‘Diplomatic forces of the new railroad’

Transcontinental terminus entry at Vancouver and Seattle

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In a review of academic studies of the American railroad, historian Maury Klein laments that ‘no one has . . . compared the organisational structures of several major roads or tried to correlate those structures with geographical regions or other factors.’[1] This article responds to Klein’s plaint by offering a comparison of the activities of the Canadian Pacific Railway Company (CPR) and the Great Northern Railway Company (GN) to secure access to a Pacific terminus at Vancouver, in Canada, and Seattle, in the United States, respectively. Its focus on the actions of the firm’s managers rather than the impact on the locale sets it apart from an earlier account of the terminus activities of the two railroads as well as from studies of other lines on the Pacific coast of North America.[2] Its method, the examination of terminus entry conflict through the prism of a select group of company officers that illuminates the role of the railroad local lawyer in particular, melds traditional perspectives on railroad management with the organisational approach championed by A. D. Chandler, Jr. Its conclusion, that both firms sustained significant setbacks in this process, departs from the received interpretation in the histories of both companies and both cities.

Comparison of an element in the development of two of the most successful transcontinental rail systems on the American continent is certainly not new. Early accounts of railroad activity on the Pacific coast usually celebrate the leaders of the two companies, W. C. Van Horne for the Canadian Pacific, and James J. Hill for the Great Northern. The acquisition and development of the terminus provides yet another demonstration of the business acumen of their heroes.[3] Pioneer histories of the two cities also laud the arrival of the railroad as heroic and its leaders as Great Men.[4] Even muckrakers acknowledged the railroad achievement. Critics of the Great Northern recognised the company’s status and influence in Seattle by ridiculing the city as ‘Jimhillville’.[5] Thus both early celebrants and detractors rehearse an element of the moribund ‘Octopus school’ of railroad history, the invincibility of the enterprise.[6]

Though modern studies of nineteenth-century railroads have largely discarded the interpretations of the Octopus school, recent accounts of railroad

terminus activity in Vancouver and Seattle reach conclusions similar to those in the earlier works. Relying heavily on the correspondence of company officers, both public and private, these historians frequently adopt the military-state rhetoric that their subjects used to describe their activity.[7] The most influential history of the Canadian Pacific declares that Van Horne's tough bargaining with the provincial government and local landowners made the company 'the real winner in a much more important game of skill and bluff', Pacific terminus acquisition and entry.[8]

The organisational approach of A. D. Chandler, Jr, represents an important alternative to this military metaphor.[9] The pre-eminent business historian of railroads glosses over the construction period, in part because the basic sources for this type of study, the formal code and organisation chart, are in short supply.[10] But a predisposition to recognise order and system leads a group of historians influenced by Chandler to conclude that the Great Northern's activities in Seattle were 'wise, swift, and sure'.[11] In both modern readings, then, the Pacific outlet becomes another episode that demonstrates the power of the company as the 'National Dream', or bears witness to the prescience of its commander as the 'Empire Builder'.[12]

A contemporary railroad administration manual offers a conceit that facilitates melding elements of the two approaches in the study of terminus entry. Though American railroad trade paper editor Ray Morris deals largely with organisation during operation, i.e. after construction, he offers a brief chapter on construction that he casts in the traditional military metaphor. Between references to the construction force as an invading army, he describes one element of the headquarters staff, the 'diplomatic forces of the new railroad [that] labour long and hard to obtain their rights-of-way without going to the courts for them'. This task requires 'skilled legal counsel and the exercise of much diplomacy'.[13]

Crude as it is, the description suggests elements of the actual managerial combination that both firms deployed for terminus entry. Tracking company correspondence reveals that this 'diplomatic force' consisted of a small command group of two staff officers – general manager and general counsel for the Canadian Pacific; president and second vice-president for the Great Northern – in corporate headquarters in Montreal or St Paul, Minnesota, and a line officer, the company's local lawyer, on the Pacific coast periphery.[14] That each transcontinental, when confronted with a very different physical, business, and legal landscape on which to drive its line to the ocean, created a similar organisation suggests that the configuration was not coincidental. Both companies drew on past practice of lines throughout the continent concerning access to key property. And in Hill, who was general manager of the Canadian Pacific before Van Horne, they shared a common organisation builder.

Within this combination, the key to success in both cases rested with the only officer with local connections, the lawyer. This is in part because entry turned on a formal undertaking with the local authorities for concessions. In their choice of a local counsel with important political connections the

transcontinentals followed the example of other railroads across the continent.[15] The attorneys that the companies selected, Montague William Tyrwhitt-Drake for the Canadian Pacific, and Judge Thomas Burke for the Great Northern, made good use of their political and business connections to extract from the respective companies probably the highest fees in their jurisdictions at the time.

In a study of railroad lawyers in the development of the American south W. G. Thomas contends that this group 'facilitated the growth of outside power in their localities'. Drawing on Chandler's view of administration, Thomas emphasises the local lawyer's loss of independence within hierarchical legal departments that were on the way to becoming 'thoroughly systematised'.[16] In his careful biography of Burke, R. C. Nesbit suggests that the Seattle attorney's position at the end of a long chain of command sometimes allowed him to function as a 'satrap to the empire builder'.[17] A recent judicial review suggests that the Canadian Pacific responded to the legal challenge with 'procedural ingenuity'.[18] Such interpretations of the activities of railroad lawyers reduce the fractious managers of both transcontinentals to monoliths. 'Dis-organising', R. W. Kostal's perceptive label for the lawyers who participated in the British railway speculation collapse of 1845, more accurately describes the actions of the CPR and GN local counsel in the respective terminus entries.[19]

It is necessary at the outset to present a brief, generalised narrative of the terminus entry process. First, a staff officer sought concessions from the local government. The CPR general manager settled the major terms for terminus acquisition from the province, which held property in what would become Vancouver. In Seattle it was the vice-president who negotiated with the municipal government that controlled access. The local lawyer then transformed the agreement for concessions into a formal instrument that would allow the company to build its line to the terminus and begin development. But the nature of the undertaking brought on the final phase, legal conflict with disappointed investors outside Vancouver, a rival railroad in Seattle. Here the actions of the lawyer compelled the command group to re-enter the process. The company eventually defeated or compromised with this opposition and entered the terminus.

The focus of this article on company actions in the two terminus entry disputes necessarily skews the treatment of these phases. After a brief review of the origins of the disputes – acquisition, negotiation, and deal – it concentrates on the development and resolution of the entry conflicts.

Conflict origins – CPR

The creation myth of Vancouver has it that CPR General Manager W. C. Van Horne settled on the present site of the city only when he inspected Burrard Inlet in the summer of 1884 in the search for an alternative to the designated terminus at the head of the inlet, Port Moody, suddenly perceived as inadequate (Figure 1).[20] No matter what the engineering consid-

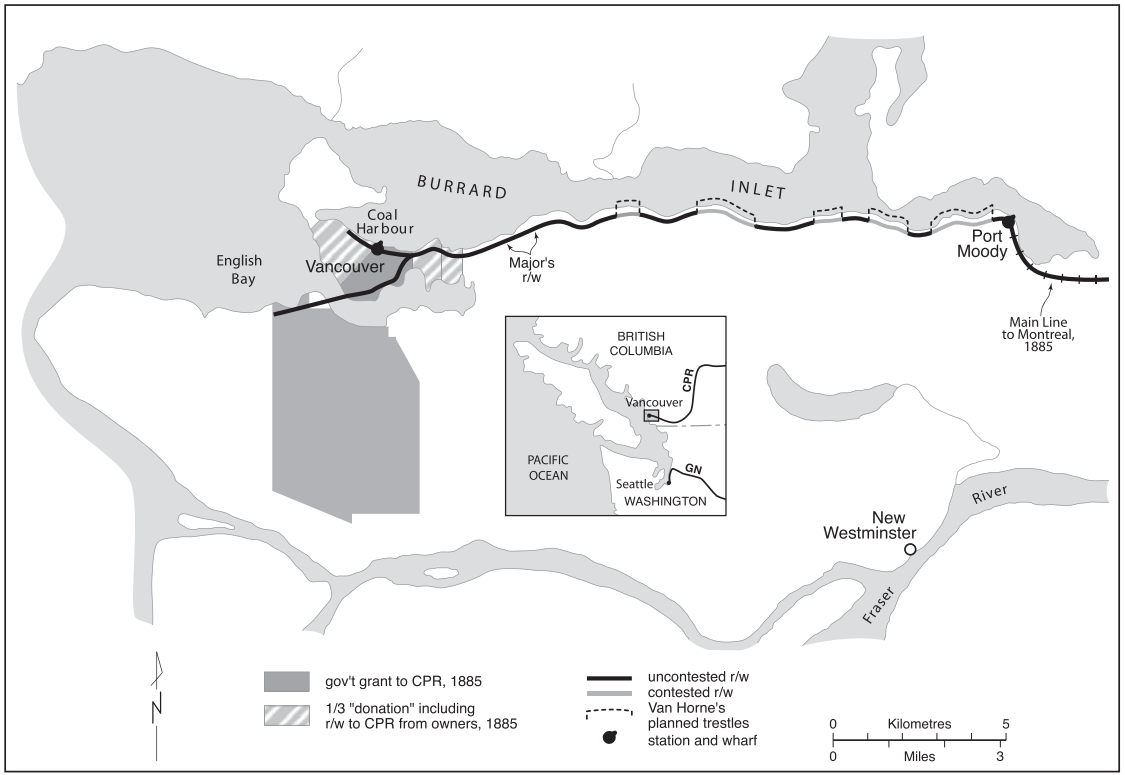

Figure 1 CPR 'branch' west of Port Moody, near Vancouver BC, 1886.
Source Adapted from CPRA Archives, Canadian Pacific Railway, 'Plan of branch line from Port Moody, a point on main line of the CPR, to English Bay, B.C.', 1886.

erations, financial necessity forced the company to locate its terminus elsewhere. Port Moody was unacceptable because the land at and near by the harbour had been purchased by speculators since the dominion (federal) government named it as the terminus in 1881. While negotiating with the provincial government for an alternative site, the general manager admitted to an agent that the company 'had not one dollar to invest in real estate. . . . The only question to be settled is how much land they [the government] are prepared to give to the Co. on condition that this line shall be extended to Coal Harbour.'[21]

Van Horne required little assistance to acquire the major terminus parcel west of Port Moody. While the company made a public demand for some 4,500 ha (11,000 acres), the general manager indicated privately to the British Columbia provincial premier that he would settle for much less.[22] When the Canadian Pacific received a provincial offer of 2,540 ha (6,275 acres) in two tracts Van Horne was clearly pleased. He later reminded his Pacific superintendent of the importance of the premier's friendship and instructed him 'to do anything we can in his private interest'.[23] A CPR emissary then threatened the owners of the lots that bracketed the government grant at Coal Harbour that the company might remove its terminus, and the highest land values, to English Bay. To forestall this second shift, the adjacent owners rushed to surrender one-third of their holdings, which included right of way through their property.[24]

As the deal took shape, the general manager required someone with legal expertise to serve as local operative. A subscribed biography of Montague William Tyrwhitt-Drake lauds him as a 'strong, able, and forceful practitioner, learned in his profession, practical in the application of his knowledge, and possessed of incisive, keen analytical powers of mind'. But Van Horne was probably more impressed by his political connections. Drake sat in the provincial legislative assembly for Victoria and served in the cabinet. Though he resigned his cabinet post after coming to an understanding with Van Horne in the fall of 1884, he retained his seat in the assembly and still had ready access to his former colleagues.[25]

Drake's role in drawing up the agreement with the provincial government initially generated important additional benefits for the Canadian Pacific. He shielded the company from those who opposed government concessions. When the premier tabled in the assembly in January 1885 the CPR agreement along with selected correspondence with the company, few journalists of the day, and few historians later, believed the ministerial contention that the grant to the Canadian Pacific would increase the value of the province's remaining reserves in the area. Most pervasive was the view that the government had surrendered the province's birthright to pay for an extension that the company would have had to build in any case. But opposition papers passed over the railroad's role in making the bargain to denounce several members of the cabinet as part of the 'Coal Harbour ring', speculators who benefited privately from the removal of the terminus. And, by undertaking not to use Chinese navvies, Drake was able to push back the deadline for

completion of the extension to 31 December 1886. It thus appeared that there was little chance the company would have to forfeit its bond of $250,000 for completion by that date.[26]

The lawyer did not, however, concern himself with right of way beyond the adjacent properties. While Van Horne's shifting terminus schemes coerced adjacent landowners to Coal Harbour to grant access, it infuriated those with holdings within or near by the old terminus, Port Moody. These property owners sent a petition to the dominion government predicting that 700 inhabitants and investors in the incipient community would be utterly ruined. And one of their own, Senator Thomas R. McInnes, was a powerful advocate in Ottawa. He warned that 'this robbing Port Moody of the terminus is beginning to rouse a spirit of rebellion, and all investors are beginning to show very ugly teeth after being assured so many times by the Government that Port Moody was the terminus'.[27]

Drake did not protect the interests of the company from the wrath of this group in the language of a crucial part of the agreement. He did not alter a clause that declared in part that 'the extension shall be considered as an original portion of the CPR'. The charter for the original concern, however, the dominion CPR incorporation Act of 1881 (CPR Act), sanctioned construction only to its named terminus, Port Moody. And it did not expressly exclude the application of the general railway statute, the dominion Consolidated Railway Act of 1879 (Railway Act), which stated that 'no railway company shall have any right to extend its line or railway beyond the terminus mentioned in the special act' (i.e. the individual incorporation Act of the company).[28]

McInnes and his friends saw the opening and construed the Acts in this manner in July 1885.[29] Drake belatedly recognised the legal flaw in the BC agreement only a year after it had been executed. In February 1886 he informed the CPR Pacific superintendent that, since the entire extension ran through land purchased at speculative prices, the owners of this property were 'likely to cause . . . considerable trouble in expropriating'. But, rather than seek clear legislative authority in an amendment to the CPR Act under which construction of the extension could take place, Drake contended that by simply designating and defending the extension 'as a branch, we have good grounds to go upon'. In Montreal, General Counsel J. J. C. Abbott claimed that he had also realised the danger, but no action had been taken. Indeed, when the company filed at the end of March 1886 its route plan for the extension with the dominion Department of Railways, the major legal requirement for the Canadian Pacific to build its line and expropriate land under its charter, it simply pasted over the word 'extension' with 'branch' in the plan title.[30]

Conflict origins – GN

Since Seattle had a population of 40,000 toward the end of 1880s, and was already served by the transcontinental Northern Pacific Railroad Company

(NP) as well as several smaller concerns, Great Northern engineering evaluations were directed to the location of a niche on the already crowded waterfront. Following an engineering inspection in February 1890, Vice-president W. P. Clough acquired property for what was probably Hill's design for an exclusive terminus in 'the best part of town'.[31] This choice location turned out to be below water on the tidal flats south of the city. As it was finally acquired, the South Seattle freight yard would occupy some 57 ha (140 acres) (Figure 2).[32]

Clough's choice of Thomas Burke to act as Hill's attorney in Seattle appeared more propitious than Van Horne's. Judge and developer, Burke had connections in the state capital as well as with the Seattle Municipal Council. His experience as a promoter of railroads made his advice more sure-footed. The vice-president was well pleased with the new GN counsel. 'We appreciate the value of your services. . . . We want to retain your services permanently and pay you their full value. I am sure you will not regret tying up to us.'[33]

Since the Northern Pacific and the local lines cut the GN yard off from southern access, its use and value depended on approach from the north. For such access to all parties the City of Seattle had begun in 1887 to build on pilings along the tidelands of Elliott Bay a 37 m (120 ft) wide planked thoroughfare, appropriately named Railroad Avenue. Clough rejected an alliance or take-over of the existing local concerns on Railroad Avenue, in particular the Oregon Improvement Company (OIC) and its narrow-gauge coal-hauling subsidiary, the Columbia & Puget Sound Railroad, whose works and coal bunkers blocked GN access to its prospective yard. Instead, he directed Burke to create a Washington-based subsidiary for the Great Northern to enter the city, which would deflect litigation from the parent company and Hill. On the day of its incorporation the Seattle & Montana Railway Company (S&M) submitted a petition to the city council requesting a municipal franchise for a 18 m (60 ft) wide right of way, enough space for four tracks, along the entire length of Railroad Avenue. The OIC, whose continued operation of its works would be imperilled by such a grant to the GN subsidiary, turned to Clough for 'a friendly adjustment . . . for a mutual right of way over, say, two tracks'.[34]

But Clough had already threatened that if the city council reneged on any space awarded to the Great Northern on Railroad Avenue the company would withdraw from Seattle. Burke lamented that such obstinacy served no economic or political purpose. 'It looked to me as if it would have been a gracious and a politic thing for the company . . . It would have completely refuted the charge of the Northern Pacific that the Great Northern was holding on to more than it needed for the very purpose of obstruction.' Since compromise was ruled out, Burke could only counsel absorption to eliminate the 'barrels of litigation' that would follow.[35]

The S&M request for a right of way on Railroad Avenue was an extraordinary demand, and its immediate acceptance by council during the mayor's absence produced acrimonious debates in council and the newspapers for

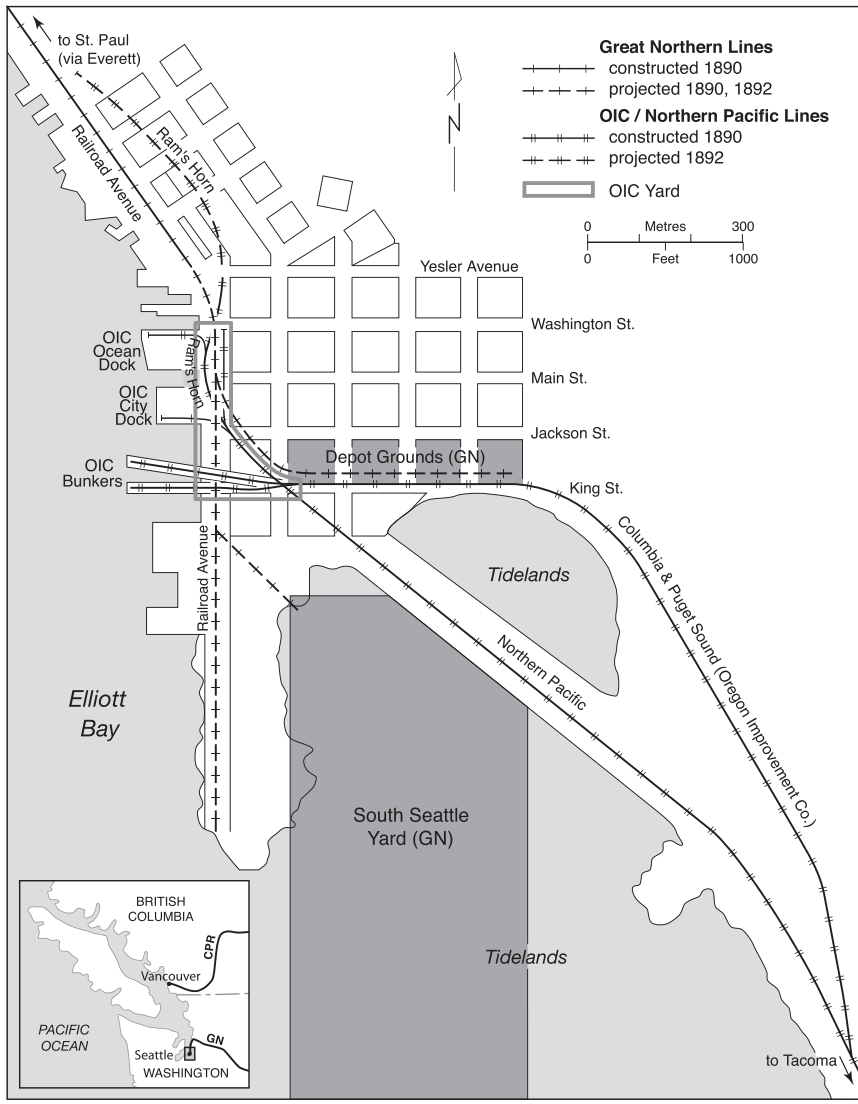

Figure 2 Great Northern on Railroad Avenue, Seattle WA, 1892.
Sources Adapted from Sanborn Perris Map Company, *Fire Insurance Atlas of Seattle, Washington* (1893), key, and R. H. Thomson, 'Map of portion of the waterfront of the city of Seattle', 1893.

the next month. But, if Burke authored the right-of-way franchise that appeared to grant the Great Northern a spectacular success, he had committed two serious tactical errors in drawing it up. It did not abolish older franchises along the waterfront, particularly the OIC's 'Ram's Horn' that meandered along the original shoreline and crossed Railroad Avenue twice. And by not awarding compensation to waterfront lot holders for right-of-

way taken in front of or through their property, it forced the OIC to resist what was virtually GN confiscation in its advance into Seattle. In December 1891, Thomas Shepard, Burke's partner, implored Hill to make an arrangement with the OIC or 'instruct us to push the fight at the risk of a judicial decision that your company has no standing in that part of Railroad Avenue because Railroad Avenue does not exist.'[36]

Conflict development and resolution – CPR

In the running legal battle between the Canadian Pacific and the opponents of the extension that took place during the summer and fall of 1886 no complete record of the proceedings of any of eight linked trials and appeals has survived. But a comparison of scattered documents concerning several actions indicates that Drake held fast to his major legal argument despite numerous defeats. The CPR counsel chose to ignore the designation of the line as an extension in the British Columbia agreement, for which, of course, he was responsible. Instead he contended that the line was a branch that the CPR Act allowed the company to lay out. Although he acknowledged that Port Moody was mentioned in the CPR Act, he maintained that it was not formally designated there or anywhere else as the Pacific terminus. Where the opponents argued that Section 17 of the CPR Act required the application of the Railway Act, including its restriction on extension from the terminus, Drake emphasised another proviso in the section, 'in so far as they [provisions of the Railway Act] are not inconsistent with or contrary to the provisions hereof'. This reading turned on a construction of the general Act as subordinate to the incorporation Act.[37] Given that the judges who dealt with this issue at three levels of court divided on its resolution, no attempt will be made here to decide which construction was legally superior. This article follows the actions of the Canadian Pacific to bring an argument that several judges considered tenable before a sympathetic court.

When offers to some right-of-way holders along the extension were rebuffed, Drake embarked upon expropriation. The CPR lawyer expected that by convincing a single judge of the merit of his construction of the Acts he could secure an order sanctioning expropriation along the entire extension. In early June, however, CPR provocations prompted two right-of-way owners to make *ex parte* applications: to begin suits where no CPR agent was present to oppose their case. Observing that the company had behaved arrogantly, Sir Matthew Baillie Begbie, the Chief Justice of British Columbia, granted interim injunctions restraining the railroad and alerted opponents to the Canadian Pacific's upcoming application for a general order to expropriate.[38]

Thus, a week later, the company's intended argument before another judge without an opposing party now took place before counsel for those who objected to the extension. Drake failed to block the submission of the agreement with the province as evidence that the line was an extension, and

the owners' lawyer rehearsed the construction of the two Acts that prevented it. The railroad counsel could only respond lamely that the designation as an extension in the agreement was 'not important'. The judge denied the CPR motion.[39]

Only in a 'friendly' action where the company paid the expenses of the erstwhile opponent, Charles Major, a landowner who supported the construction of the extension, did Drake finally get an opportunity to present his construction of the Acts without contradiction. Judge J. H. Gray, who also favoured the railway's completion, rewarded the railroad lawyer with a positive ruling. But even this sympathetic judge scolded him for placing the matter before different judges of the same court. And he did not remove the injunctions. Even Drake's strongest supporter on the coast, the Pacific superintendent, began to doubt the lawyer's ability. 'Can solicitors in Montreal see some way out?' the officer lamented.[40]

Early in August the opponents applied for an interlocutory injunction, a more substantial order that could be amended only after further court proceedings. In Edmonds *et al*. v. CPR, Begbie granted the motion, declaring flatly that the company had no power to purchase lands or construct its desired works.[41] Drake appealed the decision to the Divisional Court, an early element of the court of appeal in the province, but convinced only Judge Gray of the three sitting judges.[42] And he was unsuccessful in persuading even Gray to grant leave to appeal to the Supreme Court of Canada.[43]

Judicial reprimands did not deter Van Horne, however. During the Edmonds hearing the general manager arrived in Vancouver and assured reporters that the extension would be completed by the end of summer.[44] But rather than negotiate with the owners after they secured the injunction Van Horne turned to intimidation. He had plans drawn to bypass the combined waterfront of the objectors, some 6 km (four miles), by building a series of wooden trestle bridges along the inlet (see Figure 1). Faced with Begbie's blunt ruling that the company lacked the power to expropriate land for the extension, General Counsel Abbott constructed an extraordinary legal bridge to support this physical structure.

> We shall make application to the [dominion] Government in the name of some individual asking for a lease in perpetuity of the deep water lots in front of the lots in dispute, for the purpose of erecting thereon piers and wharves, and of connection of the same with the CPR by means of a railway. . . . I am in hopes we can rush this thing through so as to get our railway on it and running before they can get us stopped.[45]

The key to success, for Abbott, was secrecy. But Van Horne undermined this tactic by broadly hinting to friendly newspapers that plans for the edifice had already been sent to the Department of Railways for approval. And there was one problem that the lawyer could not fix. Even those who supported the Canadian Pacific realised that trestles would fall into the sea as soon as the teredos (ship worms) had destroyed the wooden piers upon which they must rest.[46]

By September the growing series of judicial setbacks suggested to the general counsel that Drake's construction of the Acts could prevail only when the Canadian Pacific was not contradicted. Accordingly, Abbott arranged to have the same friendly landowner, Major, who had served as opponent in Drake's only success launch a suit parallel to that in Edmonds. When the matter came to trial, no lawyer except those paid by the Canadian Pacific was present. Both parties simply rehearsed the arguments of the earlier trial. The judge obligingly followed the Edmonds decision against the company, and there was, of course, no opposition to appealing the matter directly to the supreme court in Ottawa.[47]

Having liberated the case at last from the venue of the original litigation and the plaintiffs' community, Abbott exulted that the Canadian Pacific could now 'take hold of it, and put it through'.[48] Drake was allowed to prepare the factum for the appeal, but Abbott invited Christopher Robinson, one of the most prestigious lawyers in Canada, to act as senior counsel.[49] In a brief intervention at the opening of the hearing in November, the lawyer for the recalcitrant landowners asked for the matter to be held over, since its appeal to the Supreme Court from a court of only one judge was irregular. But since both parties, funded by the Canadian Pacific, had consented in the trial court, this request was denied.[50]

During the appeal, Robinson forcefully rehearsed Drake's construction of the Acts. Senator McInnes, the spokesman for the opponents, excoriated the proceedings as 'to all intents and purposes the CPR v. the CPR. . . . Instead of bringing out the strong points or the arguments in favour of sustaining the decision rendered by the B.C. courts, they were suppressed.'[51] But the dominion court evidently found the company's argument more palatable than had their judicial colleagues in British Columbia. The Chief Justice observed, 'Whether this is called or treated as a branch or as an extension (for I can see no reason why a branch may not be an extension or an extension a branch if consistent with the general scope of the act), the railway company have under the act of 1881 authority for its construction.' By a vote of five to one the court upheld the company's appeal, which also overturned the other hostile decisions in British Columbia.[52]

Even then the Canadian Pacific did not feel secure. Evidently taking notice of predictions in the newspapers that the matter would be appealed to the Judicial Committee of the Privy Council in Britain, the court of last resort in the empire, the railroad secured an Act from the dominion parliament that provided explicit legislative authority for the extension, now formally designated as the English Bay branch.[53] The Canadian Pacific quickly completed the extension and started arbitrations with the landowners that dragged on for years, but the first official train did not steam into Vancouver until May 1887.

The Canadian Pacific had fought its way to the terminus, faced down hostile property owners, an unsympathetic court, and a government that saw an opportunity to recoup some of the returns that it had expended to

bring the line to the new terminus. But it had taken more than four years to shift the terminus 20 km (twelve miles).

Conflict development and resolution – GN

Early in 1892 Hill arrived in Seattle with a plan to 'straighten out the terminal difficulties'. Not surprisingly, the major difficulty for Hill was the objectionable 'bow' of the Ram's Horn in the OIC yard. To 'provide an opportunity for [all] the roads to secure adequate terminals for any future extension' he proposed a union depot north of Yesler Avenue in an area for which he had secretly begun to secure options several months before. When the OIC rejected this plan, the GN president declared war. He instructed Burke to take options on a row of lots and blocks between Jackson and King Streets. Part of the red light district, the property did not abut the South Seattle yard (see Figure 2). With this process under way, he set out clearly his views on the conflict and the GN strategy to overcome the obstacle.

> The policy of the OIC is to worry everybody into buying out their power to make trouble. . . . I see no use in wasting any more time with them. . . . We will buy it [the Jackson Street property], and condemn access to it from our four tracks, and in the meantime we should lose no time in condemning what is required to reach across the contending property claimants between Yesler Avenue and King Street, so as to give us the room for our four tracks on Railroad Avenue. . . .[54]

The city engineer accurately described this policy as picking a terminal site without regard to a general plan or the requirements of the city and fighting a way to it.[55]

Accordingly, Burke filed suit in July 1892 to occupy with four tracks the right of way awarded the Great Northern along Railroad Avenue between Yesler and King. He claimed that it was essential for the successful operation of the Great Northern to connect its South Seattle yard with its shops in Smith's Cove and that no alternative right of way was available. To do so, the Great Northern would cross and then recross the curving tracks of both the OIC and the Northern Pacific at the bow of the Ram's Horn, north of the OIC coal bunkers. The occupation of its right of way would also require raising one trestle to the coal bunkers and dismantling the other so that trains could pass underneath unimpeded.[56]

It first appeared that the Great Northern would have its way. Attempts to dismiss the proceedings or transfer them to another court department were denied in September and October. Burke offered to the newspapers a new moniker for his opponent, the 'Oregon Obstruction Company'.[57] Shepard's sober trial notes belie such confidence. 'The great danger is . . . that the court will hold that since there is room for our line to go around the outer or west side of the tracks of the respondents [OIC] and not cross them at all, there is no overruling necessity of our crossing them twice instead.'

When lawyers assembled in King County Superior Court in mid-November 1892 to argue what had become the 'Railroad Crossings Case' a newspaper noted that the court 'resembled a real estate exchange with the multitude of tracings and blue prints displayed on easels and upon the attorneys' tables'.[58] The judge, well disposed to the transcontinental because of a discreet arrangement for train passes, decided that the GN petition was in the public interest and ordered a jury to establish compensation for the proposed changes. At the end of the month the Northern Pacific offered to settle. Burke triumphantly declared that 'the position taken . . . in regard to the crossing has been completely upheld in the courts, and we have every confidence that the Great Northern will be able to make its crossings to its terminals in due time'.[59]

But after the OIC launched an appeal Burke's confident predictions proved to be off the mark. In May 1893 the city engineer submitted a report to council on the effect of the proposed changes in Seattle's railroad network. While much of the report dealt with the difficulties in altering grades, he made sweeping criticisms. The effect of the ruling for the Great Northern would place 'a barrier of heavy grades and dangerous crossings which would block business at Jackson Street almost as effectually as a wall'.[60] Three months later the state supreme reversed the decision in the crossings case. The high court accepted the OIC argument that the GN double crossing in its yard represented a 'longitudinal taking' rather than a simple traverse and, consequently, that the claim of the OIC on the property was superior.[61]

Burke tried to make the best of a bad situation. Writing a 'further line of explanation' to Hill, the lawyer claimed that the decision gave the OIC only a 'barren victory'. Practically the only injury to the Great Northern would be the delay in laying track to its yards.[62] At a meeting of lawyers and engineers in late August the Northern Pacific proposed a settlement similar to the one that it had offered following the GN victory in the lower court, i.e. that the OIC and NP shift their tracks from the Ram's Horn to the east side of Railroad Avenue, which would straighten their alignment between Jackson and Yesler. But the Great Northern would now be compelled to push only two tracks to its South Seattle yard.[63]

Great Northern local officials now had to convince Hill. When the president balked, Burke travelled to St Paul. Hill still insisted on four tracks. Burke responded that the narrowing from four tracks to two extended for only 200 m (700 ft) and recalled that the president himself had earlier likened the situation to that of a bridge and offered no objection. When Hill still temporised, Burke bluntly told him that the prolonged delay in settlement gravely imperilled the interests of the company in Seattle. The president finally yielded, albeit grudgingly. In September 1894 an agreement was executed.

Conclusion

'We have had a parrott [*sic*] and monkey time with our water front line.'[64] This cranky evaluation from the weary manager of the OIC just as well

describes the experience of the two transcontinentals in entering their respective termini. A review of the entry travails of the two railroads indicates some common characteristics, including a general disinclination of historians to recognise and explore this process. The extent of the CPR terminus acquisition has led many to ignore or subordinate its entry dispute to a rather uncritical account of real estate accumulation. Real estate returns, however, depended not simply on the size of the property but on proximity of the property to an operating terminal works. One of the prerequisites for a viable terminus was secure land access in a rail corridor. In the GN case it was Burke's influence, both as protagonist and as source, rather than the modest size of the terminus, that caused many to diminish the entry conflict. These accounts necessarily obscure Burke's errors of omission and commission in a legal battle that even contemporaries regarded as a 'muddle'.[65]

This article illuminates a series of missteps and reverses that earlier accounts have largely overlooked. First, the two railroads followed the example of other transcontinentals in striving for commercial monopoly at the terminus by sealing off access to the harbour.[66] In its drive to acquire properties fronting both Coal Harbour and English Bay at the outset of development the Canadian Pacific sought to deny access to either by a rival concern. The Great Northern's failed attempt to run four tracks through OIC property, 'to set up a wall to business', as the city engineer castigated it, revealed a monopolistic intent that was no different from that of the Northern Pacific, which it had vociferously attacked. But the drive for corporate hegemony makes less sense here, since the Great Northern was not first on the ground and could not realistically expect to strip earlier arrivals of their rights of access. Three years of litigation delayed development of its terminus and tarnished the company's reputation as the saviour of Seattle.

Second, the OIC manager's smug claim of victory goes too far,[67] but it is clear that the transcontinental railroad officers who directed and carried out the corporate expression of territoriality in each terminus made serious errors that harmed their respective concerns. In any modern organisation, responsibility for its actions ultimately rests with the leader, and the two commanders certainly contributed to the railroad reverses. Instead of negotiating with the Port Moody landowners after the company had lost a string of suits, Van Horne's ridiculous trestle scheme squandered a month in the summer of 1886, ensured that the company would not complete the extension by the deadline, and gave the provincial government an opening to initiate forfeit litigation. Just as foolish was the GN president's union station plan of 1892, which required its legal adversary to surrender its most strategic land for little beyond a vague promise of trackage. Both these inappropriate responses from headquarters to a complex problem on the periphery reveal an inability or a disinclination to shift from a system to a local scale in problem solving.[68] More evident, perhaps, was Hill's stubbornness that almost destroyed his company's entire terminus investment of

hundreds of thousands of dollars as well as years of work by subordinates. When an NP officer remarked that 'the length of Mr Shepherd's [*sic* – Burke's partner] ears interfered with his perception of the true inwardness of the case' he mistook the servant for the master.[69] These managerial 'skeletons' challenge the conflation of the leaders' activities with those of the ideal type of rational railroad executive.[70]

But, if the commanders were precipitous or stubborn, the local operatives in the organisation, the lawyers, were almost derelict. A prominent jurist of the American south suggested that the railroad corrupted lawyers 'to make legal that which is dubious, to devise means for ends which are doubtful'.[71] Even by this cynical standard, both attorneys were inadequate. Drake's conflation of branch and extension in the 1885 agreement with the province and his failure to obtain legislative sanction for the extension before construction were not only egregious but also potentially most damaging.[72] It might have delayed the company at Port Moody, with its obvious flaws as a terminus, for several years, if not compelled it to locate its permanent works there. That the company ultimately defeated its opponents may have depended as much on the general counsel's selection of an illustrious outside lawyer to present the case to the Canadian supreme court as on the legal merits of Drake's construction. The local counsel's actions played an important role in increasing the total first cost of the extension to almost twice the per-kilometre cost of an 1884 estimate.[73] Even before the trial in Ottawa, the general counsel advised Van Horne to give Drake notice that the company would no longer need his services.[74] In Seattle an NP officer perceptively observed that Burke and his partner were 'running matters to suit their own sweet will.'[75] Burke not only secured a flawed franchise on Railroad Avenue; he also pushed the crossings case to trial. By misleading his employer frequently concerning the company's vulnerable legal position, he revealed, at the least, suspect legal judgement. The errors of these officers stamp the organisation that both transcontinentals deployed to secure entry to their respective Pacific termini. This article has demonstrated that these 'diplomatic forces' departed from the 'rational economic response' that Chandler associates with railroad management.[76]

Notes

1 M. Klein, 'The unfinished business of American railroad history,' in *id*., *Unfinished Business: the Railroad in American Life* (Hanover NH, 1994), pp. 166–86, here 178.

2 N. MacDonald, *Distant Neighbors: a Comparative History of Seattle and Vancouver* (Lincoln NE, 1987), pp. 21–43. For railroad activity at other termini on the Pacific coast see S. Daggett, *Chapters on the History of the Southern Pacific* (New York, 1922), pp. 83–110; W. F. Deverell, *Railroad Crossing: Californians and the Railroad, 1850–1910* (Berkeley CA, 1994), pp. 93–122; F. Leonard, *A Thousand Blunders: the Grand Trunk Pacific Railway and Northern British Columbia* (Vancouver, 1996), pp. 127–64; C. Gallacci, 'Planning the City of Destiny: an Urban History of Tacoma to 1930' (PhD dissertation, University of Washington, 1999), pp. 124–70, 266–86.

3 See W. Vaughan, *The Life and Work of Sir William Van Horne* (New York, 1920), p. 148; J. G. Pyle, *The Life of James J. Hill* I (Garden City NY, 1917), p. 458.

4 See, for example, R. E. Gosnell, *A History of British Columbia* II (Vancouver and Victoria BC, 1913), p. 111; W. Beaton, *The City that made Itself: a Literary and Pictorial Record of the Building of Seattle* (Seattle WA, 1914), pp. 49–63.
5 S. Boswell, *Raise Hell and Sell Newspapers: Alden J. Blethen and the Seattle Times* (Pullman WA, 1996), p. 143.
6 On the characteristics, influence, and flaws of this interpretation, which takes its name from *The Octopus*, the title of Frank Norris's 1901 caricature of the activities of the Southern Pacific in California, see Deverell (see note 2), pp. 94, 137–48, 172–77.
7 J. A. Ward, 'Image and reality: the railway corporate-state metaphor', *Business History Review* 55, 4 (1981), 491–516.
8 P. Berton, *The Last Spike: the Great Railway, 1881–1885* (Toronto, 1971), pp. 302–6, 408–10 (quotation p. 410).
9 A. D. Chandler, Jr, *The Visible Hand: the Managerial Revolution in American Business* (Cambridge MA, 1977). For recent reappraisals of Chandler's study of railroads see R. R. John, 'Elaborations, revisions, dissents: Alfred D. Chandler, Jr's *The Visible Hand* after twenty years', *Business History Review* 71 (summer 1997), 183–5; G. Channon, *Railways in Britain and the United States, 1830–1940: Studies in Economic and Business History* (Aldershot, 2001), pp. 1–21.
10 The surviving codes for the Canadian Pacific and the GN were created only after the construction period. There may well have been no corresponding documents concerning the building of these concerns.
11 University of Washington, Special Collections Division, R. W. Hidy *et al*., 'Great Northern Railway Manuscript', vol. 1 (1970), pp. 19-27 to 19-42 (quotation p. 19-39). Hidy *et al*., *The Great Northern Railway: a History* (Cambridge MA, 1988), is a much abbreviated version of this massive work.
12 In *The National Dream* Pierre Berton's view that the construction of the Canadian Pacific preserved Canada entered that country's popular culture as a television series in 1973. Portland's 1910 accolade for Hill, the 'Empire Builder', was bestowed on the Great Northern's crack passenger train in 1929. It forms part of the subtitle in the most recent academic biography of Hill and has reached into popular culture as a board game. See M. P. Malone, *James J. Hill: Empire Builder of the Northwest* (Norman OK, 1996), and Black Dog Accessories, 'Empire Builder: Continental Railroading Game', www.blackdog-accessories.com/mayfair_games_main.htm (31 May 2006).
13 R. Morris, *Railroad Administration* (New York, 1915), pp. 22–8 (quotations p. 25).
14 For an explanation of the different functions and reporting of staff and line officers in railroads see Chandler, *Visible Hand*, pp. 106–7. See also Morris, *Railroad Administration*, pp. 23–4.
15 W. G. Thomas, *Lawyering for the Railroad: Business, Law, and Power in the New South* (Baton Rouge LA, 1999), pp. 11, 40.
16 *Ibid*., quotations pp. 6, 53.
17 R. C. Nesbit, *'He built Seattle': a Biography of Judge Thomas Burke* (Seattle WA, 1961), pp. 213–43, vxii (quotation).
18 'Canada (A.G.) v. Canadian Pacific Ltd', 2002 *British Columbia Court of Appeal* 0478, para. 54 (quotation).
19 R. W. Kostal, *Law and English Railway Capitalism, 1825–1875* (Oxford, 1994), pp. 11–52. Italics in original.
20 Berton, *The Last Spike*, pp. 302–6. Fragmentary evidence suggests that the Canadian Pacific settled on the present site in early 1882.
21 City of Vancouver Archives, Add. MSS 42, loc. 582-B-1, Canadian Pacific Railway Company fonds (hereafter CVA-CPR), f. 5, Van Horne to A.W. Ross, 17 September 1884.
22 British Columbia, Legislative Assembly, *Sessional Papers* (hereafter BC, *SP*), 1885, pp. 180–1, Van Horne to W. Smithe, 9 September 1884; British Columbia Archives (hereafter BCA), Department of Lands, GR 1088, f. 77/85, Van Horne to Smithe, Private, 9 September 1884.
23 CVA-CPR, f. 6, Van Horne to H. Abbott, 22 May 1886.
24 *Ibid*., f. 5, H. Beatty to Van Horne, 9 July, 29 August 1885.
25 F. H. Howay, *British Columbia: from the Earliest Times to the Present* IV (Vancouver, 1914), p. 291.
26 In debate on the agreement the provincial secretary boasted of his prescience in acquiring property near Coal Harbour and English Bay. *Victoria Daily Colonist*, 21 February 1885. Agreement BC-CPR, 23 February 1885, BC, *SP*, 1886, pp. 460–1.

27 LAC, RG 43, v. 204, f. 475, Canada, Department of Railways and Canals, Petition of Port Moody Owners, 1 January 1885; Canada, Senate, *Debates*, 1885, 6 July, p. 1136.
28 Agreement BC-CPR, sect. 11; Canada, *Statutes*, 1881, chap. 1, 'An Act respecting the Canadian Pacific Railway' (hereafter CPR Act), Schedule, sect. 1; Canada, *Revised Statutes*, 1879, chap. 9, 'An act to amend and consolidate the Railway Act, 1868, and Acts amending it' (hereafter Railway Act), sect. 7/19.
29 Senate, *Debates*, 1885, 15 July, p. 1356.
30 CVA-CPR, f. 6, H. Abbott to J. J. C. Abbott, 12 February, J. J. C Abbott to T. Shaughnessy, 26 February 1886.
31 Minnesota Historical Society, Great Northern Records (hereafter GNR), 22.E.5.8F, Clough to Hill, 26, 14 February 1890, telegram (code).
32 University of Washington, Special Collections Division, No. 1483–2, Thomas Burke Papers (hereafter BP), box 20 – file 13, Burke to Clough, 20 March, 1 April 1890; BP, 48-18, Petition to Vacate, 6 June 1890, 'Summary of Points to be Proved' (1892).
33 GNR, 133.F.6.6F, Box 1, vol. 5, Clough to Burke, 24 October 1890.
34 University of Washington, Special Collections Division, No. 249, Oregon Improvement Company Records (hereafter OIC), box 48 – file 8, H. W. McNeill to E. Smith, 7, 27 April 1890.
35 GNR, 133.F.6.6F, Box 1, vol. 3, Clough to D. H. Gilman, 26 March 1890; BP, 20-13, Burke to Clough, 19, 25 April 1890. Why Clough, probably following Hill's direction, remained so adamant in rejecting a small concession is not clear in the documents. Like the CPR, it appears that the GN managers were determined to exploit every concession that they obtained. For a more detailed account of GN plans for acquisition of its terminus property see F. Leonard, '"Wise, swift, and sure"? The Great Northern entry into Seattle, 1889–1894', *Pacific Northwest Quarterly* 92, 2 (2001), 81–90.
36 OIC, 50-8, C. J. Smith to W. H. Starbuck, 16 May 1891; GNR, 22.E.5.8F, f. BS&W, Shepard to Hill, 2 December 1891.
37 CPR Act, Schedule (contract), sect. 14; Schedule A (charter), sect. 17.
38 BCA, GR 1727, vol. 735, Begbie J, bench book, Victoria Supreme Court, Civil, 5 June 1886, 343–4.
39 New Westminster *Mainland Guardian*, 16 June 1886; BCA, Begbie, bench book, 22 June 1886, 349.
40 Gray, judgement, 'CPR v. Major', 21 July 1886, 1 *British Columbia Reports* (hereafter *BCR*) [1886], pt 2, pp. 287–95; CVA-CPR, f. 6, H. Abbott to Van Horne, 12 July 1886.
41 Begbie, judgement, 'Edmonds *et al*. v. CPR', 6 August 1886, 1 *BCR* [1886], pt 2, pp. 273–81.
42 British Columbia, Divisional Court, judgement, 'Edmonds *et al*. v. CPR,' 20 August 1886, 1 *BCR* [1886], pt 2, pp. 295–300.
43 BCA, GR 1727, vol. 775, Gray J, bench book, Victoria Supreme Court, Civil, 2, 8 September 1886, 385–6.
44 *Vancouver News*, 23, 30 July, 3 August 1886.
45 CPR Archives, CPR Law Letter Books, No. 2, December 1884–1886 (hereafter CPRA – Law), J. J. C. Abbott to H. Abbott, 25 August 1886.
46 *Ibid*.; *Vancouver News*, 13, 15, 24 August 1886.
47 BCA, GR 1727, vol. 706, Crease J, bench book, Supreme Court, Civil, Victoria, 69–73, 24 September 1886.
48 CPRA – Law, J. J. C. Abbott to H. Abbott, 2 October 1886.
49 *Ibid*., J. J. C. Abbott to C. Robinson, 14 October 1886. For Robinson's role in the prosecution of Louis Riel in the most famous criminal trial in Canadian history see P. Bode, 'Robinson, Christopher', *Dictionary of Canadian Biography* XII, *1901–1910*, pp. 882–4.
50 BCA, MS-0054, Crease Papers, vol. 8, f. 44, 4835.
51 *Ibid*., 4836–49; Canada, Senate, *Debates*, 1887, 13 June, pp. 340, 345 (quotation).
52 13 *Supreme Court of Canada Reports* [1886], pp. 233–46 (quotation p. 240).
53 Canada, *Statutes*, 1887, chap. 56, sect. 5.
54 *Seattle Post-Intelligencer*, 16, 19 February 1892; GNR, 132.E.6.10F, Box 2, f. 446, Hill to P. P. Shelby, 21 June 1892.
55 *Post-Intelligencer*, 18 May 1893, paraphrased in Nesbit, *'He built Seattle'*, pp. 227–8.
56 GNR, f. 446, Shelby to Hill, 9 June 1892; BP, 48-18, S&M, Petition, 27 July 1892.

57 *Seattle Telegraph*, 17 October 1892; BP, 49-3, 'Memorandum and Notes on the Conduct of the Trial', undated.
58 *Telegraph*, 22 November 1892; *Post-Intelligencer*, 22 November 1892.
59 GNR, 132.E.6.10F, Box 1, f. 28, P. P. Shelby to A. Hyman, 23 June 1892, Hyman to Shelby, undated; *Post-Intelligencer*, 23 November 1892; BP, 12-26, J. Ashton to Burke, 29 November 1892; GNR, f. 446, Burke to Shelby, 23 November 1892.
60 *Post-Intelligencer*, 18, 24 May 1893.
61 7 *Washington Reports* [1893], 150–73.
62 GNR, f. 446, Burke to Hill, 25 August 1893.
63 BP, 44-22, Burke, Shepard and Woods to C. J. Smith (OIC) and E. H. McHenry (NP), 6 September 1893.
64 BP, 45–3, CPS, NP, and S&M, Agreement, 8 September 1894.
65 Drawing on the reminiscences of Judge Burke as well as his speeches, the most influential early account of the Great Northern in Seattle, Beaton, *The City that made Itself*, largely shaped the interpretations of later historians. *Post-Intelligencer*, 11 June 1890.
66 Virtually every study that touches on the activities of a transcontinental at its Pacific terminus provides data on the respective concern's drive for monopoly. See note 2 above.
67 OIC, 52-27, C. J. Smith to Starbuck, 27 March 1894.
68 I am grateful to Professor Richard White for this insight.
69 Minnesota Historical Society, Northern Pacific Records (hereafter NPR), 134.E1.1B, f. 639, E. H. McHenry to J. Ashton, 23 August 1892.
70 T. Cochran, *Railroad Leaders, 1845–1890: the Business Mind in Action* (Cambridge MA, 1953). Cochran, p. 4, constructs this ideal type from the experience of 'only [ten] well-run [systems] with few family skeletons that have preserved official correspondence and are willing to open it to scholars'.
71 W. C. Breckinridge, 'The lawyer: his influence in creating public opinion (1891),' quoted in Thomas, *Lawyering for the Railroad*, p. 35.
72 'Legislative existence' of a company had been an obvious requirement for taking land for both main line and branches in British railway law for fifty years. See Kostal, *Law and English Railway Capitalism*, p. 110.
73 CPR, *Annual Report*, 1887, p. 25.
74 CPRA – Law, J. J. C. Abbott to Van Horne, 15 November 1886. Drake continued to act for the company until 1889, when he became a British Columbia supreme court judge.
75 NPR, f. 639, McHenry to Ashton, 23 August 1892.
76 A. D. Chandler, Jr, 'Comparative business history', in *Enterprise and History: Essays in Honour of Charles Wilson*, ed. D. C. Coleman and P. Mathias (Cambridge, 1984), p. 17.

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