

TO HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL.

May it please Your Excellency:--

The undersigned Commissioner, appointed by an instrument under the Great Seal, bearing date the seventh day of May in the year of Our Lord one thousand eight hundred and ninety-six, to make an enquiry into, and to investigate and adjudicate upon the claims of Messrs. Ranocraft, Gennelly and Company (now Messrs N.K. & M. Gennelly) arising out of their contract for the construction of the Kingston Graving Dock, humbly reports as follows:--

That on Monday, the fifteenth day of June he proceeded to execute the said Commission, when Mr Ritchie Q. C., and Mr Dickson appeared on behalf of the claimants, and Mr Hogg, Q.C., on behalf of the Crown. By an arrangement between Counsel Mr Alexander Downey was employed to act as stenographer, and the undersigned requested Mr Merse to act as secretary or clerk, and Mr Curran to act as crier or constable.

The proceedings commenced on the fifteenth were, in the presence of some of the parties and of Counsel for all parties, continued on the sixteenth, seventeenth, eighteenth, and twenty-fifth of June. Witnesses were examined, under oath, ~~cross~~-examined and re-examined as in an ordinary proceeding in Court, and the questions arising upon the claim made, upon the Commission and upon the orders in Council by authority of which the Commission was issued were debated by Counsel for the respective parties.

On the twenty fifth of June, the undersigned was furnished with a copy of the notes of evidence taken by Mr Downey, to which he has caused to be added notes of evidence of two witnesses examined on that day, taken by Mr Merse. Since that date the whole of the notes of evidence taken have been carefully gone

over

ever and considered, and a copy of such evidence, with the exhibits filed in the matter, are respectfully submitted herewith.

When the question of interest came to be considered it appeared to the undersigned desirable to hear Counsel further as to that matter, and accordingly Counsel for the parties appeared and were heard on the second day of July instant.

With reference to the claims made by Messrs H.K. & M. Connolly, it will be observed that they arise out of, or are incident to a contract entered into on the twenty-third day of April one thousand eight hundred and eighty-nine between Andrew Charles Manroeft, Nicholas Karrel Connolly and Michael Connolly of the first part, and Her Majesty Queen Victoria, represented therein by the Minister of Public Works of Canada, of the second part, for the construction of a dry dock and works in connection therewith at Kingston in the Province of Ontario.

The claims which by the Commission and the orders of Your Excellency in Council of the twenty-ninth day of January, and of the seventh day of May in the year one thousand eight hundred and ninety-six, the undersigned is directed and empowered to inquire into, investigate and adjudicate upon, amount in all to seventy thousand four hundred and eighteen dollars and sixty-one cents (\$70,418.61). These claims are of four classes.

First, there are claims for extra work for which the claimants could not recover on a petition of right or on a reference of the matters to the Exchequer Court because some formality of the contract, such as having the engineer's direction in writing to do the work, or his certificate stating that it was done to his satisfaction and the value of it, or the approval of the Minister, has not been complied with. In this case the difficulty in

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the way of the claimants was increased by the death of the resident engineer a short time before the completion of the work.

Secondly, there is a claim for the cost of the materials and labour expended in repairing a crib that was damaged by a storm during the pendency of the contract, the loss of which by the terms of the contract would have to be borne by the contractors.

Thirdly, there are claims for damages for detention of a derrick and gang of masons in August, 1890, while waiting for orders from the resident engineer, and also for the detention of plant, dredges, pumps, etc., from June 17th. to August 20th., 1891, due to the fact that the contractors were after the completion of the principal part of the work prevented from removing the cofferdam, and for which the contractors might, it was thought, have no recourse at law; and

Fourthly, there is a claim for interest, which is not recoverable against the Crown, unless it is payable by virtue of a statute or a contract. There is no statute by which a Court would in such a case as this give interest against the Crown, and there has been no promise or contract by the Crown to pay interest.

By the Orders in Council of the 29th of January, 1896, and 7th of May, 1896, Your Excellency in Council has directed and empowered the undersigned to enquire, determine and award whether any liability exists, and if so what sum or sums is or are fair and reasonable remuneration to be paid to the claimants in respect of the various items contained in the said claim, including interest thereon from the period when the same should have been paid, if the undersigned should think the claimants in justice entitled to be paid interest, provided that no higher price be awarded for work, labour or material than the price agreed upon in the contract of the 23rd day of April, 1889, before mentioned, for similar

work, labour and materials; and that except as to the prices as aforesaid, no provision or stipulation contained in the tender, specifications or contract shall be allowed to govern, which might prevent the claimants from recovering what they may in fairness be entitled to, and that this is to include a waiver of the clause of the contract requiring the certificate of the Chief Engineer of the Department of Public Works, before payment.

The undersigned does not understand that he is directed and empowered to enquire as to whether or not in strict law "any liability" on the part of the Crown exists, for that would be an issue and enquiry of which the Exchequer Court would have jurisdiction, and the present Commission has issued and proceeds upon the view that the qualified and limited reference intended is outside of such jurisdiction.

The undersigned understands the scope and object of the enquiry to be to ascertain and determine whether or not, there is in respect of the claims mentioned any liability which in fairness, justice and good conscience the Crown ought to recognize and discharge.

EXTRA WORK. There can of course be no doubt or question that looked at from this standpoint the claimants ought to be paid for the extra work which they have done for the Crown, and of which the Crown has had the benefit, and for which they have not been paid.

With reference to the direction as to the price to be allowed for labour and materials it has happened that in some instances something has been done or provided for which no price was fixed by the contract of the 23rd of April, 1889, and in that case the price or amount allowed is such as has been proved to be the ordinary, fair and reasonable price.

The evidence shows in the first place that there was as pointed out in the report of the Chief Engineer, of the Department of Public Works, of the 21st of September, 1895, extra work resulting from changes or omissions in the original plans, embracing items numbered 8, 9, 10, 14 1/2, 15, 16, 18, 19, and 20 of the claim filed by the contractors, and as to which there is no dispute. Then there was other extra work not yet paid for which was occasioned by the widening of the deck entrance.

By the contract of the 23rd of April, 1889, and the specification attached thereto, the entrance of the deck was to be forty-eight feet in width. During the execution of the work the attention of the Minister of Public Works was called by persons interested in the shipping employed on Lake Ontario to the fact that the proposed width of the deck was not sufficient to accommodate all the steamers and propellers plying on the lake, and by an order of Your Excellency in Council of the Seventh of August, 1890, authority was given to increase the width of the entrance of the deck from forty-eight feet to fifty-five feet, and to incur in respect thereof an additional expenditure of \$31,500.00. Of that sum \$3500 was applicable to another contract, leaving an estimate of \$28,000.00 for the extra work that it was expected the claimants would be called upon to do. The actual sum that has been paid to them for such work, as appears by the final certificate of the Chief Engineer, is \$22,625.25. The undersigned mentions this fact only to show that the proposed work has been done for a sum within the original estimate, and not as having any material bearing upon the question in issue here. The items of the claim filed by the contractors which have reference to this extra work are 1 (a), 2, 3, 4, 7, 11, 12, 17, 21, 22. Of these only items 12, 21, and 22 were in dispute between the Chief Engineer of the Public Works Department and the claimants. In item 12 the latter

had included two sums amounting to \$35.25 for travelling expenses. When the deck entrance was widened it was necessary for the contractor and his engineer to go from Kingston to Belleville, and for the foreman of the quarry to go from Belleville to Kingston to arrange for the cutting of the stone for the new work. The Chief Engineer thought this expense was incidental to the work the contractors were to do and would not recommend its payment by the Crown, and in the form in which it was presented it has been abandoned. It came out in evidence, however, that at the time ^{the} widening of the deck was determined upon, the contractors had prepared certain stone or skew-backs for use according to the original designs which could not after the change was decided upon, be used for the purposes for which they were prepared. The labour in dressing these stones was lost to the contractors, and no charge has been made therefor. On the present enquiry the Chief Engineer was satisfied that the value of the labour so lost was equal to or exceeded the sum of \$35.25, and in that form the item is allowed. With reference to item 21 of the claim, the Chief Engineer on the information before him objected to a sum of \$77.25 for reducing some ashlar, and for the use of a derrick in doing ^{this} the work. That has however, been satisfactorily explained by Mr Hume, the contractors' engineer from whose evidence it appears that the work was actually done, that the derrick was used, that it was necessary to use it, and that the work was rendered necessary by the widening of the deck entrance. Item 22 represents a claim by the contractors to be paid \$19,757.55 for labour and materials expended on the cofferdam and made necessary because the entrance to the deck was widened. In the estimate on which authority was given by the Order-in-Council of the 7th of August, 1899, to expend \$31,500.00 in this work, was included extra in cofferdam \$10,000.00. That sum has been allowed and paid, and the dispute is as to the balance of \$2957.55. It appears that Mr Strong who at the time was resident

engineer in charge of the work, and who died before it was finished, gave the contractors' engineer to understand that an estimate made by them of \$12,750.00 for the extra work on the cofferdam would be allowed. That was before the authority for the change was given. It also appears that Mr Strong told the Chief Engineer of Public Works that the contractors would accept \$10,000.00 for this extra work, and that amount was placed in the estimate as already stated, but the fact was not communicated to the contractors. So it happened that the Chief Engineer thought the work was to be done for the lesser sum while the contractors believed they were to be paid the larger amount. In such a case the parties never having agreed or been at one as to the price, it seemed to the undersigned fair that the contractors should be paid the actual cost of the labour and materials expended on the cofferdam, that was referable to the widening of the deck entrance, and also incident to the strengthening of the dam, a work which the contractors executed in their own interest. The actual cost of enlarging and strengthening the dam greatly exceeded the sum charged, and the undersigned asked the Chief Engineer of Public Works and the contractors' engineer to examine into the matter, and see what proportion of the expenditure was referable to the widening of the deck entrance, with the result that it is clear that the amount claimed by the contractors is well within the fair and reasonable proportion of the cost of the work attributable to the widening of the deck. The undersigned finds that the item should be allowed.

In the item of the claim relating to the detention of the dredges, derricks, mows, &c., to which reference has been, and will again be made, there are five items which it appears to the undersigned should be dealt with as extra work, of which the

Crown had had the benefit, and for which the contractors have not been paid. During the delay two pumps, a large boiler, and two steam derricks belonging to the contractors were in constant use by the Crown in carrying on work ^{not} embraced in their contract. For one of these pumps a charge of twelve dollars per day is made, and for the other a charge of twelve dollars per day is made, and for the other a charge of ten dollars per day. Both will be allowed at the rate of ten dollars per day; the large boiler at fifteen dollars per day and the two steam derricks each at fifteen dollars per day, it having been proved that these prices are fair and reasonable.

The contractors also claim for extra work for piling rock taken from the deck site and for filling one of the ordns with this material. The item as given in the statement of claim is as follows:-

- *To labour piling rock taken from deck site and
- *as per orders of W.O. Strong 6610 cubic yards piles
- *on east side at 75 cents.....\$5,207.50
- *To 4625 cubic yds, on west side at 75 cts. 3,618.00
- *To material filling west orb from stone
- *piled on deck site, 6072 cubic yards at
- *75 cents.....3,604.00

This statement does not accurately represent the claim as actually put forward. By the contract the claimants were required to put the stone excavated on the deck site if as directed by the engineer, and for that they are not entitled to be paid anything, having already been paid as part of the price of excavation. The space in which the stone was piled did not however permit of the piling being done in the ordinary way, and about one tenth of it had to be hand laid to make a wall to retain

the remainder. The whole was afterwards removed and placed in the cribs or other works. The removal of the stone after it was piled on the dock site was clearly an extra, and should be allowed, and the price charged therefor is reasonable. For the part that was hand laid, and built into ^a retaining wall on the dock, it would be fair under the evidence to allow one dollar and twenty-five cents per cubic yard.

Before giving in detail the items and amounts for extra work recommended for payment, the undersigned desires to observe that with respect to some of the work done and materials supplied, the public get the benefit of it only in having a larger and better dock than was anticipated. They form in that way part of the actual cost of the finished work.

The following are items and amounts for extra work which the undersigned finds should be allowed:--

Item

No. 1a.	Recutting paving block to fit keel block quoin laid by Sir John A. Macdonald, and as instructed. 2 days stone-cutter, at \$4.50.....	\$9.00
No. 2	Time of foreman and gang of men setting keel block stones on acct. of widening of dock, per orders W.O. Strong.	
	1/2 day's use of steam derrick at \$25.00	12.50
	1/2 day's time of foreman at \$4.50	2.25
	1/2 day's time of acct. at \$2.50	<u>1.25</u>
	Carried forward.....	\$ 25.00

Item	Brought forward.....	\$25.00
No.2 (Contd.)	6 days time of labourers at \$2.50.....	15.00
No.3	To labour picking down concrete under paving and side walls on account widening of deck. 3/4 day's time of foreman mason at \$4.50 9 labourers 3/4 day each at \$2.50	5.25 16.88
No.4	To recutting paving at head on acct. widening of deck 1 1/4 days time of stone-cutter at \$4.50	5.63
No.5	To labour of foreman and man changing position of derrick at head of deck on account of widening of deck, changing steam pipe, etc. 3 1/4 days time of foreman at \$3.50 15 3/4 days time of labourers at \$2.50 3/4 days time of machinist at \$3.50	7.87 39.37 2.63
No.6	To labour changing blocking under derricks on acct. widening of deck 2.8 days time of foreman at \$3.50 7.2 " " labourers at \$2.50 1.3 " " of derrick at \$25.00	9.10 19.50 32.50
No.7	To labour, pointing, grouting and picking joint on stone. 1.7 days time of labour at \$2.50	4.25
No.8	To labour changing stairs at head of deck as ordered by W.O. Strong 4.5 days time of stone-cutters at \$4.50	20.25
1890	Aug. 1st 45.56 cubic ft. stone at \$45.00	19.60
No.9	To recutting rudder wall on acct. change in plans. 4 days time of stone-cutter at \$4.50	18.00
No.10	To change in quoins of emptying culvert checking stone under 19" discharge, wood-on drain pipe on acct. of volume of water and as per orders W.O. Strong. 1.75 days time stone-cutter at \$4.50 1.75 days time foreman at \$4.50 3.75 days time labourers at \$2.50 2.5 barrels Portland Cement at \$3.50	7.87 7.87 9.38 8.75
No. 11	To change quoin at head of deck after changing same, stone was recut as per orders W.O. Strong. 3 days time of stone-cutter at \$4.50	13.50
	Carried forward.....	\$21.25

Item	Brought forward	\$281.83
No.12	To labour in dressing skew-backs lost on acct. widening of dock Expenses on patterns Cartage	35.25 1.50 .50
No.13	To time of foreman and 7 men 3 hours each changing longitudinal on track stringers under double derrick, blocking rail, etc. 3 hours time of foreman at \$4.50 per day 2.1 days time of labourers at \$2.50 5.5 days time of water boy at .75 .9 days time of machinist at \$4.50	1.35 5.25 .38 4.05
No.14	To labour trenching to protect steam pipe 1.8 days time labourer at \$2.50	4.50
No.14 1/2	To quantity pure cement used on works over and above amount required by contract. 90 barrels Portland Cement at \$3.50	315.00
1891 Jan.	To labour cutting quoins and ashlar for discharge and section pipes, and as per drawings.	
No.15	7.25 days time stone-cutter at \$4.50	32.63
No.16	To labour changing quoins at head of chain path and inverts and as ordered. 2.75 days time stone-cutter at \$4.50 40 cu.ft. stone lost by jointing at 40¢/	12.38 16.00
No.17	To labour changing roller quoins and ashlar between roller centres, changed on account of widening. 9.25 days time of stone-cutter at \$4.50 3.25 days time of labourers at \$2.50 3.5 days time of derrick at \$25.00	41.63 8.75 87.50
No.18	To labour of cutters and fillers on discharge pipes, see details on acct. change and labour settling same. 3.25 days time of derrick at \$25.00 9.6 days time of foreman mason at \$4.50 2.2 days time of stone-cutter at \$4.50 47.5 days time of labourers at \$2.50	81.25 42.75 9.90 118.75
No.19	To labour cutting checks for hand holes in engine pit for main engines and pumps as per templates furnished, and for labour jointing for 4.0 pit and drilling for 3 pipe connecting 22" feet valve.	

Carried forward \$ 1101.16

Item	Brought forward	\$1101.25
No. 19	5.9 days time of foreman mason at \$4.50	26.55
(contd)	5.7 days time of stone-cutter at \$4.50	25.15
	7.5 days time stone-cutter (night) \$4.50	33.75
	27.75 days time of labourers at \$2.50	69.38
	2.25 days time of derrick at \$25.00	56.25
	2 quins 4' x 2' x 2' 1/2" - 20' - 20' - 20'	21.04
No. 20	To labour picking surface of rock on line of invert and under the caisson side walls as ordered.	
	20.25 days time of labourers at \$2.50	50.62
No. 21	To labour of stone-cutters reducing ashlar courses over skew backs and around caisson chamber.	
	7 days time stone-cutter at \$4.50	31.50
	7 days time hook men at \$2.50	17.50
	175 Lin. feet ashlar reduced or	
	175 x 4' x 2' - 175 Cu. Ft. \$45.00	77.50
	3.5 days use of derrick at \$25.00	87.50
No. 22	To labour and material placed in coffer-dam on acct. widening.	
	21255 Lbm. Ft. Piling & walling at 40¢	8514.00
	27730 pounds iron at .06	1663.80
	2212 cu. ft. yds. clay filling at 25¢	553.00
	<u>\$12710.80</u>	
	By Cash	10000.00
		2717.80
No. 23	Part of To use of the following plant and machinery during detention from June 17th, 1891, to August 20th, 1891:	
	65 days use 6' cent pump at \$10.00 per day	650.00
	65 days use 6' cent pump at \$10.00 per day	650.00
	65 days use of large boiler at \$15.00 per day	975.00
	65 days use of two steam derricks at \$15.00 per day each	1925.00
Supple- mentary Chain	To labour removing and placing in work rock taken from dock site and piled on the dock as per orders of W. O. Strong. 11026 cubic yards at .75 per yard	8275.50
	To making retaining wall with part of such rock to hold the remainder in position, 11026 cubic yards at \$1.25 per yard	1378.25
	<u>Total for extra work</u>	\$12553.84

REPAIRING CRIB NO. 8 DAMAGED BY A STORM IN JANUARY, 1890 .

The contractors claim the sum of \$4624.03, or making a correction indicated by them in their supplementary statement, \$4620.53, for labour and materials used in repairing crib No. 8 damaged by a storm in January, 1890. There is no dispute about the amount, which represents the actual cost of the repairs. By the terms of the contract between the Crews and the contractors such a loss as this would, it is clear, fall upon the latter and should be borne by them. It appears, however, that the crib was to be placed in a very exposed place, and that no precaution was taken in its design to meet while it was being filled, the danger of just ^{such} a storm as happened. The design was that usually submitted for such work by the Department of Public Works, and it is conceded that in general it is sufficient. But in this case Mr M. Connelly, the contractor, who superintended the work, seeing the exposed position in which the crib was to be placed, suggested to Mr Strong, the resident engineer, that the crib before it was placed in position should be strengthened by using longer belts and vertical posts, and that unless these precautions were taken he could not assume the responsibility for any accident that might happen. Mr Wilson, the clerk of the works testifies that he also suggested to Mr Strong the desirability of taking the precautions mentioned. The contractors were not in default in the way they did the work, and if the suggested precautions had been taken, the accident would not in all probability have happened. After the accident, Mr Strong told Mr Connelly that he had better place the crib back in position and no doubt the Government would have to pay for it, and that he (Strong) would put the amount of the cost of repairs in the final estimate. Mr Connelly is corroborated by Mr Wilson, who testifies that after the accident Mr Strong said that he was sorry he had not taken his, Wilson's advice, and that the contractors would

have to be paid for the repairs; and both Connelly and Wilson state that in the subsequent work the precautions suggested were taken. Now, if the provisions of the contract are not to govern where otherwise "in fairness" the claimants are entitled to recover, and that is the test prescribed by the Order in Council of the 7th of May, 1896, it seems very clear that the loss resulting from this accident should fall upon the Crown and not upon the contractors, and that they should be allowed the cost of the repairs executed by them.

THE DETENTION OF A DERRICK AND GANG OF MASONS IN
AUGUST, 1890:

and

THE DETENTION OF PLANT FROM JUNE 17th TO AUGUST 30th
1891.

There is no controversy about the claim for \$584.00 for the detention in August, 1890 of a derrick and gang of masons while waiting for the orders of the resident engineer with respect to the widening of the deck entrance. It was known at the time that there would be such a loss, and an amount of \$750.00 to cover it was placed in the estimate embodied in the order-in-council that gave authority to widen the deck.

With respect to the other branch of the claim the contractors demand a sum of \$35,081.00 for the detention of dredges, scoops, derricks and other plant from June 17th, 1891, up to and including August 30th, 1891, on account of the caisson and machinery not being completed and not being allowed to proceed with the removal of the cofferdam. For this delay the claimants were in no way responsible. They had done their work well and satisfactorily and in time. The delay was occasioned by other contractors being behindhand in the work they had undertaken to do, and the claimants were by direction of the Chief Engineer stepped in the work of removing the cofferdam and kept idle and waiting while such

other work was being executed. It was not anticipated of course that there would be a delay in all of sixty three days. But one thing after another happened to retard the work for the completion of which the claimants were kept waiting. At one time, it was suggested that the detention fell within clauses 22 and 23 of the specification, which provided that for certain purposes the Minister of Public Works might, without charge, prevent the removal of any pump or appliance required for the purpose of floating and testing the caisson to insure water-tight joints at the meeting faces, and that the contractors should flood the dock after it was completed, ^{and} before the removal of the caissons. But these provisions are, it is clear, not applicable and have nothing to do with the detention that occurred in this case. The penalties for which the contractors whose default occasioned the delay were liable were not exacted of them; and if the claimants are not now indemnified for the losses they have been put to it will happen that the burdens resulting from the delays and defaults of such other contractors will be shifted to their shoulders. That manifestly would be most unfair. The claim, apart from the question of the amount of it, is one which it seems to me ought in fairness, and good conscience to be entertained by the Crown. As to the amount the sum of \$4095.00 has already been allowed for the use during the period of detention of two pumps, one large boiler and two derricks. For the rest the undersigned has no reason to doubt that the charges made would be fair and reasonable if it were proper to allow the full earning power of the staff employed, and the plant and machinery which the claimants had on the ground. It is suggested that they might have materially reduced the quantity of plant that was kept idle. But in view of the fact that the long delay was not anticipated and they expected, if not from day to day, at least from week to week, to be allowed to proceed with their work, it does not seem unreasonable that they should keep all their

outfit together. But they are not entitled, it seems to me, to recover the full amount that such outfit would earn. There is no direct evidence but there can ^{be} little doubt that on the days immediately preceding the 17th of June, when the claimants were stopped in their work, a considerable portion of the plant would not be earning anything. There would, it is probable, be idle derricks at the quarries and other things like that.

Then if there had been no delay it is not clear that the contractors would have found immediate and profitable use for all the plant. There were chances to be taken, and these must be discounted. The claimants should be paid a sum that would fairly indemnify them for the loss occasioned by the delay, and not a sum that would represent during the detention a profitable engagement by the crews of the contractors' staff and outfit. It appears from the evidence of Mr Murdoch, who succeeded Mr Strong as resident engineer, that during the delay Mr Connolly represented to him that the contractors were losing three hundred and fifty dollars per day. There is no reason to doubt that the estimate was a reasonable one, and perhaps no fairer disposition could be made of the matter than to take that as indicating the amount of the claimants' loss for the detention of which they complain. Omitting Sundays, there were fifty-four days delay. That would give a sum of \$18,900.00, from which should be deducted an amount of \$3,510.00, part of the sum allowed for the use during the period of detention of the two pumps, one large boiler, and two derricks which were used Sundays as well as other days. That would leave an amount of \$15,390.00 to be paid to the contractors for their loss in this respect.

The claim made for interest amounts in all to \$15,195.75

Of this amount \$1788.28 is for interest on moneys for which in 1891 the contractors had obtained the necessary certificates, and which were withheld for a considerable time but afterwards paid, and the remainder is for interest on the amounts now claimed by the contractors. As stated, Counsel were heard a second time on the question of interest, and from their admission it appears that in 1892, and subsequently, there was a controversy as to whether the claimants and others interested in other contracts had not been everpaid the amounts due to them, and a suit was brought against them and others in the Exchequer Court, which, on the 11th of September, 1894, terminated in a judgment in favour of the Crown for one hundred thousand dollars, less forty thousand dollars allowed to the claimants on a counter-claim they were permitted to set up in that proceeding. It is possible that the delay that occurred in the prompt payment of moneys for which certificates had been given resulted from the pendency of the controversy mentioned, but the subsequent payment for these moneys was in effect an admission by the Crown that they were due, and if due, then they were under the contract due when the certificates were given, and it appears fair and just that interest should be allowed in respect of the delay in payment. There is no dispute about the amount. But with reference to interest on the amounts now recommended for payment it appears to the undersigned that it would not be fair or proper prior to September 11th., 1894, to allow interest, the total being less than the balance of the judgment that went against the present claimants and others. But as the judgment would bear interest, it is of course fair and just that the claimants should be allowed interest from that date.

Summing up the whole, the undersigned finds that the claimants are entitled to receive from the Crown the sum of \$45,286.12, made up as follows:-

For extra work

For extra work.....	\$18,634.84
Repairs to crib No. 5.....	4,620.53
Detention of derrick and gang of masons in August, 1890.....	,594.00
Detention of plant, etc. from June 17th to August 20th., 1891.....	18,320.00
Interest on moneys withheld and not paid in 1891 and 1892, although the contractors had obtained the necessary certificates therefor.....	1,799.28
Interest at 5 per centum on \$39,239.37 from September 11th, 1894 to July 2nd, 1896.....	4,257.47
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	\$45,296.12

All of which is respectfully submitted.

Ottawa, July 2nd., 1896.

(Sgd.) GEO. W. BURBRIDGE,
Commissioner.