

THE
REPORTS OF THE COMMITTEES

OF THE

SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE THIRTY-FIFTH CONGRESS.

IN TWO VOLUMES.

WASHINGTON:
WILLIAM A. HARRIS, PRINTER.
1858.

IN THE SENATE OF THE UNITED STATES.

JUNE 9, 1858.—Ordered to be printed



MR. BAYARD submitted the following

REPORT.

The Committee on the Judiciary, to whom were referred the memorial of the Magnetic Telegraph Company and of the New England Union Telegraph Company praying the enactment of a law which will prevent combinations between citizens or companies in the United States, and monopolists or companies out of the United States, for the purpose of oppressing telegraph companies and monopolizing the business of telegraphing in the United States; and also the memorial of the American Telegraph Company in answer thereto, and a further memorial of the Magnetic and New England Telegraph Company by way of reply, varying the prayer of their first memorial, have had the same under consideration, and submit the following report:

By an act approved March 3, 1857, entitled "An act to expedite telegraph communication for the uses of the government in its foreign intercourse," Congress authorized the Secretary of State, in the discretion and under the direction of the President of the United States, to contract with any competent person, persons, or association for the aid of the United States in the manner, to the extent, and with the restrictions contained in the act. It is unnecessary for the purposes of this report to state the terms of that act. The act was passed at the instance of an association designated in their application to the President of December 15, 1856, as the New York, Newfoundland and London Telegraph Company, and the association is believed to be a corporation created by the local government of Newfoundland. Besides this Newfoundland company, there was a joint stock company organized and registered in England, in October, 1856, by the name of "The Atlantic Telegraph Company," which joint stock company has since, on the 27th of July, 1857, been incorporated by the Parliament of Great Britain.

To what extent the rights and interests of these two companies have been blended by agreement, or otherwise, is not material now to inquire, but it seems doubtful whether the contract intended to be authorized by the act of March 3, 1857, could be made so as to carry out the object of Congress without the concurrence of both these corporations. The committee have annexed to this report as part of it, the

application of the Newfoundland company made to the President, December 15, 1856, and a communication which accompanied it, addressed on behalf of the lords commissioners of the treasury to Cyrus W. Field, esq., on the 20th of November, 1856; and also a copy of the act of Parliament incorporating the Atlantic Telegraph Company; which papers are deemed material for the purpose of illustration. The memorial first presented by the Magnetic Telegraph and New England Union companies on the 31st of March, 1858, may be very briefly noticed.

Its professed object is to obtain the passage of some law by Congress to prevent combination between citizens or companies in the United States and monopolists or companies out of the United States, for the purpose of oppressing telegraph companies in the United States, and monopolizing the business of telegraphing therein.

It might well be questioned whether Congress has any authority to legislate penally on the subject, and for the purpose so indefinitely stated in the memorial; but it cannot be doubted that the legislature of each State has full authority to control and regulate telegraph companies so far as their lines pass through the State, and to them it belongs most appropriately, either by penal legislation, or by the restrictions contained in corporate acts to prevent the monopoly and oppression within the United States complained of in the memorial. The answer of the American Telegraph Company to the memorial of the Magnetic and New England companies may be passed without comment, as the committee have no disposition to enter into the disputes and combinations, offensive or defensive, of telegraph companies, or decide upon the justice or propriety of their acts in relation to each other. From their nature and objects all such companies are more or less of monopolies, and, so far as they exist within the United States, the restrictions necessary for public benefit may be enforced most properly by the respective States. By their second memorial, however, referred to the committee on the 28th ultimo, the Magnetic and New England Union Telegraph companies have modified their former prayer "so as to ask, for the present only, such an explanation and amendment of the existing law as will comport with its obvious intent, and secure, by the proposed contract, to them, and all other telegraph companies in the United States, equality of rights in their business relations with the parties owning or controlling the proposed Atlantic cable."

The committee are of opinion that it would not be consistent with good faith for the United States to alter the terms upon which a contract has been authorized to be made, not with any particular company by name, but on the faith of which individuals, associations, or corporations have embarked in a hazardous enterprise, the practicability of which has yet to be determined. The act of Congress which it is sought to modify guards both the equality of the government of the United States with that of Great Britain in reference to the use of the Atlantic cable, and the equal rights of its citizens with the subjects of Great Britain for the same use in any contract which may be concluded by the Secretary of State, in the discretion and under the direction of the President of the United States.

No further legislation, in the opinion of the committee, is at present requisite in relation to the subject matter of the memorials, and they ask to be discharged from their further consideration. It appears from a communication made on the 15th of April, 1857, by the Assistant Secretary of State, which is annexed to this report, and made part thereof, addressed to Peter Cooper, esq., president of the New York, Newfoundland and London Telegraph Company, that the terms on which the department is prepared to contract with that company are in strict accordance with the law of 1857. No contract, however, has been concluded with any person, association, or corporation, and from the communication it appears none will be until after a similar contract has been entered into with Great Britain.

At the date of that communication, the act of Parliament incorporating the Atlantic Telegraph Company had not been passed, nor are the terms of the contract which is said lately to have been entered into by the Atlantic company with Great Britain, under their charter, yet known to the department. There is also yet to be ascertained the material fact as to which of the two corporations the Atlantic Telegraph, or the New York, Newfoundland, and London Telegraph Company has authority to make the contract, so as to insure the use of the Atlantic telegraph to the United States and its citizens in accordance with the terms of the act of March 3, 1857; and also whether the concurrence of both companies will not be requisite. The act of Parliament, however, incorporating the Atlantic Telegraph Company, seems, in some of its provisions, to render any contract with that company inadmissible, within the intent of Congress, as evidenced in the act authorizing a contract. The act certainly embodies a controlling power by Great Britain over the company incompatible with the provisions of the act of Congress. The 36th and 52d sections are more particularly referred to, as giving a control to the British government over the company which impairs its authority to make such a contract as the act of Congress contemplates on behalf of the United States, and there are other sections in connexion with any contract which has been or may be made by the government of Great Britain with that company which doubtless will command the consideration of the President before authorizing any contract to be concluded with the Atlantic Telegraph Company. It is true that the terms communicated by the Secretary of State were to the New York, Newfoundland, and London Telegraph Company, but it is questionable whether this corporation, existing by the local law of a dependency of Great Britain, has sufficient authority to make an efficient contract with the United States, and the 41st section of the act of Parliament seems to indicate that any interest in or control over the Atlantic cable which may exist in this local corporation must spring from agreement with the Atlantic Telegraph Company, unless on the improbable supposition that both companies intend to lay a telegraph cable from Newfoundland to Great Britain.

Should the Secretary of State be unable to effect a contract, in accordance with the legislative intent, further legislation may become necessary when that fact is communicated to Congress.

OFFICE OF THE NEW YORK, NEWFOUNDLAND,
AND LONDON TELEGRAPH COMPANY,
New York, December 15, 1856.

SIR: The undersigned, directors of the New York, Newfoundland, and London Telegraph Company, have the honor to inform you that contracts have been made for the manufacture of the sub-marine telegraphic cable to connect the continents of Europe and America; and that it is expected to have the line between New York and London open for business by the 4th of July, 1857. A communication to this effect, having been laid before the lords commissioners of her Britannic Majesty's treasury, elicited a reply, of which we have now the honor to submit to you an official copy, just received by the United States mail steamship Atlantic, from Cyrus W. Field, esq., vice president of this company. As the work has been prosecuted thus far with American capital, aided by the efforts of your administration to ascertain the feasibility of the enterprise, it is the earnest desire of the directors to secure to the government of the United States equal privileges with those stipulated for by the British government. To this desire the lords commissioners of the treasury have acceded in the most liberal spirit, by providing "that the British government shall have a priority in the conveyance of their messages over all others, subject to the exception only of the government of the United States, in the event of their entering into an arrangement with the telegraph company similar in principle to that of the British government; in which case the messages of the two governments shall have priority in the order in which they arrive at the stations." In view of the great international interests of this government, and the constant occurrence of grave questions, in the solution of which time will be an essential element, we cannot doubt that the reservation made in favor of the United States will be deemed of great moment. We therefore hasten to communicate the facts to you, and to request, in view of the fact that the present Congress will soon terminate its existence, and that the cable will be laid, if no accident prevents, before the new Congress commences its session, that you will take such action in the premises as you may deem the interests of this government to require.

The company will enter into a contract with the government of the United States on the same terms and conditions as it has made with the British government; such a contract will, we suppose, fall within the provisions of the constitution in regard to postal arrangements, of which this is only a new and improved form.

We have the honor, also, to call your attention to the second proviso in the letter of the lords commissioners to the following effect:

"Her Majesty's government engages to furnish the aid of ships to take what soundings may still be considered needful, or to verify those already taken, and favorably to consider any request that may be made to furnish aid by their vessels in laying down the cable."

We are informed that no private steamships now built are adapted to laying a cable of such dimensions as is proposed to be used, but that the war steamers recently finished by our government are arranged to the very best advantage for this purpose.

To avoid failure in laying the cable, it is desirable to use every precaution, and we therefore have the honor to request that you will make such recommendation to Congress as will secure authority to detail a steamship for this purpose, so that the glory of accomplishing what has been justly styled "the crowning enterprise of the age" may be divided between the greatest and freest governments on the face of the globe.

With great respect, we have the honor to be, sir, your most obedient servants,

PETER COOPER,
President.
M. O. ROBERTS,
MOSES TAYLOR,
WILSON G. HUNT,
Directors.

The PRESIDENT OF THE UNITED STATES.

TREASURY CHAMBERS, *November 20, 1856.*

SIR: Having laid before the lords commissioners of her Majesty's treasury your letter of the 13th ultimo, addressed to the Earl of Clarendon, requesting, on behalf of the New York, Newfoundland, and London Telegraph Company, certain privileges and protection in regard to the line of telegraph which it is proposed to establish between Newfoundland and Ireland, I am directed by their lordships to acquaint you that they are prepared to enter into a contract with the said telegraph company, based upon the following conditions, viz:

1. It is understood that the capital required to lay down the line will be (£350,000) three hundred and fifty thousand pounds.

2. Her Majesty's government engage to furnish the aid of ships to take what soundings may still be considered needful, or to verify those already taken; and favorably to consider any request that may be made to furnish aid by their vessels in laying down the cable.

3. The British government, from the time of the completion of the line, and so long as it shall continue in working order, undertakes to pay at the rate of (£14,000) fourteen thousand pounds a year, being at the rate of four per cent. on the assumed capital, as a fixed remuneration for the work done on behalf of the government, in the conveyance outward and homeward of their messages; this payment to continue until the net profits of the company are equal to a dividend of £6 per cent., when the payment shall be reduced to (£10,000) ten thousand pounds a year for a period of twenty-five years.

It is, however, understood that if the government messages in any year shall, at the usual tariff rate charged to the public, amount to a larger sum, such additional payment shall be made as is equivalent thereto.

4. That the British government shall have a priority in the conveyance of their messages over all others, subject to the exception only of the government of the United States, in the event of their entering into an arrangement with the telegraph company similar in

principle to that of the British government, in which case the messages of the two governments shall have priority in the order in which they arrive at the stations.

5. That the tariff of charges shall be fixed with the consent of the treasury, and shall not be increased without such consent being obtained, so long as this contract lasts.

I am, sir, your obedient servant,

JAMES WILSON.

CYRUS W. FIELD, Esq.,
37 Jermyn street.

ATLANTIC TELEGRAPH COMPANY.

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AN ACT to incorporate and regulate The Atlantic Telegraph Company, and to enable the company to establish and work telegraphs between Great Britain, Ireland and Newfoundland, and for other purposes.

[ROYAL ASSENT, JULY 27, 1857.]

Whereas, in the month of October, one thousand eight hundred and fifty-six, a joint stock company was duly constituted under "The Joint Stock Companies Act, 1856," by a memorandum of association filed in accordance with the said act, whereby it was declared that the name of the company was "The Atlantic Telegraph Company (Limited); that the registered office of the company was to be established in England; that the objects for which the company was to be established were to connect Great Britain or Ireland with Newfoundland by a submarine electric telegraph, thus establishing electric telegraphic communication between Europe and America; that the liability of the shareholders was limited, and that the nominal capital of the company was three hundred thousand pounds, divided into three hundred shares of one thousand pounds each:"

And whereas it was afterwards agreed and determined by the then subscribers to or shareholders in the said company that the nominal capital thereof should consist of three hundred and fifty thousand pounds, divided into three hundred and fifty shares, of one thousand pounds each, and all the said three hundred and fifty shares have been subscribed for and issued, and the sum of six hundred pounds has been paid up upon each of the said shares:

And whereas the telegraphic cable or wire intended to be laid down by the company is in course of being constructed, and several contracts and agreements have been entered into by the company and by the original promoters thereof on their behalf, with other companies and persons, in order to the completion and working of their said submarine telegraph, and the company are otherwise engaged in carrying out the objects for which they were so constituted:

And whereas the said undertaking is one of great public and national importance, and it is desirable, in order to the better and more speedy execution of the same, that the company as originally constituted should cease to exist, and that the present shareholders therein should be incorporated by special act of Parliament, and that the company so incorporated should be substituted for the original company, and that powers should be conferred upon the company so incorporated to execute all works necessary and convenient for the purposes of their undertaking; but these objects cannot be effected without the authority of Parliament:

May it therefore please your Majesty, that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows, that is to say:

I. This act may be cited for all purposes as "The Atlantic Telegraph Act, 1857."

II. The following words or expressions shall have the several meanings hereby assigned to them, except where the subject or context shall be inconsistent therewith, that is to say:

The expression "the original company" shall mean "The Atlantic Telegraph Company (Limited,)" as constituted immediately before the passing of this act.

The expression "the company" shall mean the company incorporated by this act.

The word "person" shall include corporations.

III. "The Companies Clauses Consolidation Act, 1845," and so much of "The Lands Clauses Consolidation Act, 1845," as relates to the purchase of lands by agreement, shall be incorporated with and form part of this act.

IV. The Atlantic Telegraph Company (Limited,) as constituted under "The Joint Stock Companies Act, 1856," shall, as from the time of the passing of this act, cease to exist.

V. The several persons who, immediately before the passing of this act, were respectively the holders of the said three hundred and fifty shares in the original company, shall become and be shareholders in the company hereby incorporated; and they and all other persons who shall from time to time become shareholders in the last mentioned company, and their executors, administrators, successors, and assigns, respectively, shall, while respectively continuing to be such shareholders, be united into and be a company for the purposes herein mentioned, by the name of "The Atlantic Telegraph Company," and by that name shall be a body corporate, with perpetual succession, and shall have power to purchase and hold lands for the purposes of the undertaking, subject to the restrictions herein and in the acts incorporated herewith contained.

VI. Upon the passing of this act, all lands, property, rights, and privileges of or to which the original company, or any person in trust for them, were possessed or entitled immediately before the passing of this act, and all moneys due or accruing due, and all securities, books, accounts, documents, and choses in action belonging to the original company immediately before the passing of this act, shall be, and are hereby, vested in the company hereby incorporated for such estate or interest as the original company or their trustees had in the same, to hold to the company, their successors, and assigns, for the purposes of this act, subject, nevertheless, to such charges and liabilities as the same premises were respectively subject to immediately before the passing of this act.

VII. All deeds, contracts, and agreements entered into or made by the original company, or by the subscribers of the said memorandum of association acting on behalf of the original company, and now in force, shall bind and be enforceable against the company hereby incorporated, and shall also be enforceable by the company against the respective persons, parties thereto or liable thereon, in the same manner and to the same extent as if the same respectively had been entered into or made by the company hereby incorporated, instead of the original company.

VIII. This act shall not release, discharge, or suspend any action, suit, or other proceeding at law or in equity which shall be pending against the original company, or to which the original company shall have been a party at the time of the passing of this act; but such action, suit, or other proceeding may be maintained, prosecuted, or

continued, and execution had thereon by or in favor of or against the company hereby incorporated, in the same manner as if the company were the original company.

IX. This act shall not prejudice or affect any right of action or suit, or any remedy which the original company may now have, or, but for the passing of this act, might afterwards have had against any person, or which any person may now have, or, but for the passing of this act, might afterwards have had against the said last mentioned company; but such rights and remedies may be enforced or prosecuted by or against the company hereby incorporated in like manner and with the same effect as if the company were the original company; and all debts owing to or by the original company immediately before the passing of this act may be sued for and recovered by or against the company hereby incorporated in the same manner as, but for this act, they might have been by or against the original company.

X. All certificates, sales, transfers or dispositions and agreements made or executed of or in respect of any share in the original company shall be of force and effect as certificates, sales, transfers or dispositions and agreements, respectively, of or in respect of the corresponding shares in the company hereby incorporated.

XI. All officers and persons who immediately before the passing of this act shall have had in their possession or under their control any money, books, documents, papers, securities, goods, and other effects, belonging to the original company, shall account for and deliver up the same, respectively, to the company hereby incorporated, or to such person as they shall appoint to receive the same in the same manner, and subject to the same process and penalties for refusal or neglect, as if such officers or persons had been appointed and had become possessed of such money, books, documents, papers, securities, goods, or other effects, under the provisions of this act, or of "The Companies Clauses Consolidation Act, 1845."

XII. All officers and persons who shall be in the service of the original company at the time of the passing of this act, shall continue in the service of the company hereby incorporated in the same respective offices and employments, according to their respective appointments, until removed therefrom according to the provisions of this act, and all such officers and persons shall have the same powers and privileges, and they and their respective sureties shall be liable to the same conditions, penalties, obligations, and regulations, as if such officers and persons had been appointed, and such sureties had become bound under this act.

XIII. The capital of the company shall consist of the said sum of three hundred and fifty thousand pounds, divided, as aforesaid, into three hundred and fifty shares of one thousand pounds each.

XIV. Every person who, immediately before the passing of this act, was the holder of one or more shares in the original company shall, immediately after the passing of this act, become entitled to the same number of shares in the company hereby incorporated as he previously held in the capital of the original company, which shares shall be indicated in the register by the same number as, and be made in all

respects to correspond as nearly as possible with, those held by him in the original company.

XV. The company may, by a resolution passed with the assent of two-thirds of the votes of the shareholders, voting personally or by proxy, at any general meeting of the company convened with notice of such object, from time to time increase the capital of the company, so as the total amount of capital, including the original capital, shall not exceed the sum of one million pounds sterling, and for that purpose may from time to time create a sufficient number of additional shares of such nominal amount, not being more than one thousand pounds or less than twenty pounds each, as they may by such resolution determine, and such new or additional shares shall be allotted and issued by the board of directors to such persons, on such terms, and subject to such conditions as may be prescribed by such resolution, or (if not thereby prescribed) as the directors may in each such case think fit.

XVI. Any capital to be raised by the creation of new shares shall be part of the general capital of the company, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares for non-payment of calls, or otherwise, as the original capital, except as to the times for making calls for such additional capital, and the amount of such calls, which respectively the directors may and shall fix as they shall think fit.

XVII. It shall be lawful for the company to borrow, on mortgage or bond, any sums not exceeding in the whole one-third of so much of the capital of the company for the time being subscribed for as shall for the time being remain to be called up: *Provided, always,* That after any money shall have been borrowed by the company under the powers of this act, one-third of all sums received by them for calls shall be applied in the repayment of such money, until the whole thereof be discharged.

XVIII. The mortgagees or bond creditors of the company may enforce the payment of the principal and interest on moneys due to them respectively upon their respective mortgages and bonds by the appointment of a receiver; and in order to authorize the appointment of such receiver, in the event of the principal moneys due on such mortgages and bonds not being duly paid, the amount of the principal moneys owing to the mortgagees or bond creditors by whom application for such receiver shall be made, shall not be less than the sum of five thousand pounds in the whole.

XIX. The ordinary general meetings of the company shall be held some time in the month of February in each year, or within twenty days next after, and the first of such ordinary general meetings shall be held some time in the month of February next after the passing of this act, or within twenty days next after that month.

XX. The number of shareholders who shall be entitled to require the directors to convene an extraordinary meeting shall be ten at least, holding, in the aggregate, not less than fifteen thousand pounds in shares or stock of the company.

XXI. Every general meeting shall be held in London at the company's principal office for the time being, or at such other convenient

place within five miles thereof, as the directors shall from time to time appoint.

XXII. The quorum of every general meeting shall be twenty shareholders, holding, in the aggregate, at least fifty thousand pounds in shares or stock of the company.

XXIII. The company may, by a resolution passed with the assent of two-thirds of the votes of the shareholders, voting personally or by proxy, at any general meeting of the company convened with notice of such object, determine that the original shares of one thousand pounds, shall each be subdivided into fifty shares of twenty pounds each, and thereupon the board of directors shall take the necessary steps for carrying such resolutions into effect, and shall cause a new register to be made, and such twenty pound shares to be consecutively numbered, according to the provisions of "The Company's Clauses Consolidation Act, 1845;" and each person, who, at the time of such resolution, shall be entered upon the register as the holder of an original share of one thousand pounds, shall be registered as the holder of fifty of such twenty pound shares, and shall be entitled to a certificate of his proprietorship thereof; and the amount for the time being unpaid on such one thousand pounds share, shall thenceforth be apportioned rateably over such shares of twenty pounds, respectively, and be called up, and the payment thereof enforced on such terms and at such times as the directors may think fit.

XXIV. Every share of one thousand pounds shall confer fifty votes upon the holder; every share of less amount, which may hereafter be created either by division of the original shares, or upon the raising of further capital, shall confer one vote for every twenty pounds of its nominal amount; and every twenty pounds of stock in case of conversion or consolidation shall confer one vote.

XXV. The principal office of the company, and its corporate domicile, shall be in London.

XXVI. The number of directors shall for the present be eighteen, but a general meeting may, from time to time, reduce the number of directors to any number not less than eight, and may make or direct the necessary changes in the rotation of the retirement.

XXVII. The qualification of a director shall be the holding in his own right one original share of one thousand pounds in nominal amount in the capital of the company, or in shares of less denomination, if hereafter created or in stock, or partly in shares and partly in stock.

XXVIII. The persons who immediately before the passing of this act were the directors of the original company shall be the first directors of the company.

XXIX. The quorum of a meeting of directors shall be five, while the number of directors shall be eighteen, or any number exceeding twelve; when the number shall exceed eight and not exceed twelve, the quorum shall be four; and when the number shall not exceed eight, the quorum shall be three.

XXX. The number of directors of which committees appointed by the directors shall consist, shall be not less than three nor more than

nine, and the quorum of each such committee shall be such number as the board of directors shall prescribe.

XXXI. The remuneration of the directors, and also of the auditors appointed under the provisions of "The Companies Clauses Consolidation Act, 1845," shall, from time to time, be fixed by a general meeting of the company, and paid out of the funds of the company.

XXXII. The company may, from time to time, by one or more resolution or resolutions of a general meeting, elect from among the *shareholders* ordinarily resident in the United States or in the British colonies of North America, and duly qualified to be directors, not more than twelve persons to be honorary directors of the company in addition to and independently of the ordinary directors above mentioned; no more than eight of these honorary directors shall be elected from the *shareholders* ordinarily resident in the United States of America, and no more than four from those ordinarily resident in the British colonies of North America; such honorary directors, when in England, shall have the right to be present at and take part in and vote at the meetings of directors, but they shall not be counted in determining whether or not there is a quorum, and shall receive no remuneration for their services; and the provisions of "The Companies Clauses Consolidation Act, 1845," as to the retirement of directors by rotation, shall apply to such honorary directors.

XXXIII. In addition to the ordinary and honorary directors of the company above mentioned, it shall be lawful for the lords commissioners of her Majesty's treasury to appoint an *ex officio* director on behalf of her Majesty's government, for the purpose of seeing to and securing, as well the due fulfilment by the company of their contracts for the time being in force with the government, for the transmission of messages and signals for her Majesty or on her Majesty's service, as the working of the company's electric telegraphs with due attention to the wants and interests of the public.

XXXIV. Such *ex officio* director shall not go out of office by rotation in the same manner as the other directors of the company; but the said lords commissioners may, at any time, remove from his office any such *ex officio* director, and may appoint a new *ex officio* director in the place of any one dying, retiring, or being removed.

XXXV. Such *ex officio* director may be a shareholder in the company or not, as the said lords commissioners shall think fit; he shall be entitled to be present at all meetings of the directors and of the company, and to take part in all discussions thereat, and to inspect and examine all minute books, books of account, and other books and documents of the company, but he shall not have a right to vote, and no remuneration shall be paid him by the company.

XXXVI. Such *ex officio* director shall have power, in case he shall be of opinion that any course proposed to be taken, or act proposed to be done by the company, will or may be prejudicial to or inconsistent with the due fulfilment of their contracts with the government, or the regular, speedy, and impartial transmission of messages and signals for the public, or otherwise disadvantageous to the government or the public, to veto the taking of such course, or the doing of such act, and to require that the matter shall be submitted to the

lords commissioners of her Majesty treasury for their decision, and the said lords commissioners shall thereupon decide whether or not the objection of such *ex officio* director was well founded, and whether or not such course shall be taken or act be done, and the decision of the said lords commissioners thereon shall be final and conclusive upon the company, unless the board of directors shall, within seven days after the decision of the said lords commissioners shall have been notified to them, give to the said lords commissioners notice in writing that they are dissatisfied with such decision, and in that case the matter shall be referred to any two of the judges of her Majesty's superior courts of common law at Westminster, who shall be willing to hear and determine the same, and the decision of such two judges as to whether or not such objection was well founded, and whether or not such course is to be taken or act to be done by the company, shall be final and conclusive on all parties.

XXXVII. Except as is otherwise provided by this act, such *ex officio* director shall have the same rights and powers as any other director of the company.

XXXVIII. Upon the election or appointment of any new director of the company (whether an ordinary or honorary director) notice thereof shall be forthwith given in writing to the lords commissioners of her Majesty's treasury, and his name submitted to them for their approval, and such new director shall not take his seat or act as a director until either such approval shall have been signified to the board of directors, or one month shall have elapsed after such notice, without any disapproval being signified by the said lords commissioner, in either of which cases such election or appointment shall be taken to have been confirmed; but if within the said period of one month the said lords commissioners shall signify their disapproval of the director so elected or appointed, then such election or appointment shall thereby become null and void, and another director shall be elected or appointed, and so on, as often as the like shall happen: provided, that this shall not apply to the present directors of the company on any future re-election or reappointment, but they may sit and act without regard to any such approval.

XXXIX. The undertaking for which the company is incorporated shall be the constructing and laying down of one or more submarine telegraphic cables or wires, or other telegraphic communication, between any point or points upon or near the coast of Ireland or of Great Britain, and any point or points in Newfoundland, or on the continent of America, and the working and using the said line or lines of telegraph for the transmission of messages.

XL. For the purpose of better enabling the company to complete and maintain the said line or lines of telegraphic communication, it shall be lawful for the company to place, lay down, and maintain upon, over, and along the shore of the sea, or of any bay or inlet of the sea, on the western coast of Ireland or the western coast of Great Britain, below high-water mark of the highest spring tide, and so into and across the Atlantic ocean, any cables, wires, works, or apparatus, for the purposes of any telegraph belonging to or to be established by the company, and from time to time to alter and repair the same,

respectively; and in order to, and in the course of, such placing, laying down, altering, and repairing, to dig up and cut channels in the said shore or shores, below such high-water mark, and to construct, lay down, moor, fix, and maintain, in the direction of any of such lines of telegraph, near the western coast of Ireland or of Great Britain, and so into the open sea and the Atlantic ocean, to such distance from the said coast as they may think fit, such buoys, sea-marks, and other things of the like kind for indicating the position and direction of such lines of telegraph as they may from time to time think fit, the company in the execution of such works doing as little damage as may be, and making compensation for all damage to be caused thereby.

XLII. In the event of the company being required by her Majesty's government, at any time after the passing of this act, to lay down and construct a line or lines of telegraphic communication between London and the terminus of the company's line or lines on the coast of Great Britain or Ireland, they shall be and are hereby authorized to lay down such line or lines accordingly, but nothing herein contained shall authorize the company to enter upon, take, or use any lands or hereditaments for such purpose without the consent of the owner and occupier thereof for the time being.

XLIII. It shall not be lawful for the company to execute any works whatsoever on the bed or shore of the sea, or of any navigable river, so far as the tide flows and reflows, without the consent, in writing, of the commissioners of her Majesty's woods, forests, and land revenues, or one of them.

XLIII. This act shall not authorize the company to raise for or expend on the execution of any work situated in Great Britain and Ireland, or either of them, any greater sum in the whole than ninety-eight thousand pounds.

XLIV. The quantity of land within the United Kingdom which the company may hold at any one time (not including therein any land actually occupied by their telegraphic cables or their other lines of telegraph) shall not exceed thirty acres or such further quantity as the lords of the committee of privy council for trade shall or may from time to time by their license authorize or permit.

XLV. The company may construct, build, and maintain upon the land of which they may for the time being be in possession, such works and buildings for the purposes of their undertaking as they may from time to time think fit.

XLVI. Previously to commencing any work whatever on and within three miles seaward of the shores of Great Britain and Ireland, the company shall deposit at the admiralty office plans, sections, and working drawings of all such works for the approval of the lord high admiral of the United Kingdom of Great Britain and Ireland, or the commissioners for executing the office of lord high admiral aforesaid, such approval to be signified, in writing, under the hand of the secretary of the admiralty, and such works shall be constructed only in accordance with such approval; and when any such work shall have been commenced or constructed, it shall not be lawful for the company at any time to alter or extend the same without obtaining, previously to

making any such alteration or extension, the like consent or approval; and if such work shall be commenced or completed, or be altered, extended, or constructed contrary to the provisions of this act, it shall be lawful for the said lord high admiral, or the said commissioners for executing the office of lord high admiral, to abate, alter, and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the company, and the amount thereof shall be a debt due from the company to the Crown, and be recoverable accordingly with costs of suit.

XLVII. If at any time or times it shall be deemed expedient by the lord high admiral of the United Kingdom, or the commissioners for executing the office of lord high admiral, to order a local survey and examination of any work hereby authorized in, over, or affecting any tidal or navigable water or river, or within three miles seaward of the shores of Great Britain and Ireland, or of the intended site of such works, the company shall defray the costs of every such local survey and examination, and the amount thereof shall be a debt due to her Majesty from the company, and if not paid upon demand, may be recovered as a debt due to the Crown, with the costs of suit, or may be recovered with costs as a penalty is, or may be recoverable from the company.

XLVIII. If any work hereby authorized in, under, over, through, or across any tidal water or navigable river, or within three miles seaward of any of the shores of Great Britain and Ireland, or if any portion of any work which affects, or may affect, any such water or river or shores, or access thereto, shall be abandoned or suffered to fall into disuse or decay, it shall be lawful for the lord high admiral, or the commissioners for executing the office of lord high admiral, to abate and remove the same, or such part or parts thereof as he or they may at any time or times deem fit and proper, and to restore the site thereof to its former condition at the cost and charge of the company, and the amount thereof shall be a debt due from the company to the Crown, and be recoverable accordingly with costs of suit.

XLIX. The company shall be authorized and empowered to enter into and make with the New York, Newfoundland, and London Telegraph Company, and all other companies and persons now or at any time hereafter owning or working any electric telegraphs or other telegraphic communication, whether within the United Kingdom or not, and with any one or more of them, such agreements or arrangements for the working or using of any line of electric or other telegraphs in the United Kingdom or elsewhere, and whether sub-marine or not, or for the through or onward transmission of messages and intelligence requiring to be transmitted by or along any line of telegraph of any such other company or person as well as those of the company hereby incorporated, and for the payment or apportionment of the rates or charges to be made for such use, or for such through or onward transmission, or any services connected therewith, and generally as to the terms on which the lines of telegraph of this company, and of the other companies and persons respectively, are to be worked in connexion, as the parties to any such agreement or arrangement may from time to time agree on and determine.

I. The company may agree with the original grantee of any letters patent granted to any person for any inventions or improvements, or additions to inventions of electric telegraphs, or of the apparatus thereof, or of the giving or transmitting of signals, or of the regulating the transmitting or applying of electric currents or other processes for the purposes of telegraphic communication, or which may be available for the purposes of the company, or with any person in whom, for the time being, any such patent and privileges, or any part thereof, may be vested for the granting to them of the license or permission to use the privileges or any of them granted by the said letters patent, and may accordingly purchase and become entitled to the same, and accept such grant upon such terms and conditions as they may in any such case agree on.

LI.—In case the company shall, in pursuance of the acts of Parliament, 5 and 6 William IV, chapter 83, or the 7 and 8 Victoria, chapter 69, or of "The Patent Law Amendment Act, 1852," obtain the leave of her Majesty's attorney general or solicitor general for England or Ireland, or of her Majesty's lord advocate or solicitor general for Scotland, to enter at the office in the last mentioned act prescribed in that behalf any disclaimer of any part of either the title of the invention mentioned or comprised in any letters patent belonging to the company, or of any part of the specification of any such invention, or to enter in such office a memorandum of any alteration in any such title or specification as aforesaid, such disclaimer or memorandum of alteration may be made under the seal of the company and signed by two directors of the company, and when so made may, in pursuance of such leave as aforesaid, be entered, filed and enrolled according to the provisions of the said acts respectively, and no acknowledgment of any such disclaimer or memorandum of alteration shall be necessary previous to the enrolment thereof.

LII. The company shall be entitled to demand, receive, and recover from all persons from whom any messages or signals shall be transmitted by the company by means of any telegraph belonging to them, or under their control, such reasonable charges as they shall think fit; and such charges may be demanded and taken either by them, or on their behalf by any other company or person by or along whose line of telegraph such messages or signals shall be transmitted, before passing to and being transmitted by and along any line of telegraph of the company, and payment of any such charges may be required to be made before the transmission of such messages and signals respectively: *Provided always*, That if by and under any agreement or arrangement for the time being in force, made under the powers hereinafter contained with the lords of her Majesty's treasury, the company shall have bound themselves to demand and receive from the persons transmitting messages and signals by their lines of telegraph certain charges for such transmission, they shall demand, receive, and recover those charges only, and no others; and if they shall have so bound themselves to demand and receive from such persons charges not exceeding certain maximum charges, they shall not be entitled to demand, receive or recover for the transmission of such messages and

signals by their lines of telegraph charges greater than such maximum charges.

LIII. The company shall also be entitled to demand, receive and recover from all persons for whom they shall undertake to transmit and shall transmit any messages or signals along any line of telegraph of any other company or person after the transmission thereof by and along any of their own lines of telegraph the through charges as fixed for the time being, under any such agreements or arrangements for through transmission as aforesaid, or if there shall not be a fixed through charge, then, in addition to the charges of this company, to demand, receive and recover on behalf of such other companies or persons the further charges for such message or signal which may be payable to such other companies or persons, and no more, for the transmission of the said messages or signals over the lines of telegraph of such last mentioned companies or persons, respectively; and such through charges or additional charges (as the case may be) may also be demanded and required to be paid before the transmission of such messages and signals, respectively.

LIV. The use of the company's lines of telegraph and of all other lines of telegraph in the United Kingdom which they may for the time being have the right to use shall, subject to the rights of priority hereinafter mentioned, and the company's right of priority for their own purposes, and subject also to such reasonable regulations as may from time to time be made by the company, be open for the sending and receiving of messages by all persons alike, without favor or preference; and subject to such priority and reasonable regulations, respectively, all messages and signals shall be transmitted and delivered according to the order of time in which they shall have been received by the company.

LV. All lines of telegraph constructed or worked by the company shall at all reasonable times be open for the transmission of intelligence for her Majesty, or on her Majesty's service; and the company shall receive, transmit, and deliver all such messages and signals as shall from time to time be tendered for transmission for her Majesty, or on her Majesty's service.

LVI. All messages and signals sent or forwarded for transmission and delivery for her Majesty or on her Majesty's service shall have priority over all other messages whatsoever, and it shall be imperative on the company, their officers, and servants, to transmit and deliver such messages and signals accordingly, and to suspend the transmission of all or any other messages until the said messages and signals shall first have been transmitted: *Provided always*, That the company may, in consideration of a guarantee or subsidy granted or secured by the government of the United States, equal in rate or amount to that granted by or on behalf of her Majesty's government, grant and extend to the government of the United States the like priority for intelligence, on and for their service over all other messages and signals whatsoever, except those for her Majesty or on her Majesty's service, and after they shall have so done, and shall have notified their having so done to the lords commissioners of her Majesty's treasury, the messages and signals on the service of the government of the United

States shall thenceforward be entitled to, and shall have, during the continuance in force of any such guarantee or subsidy, the like priority as messages and signals for her Majesty or on her Majesty's service over those of all other persons whatsoever, and thenceforward messages and signals for her Majesty or on her Majesty's service, and those on the service of the government of the United States, shall, as between themselves, have no right of priority, but be transmitted and delivered respectively in the order of time in which they may be respectively tendered for transmission and delivery.

LVII. The lords commissioners of her Majesty's treasury may make and enter into, on behalf of her Majesty and of all departments of her Majesty's government, such agreements or arrangements with the company as to the rates or charges to be paid to the company for the use of their lines of telegraph, and for the assistance of their officers and servants, in the transmission and delivery of messages for her Majesty or on her Majesty's service, and may introduce into any such agreements or arrangements such terms and provisions as to the amount of the rates and charges to be demanded as well from her Majesty as from the public at large, and as to securing to the company a minimum annual payment for the transmission and delivery of messages and signals for her Majesty or on her Majesty's service, and generally in relation thereto, as they may think proper and may be able to agree on; and all agreements and arrangements which, before the passing of this act, were made and entered into between the said lords commissioners and the original company, shall be and are hereby ratified and confirmed so far and to such extent as they would have been good and valid if made and entered into after the passing of this act between the said lords commissioners and the company under the above power, and shall, as from the time of the passing of this act, be to such extent good and binding agreements and arrangements respectively between the said lords commissioners and the company hereby incorporated.

LVIII. When there shall be no agreement or arrangement in force as to the amount of such remuneration as aforesaid, the company shall be entitled to such reasonable remuneration for the use of their lines of telegraph, and the assistance of their officers and servants, for her Majesty or on her Majesty's service as aforesaid, as shall be determined by arbitration in the manner hereinafter provided; but the company shall not be entitled to refuse or delay to transmit or deliver any messages or signals for her Majesty or on her Majesty's service by reason of such remuneration not having been then agreed on or determined.

LIX. Every such matter to be determined by arbitration, as in the last section mentioned, shall be referred to the award of two persons, one to be named by the said lords commissioners, and the other by the company; and if such two arbitrators cannot agree as to the amount of such remuneration, then to the umpirage of some third person to be appointed by such two first named persons previously to their entering on the inquiry, and the said award or umpirage shall be binding and conclusive on all parties thereto.

LX. In any such reference, each of the parties thereto shall nomi-

nate their arbitrator within fourteen days after notice from the other party requiring such nomination, or, in default, the arbitrator appointed by the party giving such notice shall act as sole arbitrator, and the matter to be determined shall be left to the umpire in case the arbitrators shall not have made their award within three months after the appointment of the one of them last appointed; and if any umpire shall not make his award within three months after the matter shall have been left to him, then a new umpire shall be appointed by the arbitrators, who shall, in like manner, make his award within three calendar months from his appointment, or be superseded, and so *toties quoties*.

LXI. It shall be lawful for the company, whether or not they shall grant to the government of the United States any such priority as aforesaid, from time to time to make and enter into agreements and arrangements with that government for the transmission of messages and signals, on the service of that government, and as to the rates and charges, or the other remuneration in respect thereof.

LXII. At all times from and after the period of twenty-five years, from the opening of the said lines of telegraphic communication for the transmission of messages, whenever one of her Majesty's principal secretaries of state for the time being shall be of opinion that circumstances render it expedient to vest in her Majesty's government the control of the operations of the company, it shall be lawful for such secretary of state, by warrant under his hand, to cause possession to be taken of all the telegraphs and telegraphic apparatus of the various stations of the company, their licensees or assigns, for the space of one week from the date of such warrant, for the purpose of preventing any communication being made or signals given, save such as shall be directed and authorized by any such secretary of state, and also by further successive warrants to cause possession of the said telegraphs and telegraphic apparatus to be retained from week to week, so long as any such secretary of state shall deem such possession expedient for the public service: *Provided, always*, That for every week during which possession shall be so retained, the company, their licensees or assigns, shall receive from and be paid by the lords commissioners of her Majesty's treasury the same amount of profits as the company would have made in case they had continued the working of the said telegraphs, such profits to be computed upon an average of the weekly profits of the company for three months immediately preceding the issuing of the first of the said warrants.

LXIII. If any person in the employment of the company shall wilfully or negligently omit or delay to transmit or deliver any message or signal, or shall wilfully or negligently do any matter or thing whereby the transmission or delivery of any message or signal shall not take place, or shall be delayed or prevented, or shall wilfully or negligently omit to perform any act, matter, or thing, by reason whereof any message or signal shall not be transmitted or delivered, or shall be delayed in its transmission or delivery, every such person shall, for every such offence, forfeit a sum of money not exceeding twenty pounds.

LXIV. If any person shall wilfully remove, destroy, or damage any

electric telegraph belonging to or under the control of the company, and which may have been lawfully constructed, or any apparatus or other part of any such telegraph or any works connected therewith, he shall be guilty of a misdemeanor.

LXV. Any officer or servant of the company, and all persons called by any such officer or servant to his assistance, shall or may seize or detain any person who shall or may, in the presence of such officer or servant, wilfully have broken, injured or obstructed the working of any telegraph of the company, or any of the apparatus or works belonging to or connected with the same, and whose name or residence shall be unknown to such officer or servant, and shall convey such offender with all convenient speed before some justice, without any other warrant or authority than this act, and such justice shall proceed with all convenient speed to the hearing and determining of the complaint against such offender.

LXVI. If any person shall wilfully or negligently break, throw down, destroy, or injure any such telegraph, apparatus, buoys, or works as aforesaid, and shall not on demand make sufficient satisfaction for the damage thereby done, the company may recover such damages from the person so offending as any two justices think reasonable and adjudge, and the recovery of such damage shall not relieve such person from liability to any other punishment or penalty.

LXVII. The clauses of "The Railways Clauses Consolidation Act, 1845," with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with and form part of this act.

LXVIII. Nothing in this act, or the acts wholly or in part incorporated therewith, shall authorize the company to purchase, take, use, or otherwise interfere with any lands or any rights in respect thereof belonging to her Majesty in right of her crown without the consent in writing of the commissioners for the time being of her Majesty's woods, forests, and land revenues, or some one of them, first had and obtained for that purpose, and which consent such commissioners or commissioner are, or is, hereby authorized and empowered to give or to divest, prejudice, diminish, alter, or take away any of the estates, rights, privileges, powers, or authorities which now are or hereafter may be vested in or enjoyed by her Majesty, her heirs and successors.

LXIX. All the costs and expenses of and incidental to the applying for and passing of this act shall be paid by the company.

DEPARTMENT OF STATE,

Washington, April 15, 1857.

SIR: Your letter on the subject of a contract with the New York, Newfoundland, and London Telegraph Company has been received and considered, in connexion with the act of Congress to which it refers, and the correspondence of the company with the British government.

Under the direction of the Secretary, I have now to inform you that this department is prepared to contract with said telegraph company, as soon as a similar contract shall have been entered into with Great Britain, upon the following conditions, viz :

1. The United States, from the time of the completion of the submarine line of telegraph between Newfoundland and Ireland, and while it shall continue in working order, will pay at the rate of \$70,000 per year, for twenty-five years, as a remuneration for the work done on behalf of the government, in conveying its messages outward and homeward: *Provided, however*, That if, within that time, the net profits of the company shall be equal to a dividend of six per cent. per annum on a capital of £350,000, then the annual payment by the United States is to be reduced to fifty thousand dollars for the remainder of the twenty-five years.

2. The said company, in consideration of the premises, will give to the government of the United States concurrently with that of the Great Britain a preference in the transmission of messages, the despatches of the two governments to have priority in the order in which they arrive at the stations, respectively.

3. The tariff of prices for the use of such submarine communication by the public shall be fixed by the Secretary of the Treasury of the United States and the government of Great Britain or its authorized agent.

4. The United States and the citizens thereof shall enjoy the use of the said submarine telegraph and the lines of telegraph which may at any time connect with the same at its terminus on the coast of Newfoundland and in the United States, for all time, on the same terms and conditions which shall be stipulated in favor of the government of Great Britain and the subjects thereof, recognizing equality of rights in such use among citizens of the United States.

5. The contract will be subject to the conditions expressed in the act of Congress on this subject, approved March 3, 1857, and may be terminated by Congress, after ten years, upon giving one year's notice.

The British government has expressed its readiness to enter into stipulations of a similar character, by the letter of James Wilson, in behalf of the lords commissioners of her Majesty's treasury, dated November 20, 1856, and it is not doubted, therefore, that the two contracts may be completed at an early day. In the meantime, it is understood that the Secretary of the Navy feels himself at liberty to further the great purpose had in view by Congress, by furnishing two ships to be employed in laying down the submarine cable, and that these ships will soon be ready for sea.

Very respectfully, &c.,

JOHN APPLETON,
Assistant Secretary.

PETER COOPER, Esq.,
*President of the New York, Newfoundland, and
London Telegraph Company.*