
REPORT OF THE ROYAL COMMISSION CONCERNING **TIMBER**
LIMIT CHARGES.

To the Honourable Josiah Wood, D. C. L., LL. D.,

Lieutenant-Governor of the Province of New Brunswick.

We the Commissioners, appointed by Your Honour by Letters Patent under the Great Seal of New Brunswick on the eighteenth day of May in the year of our Lord one thousand nine hundred and fourteen, authorizing and requiring us to enquire into certain charges connected with the Timber Limits of the Province of New Brunswick, have by virtue of the authority conferred upon us by the Act, 4 George V.; Chapter 12, investigated the said charges, and most respectfully report to Your Honour as follows:

We have examined a large number of witnesses under oath, and beg to submit herewith a full report of the evidence so taken.

In the preamble of the said Act the charges, which we were authorized to investigate, are recited and set forth as follows:

“That the Honourable James Kidd Flemming, through the agency of William H. Berry, Chief Superintendent of Scalers of the Crown Land Department of this Province, and under the direct control of the said Hon. James Kidd Flemming, in the year A. D. 1913, did unlawfully extort from divers large lessees of Crown Timber Limits within the Province, a sum of fifteen dollars a square mile of their said timber limits, over and above the amount of bonus paid by them respectively, as set forth in the fifty-third Annual Report of the Crown Land Department of the Province of New Brunswick ‘for the year ending the thirty-first day of October, A. D. 1913, in pages 23 to 27 thereof, both inclusive, which said amounts so unlawfully extorted from said lessees amount in the whole to the sum of about one hundred thousand dollars, no portion of which sum was accounted for or

paid into the revenues of this **Province**, and said moneys were extorted from said lessees, and paid to the said William **H. Berry**, with the knowledge and consent and under the direction of the Hon. James Kidd Flemming,, while occupying the offices of Premier and Minister of Lands and Mines, and all of said moneys were so paid before the lands were classified under the provisions of Chapter **11** of the Statutes of New Brunswick for the year A. D. 1913.”

By the first section of the said Act we are **authorized** and empowered to enquire into the said charges and report whether we find the Honourable James Kidd Flemming guilty of directing the extortion of said moneys by the said William, H. Berry before the said lands were -classified, and if we find that the' said moneys were so extorted with the knowledge and consent and under the direction of the said Honourable James **Kidd** Flemming, and received by the **said** William H. Berry, then what disposition did he make thereof, and to whom the said moneys were paid by him, as well as the ultimate destination of all said moneys.

As the alleged charges and the greater portion of the evidence in support of the **same** are closely related to the Act, 3 George V., Chapter **11**, entitled “**An Act** respecting the Timber Lands of the Province,” we **deem** it appropriate that said Act, which is as follows, be set forth in full:

CAP. XI.

An Act respecting the Crown Timber Lands of the Province.

Whereas, the Crown Land areas of the Province comprise a large percentage of the **total** land of the Province, consisting of over **10,-000** square miles, the said lands being of great value, both as a means of providing revenue for the Province, and of maintaining a large and important industry within the Province, and it is desirable, and in the public interest that proper and effective measures should be taken for the preservation and conservation of these lands, in order that their productive power may not be diminished, but that they may continue to supply the raw material to maintain our great Lumber Industry;

And whereas, the Licenses issued on the first day of August, 1893,

embodying regulations, approved by Order-in-Council of June 9th, 1893, were renewable for a total period of 25 years; which period will expire on the first of August, 1918;

And whereas, the near approach of the termination of the above mentioned period renders it more difficult for the lumbermen to make the necessary financial arrangements to carry on their lumber operations, and increases any tendency there might be to deplete the Crown Lands by cutting timber under the regulation size ;

And whereas, the establishment of pulp and paper mills within the Province, would insure the investment of a large amount of capital, and would provide employment for a largely increased number of people, and would result in our raw material being wrought into the more valuable finished product;

And whereas, it is found necessary, in order to secure the establishment of such a valuable branch of the lumber industry, that a reasonable fixture of tenure upon the Crown Lands be provided for those embarking in the pulp and paper industry;

Be it therefore enacted by the Lieutenant-Governor and Legislative Assembly, as follows :

“1. The Lieutenant-Governor-in-Council is hereby authorized to issue Licenses upon the first day of August next of two kinds, namely :

(a) A license, to be known as “The Pulp and Paper License,” which shall contain as part of its conditions, the following provisions and requirements : At least fifty per cent. of the lumber cut yearly upon the said Crown Lands under such license, shall be manufactured into pulp and paper or other manufactures of pulp, within the Province of New Brunswick. That the Licensee agrees, upon taking out the License, that he shall acquire or erect and operate a Pulp Mill, within three years of the date of taking out of such License, and that he shall acquire or erect and operate a Paper Mill or other mill which manufactures goods into which Pulp largely enters as raw material, within five years

from the same date., and that both the Pulp and Paper Mill, or other mill as aforesaid, shall be of sufficient capacity to manufacture the, **quantity** of timber above mentioned, and **further**, that the operation of such Pulp and Paper Mill or other mill as aforesaid, shall be continuous from year to year ; such Licenses **to** be renewable 'for a period of thirty years, and shall be subject **to** an extension, for a period of twenty years from the termination **of** the thirty year period, upon the condition hereinafter provided; The renewal from year to year for the thirty year period, and the yearly renewals during the extended period of twenty years to be subject to a satisfactory compliance on the part of the Licensee,* with such rules and regulations, as may be made from time to time, by the Lieutenant-Governor-in-Council in dealing with the Crown Lands of **the** Province.

(b) **A** License to be known as 'The Saw Mill License,' a condition of this License to be that it shall be renewed from year to year for a period of twenty years, from the first of August, 1913, and, at the expiration of **that** period, may be extended for a further period of ten years; such renewals, **both** as regards the twenty year period, and the extended period of ten years being **conditional** on the satisfactory carrying out of the rules and regulations made in connection with the Crown Land Areas.

2. The above mentioned Licenses may be issued and shall, on the first day of **August** next, be available to the present Licensees, should they desire to surrender and cancel their existing Licenses; the Licensee is hereby required to notify the Surveyor-General, prior to July 15th next, of **his** intention to take **out** the new License or to continue under the existing License.

3. The Lieutenant-Governor-in-Council shall, prior to the **first of July**, 1913, determine the amount of the bonus to be paid by the Licensees per square mile, for the privilege of cutting the timber upon the lands now held by them, for the period of thirty **years in the case of the Pulp and** Paper License, and for a period of twenty years in the case of the Saw Mill License.

The bonus determined upon by the **Lieutenant-Governor-in-Council** in this section, shall, in the case of the Pulp and Paper License, be payable, one *third prior to August first, 1913, one third prior to August first, 1923, and one third prior to August first, 1933. In the case of the Saw Mill License, the bonus **fixed** and determined upon, shall be paid one **half** prior to August 1st., 1913, and one half prior to August 1st., 1923.

The Lieutenant-Governor-in-Council shall, at the expiration of the twenty and thirty year periods respectively, fix and determine what bonus shall be paid for the privilege of cutting for the further period of ten years in the case of the Saw Mill License, and for the period of twenty years in the case of the Pulp and Paper License. The bonus, in all cases, shall be in lieu of the lands not being offered at **Public Sale**.

At any time during the currency of a Pulp, and Paper License, the holder may surrender it, and shall be entitled to receive a **'Saw Mill License'** in lieu thereof and at any time during the currency of a Saw Mill License, the holder, if he shall have acquired or erected, and is prepared to operate a Paper Mill or other Mill which manufactures goods into which pulp largely enters as raw material, may be granted a Pulp and Paper License in lieu thereof.

In either of such cases, the Lieutenant-Governor-in-Council may re-adjust the bonus paid or adjust the bonus to be paid as to him shall seem right.

4. The **Lieutenant-Governor-in-Council** shall, from time to time, fix and determine the rates of **stumpage** to be paid upon the various kinds of lumber cut from the Crown Lands by the Licensees, and shall determine the mileage to be paid annually by the Licensee, and shall make such other rules and regulations in regard to the cutting and removing of lumber **from** the Crown Land Areas, as may to him seem just, **wise** and prudent.

5. The regulations above mentioned shall contain the provision that if any Licensee shall at least twelve years before the expiration of the twenty and thirty year periods hereinafter men-

tioned, notify ~~the~~ Crown Land Department of his or their intention to set ~~aside~~ and not operate on certain portions of their area, but to allow the same to reproduce for the period of twelve years, and it appears to the Surveyor General that no cutting on such area has taken place during such period, the said Licensee shall have the privilege of cutting upon such lands for the further period of ten years without the payment of any bonus, but subject to such mileage and **stumpage** rates as may be imposed.

6. The Surveyor General is hereby authorized to employ the necessary number of competent men who will be charged with the following duties :

(a) To make a survey, examination and classification of the Crown Land Areas of the **Province**.

(b) To report, with as much detail as possible; upon the character and quality of the lumber; to estimate the quantity of timber and the reproductive capabilities of the various areas, estimating as accurately as possible as to what may be the annual growth of the timber upon each area or tract, and to report upon the accessibility of the timber in each section, estimating as nearly as possible, the cost of logging the different areas, and the cost of stream-driving to the point of manufacture; to report the location of the lands deemed suitable for agricultural purposes, distinguishing ~~them~~ from other lands that might be regarded as especially suitable for the growth and reproduction of timber; such survey, examination and classification of the lands, shall be completed not later than the first of August., 1917.

7. Upon the **receipt** of such report, estimating ~~the~~ annual growth on the various areas held by the Licensees, if it appears to the Lieutenant-Governor-in-Council that **any** Licensee is not cutting reasonably close to ~~the~~ annual growth, or that the capacity of his or their mill is not sufficient to warrant the Licensee to continue+ hold all the lands then included in his License, the Lieutenant-Governor-in-Council' may authorize ~~the~~ Surveyor General **to** take out of such **License** such **portion** of the same as in his judgment the Licensee **does** not reasonably require, but

such reduction shall, in no case, exceed twenty five per cent. of the whole quantity of land held by the Licensee; such decision shall be determined before the first day of August, 1918.

8. Any areas of land taken from existing Licensees under the provisions of the preceding section may, upon application, be leased to Mill owners who may require the same for the operation of their mills; such License to date as of August 1st., 1918, and shall be renewable, from year to year, for a period of fifteen years, and shall be subject to an extension of ten years, as provided in sub-section (b) of Section 1. The bonus to be paid by such Millowners or Licensees, and the terms of payment thereof shall be determined by the Lieutenant-Governor-in-Council.

9. The expenses incurred in Carrying out the provisions of this Act shall be paid out of the Consolidated Revenue Fund of the Province.

10. Chapter 31 of the Acts 6 Edward VII., (A. D. 1906), and any other Act or Acts, or parts thereof, inconsistent herewith, are hereby repealed."

The Hon. Mr. Flemming became Premier of the Province, taking at the same time the portfolio of Surveyor General in October, 1911. This Department was afterwards known as the Department of Lands and Mines, and he continued to occupy the positions of Premier and Minister of Lands and Mines, up to the time said charge³ were made.

Beginning with 1893 the policy with reference to the administration of the Crown Lands of the Province was that leases of the Crown Lands, that is, the right to cut timber on the Crown Lands, were upon application advertised in the Royal Gazette and sold at public auction to the highest bidder for a term of twenty-five years. More properly the leases were in terms annual leases with the provision therein contained that if the conditions were complied with they would be renewed from year to year up to 1918. In addition to the price paid at public auction for the privilege of cutting timber the lessee paid \$8 per square mile mileage each year upon his holdings at each renewal, and besides that, the regular stumpage rate, which at the time of the passing of the Act, 3 George V., was at the rate of

\$1. 25 per 1,000 superficial feet for spruce, pine and cedar; eighty cents for hardwood and forty cents for hemlock.

The said Act, 3 George V., Chapter 11, was intended to alter, and did alter, the 'policy. upon which the Crown Lands of, the Province had been heretofore administered, and while permissive and not compulsory in its terms, practically all the lessees of Limits from the Crown surrendered the unexpired terms of their leases and came in under the provisions of the said Act, and were granted leases under section one of the said last mentioned Act, the effect being that virtually all holders of licenses from the Crown at the time of the passing of the said Act were continued in their respective holdings, referring to saw mill licenses, (there only being one or two pulp mill licenses issued) for a period of twenty years from the first day of August, 1913, with right of extension under the provisions of said Act for a further period of ten years, subject to the payment of a bonus, to be paid by the licensees per square mile for the privilege of cutting timber on the lands held by them, the amount of such bonus to be determined by the Lieutenant-Governor-in-Council, also \$8 per mile mileage each year upon their holdings on the annual renewal, and **\$1. 50** per 1,000 superficial feet stumpage, which was fixed at said rate for ten years.

By the provisions of section three of said last mentioned Act, the Lieutenant-Governor-in-Council was to determine, prior to the first day of July, 1913, the amount of the bonus to be paid by the said lessees per square mile for the privilege of cutting timber upon the lands held by them, and it was considered . that some examination should be made and information obtained for the purpose of classifying the Crown Land areas held by various licensees with a view of determining the amount of bonus that should be paid by the respective holders thereof, and it appears that William H. Berry (who is the Berry mentioned in the said charges) and who was at the time the Hon. Mr. Flemming became Surveyor General, and afterwards, an important official of the Department, to wit, Chief Superintendent of Scalers, was charged with the duty of making the examination and securing the information aforesaid, and it is in evidence that the said William H. Berry did call upon most, if not all, of the large holders of Crown Land areas, and received from them, as many testified, all

the information they and their woods foremen and other employees could give with reference to the location and general conditions of the lands held by them, the character and quality of the lumber on their respective areas, the extent of their production, the facilities for lumber operations upon the said lands with reference to stream driving, and the prospects and possibilities for reproduction.

The said William H. Berry afterwards made a report or statement to Hon. Mr. Flemming, Minister of Lands and Mines, showing the holdings of the different lessees of Crown Lands, the nature of their holdings and the number of miles held by them, dividing their holdings into four classes, A, B, C and D. The statement so submitted gave the number of miles held by each lessee and the class in which each should be placed. Mr. Flemming states in his evidence that after said statement was submitted and after discussion of the matter with his colleagues an Order-in-Council was made on the tenth day of July, 1913, fixing the rate of bonus as follows: \$100 for class A; \$75 for class B; \$50 for class C, and \$20 for class D. Said Order-in-Council is in words and figures following:

“The Minister of Lands and Mines begs leave to report for the information of the Committee of Council:—

That, acting under authority of Chapter XI. of 3 George V., he has caused an investigation to be made into the physical condition and value of the various Crown Timber Areas of the Province.

He further reports that having in view the quantity of timber of merchantable size, the reproductive capacity of the land, its proximity to the point of manufacture, and other conditions affecting its relative value, he recommends that the Crown Timber Areas of the Province be divided into four classes, to be designated A, B, C and D.

He further recommends that the bonus to be determined by the Lieutenant-Governor-in-Council under Section 3 of the aforementioned Chapter shall be for the Saw-mill and Pulp and Paper Licenses, respectively, and for the different classes of land as herein specified, as follows :

Saw-mill.	Pulp and Paper.
Class A—\$100 per sq. mile	\$130 per sq. mile

Class B—	75 per sq. mile	100 per sq. mile
Class C—	50 per sq. mile	65 per sq. mile
Class D—	20 per sq. mile	30 per sq. mile

The Minister further recommends that the Crown Timber Lands of the Province now under lease shall be apportioned to the various classes as follows :—(here follows a complete list of the licensees, showing the location of the lands held by each, as well as the extent of area enjoyed by each holder, and the class into which each licensee's holdings were placed).

The Minister further recommends that the bonus due and payable under Section 3 of the aforementioned Chapter on the first day of August, 1913, may be adjusted by the payment of one-half the amount in cash, and the obligation of the Licensee to pay the remaining half on or before the first day of August, 1914.

And the Committee of Council concurring in the said report and recommendations, it is accordingly so ordered."

The Hon. Mr. Flemming is unable to give the date when the first intimation was made to him that the formation of a fund for party purposes was in contemplation, but evidently it was after Berry had conferred with the lessees of Crown Lands for information with reference to the classification of their lands as mentioned above, which would probably be some time in the latter part of May, 1913. He says that William H. Berry stated to him more than once that the lumbermen, meaning the lessees of Crown Lands, were desirous of making a contribution to the party's funds, that at first he took no notice of the suggestion, but the second or third time it was mentioned by Berry he told him that he (Flemming) could have no connection with a matter of that kind, and that he (Berry) must have no connection with the getting of money for that purpose, because he (Berry) was an official of the Department and that his usefulness would be gone if he had received money from the lumbermen, and if contributions were made, E. R. Teed, of Woodstock, would be a proper person to receive the funds in the interests of the party. Flemming said that he spoke to Teed about the matter, told him what Berry had said to him about the proposed contributions to a party fund from the lumbermen, asked him to take care of said fund, and

Teed consented to do so. Mr. Flemming also says in this connection that he did not know or have any hint, knowledge or information that the contributions were to be other than absolutely voluntary.

The evidence shows that some time in June, 1913, Berry visited the north shore of the Province, where a large number of lessees holding licenses of Crown Land areas reside, and asked the said lessees of Crown Lands to meet him at Newcastle, which they did in very considerable numbers, to talk over the general provisions of the said last mentioned Act, and to make suggestions in regard to it, and he explained the provisions of the Act and how it was to be worked out. He also spoke about the bonus to be fixed under the said Act, and said he thought the maximum bonus would be somewhere in the vicinity of \$100 per square mile, but it was not settled. It appears in evidence that within a few days after said meeting and somewhere about the last part of June, 1913, Berry made a proposal to J. P. Burchill; Angus McLean, manager of the Bathurst Lumber Company; Walter Stevens, manager of the Dominion Pulp Company; William B. Snowball, of the J. B. Snowball Company, Limited; Allan Ritchie, Hubert Sinclair for the Sinclair Lumber Company; James Robinson; N. M. Jones, manager of the Edward Partington Pulp and Paper Company; James A. Rundle and Charles L. Fender-son that it was desired to raise a campaign fund and asked them to contribute a sum of money equal to \$15 per square mile of their holdings of Crown Lands, in addition to the bonus to be paid by them. While some at first demurred and some asked for time to consider the matter, the final result was that they paid or handed over in cash, checks or bank drafts to J. W. Brankley, general manager of the Miramichi Lumber Company at Chatham, whom Berry had asked to act as treasurer of the fund for the time and afterwards to pay it over to E. R. Teed, as follows :-J. P. Burchill, \$2,000; Bathurst Lumber Company, \$15,000; J. B. Snowball Company, Limited, \$7,200; Allan Ritchie, \$4,500; Sinclair Lumber Company, \$3,000; James Robinson, on own account, \$2,167.50; James Rubinson, on account of T. Lynch estate, \$1,880; James A. Rundle, \$832.50.

These amounts were subsequently handed over by J. W. Brankley to said Edgar R. Teed who was designated by the Hon. Mr. Flemming to receive and take care of the said fund for party purposes. In

addition to the said amounts there was received by the said Teed for the purposes of said party or campaign fund from Frederick C. Beattey, acting for Stetson Cutler and Company, the sum of \$15,000 and from Nathaniel M. Jones, representing the Partington Pulp and Paper Company, the sum of \$3, 250, both companies being at the time lessees of Crown Lands and both these amounts were paid by the said companies respectively over and above the bonuses paid by them under the said Act, 3 George V., Chapter 11.

The evidence clearly shows that William H. Berry received the sum of \$4, 500 from the Dominion Pulp Company through a bank draft sent by Walter G. &evens, manager of said Company, to John E. Moore of Saint John. Moore endorsed the said draft and Berry got the money for same from the bank; also from the Bathurst Lumber Company through Angus McLean, manager of said Company, in addition to the above amount of \$15, 000 paid by them, the sum of \$5, 000 ; from the Louisun Lumber Company through Charles L. Fenderson, manager of said company, the sum of \$2, 000, and from Stetson Cutler and Company through Frederick C. Beatteay the sum of \$1, 000, in addition to the said amount of \$15, 000 paid by them, all of which said moneys the said Berry retained and still retains and has appropriated to his own personal use.

Now as to the moneys so received by Berry as above set out, the first enquiry that suggests itself is: Were these moneys extorted by him?

To understand and appreciate just what is involved in the terms "extort" and "extortion," it is well to say that there is necessarily conveyed by these words the idea that the thing extorted is acquired under compulsion or exaction, as stated in the definition of extortion given in 12 'A. & E. Ency. of Law, 2nd. Ed., 5'76, or by reason of the subjection of the giver to some necessity (Standard Dictionary) or is obtained by the party extorting it by virtue of his authority over the person parting with it (Century Dictionary). In Halsbury's 'Laws of England, volume 9 at page 665 under the head of Extortion by Threats the author says:

"They (the menaces) must be of such a nature as to unsettle the

mind of the person to whom they are made and take away that element of free **voluntary** action' which alone constitutes **consent**."

Under Canadian Law it is an **offence** to do certain things enumerated in the Code **with** intent to extort or gain anything from any person. Doing such things constitutes the statutory. **offence** of extortion. It is not, however, with the **offence** so defined by **statute** that we have here to deal. **For** the purpose of this enquiry, having regard to the definitions above referred to, we consider that the money in question was obtained by extortion, if it were not given by free **voluntary action** on the part of the donors.

To decide this question it becomes necessary to pass under review the conversations and negotiations which were had between Berry on the one hand and the various contributors to the fund on the other hand, as well as to consider the **circumstances** under which such conversations and negotiations took place **and** the relationship of **the** parties affected thereby.

In the **conversation** with Mr. John P. Burchill in June, **1913**, Berry explained that the bonus **had** not yet been settled but he thought it would be in the vicinity of one hundred dollars a mile, and he said it was proposed the lumbermen should put 'up a fund of fifteen dollars a mile for election purposes. It must be borne in mind that at **the** time of **the conversation** above referred to the lands were not classified, neither was the **amount** of the bonus determined. Mr. Burchill paid his contribution on the 27th day of June, 1913, in the manner Berry suggested.

To Mr. Stevens, manager of the Dominion Pulp Company, Mr. Berry said he couldn't answer his (Stevens') inquiry as to how much the bonus upon the pulp company's lands would be until he (Berry) had seen Mr. Brankley. Mr. Stevens further testified that after he had agreed through Mr. Brankley to put up fifteen dollars a mile for a campaign fund and after informing Berry that he had agreed to **Brankley's** proposition, Mr. Berry informed him that the classification of the company's lands would be **\$75** per mile. On the day following, 27th June, **1913**, Mr. Stevens paid Mr. Brankley \$4,500 for the campaign fund.

In the interview with Mr. W. B. Snowball in the latter part of

June, 1913, after a discussion concerning the lands under license to J. B. Snowball Company, Berry said to Mr. Snowball: "There is another thing I want to discuss with you. It is considered an opportune time to raise a fund, it is considered that all you lumbermen should pay \$15 a mile; all the others have agreed to it? Mr. Snowball refused to pay until after discussing the proposal with others engaged in the business, and as a matter of fact did not pay until the 15th day of July, 1913, on which date he handed over his contribution of \$7,200 to Mr. Brankley, therein following Berry's instruction in that regard.

To Angus McLean, manager of the Bathurst Lumber Company, Mr. Berry said that the bonus on the last named company's lands would be \$100 a mile, and in addition to that, the company would have to put up \$15 a mile for an outside fund, which witness said he understood to be a campaign fund. The witness paid to the order of Mr. Brankley into the Bank of Montreal, Bathurst, fifteen thousand dollars between the first and third days of July, 1913, as the company's contribution to the fund.

Mr. Allan Ritchie has testified that in a conversation between himself and Berry on or about the 26th day of June, 1913, after discussing the hundred dollars a mile bonus, in the same conversation Berry brought up the matter of the campaign fund of \$15 a mile. Mr. Ritchie paid the levy on three hundred miles, amounting to \$4,500, to Mr. Brankley on the following day.

After telling Mr. Hubert Sinclair that the bonus had been fixed at one hundred dollars a mile for class A and that about all the Miramichi lumbermen were in class A, Mr. Berry went on to say that they wanted a campaign fund and thought the friends of the Government should donate about fifteen dollars a mile. This conversation took place about the 25th day of June, 1913, and on the following day Mr. Sinclair paid the money and he says he gave it voluntarily and freely.

On the same day Mr. Berry met Mr. James Robinson at the Miramichi Hotel in Newcastle and after explaining about the classification of the lands and the amount of bonus; asked for a campaign fund of fifteen dollars a mile, saying that the others were contribut-

ing, to which Mr. Robinson replied: "If the others **are paying, I** will pay that on mine." At the same time Mr. Berry'also **asked for** a like contribution **on** the licenses held by the Lynch Company, of which Mr. Robinson was president. As a matter of fact both contributions were paid by Mr. Robinson, who testified that the payment was optional and voluntary.

Mr. James A. **Rundle's** land was classified at seventy-five dollars a mile-in Division B. This witness testified that Berry told him he had to pay fifteen dollars a mile more, and that he understood it **was to be paid** into the Government and that Berry said "his orders **from the Surveyor General** were to collect \$15 a mile and that I was to **pay** it to Mr. Brankley." Witness paid the money, amounting to \$832.50, to Mr. Brankley on the 26th day of June, 1913, and says he figured it as a condition of getting his **licenses renewed**.

The evidence given by Mr. Charles Fenderson shows that in his conversation with Berry the matters of classification and bonus were discussed, and eventually at the Barker House, Fredericton, Berry told the witness that the rate per mile had been practically decided upon but they had also decided it was a good time to start a political fund and that **the** Government expected fifteen dollars additional. Mr. Fenderson further says that he agreed to talk it over with his firm and that afterwards in June, 1913, amounting to \$2,000, the money was paid to Mr. Berry in cash in the Dufferin Hotel in **Saint John**, but he says he had no reason to believe the payment would **influence** the classification **of** his lands.

The sums paid by Mr. Frederick C. **Beatteay** for Stetson Cutler and Company and other companies, amounting to **\$20,000**, were not paid by arrangement with or through Mr. Berry. Consequently for this branch of the report no further reference to them need be made.

The contribution of the Partingtun Pulp and Paper **Company** was not paid until the fourth day of October, 1913, although negotiations for its payment had been progressing since -about the first of July previous between Mr. Jones, manager of the company, and Mr. Berry, who was at times accompanied by Mr. E. **R. Teed**, Mr. **Jones** said he paid **the amount**, \$3,225, because everybody else had paid it, and if all the other lumbermen had acceded to the request, the **com-**

pany would like to be on as good a basis and by paying the amount he would *eliminate any danger in that respect. He said he felt something was being demanded which he had no right to pay. His conversation over the matter was with Mr. Berry, who told witness that in view of the terms made in connection with the bonuses, the large timber owners should contribute to a campaign fund, that all the other large owners had agreed to the proposition and that they felt that the Partington Company should come in with the rest. The money was finally paid on the fourth day of October, % 1913.

Having in view the testimony given by the different contributors the only conclusion that seems possible to us is that the money was actually extorted. Under the conditions which prevailed it was impossible for any of the license holders to exercise any freedom of mind or will when the proposition was made to them by Berry that the extra amount should be raised. The fact is that the request, if it can be so termed, was made by the Crown Land official to whom each license *holder knew the classification of all the lands was entrusted. They knew further that the decision of this same man Berry would prevail in regard to whatever disputes might arise between any of them and the Government scaler in each season's cut. He was the one official in the Crown Land Department whom it was absolutely imperative that each license holder should appease and placate; and all that being so it would seem of less moment what the actual conversation was made when Berry asked for the money. It was the very relationship between each donor and Berry that gave weight, if not menace, to the suggestion, and accounts for the fact that so few out of all approached had strength of mind to refuse a contribution,

All the above indicated conversations and payments, except the ones specially referred to above and excepted, took place before the Order-in-Council classifying the lands and fixing the amount of bonus payable under each classification*

At the time these demands were made the Government was on the eve of fixing the bonus and stumpage payable by license holders for a time which would cover the full period of the lives of most of the parties affected, and it is difficult to imagine anything more reprehensible or blameworthy than an official of the Department interested should present such a demand or request at such a time, The

license holders were not even free to protest against such request, coming from the lips of an official whose ill-will might easily express itself in ways that would cost much more than the amount then demanded. **It** was of the most vital interest to each holder 'that **his** licenses be renewed. **His investments in mills**, machinery and other plant were in issue. By the **ill-will of Berry** the value of **his** holdings could in many ways be **depreciated**, and for 'a man holding the position of Chief **Superintendent of Sealers** to make such a proposition as that involved in the **conversation** above detailed, is, 'in our opinion, an **extortion** gross and culpable in the **extreme**. To those dependent upon the renewal of their timber licenses it **is** not only an extortion of the **most effective** nature, but it appears the more harsh and cruel inasmuch as it is practiced by one to whom it is unsafe to make **protest** and for a purpose repugnant to many of the contributors,

Coming now to the immediate issue involved in this enquiry the question remains : Was this extortion, which is shown to have been practiced by Berry, directed by Hun. Mr. Flemming?

In the first place **no** one has testified that it was so directed. The only man other than Hon. Mr. Flemming who would be in a position to give positive evidence upon the point has been, since the start of this investigation, beyond the jurisdiction of the Commission. On the other hand the Hon. Mr. Flemming has testified that he in no way directed such extortion.

But it was claimed on the part of Mr. **Dugal** that such direction was amply proven, and the evidence pointing to that conclusion cannot be lightly treated or dismissed. **It** was shown by the Premier's own testimony that suggestions for the collection of a party fund, or, as it was called in the conversation, an "educational" fund, had come to him from **Mr. George Cutler**, whose firm **subsequently contributed** a very large amount, and that MP. James Robinson had expressed to him the same idea. **To** neither of these men was encouragement given, neither was the suggestion discouraged. The conversations with these two men transpired prior to **Mr. Berry's announcement** that the lumbermen were desirous of contributing to the fund which **was afterwards created**. **It** is apparent that **Hon. Mr. Flemming** did **not discourage such a movement**, but he **warned Berry not to have**

anything to do with getting or receiving the money. The Premier named the treasurer, Mr. Teed, of Woodstock. He knew that efforts were being made to get moneys from certain holders of Crown Timber licenses; he knew that from time to time such moneys were coming into Mr. Teed's hands. He set his seal of approval on the **transaction** by introducing his chosen treasurer to Mr. Brankley with the words: "Anything Mr. Berry tells you about this man (Teed) will be all right." At the time of such remark, the Premier, with Messrs. Berry, Teed and Brankley, was in his room at the Barker House in Fredericton, and Berry had acquainted him with the fact that Brankley was acting for the lumbermen in holding the fund prior to its being passed over. In the case of the Partington Pulp and Paper Company, the Premier was aware that Berry was urging a contribution, and, backed by **all** these facts and circumstances, the **view** was strongly pressed upon the Commission that Hon. Mr. **Fleming** could not possibly have been in ignorance of Berry's activities and of the methods he employed. There is a great deal to support such a view, but, in our opinion, it stops short of such sufficiency of proof as would justify the Commission in declaring the charge of directing the extortion proved. That the money was in fact extorted by Berry is fully proved. That the Premier was well aware that moneys were being collected for a purpose unquestionably improper, is also amply shown. It is also manifest that he directed the disposition of such moneys when collected, also that he acquiesced in the collection **of** such moneys at a time and from a source highly and grievously improper.

That Berry held himself out to certain of the donors to the fund as authorized to speak on behalf of the Government and as representing the Premier, is, **we** think, beyond question. It is certain that some of the contributors-possibly all of them-regarded Berry as **the** duly authorized agent of the Government in the task of raising the fund, but this brings us no nearer a conclusion, for it was simply Berry's statement that influenced such belief, and it does not seem to have occurred to any of the parties so injuriously affected to make any inquiries with a view of testing the accuracy of Berry's representations in that regard.

The evidence shows that. Berry had nothing whatever to do with

fixing or determining the amount of bonuses. This was fixed and determined by the Lieutenant-Governor-in-Council on the recommendation of, the Hon. Mr. Flemming as Minister' of Lands' and Mines, and embodied in, the Order-in-Council. as aforesaid, Mr. Flemming. in his evidence states that **'the amount of the bonus was** so determined after the most careful enquiry, and consultation with his colleagues, and he believes they are fair and reasonable both for the Province and the lessees of Crown Lands. **We** could not, help being impressed with the positive and uniform testimony upon oath of the lessees' that the bonuses so fixed were high enough. With the exception of Allan Ritchie, who swore , that they were about fair, every lessee of Crown Lands who gave evidence swore that the bonuses so fixed were too high, and we are of opinion that it does not' follow conclusively that because, at the request of, and some under pressure from Berry, said holders contributed \$15 per square mile of their holdings to this campaign fund, that the 'bonuses so fixed were not sufficiently high in the interests both of the Province and of the lumbermen. It may well be that it was to keep on the "right side,, of Berry who as Superintendent of ' Scalers had power and authority to revise, reduce or' increase the scale of logs cut by them from- Crown Lands year by year, that they contributed to said fund as aforesaid.

There are some circumstances and some evidence which appear to show that the 'Hon. Mr. Flemming had such close relationships with and intimate knowledge of the unworthy conduct of Berry in collecting these moneys that the inference ought to be drawn that what was done by Berry was done. by Mr. Flemming's directions, but when it is remembered, that Berry was not disinterested in his zeal in behalf of this unscrupulous and corrupt enterprise, but, as appears by the evidence, switched from the fund which he pretended was being raised for party purposes into his own pocket the amount of \$16, 500, without the knowledge of Mr. Flemming or of Mr. Teed, who was to be the treasurer and custodian of this, whole fund, is it unreasonable to conclude that Berry, with the wicked intent of advancing his own interests, with the expectation from the beginning of appropriating to his own use a large portion of the moneys, to be

contributed to this fund, made the proposals with respect to the raising of these moneys both to the Hon. Mr. Flemming, as he stated he did, and to the said lessees of Crown Lands, as they stated he did?

Having this in mind, while it clearly appears that the fund was raised with the knowledge and consent of Mr. Flemming, the vital question in this enquiry is: Did Mr. Flemming, through the agency of Berry, extort these moneys from the said lessees of Crown Lands? The evidence does not convince us that he did, for as against the evidence and circumstances above mentioned from which such an inference might be drawn, we have the positive and uncontradicted testimony of Mr. Flemming that he did not know or have any hint, knowledge or information that the contributions to said fund were to be otherwise than absolutely voluntary, which testimony we do not feel justified in totally casting aside and disbelieving.

Not being satisfied by the evidence that the Hon. Mr. Flemming is guilty of directing the extortion of said moneys by the said William H. Berry before the lands were classified, we therefore find him not guilty as charged.

There has been no evidence whatever to show "that any other members" of the Government had any knowledge of this fund or its collection; in fact, Mr. Flemming in his testimony clearly stated this, saying that he was, the only member of the Government who had anything to do with the matter, and that he had not consulted with his colleagues regarding it. The inference, therefore, is clear that it was to be controlled and disbursed entirely by Mr. Teed and himself.

As to the disposition made by Berry of the moneys so extorted, and the ultimate destination thereof, we beg to report that of the total amount of seventy-one thousand, six hundred and sixty-five dollars so raised, he, the said Berry, retained in his possession sixteen thousand five hundred dollars, and the balance, being the sum of fifty-five thousand one hundred and sixty-five dollars, has been paid over to E. R. Teed, of Woodstock, who was asked by Hon. Mr. Flemming to receive and hold the same. According to Mr. Teed's evidence he has paid from the fund some of the bills of the Local Government party, also twelve dollars for safety boxes, two hundred to Mr. Brankley for expenses, and one thousand dollars for his own

expenses in connection with the collection and handling of the fund. With the exceptions above noted, the entire amount which was paid over to Mr. Teed as aforesaid was in Mr. Teed's possession at the time he gave evidence before the Commission, and he is now, or then **was, holding the same as a fund to be used in the interests of the Local Government party** in this Province.

All of which is most respectfully submitted.

HARRISON A. McKEOWN,
Chairman.

W. WILBERFORCE WELLS,
W. SHIVES FISHER,

Saint John, N. B., 30th September, 1914.