by the regulations

had not been placed upon the land in conformity with the official regulations, the company was to forfeit one hundred and sixty dollars for each settler fewer than the required number.

Under an alternative plan, provision was made for the encouragement of settlement by those desiring to cultivate larger farms than could be purchased under the regulations requiring two settlers to be placed on each section. A colonization company of this sort was called upon to bind itself simply to place one hundred and twenty-eight bona fide settlers in each township.

After the boom of 1882, colonization companies mushroomed in every direction. As a general rule, their careers were likewise of mushroom brevity. Most of them proved financial failures, as far as the original investors were concerned, and few of them succeeded in placing any considerable number of permanent settlers on their lands. Many of the settlers they did secure were not well adapted to agricultural life in such a country as this then was, and in consequence were soon dissatisfied and restless.

The Minister of the Interior recognized that, to a large extent, the failure of the companies was due to circumstances over which they had no control. Some of them had honestly and earnestly proceeded with the task they had undertaken, and had expended large sums of money in promoting immigration, disseminating general information about the North West and in establishing mills, roads, bridges, stage lines and other improvements. But while they had doubtless been instrumental in bringing into the country a considerable number of its immigrants, a large proportion of these had not settled on the companies' tracts but had homesteaded elsewhere or purchased from the Canadian Pacific Railway Company.

The Department of the Interior felt that it would be impossible to adopt any hard and fast basis of settlement that would be fairly applicable to all the defaulting companies. However it was agreed that every settler placed by such a company upon its land should be credited as a payment of \$160,000 which should be included with such other expenditures as might in the Minister's opinion have materially conduced to the progress of colonization. On such a basis final settlement was arrived at, and the companies concerned were dissolved between 1884 and 1891, chiefly in 1886.

Seven companies had succeeded in placing fifty or more settlers in what is now Saskatchewan. The Saskatchewan Land and Homestead Company, whose holdings were located southwest of Yorkton, at the Elbow, and at Red Deer River, Alberta, had placed two hundred and forty-five settlers on its reserve of 491,746 acres. It had paid on account over \$150,000. In the final settlement it was therefore given the title to 179,200 acres and scrip for \$32,000 additional applicable on the purchase of public lands. The York

Farmers' Colonization Company, operating near Yorkton, placed one hundred and sixty-four settlers and obtained finally 51,358 acres. The Dominion Lands Colonization Company placed one hundred and forty-three settlers on its reserve in the Fill Hills and ultimately received 56,672 acres and scrip for \$33,586. The Primitive Methodist Colonization Company, operating between Yorkton and Qu'Appelle, placed one hundred and four settlers, and obtained in the final settlement approximately 36,600 acres. The Temperance Colonization Company had control of fourteen contiguous townships south of the Saskatchewan River with the Village of Saskatchewan as its chief settlement. It placed one hundred and one settlers and received in settlement 100,000 acres. The Touchwood and Qu'Appelle Colonization Company placed ninety-six settlers and received scrip for 48,300 acres. The Montreal and Western Land Company, south of Yorkton, had paid approximately \$16,400 on account, which, together with rebates, brought up the amount to its credit to slightly over \$49,000. It had placed sixty-four settlers and received in settlement of its claim 24,586 acres.<sup>2</sup>

The Lieutenant Governor in his first annual report referred to the establishment over recent years of Colonization Companies and the amount of uneasiness with which many of the old settlers viewed the activities of these companies. The original settlers feared that their claims as squatters might be endangered should their holdings happen to be included in any colonization grant. The Lieutenant Governor was able to report that most of the fears had proved to be groundless and the impact of the companies most beneficial to the Territories, and in many cases new settlers had been induced to venture into previously unknown parts of the Territories remote from railway communication and leading highways.

The Indian population of the plains had almost all been induced to go to their respective reserves and were quiet and law abiding. It was said that this was due to the "wise policy pursued by the Canadian Government". Perhaps effective policy would be a better description.

There were already signs of a minor mineral rush being likely. The excavation of the railway track through the mountains had made possible prospecting and already exploration proved the existence of considerable mineral deposits in the mountains. The Dominion Government was known to be preparing mining laws<sup>3</sup> and the Lieutenant Governor recommended the establishment of a Gold Commissioner's Office where records could be made and

<sup>2</sup> For a fuller discussion of this matter see N. F. Black, *A History of Saskatchewan and the Old North West*, (Regina, North West Historical Company, 1913), at pp. 494-503.

<sup>3</sup> In 1930 Federal power basically ceased in this area. See the B.N.A. Act, 1930, 20-21 George V., c. 26.

disputes settled on the spot if the Gold Commission was vested with the powers of a stipendiary magistrate. The District of Alberta was referred to as "one huge coal bed", and it was clear that in many parts of the Territories coal was plentiful. All that was needed to ensure the supply of coal at very reasonable rates was vastly improved machinery.

The report referred to the crop, which, in spite of an unusually dry summer and an early frost (at the end of August), turned out to be a large one. The great rapidity<sup>4</sup> which had marked the construction of the Canadian Pacific Railway had caused a great increase in settlement—about 1,000 per year—particularly near the railway. Numerous towns had sprung up all along the line, the most important being Broadview, Indian Head, Regina, Moose Jaw, Medicine Hat and Calgary. Attached to the report were certain returns, concerning the annual (1883) importation of intoxicating liquors into the Territories,<sup>5</sup> the list of Justices of the Peace,<sup>6</sup>

<sup>4</sup> The main line of the Canadian Pacific Railway between Port Arthur and Winnipeg was completed in 1883. Construction was rushed across the prairies with such speed that the main line reached the Rockies in 1884. In the fall of 1885 the prairie and the British Columbia sections were linked up, the last spike being driven at Craigellachie on November 7, 1885. The transcontinental timetable was inaugurated in July, 1886.

<sup>5</sup> The summary of this return was as follows:

Total number of Permits .....	1874
Total gallons	
Whiskey .....	2730
Brandy .....	1475
Beer .....	1468
Wine .....	727
Gin .....	23½
Rum .....	89
Alcohol .....	134
Porter .....	90
Total gallons .....	6736½

With effect from September 20, 1883, a regulation was passed requiring a fee of 50 cents per gallon for spirit and wine, and from that date until December 31 of the same year 599 permits were granted and the sum of \$763.75 was received from this source and paid into the general revenue fund of the Territories.

The Annual Report of the Lieutenant Governor for 1884 refers to the fact that little abuse was made of liquor imported on permit, but a large amount of liquor was being constantly smuggled in the country in spite of the valiant efforts of the North West Mounted Police to prevent it. Profits from such smuggling were large, and illicit stills were in operation in several parts of the Territories. It was suggested that the establishment of breweries in the Territories was a solution to the problem. The suggestion was conveyed to the Federal Government. See Journals of the Council, 1884, at p. 7.

<sup>6</sup> Eighty-seven names were recorded.



the list of Notaries Public,<sup>7</sup> and the list of issuers of marriage licenses.<sup>8</sup>

By the close of the year 1883 there had been a change in the office of Governor General, the Marquis of Lorne being succeeded by Lord Lansdown. A change in the office of Minister of the Interior also had taken place. The Honourable D. L. McPherson was the new Minister, and he immediately promulgated new regulations opening up "the mile belt" for settlement, foreshadowing a liberal policy as regards the railway reserves.<sup>9</sup> Previously in the system of township surveys adopted, only the even numbered sections, except 8 and 26 (which were allotted to the Hudson's Bay Company), were open for homestead entry. Odd numbered sections, except 11 and 29 (which were assigned to school purposes), were held for sale or given in aid of railway construction. The existence of these unoccupied odd sections, however, was a great barrier to settlement. They separated the settlers, prevented school organization and the creation of municipalities, and materially increased the danger of prairie fires. They were held by companies and individuals for speculative purposes and in the Canadian Pacific Railway belt were exempt from taxation. The even sections of the railway belt within a mile of the railway were thrown open on condition that the settlers prepare ten acres the first year, crop ten acres and prepare fifteen the second year, and the third and final year crop twenty-five acres and prepare fifteen. The even numbers in the Regina reserve were placed on sale to bona fide settlers at five dollars an acre. Purchasers were limited to one hundred and sixty acres per individual, and settlers cultivating a quarter of their land within three years were to be granted a rebate of half the purchase price. On the other hand, if the settler failed to cultivate the minimum of a quarter of his land within the three years the sale might be cancelled. The object of these regulations was to prevent valuable lands adjacent to the railway from being monopolized by speculators.<sup>10</sup>

Reference has already been made to the fact that the early 1880's saw the birth of many Territorial newspapers. At least one of these newspapers began as a manuscript newsheet which sought to stimulate social life. The first number of the *Saskatoon Sentinel*, which appeared on August 1, 1884, consisted of seventeen pages of manuscript carefully written by the school teacher and passed around the whole community. It reflected the consciousness of the settlers that they were pioneers and their determination to win

<sup>7</sup> Sixty-three names were recorded.

<sup>8</sup> Forty-three names were recorded.

<sup>9</sup> See Black, *op. cit.*, at p. 234.

<sup>10</sup> See *supra*, at p. 3.

## Constitutional History

The following recent decision by Mr. Justice Morrow provides a solid introduction to the Constitutional History of the government of the Northwest Territories. (20 D.L.R. (3d))

### ROYAL BANK OF CANADA v. SCOTT; COMMISSIONER OF THE NORTHWEST TERRITORIES, Garnishee

*Northwest Territories Territorial Court, Morrow, J.  
June 15, 1971.*

Debtor and creditor — Execution — Garnishment — Crown servant — Teacher employed by Government of Northwest Territories — Whether modern considerations of public policy prohibit garnishment of Crown servant's salaries — Whether Court empowered to make order against Crown — Northwest Territories Act, R.S.C. 1952 — Financial Administration Ordinance (N.W.T.) — Exchequer Court Act, R.S.C. 1952 — Federal Court Act, 1970-71 (Can.).

The salary of a teacher employed by the Government of the Northwest Territories is not attachable by garnishee order. Although traditional considerations of public policy need not inhibit the Court in a place and at a time when a majority of persons are Crown servants, the real difficulty lies in the inability of the Court to make an order against the Crown.

Judicial observations on the legislative and judicial history of the Northwest Territories.

[*C.P.R. Co. et al. v. A.-G. Sask.*, [1951] 3 D.L.R. 362, 1 W.W.R. (N.S.) 193 [revd in part [1951] 4 D.L.R. 21, 2 W.W.R. (N.S.) 424, 68 C.R.T.C. 232; var'd [1952] 4 D.L.R. 11, [1952] 2 S.C.R. 231, 69 C.R.T.C. 1]; *Great West Life Ass'ce Co. v. Baptiste*; *Canada Life Ass'ce Co. v. Mills*, [1924] 3 D.L.R. 1061, 20 Alta. L.R. 513, [1924] 2 W.W.R. 920; *C.N.R. Co. v. Croteau and Cliche*, [1925] 3 D.L.R. 1136, [1925] S.C.R. 384, 30 C.R.C. 350; *The King v. Central Railway Signal Co., Inc.*, [1933] 4 D.L.R. 737, [1933] S.C.R. 555; *Hobbs v. A.-G. Can.* (1914), 18 D.L.R. 395, 7 Alta. L.R. 371, 7 W.W.R. 256; *Central Bank of Canada v. Ellis* (1893), 20 O.A.R. 364; *Flarty v. Odium* (1790), 3 T.R. 681, 100 E.R. 801; *Cooper v. Reilly* (1829), 2 Sim. 560, 57 E.R. 897; *Wells v. Foster* (1841), 8 M. & W. 149, 151 E.R. 987; *Re Millar*, [1938] 1 D.L.R. 65, [1938] S.C.R. 1, ref'd to]

GARNISHEE SUMMONS to attach the salary of a teacher employed by the Government of the Northwest Territories.

*Bryan Waller*, for judgment creditor.

*David J. Turner*, for Commissioner of the Northwest Territories.

MORROW, J.:—By garnishee summons issued out of this Court on February 22, 1971, and served personally on S. M. Hodgson, Commissioner of the Northwest Territories, on the same date, the judgment creditor has attempted to attach the salary of the judgment debtor, admitted to be a teacher in the employ of the Government of the Northwest Territories. It was further agreed by counsel that the judgment debtor is in receipt of wages or salary paid out of the Northwest Territories Consolidated Revenue Fund and that he is a teacher, teaching in a Territorial School at Pine Point and is employed pursuant to the *Public Service Ordinance*, 1965 (N.W.T.) (2nd Sess.), c. 9. Counsel also agreed that S. M. Hodgson is the Chief Executive Officer for the Northwest Territories and this office is styled and known as Commissioner of the Northwest Territories. The amount sought to be attached is \$1,811.47.

The garnishee filed an answer to the proceedings, taking the position that moneys in the hands of the Commissioner or under his control is not and may not be attachable.

At the time argument came on before me at Yellowknife, counsel appeared for the judgment creditor and for the garnishee, the judgment debtor not appearing but having indicated he would rely on the position taken by the garnishee.

Several important points of argument, some of them constitutional, came out at the hearing.

The questions to be considered are as follows:

- (1) Is the garnishee summons styled as above improperly styled in that the Commissioner of the Northwest Territories should not be named as a garnishee?
- (2) Moneys in the hands of or under control of the Commissioner as the Commissioner of the Northwest Territories are funds of Her Majesty the Queen, are public funds and are not subject to attachment.
- (3) The *Northwest Territories Act*, R.S.C. 1952, c. 331, as amended, provides for a limited form of self-government for Her Majesty's subjects in the Territories but does not create an entity that is subject to processes of the Court such as the present garnishee summons.
- (4) The judgment debtor is a servant or agent of Her Majesty the Queen and the wages of such a servant are not attachable in the hands of the Crown because:

- (a) The Courts cannot make a binding order against the Crown to pay money into Court.
  - (b) Only a presently existing debt is subject to garnishee proceedings and the wages or salary of a public servant are not a debt due and owing from the Crown to such public servant.
  - (c) It is contrary to public policy to allow the wages or salary of a public servant to be subject to garnishee or assignment.
- (5) The Government of the Northwest Territories and the Commissioner of the Northwest Territories as Chief Executive Officer of the Territories perform functions of a public nature and whatever the relationship to Her Majesty the Queen they are not separate and independent from Her Majesty and subject to processes of the Court.
  - (6) In the event the Commissioner should be found to be a servant or agent of the Crown does the Territorial Court have jurisdiction to hear and determine questions touching Her Majesty or moneys in her hands or the hands of her officers?
  - (7) Is the Territorial Court the proper Court to hear these proceedings?

Before discussing each of the above in detail a brief examination of the constitutional history of both the Government of the Northwest Territories and the Territorial Court becomes necessary.

#### *I. Constitutional History of the Government of the Northwest Territories*

By s. 146 of the *B.N.A. Act, 1867 (U.K.)*, c. 3, provision was made for the admission of Rupert's Land and the North-Western Territory or either of them into the union by Imperial Order in Council. The provisions of any such Order in Council "shall have the effect as if they had been enacted by the Parliament of the United Kingdom . . ."

In 1868, accordingly, Rupert's Land (to include the "whole of the Lands and Territories held or claimed to be held by the said Governor and Company") was surrendered by the Hudson's Bay Company and admitted into and became part of the Dominion of Canada: *Rupert's Land Act, 1868 (U.K.)*, c. 105. By s. 5 of this Imperial statute the Dominion of Canada was empowered "to make, ordain, and establish within the Land and Territory so admitted" such laws and Ordinances as may be necessary for the "Peace, Order and good Government of Her Majesty's Subjects".

To ensure continuity in the laws until altered or changed by the Government of Canada "An Act for the temporary Government of Rupert's Land and the North-West Territory when united with Canada", 1869 (Can.), c. 3 was passed. Among other things this enactment provided that the Territories would be known as "The North-West Territories" and that the Governor might empower the Lieutenant-Governor of the North-West Territories to "administer the Government under instructions from time to time given him by Order in Council": s. 3. Provision was made for an appointed Council to aid the Lieutenant-Governor, but the statute made it clear that government was to be by the Lieutenant-Governor instructed by Order in Council from Ottawa.

Pursuant to Imperial Order in Council dated June 23, 1870 [R.S.C. 1870, app. II, p. 257], Rupert's Land and the North-Western Territory were in fact admitted to the union, effective July 15, 1870.

The *B.N.A. Act*, 1871 (U.K.), c. 28, was passed to remove any doubts as to the Dominion's power to establish Provinces in the Territories admitted. Section 4 states

4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

While there was intervening legislation passed by the Dominion Government in respect to the North-West Territories, as it then was, the first serious statute was passed in 1875: *North-West Territories Act*, 1875 (Can.), c. 49.

By s. 2 this statute provided for "an officer styled the Lieutenant-Governor, appointed by the Governor General in Council" who held office "during the pleasure" and who "shall administer the government under instructions from time to time given him by Order in Council, or by the Secretary of State of Canada".

Section 3 provided for a five-man, appointed Council to aid the Lieutenant-Governor with such powers as might from time to time be conferred upon them by the Governor in Council. All laws then in force in the Territories and not inconsistent with this Act were continued until changed or repealed: s. 6.

In an amending statute assented to in 1877 provision is made for the power to make Ordinances for the government of the North-West Territories by the Lieutenant-Governor "by and with the advice and consent of the Legislative Assembly": "An Act to amend the 'North-West Territories Act, 1875.'", 1877 (Can.), c. 7, s. 3. By the same section it is inter-

esting to note that the "power" referred to here is "such powers . . . as the Governor in Council may, from time to time, confer upon him". As subsequent enactments are later examined it will be seen that although almost 100 years have now gone by, this method of government for the Territories (the remnant still designated as such) is still in effect.

A consolidation of this legislation took place in 1880 by the *North-West Territories Act*, 1880 (Can.), c. 25.

The "powers" as set forth in s. 3 of the 1875 amending statute continue down through the years despite several amendments which are not of sufficient importance to require discussion. It is interesting to note however that by 1886 the *North-West Territories Act*, R.S.C. 1886, c. 50, in setting forth the Lieutenant-Governor's powers adopts the language [of 1880, c. 25, s. 2] that has continued down to the present time, namely, "shall administer the Government, under instructions, from time to time, given him by Governor in Council, or by the Secretary of State of Canada": s. 4(2).

By the *Yukon Territory Act*, 1898 (Can.), c. 6, the Yukon Territory was taken out of the Northwest Territories and then in 1905 a major constitutional development or change took place with the formation of the Provinces of Alberta and Saskatchewan: *Alberta Act*, 1905 (Can.), c. 3; *Saskatchewan Act*, 1905 (Can.), c. 42.

In the *Northwest Territories Act*, R.S.C. 1906, c. 62, the designation of Lieutenant-Governor disappears from the legislation. Section 3 of the revision [from 1905, c. 27, s. 4 (part)] makes provision for the appointment of a chief executive officer, viz., the Commissioner of the Northwest Territories. Whether this was a deliberate step to demark the difference between the self-governing Provinces which had just emerged into what is referred to as southern Canada and that vast area to the north, is not known. From this time on, however, except for changes in the numbers of the Council and in the numbers who are elected, there has been no serious legal change in the manner of Government in the Northwest Territories. Here of course reference is being made to the Government in the "legal" sense rather than to Government in the *de facto* "political" sense.

By s. 4 of the 1906 revision the executive powers vested previously in the Lieutenant-Governor as of August 31, 1905, became vested in the Commissioner and the "Commissioner shall administer the government of the Territories under instructions from time to time given him by the Governor in Council or the Minister".

By an amending Act, 1921 (Can.), c. 40, a Deputy Commissioner was provided for, to have the same powers as the Commissioner when the Commissioner might be away [s. 1 amending s. 6 of the Act].

The statute currently in force is the *Northwest Territories Act*, R.S.C. 1952, c. 331 as amended [later R.S.C. 1970, c. N-22]. In this statute s. 3 makes provision for the appointment of a chief executive officer by the Governor in Council who is to be styled and known as the "Commissioner of the Northwest Territories". Again by s. 4 is found

4. The Commissioner shall administer the government of the Territories under instructions from time to time given by the Governor in Council or the Minister.

Down to 1905 the general intent would appear to be to administer the Territories pretty much as a Colony with the Dominion Government remaining the dominant authority and administering through a Lieutenant-Governor just as the Imperial Government would govern a Colony. After the more populous areas were formed into self-governing Provinces the control and direction from Ottawa of the remnant did not diminish. Substituting a "Commissioner" for the "Lieutenant Governor" seemed to indicate a change from "colonial status" to one more akin to a mere Department of the federal Government. And this is the way it has continued to the present date. For a Court reference to the Territories being referred to as a Colony see the remarks of Wallbridge, C.J., found at pp. 241-2 of *The Queen v. Connor* (1885), 2 Man. R. 235, 1 Terr. L.R. 4.

## II. Constitutional History of the Courts of the Northwest Territories

By the Royal Charter, ratified and confirmed by Act of Parliament, 2 W. & M. c. 23, 1690, the "Governor and His Council" (of the Hudson's Bay Company) had the "power to judge all persons belonging to the said Governor and Company or that shall live under them" or in the alternative he could transport the person to the "Kingdom of England . . . to receive such punishment as the nature of his offence shall deserve".

In 1803 by 43 Geo. III, c. 138 the Imperial Parliament passed an Act extending the jurisdiction of the "Courts of Lower Canada . . . with power to the Governor of Lower Canada to change the venue to Upper Canada" with respect to "offences committed in the said (Indian) Territories". This Act also provided for the appointment of Magistrates and

Justices of the Peace "for the purpose of committing to custody . . . for trial" in the above Courts.

Friction and conflict between the Hudson's Bay Company and the Northwest Company prompted a further statute by the Imperial Parliament in 1821, (1 & 2 Geo. IV, c. 66). This statute extended the 1803 Act to include the Territories granted to the Hudson's Bay Company and extended the jurisdiction of the Upper Canada Courts to all the Territories. Justices of the Peace could by this statute be appointed to "sit and hold Courts of Record", except for capital or life imprisonment cases. Appeals in civil suits could go to the Privy Council. In 1839 the first Recorder or Chief Justice of Rupert's Land was appointed under this Act. It is interesting to note that in 1848 this Justice held he could try a case concerning an offence committed near Peace River although the Peace River did not drain into Hudson's Bay: *The Early Administration of Justice in the North West*, Horace Harvey, C.J.A., (1934) 1 A.L.Q. 1.

Provision is made in *Rupert's Land Act, 1868* [(U.K.), c. 105, s. 5] "to constitute such Courts and Officers, as may be necessary for the Peace, Order, and good Government". The statute went on to say that "until otherwise enacted . . . all the Powers, Authorities, and Jurisdiction of the several Courts of Justice now established in Rupert's Land . . . and of all Magistrates and Justices now acting, within the said Limits, shall continue in full Force and Effect therein".

By "An Act for the temporary Government of Rupert's Land and the North-Western Territory, when united with Canada", 1869 (Can.), c. 3, the Lieutenant-Governor of the Territories was empowered [s. 2] "to make provision for the administration of Justice therein . . ." This provision was continued on through the legislation until 1873 when by c. 35 for the first time the Dominion Government made provision for the establishment of Courts and the appointment of judicial officers for the Northwest Territories. In the same statute the North West Mounted Police Force was established with the Commissioner and every Superintendent of the Force appointed "ex-officio a Justice of the Peace" [s. 15]. In this legislation the Governor-General was empowered to appoint Stipendiary Magistrates, to hold office during pleasure, and to have the authority of two Justices of the Peace. They could try less serious offences. On more serious offences up to seven years any two Stipendiary Magistrates could sit as a Court as could a Judge of the Court of Queen's Bench of Manitoba. In the more serious offences they or the Judge sat as a Court



of record. This statute also provided for committal to be sent to and trial in Manitoba by a Judge of the Court of Queen's Bench when a penitentiary case.

By the *North-West Territories Act*, *supra*, passed in 1875 and brought into effect in 1876, provision was made [s. 61] for the appointment of up to three Stipendiary Magistrates who should be "fit and proper . . . persons". With certain refinements the legislation pretty well continued the arrangement discussed in the previous paragraph.

An amendment passed in 1877 (Can.), c. 7, removed the jurisdiction of the Judges of the Court of Queen's Bench of Manitoba and reaffirmed the jurisdiction of Stipendiary Magistrates and Justices of the Peace and the cases in which a jury of six may try the case [s. 7].

The amending and consolidating Act of 1880, c. 25, *supra*, made provision for the first time for the appointment of Stipendiary Magistrates who were "fit and proper . . . persons, barristers-at-law or advocates of five years' standing": s. 74, with the functions of any two Justices of the Peace: s. 76, and sitting with one Justice of the Peace and a jury of six to hear all serious criminal cases: s. 76, paras. 4, 5. In capital cases an appeal was provided to the Manitoba Court of Queen's Bench. As well the Stipendiary Magistrate was given civil jurisdiction with provision for a jury of six in the more important cases. These provisions, with slight modification, were continued down through amending legislation, 1884, c. 23, and 1885, c. 51.

By "An Act further to amend the law respecting the North-West Territories", 1886 (Can.), c. 25, the laws of England relating to civil and criminal matters "as the same existed on the fifteenth day of July [1870] in so far as the same are applicable . . ." were declared to be in force in the Territories and subject to any laws of Canada or Ordinances of the Territories.

By this statute, s. 4, "a supreme court of record of original and appellate jurisdiction" was set up — "The Supreme Court of the North-West Territories". This was a Court of five puisne Judges, who had to have been a Judge of a superior Court of any Province, a Stipendiary Magistrate of the Territories, or a barrister of at least ten years' standing. By s. 9 the Judges were to hold office during good behaviour but removable by the Governor-General on address of the Senate and House of Commons. It is important to note that s. 14 gave them the "powers and authorities as by the law of England are incident to a superior court of civil and criminal jurisdic-

tion; and shall have, use and exercise all the rights, incidents and privileges of a court of record . . ." as of July 15, 1870, were used and exercised by any of Her Majesty's superior Courts of Common Law, Chancery or Probate in England. By s. 30 the powers formerly exercised by Stipendiary Magistrates were vested in the Judges.

The Court system as set up above was continued in the *North-West Territories Act*, R.S.C. 1886, c. 50, and remained the situation until Alberta and Saskatchewan became Provinces in 1905. This period can be considered to be the high-water mark for the Court system for by the *Northwest Territories Act*, R.S.C. 1906, c. 62, the old system of Stipendiary Magistrates (s. 32 [from 1905, c. 27, s. 8]) is reverted to for what remained of the Territories.

Beginning with an amending Act, 1908 (Can.), c. 49, a new arrangement was introduced whereby the superior Courts of the Provinces of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia exercised civil jurisdiction for the Territories west of the 80th meridian. Except for some variation in the geographical distribution of these civil powers (1940 (Can.), c. 36) this arrangement remained up to 1955. In 1948 appeals from Stipendiary Magistrates were provided for to the Alberta Appellate Division and from that Court to the Supreme Court of Canada: 1948 (Can.), c. 20.

Proclaimed on April 1, 1955, the *Northwest Territories Act*, R.S.C. 1952, c. 331 [repealing R.S.C. 1952, c. 195; later R.S.C. 1970, c. N-22], introduced the next major change in the development of the administration of justice for the Territories.

By s. 20 [rep. & sub. 1955, c. 48, s. 9] of this statute a superior Court of record consisting of one Judge appointed by the Governor in Council is set up to be called the Territorial Court. The Judge was to hold office during good behaviour but removable on address of the Senate and House of Commons. Wherever any power or authority was given to a Stipendiary Magistrate such power was now in the new Court. Appeal procedures were laid down to provincial Courts depending on the geographical juxtaposition of such Court. Superior Courts of certain Provinces were given concurrent civil jurisdiction for matters which arose east of the 102nd meridian of west longitude. A system of Police Magistrates and Justices of the Peace was also introduced by this statute. Except for modifications in the appeal Court (1960, c. 20) this legislation remained in effect up to March 15, 1971, when by P.C. 1971-431 [105 Can. Gaz., p. 790] the statute in so far

as it was concerned with the administration of justice ceased to have effect.

The Parliament of Canada in 1970 passed "An Act to amend the Yukon Act, the Northwest Territories Act and the Territorial Lands Act", 1969-70, c. 69 [R.S.C. 1970, 1st Supp., c. 48]. The effect and purpose of this piece of legislation, when proclaimed as above, was to remove the federal presence in the field of administration of justice and to as much as possible, subject to certain constitutional safeguards contained in the statute, transfer this field to the Territorial Government now based at Yellowknife in the Territories. This major change was effected by the Territorial Government enacting a new *Judicature Ordinance*, 1970 (N.W.T.) (3rd Sess.), c. 5. This Ordinance took effect March 15, 1971.

The new *Judicature Ordinance* by s. 3 continued the Territorial Court originally set up in the 1955 statute (*supra*) and purported to perpetuate the powers it had formerly exercised. By s. 15 an appellate Court for the Territories to be called the Court of Appeal for the Northwest Territories was provided for. Transitional provisions are found in s. 47 whereby no loss of jurisdiction in cases pending is suffered by either Court. Under this legislation the present Judge of the Territorial Court was reappointed by P.C. 1971-438, effective March 15, 1971 [105 Can. Gaz., p. 788]. This appointment was pursuant to s. 101 of the *B.N.A. Act, 1867*. It should perhaps be observed that a proposal to change the name of the Court back to "Supreme Court of the Northwest Territories" is before the Territorial Council now in session.

With the above historical background in mind it now becomes necessary to examine the various arguments put forward.

- (1) Is the garnishee summons styled as above improperly styled in that the Commissioner of the Northwest Territories should not be named as a garnishee?

Reference has already been made to s. 4 of the *Northwest Territories Act* currently in effect whereby the Commissioner "shall administer the government" as he may be instructed and how under s. 3(1) of the same statute he is to be "styled and known as the Commissioner of the Northwest Territories". It is to be noted as well that by s. 19C(2) [enacted 1966-67, c. 22, s. 5] the Territorial Accounts are to be in such form as the Commissioner may direct and that by s. 19(2) [rep. & sub. 1966-67, c. 22, s. 5] the Commissioner "shall establish, in the name of the government of the Northwest Territories,