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## SOMMARIO

ANNO XVI (2013) - n. 2

### ECONOMICS AND POLITICS IN SUBMARINE TELEGRAPH CABLES (XIX<sup>TH</sup> AND XX<sup>TH</sup> CENTURIES).

A GLOBAL PERSPECTIVE BETWEEN HISTORY,  
HERITAGE AND PRESERVATION

edited by Andrea Giuntini and Ana Paula Silva

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## A HISTORY OF THE ANGLO AMERICAN TELEGRAPH COMPANY AS SEEN THROUGH ITS LITIGATION\*

### *Introduction*

This paper constitutes a history of the company seen largely through some of the most significant court disputes in which it was involved. A perhaps surprising outcome of the paper is to highlight an organisation which was at the forefront of technology, but which had little or no background expertise in technology amongst its management. True, it was encumbered by large initial capital expenditure as one of the first movers in its field, but everything about its business practices seems to have been driven by maximisation of short-term return rather than a strategic eye to the future. It will be seen that the Board of Directors were unable to react to a bluff when the *Western Union Telegraph* moved to take it over. The *Anglo American Telegraph* then survived in a twilight world as an investment company receiving lease income and certain other amounts even after its operations were absorbed by *Western Union* in 1912. *Western Union* was not above using litigation in the UK courts to forward its interests and a major spat between it and the investment company remains of *Anglo* over tax bills continued for some time with victories for both sides before ending in up in the House of Lords (at that time the highest UK appeal court). The outcome, which was ultimately in *Western Union's* favour, was a disaster for the extenuated *Anglo* operations. The basis for the judgment was in part due to circumstances that could not have been foreseen at the time of take-over, but problems with the wording of the 1912 contract were at the heart and the blame for this must rest with the directors of the two undertakings and their legal advisers. This paper will start by providing background information about the various facets of the history. The various instances of litigation will be discussed within the chronological order in which they occurred.

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*The Atlantic Telegraph Company, its predecessors and their concessions*

In 1850 Bishop Mullock of Newfoundland, probably aware of the developing importance of telegraphs, pointed out that Newfoundland represented the point on the North American landmass that was closest to Europe. Some of his ideas on communication were taken up by F.N. Gisborne who with the support of the island's legislature set up the *Newfoundland Telegraph*, but his efforts to establish links to nearby Canada were threatened by bankruptcy long before anything was in place. His approaches to the American entrepreneur, Cyrus Field were so successful that Field took over the entire enterprise in 1854 and with an eye to traversing the Atlantic he set up the *New York, Newfoundland and London Telegraph*. He obtained a charter from the Newfoundland legislature which granted him sole landing rights on the island for a period of 50 years. An interesting feature of Field's company was that it had the right to hold meetings of stockholders and directors in London, New York or Newfoundland.

In Autumn 1854 Field travelled to London to promote his venture, but mainly to order cable. The first attempt to lay a cable across the Gulf of St Lawrence failed, but lessons were learnt. Field returned to England to get more cable and by 1856 he had a line from Newfoundland to New York, but the cost was prohibitive. He was back in London during the summer of 1856 where he approached many well-known engineers including Robert Stephenson, Charles Tilston Bright and Isambard Kingdon Brunel. The UK government was responsive and was generous with its conditions and subsidies. Accordingly, the *Atlantic Telegraph Co.* was established by Act of Parliament in September 1856. Field took 25% of shares on behalf of his American partners. Amongst the UK subscribers were Brett (the pioneer of the Dover-Calais cable link), Bright (the engineer), Thackeray (the writer) and Lady Byron. The list of Directors appointed in December 1856 included many eminent bankers and merchants from London, Liverpool and Manchester. Samuel Gurney of the firm *Overend and Gurney*. T.H. Hankey of the firm of bankers of that name in London. Sir William Brown, Henry Harrison, Edward Johnston, Robert Crosbie, George Maxwell and C.W.H. Pickering were all from Liverpool. John Pender and James Dugdale were from Manchester. The list also included three other names. George Peabody and Curtis M. Lampson were American merchants, long time resident in England. William Thomson Professor of Natural Philosophy at Glasgow University had been appointed by the vote of the Scottish shareholders to represent their interests. Thus

we see that the *Atlantic Telegraph* had a scientist/technologist right at the top and right from the start.

According to Coggeshall<sup>1</sup>, Field's charter was passed to the *Atlantic Telegraph Co.* and that thereafter the name, *New York, Newfoundland and London* disappears on the eastern side of the Atlantic, although, until Field sold out to *Western Union* it remained in North America as the body which conveyed the *Atlantic Telegraph's* messages from Newfoundland to New York.

Details of the events surrounding the 1857 and 1858 cable laying fiascos can be found in various sources<sup>2</sup>. Further progress was delayed until after the American Civil War and in 1865 the *Atlantic Telegraph Co.*<sup>3</sup>, using the steamship *Great Eastern* almost succeeded in their endeavours, but were foiled by a major cable break in deep ocean. This ultimately led to the creation of the *Anglo*, but first we must take a short detour whose significance will become apparent below.

### *The origins of the Western Union Telegraph Company*

Coggeshall, citing James D. Reid's *The Telegraph in America*, says that the *Western Union Telegraph* was incorporated in 1851 as the *New York and Mississippi Valley Printing Telegraph*. Under the influence of Ezra Cornell the name was changed to the *Western Union Telegraph* in 1856 and by 1863 its shareholders were receiving generous dividends. Coggeshall says that in the middle 1850s the *American Telegraph* had acquired companies working between New York, Boston and Portland (Maine). These were integrated and the lines extended to Port Hastings (Nova Scotia) and on to Cape Breton island where they met the cables which had been laid by *New York, Newfoundland and London*. The

<sup>1</sup> I.S. COGGESHALL, *An annotated history of submarine cables and overseas radiotelegraphs 1851-1934*, edited by D. de Cogan, School of Information Systems (UEA) 1993, p. 5.

<sup>2</sup> D. DE COGAN, *Background to the 1858 telegraph cable*, IET Seminar on The Story of Trans-Atlantic Communications, Museum of Science and Industry, Manchester 28 October 2008, pp. 19-25; ID., *Insights into the landing of the 1858 cable*, ivi, pp. 35-46; ID., *Dr. E.O.W. Whitehouse and the 1858 trans-Atlantic Telegraph Cable*, «History of Technology», 10 (1985), pp. 1-15; D. DE COGAN-A. GREEN, *Numerical analysis of some measurements on the first trans-Atlantic cable*, «IET Scientific Measures Technology», 5 (2011), pp. 117-124.

<sup>3</sup> It is not certain to the present authors how this transfer was effected or indeed if it was permissible under the terms of the Charter.

*American Telegraph* was reorganised in 1859 with Field and Samuel Morse on the Board of Directors. As part of Field's realisation of his investments the company was absorbed by *Western Union* in 1866. Thus from the very start of successful trans-Atlantic communications it was *Western Union* which provided the link from Newfoundland to New York.

### *The formation of the Anglo American Telegraph Company*

Following the near success of 1865 the *Atlantic Telegraph* required extra capital but this was almost impossible to raise in the financial climate following the collapse of the merchant banking firm of *Overend and Gurney*. In order to overcome this reluctance the directors decided to attract investors with the issue of 12% preferential shares which would rank before the original 4% 1857 and 8% 1865 shares. Just as everything was in place to proceed with the cable laying expedition the directors were informed that their method of financing was unlawful. In particular this company, formed under an Act of Parliament, would need to seek specific Parliamentary approval for the issue of preferential shares. It appears that similar approvals had been granted previously, but the process could be notoriously protracted and in view of the weather window it was out of question on this occasion. A solution to the problem was suggested by several of the larger investors. A new body, the *Anglo American Telegraph Company*, would be formed under the relatively new and straightforward process of registration under the Companies Act of 1862 with a capital of £ 600,000, which required no Parliamentary oversight either initially or on subsequent changes to the company's constitution. This new company would enter into agreement with the *Atlantic Telegraph Co.*, issue the preferential stock and take over responsibility for laying the cable. This is what happened and by the summer of 1866 there were two working cables between Valentia Island in Ireland and Hearts' Content in Newfoundland. The agreement provided for the winding up of the *Anglo American Telegraph* on condition that a payment of £ 1.2 million was received from the *Atlantic* on or before 1 Jan 1869. Consistently with the temporary nature of this arrangement, in 1867 an Act of Parliament<sup>4</sup> was obtained which permitted the *Atlantic* to raise the

<sup>4</sup> Atlantic Telegraph Amendment Act 1867 c. 28.



capital necessary to buy out the *Anglo American*. However section 4 of the Act stipulated that such resolution must be passed with the assent of three quarters of the votes of the *Anglo's* shareholders. A few of the larger shareholders (including Lord Brassey) were opposed to the dissolution of the *Anglo* and used this provision to block the resolution. This would clearly have prevented the Atlantic company from operating independently as intended, and in consequence an Act of Parliament was passed in 1870 «to amalgamate the *Atlantic Telegraph Company* with the *Anglo-American Telegraph Company*, and to provide for the dissolution of the *Atlantic Telegraph Company*»<sup>5</sup>.

*The Anglo American Telegraph Co as the major player in Atlantic communications*

The *Anglo* thus found itself in control of two cables with little technical expertise except for the Superintendent at the Valentia island cable station, James Graves, who had to research optimum operational conditions as well as establish procedures for the reception and transmission of traffic. At first, errors were frequent and customers, who were paying extortionate rates, sought redress. One example arose as a result of the linguistic and accent differences that sometimes created problems of communication between staff. In the early stages two people were involved in receiving a message. In the instant case, the person reading the mirror galvanometer was from London, so that when he dictated the word «hoax» on an incoming message the first letter was silent. The scribe was not from London and the recipients were not amused when they received information concerning «oaks». Errors in transmission and failure to deliver messages could have serious consequences and Humphrey<sup>6</sup> gives an interesting account of cases which involved *Western Union*.

In 1876 the *Anglo* found itself in a legal sandwich<sup>7</sup>. £ 5,000 worth of *Anglo* stock was owned by Coates and without his knowledge his clerk Philips sold this using a forged document. The new owners (Spurling and others) almost immediately used this stock as security

<sup>5</sup> Atlantic Telegraph Act 1870 c. 99.

<sup>6</sup> T.F. HUMPHREY, *Telegraph Law in New York: Company Liabilities and the Rule for Damages*, HeinOnline 5 Counsellor 18 (1895-1896).

<sup>7</sup> *Simm and others v Anglo American Telegraph Co; Anglo American Telegraph Co v Spurling and others* [1879] 5 QB 188.

with a bank. Dividends were paid by *Anglo* up to August 1877 when the forgery was discovered and further payment of dividends to the bank was withheld. The bank sued the *Anglo American Telegraph*, and although the first instance judge ordered the company to pay the bank the value of £ 5,000 stock plus interest at the rate of 4%, this decision was reversed in the Court of Appeal in November 1879. At today's prices, the amounts involved would amount to almost £ 500,000, demonstrating that the *Anglo's* shares were at the least valuable and marketable enough to support a substantial fraud.

Meanwhile, the *Anglo* continued with its policy of high tariffs and those most affected made moves to encourage competition. Given the enormity of the investment, these had to be prestige projects. Early attempts by Reuter and others to establish competition in the guise of the *Société du Cable Transatlantique Française* had some effect in reducing rates, but it was soon joined with the *Anglo* in what was called the *Joint Purse Agreement*<sup>8</sup>.

The first effective competition came from the *Direct United States Telegraph Company* (DUSTC) which was formed in 1873. This company had strong support from the press who were clamouring for reduced tariffs. They were also supported by the German electrical company *Siemens*, whose British arm wished to break the cable manufacturing monopoly enjoyed by the *Telegraph Construction and Maintenance*. The DUSTC was formed with a capital of £ 1.3 million which was very small compared with the £ 7 million stock which the *Anglo* had as a result of the initial technical failures of the *Atlantic Telegraph*. The original subscribers included bankers, and stockbrokers, but also a politician, Henry Labouchere, best known as the author of the «Labouchere Amendment» to Britain's homosexuality laws that was used to imprison Oscar Wilde.

*Siemens*, having had bad experiences with chartered ships commissioned its own, the *Faraday*, which had many revolutionary features. These included twin screws, a bow rudder, twin superstructure with a through deck as well as similar cable laying gear fore and aft. This meant that it could lay or pick up a cable with equal facility. It was launched on 17 February 1874, was fitted out during April and was on her way by 16 May of that year. It was originally

<sup>8</sup> D. DE COGAN, *Innovazione tecnologica e stagnazione finanziaria (lo sviluppo della telegrafia internazionale tra il 1866 e il 1900: una prospettiva britannica)*, in *Flussi invisibili. Le telecomunicazioni fra Ottocento e Novecento*, a cura di A. Giuntini, «Memoria e Ricerca», 11 (2000), pp. 25-43.

intended that the cable should be connected directly between Ireland and the United States and for that reason *Siemens* designed a special highly conducting cable. However, in spite of this, it was soon realised that the excessive length would result in an uneconomical operating speed (measured in words per minute) and that a nearer land-fall would be needed. Papers in the Centre for Newfoundland Studies at Memorial University in St Johns Newfoundland show that as *Faraday* approached Conception Bay its intentions were challenged in the courts by the AATC manager in Newfoundland, Alexander M. Mackay. On 6 August 1874 the DUSTC was subjected to an injunction against landing a cable which they opposed, claiming that the cable landing monopoly claimed by the *Anglo* was void for a variety of reasons. The matter was pursued through the Supreme Court of Newfoundland up in the Privy Council in London, the ultimate level of appeal in the Newfoundland court system at the time, which confirmed the initial injunction on 14 February 1877. The Privy Council report provides a good summary<sup>9</sup>.

In parallel with the court challenges by DUSTC, Henry Labouchere and colleagues pushed hard on the question of the Newfoundland Government exercising its right of pre-emption, a take-over of the telegraph operation, which right formed part of the original agreement between the Newfoundland Government and Cyrus Field. By creating uncertainty in the public mind, it was possible to damage the stock market value. The architects of this attack were able to buy *Anglo* shares at a knock-down price and sell them when it became obvious that the Newfoundland Government had never had any intention of exercising its rights of pre-emption.

Once it became clear that it was not going to be possible to break the monopoly *Faraday* was forced to divert the cable to Tor Bay near Halifax and the link from Ireland to New York was operational by late 1875. In its first year of operation the *Direct* earned £ 143,610 gross income on its capital of £ 1.3 million. During the same period the *Joint Purse* companies grossed £ 490,910 on a capital of £ 7 million. The *Direct* was quite clearly a very lean operation and therefore presented a very serious threat to the share value of the *Anglo*. At this point John Pender stepped in. He was one of the leading sources of funding for the original *Anglo* cables and was now directing the *Eastern Telegraph* which was connecting all points of the Empire. In

<sup>9</sup> *The Direct United States Cable Company Limited v The Anglo-American Telegraph Company Limited* (1877) 2 App Cas 394.

1873 he had established the *Globe Telegraph and Trust Company*, an early form of unit trust which helped telegraph cable investors to spread their risk in what was a volatile market. Pender then moved to protect the interests of the *Anglo* by using funds from the *Globe Telegraph and Trust* to buy out the *Direct* and force a merger with what was effectively a price-fixing cartel. His first obstacle was the Articles of Association of the *Direct* which provided that no shareholder could vote on more than 100 shares with each ten shares counting as one vote. Pender started with 1000 shares and dispersed them amongst nominees who would vote in-line with his wishes. After the lapse of the required three months Pender proposed at a general meeting of the *Direct*:

That it is expedient to put an end to the present antagonism of this company towards the Anglo American Telegraph Company and its connections, and to work this company's cable in friendly alliance with their lines; and that a committee of shareholders be appointed to be named by the meeting to confer with the directors as to the best method of giving effect to this resolution, and to report to the shareholders thereon at such time as the meeting shall appoint.

The board, including its chairman, Mr Lushington voted against the motion which Pender would have won, except that Lushington refused to allow the votes of Pender's nominees to be counted. Pender sought an injunction<sup>10</sup>. The Master of the Rolls, Lord Jessell granted the remedy on the basis that the right of DUSTC shareholders to vote at general meetings was determined by reference to the names on the share register. The possibility that Pender might be the beneficial owner of many of the shares under other names was not relevant.

The *Anglo* was also at the edge of other potential litigation which had deeper technological implications. Up to about 1875 all traffic on their cables had been transmitted simplex; messages were sent in one direction for a period of time and then the direction of transmission was reversed. If cables could be operated duplex, then the efficiency of each cable could be doubled since traffic could be simultaneously transmitted in both directions. The basic concept of duplex operation on telegraph lines had been around for some time and various aspects of the technique had been patented. The duplexing of land-lines came first. The American J.B. Stearns was paid £ 1,000 by the *Anglo* to duplex the lines between London and Valentia. In the early 1870s the UK Post Office who now controlled all the UK land-lines were

<sup>10</sup> *Pender v Lushington* (1877) 6 Ch D 70.

demurring on the subject of paying Stearns for work which he had done for them as certain aspects of his circuit clearly infringed a patent by Cromwell F. Varley of 1862. However, Varley was in receipt of royalties from the *Anglo* for the use of various patents including one which involved the key components of Stearn's duplexing circuit. Stearns was attempting to duplex short sections of ocean cable in 1872, but with moderate success. He was more successful the following year on a cable across the Irish Sea, but the key was the «artificial line» which mimicked the ocean cable and which at every point strayed further from his (Stearn's) original patent and more closely resembled Varley's concept of an artificial line. He then started on the cables between Ireland and Newfoundland in 1875. He was assisted by James Graves, the superintendent at Valentia who was really the only technical person directly employed by the *Anglo American Telegraph*. The superintendent in Newfoundland appeared to make every attempt to avoid participating in these experiments, almost to the point of obstruction<sup>11</sup>. Stearns clearly impressed Graves who in his writings<sup>12</sup> staunchly supported him in spite of adversity. It was not until 1880 that the Valentia cables were operating duplex on a commercial basis. C.F. Varley and W.E. Ayrton in a Joint Report in 1881<sup>13</sup> described the Stearns system as practically unworkable and in the long-run it was a variant of the Varley system, as patented by Alexander Muirhead in 1874 and 1875 that became the basis for cable duplex. It would appear that Graves's unswerving support for Stearns served him badly with his employers who had invested heavily in a technology that was quickly superseded. His writings would suggest that he was technologically sidelined by the company from about this time.

### *Western Union Telegraph Company 1866-1881*

According to Coggeshall<sup>14</sup>, during the period 1866-1880, *Western Union* had been content to act as the American feeder for the *Anglo*

<sup>11</sup> "Weaver to Weedon", "Graves to Weedon" and "Weaver to Graves" in Interstation Letters from 1879, part of the Heart's Content Papers in the Provincial Archives of Newfoundland and Labrador, St Johns, Newfoundland.

<sup>12</sup> *Thirty six years in the telegraph service 1852 to 1888, being a brief autobiography of James Graves MSTE*, copy available at <http://dandadec.com/some-telegraph-papers/>.

<sup>13</sup> C.F. VARLEY-W.E. AYRTON in a Joint Report in 1881. See BRIGHT, *Submarine Telegraphs*, p. 641.

<sup>14</sup> COGGESHALL, *An annotated history of submarine cables*, p. 19.

*American Telegraph*. However in 1880 the financier, Jay Gould (often vilified as an archetypal Robber Baron)<sup>15</sup> had other ambitions. He had secured control of many US railroads and took control of the telegraph companies that used line-side poles even though many had long-standing contracts with *Western Union*. In 1879 he created the *American Union Telegraph Company* with the intention of forcing *Western Union* and the companies for whom it acted as feeder to dance to his tune. The war did not last long. The *Western Union* board capitulated in January 1881. Meanwhile Gould had approached John Pender to see how the *Anglo American Telegraph* would respond to his demand for concessions. Getting a negative response he set about ordering two new Atlantic cables. *Siemens* completed the first cable from Canso, Nova Scotia to Sennen Cove, Cornwall in May 1881. The project was viewed with consternation by the pool of companies led by *Anglo*. Their stock went down. Gould bought. Just as they were ready to start operations, Gould announced a rate 50% higher than the *Anglo*'s, so their stock rose. Then rumors went about that the Gould cable was faulty and that it was too light to repair. The *Anglo*'s stock continued to rise and then Gould sold, making a handsome profit. Once *Siemens* had completed the second cable Gould was ready to go but was not going to have a tariff war with the *Anglo* and its associated companies. However, since he now controlled *Western Union* which acted as the feeder for pool traffic, it was made clear that this might not continue. The value of *Anglo* stock plummeted and they had to accept Gould's terms. Gould's cables were now leased to *Western Union* and started operating as members of the pool in May 1882. At this stage one has to ask how different things might have been had *Anglo* called Gould's bluff and established their own system of feeding, possibly by means of cables from Newfoundland to New York?

### *Anglo American Telegraph Company 1881-1905*

The *Joint Purse* group were faced with stiff competition from 1885 onwards when the *Commercial Cable* was founded by Mackey and Bennett<sup>16</sup>. They had cables from Nova Scotia to Ireland and by way

<sup>15</sup> E.J. RENEHAN, *Dark Genius of Wall Street: The Misunderstood Life of Jay Gould, King of the Robber Barons*, New York 2005.

<sup>16</sup> D. DE COGAN, *The Commercial Cable Co. and their Waterville station*, Proceedings of the IEE History of Technology Weekend, Dublin 1987.

of innovation, they had a cable from Ireland to UK which circumvented delays on the UK Post Office cables and land-lines. They also provided their own feeder system on the US side of the Atlantic. This comprised feeder cables from Nova Scotia to New York and Mackey finding that he needed an inland feeder system formed the *Postal Telegraph*, so that they had no dependence on *Western Union*. Meanwhile, mindful of the effective absorption by *Anglo* of their first trans-Atlantic cable, in 1879 the French had established *Compagnie française du télégraphe de Paris à New-York*, otherwise known as «the PQ»<sup>17</sup> after its founder, Augustin Pouyer-Quertier. At the start it joined the *Anglo/Western Union Pool*. Haigh<sup>18</sup> reports that in 1895 PQ joined forces with the *Société Française de Télégraphes Sous-Marins* to form the *Compagnie Française de Câbles Télégraphiques* and thereafter the PQ withdrew from the Pool. It is known that the *Anglo* took a case against the PQ in 1894 for the refund of a share of the benefits that the PQ had derived from being part of the Pool, so its departure from the pool may have been earlier than Haigh suggests. In fact the *Times* (page 5) for 11 July 1894 tells a slightly different story. It suggests that it was the French Government who in 1886 protested against the agreement of 1880 between the two companies and prompted the French company to withdraw by threatening to remove its concessions. This question of whether PQ had acted under pressure was referred to the Conseil d'État by the French appeal court. The *Times* continues: «A fresh notification from the Government settled this point and the Anglo-American company, consequently claimed damages for breach of contract. The Court today (11 July 1894) held that damages were payable and appointed three experts to appraise them». The case seems still to have been dragging on in 1898, by which time the PQ was in liquidation.

The experience with Marconi is another example of the *Anglo's* determination to exercise its right of monopoly in Newfoundland to the bitter end. In 1901 Marconi, using a receiver set up at Signal Hill, St Johns, Newfoundland was able to demonstrate that trans-Atlantic wireless reception was possible. However, on hearing the news the *Anglo's* local manager, Alexander M. Mackay threatened Marconi with an injunction despite the fact that Cyrus Field's monopoly had only four years to run. The public and the Newfoundland legislature were furious and there were near riots when he prevented Marconi continuing

<sup>17</sup> BRIGHT, *Submarine Telegraphs*, p. 131.

<sup>18</sup> K.R. HAIGH, *Cables and Submarine Cables*, STC, London 1978, p. 331.



with his experiments in St Johns. It would have been interesting if the matter had gone to court. Wireless was not a cable and thus the better opinion is that Marconi was not in breach of the landing monopoly. Mackay might have been able to use the Anglo's control of the inland telegraphs as his basis for thwarting Marconi, although, if Marconi had merely used Newfoundland as a relay point, then it is unlikely that Mackay could have stopped him. The question was not raised as Marconi moved his operation to Nova Scotia.

*Western Union (1882-1911). Anglo American Telegraph Company (1906-1911)*

In order to understand what was happening in the saga that ended up with *Western Union* leasing the entire cable operation from *Anglo*, we need to look at the wider picture, particularly in the US. Shortly after the invention of the telephone, Bell offered his patents to *Western Union*, who turned him down, believing that telegraph was the way forward. When they realized their error they retained Thomas Edison to try and break the Bell patent. Edison's invention of the phonograph was a by-product of this work. The *Bell Patent Association* was established in 1874 with the objective of protecting Bell's patents. It became the *Bell Telephone Company* in 1875. At this stage we need to consider Theodore Newton Vail (1845-1920) who had an early association with *Western Union*, but was an early convert to the telephone. In 1878 he became the general manager of the *American Bell Telephone* and defended his company in the 1879 patent lawsuit, which *Western Union* lost, forcing their exit from telephones. The Bell companies became *American Telephone and Telegraph Company (A.T.&T.)* in 1885 and Vail was elected president, but was forced to retire due to ill-health in 1887. He was re-appointed president in 1909 and oversaw a rapid expansion of A.T.&T. as it bought up smaller companies, one of these being *Western Union*, which was taken over in 1910 with Vail as its president. During this time the US government was very concerned about this monopolistic growth of certain key companies and with the formation of cartels. The Sherman Anti-Trust Act of 1890 was an attempt to curtail such behaviour, but it really did not achieve bite until the trust-busting presidency of Theodore Roosevelt (1901-1909). It still forms the basis for much federal anti-trust litigation. Meanwhile AATC was involved in several cases during this period. The most notable of these was a case in the Newfoundland courts



*The King v the Anglo American Telegraph Company* in 1907. This centered around a tax on cables landing in, and traffic passing through the island that was imposed on telegraph companies operating in Newfoundland<sup>19</sup>. The *Anglo American Telegraph* denied their liability, claiming exemption which had been granted specifically to the *New York, Newfoundland and London Telegraph*<sup>20</sup>. The *Anglo* claimed that the rights, privileges, franchises and obligations of that company under the Act were now vested in them. The court did not accept this argument and *Anglo* were forced to pay the tax plus court costs. The other item of litigation, between the *Anglo* and the railway company *Reid Newfoundland* seems to have dragged on for years. There was an agreement of 11 August 1888 whereby the *Anglo* agreed with the *Newfoundland Railway* that the *Anglo* should have exclusive rights to maintain and operate telegraph lines along railway property for 27 years, in return for which the *Anglo* would erect and maintain a special wire for the use of the railway company. *Newfoundland Railway* was taken over by *Reid Newfoundland* which was obliged to continue the agreement. It transpired that certain commercial messages, not connected with railway business, had been sent along this special wire in contravention of the agreement. In 1907 the *Anglo* went to the Supreme Court of Newfoundland claiming account for these messages. The Court held that the *Reid* was required so to account, and this was confirmed by the Privy Council on further appeal<sup>21</sup>. In 1909 the *Anglo* was back in the Supreme Court of Newfoundland seeking an injunction to restrain the *Reid Newfoundland* from operating a different wire which the *Reid Newfoundland* had erected on their own property. The Court held that by the agreement of 1888 the *Anglo* was entitled to an injunction. However, this decision was reversed by the Privy Council in 1910, who held that the railway could erect telegraph poles solely for their own business. The affair was drawing to a close when in 1910 it was held in the Supreme Court of Newfoundland that the railway company could not under the terms of the contract use the «special wire» for commercial purposes other than for its own business and this decision was upheld by the Privy Council in 1912<sup>22</sup>.

<sup>19</sup> By Act 5 Edw. VII.c.7.

<sup>20</sup> Act 17 Vic. C. 2.

<sup>21</sup> *Reid Newfoundland Co v Anglo American Telegraph Co.* (1907) *Newf.* 307; [1908] UKPC 52.

<sup>22</sup> *Reid Newfoundland Co v Anglo American Telegraph Co.*(1910) *Newf.* 451; [1912] A.C. 555.

*The take-over and its immediate aftermath*

As part of the US Government's attempt to thwart Vail's attempt to gain a total monopoly on all telephone and telegraph the government put pressure on A.T&T. to force *Western Union* out of the British Cable Pool. Coggeshall<sup>23</sup> contends that there were behind the scenes promptings by the *Commercial Cable*, which led the US Attorney General to indicate that if *Western Union* did not leave the *Pool*, then it would be forced out using the Sherman Act. Coggeshall continues: «Vail thus was balked in his desire to amalgamate the companies both home and abroad into a world-wide telephone, telegraph, cable system, but making opportunity out of the turn which events had taken, he seized upon the Sherman Act as an excuse for withdrawing Western Union from the Pool forthwith», leaving the *Anglo* and *DUS* both high and dry upon the beach with no landline support. The *Electrician* 67 (1911), p. 1022, quoting the proceedings of a *DUS* board meeting, says Vail informed them in February 1911 that the 1882 *Pool* contract would be terminated on 1 March 1911. After withdrawal of the traffic, *Anglo* and *DUS* were at first inclined to combine and fight, but court action seemed futile and there was little hope of getting any American traffic outside of New York and Boston.

According to the *New York Times* of 18 December 1910, the details of the take-over (purchase or lease) were not as straightforward on the British side as in the US. It was suggested that this was because the stock ownership was dispersed widely into small-holdings and no sale of the company could be effected without a meeting of shareholders. From the *Western Union* point of view there were also difficulties because most land-lines connected to the cable landing sites in Britain and Europe were state owned. So, agreement with each of the telegraphs services as well as the assent of the International Telegraph Convention would be required.

On 3 May 1911 there were questions on the matter in the House of Commons<sup>24</sup>. The Postmaster General replied that he was taking steps by arranging for the government to have certain powers of control over the rates for Transatlantic cable messages and by other measures to secure that no British interests suffer from the control of

<sup>23</sup> COGGESHALL, *An annotated history of submarine cables*, p. 33.

<sup>24</sup> <http://hansard.millbanksystems.com/commons/1911/may/03/american-cable-companies>.

the *Anglo American Cable Company's* business being in effect transferred to the *Western Union Cable*.

Given these obstacles we can assume that lease became the least-troublesome option for the takeover. The *Anglo* lease by *Western Union*, was arranged by Executive Agreement in July 1911 and by Indenture of 1 March 1912 for 99 years from 1 April 1912. According to the *New York Times* of 11 October 1911, *Anglo* and DUS stockholders had ratified the lease on 29 September 1911. The annual meeting of *Western Union* was to be held on the day the paper reported and it was expected that stockholders would do likewise.

Although Vail might have been able to claim that *Western Union* was no longer part of a British monopoly, it does not appear to have washed with the authorities who were still trying to attack the Anti-Trust aspects of A.T.&T. In 1913 Vail oversaw the *Kingsbury Commitment*<sup>25</sup> which allowed the company to continue certain aspects of its monopoly in return for concessions such as the divestment of its controlling interest in *Western Union* as well as allowing competing, independent telephone companies to interconnect with the A.T.&T. long-haul network. Thus *Western Union* regained its independence in 1914, although, during the period of the first world war, it was virtually taken into state ownership and its operation was overseen by the US Postal Service. Vail had relinquished his presidency of *Western Union*, although he remained president of A.T.&T. until 1919. Newcomb Carlton became President of *Western Union* and held the position until 1933. During his tenure he oversaw major technological changes to what had previously been the *Anglo* cables. In the period after the first world war the number of operators was reduced by a factor ten as a result of the introduction of telex. *Western Union* also retained close links with the *Western Electric Company* which was a major supplier to A.T.&T. In the period up to 1929 *Western Electric* helped to significantly raise the transmission speeds on submarine cables and introduce multiplex signaling.

There is a curious aspect that still needs clarification. Even after the take-over we find the *Anglo American Telegraph* named in litigation, but only in cases originating in Newfoundland<sup>26</sup>. In *Parker, Webb and*

<sup>25</sup> [http://en.wikipedia.org/wiki/Kingsbury\\_Commitment](http://en.wikipedia.org/wiki/Kingsbury_Commitment).

<sup>26</sup> This aspect deserves much more study. *Anglo* held a monopoly for telegraph/telephone lines on the island, but the lease agreement with *Western Union* specifically included landlines. However, Clause III Art 6 grants *Western Union* the right to use the name of the *Anglo Company* in connection with the operation of

*Co v Anglo American Telegraph Co* (1914)<sup>27</sup> there was a significant error in transmission that resulted in a financial loss to the Plaintiff<sup>28</sup>. It was argued that as customers they had used a form on which was written conditions declaring that the company would not be liable for errors in transmission beyond refunding the cost of the message. The Court held that in the circumstances a person was not bound to accept conditions that were unreasonable and that in view of the duty owed to the public by the company under the Newfoundland legislation, the New York, Newfoundland, and London Telegraph Company Act 1854, a condition disclaiming liability for any error in transmission was unreasonable. In 1921 the company was more fortunate in another case involving errors in transmission: *Harvey & Co v Anglo American Telegraph Co*<sup>29</sup>. The message had been carried over three different telegraph systems: *Anglo* (St Johns-Sydney, Nova Scotia), *Western Union* (Sydney-US Border) and the wartime US Government system (US Border-Chicago). The message was transmitted erroneously and a case was brought against the *Anglo* in respect of the damages caused. The Court held that the plaintiff had contracted for the transmission of an unrepeatable message, taking all the risks of mistake; that the defendants were the agents without liability for the plaintiff; they had transmitted the message through several carriers and that their liability ceased when they had done this correctly.

There is an interesting case in 1936 which involved both companies (*Hopkins v AATC and WUTC*)<sup>30</sup>. It concerned a pension matter. *Anglo* employees at a certain level in the cable stations were entitled to a pension. At the point of the *Western Union* takeover employees could stay with the *Anglo* pension or transfer to the *Western Union* scheme. It would appear that the Plaintiff who had been employed at the Heart's Content cable station had suffered due to the absence of key records. Had he lost, he would have been without a pension from either company. Fortunately for him, in spite of a robust defense by the *Anglo* directors, the judge found in his favour and ordered that he be included in the *Anglo* pension scheme and that both

the cables. Whether this extended to its use of *Anglo's* landlines in Newfoundland is not quite clear at this moment. De Cogan and Baldwin have commented on the curiosity that no reference can be found of the financial aspects of the *Anglo's* Newfoundland landline operation in their Company reports in London.

<sup>27</sup> *Parker, Webb and Co v Anglo American Telegraph Co* (1914) Newf 214.

<sup>28</sup> "2,400 hams" rather than the correct "2,400 pounds of ham".

<sup>29</sup> *Harvey & Co v Anglo American Telegraph Co* (1921) Newf 5.

<sup>30</sup> *Hopkins v Anglo-American Telegraph Co* (1936) Newf 64.

defendants should pay him any sums due, minus gratuities already paid.

*The Anglo American Telegraph Company after takeover*

It is fortunate that the present authors have access to copies of the Annual Reports of the *Anglo American Telegraph* for 1922, 1927, 1928, 1939, 1946 and 1947. They do not make for happy reading. The company had a total capital of £ 7,000,000 comprising Ordinary stock, Preferred stock and Deferred stock. Over the period covered by these reports the various dividends paid plus income tax<sup>31</sup> completely absorbs the rent paid by *Western Union*. Each report includes the following paragraph, which is ominous in view of the expressed wish of the *Anglo* directors to recommence business at the end of the lease period and to finance the purchase of new technology through careful investment of sums received under the lease agreement: «There is no balance upon the Renewal Fund account. The Western Union Telegraph Company have not remitted the £ 20,000 payable under the lease as a contribution to the Renewal Fund in respect of the year to \*\*\*\*<sup>32</sup> as the expenditure by that Company on partial renewals of the Anglo-American Telegraph Company's cables has exceeded that amount». At least in 1927, just as the advanced technology which *Western Union* is about to install the Annual Report states: «The Directors have decided to apply accumulated interest of £ 7,351-17s-8d<sup>33</sup> to the creation of a Capital Reserve Fund and to credit that Fund with all future interests». Even by 1947 this had only reached a paltry £ 29,906. In the era just before the advent of trans-Atlantic telephone cables, the directors, without the benefit of any technical advice were simply not going to be able to resume business at the end of the lease period.

*Endgame: Anglo American v Western Union in the House of Lords*

As with Al Capone, it was tax that ultimately did for *Anglo*. In the 1912 lease *Western Union* agreed to

<sup>31</sup> Note that income tax on the income of *Anglo* had to be borne by the company and its shareholders under the agreements with *Western Union*.

<sup>32</sup> Where '\*\*\*\*' refers to each of the years for which these authors have financial reports.

<sup>33</sup> £ 7,351.88 in decimal currency.

pay, discharge and perform all rates, taxes, charges, assessments, impositions, outgoing and duties whatsoever whether Parliamentary, Colonial, Federal, State, parochial, local or in the nature of customs or excise, or of any other description which are at the date hereof or shall at any time hereafter by assessed, charged or imposed upon or payable or required to be performed *in respect of the premises hereby demised* [...] or *in respect of the undertaking of the Anglo Company* [...] (except only income tax of the United Kingdom as aforesaid), whether the same are so assessed [etc.] in or by the laws of the United Kingdom, the United States of America, Canada or Newfoundland or any state, province, department or municipality thereof respectively, or of any other country, state [etc.] in any part of the world.

Unfortunately, the drafters of this agreement did not foresee the Second World War, or indeed the National Defense Contribution that was introduced by Neville Chamberlain in 1937 in order to fund the war preparations. This tax was unexpectedly retained after the war (now called the Profits Tax) but more importantly the rates were raised sharply to 25% on corporate profits.

Up to this point, *Western Union* had happily paid NDC and Profits Tax on amounts paid to *Anglo* under the agreement of 1912. However, a 25% tax rate was worth disputing, especially as the terms of the least document were not particularly clear on the matter. It is also worth noting that the rate of Profits Tax was higher if profits were distributed to shareholders than if they were retained in the company. This meant that *Anglo* through its distribution decisions could control the rate of tax paid by *Western*, which cannot have been all too popular with the board of the American company. The problem was that NDC and Profits Tax were not «income tax of the United Kingdom» in name, although they did have the character of a corporate income tax. Nor did the rental income of *Anglo* really relate to «the premises hereby demised» or the «undertaking of the Anglo Company».

The case reached the House of Lords<sup>34</sup>, the highest tier of appeal in the UK at the time, but the judgments are highly unsatisfactory. It is as if each judge made it his personal business not to agree with any of the others, with an overall result that is very confusing and difficult to interpret. It is just as well that the case has had no lasting precedent value. To the extent that it can be summarized, the bare majority of the five judges thought that *Western Union's* obligations under the lease extended only to paying taxes on the transferred

<sup>34</sup> *Anglo-American Telegraph Co v Western Union Telegraph Co* [1950] T.R. 45; [1950] W.N. 172.

business and not on *Anglo's* rental income. Profits Tax should therefore be borne by the *Anglo*.

The minority of the House of Lords thought that *Western Union's* promise to pay all taxes apart from income tax should be taken literally, illustrating how finely balanced the decision was. Ultimately the *Anglo's* loss in this case might be seen as bringing reality home to the directors. The lease was for a period of 99 years from 1 April 1911, and throughout the 1920s and 1930s there seems to have been a romantic notion amongst some of the *Anglo* directors that the operating business really could be resumed in 2010 if only the rental income was invested prudently. We can forgive them for not predicting hyperinflation and the internet, but unprecedented and rising tax rates were a much more immediate threat to their plans. Once it was confirmed by the highest court of the land that *Anglo* would have to suffer a much more significant proportion of these taxes than expected, even the pipe-dreams were over.

### *Concluding thoughts*

At the end of this work there are still many unanswered questions, notably relating to legal drafting and the conversion of the *Anglo* into an investment company. What is clear is that the *Anglo* was assiduous about protecting its material interests but lacked a convincing longer-term intellectual strategy. Unlike *Western Union*, for example, who became closely linked with *Western Electric* and implemented many of their ideas in the 1920s, the *Anglo* tended to rely heavily on consultants such as *Clark, Ford & Taylor*. Perhaps if the company had had various types of technical expertise on its Board it would have been better advised both as an operating company and, after 1911, as an investment vehicle.

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