

2. This act shall come into force on the day of its sanction. Coming into force.

C A P. I V .

An Act respecting the payment of a certain sum forming part of the subsidy granted by the act 49-50 Victoria, chapter 77.

[Assented to 21st December, 1895.]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. The Order in Council number one hundred and fifty-two of the eleventh of May, eighteen hundred and ninety-five, contained in the annex of this act, is approved. Certain Order in Council approved.

2. It shall be lawful for the Lieutenant-Governor in Council to pay to John L. Reay (for the Bank of Montreal), the sum of two thousand dollars, together with an additional sum of seven hundred and forty-one dollars and seventy-three cents, for costs ; to Dame Caroline Têtu, widow of the late Henri Jules Juchereau Duchesnay, the sum of four thousand dollars ; to Cléophas Beausoleil, advocate and member of the House of Commons of Canada, the sum of two thousand five hundred dollars, the whole with interest from the eleventh of May, eighteen hundred and ninety-five. Certain sums authorized to be paid.

3. The aforesaid sums shall be taken out of the consolidated railway fund, that is to say, out of the seventy-three thousand, three hundred dollars and seventy-five cents, of the subsidy declared lapsed by the act 57 Victoria, chapter 5, section 4, and the schedule A thereto. Whence to be taken.

4. The Government shall have recourse against Charles N. Armstrong mentioned in the Order in Council, annexed to this act, and against the Great Eastern Railway Company for the sums paid under this act, and for the interest thereon from the time they are paid. Recourse of Government against certain persons reserved.

5. This act shall come into force on the day of its sanction. Coming into force.

ANNEX.

COPY of the Report of a Committee of the Honorable the Executive Council, dated the eighteenth of April, eighteen hundred and ninety-five, approved by the Lieutenant-Governor in Council, the eleventh of May, eighteen hundred and ninety-five.

No. 152.

Concerning certain claims connected with the building of a railway from the village of Yamaska to Doucet's Landing.

The Honorable Provincial Treasurer, in a report dated the eighteenth of April instant, eighteen hundred and ninety-five, sets forth :

That, by section 5 of the act of the Legislature of this Province, 49-50 Victoria, chapter 77, a subsidy of four thousand dollars per mile was granted for the building of a railway from the village of Yamaska to Doucet's Landing (thirty-one miles) ;

That, on the first June, eighteen hundred and eighty-nine, by deed passed before Mtre. Reddy, notary, the Great Eastern Railway Company assigned to the Bank of Montreal, a sum of twenty-six thousand, six hundred and sixty-six dollars, to be taken from such subsidy, to wit : on the portion thereof devoted to the section of the said road comprised between Doucet's Landing and Nicolet (six miles and two-thirds) ;

That notice of such assignment was duly served upon the Government of this Province ; and, on the third of the same month (June, eighteen hundred and eighty-nine), Mr. H. T. Machin, assistant-treasurer, wrote the following letter to the Bank of Montreal :

" I beg to acknowledge the receipt of transfer, dated first of June, eighteen hundred and eighty-nine, by the Great Eastern Railway Company to the Bank of Montreal, of the subsidy on six miles and two thirds of the said railway, between Doucet's Landing and Nicolet, at the rate of four thousand dollars a mile, amounting to twenty-six thousand, six hundred and sixty-six dollars, granted by the act 49-50 Victoria, chapter 77, section 5.

" I beg to inform you that there is no record of any previous transfer of this subsidy filed in this department ;"

That, on the faith of such assignment and on the additional security of promissory notes, signed by the said company and endorsed by Mr. Cirice Têtu and Mr. Cléophas Beausoleil, for an amount equal to that mentioned in the said deed of assignment (twenty-six thousand, six hundred and sixty-six dollars), the Bank of Montreal advanced twenty-six thousand, six hundred and sixty-six dollars to the said company ;

That it is established that Messrs. Têtu and Beausoleil consented to give their endorsement as aforesaid only because they relied upon the said assignment, and they delivered the notes which bound them towards the bank only after the service of the notice of such transfer and after the reception of the letter from the assistant-treasurer above recited ;

That it is also established that the said advance was asked and granted for the building of the said section of the Great Eastern Railway, and that it was really employed for that purpose ;

That, by an order of the Executive Council, dated the eleventh of March, eighteen hundred and ninety, the Government acknowledged that the said company (or its legal representatives) was entitled to a sum of twenty-five thousand dollars for its work on the said section of the railway, and that it decided to pay the said amount : 1, less the sum of nine thousand, nine hundred and twenty-one dollars and thirty-two cents, which was to remain " deposited in the Treasury as security, not only for the " completion of the work remaining uncompleted on the " said section, but also for the payment of certain claims " filed in the Department of Public Works, for work done " and materials supplied, etc., by a certain number of " persons employed in the construction of that portion " of the railway for the said company or its contractors or " sub-contractors, which sum of nine thousand, nine hundred and twenty-one dollars and thirty-two cents was to " be paid to the company or its assigns only when the un- " finished work should have been completed to the satisfaction of the Government engineer, and the said outstanding claims should have been settled to the satisfaction of " the Honorable Commissioner," and 2, less the sum of seventy-eight dollars and sixty-eight cents, claimed by Mr. Vallée, the engineer, for his fees and disbursements.

So that, in virtue of this Order in Council, the Government has paid only fifteen thousand and seventy-eight dollars and sixty-eight cents ;

That such payment of fifteen thousand dollars was made directly to the Bank of Montreal as assignee of the said company ;

That the company afterwards completed its work on the section which was entitled to the said sum of twenty-six thousand, six hundred and sixty-six dollars, with the exception of the last third of a mile, on which something still remains to be done ;

That, as the Government refused, on account of the debts due for the construction of the railway, to pay the said bank the eleven thousand, six hundred and sixty-six dollars remaining due on the amount transferred to it, the

latter exercised its recourse against the other parties who were bound towards it ;

Mr. Têtu died on the third of January, eighteen hundred and ninety, leaving as his sole legatee, his daughter, Dame Caroline Têtu, widow Duchesnay, whom he had appointed his testamentary executrix, and against whom a suit was taken in that capacity ;

The suit was taken out, on or about the thirty-first of August, eighteen hundred and ninety-one, under the name of John L. Reay (for the Bank of Montreal), against these three defendants in the order above-mentioned, under the number two thousand, one hundred and seventy-three of the records of the Superior Court in Montreal ; and, on the eighth of November, eighteen hundred and ninety-one, the court condemned the defendants, jointly and severally, to pay to the plaintiff twelve thousand, nine hundred and eighty dollars and ninety-six cents with interest from the date of the summons (first of September, eighteen hundred and ninety-one), and costs ;

In execution of this judgment, the bank seized certain claims, due Mrs. Duchesnay, in the hands of Mr. H. J. Beemer, and thereby levied about three thousand, two hundred dollars ;

The bank also caused immoveables to be seized, which Mrs. Duchesnay values at about ten thousand dollars, and which, when sold by authority of justice, were adjudged for two hundred and seventy dollars ;

That, by a statement produced by Messrs. Robertson, Fleet and Falconer, advocates, for the Bank of Montreal, it appears that it has received, on account of the said judgment :

From Mrs. Duchesnay, by execution.....	\$ 3,292 34
From Mr. C. Beausoleil..... ..	2,000 00
And from Mr. Armstrong, who had contracted for the building of the railway and who had made himself responsible towards the endor- sers, Messrs. Têtu and Beausoleil.....	4,885 00
	<hr/>
	\$10,177 34

And that the costs due to the said advocates in
the said case are.\$ 741 93

That, in the month of February, eighteen hundred and ninety-three, Mrs. Duchesnay, addressed a petition to the Lieutenant-Governor in Council, alleging, in substance, the facts above set forth, and containing, amongst others, the following allegations :

“ That the company’s contractor, at the time, Mr. Charles N. Armstrong, of the city of Montreal, at the request of the

directors of the company, applied to the late Cirice Têtu, formerly of the city of Montreal, merchant, and to Cléophas Beausoleil, of the same place, advocate and member of the House of Commons of Canada, to obtain through them, the advances of money necessary for the completion of the aforesaid section of the railway ;

“That these gentlemen—on the formal promise of the said Charles N. Armstrong and of the directors of the Great Eastern Railway Company, that the responsibility they were disposed to assume to promote the interests of the company would be covered and protected by the assignment and transfer, to be made by the company, to any financial institution which would advance the money asked for, of the subsidy or subsidies granted to the company by the Government of Canada and that of the Province of Quebec—undertook to work together to obtain the advances asked for ;

“That, in fact, after several attempts, they obtained a sum of twenty-six thousand, six hundred and sixty-six dollars and sixty-six cents, from the Bank of Montreal, on their endorsement of certain notes of the said company, signed by its president, James Cooper ;

“That the endorsers of the said notes and the said late Cirice Têtu in particular, consented to bind themselves towards the said Bank of Montreal, only on the express condition that the said transfer so made and accepted by the Government of the Province of Quebec, and that if they had thought that the said transfer, as noted and accepted by the Government, would have not given rise to a lien between the latter and the bank to which the transfer was made, they would never have consented to make themselves responsible for such a large amount ;

“That, in her capacity of sole legatee and testamentary executrix, your petitioner, after the death of the said Cirice Têtu, endeavored, in concert with the said Cléophas Beausoleil and Charles N. Armstrong, to obtain from the Government the payment to the Bank of Montreal of the balance remaining unpaid by the settlement of the claim aforesaid, out of the sum of nine thousand, nine hundred and twenty-one dollars retained in the Treasury ;

“That the said Charles N. Armstrong wrote several letters to that effect to the various officers of the departments at Quebec and, in particular, to E. Moreau, Esq., director of railways of the Province of Quebec, complaining of the bad faith of the Government, and expressing surprise that the latter should have retained and paid the workmen and others the amount of their claims out of the moneys of a subsidy transferred as security, instead of doing so out of the amount of the subsidy not yet transferred and set apart for that section of the railway from Saint Thomas de

Pierreville to La Baie du Febvre; a copy of which correspondence is in the Department of Public Works.....

“ That your petitioner is a widow and mother of a large family, most of whom are very young and unable to earn their living, and she herself is entirely without means of subsistence, through being deprived of the moneys and other property belonging to her so confiscated as aforesaid in virtue of the law ;

“ That, moreover, the proceeds of the seizures taken out against her cannot suffice to pay the claims of the Bank of Montreal, and consequently your petitioner is exposed to lose all other property, moveable or immovable, which she might have or acquire

“ That for all these reasons, your petitioner respectfully and confidently prays Your Honor in Council to be pleased to take into consideration the various circumstances which have preceded, accompanied and followed the transfer, by the Government of the Province of Quebec, of the subsidy of twenty-six thousand, six hundred and sixty-six dollars and sixty-six cents, as security for the advances made by the Bank of Montreal to Messrs. Tétu and Beausoleil, and firmly hopes that Your Honor in Council will come to the conclusion that serious injustice was then done to the Bank of Montreal, and the endorsers, in good faith, of the notes of the Great Eastern Railway Company, and specially to your petitioner, who now represents the rights and obligations of one of them, the said Cirice Tétu, and that, in equity, it lies with Your Honor in Council to repair the injustice so done to your petitioner :

“ 1. By indemnifying her for the sums paid by her to the Bank of Montreal, in payment of its claim or received by the said bank, as creditor, on the proceeds realized by the sale of the immovable property belonging to your petitioner *ès-qualité* ;

“ 2. By paying directly to the Bank of Montreal, the balance which remains or may remain due on its claim, in capital, interests and costs ;

“ Or in such other manner as may please Your Honor in Council ; ”

That the allegations of the said petition are substantially true; and, in particular, it is true that Messrs. Beausoleil and Armstrong protested against the action of the Government which, without any regard for the rights of the assignees, decided, by a mere Order in Council, to retain a portion of the subsidy assigned to the Bank of Montreal, to devote the same to the payment of claims due for the construction of the said section of the railway ;

That it is to be observed that the sum of twenty-six thousand, six hundred and sixty-six dollars and sixty-six cents, advanced by the bank, was all employed in paying

for work, materials and other expenses in connection with the construction of the said section of the railway, as the Honorable Mr. Garneau, then Commissioner of Public Works, acknowledges in a letter addressed by him to the Bank of Montreal, on the fourteenth of November, eighteen hundred and ninety, from which letter the Honorable Treasurer extracts the following passages :

“ It appears, by the certificate of Mr. C. N. Armstrong, of Montreal, the general manager of the Great Eastern Railway, filed with this department on the twenty-ninth of October last, that Messrs. C. Beausoleil, M.P. and advocate, and C. Têtu, merchant, both of Montreal, did, between the first of June and fifteenth of September, eighteen hundred and eighty-nine, pay over and advance to him, as contractor for the construction of that railway, the sum of twenty-six thousand, six hundred and sixty-six dollars and sixty-six cents, as representing the amount of the Quebec Government subsidy coming due to the company on its railway, at the rate of four thousand dollars per mile, and that the whole of the said amount was expended in and upon the construction of said road, and forms part of a total expenditure of forty-four thousand, two hundred dollars, made to fifteenth of September, eighteen hundred and ninety-nine, as shown by the certificate of Mr. W. C. E. Phillips, the engineer in charge of the construction; Mr. Armstrong also certifying that the above subsidy of twenty-six thousand, six hundred and sixty-six dollars and sixty-six cents was transferred to your bank as collateral security for the repayment of the moneys so advanced. Considering that, after the death of Mr. C. Têtu, Mr. Beausoleil is responsible with Mr. Armstrong to your bank for the eleven thousand, six hundred and sixty-six dollars and sixty-six cents, balance now remaining due to the latter on the amount of said transfer; and considering that the advance so made by your bank to Messrs. Beausoleil and Têtu constitutes a privileged claim on said railway, as having been employed in the construction of that road, towards the settlement of laborers' wages, etc., as far back as the first of June, eighteen hundred and eighty-nine, etc., etc.”

That, by the act 57 Victoria, chapter 5, section 4, it is enacted that the subsidies granted to the railway companies mentioned in schedule A, annexed to the said act, are cancelled, because the said companies have not complied with the requirements of certain acts, and the Great Eastern Railway is included in that schedule, but it is therein stated: “ saving any right that may be admitted in favor of Mrs. widow Duchesnay,” the Government, while of opinion that *primâ facie* Mrs. Duchesnay's claim should not be rejected, had not yet sufficient information on the subject to allow it to come to a decision ;

That in the Supplementary Estimates for the year ending thirtieth of June, eighteen hundred and ninety-five, submitted to the Legislature during last session, this matter is mentioned in the following terms :

The Great Eastern Railway Company : to pay amount of claim arising from a transfer, dated first of June, eighteen hundred and eighty-nine, to the Bank of Montreal, signified to and recognized by the Government, of a portion of the subsidy granted to the said company, in consideration whereof the late Cirice Têtu and others had advanced to the said company the sum of twenty-six thousand, six hundred and sixty-six dollars and sixty-six cents..... \$11,000 00

This sum was not entered amongst those to be voted but amongst those *already voted*, and it was only mentioned as a matter of information ;

That, since that time, by the correspondence exchanged with Mrs. Duchesnay, Mr. Beausoleil, Mr. Armstrong, and the advocates of the Bank of Montreal, the Government has completed the information it required, and has ascertained that the said amount of eleven thousand dollars would be insufficient as hereinafter stated ;

The Honorable Treasurer is of opinion that it would be but just to place the parties aforesaid on the same footing : the Bank of Montreal for what remains due to it in virtue of the judgment obtained by it as aforesaid, and the others for what they have respectively paid ;

That, if all that is due in virtue of this judgment for capital, interest and costs, be calculated, it will amount to a sum in excess of the eleven thousand, six hundred and sixty-six dollars remaining due by the Government on the transferred subsidy ;

That, by a private writing dated the thirtieth of March last and at present deposited in the Treasury Department, it was agreed between Mr. John L. Reay, plaintiff (for the Bank of Montreal) in the said case number two thousand, one hundred and seventy-three, S. C. M., C. Beausoleil, C. N. Armstrong, by his attorney A. C. Würtele, and Mrs. Duchesnay, represented by Mr. Gustave Hamel, that the said sum of eleven thousand, six hundred and sixty-six dollars should be divided amongst them, as follows :

Mr. John L. Reay.....	\$2,000 00
Mrs. Duchesnay	4,000 00
Mr. Cléophas Beausoleil.....	2,500 00
Mr. Charles N. Armstrong.....	3,166 00

And that this arrangement would be a final settlement between the parties.

In addition to this private writing it was agreed that Mr. Armstrong should pay the plaintiff's attorneys their costs : seven hundred and forty-one dollars and seventy-three cents, as established by a letter of Mr. Morgan, representing Mr. Armstrong.

CONCLUSION.

Apart from the question whether, by the mere notification of a sale of a claim, the Crown can be liable towards the assignees and deciding the present case on its own merits :

The Honorable Treasurer, considering the transfer, the notification thereof, the letter of the Assistant-Treasurer, the payment made directly to the Bank of Montreal, the assignee, the circumstances under which Mr. Têtu and Mr. Beausoleil became responsible towards the bank, the employment of the sum advanced by it ;

Considering, moreover, that the claims, for the payment of which the Government has retained a portion of the transferred subsidy, were not more favorable than those which had been paid by means of the twenty-six thousand, six hundred and sixty-six dollars obtained from the bank ;

Considering the damages suffered by Mrs. Duchesnay through the judicial proceedings taken against her ;

Considering that if, under certain circumstances, the Government could retain a subsidy granted to a railway undertaking to pay the debts due by the company or by the contractors for the building of the road, without injustice to the company, it could not, in this instance, disregard the rights of third parties ;

Considering that, in order to enable the Government to so protect the claims due for the construction of a railway, the Legislature of this Province thought that a special act was necessary and for that purpose passed the act 56 Victoria, chapter 36 ;

Considering that the company has done certain construction work on the line of the said railway, beyond the six and two thirds miles above mentioned, for which work it has received nothing, and which is worth more than what remained to be done on the last third of a mile as aforesaid ; considering also that the interest on the nine thousand, nine hundred and twenty-one dollars and thirty-two cents, from the year eighteen hundred and ninety, exceeds the value of the work remaining to be done on such third of a mile ;

Proposes that, out of the consolidated railway fund, and out of the seventy-three thousand, three hundred dollars and seventy-five cents of subsidies declared lapsed (saving the rights of Mrs. Duchesnay) by the act 57 Victoria, chapter 5, section 4, and schedule A, forming part of such act,

there be paid to John L. Reay (for the Bank of Montreal) a sum of two thousand dollars, to Dame Caroline Têtu, widow of the late Henri Jules Juchereau Duchesnay, as legatee and testamentary executrix of the late Cirice Têtu, her father, the sum of four thousand dollars, and to Cléophas Beausoleil, the sum of two thousand, five hundred dollars.

As to Mr. Armstrong, to whom the sum of three thousand, one hundred and sixty-six dollars would be due, the Honorable Treasurer does not consider it expedient to make any recommendation before obtaining full information as to the nature of his relations with the undertaking of the Great Eastern Railway, in order to be in a position to judge to what extent he might have been responsible towards the creditors, whose claims the Government has paid in virtue of the said Order in Council, and, meanwhile, the Honorable Treasurer proposes that the sum of seven hundred and forty-one dollars and seventy-three cents, to be taken out of Mr. Armstrong's share, be paid to whomsoever it may concern, for the costs of the plaintiff's attorneys in the said case number two thousand, one hundred and seventy-three, in the Superior Court, Montreal ;

The Honorable Treasurer therefore proposes that a bill be submitted to the Legislature, at its next session, to authorize the payment of the said sums of two thousand dollars to Mr. Reay (for the Bank of Montreal), four thousand dollars to Mrs. Duchesnay, two thousand, five hundred dollars to Mr. Beausoleil, and seven hundred and forty-one dollars and seventy-three cents, for the costs of the plaintiff's attorneys in the said suit, with interest from this day to that of the payment.

(Certified),

GUSTAVE GRENIER,
Clerk of the Executive Council.

COPY of the Report of a Committee of the Honorable the Executive Council, dated the twelfth of December, eighteen hundred and ninety-five, approved by the Lieutenant-Governor on the thirteenth of December, eighteen hundred and ninety-five,

No. 454.

Respecting the Order in Council No. 152, of the eleventh of May, eighteen hundred and ninety-five.

The Honorable the Provincial Treasurer, in a report dated the twelfth of December instant (eighteen hundred and ninety-five), represents :

That, by an Order in Council of the eleventh of May, eighteen hundred and ninety-five (number one hundred

and fifty-two), respecting a sum of twenty-six thousand, six hundred and sixty-six dollars and sixty-six cents transferred by the Great Eastern Railway Company to the Bank of Montreal, which sum made part of the subsidy granted for the building of a railway from the village of Yamaska to Doucét's Landing, it was ordered that the Government should pay out of the consolidated railway fund, to John L. Reay (for the Bank of Montreal), a sum of two thousand dollars, to Madame Caroline Têtu, widow of the late Henri Jules Juchereau Duchesnay, as heiress and testamentary executrix of the late Cirice Têtu, her father, the sum of four thousand dollars, and to Cléophas Beauvoileil, the sum of two thousand, five hundred dollars ;

That it is stated in the said Order in Council :

“ As to Mr. Armstrong, to whom the sum of three thousand, one hundred and sixty-six dollars would be due, the Honorable Treasurer does not consider it expedient to make any recommendation before obtaining full information as to the nature of his relations with the undertaking of the Great Eastern Railway, in order to be in a position to judge to what extent he might have been responsible towards the creditors, whose claims the Government has paid in virtue of the said Order in Council.”

That the Honorable the Provincial Treasurer is now in a position to declare that Mr. Armstrong was responsible towards the persons whose claims the Government paid, as stated in the said Order in Council of the eleventh of May, eighteen hundred and ninety-five, and that consequently there is no reason to pay him the said sum of three thousand, one hundred and sixty-six dollars mentioned in the said Order in Council.

(Certified),

GUSTAVE GRENIER,
Clerk of the Executive Council.

C A P . V .

An Act respecting the Protestant Asylum for the Insane.

[Assented to 21st December, 1895.]

WHEREAS, under the powers conferred by the act 55-56 Preamble. Victoria, chapter 39, the Government guaranteed the payment of the capital and interest of one hundred and fifty thousand dollars of debentures issued by the corporation of the Protestant Hospital for the Insane, and payable in twenty years ;

Whereas, to secure the repayment of the sums that the Government might be called upon to pay under such guar-