

REPORT  
OF THE  
ROYAL COMMISSION  
ON THE  
NATURAL RESOURCES  
OF SASKATCHEWAN

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LON. A. K. DYSART, *Chairman*  
HON. H. V. BIGELOW  
GEORGE C. McDONALD, Esq., C.A.

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OLIVER MASTER, *Secretary*



OTTAWA  
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PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
1933

OTTAWA, CANADA, March 12, 1935.

The Right Honourable R. B. BENNETT,  
Prime Minister of Canada.

MY DEAR PRIME MINISTER:

I have the honour to transmit herewith the report of the Royal Commission on the Natural Resources of Saskatchewan, signed by Mr. Commissioner George C. McDonald and myself.

The report signed by the Honourable H. V. Bigelow, who dissents, is also enclosed.

Your obedient servant,

(Sgd.) A. K. DYSART,  
*Chairman.*

MAJORITY REPORT

REPORT OF—

HON. ANDREW K. DYSART,  
GEORGE C. McDONALD, Esq., C.A.

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GEORGE THE FIFTH, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith, Emperor of India.

TO ALL TO WHOM these Presents shall come, or whom the same may in anywise concern,

## GREETING:

WHEREAS pursuant to the provisions of Part I of the Inquiries Act, Revised Statutes of Canada, 1927, Chapter 99, His Excellency the Governor General in Council by Order P.C. 2722, of the twenty-ninth day of December in the year of Our Lord one thousand nine hundred and thirty-three, copy of which is hereto annexed, has authorized the appointment of Our Commissioners therein and hereinafter named to enquire into and report whether any, and if any, what consideration, in addition to the sums provided in paragraph 21 of the Agreement between Our Government of Canada and Our Government of the Province of Saskatchewan scheduled to the Saskatchewan Natural Resources Act, Chapter 41 of the Statutes of Canada, 1930, shall be paid to the Province of Saskatchewan in order that the Province may be placed in a position of equality with the other Provinces of Confederation with respect to the administration and control of its natural resources from the first day of September, in the year of Our Lord one thousand nine hundred and five, and has conferred certain rights, powers and privileges upon Our said Commissioners as will by reference to the said Order more fully appear.

NOW KNOW YE, that by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint the Honourable ANDREW K. DYSART, Judge of the Court of King's Bench, of the Province of Manitoba; the Honourable HENRY V. BIGELOW, Judge of the Court of King's Bench, of the Province of Saskatchewan, and GEORGE E. C. McDONALD, Esquire, of the City of Montreal, in the Province of Quebec, Chartered Accountant, to be our Commissioners to conduct such inquiry.

TO HAVE, HOLD, exercise and enjoy the said Office, place and trust unto the said Andrew K. Dysart, Henry V. Bigelow and George C. McDonald, together with the rights, powers, privileges and emoluments unto the said office, place of trust of right and by law appertaining, during pleasure.

AND WE do further appoint the said the Honourable Andrew K. Dysart, Judge of the Court of King's Bench, Manitoba, to be Chairman of Our said Commissioners.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS: Our Right Trusty and Right Well-beloved Cousin and Counsellor, Vere Brabazon, Earl of Bessborough, a Member of Our Most Honourable Privy Council, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, formerly Captain in Our Territorial Army, Governor General and Commander-in-Chief of Our Dominion of Canada.

AT OUR GOVERNMENT HOUSE, in Our City of Ottawa, this twenty-ninth day of December, in the year of Our Lord one thousand nine hundred and thirty-three and in the twenty-fourth year of Our Reign.

By command,

E. H. COLEMAN,  
*Under-Secretary of State.*

## CHAPTER I

## INTRODUCTORY

1. The Commission on the Natural Resources of Saskatchewan was created pursuant to authorization contained in Order in Council, P.C. 2722, of December 29, 1933.

The Commissioners appointed were

The Honourable Andrew K. Dysart, Judge of the Court of King's Bench, Manitoba, Chairman.

The Honourable Henry V. Bigelow, Judge of the Court of King's Bench, Saskatchewan.

George C. McDonald, Esq., Chartered Accountant, Montreal, Quebec.

A secretary for the Commission was designated in the person of

Oliver Master, Chief, Economics Division, Department of Trade and Commerce, Ottawa.

Counsel appearing before the Commission

For the Dominion of Canada were

James McGregor Stewart, K.C., Halifax, Nova Scotia.

Theo. A. Hunt, K.C., Winnipeg, Manitoba.

C. P. Plaxton, K.C., Senior Advisory Counsel of the Department of Justice, Ottawa.

And for the Province of Saskatchewan were

Percy H. Gordon, K. C., of Regina, Saskatchewan.

Major John Barnett, Deputy Minister of Natural Resources, Saskatchewan.

Assisting at the hearings and elsewhere were responsible officials of several Departments of the Dominion and Provincial Governments.

2. *Sittings.*—Public sittings for the reception of evidence and argument were held chiefly at Ottawa, where, because of the accessibility of records, the convenience of all parties was best served. The hearings were divided into several periods,—from February 7 to 12, from February 26 to March 1, from April 16 to 18, and from May 14 to 26. In addition, the Commission sat at Regina for three days, March 26 to 28. Thus we held sittings on twenty-seven days, nearly all of which included both forenoon and afternoon sessions.

3. *Adjournments.*—Our sittings, it will be observed, ranged themselves into five groups which were separated from one another by intervals of varying duration. These intervals were required for investigating sources of information, and for securing and preparing evidence as the same was requisitioned from time to time during the progress of the enquiry, and as issues emerged and took definite form. The task of procuring and compiling the vast and varied amount of needed information was one of great magnitude and demanded the services of many departmental officials for many weeks.

4. *The Record.*—A full and accurate record of the proceedings has been kept. In it will be found a verbatim report of all that was said at the public sittings together with reference to all documents filed as exhibits.

5. *The evidence* submitted to the Commission falls into three classes, (a) statements of Counsel, (b) oral testimony of witnesses, and (c) documentary material. The statements of Counsel, as well as the testimony of witnesses, are recorded in the verbatim report of the proceedings. The documentary evidence, comprised in 276 exhibits, covers a wide range of material, including maps and graphs, copies of Orders in Council, extracts from public documents, quotations from the public utterances of public men, synopses and analyses of records, and complicated tabulations of data. This documentary evidence, as explained and connotated by counsel, is by far the most voluminous and important part of our evidential material.

6. *Delay in issuing the Report.*—It is perhaps necessary to explain that the issuing of this report has been purposely delayed pending completion of an enquiry relative to the resources of Alberta. That enquiry, which began when the hearings in this Saskatchewan enquiry had been completed, has had to do with problems closely paralleling those of Saskatchewan, both in respect to historical background and practical difficulties, and has been conducted by three commissioners of whom two are members of this Saskatchewan Commission. This intentional delay has enabled us to insure that the two investigations, having so much in common, have been dealt with by similar methods and upon consistent principles.

## CHAPTER II

## CONTROL OF NATURAL RESOURCES IN CANADA

7. *The principle.*—It seems to be a principle, widely if not universally followed in British democracies, that natural resources should be administered and controlled by the province in which they lie, for the revenue and other purposes of that province. How this principle has been applied in the Canadian provinces is a matter that closely touches the origin of the present enquiry.

8. *Dominion territory.*—Soon after Confederation, the Dominion acquired from Imperial Crown authorities all the North-West Territories and Rupert's Land, including therein all the natural resources of those regions, and it has ever since retained the control and administration of those resources to the extent that it has retained the Territories.

9. *Ontario, Quebec, Nova Scotia and New Brunswick.*—When these provinces entered Confederation in 1867, each was allowed to retain for itself, and for its sole use, what then remained unalienated or unpledged of the natural resources lying within its boundaries. The terms of that retention are set out in Section 109 of the British North America Act, 1867, thus:—

"All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts, existing in respect thereof, and to any Interest other than that of the Province in the same."

In 1912, Ontario and Quebec were both enlarged to include large tracts of the Northwest Territories which until then had been under Dominion control. The area so added to Ontario was nearly 100,000,000 acres, and that added to Quebec was about 164,000,000 acres. The administration and control of the natural resources in the added territory passed by these provinces.

Nova Scotia and New Brunswick have, for obvious reasons, never been enlarged.

10. *Manitoba*, which was the next province to enter Confederation, was not permitted to have administration and control of the resources lying within its boundaries. Section 30 of the Manitoba Act, 1870, reads:—

"All ungranted or waste lands in the Province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, subject to, and except and so far as the same may be affected by the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty."

Nothing in lieu of that public domain was then or for some years thereafter given to Manitoba.

Manitoba's land area, originally 8,429,440 acres, was enlarged in 1881 to approximately 40,000,000 acres, and again in 1912 to approximately 140,000,000 acres. Unlike Ontario and Quebec, Manitoba did not secure the administration and control of the natural resources in the added territory. In 1885, however, the Dominion agreed to transfer to the province the swamp lands located therein, and in the course of ensuing years did accordingly transfer large tracts of such lands, part of which the province sold, and the remainder of which it re-conveyed to the Dominion as a term of the boundaries extension arrangement of 1912. In the resources settlement of 1929, all the unalienated resources in the province were transferred to the province.

11. *British Columbia*, which had been organized in 1858 and extended to its present boundary limits in 1866, was allowed to retain its public domain on



entering Confederation. Section 10, of the Imperial Order in Council which admitted British Columbia into Confederation in 1871, reads:—

"The provisions of the British North America Act, 1867, shall (except those parts thereof which are in terms made, or by reasonable intentment may be held to be specifically applicable to and only affect one and not the whole of the Provinces now comprising the Dominion, and except so far as the same be varied by this Minute) be applicable to British Columbia in the same way and to the like extent as they apply to the other Provinces of the Dominion, and as if the Colony of British Columbia had been one of the Provinces originally united by the said Act."

There is nothing in said "minute" or elsewhere to vary or restrict the full applicability of Section 109 of the British North America Act to the Province of British Columbia. In fact the applicability is confirmed indirectly by section 11 of the said Order in Council under which the province agreed to convey to the Dominion, in aid of railway construction, certain "public lands" since known as the British Columbia "Railway Belt"—a provision predicated upon provincial ownership of the land. This Railway Belt was soon after supplemented by a large grant of land in the Peace River District. Some parts of these lands, so transferred to it, were alienated by the Dominion, but in 1930, following the Report of the Royal Commission (known as the Martin Report) all the unalienated portions thereof were re-conveyed to the province. The conveyance of the land and the re-conveyance included the administration and control of natural resources.

12. *Prince Edward Island* entered the union in 1873 with no public domain whatever, the whole having been alienated many decades before. Because of these special circumstances, that province received a money subsidy in these terms:—

"That as the Government of Prince Edward Island holds no lands from the Crown, and consequently enjoys no revenue from that source for the construction and maintenance of local works, the Dominion Government shall pay by half-yearly instalments, in advance, to the Government of Prince Edward Island, forty-five thousand dollars per annum. . . ."

13. *Saskatchewan*.—By the Saskatchewan Act, 1905, (Dominion) a portion of the then Northwest Territories was formed into the Province of Saskatchewan, and by virtue of the same statute it became one of the provinces of Canada. The administration and control of the natural resources was retained by the Dominion, as provided for by section 21 of the Saskatchewan Act, which reads as follows:—

"All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under the Northwest Irrigation Act, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said Province for the Northwest Territories."

In lieu of the public lands, so withheld, Saskatchewan was granted an annual subsidy which is hereinafter referred to more specifically.

14. *Alberta* was organized and brought into Confederation at the same time as Saskatchewan and on the same terms as to natural resources. Like Saskatchewan, it received an annual subsidy in lieu of public domain.

15. A summary of these results follows:—

	Date of Entry into Confederation	Provincial Control of Resources	Received Subsidy in lieu
Ontario . . . . .	July 1, 1867	Yes	No
Quebec . . . . .	July 1, 1867	Yes	No
Nova Scotia . . . . .	July 1, 1867	Yes	No
New Brunswick . . . . .	July 1, 1867	Yes	No
Manitoba . . . . .	July 15, 1870	No	No
British Columbia . . . . .	July 20, 1871	Yes	No
Prince Edward Island . . . . .	July 1, 1873	None	Yes
Saskatchewan . . . . .	Sept. 1, 1905	No	Yes
Alberta . . . . .	Sept. 1, 1905	No	Yes

16. *Prairie provinces in unique position.*—Thus we see that the only Canadian provinces from which the control of natural resources was withheld by the Dominion are Manitoba, Saskatchewan and Alberta. None of these three provinces had any existence as such until the moment it entered Confederation. None of them, therefore, was ever in a position to register objection to the denial of resources control until after it came into being, and by that time it was without control. All the other six provinces had legal existence as self-governing colonies before entering into the union and were, therefore, able to express their wishes in the matter of the control of public domain. The natural resources of the three prairie provinces, being completely in the hands of Dominion authorities, were utilized to meet Dominion desires at a time when the Dominion, for very special national reasons, desired control of the prairie resources for federal purposes.

## CHAPTER III

## THE DOMINION'S CONTROL OF NATURAL RESOURCES

17. *The purposes of Canada.*—Inspired from the beginning with a determination to bring the whole of British North America under one government, the Dominion promptly set out to secure control of all unorganized territory outside of the original provinces. In 1870, it acquired the North-West Territories and Rupert's Land by Imperial Order in Council, after the Hudson's Bay Company had surrendered its rights in those regions. The next step was to bring the colony of British Columbia into the union; and in order to meet the conditions imposed by that colony, the Dominion had to undertake 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 more than 2,000 miles of railway across unsettled prairies and through rough and mountainous country, but also the colonizing and settling of the fertile areas through which the railway was to pass. Thus two great problems came into being, (1) railway construction in the West, and (2) settlement of the prairies.

18. *Railway construction.*—After casting about for some time, the Dominion eventually settled upon a policy of building the railway through the instrumentality of a private corporation aided by generous grants of land. This policy was later modified by reducing the land grants, and substituting a cash subsidy for the eliminated lands. The contract between the Dominion and the Canadian Pacific Railway Company called for a grant of 25,000,000 acres of lands to be selected by the company in alternate sections throughout the fertile area of the prairies,—an arrangement which was to be still further modified before the final completion of the contract. Other benefits and privileges affecting the land, including tax exemption for twenty years after the grant from the Crown, were conferred upon the company.

As time went on, additional land subsidies were promised to the Canadian Pacific Railway for subsidiary lines, and to other railway companies for other projected lines. By 1905, more than 55,000,000 acres of prairie lands had been so pledged, but only two-thirds of this acreage was earned by actual construction. Well before 1905, the policy of subsidizing railway construction by land grants had been discontinued but the process of selecting these lands so earned, and the after-math of tax exemption, remained for many years to vex the growing communities of the West.

It should be pointed out that practically the whole burden of providing land for these railway subsidies, not only for the railways within the Prairie Provinces, as set up in 1905, but for the railways to the north, as well as for portions of the Canadian Pacific lying in Western Ontario and in British Columbia, fell to the lot of the three Prairie Provinces, chiefly to Saskatchewan.

19. *Colonization and settlement.*—Indissolubly linked up with railway construction, as part of a nation-building program, lay the need of settling the fertile areas of the prairie with permanent agriculturists. The Dominion met the challenge by making colonization and settlement a prominent feature of its national policy. From 1870 onward for about twenty-five years, the Dominion pressed settlement as best it could, but progress though substantial was slow. Shortly before 1900, the Dominion gave to this colonization policy a greatly increased importance in its national program, and this fact, synchronizing with

very favourable world conditions, gave to western settlement a new and powerful stimulus. By 1905, there were sufficient settlers between Manitoba and the Rockies to warrant the organization of the two provinces of Saskatchewan and Alberta with a population estimated at a quarter of a million each, and with railways constructed or under construction running into thousands of miles.

20. *Saskatchewan started out* on its career on this full tide of immigration and settlement activity. Capital in great abundance poured into the country and provided for the construction of all kinds of communications and public services. 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. Thereafter development slowed down, paused during the Great War, then resumed its progress intermittently. In 1930, the Dominion retired from the administration and handed over to the Province the unalienated portions of the resources.

## CHAPTER IV

## THE ATTITUDE OF THE PRAIRIE PROVINCES

21. *In the earlier stages of the Dominion's administration, the three prairie provinces displayed no common front on the question of control of natural resources; but by the time that long administration approached its close, the three provinces were unanimous in their demand not only for transfer of the unalienated resources, but also for compensation for alleged losses resulting from the Dominion's administration. The course of development of this last attitude may now be briefly traced.*

22. *Manitoba.*—This Province, having neither the public lands nor a money subsidy in lieu thereof, early began a campaign to secure the one or the other. In 1882, the province attained its first success in the form of an annual "indemnity" of \$45,000 in lieu of lands. This indemnity continued until 1885, when it was increased to \$100,000 a year, at which figure it remained until July 1, 1908. Beginning from this later date, the subsidy was raised to the same level, based on area and population, as that which prevailed for the provinces of Saskatchewan and Alberta from September 1, 1905. This new arrangement was effected in 1912 but was made retroactive to 1908.

In return for raising Manitoba's subsidy to the same scale as that of Alberta and Saskatchewan, the Dominion required that an adjustment be made in respect of the swamp lands and university lands. It was agreed between the Dominion and the province that the unalienated swamp lands, under the administration and control of the province, should be re-conveyed to the Dominion. In regard to that portion of the swamp lands which had been alienated by the province it was agreed that the principal sum of \$2,769,856 realized by the province from the sales of those lands should constitute a debt of the province to the Dominion. By this arrangement, lands transferred to the province for university purposes, and estimated to be worth \$300,000, were also taken into account so that the total debt agreed upon as owing by the province to the Dominion in respect of swamp lands and university lands was \$3,069,856. Upon this debt, interest at the rate of five per cent per annum was to be paid, such payment to be made by deducting the amount of the interest annually from the subsidy.

The demand for control of resources though quieted by the 1912 arrangement was not dead, was soon renewed in slightly different form, and was continued with more or less regular insistence until 1928. In that year the Government of Canada entered into an agreement with the Government of Manitoba whereby the unalienated resources were to be transferred to Manitoba, and a commission was to be appointed to enquire into and report upon the adjustment of financial terms with the view of placing the province in a position of equality with the other provinces of Confederation as from 1870. The Commission was accordingly appointed, and in due course made a report, of which frequent mention is made in these pages, recommending

- (a) that the scale of subsidy adopted in 1912, effective from 1908, was adequate and should continue for all time to come;
- (b) that for the years 1870 to 1908 payment be made in cash of a sum representing the difference between the annual amounts which in the opinion of the commissioners ought to have been paid to the province during those years and the amounts which the province actually

received. (During the years from 1870 to 1881 the province had received no subsidy. From 1881 to 1886 it received \$45,000 per annum; and from 1886 to 1908 it received \$100,000 per annum.)

The Manitoba Commission took advantage of the occasion to clear away the arrangement made in 1912 between Manitoba and the Dominion with respect to the swamp lands and university lands—relieving the province of the manifest anomaly of being charged for lands which under the transfer agreement were recognized as really being its own property. In the outcome, the subsidy short-ages were adjusted at \$4,584,000, a sum which was actually paid to the province in 1930. And by this award, Manitoba had her subsidy brought up, without modification, to the scale of that being paid to Alberta and Saskatchewan.

23. *Saskatchewan*.—This province was never placed in Manitoba's earlier position. Like Manitoba it was not given control of resources; but unlike Manitoba it received, from the beginning, an annual cash subsidy in lieu thereof. Although Saskatchewan was not an actual party to the scheme of resources control, having had no existence prior to the coming into force of the arrangement itself in 1905, the province in two successive provincial general elections endorsed the provincial political party which had supported the resources arrangement. In those elections, control of the resources was an important, though not the only, issue before the electorate, and the election results may properly be construed as provincial approval of the scheme.

24. In 1911, a change in the boundaries of some of the provinces was in contemplation by the Dominion. Manitoba was to secure a long-desired extension of boundaries to Hudson Bay, while Ontario and Quebec were to receive the territory lying between their then boundaries and Hudson Bay. All of the land so to be added to those three provinces, was undeveloped hinterland. These circumstances, it seems, suggested to Saskatchewan that it might get control of the somewhat similar hinterland lying in the northern part of the province. The Legislative Assembly passed a resolution which—because so far as we are aware it is the first resolution passed by that body on the subject of natural resources, and because of its implications—is worthy of careful study. It was passed, unanimously, on March 16th, 1911, and reads as follows:—

"That whereas the Government of Canada has under consideration the advisability of extending the boundaries of the provinces of Quebec, Ontario and Manitoba so as to include the hinterland lying adjacent to and north of these provinces:

"And whereas the several areas proposed to be included in the said provinces are at present the property of Canada and any action by the Parliament of Canada to transfer the ownership of the property to the provinces referred to will have the effect of altering the terms and conditions upon which such provinces entered Confederation;

"And whereas the extension of the boundaries of the said provinces northward will bring within their respective borders areas very similar to the territory comprising the northern part of the Province of Saskatchewan;

"And whereas under the terms of The Saskatchewan Act, The Alberta Act and The Manitoba Act the compensation payable to the provinces in lieu of lands is based upon the principle that the Federal Government should retain control of the agricultural lands of Western Canada for colonization and immigration purposes;

"And whereas the said northern part of the Province of Saskatchewan is not required by the Government of Canada for the purpose of carrying out its colonization and immigration policy;

"And whereas in addition to the agricultural lands there are certain natural resources within Saskatchewan which are purely of local concern and which are not required by the Federal authorities for the carrying out of its colonization policy;

"Therefore be it resolved that in the opinion of this House the Government of Saskatchewan should proceed with negotiations with the Federal authorities for the purpose of having transferred to the province all that part of the hinterland of Saskatchewan, together with all natural resources of purely local concern contained within the province, not required for colonization and immigration purposes."

25. Within a few months after the passing of the 1911 resolution, a Dominion general election resulted in a new ministry under a new Prime Minister,

who had previously gone on record as favouring the transfer of natural resources to the prairie provinces on some fair terms to be agreed upon. Prompted perhaps by these circumstances, the Saskatchewan Legislature, at its next ensuing session, passed on May 14, 1912, another resolution urging the provincial government to negotiate with the Government of Canada with a view, inter alia, of obtaining transfer of the provincial resources with compensation for all lands and other resources disposed of by the Dominion for federal purposes. Other resolutions of similar nature appeared almost annually thereafter till 1929 in which year a suggestion was added that a conference on the subject should be arranged between the Dominion and the Provincial Government. Soon after the 1929 session, a conference was held and resulted in the 1930 resources agreement.

26. *Alberta.*—Inasmuch as Alberta's natural resources question is under consideration by a Royal Commission at the present time, it will be inexpedient here to say more than that Alberta's attitude in respect to the transfer of resources was no less insistent than that of Saskatchewan. Fuller reference to the province's attitude will be found in the report of the Alberta Commission.

## CHAPTER V

## THE REFERENCE: ITS SCOPE AND INTENT

27. *The Reference.*—It is now necessary to turn to the Reference with a view of ascertaining precisely the questions which we are called upon to investigate. The Order in Council authorizing the Commission is a step towards fulfilment of an undertaking expressed in an agreement entered into between the Government of Canada and the Government of Saskatchewan, dated the 20th day of March, 1930, and later approved, ratified and confirmed by necessary legislation, (a) of the province (1930, Ch. 87), (b) of the Dominion (1930, Ch. 41), and (c) of the Imperial Parliament (1930, Ch. 26).

The terms of the Reference to the Commission are:—

"To enquire and report whether any, and if any, what consideration, in addition to the sums provided in paragraph 21 of the said Agreement shall be paid to the Province of Saskatchewan in order that the province may be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources from the first day of September, 1905."

These terms were adopted from the said Agreement of March 20, 1930, paragraph 24, which, because it is the basis of this Reference, may with advantage be here set forth in full:—

'24. As soon as final answers to the questions submitted under the last preceding paragraph have been given, the Government of Canada will appoint three persons to be agreed upon to be Commissioners under Part I of the Inquiries Act, to inquire and report whether any, and if any, what consideration, in addition to the sums provided in paragraph twenty-one hereof, shall be paid to the province in order that the province may be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources either as from the first day of September, 1905, or as from such earlier date, if any, as may appear to be proper, having regard to the answer to the questions submitted as aforesaid; such commissioners to be empowered to decide what financial or other considerations are relevant to the inquiry and the report to be submitted to the Parliament of Canada and to the Legislature of Saskatchewan, if by the said report, the payment of any additional consideration is recommended, then, upon agreement between the Governments of Canada and of the province following the submission of such report, the said Governments will respectively introduce the legislation necessary to give effect to such agreement.'

The "questions" (to which "final answers" were to be given as a condition precedent to this Reference) were intended to determine whether or not the province had, prior to the first of September, 1905, any right to the natural resources lying within the territory which on that date became the Province of Saskatchewan; and when prepared they were to be submitted to the Supreme Court of Canada for consideration and opinion, subject to the right of appeal to the Judicial Committee of the Privy Council. Accordingly, questions were prepared and submitted to the Supreme Court; and were answered in the negative, that is, that prior to its formation, in 1905, the province had no rights in the resources. (See 1931, Supreme Court Reports, page 263). On appeal to the Judicial Committee of the Privy Council, these answers were affirmed, (1932, Appeal Cases, page 28). Thus it was that the answers became "final answers" as contemplated by paragraph 24. Thus they serve the double purpose of satisfying a condition precedent to the creation of this Commission, and of determining the starting point for the period to be reviewed by the Commission, that is, September 1, 1905.

28. *The Inquiries Act*, mentioned in said paragraph 24, need not be referred to further than to say that this enquiry has been conducted along the lines therein prescribed.



29. For convenience of analysis, our directions may be set out in detail as follows:—

- (a) What consideration, if any, should be paid by the Dominion to the province, in addition to the sums provided in paragraph 21 of the 1930 Resources Agreement,
- (b) in order that the province may be placed in a position of equality with the other provinces of Confederation,
- (c) with respect to the administration and control of its natural resources,
- (d) from the first of September, 1905, till the first of October, 1930.

30. "What consideration."—The term "consideration" as here used means compensation for loss of revenue sustained by the province in respect of its natural resources.

31. "In addition to the sums contained in paragraph 21."—Said paragraph 21 follows:—

"21. In lieu of the provisions made by subsection one of section twenty of the Saskatchewan Act, Canada will, from and after the date of the coming into force of this agreement, pay to the province by half-yearly payments in advance, on the first days of January and July in each year, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:

"The sum payable until such population reaches one million two hundred thousand shall be seven hundred and fifty thousand dollars;

"And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars."

It will be noted that under the provisions of this paragraph, the subsidy can never be decreased even though the population decreases. The sum of \$750,000 a year is fixed as a minimum, to be increased to \$1,125,000 if and when the population increases to 1,200,000. The value and significance of this subsidy will be discussed later. The point to be emphasized here is that the further possible compensation to the province must be over and above these subsidy payments, to the making of which the Dominion is already obligated.

32. "In a position of equality."—In any attempt to determine what is meant by the term "equality" as here used, it will be convenient to approach the subject by the process of indicating briefly some of the inequalities which are not meant to be—which cannot possibly be—overcome.

Physical inequalities among the provinces as at present constituted are first to be noted. These affect all the provinces in varying degrees, and reach into all classes of resources. The subjoined table illustrates inequalities in the acreage of all land and in the portion thereof that is estimated to be fit for agriculture—expressed in thousands of acres:—

Province	Total Land Area	Total Arable Land
Prince Edward Island . . . . .	1,397	1,258
Nova Scotia . . . . .	13,275	8,092
New Brunswick . . . . .	17,734	10,718
Quebec . . . . .	333,062	43,745
Ontario . . . . .	232,500	65,837
Manitoba . . . . .	140,623	32,580
Saskatchewan . . . . .	152,304	80,074
Alberta . . . . .	159,232	87,450
British Columbia . . . . .	223,081	22,603

Pre-Confederation inequalities. A second series of inequalities which clearly lie entirely beyond our reach are those originating prior to the entry of the various provinces into Confederation. Whether we refer to the original provinces only, or to those as well that entered the Dominion in later years, we find in every instance a material alienation of resources from the Crown, either by Imperial, Dominion or Colonial authority. And the inequalities so created are wholly beyond our responsibility to consider or our powers to remedy. In common with all other provinces—there is no exception whatever—Saskatchewan

has been subject to an alienation of lands and other resources antedating its history as a province of the Dominion but its position in that regard is certainly no worse, and perhaps materially better, than that of some of the other provinces.

33. *Special meaning of equality.*—In discussing this question of equality, the Royal Commission on the Transfer of the Natural Resources of Manitoba drew attention repeatedly to the fact that equality does not and cannot mean equality in an unqualified sense. To quote from their report:—

"The provinces received equal treatment in this respect, that each one acquired what was left of the natural resources within its territory, however great or small the value of these resources may have been in one case or another." (p. 11.)

"The equality established among these four provinces by the Confederation pact was one of method rather than of pecuniary benefit. Each province kept what it had, regardless of its value, just as it surrendered to the central government its other sources of revenue regardless of their value. But the results obtained in each case up to the present have shown that great differences exist in these respective values, because the revenue yielded annually from the natural resources is much greater in some provinces than in others." (p. 11-12.)

"It appears, therefore, from the foregoing that the four original provinces of Confederation received equal treatment in regard to their natural resources in this respect—that each retained what it had possessed previously, regardless of natural differences of volume and value, and regardless also of all past acts of administration affecting this value." (p. 13.)

"Bearing in mind the object sought to be attained by this Order in Council, which, as we understand it, is to place Manitoba, in so far as is now possible, in the position of a fully autonomous and fully endowed member of Confederation, we think it admissible to proceed by inquiring in the first place into the treatment which the province has received from the time of its creation down to the present. We can then decide whether, in view of the situation thus revealed, Manitoba is in as good financial position as she would probably have been in had her right to the administration and control of her natural resources been conceded from the beginning." (p. 21.)

"We have seen how, in entering the Union, each province kept what it had within its own provincial territory, for better or for worse, regardless of losses in the past which had been great in most cases, and of the superior or inferior value of the resources of other provinces." (p. 31.)

The most that can be said is that, however much inequality existed among the provinces at their entry into Confederation, the provinces ought to receive from the Dominion fair and equal treatment in regard to the natural resources lying within their respective boundaries, and should be regarded as having equal opportunity to deal with their resources each in its own particular way.

34. *"The other provinces of Confederation."*—What is meant by the other provinces? The four original provinces certainly are included—in another part of the agreement, they are expressly mentioned. Of the western provinces, British Columbia should be included—it has had its resources from the beginning. Manitoba should be included—its resources problem has been settled. Alberta should be included only if its natural resources problem reaches final solution in terms consistent with the recommendations contained for Saskatchewan in this report. Prince Edward Island can furnish but little that is relevant to our enquiry, but need not, in principle, be excluded. On the whole, we construe "the other provinces of Confederation" to mean all the other provinces of Canada.

35. *"With respect to the administration and control."*—The administration and control, contemplated under this heading, extends through the entire period from September 1, 1905, to October 1, 1930, and refers to every form of natural resource. It embraces every form of actual dealing with resources on the part of the Dominion, and the equal right, now retroactively to be assumed for the province, to deal with any and every part of those same resources during that same period, 1905-1930.

36. *The term "natural resources,"* as used in our commission and in paragraph 24 of the 1930 agreement, is not expressly defined. Its meaning is to be gathered, therefore, from the implications of other parts of the agreement, and from certain Acts of Parliament dealing with natural resources. The agreement, in its recitals, refers to "lands, mines and minerals," and to "the interest of the

Crown in the waters within the Province," but in its operative clause, it transfers "the interest of the Crown in all Crown lands, mines, minerals," omitting mention of the waters. All these expressions refer to natural resources. In other parts of the agreement, and in the Saskatchewan Act, 1905, and still other acts of Parliament, natural resources are sometimes referred to as "Crown lands," "public lands" and "public domain." The British North America Act, in section 109, describes them as "all lands, mines, minerals."

37. The term "lands," in its ordinary legal sense means and includes not only the surface soil, but everything below as well as above that surface—everything from the centre of the earth to the highest heavens. That being so, and in absence of some special reason, the constituent parts or incidentals of lands, such as mines, minerals or waters, would ordinarily be included in the term. By the same token, it would seem that, if enumeration is made of any of the parts, it should be extended to all of them; otherwise, by the rules of interpretation, the unenumerated parts would be excluded. The British North America Act, 1867, section 109, sets the precedent of enumerating some but not all of the particulars. It mentions "lands" and follows up with "mines, minerals" as constituting the natural resources which are to be retained by the original four provinces respectively. This description of natural resources was adopted, slightly amplified, in the Saskatchewan agreement of 1930, and we may, therefore, justly assume that the 1930 agreement intended to pass to Saskatchewan all the resources within its boundaries as fully and completely as the British North America Act intended for the original provinces. No question has ever been raised, or at any rate effectively raised, that the original provinces retained less than all of their natural resources, not only the enumerated parts, but also unenumerated parts, such as quarries, oils, gas, forests and waters. By the same token all such should pass to Saskatchewan. That they have passed, is not questioned, except in the case of waters and water-powers.

38. *Water and water-powers.*—Early in the course of this enquiry, doubts were expressed as to whether or not waters are included in the transfer. The doubt arises from the express mention of waters in the recitals, and the omission of any such mention in the transferring clause,—a doubt which is not completely removed by the provisions relating to waters appearing in subsequent paragraphs of the agreement.

To set the matter at rest, Counsel for the respective Governments, after conferring with their principals, assured us that both governments have, ever since 1930, assumed that waters are included in the transfer, and accordingly have so treated them, and will continue to treat them in future. The Saskatchewan Government has set up a Water-power Branch of its natural resources administration, and has been collecting the water-power revenues in the province with the full knowledge and acquiescence of the Dominion.

The point, therefore, so far as we are concerned, is one of only technical or academic interest, but because it may possibly at some time assume practical importance, we think it proper to say that while we accept the view that waters and water-powers have passed to the province under the resources agreement, we do so for the purposes of this report, and not with a view of expressing an opinion on what may become a question of law for later determination.

39. "*Royalties*" derivable from, and "*sums of money receivable*" in respect of natural resources, are not in themselves natural resources. They are *revenues* from resources and as such pass to the province under express assignment in the agreement.

40. *School Lands.*—A suggestion has been made that these are *trust* lands and not *public* lands in the ordinary sense, and that they are therefore not included in "natural resources," and so are not within the scope of our enquiry.

The unalienated portions of these lands, as forming part of "the Crown lands," mentioned in the 1930 agreement, have actually been transferred to the province; the propriety of so transferring them is not questioned. If, then, these lands were Crown lands and were a proper subject for transfer in 1930, as part of the natural resources, they must also be natural resources for the purposes of this enquiry. We, therefore, treat them as a proper subject for enquiry in respect of the administration and control of natural resources. But we have thought it essential—owing to the special provisions applying to the use of funds arising from school lands—to state our conclusions in regard to school lands claims separately from those pertaining to claims relative to other resources.

41. "As from the first of September, 1905."—We have already seen that this date has, since the making of the Agreement, been definitely settled as the beginning of the period under review.

42. "Till the first of October, 1930."—The terminating date of this period is not mentioned in our Commission, nor in the Order in Council authorizing our Commission, nor even in paragraph 24 of the Agreement which provided for the enquiry. In paragraph 28 of the Agreement, the terminating date is fixed, movably, upon the happening of certain events. By a supplementary agreement entered into by the Government of the Dominion and the Government of the province, dated August 7, 1930, the terminating date was expressly fixed as October 1, 1930. And upon this date, so set, the administration and control of the province's resources were actually handed over by the Dominion and assumed by the province.

Notwithstanding the foregoing facts, the terminating date still remains in some doubt because of a certain stipulation contained in paragraph one of the Resources Agreement, namely, that upon being transferred, the resources "shall be administered by the province for the purposes thereof, subject, until the Legislature of the province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration." This provision was, doubtless, intended to provide regulations for the provincial administration until the Provincial Legislature set up its own regulations. That Legislature has not yet taken action. The point is merely technical and to all intents is a matter of internal concern to the province itself. It is mentioned here only to be eliminated. Counsel for both Governments admit the doubt and specifically waive it.

43. *The transfer is subject to pre-existing trusts and interests.*—By paragraph 1 of the 1930 Agreement, the resources are transferred "subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same." This provision is copied in substance from section 109 of the British North America Act, 1867, where it is made applicable to the retention, by the original provinces, of their unalienated natural resources.

The meaning and significance of the terms "trusts" and "interests," as therein employed, were considered and determined by the Judicial Committee of the Privy Council in the case of The Attorney-General of the Dominion vs. Attorney-General of Ontario, reported in 1897, Appeal Cases 199. That tribunal laid it down that

"The expressions 'subject to any trusts existing in respect thereof,' and 'subject to any interests other than that of the province,' appear to their Lordships to be intended to refer to different classes of right.

"Their lordships are not prepared to hold that the word 'trust' was meant by the Legislature to be strictly limited to such proper trusts as a Court of Equity would undertake to administer; but, in their opinion, it must at least have been intended to signify the existence of a contractual or legal duty, incumbent upon the holder of the beneficial estate or its proceeds, to make payment, out of one or other of these, of the debt due to the creditor to whom that duty ought to be fulfilled.

"On the other hand, 'an interest other than that of the province in the same,' appears to them to denote some right or interest in a third party, independent of and capable of being vindicated in competition with the beneficial interest of the old province."

## CHAPTER VI

## SASKATCHEWAN'S CLAIMS—GENERAL OBSERVATIONS

44. *The claims which Saskatchewan sets up for additional compensation are based on the assumption, which it makes and invites us to accept, that if the province had been in control of its resources from 1905 to 1930, it would have procured from them net provincial revenue substantially in excess of the net value of the subsidies and other purely provincial benefits which it received from the Dominion in lieu of those resources.*

The Dominion's administration of the resources is divided by the province into three general groupings:—

- (a) Alienation of resources.
- (b) Administrative methods.
- (c) Miscellaneous matters.

45. *Alienation defined.*—The term "alienation," used so frequently in this enquiry and report, is a comprehensive one, embracing not only actual conveyances but also commitments to convey. The commitments to convey were in the nature of agreements, or undertakings, or licences, sometimes conditional, sometimes absolute, which, when acted upon by persons or companies dealing with the Crown, created in them the right to demand and receive conveyances. Conveyances were made (a) by patents, (b) by Order in Council, or (c) by notices having the force of patents.

46. *Ascertainment of acreages.*—In every alienation of land, one important factor is acreage. The figures representing these acreages have been taken from departmental records and have, on the whole, been accepted by the province as accurate or approximately so. The outstanding exception is the acreage of land alienated to railways as subsidies, and in this instance the uncertainty, which is attributable to difficulty in construing the precise meaning of certain Orders in Council and certain departmental communications, has been overcome by a carefully studied estimate of the acreage involved. Of the 3,300,000 acres which the province claims were alienated after 1905 without antecedent commitment, we are convinced after careful study that not more than 2,200,000 acres can form the proper basis of a claim.

The commitments which were entered into prior to September 1, 1905, created trusts or interests which the province after 1905 would have been bound to honour, at the option of the beneficiary; and to the extent that they were not cancelled or abandoned after 1905, they were honoured, and consequently are excluded from further consideration. By the same token, commitments entered into before, but not completed by actual conveyance till after October 1, 1930, are properly included in alienations, except so far as they might be abandoned or cancelled after October 1, 1930. Such cancellations are estimated at 500,000 acres at least, which we have apportioned among the appropriate items of alienations. Our figures, therefore, represent the net acreages stated in round figures.

47. *Values.*—In computing its total claim, the province has placed unit values upon the lands and other resources, using the records of current sales and market prices as the basis of its assumed land values. It has done so with the intent to indicate what, in the judgment of Counsel for the province, could have been realized in different years from the public sale of provincial lands. With this basis of valuation we deal, in detail, later.

48. *Extent of alienations.*—Alienations were confined almost exclusively to agricultural lands and did not, as a rule, extend beyond the surface rights. As an aid in classifying alienations for the purpose of examining them in the light of probable provincial policies of administration, and for the purpose of examining their revenue potentialities, we group them as follows:—

(a) To settlement—		
Free homesteads . . . . .	20,500,000	acres
Pre-emptions . . . . .	3,600,000	“
Purchased homesteads . . . . .	700,000	“
(b) To soldiers as bounties—		
South African Veterans . . . . .	1,200,000	“
Great War Veterans . . . . .	650,000	“
(c) To railways as subsidies . . . . .	2,200,000	“
(d) To various other uses . . . . .	625,000	“
Total . . . . .	29,475,000	“

49. *Other alienations.*—Apart altogether from the several millions of acres conveyed after September 1, 1905, in fulfilment of antecedent commitments, the following alienations were made by the Dominion during its regime but are not included in the foregoing list because they are not made the basis of any claim under this heading. They are—

(a) School lands—for which the province makes claim on grounds of administration but not on grounds of alienation . . . . .	2,100,000	acres
(b) National park—established by the Dominion near Prince Albert, for which the province claims only nominal value . . . . .	1,195,000	“
(c) Grants for various charitable, religious and community purposes, retentions for national defence, and some eliminated half-breed grants . . . . .	120,000	“
	3,415,000	“

50. *Comment on alienations.*—The figures above given are stated roundly and are not more than approximately correct in any particular instance, but on the whole they do present a fairly accurate picture of the total alienations. Under-rights are not mentioned above, because of the relatively small acreage and value involved, but they are included in our consideration of surface alienations.

51. *The administrative claims.*—These have to do with the Dominion's methods and policies of handling school lands, grazing lands and timber berths. The school lands, because of their special nature as a trust, are dealt with under a separate heading. The grazing and timber claims are based upon the contention that the province would have produced, from these resources, more revenue than the Dominion actually received. For present purposes, it is sufficient to say that the grazing leases had to do with two classes of grazing lands—(a) the reclaimed or unsold school lands, and (b) ranching lands; and that the annual rentals secured from school leases were, on the whole, nearly twice as high per acre as those secured from ranching lands. The province claims that all rentals should have been on the higher level. The timber claims are based on somewhat similar grounds. The forests were, for the greater part of the period, administered under two branches of the Department of the Interior—(a) the Timber and Grazing Branch, and (b) the Forestry Branch. The revenue secured under the Forestry Branch was apparently considerably higher per unit of timber

cut than that obtained under the other branch, and here again the province would have the higher scale applied throughout.

52. *The miscellaneous claims.*—Under this heading are included claims of various sorts which do not logically fall under either alienations or administrative headings. They will be dealt with in detail in another place.

53. *Before proceeding to consider the claims more particularly, we feel that we should offer some general observations upon the fundamental principles and tests to be applied to their solution. Our primary guiding principle is this—that we seek to ascertain whether or not the province is as well off as it would have been had it enjoyed the control and administration of its resources from 1905 to 1930.*

54. *Alienations for revenue.*—It is urged by the province and must be conceded that, under provincial administration, policies which would probably have been adopted for settlement purposes would have been influenced by the province's need for using the lands and other resources in some measure for revenue purposes. Revenue policies and settlement policies may be combined but they cannot be completely harmonized. In their very nature, each tends to make its influence felt only at the expense of the other. Had the lands, or a substantial share of them, been made available to settlers only at prices comparable with the ruling prices for western lands during the period 1905-1930, the province would have raised considerable revenue; but, in that manner, it would automatically have placed some check upon settlement. Alienations would have been somewhat reduced. Consequently a greater area of lands would have remained for transfer to the province in 1930. As a corollary to the foregoing, it seems certain that, with the restrictions in alienation and settlement imposed by revenue policies, the demand for lands would have been less, and general land prices lower. When considering what revenue the province would probably have derived from its resources, these two consequences of revenue policies must be kept in clear view—(1) fewer alienations, (2) lower prices.

55. *Valuation for revenue.*—In appraising values, we must bear in mind that the values to be sought are of very exceptional nature. They are not values measured by market or current prices prevailing during the period, nor by the net proceeds of sales at such prices, calculated after making due allowance for all costs of or incidental to administration and sale. The values which we must seek are the values to the province for revenue purposes. The test is, how much revenue would the province have derived from those resources had it been in control of them. It was only because the province was not to have its public lands "as a source of revenue," that it received compensation by way of annual subsidy under section 20 of the Saskatchewan Act, 1905; and it was only because of that same want of lands "as a source of revenue" that the subsidy is continued for all time to come as compensation under paragraph 21 of the 1930 agreement, and is now to be supplemented if, on this enquiry, the subsidy is found to be inadequate. We cannot, too strongly, emphasize that we are not concerned with the gross or aggregate value of Saskatchewan's lands and other resources. We are concerned only with the net revenue which the province would probably have derived from them in circumstances very different from those which actually prevailed between 1905 and 1930.

56. *Revenue equivalent.*—Had the province been in control of its resources, it would not have had the subsidy, and would have been under the necessity of securing revenue equivalent to the subsidy in some other way. We are by no means convinced that the province would have felt it necessary to resort wholly to the lands or other resources to find the revenue equivalent to the subsidy. It might very well have made up the deficiency, at least in part, by taxation in

other directions, by borrowing or by reduced expenditure. To the extent to which the revenue would have been supplied from the resources it would serve as a measure for additional compensation only in so far as it exceeded the actual value of the subsidy.

57. *Methods of obtaining revenue.*—There are only two general methods of obtaining revenue from public lands.—(1) sales, and (2) leases. If sales had been resorted to, the proceeds thereof—that is the gross price less all costs of and incidental to selling and administering—would in a sense constitute revenue; but such revenue would be a substitute for the lands so sold, and any consumption of that capital revenue would be equivalent to a corresponding loss of the lands as any further source of revenue. If such capital proceeds were invested, the interest therefrom would constitute continuing revenue. If leases were made the basis of revenue, the income therefrom would be analogous to income derived from the invested proceeds of sales. In the Dominion, any extensive scheme of securing provincial revenue by leasing agricultural lands is unknown, although it is otherwise with forests, waters, mines and grazing lands. The agricultural lands in the Canadian provinces have in general been in part given away free, and in part sold. Both rentals and sale prices of Crown lands have almost uniformly been moderate.

58. *Probability the only test.*—In endeavouring to determine what policies the province would have pursued when dealing with its resources, we are to be guided by a few fundamental considerations and are to seek, not what the province *might* have done, or what it *could* have done, but *only* what it *would* have done. In the absence of any conclusive evidence as to what the province would have done, we have to content ourselves with determining as best we may what the province would *probably* have done. Probability is therefore the test. It is also the test applied by the Manitoba Commission.

59. *Probable provincial attitude.*—Under the assumed provincial administration, the province would, as already pointed out, have had no subsidy as a source of revenue and would, therefore, have been under the necessity of supplying that revenue, at least in part, from the resources. The necessity would surely have created, in both the people and the Government of Saskatchewan, an outlook far different from that which prevailed under Dominion administration. The fact that the Dominion had the responsibility of looking after these resources, and that the province was only indirectly affected by generosity in alienations, must have created in the minds of the people a certain indifference to the free and easy disposal of the lands. Had they been charged with a sense of ownership and responsibility, and with the necessity of providing some revenue from those lands, their attitude would surely have been quite different.

60. *Revenue precedents.*—The province would have had before it, from the very beginning, the example of Manitoba's policies of securing provincial revenues from the sale of its swamp lands. These swamp lands were admittedly inferior lands—designated by statute "waste lands"—and until drained were hardly fit for settlement; they had been rejected by the Manitoba South Eastern railway as not being "fairly fit for settlement." Manitoba sold those lands extensively between 1885 and 1908 for substantial prices, and used the proceeds as current revenue.

There was also the example of the school lands in Saskatchewan and the other prairie provinces. These lands sold at high prices, under very special and favourable conditions. Although they comprise only one-eighteenth of the agricultural lands of the province and although only little more than 2,000,000 acres were sold, these lands produced very large aggregate returns. They suggest the possibilities of revenue production from other Saskatchewan lands.



Pre-emptions and purchased homesteads, as sold by the Dominion, afford an indication of what the province would probably have done with some of the settlement lands. These lands were available only in the sub-humid areas of the province, and were regarded as much less desirable than the average of good lands; yet the Dominion, whose policies were designed for settlement and not revenue, sold over 4,000,000 acres of these lands at \$3.00 an acre. It would seem that the province, with its desire for revenue as well as settlement, would probably have followed and greatly extended this policy of selling lands to settlers.

These examples must not, however, be applied without reservation and qualifications adapting them to the conditions that would have prevailed under a provincial administration; but they do serve as useful guides for us in determining what the province would probably have done with its agricultural lands.

61. *Comparing the actual with an assumed administration.*—The Dominion's administration is to be found in actual records; the province's administration is to be based on assumptions and inferences. The one has a foundation of certainties; the other of probabilities. Stated more explicitly, the Dominion's administration is to be ascertained by examining, analysing, and classifying the actual administrative transactions of the period,— a task which, although it involves an immense amount of labour and care, is simple in principle and should be fairly definite in results; the province's administration, on the other hand, is to be ascertained from assumptions based upon, and inferences drawn from, a wide examination and comparison of statements and actions, both official and unofficial, of public men and public bodies within the province itself, as well as from the records of administration by the Dominion of resources in certain other provinces, and from the records of administration by other provinces of their respective resources.

When so constructed, the province's administration is to be compared with that of the Dominion; and if that comparison proves favourable to the province, the difference between the two administrations must then be appraised in dollars. Obviously, the problem is one which does not lend itself to clear-cut determinations. The most that can be hoped for is approximations.

62. *Dominion purposes, and Provincial purposes.*—The Saskatchewan Act, 1905, provided that all Saskatchewan's resources were to be "administered by the Government of Canada for the purposes of Canada"; the 1930 agreement declares that those same resources shall now be considered to have been administered retroactively as from September 1, 1905, by the Government of Saskatchewan for the purposes of Saskatchewan.

The line which separates the purposes of the Dominion from those of the province is not always discernible. There is much overlapping of such purposes and very little exclusiveness. Many, if not most, of the administrative policies, methods and transactions of the period, even though initiated by the Dominion in furtherance of its own purposes, served also, in varying degrees, to meet the real needs and purposes of the province. This they did by attaining objectives which the province, had it been in control, would surely have set for itself. Moreover, it may be said that in conferring benefits on the province, the Dominion policies were, to some extent, serving purposes of the province. Such overlapping and admixture of effects are inevitable. What must be apparent is that Dominion purposes and provincial purposes do not necessarily conflict, or exclude each other. There are many purposes common to the Dominion and the province. For instance, colonization and settlement were avowed purposes of the Dominion; they would also have been purposes of a provincial administration. And by whichever administration brought about, they would necessarily have resulted in great expansion in the industrial and commercial life of the whole of Canada,

including the prairie provinces themselves. This principle of overlapping purposes we regard as of fundamental importance as a guide to correct conclusions in this investigation.

63. *Onerous consequences of rapid development.*—Although the province would have sought colonization and settlement on a large scale, it would probably, early, have learned that rapid, scattered settlement entails unnecessarily heavy burdens on a new province for the construction and maintenance of highways, bridges, and other means of communication as well as for schools and other necessary services. It is possible that, with the burden of providing for these services, the province would have sought, in some measure, to restrain the march of the frontier line by refraining from opening up new territories for settlement until the regions already opened were comparatively well settled. By such measures, the province might have avoided some of the onerous burdens thrown upon it by the unprecedented rapidity of colonization and settlement under the Dominion rule.

64. *Revenues obtained by the Dominion.*—Notwithstanding that the main purposes of the Dominion in administering the western lands did not include the production of revenues therefrom, the federal administration did secure from the resources, revenues in excess of its cost of administration. For the period under review, these revenues exceeded \$25,000,000, whereas the expenses, as charged up by the Dominion, amounted to about \$23,000,000. What might have been attained under policies designed not for settlement alone, but for settlement and revenue, is difficult to estimate, but assuredly substantial increases of revenue might have been expected.

65. *Governmental methods.*—We must also keep in mind that the method followed by governments generally in administering public domain, is not to press too rigorously on pioneers and settlers, but to encourage them by generosity and by leniency. This is almost universally true, and would almost surely have affected the policies and methods of the assumed provincial administration.

66. *Economic instability of the period.*—Whatever the province may have done in formulating policies for the administration of its resources, it would have had to face, throughout the whole of the period, the same disturbing features of great fluctuations in prices of lands and commodities. The period was one of great economic instability, and was characterized by several booms at varying intervals, each followed by its inevitable depression in prices. On the rising markets—too often near the peak—purchasers secured school lands and other lands, on deferred payment plans, only to find themselves unable to meet these obligations in the periods of succeeding depressions. In many of these cases, the alternatives open to the government administration were unpleasant; either the purchaser had to be put off the land, or had to be allowed to remain without payment of his debt. It is not conceivable that a provincial administration could have escaped losses consequent on such conditions.

67. *The expropriation theory rejected.*—The suggestion that we should treat the resources as having been expropriated by the Dominion on September 1, 1905, cannot be accepted; and compensation cannot, therefore, be calculated on the basis of a conversion as of that date. Although such a method of dealing with the problem would greatly simplify our task, especially that part of it dealing with alienations, by eliminating practically all considerations except land values at 1905, with perhaps interest thereon until 1930, it would preclude us from giving equal, consistent treatment to administrative questions which do not involve alienations. However desirable the suggested course might be on grounds of simplicity, it is out of harmony with, not to say adverse to, the spirit and letter of our Reference. The course laid out for us is to review along general

line, the whole actual administration by the Dominion of Saskatchewan's resources during the period in question.

The idea of expropriation appears in the report of the Manitoba Commission but, on scrutinizing the use of the term there in its relation to the general exposition of the case, we feel justified in assuming that its use was not intended to imply anything contrary to the view that Manitoba was to be compensated only for its loss of revenue.

68. *Provincial administration since 1930.*—The policies and methods adopted and pursued by Saskatchewan in the administration of its resources since October 1, 1930, have been brought to our attention for comparison with those of the Dominion prior to that date. It is suggested that they afford some guide to what the province would probably have done had it been in control from 1905. It is true that these provincial policies and methods display a high degree of diligence, thrift and care, and had they been applied to the administration of the resources from 1905 to 1930, would either have produced large revenues, or carefully husbanded the resources. We must not, however, make the comparisons unless we bear always in mind the sharp difference that exists between general economic conditions during the years before and the years since 1930. These differences are so marked that the periods ought to be contrasted rather than compared. Moreover, it should be borne in mind that the province assumed the burden and responsibility of management only after a quarter-century of federal administration, having before it as a guide all the experience and lessons of that period. However, the provincial administration since 1930 does indicate that a local "close-up" administration designed for provincial rather than national purposes, has many advantages.

69. *Saskatchewan's resources depleted.*—The resources of Saskatchewan consist chiefly of agricultural lands. Timber, minerals and other resources constitute a relatively small portion of the aggregate of all its natural resources. The area of agricultural lands alienated is very great, leaving the province in this position—that it has lost an unusually large proportion of its public domain.

## CHAPTER VII

## THE CLAIMS CONSIDERED

70. *Free homestead lands.*—In 1905 and for some years preceding, free homesteading was at very high levels. For several years after 1905, the rate continued unabated if not increased. The province was then enjoying its greatest progress in settlement, and would have been loath to abandon the free homestead policy on which that progress so much depended. This is particularly true of the earlier years of the period 1905-1930. Speaking in the Saskatchewan Legislature in 1911, Sir Frederick Haultain expressed the opinion of many public men of the day when he said:—

"No man in 1905 would have dreamt of altering the homestead policy because it was that that was so attractive to settlers. The province would have followed out the same policy and would have been in exactly the same position except that the province instead of the Dominion would have received the land revenue."

But we are convinced that eventually the time would have come when, with a rapidly lessening supply of good available agricultural lands, coupled with an almost equally rapid growth in the need for revenues, the province would probably have modified the homestead policy. In all likelihood the change would not have been put into effect until after a large proportion of the homestead lands had been alienated. Homestead entries during the period of the Dominion's control reached the number of about 238,250 (of 160 acres each). Many of these were afterwards cancelled, but the entries as made will serve to illustrate the point we have in mind. Nearly forty-five per cent of these entries were made in the first five years after September 1, 1905, and an additional thirty-five per cent were effected in the next five years. In all, more than three-quarters of all these homestead entries were made in the first ten years of the period. The date at which the free homestead policy would have been modified or discontinued is a matter of speculation. At whatever date the discontinuance would have occurred, the effects of the policy would continue for three years thereafter—the entries made immediately prior to the change would have to be honoured in the next three years. How much of the twenty million acres would have been saved for provincial revenue is also speculative, but the acreage, whatever it might have been, would in all probability have been in part used (probably sold) for revenue, and in part would have remained a provincial asset with revenue possibilities. It is evident that the acreage that would have been devoted to revenue production would have been restricted to a comparatively small part of the whole. We stress this point because the claim of the province is based upon the vast aggregate acreage of lands actually homesteaded.

It may have been with such considerations in mind that the Manitoba Commission contented itself with "placing a light appraisal on the loss to the Provincial Government (of that province) in respect to homestead lands," (page 42). The precise amount of that appraisal is not disclosed but is embodied in the general award.

71. *Pre-emptions and purchased homesteads.*—These lands are here treated together because they were sold during the same years, in the same general areas, at the same uniform price, to settlers who already were in possession of free homesteads in immediate or close proximity. The price obtained by the Dominion of \$3 an acre is irrelevant here except to indicate what the province might have secured from the lands under a revenue policy. The province claims that a higher price per acre would almost surely have been obtained for any

portion of these lands that it would have sold. This claim may well be conceded, but the higher the selling price the fewer the sales. It also claims that a large part of these lands would not have been diverted from the only use for which they were designed by nature, namely, grazing purposes. Assuming that to be so, we must not overlook the fact that any portion of these lands so left to their original grazing uses would to that extent have reduced the acreage of alienations.

The rental of grazing lands under the Dominion's administration ranged from two to four cents an acre a year. If, as the province contends, a four-cent rental was obtainable, it means, when capitalized, that the land is valued at about \$1 per acre. All things considered—part of the acreage at more than \$3 per acre and the balance at less than \$1 per acre—it is not clear that the province would have received, from these alienated pre-emptions and purchased homesteads, a gross revenue higher than that obtained by the Dominion. But the loss of that revenue, whatever the amount, is a proper claim by the province.

72. *Half-breed lands.*—The care of Indians was assumed by the Government under the British North America Act. In order to extinguish Indian title in the North-West Territories, certain lands were set apart as reserves for full-blooded Indians, on which these Indians were to reside. Other lands were made available for half-breeds belonging to the region, and were alienated by scrip, entitling each holder, if otherwise qualified, to 240 acres of land, to be selected from available settlement lands. Most of this half-breed scrip was sold by the half-breed recipients and so passed into the hands of speculators and others, thus depriving the alienation of some part of the intended settlement element.

The question is raised as to whether or not Saskatchewan was bound to provide lands for all the half-breeds who later secured scrip. The question is one of difficulty, and we do not pass upon it in the sense of deciding legal rights. It seems, on the whole, that had the province been in control, a substantial part of these half-breed alienations would never have been made, and the land so saved from such alienation would have been saved to the province as assets with revenue potentialities.

73. *Soldier bounties.*—The province claims, and it is not disputed, that bounties to be given to soldiers were a matter of Dominion and not provincial responsibility.

As regards the alienations to South African veterans, which were authorized in 1908, the evidence indicates that the province itself would probably have granted free lands to those soldiers who were domiciled in the province, or who would undertake to settle on the land. It is impossible to say to what acreage such alienations would have extended. It seems that the province would not have adopted the policy which the Dominion pursued, of giving away lands to all veterans, irrespective of domicile or settlement intentions, and that in any event alienations would not have been made in the form of scrip, which defeated the great purpose of settlement.

As regards the grants to veterans of the Great War, rather less force, we think, is to be attached to the views urged by Counsel for the province; but even in respect of these alienations, the province would have been guided more than the Dominion was by the need of conserving its lands for provincial uses. These soldier bounties constitute a substantial ground for claim.

74. *Railway land subsidies.*—All the alienations under this heading were made to the Canadian Northern Railway Company as the successor of three companies which, before 1905, had constructed several hundred miles of railway in Manitoba, and had carried the construction into the North-West Territories on the way to Hudson Bay, passing through a section which was later included in Saskatchewan. It is not conceivable that the province would have disposed of

these lands for the purpose of subsidizing railways in Manitoba, nor is it fair to say that, had the lands not been so alienated, they would all have been given away to settlers as free homesteads. Some portion of these lands probably would have been given for settlement, but a substantial part of them almost certainly would have remained as provincial assets with revenue possibilities. This is one item of claim which perhaps more clearly than any other affords an instance of alienations which a provincial administration would hardly have been expected to duplicate.

75. *Timber claims.*—These are administrative claims. They are based on the assumption that the province would have pursued more thrifty methods of dealing with timber. Claims that depend for their validity upon an assumed higher standard of efficiency by the province than by the Dominion, in regard to the details of administration, raise a question that cannot be lightly passed upon. It is a question that touches many of the claims which we have to consider. In this matter of efficiency of management—as distinct from the nature of policy involved—we are unable to accept the view that Saskatchewan would have succeeded in reaching and maintaining a standard of efficiency materially higher than that exhibited by the Dominion or by other provinces. Undoubtedly, the Dominion's long administration was not without its defects, but we cannot conceive that a provincial administration, covering the same period and matters, would have been flawless. The Dominion's administration had also its high points of efficiency, and in attempting to appraise the administration of any particular department, we should view not only the faults but the virtues as well, and regard the administration not piecemeal but as one whole, comprehensive unit.

There are several special features of the Dominion's timber administration which the province almost certainly would not have duplicated. The Dominion ignored provincial boundaries in its administration—it had a perfect right to do so—but one of the consequences was that much timber which lay in Saskatchewan was administered or disposed of by way of sale or exchange through the Dominion Land Office, located in Manitoba, and was never credited to Saskatchewan. These credits should now be made.

76. *Grazing leases.*—These are administrative claims, arising out of the grazing lands. Here again, the principles just mentioned should be applied. This claim involves an attempt to apply an assumed provincial administration to the actual facts of the Dominion's administration.

The Dominion gave to school lands a rental value, uniformly throughout the province, of four cents an acre a year and to grazing lands two cents. The province says there was no ground for such distinction and that all leases should have been at the four-cent rental level. The school lands, leased for grazing purposes, were small and situated within or adjacent to settled communities. They afforded additional pasture lands for nearby farmers, limited in extent but adequate for the use of farmers not engaged in stock-raising on a large scale. The grazing lands, proper, were the basis of extensive ranching activities. They were leased in very large tracts and for long periods. Their use, as the foundation of the ranching industry, was decidedly different in many ways from the use of the school lands which were available only in small blocks and under short-term leases. We do not think it was conclusively established that the higher level of rental could and probably would have been applied by the Province to the grazing lands; for the Province, no less than the Dominion, would no doubt have been disposed to shape its policy with close regard to the needs and representations of the ranching interests. On the whole, the amount involved being relatively small, the Province could not have bettered itself to any great extent.

77. *School lands.*—This claim is in a special category, because school lands had been set apart for educational purposes of the Province, and were in a sense impressed with a species of trust. The provincial claim in respect of these lands is that the Province would have been more zealous and thrifty in collecting the principal and interest owing on agreements for sale, and in securing rental income from some of the unsold and revested lands. No complaint is made with regard to the acreage sold or the sale prices. Here again we have to point out that the Province's claim is based on incompatible assumptions. Under provincial administration of all natural resources, the prices obtained for school lands would almost certainly have been lower than those obtained under the Dominion administration, because, as we have already pointed out, the whole level of land prices would have been lowered. We must treat this claim on the basis that, under an assumed provincial administration, either the acreage of sales or the price per acre must have been less than those shown under Dominion administration.

Although the Dominion record is not without its blemishes it makes, on the whole, an excellent showing. 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 acres, 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. Farther, on October 1, 1930, the Dominion turned over to the Province, many agreements for sale, under which there was outstanding principal of about \$16,600,000. 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 an acre to be added to the \$16 already mentioned.

In respect of the 500,000 acres of cancelled sales, the cancellations meant the abandonment of a large part of the principal; but it also meant that all the moneys, both principal and interest, that had been paid were forfeited to the fund, and the land itself became revested in the Crown. The chief loss in these sales was confined to the right to enforce the personal covenant of the purchaser, a right which it is not the practice of governments to exercise in such circumstances, and which, even if exercised, would on the whole be of doubtful value. Another loss—often serious—was the condition of weed infestation in which some of the land was left.

The high prices which school lands commanded, increasing generally throughout the period and averaging more than \$17 an acre, are attributable to the wisdom with which the sales were conducted. No school lands were put up for sale till the surrounding lands were well settled and a local demand established. The sales were by public auction, well advertised, and so timed as to follow good harvests. The merit of high prices carried the defect of difficulty in collecting, accentuated by the fact that many of the sales were effected in years of high land prices followed closely by periods of depressed prices. Taking a broad comprehensive view of the school land situation, we question whether a provincial administration could have attained better results on the whole.

78. *Hinterland.*—This item, with the remaining claims, falls under the heading of miscellaneous claims. We are told that the Dominion, during its administration, did little to survey or open up northern areas of the Province. Certain moneys were expended upon limited surveys and the question arises,

how far the Dominion should have surveyed or investigated this region, and whether or not it should be held responsible for failure to do more than it actually did. One thing seems certain, that had the Dominion expended moneys to open up this region to fuller knowledge of its possibilities, it would be entitled now to charge up the cost against the Province. It seems, therefore, that although the lack of aggressive development has been brought to our attention, there can be no good ground for a provincial claim for compensation in respect to this matter.

79. *Under-rights*.—By this term is meant sub-surface rights, such as mines, minerals, quarries, gravel, oil, gas, and such like, some of which were alienated by special grants and some by implication in ordinary land grants. The total acreage of these alienations runs to only a relatively small percentage of the whole. This claim has been given recognition in our consideration of claims pertaining to surface rights.

80. *Mines and Royalties*.—These are not made the subject of separate claims by the Province and are impliedly included under the heading of under-rights, to which we have just referred.

81. *Tax Exemption of Railway Lands*.—Although at first put forward as a basis of claim by the Province, this item was not pressed to a conclusion. The claim, it may be explained, was based on the loss of tax revenue to the Province and its municipalities as a result of unduly long delay by railway companies in obtaining the grant of their subsidy lands, the lands being exempted from taxation until granted by the Crown.

82. *Water and water-powers*.—These are not made the subject of any special claim, and are mentioned here only to be eliminated.

83. *Seed Grain Liens*.—Between 1905 and 1930, the Dominion, on several occasions, directly and indirectly assisted needy farmers of Saskatchewan by furnishing them with seed grain and fodder. This assistance took the form, in 1908, of a money loan to the Province, to enable the Province itself to furnish that aid; on other occasions the Dominion furnished the aid directly to the farmers through the agency of the Province—an agency which embraced both the distribution of aid and the subsequent collection of the debts. The 1908 loan, as made to the Province, has been almost wholly repaid; but the balance outstanding on the other loans is, according to Dominion figures, over \$3,000,000. These loans were made on security of mortgages on patented lands, and on the security of liens on the unpatented lands. The Dominion asks that the Province assume these outstanding debts of individual farmers.

We think that this matter is placed outside the scope of our enquiry by section 18 of the 1930 agreement which reads as follows:—

“18. Every lien upon any interest in any unpatented land passing to the Province under this agreement, which is now held by Canada as security for an advance made by Canada for seed grain, fodder or other relief, shall continue to be vested in Canada, but the Province will, on behalf of Canada, collect the sums due in respect of such advances, except so far as the same are agreed to be uncollectible, and upon payment of any such advance, any document required to be executed to discharge the lien may be executed by such officer of the Province as may be authorized by any provincial law in that behalf; the Province will account for and pay to Canada all sums belonging to Canada collected hereunder, subject to such deduction to meet the expenses of collections as may be agreed upon between the Minister of the Interior and the Provincial Secretary or such other Minister of the Province as may be designated in that behalf under the laws thereof.”

84. *Townsites*.—During the early years of the Grand Trunk Pacific Railway, the Dominion sold the railway many relatively small parcels of land for townsites at a price of \$3 an acre, plus one-fourth of the profits on resale.



These profits, collected or uncollected, have not yet been turned over to the Province—an oversight which the Dominion now offers to remedy. The collected profits due Saskatchewan amount to \$85,270.

85. *Minor adjustments.*—There are several items which have been adjusted and are mentioned merely to be eliminated. These include some errors and omissions by the Dominion in apportioning to the Province its just share of certain *equipment and supplies* which were on hand on October 1, 1930, but which have now been satisfactorily apportioned between the two Governments. Certain *exchanges of lands and timber berths*, as made by the Dominion and affecting the Province, have been taken into consideration. And finally, certain *acres of land* of special character have been included in the general totals. There is an item of something over 70,000 acres which the Hudson's Bay Company abandoned in Saskatchewan at the Dominion's request in exchange for an equivalent acreage elsewhere. There are, also, two small items covering lands alienated in Saskatchewan in satisfaction of railway subsidy earned in Alberta. All these adjustments are taken into consideration.

## CHAPTER VIII

## CREDITS CLAIMED BY THE DOMINION

86. *Past subsidies.*—The first and most obvious of these credits is the semi-annual payment of subsidy in lieu of the resources made by the Dominion between September 1, 1905, and October 1, 1930. These payments exceed \$14,200,000.

87. *Future subsidies.*—Under section 20 of the 1930 agreement, these are to continue from October 1, 1930, for all time to come at a minimum of \$750,000 a year, to be increased to \$1,125,000 a year if and when Saskatchewan's population reaches 1,200,000. These subsidies are to be paid in semi-annual instalments on January 1, and July 1, of each year.

The present value of these future payments has been calculated by capitalizing the payments. In the capitalization, two variables are encountered: (1) the rate of interest to be used in the calculation; and (2) the date at which the subsidy will probably rise to its maximum. The first of these will vary with the opinions of individuals as to what interest rate should be adopted. Counsel approach agreement at three per cent. At this rate, the value of these future subsidies, continued in perpetuity on the present basis but without the anticipated increase, would amount to more than \$25,000,000. As to the second factor, calculations have been put in that the population of the province will reach 1,200,000 in the year 1948. We make no prophecy on this score, but if the maximum should be reached in that year, and the increase in subsidy thereon be capitalized at three per cent, it will bring the total present value of future subsidies up to almost \$33,000,000. If a higher or lower rate of interest be adopted in the calculation, the amount of that value will be decreased or increased correspondingly. We do not consider that a hard and fast capital value should be attached to these future subsidies, but we quote the figures chiefly to indicate that, in any view of their actual value, they constitute a very large compensation already given to the province.

88. *Administrative expenses.*—The Dominion's statement of these expenses runs to over \$23,000,000. This sum includes many items which, had the province been in control of the administration of the resources, would have been reduced in amount or eliminated altogether. The credit on this item should therefore be substantially below the Dominion's figure.

89. *School land revenue.*—As already pointed out (paragraph 77), the Dominion administration produced and turned over to the province from school lands (a) current revenues amounting to \$16,350,000, and (b) capital revenue of \$17,800,000, a total of actual cash already paid amounting to more than \$34,000,000, with a realizable additional sum of at least several millions.

90. *Branch Line Railways.*—Following the principle laid down in the Manitoba Report, the Dominion claims credit for the aid it gave in different forms to the construction of branch line railways in Saskatchewan. The circumstances in Manitoba's case differ from those in that of Saskatchewan. Again, the Dominion acknowledges the impossibility of being accurate, but suggests several million dollars. In considering this claim we ought to keep in mind that the Dominion during the same period made large expenditures in nearly all of the other provinces for what might well be called branch line railways, and that equality of treatment would require that Saskatchewan should not be asked to reimburse the Dominion unless other provinces were called upon to do likewise.

## CHAPTER IX

## CONCLUSIONS AND RECOMMENDATIONS

91. From the foregoing survey of the resources problem of Saskatchewan, several general conclusions may be drawn:—

- A—That the Dominion administration of those resources, while inspired primarily by the needs and purposes of national development, did serve effectively to promote many of the major objectives which would have been sought by a provincial administration;
- B—That the Dominion policies, designed chiefly for purposes of settlement and development, nevertheless produced substantial revenues from the resources under administration;
- C—That a provincial administration, concerned primarily or even largely with revenue production could, and probably would, have produced a much greater amount of revenue and at the same time have assured extensive settlement and development;
- D—That in order to find sure ground for awarding any further compensation to the province it is necessary to do more than merely concede that greater net revenues would have been realized under a provincial administration. It is necessary to find also that the probable *net* revenues which would have been derived by the province would have exceeded the aggregate of (a) the subsidy received between 1905 and 1930; (b) the capitalized value of the continuing subsidy; and (c) all school land returns;
- E—That the exact amount of any such excess cannot possibly be ascertained by any conceivable method of treatment. As so well put in the report of the Manitoba Commission in 1929, the problem of appraisal is complicated "almost beyond the possibility of clear unanswerable solution".—The amount, if any, must remain a matter on which opinions widely differ. In order to reach common ground, we must proceed upon the principle of compromise. Without compromise of opinion, settlement may not be reached. This affects the members of this Commission no less than it may affect the members of the Parliament of Canada and of the Legislature of the province, if and when they are called upon to review or approve the recommendations of this report;
- F—That in approaching the matter of making a definite recommendation as to compensation, we can find no more cogent statement of the crux of the problem than is contained in the remarks made by the Right Honourable Arthur Meighen in the House of Commons, April 25, 1921, when, as Prime Minister of Canada, he participated in a debate on this subject. He said:

"It is not a hard matter to scramble an egg but it is a very hard matter to unscramble it. It was not a hard matter to retain the resources, but once you have retained them for fifteen to twenty years and adjusted every phase of public policy to the fact that there was retention, then it becomes a matter of very great complexity. Indeed it becomes a matter in the solution of which you meet with obstacles at every step and to such an extent that no half-dozen men can agree on any stage."

and further, when discussing the methods of solution:—

"You may get further by one way, and one way only, by presenting some concrete proposal in figures that will appeal to a fair-minded man as a square, bald, rough but honourable solution."

92. *Recommendation.*—We recommend that the Dominion pay to the Province of Saskatchewan a sum of money which, when added to all the purely provincial benefits that Saskatchewan has received or is yet to receive from the Dominion in respect of its resources will, in our judgment, balance the amount of net revenue which the province would probably have obtained from those portions of its resources alienated or otherwise disposed of by the Dominion during the course of its twenty-five year administration. The sum which we recommend is \$5,000,000. We also recommend that this sum bear interest at the rate of five per cent per annum from October 1, 1930, to March 31, 1935, and thereafter to such date and at such rate as the two Governments may agree upon. We should make it clear that no portion of this sum is to be considered as belonging to the Saskatchewan School Lands Fund; also that it includes all sums payable by the Dominion in respect of townsites (paragraph 84) and other minor adjustments.

The sum of money involved in this recommendation has been determined as the result of compromise and agreement as to the amount—but not by agreement as to the method of calculation. The arithmetic of the case presents so many variables that probably no two persons could ever reach a common result in precisely or even closely similar manner. Given agreement upon the result, we deem it unnecessary to set out our individual views as to the different ways in which the Dominion credits and the provincial credits, respectively, should be compiled. That problem lends itself to endless variation, and consequently, to endless confusion and controversy.

93. *Equality with the four original provinces.*—We submit this recommendation with full appreciation of the inherent difficulty of demonstrating, clearly and conclusively, that this or any other recommendation will actually and precisely place Saskatchewan in a position of equality with the other provinces. Our primary test on the question of equality is this—that we seek to put Saskatchewan in the position of being as well off financially in 1930 as the Province would have been had it received the control and administration of its resources in 1905. Upon the payment of the sum which we now recommend, we believe that Saskatchewan will be placed in that position. And we feel that by this method or test alone, carried out to the best of our ability, we are meeting the requirements of our terms of reference insofar as equality between Saskatchewan and each of the four original provinces of Confederation is concerned. We have sought to give Saskatchewan what we think the Province itself would probably have made out of its resources if it had had what each of the four older provinces had, that is, a free hand with its own public domain.

94. *Equality with the remaining Provinces.*—The same method of approach should apply with respect to parity between Saskatchewan and each of the provinces, British Columbia, Manitoba and Alberta. But, here, the situation is complicated by the fact that the Dominion had certain transactions with each of these provinces. We are satisfied that, so far as the underlying facts are comparable, what we have recommended for Saskatchewan is consistent with what the Dominion has done in its resources transactions with these three provinces.

95. *British Columbia.*—This Province presents a case with special features. By the terms under which British Columbia entered the union, the Dominion undertook to connect the seaboard of British Columbia with the railway system of Canada; and British Columbia agreed to contribute toward that project by making a conveyance to the Dominion of a belt of land along the line of railway throughout its entire length within that province. Further, and in some way connected with that conveyance, the Dominion agreed to pay to British Columbia the sum of \$100,000 per annum. Later, in addition to the Railway

Belt, the Dominion obtained by transfer from the Province a substantial area known as the Peace River Block. In 1930, following the report of the Martin Commission, the Dominion returned to the Province all these lands except the limited acreage that it had alienated. The payment of \$100,000 per annum continues in perpetuity.

In this transaction in railway lands in British Columbia we find little or nothing to warrant comparison with Saskatchewan. This was a pre-union bargain made in very special circumstances, and for very special purposes, between the Dominion and a self-governing colony. It has no discernible connection with or relation to that Province's natural resources, which always remained under the administration and control of the Province itself. The readjustment made in 1930 was influenced more by considerations arising out of the early railway situation than by any subsequent dealings by the Dominion in the Railway Belt or Peace River Block. Equality between Saskatchewan and British Columbia must be sought chiefly along the path that we have indicated with respect to the four original provinces of Confederation, that is to say, in regard to the major share of her resources British Columbia has got what she has been able to make by her own methods of administration. That, no more and certainly no less, is what we must endeavour to secure for Saskatchewan, subject to the handicap of having to work largely by hypothesis.

96. *Manitoba*.—It is only when we come to consider Manitoba that we find a case which, although different in many important aspects from that of Saskatchewan, presents in many other ways closely similar characteristics. We have therefore had to be especially careful to insure that what we now recommend for Saskatchewan is founded upon full and accurate understanding of the adjustment made between the Dominion and Manitoba in 1929. From a close scrutiny of the Manitoba report, we feel justified in the belief that the same primary test was applied in that enquiry as in this—namely, that of seeking to ascertain whether the Province found itself, at the end of the period of federal control, in as good financial position as if it had had provincial administration of the resources from the time of Manitoba's entry as a province into Confederation. We find on page 21 of the Manitoba report, this statement:

*"Bearing in mind the object sought to be attained by this Order in Council, which, as we understand it, is to place Manitoba, in so far as is now possible, in the position of a fully autonomous and fully endowed member of Confederation, we think it admissible to proceed by inquiring in the first place into the treatment which the province has received from the time of its creation down to the present. We can then decide whether, in view of the situation thus revealed, Manitoba is in as good financial position as she would probably have been in had her right to the administration and control of her natural resources been conceded from the beginning."*

The latter portion of the foregoing extract—which we construe only in the light of a thorough study of the entire text of the report—we take as indicating a method of approach closely corresponding to that which we adopt for Saskatchewan. The recommendations of the Manitoba Commission led to that province's receiving, (1) transfer of the unalienated resources; (2) the continuance in perpetuity of the subsidy in lieu of lands on the scale originally provided in 1905 for Alberta and Saskatchewan and later applied to Manitoba; and (3) payment of a sum which when added to what Manitoba had already received and was thereafter entitled to receive, placed the province in as good a financial position as it would have been in had it been endowed with control of its resources from its inception as a province in 1870.

The sum, so awarded, was made up of the shortages between the subsidy payments which the province had received from July 15, 1870, to July 1, 1908 (see paragraph 22 (b) ), and the subsidy payments which it should have received during those thirty-eight years. The sum comprises nothing else. The aggregate

of these shortages was found to be \$4,693,125, of which nearly \$3,800,000 was referable to the period before 1905. The sum paid on July 1, 1930, was reduced to about \$4,584,000 by the net result of a series of debit and credit items arising out of the sale by the province of swamp lands. These items had no direct connection with inadequacy of subsidy.

Moreover, without descending into any computation of the acreage of Manitoba's lands alienated by the Dominion during its administration of them, we must bear in mind that Manitoba was deprived of its natural resources as a source of revenue for a period not only of twenty-five years, as was the case with Saskatchewan and Alberta, but for a period of nearly sixty years. The length of this deprivation of this source of revenue was apparently the chief factor in the computation of the amount awarded by the Commission for deficiency or inadequacy of subsidy. It accounts for nearly the whole of the actual award. This time factor is only one of the several considerations which distinguish Manitoba's resources problem from that of Saskatchewan, but it will serve to illustrate the point we wish to stress, namely, that quantitative comparisons of resources alienated by the Dominion in the western provinces are impracticable and valueless if confined to acreage of surface alienations alone. Many other elements must be brought into the picture if we are to get anything like a fair and comprehensive view of the whole problem. We are convinced that, when the sum total of what Manitoba and Saskatchewan (including in the latter case, the payment we are now recommending) have received from the Dominion in compensation for their respective resources is compared on a basis that considers the case of each province "as from its entry into Confederation," it will be found that both provinces have been fairly dealt with, and the one not more or less so than the other.

97. *Alberta.*—We have already mentioned that concurrently with the present enquiry, a separate commission has been conducting an investigation, similar in scope and character, relative to Alberta. The personnel of the two commissions have been the same, except for one member of each, and the work of the two bodies has been carried on almost as a joint undertaking. We have thus had every opportunity of ensuring, as regards Saskatchewan and Alberta, consistency in conclusions as well as in method of approach. The measure we recommend for the purpose of placing Saskatchewan on a basis of equality with the other provinces of Canada is in accord with the conclusions similarly reached with respect to Alberta.

98. *Prince Edward Island.*—Upon its entry into Confederation, this province possessed no public lands, and the Dominion agreed as part of the terms of union to give the province, on that account, a special subsidy of \$45,000 per annum. That was part of a bargain made under exceptional conditions; and the circumstances can hardly be regarded as affording in any way a parallel to the present case. While the special subsidy to Prince Edward Island is admittedly a payment from the Dominion to a province in respect of natural resources, we feel confident that this Commission was not expected to preserve equality between what Saskatchewan should obtain in return for very large resources alienated by the Dominion and what Prince Edward Island has received by virtue of having no public domain whatever.

99. *The subsidy system.*—Time and again, during the course of this enquiry, material was submitted or suggested for consideration which, we thought, involved issues not clearly within our terms of reference. We have endeavoured to keep within the limits of our particular task but we realize that, directly or indirectly, the resources question as we have had to deal with it with regard specifically to Saskatchewan and with some regard necessarily to other provinces, touches closely the whole problem of the subsidizing

of provinces by the Dominion. We make the suggestion that a re-examination of this subsidy system in its entirety might be undertaken with advantage both to the Provinces and to the Dominion. The re-adjustments made in recent years have been chiefly on the basis of ad hoc investigations affording little opportunity or authority to consider the full effect of such adjustments in relation to the subsidy system as a whole.

100. *Acknowledgments.*—We close with a word of appreciation to all who have assisted in the conduct of this enquiry. Counsel for the province and for the Dominion left nothing undone toward presenting and clarifying the voluminous material required to afford a clear view of every aspect of the case. An enormous burden of preparatory work fell upon departmental officers both at Regina and at Ottawa. In particular, the Department of the Interior was called upon for assistance at every turn, entailing not merely weeks but months of heavy demands upon the staff, over and above their normal duties. All branches of that Department, concerned now or in earlier years with the administration of western lands, forests, minerals and waters, or with kindred responsibilities, gave us courteous, prompt and invaluable co-operation. Officers of the Department of Finance likewise extended all possible assistance in equally efficient and courteous manner.

Special reference must be made to Mr. Oliver Master, the secretary of our Commission. Mr. Master is Chief of the Economics Division of the Department of Trade and Commerce. He was secretary of the Manitoba Resources Commission and also secretary of the Alberta Resources Commission. Deeply versed in the natural resources problems with all their ramifications, experienced, able and industrious, he has rendered our Commission advice and assistance that we deeply appreciate and gratefully acknowledge.

A. K. DYSART,  
*Chairman.*

GEORGE C. McDONALD.

March 12, 1935.

**NOTE BY MR. COMMISSIONER McDONALD**

I have subscribed to the recommendation in favour of an additional payment in the belief that a settlement is urgently desirable and that the merits of the case not only permit but demand latitude of view. Having regard only to the terms of reference, I have found it difficult to put aside the opinion that without further payment the Province of Saskatchewan has already been well compensated in respect of natural resources.

I question whether—as was so often urged—force of circumstances would have induced the Province, had it not been in receipt of an annual subsidy, to look wholly and solely to its natural resources to obtain a revenue equivalent to the subsidy. It is not unlikely that by a combination of—

1. Less expansive expenditure;
2. Increases in other forms of taxation;
3. Further borrowings, which would have been simplified by the possession of the natural resources;

the Province would have substantially obtained the equivalent of the subsidy and that, in consequence, the revenues sought from the natural resources would hardly have approached the immense figures which were from time to time suggested.

While I concede that the Province, had it been in possession of its resources from 1905 to 1930, might have taken advantage of high land values to realize substantial sums, I find it difficult to convince myself that any considerable proportion of these receipts would have been set aside to produce a permanent income in any way equivalent to the annual subsidy from the Dominion, which is now \$750,000 and which will rise ultimately to \$1,125,000.

GEORGE C. McDONALD.

March 12, 1935.



**NOTE BY THE CHAIRMAN**

A brief note of explanation appears necessary in respect of the supplement to Mr. Justice Bigelow's minority report.

Mr. Justice Bigelow's report, completed and submitted before the majority report had advanced beyond draft form, recommends the payment to Saskatchewan of a very considerable sum of money. That recommendation is justified largely by reference to data relating to the findings of the Manitoba Commission in 1929—the data in question have been made available to Mr. Justice Bigelow partly from the text of the Manitoba Commission's published report and partly from unpublished records of that Commission obtained by our secretary for Mr. Justice Bigelow at his request.

On receipt of Mr. Justice Bigelow's report, I thought it well to consult the records of the Manitoba Commission since, in my view, Mr. Justice Bigelow's recommendation failed to take account of the full extent of the land alienations in that Province. Through our secretary, I obtained additional data on this subject from the records of the Manitoba Commission, incorporating some of the material in the draft of the majority report. In his supplementary report Mr. Justice Bigelow has taken exception to this material, although it was obtained in the same manner and from the same source as part of the data on which his own report is based. (See his report, page 55, lines 15 and 16.) To avoid useless controversy I have eliminated this material from the majority report in its final form, but I should make it clear that the manner in which Mr. Justice Bigelow applies the findings of the Manitoba Commission to the Saskatchewan case is, in my view, not only unsound in principle, but as a study of the records of the Manitoba Commission will show, is inaccurate in its basic data, in that he overstates the amount of the Manitoba award by nearly \$3,000,000, and understates the acreage of Manitoba alienations by at least several million acres.

In his supplementary report Mr. Justice Bigelow introduces the name of our secretary, Mr. Oliver Master, in a way which he has since assured me by letter was not intended to convey criticism, expressly or impliedly, of any conduct of the secretary. I need only add that what Mr. Master did by way of furnishing or obtaining information he did on instructions from me as Chairman of the Commission. I assume full responsibility for his action and express the conviction that what was done was entirely correct and proper in every respect.

A. K. DYSART,

March 12, 1935.

*Chairman.*

MINORITY REPORT

REPORT OF

THE HON. MR. JUSTICE H. V. BIGELOW

## REPORT OF THE HONOURABLE MR. JUSTICE H. V. BIGELOW

I regret that I am unable to agree with the other two commissioners, and therefore I must express my reasons with some detail. It seems to me very unfortunate for the contracting parties that one commission was not appointed to deal with the three prairie provinces; in that way only, apparently, could uniformity be attained.

It is not necessary for me to refer fully to the appointment of the Commission, the causes leading up to this inquiry, the Dominion's purposes in administering the resources, the attitude of the western provinces towards their resources, the features of the Dominion's administration of Saskatchewan's resources, the scope and limitation of the inquiry, and other matters quite fully set out in the Chairman's report.

In 1905, 4 and 5, Edward VII, Chap. 42, the Parliament of Canada established the Province of Saskatchewan out of territory then being part of the Dominion of Canada.

Section 109 of The British North America Act provides:—

"All Lands, Mines, Minerals, and Royalties belonging to the several provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the province in the same."

Notwithstanding that the original provinces of Confederation obtained all their natural resources that had not been alienated before Confederation, and later British Columbia, on entering Confederation, obtained the same treatment, Canada saw fit to keep the natural resources of the three prairie provinces, to be administered by the Government of Canada for the purposes of Canada. Section 21 of The Saskatchewan Act, 4-5 Edward VII, Chap. 42, is as follows:—

"All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under the North-west Irrigation Act, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-west Territories."

In lieu of such resources retained by Canada, an allowance in lieu of public lands was arbitrarily fixed as follows, section 20:—

"Inasmuch as the said province will not have the public land as a source of revenue, there shall be paid by Canada to the province by half-yearly payments, in advance, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:—

"The population of the said province being assumed to be at present two hundred and fifty thousand, the sum payable until such population reaches four hundred thousand, shall be three hundred and seventy-five thousand dollars;

"Thereafter, until such population reaches eight hundred thousand, the sum payable shall be five hundred and sixty-two thousand five hundred dollars;

"Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars;

"And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

"2. As an additional allowance in lieu of public lands, there shall be paid by Canada to the province annually by half-yearly payments, in advance, for five years from the time this Act comes into force, to provide for the construction of necessary public buildings, the sum of ninety-three thousand seven hundred and fifty dollars."

It is not necessary for me to discuss the long conflict between the province and Canada, in which the province claimed administration and control of its lands. It began, I believe, in 1905, when The Saskatchewan Act was passing through Parliament, when Sir Robert Borden urged in the House of Commons that the new provinces were entitled to their lands. In 1907, Sir Robert Borden, in his Halifax platform, advocated "the restitution of the public lands to the Provinces of Alberta and Saskatchewan upon fair terms." In June, 1911, in a closely reasoned statement in Winnipeg, Sir Robert Borden expressed the opinion that all three prairie provinces were entitled to the just recognition of their undoubted rights to their public lands and natural resources. (These references are taken from a very interesting pamphlet prepared by Professor Chester Martin, then of the University of Manitoba, on the natural resources question.)

It is sufficient for me that in the agreement between the Government of the Dominion of Canada and the Government of the Province of Saskatchewan, made on March 20, 1930, the Government of Canada expressed its desire that the province should be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources, as from its entry into Confederation in 1905, and appointed this Commission to inquire and report what consideration, in addition to the sums provided in section 21 (subsidy section), shall be paid to the province in order that the province may be placed in that position. As that agreement is important, I quote part of it. The preamble states in part:—

"Whereas by section twenty-one of the Saskatchewan Act, being chapter forty-two of the four and five Edward the Seventh, it was provided that 'All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under the North-West Irrigation Act, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-West Territories;'

"And whereas the Government of Canada desires that the province should be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources as from its entry into Confederation in 1905;"

Clause 1 of the agreement provides:—

"In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the British North America Act, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals, or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter."

Clause 21 is as follows:—

"In lieu of the provision made by subsection one of section twenty of the Saskatchewan Act, Canada will, from and after the date of the coming into force of this agreement, pay to the Province by half-yearly payments in advance, on the first days of January and July in each year, an annual sum based upon the population of the Province as from time to time ascertained by the quinquennial census thereof, as follows:

"The sum payable until such population reaches one million two hundred thousand shall be seven hundred and fifty thousand dollars;

"And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars."

Clause 24 provides in part:—

"As soon as final answers to the questions submitted under the last preceding paragraph have been given, the Government of Canada will appoint three persons to be agreed upon to be Commissioners under Part I of the Inquiries Act, to inquire and report whether any, and if any, what consideration, in addition to the sums provided in paragraph twenty-one hereof, shall be paid to the Province in order that the Province may be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources either as from the first day of September, 1903....."

*For the Purposes of Canada.*

We heard a great deal of argument by Dominion Counsel that the administration of these lands, which included free homesteads, pre-emptions, railway subsidies, South African veterans' grants, soldiers' grants, etc., were all for the benefit of Saskatchewan, and that therefore Canada should not pay anything for them. Undoubtedly such administration was a great benefit to Saskatchewan, which wanted more settlers; undoubtedly Saskatchewan would have continued the free homestead policy, but, on the other hand, I am of opinion that such free homestead policy would not have been continued to the exclusion of a revenue policy. I will deal with that later. Notwithstanding that Canada's administration did benefit Saskatchewan, Canada as a whole benefited greatly by this administration. I am satisfied to take the Parliament of Canada at its own word, when it said in section 21 of the Saskatchewan Act that the lands were to be administered "for the purposes of Canada."

But, in case it is not fair to hold the Dominion to that clause put in the Act by the Dominion Parliament, let us examine the utterances of some public men at the time, to see what benefit Canada as a whole expected to get, and then examine some of the trade returns to see just how much benefit Canada did get.

Sir Clifford Sifton, the Minister of the Interior at that time, speaking in the House in 1903 said:—

"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."

The Hon. Frank Oliver stated in the House of Commons: (1905 Hansard, Vol. 2, p. 3157):—

"One hon. gentleman said that the lands could be better administered by 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 interests 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 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 prosperity this Dominion is enjoying to-day is to a very large extent due to the fact that the lands of the Northwest 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 of dollars in surveying and administering these lands, and then to give them away. 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 Northwest Territories is a bill of expense to the Provincial Government. That settler requires good roads made, he requires a school supported, he requires the advantages of municipal organization, 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."

The Hon. Frank Oliver also said in the House of Commons, on another occasion (Hansard 1905, Vol. 4, p. 5995):—

"The people of the Dominion at large have become so well aware of the benefits resulting from the rapid settlement of the North-west through the giving of its lands free to settlers, that I cannot imagine any Dominion government reversing that policy. But a provincial government cramped for money, as all our provincial governments are, deriving no direct revenue from the influx of settlers, but carrying an increased burden by reason of every ship load of immigrants that arrived would be likely to adopt a policy of administration of the lands for revenue, which would be injurious in the ultimate end to the province itself, and still more to the Dominion."

Mr. Walter Scott, later Premier of Saskatchewan, said in the House of Commons (1905 Hansard, Vol. 2, p. 3599):—

"But a purely revenue policy might be followed, as it would be the right of those provinces, if they were to assume the responsibility and the expense of administering the domain, to follow a purely revenue policy. The probability is that a provincial government, as has been well explained by my hon. friend from Edmonton (Mr. Oliver), not having the same inducement, or the same opportunity, to reap indirect profits from the settlement policy of the federal government, would be driven by necessity to adopt a purely revenue policy."

Mr. J. G. Turriff, then the member for East Assiniboia, also said in the House of Commons (Hansard 1905, Vol. 2, p. 3823):—

"I think it is a better arrangement than to have handed over the lands to the provinces. That was made clear by the hon. member from Edmonton (Mr. Oliver), who showed with absolute clearness that the ideas of the two governments, the provincial and the Dominion, would be absolutely different, that if the lands were handed over to the provinces they must use them for the purpose of producing immediate revenue, whereas by keeping the lands in the hands of the Dominion Government they would be used rather to fill up the country and not necessarily for the taking of the last dollar out of the lands."

The Hon. J. H. Lamont (now the Hon. Mr. Justice Lamont of the Supreme Court of Canada), stated in the House of Commons, (Hansard 1905, Vol. 3, p. 4366):—

"But, Mr. Speaker, if the system of free homesteads is to be continued and these lands given away to the settlers, how would the provinces obtain the revenue necessary, not only to offset the amount which this Bill provides in lieu of lands, but also the amount necessary to cover the cost of administration. As has been forcibly pointed out by the hon. member for Edmonton (Mr. Oliver), the interest the provinces would have in these lands if they were handed over would be to obtain therefrom a revenue, and this could not be done if the lands were given to the settlers free. If the lands were not given to the settlers free, but were reserved for sale, it cannot be doubted that a serious check to the rapid settlement of these lands would be administered."

Now let us examine some of the trade statistics to see how Canada as a whole did benefit by the settlement of Western Canada. The evidence shows that the net exports from the prairie region during 1923 were valued at \$270,000,000, while imports into the prairie provinces during that time were \$145,000,000, leaving a favourable trade balance for this section of Canada of \$125,000,000. The year 1923 was taken, I suppose, because that would be a fairly normal year after the country was well settled. Exports were made up as follows:—

## EXPORTS OF THE PRAIRIE PROVINCES (1923)

Wheat .....	\$208,000,000
Oats .....	10,000,000
Barley .....	5,000,000
Rye .....	2,800,000
Mixed grains .....	200,000
	<hr/>
Flax .....	\$226,000,000
	6,500,000
	<hr/>
Flour .....	\$232,500,000
Other mill products .....	17,000,000
	5,500,000
	<hr/>
Livestock .....	\$255,000,000
Butter and cheese .....	3,000,000
Hides and leather .....	5,000,000
Poultry and eggs .....	2,000,000
	2,000,000
	<hr/>
All other products .....	\$267,000,000
	3,000,000
	<hr/>
	\$270,000,000

The imports are made up as follows:—

## IMPORTS INTO THE PRAIRIE PROVINCES (1923)

The largest group, comprising manufactured and miscellaneous articles, accounted for \$109,000,000 of shipments to the prairie region or nearly 85 per cent of the total value of all shipments. The principal items making up this total are as follows:—

Refined petroleum and its products .....	\$ 5,400,000
Sugar .....	17,500,000
Iron, pig and bloom .....	400,000
Rails and fastenings .....	2,000,000
Bar and sheet iron, structural iron, and pipe iron .....	4,200,000
Castings, machinery and boilers .....	8,300,000
Agricultural implements and vehicles other than autos .....	28,500,000
Automobiles and auto trucks .....	15,000,000
Furniture .....	5,500,000
Liquors and beverages .....	700,000
Paper, printed matter and books .....	17,500,000
Canned meats .....	500,000
Canned goods .....	3,500,000
	<hr/>
	\$109,000,000
Add:	
Apples, fruits and vegetables .....	3,000,000
Railway coal and coke .....	6,800,000
Crude petroleum .....	1,400,000
Salt .....	500,000
Miscellaneous mine products .....	300,000
Forest products .....	8,000,000
	<hr/>
Unclassified .....	\$129,000,000
	3,000,000
	<hr/>
	\$132,000,000
Transportation, insurance, etc. ....	13,000,000
	<hr/>
	\$145,000,000

Again, the following table of Canada's leading exports for the fiscal years 1900, 1910 and 1930, shows how wheat and wheat flour increased from fourteen millions of dollars in value in 1900, to over two hundred and sixty millions in value in 1930.

## CANADA'S LEADING DOMESTIC EXPORTS, FISCAL YEARS 1900-1910-1930

Reference: Canada Year Book (1933) Page 509.

"The year 1910 is the first year in which wheat appears as the leading export, although this first occurred in 1908."

Commodity	1900	1910	1930
Wheat	\$11,995,488	\$52,609,351	\$215,753,475
Newsprint paper	2,012,243	2,012,243	145,610,519
Wood pulp	1,316,016	5,204,597	44,704,958
Fish	10,564,688	15,179,015	34,767,739
Wheat flour	2,791,885	14,859,854	45,457,195
Planks and boards	22,015,990	33,100,387	49,446,887
Gold, raw	14,148,343	6,016,126	34,375,003
Copper bars, etc.			48,181
Furs, raw	2,264,580	3,749,005	18,706,311
Nickel	1,040,498	3,320,054	25,034,975
Whiskey	396,071	1,010,657	25,856,136
Cheese	19,856,324	21,607,692	18,278,004

Again, the growth of the West benefited the railways. In 1905 the operating revenue of the C.P.R. on western lines was \$25,000,000, 53 per cent of its net operating revenue. In 1912 this became \$71,000,000, 60 per cent of its net operating revenue, and, in 1930, \$94,000,000, or 64 per cent of its net operating revenue.

The grain hauled by western lines increased as follows:

1905	59,000,000 bushels
1912	151,000,000 bushels
1930	226,000,000 bushels

There is evidence also referring to the destination of immigrants into Canada by provinces, from 1901 to 1930, which shows that while nearly two million immigrants went to the prairie provinces, over two million seven hundred thousand went to other provinces of Canada, thus justifying Sir Clifford Sifton's explanation of the policy of the Government:

"to build up a consuming and producing population in our vast western country, for the purpose of giving legitimate occupation to the mechanics and artisans of Eastern Canada."

Other evidence shows the tremendous growth in the population of eastern manufacturing centres from 1901 to 1931.

Still further evidence shows the retail merchandise trade in Canada in 1930:—

## RETAIL MERCHANDISE TRADE IN CANADA IN 1930

	Net Sales	Per Cent
Prairie provinces	\$ 569,780,000	20.33
Ontario	1,112,733,300	39.68
Quebec	667,173,500	23.78
Maritime provinces	292,703,900	7.22
British Columbia, Yukon and N.W. Territories	252,685,100	8.09
	\$2,805,075,800	100.00

Reference: Canada Year Book (1933) Page 652.

Another table shows the agricultural implement sales in Alberta. In two companies only, such sales increased from \$661,000 in 1905, to \$3,373,000 in 1912, and \$4,902,000 in 1930. (We have no figures for Saskatchewan, but it is a fair presumption that Saskatchewan figures would be at least as much as Alberta. It is well known that Saskatchewan has produced more grain than Alberta.) It is also shown that the investment in implements and machinery in 1932, in Saskatchewan, was \$185,510,000.

Another table shows how sales of one manufacturing company increased in Western Canada from 1905 to 1930:—

## SALES IN WESTERN CANADA—COMPANY "C"—OF THE UNDERMENTIONED ARTICLES DURING THE YEARS 1905, 1912 AND 1930

	1905	1912	1930
Men's and boys' clothing	\$198,197	\$1,599,000	\$3,711,000
Men's furnishings and caps	138,059	1,201,000	3,494,000
Women's garments	462,008	3,330,000	5,518,000
Women's underwear	154,854	1,085,000	3,517,000
Shoes	139,800	931,000	4,848,000



Other evidence shows the increase of sales by three different manufacturing companies:—

## SALES IN WESTERN CANADA BY REPRESENTATIVE WHOLESALE COMPANIES

COMPANY E—HARDWARE		Gross Sales.
Year		
1905	.....	\$ 2,415,000
1912	.....	5,400,000
1920	.....	8,257,000
1929	.....	9,329,000
1930	.....	6,848,000

COMPANY F—DRY GOODS		
1915	.....	\$ 2,887,918
1920	.....	8,783,507
1921	.....	5,249,000
1926	.....	4,027,891
1927	.....	3,810,248

COMPANY G—GROCERIES		
1908	.....	\$ 2,311,043
1912	.....	5,446,000
1913	.....	7,011,000
1919	.....	8,850,000
1920	.....	9,370,000
1930	.....	12,755,000

I have gone into this with some detail, with the object of showing how the development of the West was for the benefit of Canada as a whole, the very policy of the Government in retaining control of the western lands.

*Saskatchewan's Claims.*

These claims may be divided into two classes:—

- (1) Those based on alienation of lands.
- (2) Those based on administration of lands and other resources, such as the school lands trust, the timber claims, the grazing claims.

I will deal now with the claims for alienation. From September 1, 1905, the date of the formation of the province, until October 1, 1930, Canada alienated of Saskatchewan lands the following:—

Free homesteads.....	Acres	20,705,139
Purchased homesteads.....		703,862
Pre-emptions.....		3,871,882
South African veterans' grants.....		1,110,883
Soldiers' grants.....		322,247
Special grants.....		333,976
Sales miscellaneous.....		480,811
Half breed scrip.....		96,740
Station grounds.....		22,289
Reserved for federal purposes.....		23,009
G.T.P. Townsites.....		9,484
C. & E. and A. R. & I. railway.....		7,452

From this should be deducted:	Acres	27,698,744
Estimated cancellations.....	500,000	
Hudson's Bay exchange account.....	70,097	
		570,097
		<u>27,128,647</u>

To this must be added grants to railways of Saskatchewan lands for railways built in Manitoba. The Province claims 3,210,359 acres for which no commitments were made before 1905, after abandoning 497,547 acres for which the Province admitted commitments had been made before 1905.

I have spent a great deal of time going into the details of this claim, examining all the orders in council, correspondence between the railway companies and the Dominion Government, and the briefs filed by both sides, and

I could write a long, detailed report, going into the particulars of each of the many separate parcels alienated at different times. I can see no useful purpose in this, as the conclusions reached as to acreage, by the Chairman and myself, are not so far apart as to make any appreciable difference. I find that of Saskatchewan's lands, the Dominion granted to railway companies after September 1, 1905, for which no commitments had been made previously, 2,561,122 acres, and this was all for railways built in Manitoba.

Adding that to the last total of alienations, we have a grand total of 29,687,769 acres.

I have left out of the calculation over a million acres appropriated for the Prince Albert National Park, as I do not think the Province should receive compensation for that.

Let us examine the different classes of alienation:

#### *Free homesteads.*

A homestead consisting of a quarter section, 160 acres each, of agricultural land, was given to anyone who would pay ten dollars entrance fee and perform for the next succeeding three years certain homestead duties. This policy, begun by the Dominion in 1871, continued during the administration by the Dominion.

#### *Second Homesteads.*

The right to a second homestead was confined (1) to anyone who prior to June 2, 1889, had completed the homestead duties and had been entitled to a patent for a free homestead. (2) To anyone who before January 1, 1923, had obtained a patent for a homestead, in the area set aside for pre-emptions and purchased homesteads, but had found the homestead unfavourable for successful agriculture and was no longer the owner of a farm.

#### *Pre-emptions.*

The law, from 1871 to 1890, and again from 1908 to 1918, gave to the homesteader, in a restricted area in the southern and south-western portion of the province, a right to buy a quarter section adjoining his homestead for three dollars an acre. The pre-emptor had to perform the duties required of homesteaders.

#### *Purchased Homesteads.*

This right ran from 1908 to 1918. The territory was the same as the pre-emption territory, but it was not necessary for the purchased homestead to be adjacent to the entrant's homestead. The purchased homestead could be taken up anywhere within the pre-emption area, and if the purchased homestead was within nine miles of the entrant's original homestead, the resident duties might be performed on the original homestead. The price was three dollars an acre, the same as pre-emption lands.

#### *South African Veterans' Grants.*

These grants were given under an act of 1908, 7 and 8, Edward VII, Chap. 67, as a bounty to all volunteers domiciled in Canada who had served with the British forces in South Africa during the years 1899 to 1902. Scrip was issued to the volunteer for a half section of land and to a very large extent passed into the hands of speculators and substitutes.

#### *Soldiers' Grants.*

These were allowances to Great War veterans, which began under The Soldiers Settlement Act of 1917. The soldier, wherever resident, was entitled to a

quarter section free. 322,247 acres were entered for in this manner. Under subsequent legislation, patents in respect to soldiers' grants were issued also to the Soldier Settlement Board, which largely explains the next heading, *Special Grants*.

#### *Sales Miscellaneous.*

Under this heading are included sales made for a great variety of purposes not included in any of the other classifications. Townsites granted to railways, other than the Grand Trunk Pacific, would come under this.

#### *Half breed scrip.*

These allowances were made by scrip issued to half breeds. Each scrip entitled the holder to locate 240 acres of land available for homesteads. The half breeds were afterwards given the right to take \$240 cash instead, which many did. This scrip or money was given as a result of treaties with the Indians. The definition of Indian, in the Act, includes half-breed.

The treaties under which this acreage was granted, were all made after 1905. Counsel for the Dominion frankly admitted, page 1166 of the record, that he did not claim that there was any trust under section 109 of The British North America Act. His contention was that the province would have had to grapple with this question and would probably have had to make these same grants; but the answer to that, it seems to me, is that by section 91 of The British North America Act the Dominion assumed the jurisdiction and obligation to look after the Indians.

The Chairman points out that in the Manitoba Natural Resources case no compensation was allowed that province for lands granted to half breeds, but I cannot find anywhere in the Manitoba case that any claim was made, probably because by The Manitoba Act, 1870, section 31, special provisions were made for a reservation of lands for half breeds. There is no such provision in The Saskatchewan Act.

*Station Grounds and Land reserved for Federal Purposes*, are two small items which need no explanation.

#### *C. & E. and A.R. & I. Railway.*

This was Saskatchewan land granted to Alberta railways after 1905 for which no commitments had been made before 1905.

### THE MANITOBA REPORT

The order in council providing for the Manitoba Commission was dated August 1, 1928; the report of the Commission is dated May 30, 1929, so that the Dominion Government had the Manitoba report before them from May 30, 1929, until March 20, 1930, when the agreement with Saskatchewan was entered into.

Counsel for the Dominion, at page 735 of the record, said:—

"The only point I make in connection with that is that the contract was entered into in the light of the agreement made in the Manitoba case, and of the report made there. These were all before the contracting parties, and an inquiry on similar lines was contemplated by the agreement with Saskatchewan and Alberta."

I agree with that contention. It becomes necessary then to examine the Manitoba report with some detail and see on what basis Manitoba was awarded \$7,654,069, before certain deductions were made, or a net of \$4,584,212.

These deductions were \$2,769,856, which the Province of Manitoba had received on the sale of swamp lands, 620,000 acres, and \$300,000, the value fixed on 150,000 acres of land granted as an endowment to the provincial university.

First, it will be noted that the amount of land in Manitoba that the Dominion gave away was nearly 8,000,000 acres for homesteads, and nearly 3,000,000 acres to subsidize railways, page 36 of the report, or a total of nearly 11,000,000 acres, and adding swamp lands and university lands a total of nearly 12,000,000 acres, as compared with 29,500,000 acres of Saskatchewan's lands given away.

Let us see if we can find on what principles the Manitoba Commission proceeded. On page 29 of that report it is stated:—

"It is the plain intention of the Order in Council that the Province of Manitoba is to be dealt with now as if it had come into Confederation in 1870 in the same position as Ontario, Quebec, Nova Scotia and New Brunswick—that is, as an independent, self-governing entity, having 'belonging' to it the lands, mines and minerals within its territory, still unalienated, and the royalties incident thereto, which it was to continue to administer and control for provincial purposes, 'subject to any trusts existing in respect thereof and to any interest other than that of the Province in the same.'

"Under this Order in Council the Crown lands of the Province, remaining unalienated, will be transferred to the Provincial Government as a matter of course. The task of this Commission has to do with that portion of those lands which has been alienated by the Dominion Government since July 15, 1870. Has the Province received adequate consideration for the resources which have been lost to it by the carrying out of Dominion policies? If not, what 'financial readjustments' (to use the language of the Order in Council) should be made now to render justice to the Province, and thereby establish the desired 'equality' in the only way in which it can be established at this date? The resources disposed of by the Dominion cannot now be returned. In the light of the Order in Council the retention of those resources in 1870 must be looked upon as an expropriation for which adequate compensation, or the balance justly due as adequate compensation, must now be paid."

On page 34 of the report it is stated:—

"The real questions raised by the subject now immediately under discussion, are, on the one hand, to what extent have the finances of the Provincial Government suffered by reason of the appropriation of the lands of the Province to free homesteads and grants to railways, and, on the other, to what extent have the financial responsibilities of the Provincial Government been relieved, and its expenditure lessened, by this policy.

"Now, dealing first with free homesteads, it must be remembered that a rapid increase of population throws upon a Provincial Government a heavy burden of expenditure for education, road-building, the administration of justice, etc. It is wrong, we think, to assume, as we have been asked to assume, that, if the public lands of Manitoba had been handed over to the administration of the Provincial Government, the Government would have adopted a free homestead policy similar to that of the Dominion. On the contrary, we find all along, from what was said by exponents of the Dominion policy in 1870 and down to the creation of Alberta and Saskatchewan in 1905, that the assumption entertained was that Manitoba, and later the new Provinces, if given the control of their lands, would use them, not for free homesteads, but for the purpose of revenue. It was feared from the very beginning that Manitoba, if allowed the control of its lands, would adopt a policy of settlement by land sales, which would necessarily prove to be slow, and would thus defeat the desire of the Dominion to bring about rapid settlement for the general benefit of Canada. But it must be remembered that in such a case, the case feared by the Dominion authorities, the lands remaining unsold and unsettled from time to time would still be an asset in the hands of the Provincial Government, which in the meantime would enjoy, as ready money, the proceeds of the lands sold. Naturally it was in the interest of the Province to see its population increase. Its prestige in the Dominion, its representation in Parliament, and even, of course, the amount of the per capita grant to the Provincial Government, would all be enhanced with the growth of population. But we think that a Provincial Government would not have lost sight of its own financial welfare in the pursuit of its desire to see the Province grow. The various considerations involved would have tempered each other. In all probability the selling price placed upon the lands for settlement purposes would not have been high at the beginning, and for some years, in respect at least to certain areas of the Province, a system of free grants would have been established. Still we think that a judicious land settlement policy, conceived wholly in the interests of the Province, could have produced considerable revenue, particularly at the time of, and after, the construction of railways. The revenues derived from School Lands are some indication of that. In all the Dominion Government has given away nearly 8,000,000 acres of Manitoba's good agricultural land to homesteaders. We think that the claim of the Dominion should be allowed to this extent that we should not tax that Government with an amount equal to the actual value of those lands. Such a charge would be excessive. Justice can only be done by reducing it in a degree commensurate to the sacrifice which we think the Provincial Government might reasonably have been expected to make to assure the growth of population of the Province."

On page 42 of the report we find:—

"We consider the payments we are about to suggest as the purchase price which is now to be paid to Manitoba for the lands of which it has been deprived from 1870 down to to-day."

Again, on the same page:—

"We are placing a light appraisal on the loss to the Provincial Government in respect to homestead lands."

Now, what is the light appraisal on the loss to the Manitoba Government, in respect to homestead lands, adopted by the Manitoba Commission? Manitoba receives a subsidy on the same scale as Saskatchewan, which has been capitalized by an expert, as of

July 1, 1929, the date fixed by the Dominion, at . . . . .	\$26,620,008
Manitoba had received in subsidies up to the time of the Manitoba report: . . . . .	11,193,430
(These figures are taken from the records of the Manitoba Commission)	
Manitoba received in consequence of the report of the Commission. . . . .	7,654,000
Total . . . . .	<u>\$45,467,507</u>

This is the light appraisal placed on nearly 12,000,000 acres of Manitoba lands.

If Manitoba received \$45,000,000 for nearly 12,000,000 acres of her lands given away by the Dominion, what should Saskatchewan receive for 29,500,000 acres of land, admitting that the land is of the same value—and the evidence before us is that Saskatchewan's agricultural land given away was much more valuable than that of Manitoba?

On October 1, 1930, Saskatchewan had already received \$14,500,000 in subsidies in lieu of lands, and the value of Saskatchewan's subsidy provided for in section 21 of the agreement, as of October 1, 1930, is about \$33,000,000. What, in addition, should be paid to Saskatchewan, in the language of the agreement, in order that the province might be placed in a position of equality with the other provinces of Confederation, and Manitoba is admittedly one of the provinces to which Saskatchewan should be compared?

If Manitoba has received \$45,000,000 for alienation of nearly 12,000,000 acres, for 29,500,000 acres Saskatchewan should receive roughly . . . . . \$110,500,000 less subsidies paid and to be paid . . . . . 47,500,000

Balance . . . . . \$ 63,000,000

That is, Saskatchewan should receive \$63,000,000 in addition to the subsidy provided, to place the province in a position of equality with Manitoba, as decided by the Manitoba Resources Commission.

This amount may not seem surprising if it is considered that before 1905 about 15,000,000 acres of Saskatchewan's fertile lands had been disposed of to the Hudson's Bay Company, the railway companies, and for free homesteads. Saskatchewan cannot be compensated for that. I mention it only to show that, when 29,500,000 acres disposed of after 1905 are added to the 15,000,000 acres disposed of before 1905, it can be readily understood that practically all of Saskatchewan's fertile agricultural lands had been given away without any revenue to the province except the subsidy in lieu of lands.

Let us consider another aspect of the case. It is argued that Saskatchewan would have administered its lands and resources in the same way as the Dominion and that the Saskatchewan administration of her natural resources would not have produced any surplus at all, and therefore Saskatchewan is entitled to nothing in addition to the subsidy provided. I think it must be admitted that undoubtedly a free homestead policy would have been continued by Saskatchewan, but I am equally convinced that such a policy would have been accompanied

with a policy for revenue as well. The addresses of the public men in Parliament in 1905, quoted above, are convincing to me that the province would have been driven by necessity to adopt a revenue policy. As Mr. Oliver said, every settler who goes on the land is a bill of expense to the Provincial Government.

In addition to what public men at the time said, the history of the province, from its economic standpoint, drives me to the same conclusion. I have prepared a table from different exhibits, showing year by year the population of Saskatchewan, the subsidy received in lieu of lands, current expenses of the province, and the public debt.

Year	Population of Saskatchewan	Provincial Expenditure	Land Subsidy	Gross Public Debt, Sask.
1906	257,763	\$ 1,361,351	\$468,750	\$
1907		2,091,612	468,750	
1908		2,654,689	468,750	
1909		2,220,866	468,750	
1910		2,575,145	375,000	
1911	492,432	4,235,850	562,500	
1912		4,656,900	562,500	13,070,512
1913		5,823,980	562,500	20,203,300
1914		5,369,649	562,500	22,735,772
1915		5,183,256	562,500	24,425,747
1916	647,835	5,329,610	562,500	25,961,990
1917		6,884,534	562,500	28,756,077
1918		8,086,756	562,500	31,662,505
1919		8,738,667	562,500	37,369,169
1920		12,083,330	562,500	45,299,201
1921	757,510	13,258,784	562,500	51,237,377
1922		12,523,208	562,500	54,058,210
1923		12,414,413	656,250	57,049,640
1924		12,464,196	468,750	57,879,852
1925		12,761,790	562,500	57,750,917
1926	820,738	12,465,166	750,000	57,742,206
1927		12,925,094	750,000	58,032,535
1928		15,362,866	750,000	62,875,048
1929		17,079,704	750,000	74,760,338
1930		18,202,676	312,500	94,840,611
1931	921,785		(To Oct. 31)	

If the average for the first five years, 1906 to 1910, is compared with the average for the last five years, 1925 to 1930, it will be observed that in the first period the subsidy in lieu of lands represented over twenty-five per cent of the current expenses of the province, whereas in the last period the subsidy was less than five per cent of the provincial current expenditure.

The capital expenditure of the Province also increased very rapidly.

During that period the Provincial Government spent on roads, bridges, etc., \$22,824,000, and on schools, in addition to the amount received from the School Lands Trust Fund, \$17,396,000, a total of over \$40,000,000.

In view of this evidence, I conclude beyond any doubt that the province would have been forced by necessity to adopt a revenue policy as regards its public lands.

Just how much land the province would have sold is speculative. What the province could have done is fairly well illustrated by the School Lands sales. These were all sales by public auction. Up until 1930 the Dominion sold 2,611,628 acres of School Lands in Saskatchewan for \$43,999,764, the average price from 1905 to 1930 being \$17.27 per acre. The average price of School Land sales in fiscal years, covering different parts of this period, was as follows:—

1905-1906	\$14 32
1912-1913	19 24
1917-1918	19 35
1918-1919	22 54
1921-1923	19 69
1928-1929	12 89
1929-1930	14 61

Except for the years 1905-1906, I have taken the years in which large acreage was sold.

Of these sales, 501,851 acres were cancelled, of a value of \$10,995,670, leaving a net of 2,109,777 acres, of a value of over \$33,000,000.

I feel quite sure that anything like a business-like administration of the School Lands Fund would have resulted in less cancellations and more collections. I will deal with that more fully under the claim of the province for losses on account of the administration of the School Lands Fund.

An extract from the report of the Saskatchewan Royal Commission on Immigration and Settlement, shows that the estimated value of grain crops and dairy products for Saskatchewan, from 1916 to 1928, was almost four billion dollars, namely:

Grain crops.....	\$3,738,413,960
Dairy products.....	218,831,854
Total.....	\$3,957,245,814

Other evidence shows in detail, from 1905 to 1930, the acreage, yield, production, and bushel price on the farm of Saskatchewan's wheat, oats, barley, flax and rye. I have not totalled this, but the evidence referred to shows that Saskatchewan was prosperous during that period. It is only a reasonable conclusion that a reasonable policy of collection would have obtained more money for the Saskatchewan School Lands Fund.

Taking into consideration the cancellations, we have it that 2,100,000 acres of school lands produced \$33,000,000. The value in 1905 of the subsidy in lieu of lands given to the province, at that time, calculated on a three per cent basis, was \$25,609,812. Not a very large acreage would have had to be sold to produce fifty or sixty million dollars in addition to the subsidy.

Important additional evidence as to the value of the lands in question is furnished by the order in council, December 5, 1908, P.C. 2649. Certain lands had been selected by the Canadian Northern Railway on account of their land subsidy, referred to in order in council, May 8, 1907, P.C. No. 1071. The order in council, December 5, 1908, referring to that selection, recites:

"That the Department of the Interior reports that the present ruling prices for land in the locality where the lands so selected are situated, vary from \$7.50 to \$12 an acre."

The locality referred to is the so called Goose Lake, Tramping Lake country, west of Saskatoon.

What the province would have sold is, as I have said, extremely speculative; they might have sold more, they might have sold less, but with the increasing annual expenditure for roads, bridges, schools and many other things, and with a rapidly increasing public debt, I do not think it is an unreasonable conclusion that the province would have been forced of necessity to sell at least enough to produce fifty or sixty millions of dollars over and above the twenty-five millions required to produce the subsidy.

Such a sum could have been very easily used on capital account, or, if wanted on current account, invested at three per cent, would have produced one million and a half to one million eight hundred thousand dollars a year income.

In seeking a solution of the question, what Saskatchewan would have done with its lands, if it had had the administration of them from 1905, it might be of some assistance to see what other provinces did with their lands. Exhibits have been prepared to show the history of the land policies of the different provinces.

At page 25 of the Nova Scotia exhibit it is stated:—

"The agriculturists' lands of Nova Scotia were practically all taken up in the eighteenth and first half of the nineteenth centuries. Settlement since then has been limited and most

of the land granted has been desired for the lumber and not for agriculture. The laws and regulations from the earliest times up to the present have provided for the grant of land either free or on nominal terms to settlers. . . .

"At the present time the province retains only about ten per cent of its land, which includes for the most part worthless or inaccessible areas that no one wanted."

What were the nominal terms to settlers? The R.S. of Nova Scotia, 1900, Chap. 24, provided for forty cents an acre. In 1903 this was changed to eighty cents an acre. In 1910 an Act was passed, providing for the disposal of Crown lands, and the price was fixed at eighty cents an acre together with costs of survey. In 1912 the price was changed to \$1 an acre. In the table of Receipts and Cost of Administration, from 1917 to 1926, at page 22, it appears that for 33,400 acres granted and 141,000 acres leased, Nova Scotia made a profit of \$160,000, nearly a dollar an acre.

As to New Brunswick, it is stated that almost since Confederation the land policy of New Brunswick should be more properly described as a timber policy. It appears that in 1881 some land was sold at an average of \$1.43 an acre, and in 1895 the usual upset price for land was \$1 an acre, and in 1906 the Public Domain Act recited that seven and a quarter million acres of Crown land had a value of \$3 an acre. In 1920 over fifty per cent of the entire revenue of the province was derived from Crown lands, the total revenue that year from Crown lands being \$1,517,340.

As to Ontario, the evidence shows that free land grants were given and that land was also sold for from 50 cents to \$1 an acre. Doubtless the agricultural lands of any value in Ontario were taken up in the eighteenth and first half of the nineteenth century, the same as in Nova Scotia. In 1926 any public lands available for settlers were in the north part of the province and even for them the price was fixed at 50 cents an acre.

The policy of British Columbia was to sell its Crown lands. During the ten-year period between 1905 and 1914, a total of over 3,200,000 acres was deeded. In the same period cash receipts from land sales amounted to \$9,741,000. In 1884 the price of first quality land was raised to \$2.50 an acre. In 1897 it was raised to \$10 an acre. At the present time the price of arable lands of the first quality is \$5 an acre and of second quality or pasture lands, \$2.50 an acre.

In applying this comparison of the land policies of other provinces of the Dominion one must not lose sight of the fact that a free grant of land in Nova Scotia, New Brunswick, Ontario or British Columbia meant an expenditure of much money and labour, and waiting for a long while before land covered with trees could become agricultural land and produce crops. As counsel for the Dominion said "in the older provinces raw land was of very little value, it cost so much to clear." On the other hand, in Saskatchewan, as a rule, the land was ready for the plough and could produce crops within one year.

The brief analysis I have made of the land policies of the other provinces shows that some provinces obtained substantial revenues from their lands.

And now, reverting to the question, what would Saskatchewan have done with its lands if it had administered them from 1905, I am convinced beyond any doubt, after reading the public utterances of such men as F. W. G. Haultain, now Sir Frederick Haultain, Chief Justice of Saskatchewan, J. T. Brown, now Chief Justice, Court of King's Bench, Saskatchewan, A. B. Gillis, now Senator Gillis, that a free homestead policy would have been continued by Saskatchewan. Just what that free homestead policy would have been is entirely speculative. The Dominion, even after 1905, enlarged its homestead policy. In 1905 a homestead could only be selected from even numbered sections, but in 1908, after the railways had taken their grants out of odd numbered sections, the remaining odd numbered sections were thrown open for homesteads. The policy of administering the lands for the purposes of Canada apparently produced such good results that all available land was thrown open.



As well as being convinced that a free homestead policy would have been continued, I am equally convinced, after reading the public speeches of the Hon. Frank Oliver and others referred to above, and after observing how much the public expenditure of Saskatchewan was increasing from 1905 on, as well as the public debt, and after observing what other provinces have done, that Saskatchewan would have been forced to raise a revenue out of its public lands.

#### THE DOMINION AND BRITISH COLUMBIA LANDS

The Province of British Columbia received a subsidy in lieu of lands of \$100,000 a year. It might be well to analyse the situation in British Columbia and see what lands the Dominion got for that.

When British Columbia entered Confederation it retained control of its lands, the same as the original provinces, under section 109 of the British North America Act. By the terms of the Union, the Dominion agreed to pay British Columbia \$100,000 a year in consideration of the land to be conveyed by British Columbia to the Dominion in aid of the construction of the Canadian Pacific Railway. The Province of British Columbia agreed to convey to the Dominion certain land for that purpose, and did convey an area along the railway, consisting of 10,976,000 acres, also an area known as the Peace River tract, of 3,500,000 acres.

The Dominion only disposed of 1,373,600 acres along the railway, and 270,000 acres in the Peace River tract, a total of 1,643,600 acres. Evidently the railways preferred to take their grants from the more fertile land in Manitoba, Saskatchewan and Alberta.

The time came when British Columbia claimed a reconveyance to the province by the Government of Canada of the land not disposed of by Canada. A Royal Commission was appointed by Order in Council, March 8, 1927, and that Commission reported on February 16, 1928. The Commission decided that on principles of natural justice British Columbia was entitled to a reconveyance of the land not disposed of. The recommendation of the Commission was approved and carried out. The subsidy is still being paid. \$100,000 a year, calculated on a three per cent basis, means a capital of three and one-third million dollars. That means that for 1,643,600 acres of British Columbia lands, disposed of by the Dominion, the Dominion pays, and has paid, British Columbia three and one-third million dollars as of 1870.

That is, the Dominion has paid to the Province of British Columbia slightly over \$2 an acre for the land used, as of 1870. On the same basis Saskatchewan should receive \$60,000,000 for the 30,000,000 acres disposed of by the Dominion for the purposes of Canada, or roughly \$35,000,000 in addition to the value of the subsidy in 1905.

And this would be on the assumption that the land in Saskatchewan was of no more value than that in British Columbia, whereas it is a well known fact that Saskatchewan's agricultural lands were of much greater value.

Summing up the facts and reasons given above, in order that Saskatchewan may be placed in a position of equality with Manitoba and British Columbia, in my opinion Saskatchewan should be paid in addition to the subsidy provided, a minimum of \$50,000,000 for lands alienated.

Or if viewed from the other angle as urged by Dominion Counsel, but which is not the wording of the agreement—what would the province have done with its resources had it administered them since 1905? I reach the conclusion after making the most liberal allowance for free homesteads, and a conservative estimate of what would be sold for revenue purposes, that the province would have realized at least \$50,000,000 from its lands in addition to the amount required to produce the subsidy.

## ADMINISTRATION CLAIMS

In addition to the lands alienated, the Dominion administered lands that were not alienated and received certain moneys, and it is alleged by the province that the Dominion should have received other moneys if the Dominion administration had been a business-like one, and that the Dominion should pay to the province such money. These claims may be summarized under three headings:

- (1) School lands.
- (2) Timber.
- (3) Grazing leases.

*School lands.*

Long before Saskatchewan became a province, the Dominion set aside certain lands, to be held in trust, and the proceeds of sales to be for schools in the territory concerned. Up to 1930 the Dominion sold 2,611,628 acres in Saskatchewan, for a contract price of \$43,999,764. Sales cancelled up to 1930 were 501,851 acres, contract price \$10,995,670. In the twenty-five years up to 1930, the Dominion paid to the province \$10,350,000 revenue received, and kept the principal intact, which was handed over to the province in 1930.

But the province lost the \$11,000,000 principal cancelled between 1905 and 1930, and, in addition, millions of dollars of interest, which, it is alleged, was on account of the unbusiness-like administration by the Dominion.

In the first place, the Dominion admits that they were trustees of this land; see Order in Council, March 20, 1891.

Then a letter from Frank A. Collins, Superintendent of School Lands, December 12, 1919, says:—

"The Federal administration of these lands, granting undue leniency in the past, has been severely criticized by the various local governments of Western Canada, and also by the Secretary of the Union of Municipalities."

It is quite clear that, after that, the policy and administration remained the same. There is no sign of any improvement. It was a policy of *laissez faire*, or, as expressed by counsel for the Dominion, a policy of wait and see, resulting in millions of dollars of principal and interest being lost to the fund.

I have shown above how Saskatchewan prospered in those days, and, with abundance of crops, it would not have been difficult to collect a much larger percentage of these sales. Nothing was done to try to collect, except to send an occasional letter. Apparently the officials in charge of this fund knew nothing of The Crop Payment Act. The Dominion never took a crop lease, although sometimes asked to do so. One witness stated, and he was not contradicted, that 95 per cent of the land sold in Saskatchewan was sold along with a crop lease. Interest and principal were allowed to go on for years, with no effort to collect, and this notwithstanding the fact that as early as 1919 the province, through the Hon. Mr. Dunning, then Provincial Treasurer, complained that the federal administration had resulted from year to year in payments steadily falling further and further behind.

The province also attempted to obtain the administration of these school lands, but without success.

I would not for a minute hold the Dominion to a hundred per cent trust administration, but I am satisfied that if the province had been administering these school lands, they could and would have collected many millions of dollars more than the Dominion, and that on principles of natural justice the Dominion should pay \$5,000,000 as a small part of the money lost because of their unbusiness-like administration.

*Timber Claims.*

During the administration of Saskatchewan's resources, 1905 to 1930, the Dominion received a revenue of \$25,369,852. During the same time they charged for expenses \$21,904,137, plus \$1,175,042, in all \$23,079,179.

These expenses are strenuously criticized by Saskatchewan. It is claimed that Saskatchewan is charged with the cost of a staff of 250, up until the time of the transfer of the resources, for the same work that Saskatchewan has since been doing with a staff of 62. In these expenses the province is charged with the expense of the National Park, \$443,495, also the cost of administration of seed grain in 1914-1915, \$1,227,177. The province claims that this was a national undertaking, that such seed grain was also advanced to Manitoba and Alberta, that there never was any agreement by the province to repay the 1914-1915 advance, as there was for the 1908 advance, that the Dominion took liens from the farmers, against the land, for all those advances, and that no such claim was made against Manitoba.

In my opinion, the expenses charged are excessive and unreasonable to the extent of several million dollars, but it seems to me unnecessary to go into that, because, if the Dominion pays a reasonable price for the lands alienated, it should receive any profits it made out of the lands. This would not apply to the cost of administration of resources not alienated, such as timber and grazing, but we have not the material before us to enable us to separate the cost of administration of these two items.

The Dominion received from Saskatchewan timber \$3,636,516. Against this there is charged for protection of timber \$3,884,325. This charge is criticized partly, because it includes charges for forest surveys and other forest services of a national character not charged to other provinces.

But there is no way of even estimating what should be deducted.

The complaint of the province is that the Saskatchewan forests were administered partly by the Forestry Service and partly by the Timber and Grazing Branch, and that the Forestry Branch got more than twice as much revenue in their administration as the Timber and Grazing Branch, on the boardfoot measure of lumber, and the claim is that all of the timber should have been administered by the Forestry Branch.

This mistake of policy is found in the Pulpwood Commission Report of 1924, which states:—

"And an unfortunate change was made, in that control of timber outside the forest reserves was withdrawn from the Forestry Service and vested in the Timber and Grazing Branch."

Without going into details, my conclusion is that Saskatchewan is entitled on this account to \$2,400,000.

#### Grazing Leases.

The Timber and Grazing Branch leased all lands at 2 cents an acre. The School Lands Branch obtained from 4 cents to 10 cents an acre on all grazing leases of school lands. Fifty per cent of the school lands leased were in the same part of the country as other leases, so there can be no comment that the land was of a different quality. In my opinion, there is no difference in the quality of the land, and there was a very large proportion of small leases issued by the Timber and Grazing Branch. I am convinced that under provincial administration Saskatchewan would have obtained \$1,200,000 more on the grazing leases, and is entitled to that sum on the principles of natural justice.

Summing up then, in addition to the value of the land alienated, Saskatchewan should receive:—

(1) On account of administration of school lands .....	\$5,000,000
(2) On account of administration of timber .....	2,400,000
(3) On account of administration of grazing leases .....	1,200,000
	<hr/>
	\$8,600,000
	<hr/> <hr/>

## DOMINION COUNTER CLAIMS

The Dominion claims to offset or counter claim against any allowances to Saskatchewan:

(1) A part of the cost of the Hudson's Bay Railway.....	\$15,500,000
(2) Railway guarantees of which Saskatchewan has been relieved .....	10,000,000
(3) Branch line construction .....	9,705,000
(4) Seed grain account outstanding .....	3,432,000

As to the first three of these claims, I agree with the Manitoba Commission, which stated at page 40:

"We think we should take this opportunity to add that we conceive it to be our duty to deal only with claims arising clearly out of the administration of the Crown lands in Manitoba. There may be other matters outstanding in the way of claims and counter-claims between the Dominion and the province, but we cannot attempt to decide them. We are concerning ourselves only with the question of Manitoba's lands and the amount of compensation now due to the province in respect of those lands, making due allowance for any equities in respect of them coming to the Dominion. We cannot inquire further to ascertain whether the claim of the province in respect of its lands is not met wholly or in part by some counterclaim of a different origin.

*Hudson's Bay Railway.*

The only basis for this claim is that at one time one of the Ministers of the Crown stated that the Government hoped to assist the building of the Hudson's Bay Railway by the sale of pre-emptions. No such decision was ever reached, no moneys received from pre-emption sales were earmarked or set aside for this purpose. Whereas the Dominion received from pre-emptions and other natural resources about \$25,000,000, it cost them to administer, according to their own statement, about \$23,000,000.

The Hudson's Bay Railway was built as a national undertaking and is now a part of the Canadian National Railways. No such claim was made against Manitoba as is now made against Saskatchewan and I cannot see any justification whatever for the claim, any more than if Nova Scotia, New Brunswick and Quebec were asked to pay a proportion of the cost of the Inter-colonial Railway.

*Railway Guarantees.*

The Province of Saskatchewan guaranteed bonds issued by railways included in the Canadian Northern Railway system to the extent of over \$27,000,000. The companies defaulted in their interest and the province had to pay under its guarantee. In consequence thereof, the province was entitled to indemnity and satisfaction from the railway companies, and entitled even to take over the railways, failing payment. The Dominion repaid the province and has taken care of the obligations ever since. An agreement was entered into between the province and the Dominion whereby the province assigned to the Dominion all the rights, remedies, etc., of the province, on account of said guarantees. The Dominion has taken over the railways referred to, which are now part of the Canadian National Railway system. What basis of claim by the Dominion there can be, I cannot understand. If there were any, I should think a good time to mention it was when the agreement was entered into whereby the Dominion acquired all rights against the railways. If the province had carried out its guarantee, it would have been entitled to acquire the railways, which now belong to the Dominion. I have a recollection of evidence given before the Railway Committee of Parliament, not long ago, that the branch lines in the West were the only part of the railway system that paid. At any rate, the Dominion obtained the railways, and now seeks to have the province pay for part of them. A fantastic claim, in my opinion.

### *Branch Line Construction.*

This claim is for money grants to the G.T.P. and C.N.R. for branch lines in Saskatchewan. This claim is just as groundless, in my opinion, as the last one. The Dominion has, from the beginning of Confederation, assisted railways by money grants. One statute, I remember, counsel for the province cited, where the Dominion assisted by money grants fifty-one different branch lines in different provinces of Canada.

### *Seed Grain Account.*

I agree with the Chairman on this question, that it is beyond the scope of our inquiry, as the contracting parties have dealt with the subject in section 18 of the agreement.

In case that it is not considered right and we are supposed to deal with it, I will state my conclusion. Most of the seed grain advances were made in 1908, and in 1914-15. In 1908 there was a definite agreement by the province to pay moneys advanced by the Dominion for seed grain. I think the province is liable for the balance due on this account. There is a wide difference in the amount claimed to be the balance due. The difference is clearly explained in correspondence between Mr. Gordon and Mr. Plaxton subsequent to the closing of the case in June. A letter from Mr. Gordon, June 5, 1934, enclosed a copy of a statement from Perring Taylor, showing that the province claims a balance due the Dominion of \$199,286. In Mr. Plaxton's letter to Mr. Gordon, July 16, 1934, Mr. Plaxton shows how the Dominion's claim for \$357,309 is made up, and that the difference is because the Dominion claims interest on the cost of distribution.

In the agreement the province obligated itself to pay to the Dominion the cost of administration forthwith upon the amount being ascertained. The province was notified of the amount thereof on March 31, 1909. I therefore think it right that the province should pay interest from that date, and would allow that credit to the Dominion, \$357,309.

The 1914-15 seed grain advance was evidently considered by the Dominion as a Dominion undertaking. Perhaps it was, as suggested, in order that the Dominion would be sure of crops while the war was going on. At any rate, no provincial agreement was asked for or obtained, as in 1908, and the Dominion took liens against all lands for its advances. I can see no liability by the province for this.

### *Grand Trunk Pacific Townsites.*

The Dominion sold to the Grand Trunk Pacific Townsites Development Co. Ltd. 9,484 acres of land for townsite purposes, for \$3 an acre plus the payment of one-fourth of the net proceeds realized from the disposal of the said lands. The \$3 an acre received is credited in the receipts of the Dominion. Before the Saskatchewan Resources Commission, Dominion counsel admitted that Saskatchewan was entitled to a further credit on account of the one-fourth of the net proceeds, namely, \$111,700, but in the Alberta case it is claimed that an error was made and that Saskatchewan should only get credit for \$85,700.

In the view I take, this does not make any difference, as, if the Dominion pays a reasonable amount for the lands, it is entitled to keep any profits made. Incidentally, this shows that the Dominion has received so far over \$12 an acre for this land, with more to come.

Summing up then, in my opinion Saskatchewan is entitled in addition to the sums provided in the agreement, in order that Saskatchewan may be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources, as from September 1, 1905, up to October 1, 1930, to the following amounts:—

## REPORT OF ROYAL COMMISSION

A minimum for lands alienated. . . . .	\$50,000,000
Loss on School Land administration. . . . .	5,000,000
Loss on Timber administration. . . . .	2,400,000
Loss on Grazing Land administration. . . . .	1,200,000
	<hr/>
	\$58,600,000
Less due for 1908 seed grain advance. . . . .	357,309
	<hr/>
	\$58,242,691

In conclusion, I wish to heartily thank Mr. Oliver Master, Secretary of the Commission, for his efficient and courteous assistance throughout this inquiry. His expert knowledge of the many difficult questions involved, as well as the perfect arrangement of the record and numerous exhibits, assisted me in many ways.

Respectfully submitted,

H. V. BIGELOW.

OTTAWA, January 30, 1935.

## SUPPLEMENTARY REPORT OF MR. JUSTICE H. V. BIGELOW

Since writing the above report I have had the opportunity of reading a later report of the Chairman. I would have no further comment to make, except for the fact that in criticizing my comparison of the Manitoba report with the situation of Saskatchewan, figures were used that were not in evidence before us up to January 30 last, when the three Commissioners met at Ottawa and exchanged draft reports.

In paragraph 96, of the Chairman's report,\* it is stated that Manitoba's alienations, corresponding in classification to the 29,500,000 acres of Saskatchewan's alienations, come to a total of nearly 18,000,000 acres, and that this is far above the 11,000,000 acres so commonly stated as the acreage of Manitoba's alienations.

As we had no such evidence before this Commission up till the time above mentioned, I wired to know what it meant and I have been furnished by the Secretary with a copy of an exhibit, or a page of an exhibit, from the evidence in the Manitoba case, which has only been furnished us by Mr. Master since our meeting of January 30 last above referred to.

From a very early time in this inquiry it was known that Saskatchewan relied on the Manitoba Commission as a precedent, and counsel for the Dominion concurred in the view that this inquiry should be on similar lines as Manitoba, and yet, with three able counsel representing the Dominion, no such evidence was presented and no attempt was made to go behind the finding of the Manitoba Commission, 11,000,000 acres.

This seems to me a most peculiar way to obtain evidence. Counsel have not been given any opportunity of verifying, correcting or criticizing it. That statement furnished by Mr. Master shows total patented alienations and other commitments in Manitoba as 23,760,519 acres. The Chairman suggests that about 18,000,000 acres is what should be considered.

With due deference, I prefer to take the finding of the Turgeon Commission, which fixes the acreage compensated for at nearly 11,000,000 (page 36 of the Manitoba report), for the following reasons:—

- (1) That Manitoba's case was well prepared and ably presented.
- (2) Both the Dominion and Manitoba adopted the findings and approved of them by statutes: Manitoba, 1930, chapter 30; the Dominion, 1930, chapter 29.
- (3) I do not think it is fair to accept evidence going back of the report without giving opposing counsel the chance to verify it. In the only respect in which I can check it, I find that this new evidence does not correspond with the evidence in the Saskatchewan inquiry, viz. Mr. Master's statement, item 11, is this: swamp lands sold by the Province of Manitoba, 850,064 acres. Saskatchewan exhibits 125 D. and 126 D., filed by the Dominion, show the net sales of swamp lands to be 619,294 acres.

We have seen many inaccuracies in statements prepared by the Dominion, so that before relying on them they should be checked up, e.g., at first the Dominion filed a statement, 72 D., page 41, showing the revenue from Saskatchewan resources as \$24,954,719. Later, under criticism from Saskatchewan counsel, exhibit 163 D. was filed, showing \$25,369,852.

\* *Explanatory Note.*—Lest they be regarded as typographical inaccuracies it should be noted that the references here and in certain other portions of this report are in accordance with the text, but the material referred to as being contained in the majority report is not to be found there.

Again, at first exhibit 72 D., page 42, showed the expenditure of the Dominion, to offset the revenue, as \$24,633,491. Later this was replaced by 162 D., showing \$21,904,131.

In taking the page now presented by Mr. Master, purporting to show total patented alienations and other commitments in Manitoba as 23,760,519 acres, we might as well take the lone exhibit, 73 D., of the Saskatchewan exhibits, showing Dominion alienation of Saskatchewan's lands between 1905 and 1930 at 44,843,973, whereas, when other exhibits are taken into consideration, the alienations Saskatchewan can claim for are below 30,000,000 acres.

If it is thought proper to go behind the findings of the Manitoba Commission, without knowing anything about the accuracy of the figures, I would make the following comment:—

The alleged alienations and other commitments in Manitoba are stated to be 23,760,519 acres.

The following items are included for which Manitoba could not be compensated:—

	Acres
(1) Grants to half-breeds. . . . .	1,518,500
(By the Manitoba Act in 1870 special provisions were made for a reservation of lands for half-breeds.)	
(2) Items in No. 4, grants made under the Manitoba Act and those made to satisfy claims arising from the Act. . . . .	472,000
(3) Grants made to the Hudson's Bay Co. . . . .	1,279,965
(These grants were a trust by the Dominion and the Province never should have got them.)	
(4) School land sales. . . . .	593,312
(5) Swamp lands sold by the Province should be reduced. . . . .	230,000
(See Exhibits 125 D and 126 D.)	
(6) Area set apart for Indians. . . . .	559,301
(7) Road allowances. . . . .	997,244
(8) School land sales unpatented. . . . .	22,273
(9) 50 per cent allowance for cancelled homesteads, etc. . . . .	372,000
(10) Leases. . . . .	2,024,107
(11) Alienations before 1870. . . . .	1,290,000
	<u>9,358,802</u>

This last amount, deducted from the 23,760,519 acres, leaves 14,401,717 for which Manitoba could have claimed compensation if the figures in Mr. Master's exhibit are correct, and there are no other exhibits to qualify those figures.

Not having access to the Manitoba exhibits, and counsel not being given a chance to answer the alleged evidence, I have interviewed the Chairman of the Manitoba Commission to see how the 11,000,000 acres, in the Manitoba report, was arrived at. He informs me that against the acreage Manitoba was claiming the Dominion claimed a set off of some millions of acres of Saskatchewan lands that were given the railways for branch lines in Manitoba, and that this was allowed. Our evidence shows that 3,707,906 acres of Saskatchewan lands were given to branch lines in Manitoba. If three and a half millions of acres are deducted from the fourteen and a half millions above referred to, we have the eleven million acres referred to in the Manitoba report.

Again, in the Chairman's report it is stated that the Manitoba award would include mineral areas, timber resources, fisheries and water-power rights. With due deference, and speaking from memory, a perusal of the Manitoba record will show that no claim was made for any such items, and certainly a perusal of the Manitoba report will show that no allowance was made for such items.

#### BRITISH COLUMBIA

The Chairman's report states: "From the resources of the railway belt and Peace River belt the Dominion, during its period of administration, derived gross revenue amounting to roundly \$0,100,000. Of that total only about fifteen per cent came from lands, the balance mainly from timber and mines."



When it is suggested that fifteen per cent of the income from British Columbia lands came from lands and the balance mainly from timber and mines, may I refer to the exact figures, which show that in about fifty years of administration the Dominion got from British Columbia mines about \$380,000, and from timber \$4,847,000, a little more than the Dominion got from Saskatchewan timber in twenty-five years. (Page 26, Martin report.) But I am unable to understand what difference it makes what revenue the Dominion made out of the lands, or whether it made any revenue, or whether it obtained its revenue above or below the surface. The point of interest, it seems to me, is what the Dominion paid British Columbia for the lands. In my opinion, as expressed in the main report, if the Dominion pays for the land it is entitled to any profit made out of the land. In administering Saskatchewan resources the Dominion happened to make a profit of over \$2,000,000, according to their own account, although it was not a money making policy. The administration of British Columbia's lands, the railway belt and the Peace River belt, for nearly fifty years, resulted in a loss to the Dominion, the revenue being about \$6,100,000 and the expenditure \$7,400,000.

If the revenue of six million dollars is mentioned for the purpose of showing that the Dominion received more than the equivalent of three and a third million dollars, which the Dominion paid British Columbia, that is misleading, as it cost the Dominion over seven million dollars to obtain the six million dollars. As Commissioner Martin said at page 27 of his report, "the above figures, however, are sufficient to show that the administration of the lands has not been profitable to the Dominion."

The subsidy to British Columbia in lieu of lands was certainly not given as an equivalent of any money the Dominion made out of lands.

When it is suggested that the transaction with British Columbia was a pre-union bargain between the Dominion and a self governing colony, I would make this observation, that it is quite true that the original bargain, whereby the Dominion got the lands, was a pre-union bargain, but certainly the bargain whereby British Columbia got its lands back, was not made until 1930. (See Statutes of Canada, 20 and 21, George V, chapter 37.)

And, in my opinion, notwithstanding the comments referred to, it still remains a fact that for 1,643,600 acres of British Columbia land the Dominion had paid since 1870, and will pay for ever, \$100,000 a year, the equivalent of three and a third million dollars as of 1870, over \$2 an acre.

When a comparison is made with Saskatchewan lands, it must be remembered that a very considerable portion of the lands included in the railway belt consists of impassable, mountainous and rocky lands, useless for agricultural purposes. (See Martin report, pp. 19 and 20.)

#### EXHIBITS

In my report, as first filed with the Secretary, for all the facts I stated I gave references to the appropriate exhibits. I was requested to strike these out, on the ground that it would save printing of the exhibits. Now that I realize that this question is liable to be controversial, I regret that the references were left out, particularly as there have developed different statements of the facts. Even with the references, it is not necessary for Parliament to have the exhibits printed.

I merely wish to state that anyone interested in verifying the facts I have stated can see the original references in my report as first filed, in the hands of the Secretary, Oliver Master, or I will be glad to furnish same.

## INTEREST

In my report I have said nothing about interest. With the unfortunate result of the inquiry, I recognize that it is now a matter of controversy and compromise between the two Governments. There is much force in the contention that the Dominion should pay some interest on the amount due to the province. My conclusion is that the province in twenty-five years would have realized at least \$58,000,000 from their resources, over and above the subsidy provided in 1905. That would not have been realized at the beginning, but would have no doubt extended over many years, perhaps over the whole twenty-five years. The province in the meantime has been paying interest at the average rate of about five per cent per annum on its loans, and is even charged five per cent per annum by the Dominion for money due the Dominion. It seems to me then reasonable that some interest should be paid by the Dominion on whatever is due. The rate and the date of the beginning of the interest I leave to the contracting parties.

Respectfully submitted,

H. V. BIGELOW.

REGINA, SASKATCHEWAN, March 1, 1935.