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In the Privy Council.

No. 21 of 1896.

UNIVERSITY OF LONDON
W.C.1.

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INSTITUTE OF ADVANCED
LEGAL STUDIES

29432

ON APPEAL FROM HER MAJESTY'S
COURT OF QUEEN'S BENCH FOR MANITOBA.

BETWEEN

FRANCIS DOUGLAS GREY AND SIR JOHN ROBERT
HERON MAXWELL - - - - - *Appellants,*

AND

THE MANITOBA AND NORTH-WESTERN RAIL-
WAY COMPANY OF CANADA - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 21 of 1896.

ON APPEAL FROM HER MAJESTY'S COURT OF QUEEN'S BENCH FOR MANITOBA.

BETWEEN

FRANCIS DOUGLAS GREY AND SIR JOHN ROBERT HERON MAXWELL - - - - - Appellants,

AND

THE MANITOBA AND NORTH - WESTERN RAILWAY COMPANY OF CANADA - - - Respondents.

RECORD OF PROCEEDINGS.

In the Queen's Bench (in Equity).

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Between

No. 1. Bill of Complaint, 3rd July 1894.

Francis Douglas Grey and Sir John Robert Heron-Maxwell - - - - - Plaintiffs,

and

The Manitoba and North Western Railway Company of Canada - - - - - Defendants.

City of Winnipeg.

To the Honourable the Judges of the Court of Queen's Bench, in Equity.

10

The Bill of Complaint of Francis Douglas Grey of East Sheen in the County of Surrey in England, Lieutenant-Colonel, and Sir John Robert Heron-Maxwell, Baronet, of Hamilton House, Tooting, in the County of Surrey, England, showeth as follows:—

1. The Defendants are an incorporated Railway Company and were incorporated in the year one thousand eight hundred and eighty (1880) by

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2. In the year one thousand eight hundred and eighty-one (1881) the said Act was amended by the said Legislature and the Company name was thereby changed to "The Portage Westborne and North Western Railway Company."

3. In the year one thousand eight hundred and eighty-two (1882) by an Act of the Parliament of Canada the Defendant Company's railway was declared to be a work for the general advantage of Canada and an extension thereof into the North-West Territories was authorised as will appear more fully by reference to the above Act. 10

4. In the year one thousand eight hundred and eighty-three (1883) by a further Act of the Parliament of Canada the Company's name was again changed to "The Manitoba and North Western Railway Company of Canada."

5. The various Acts relating to the said Company have been consolidated and the various statutory provisions relating to the said Company now in force are now embodied in an Act of the Parliament of the Dominion of Canada known as "The Manitoba and North-Western Railway Company's Act 1893" passed in the year one thousand eight hundred and ninety-three and the various Acts from time to time passed relating to the said Company are more particularly shown in the schedule annexed to the last-mentioned Act and numbered one to the said Act. 20

6. The Head Office of the Company is at the town of Portage la Prairie in the Province of Manitoba.

7. Prior to the 16th day of April 1886 the said Railway Company had borrowed a large sum of money namely the sum of five hundred and forty thousand pounds (540,000*l.*) and had issued its Bonds therefor, which Bonds were in the following form, that is to say:—

" Dominion of Canada.

30

" The Manitoba and North-Western Railway Company of Canada.

" 100*l.* stg.

100*l.* stg.

" First Mortgage Bond.

" Part of a total of 540,000*l.* secured on the First Division of 180 miles of the railway and on land grants as stated in the Indentures hereinafter mentioned—bearing interest 5 per cent. till 1st December 1890 and 6 per cent. thereafter till 1st December 1933.

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- 10 “The Manitoba and North Western Railway Company of Canada for value received hereby promises to pay to the bearer the sum of 100% sterling on the 1st day of December 1933 (unless the same shall have been previously redeemed or become payable as provided herein and in the Indenture of Trust and Mortgage hereinafter mentioned) on presentation of this Bond at the office of the Clydesdale Bank Limited 30 Lombard Street London England with interest thereon at the rate of 5 per cent. per annum from the 1st December 1890 until the 1st December 1933 payable half-yearly on the 1st day of June and on the 1st day of December in each year on presentation and surrender at the said office in London England of the coupon hereto annexed for the same.
- 20 “Provided that the Company may upon any of the half-yearly days herein provided for payment of the interest coupons before the date at which the principal money secured by this Bond shall become due and payable as hereinbefore provided redeem the same upon payment of a sum of 120% sterling provided that the Company shall have given not less than three months previous notice by advertisement in three daily newspapers circulating in London and one daily newspaper circulating in Canada and that this bond shall have been drawn for redemption as provided in the Indenture securing the same.
- “The interest upon the amount secured hereby shall cease to accrue from and after the day on which the Company shall have become entitled to redeem the same as aforesaid unless from the default of the Company it shall not be redeemed accordingly.
- “All immature coupons must be surrendered with the Bond and the amount of any such coupons not so surrendered will be deducted from the principal sum payable.
- 30 “This Bond is one of a series of 5,400 Bonds of 100% sterling each all of like tenor and date numbered consecutively from 1 to 5,400 inclusive issuable at the rate of 3,000% sterling per mile of the road from Portage la Prairie in the Province of Manitoba to a point distant 180 miles therefrom measured along the track of the said railway. None of the said Bonds shall be certified or issued by the Trustees hereinafter mentioned except in respect of the length of the road actually constructed and ready for operation. All the said bonds are issued under the provisions of the Acts incorporating or regulating the said Company and the payment thereof and the interest thereon is secured without
- 40 reference to the time when they shall be actually issued by an Indenture of trust and mortgage dated the 16th day of April 1886 made between the Company of the first part the Honourable George Granville Campbell called Lord George Campbell Henry William Cobb and Francis Douglas Grey of the second part and Francis Douglas Grey and Sir John Robert Heron Maxwell Bart. of the third part by which Indenture there is

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conveyed to the parties thereto of the third part as Trustees by way of mortgage free from incumbrances so much of the railway of the said Company built and to be built in the Dominion of Canada as extends from Portage la Prairie to a point distant therefrom 180 miles measured along the track of the said railway under the authority of the said Acts and all the property rights and privileges forming part thereof or used and operated in connection therewith (other than Government Land Grants and Provincial subsidies) and all the stations fixtures rolling stock plant and appurtenances thereof now owned or held or that may be hereafter acquired owned or held by the said Company in connection 10 with the said portion of the said railway the whole as described in the said Indenture of trust and mortgage.

“ All the said bonds are further entitled to the benefit of an indenture of additional security dated the sixth day of April 1886 duly executed by the Company to the said Francis Douglas Grey and Sir John Robert Heron Maxwell Bart. as Trustees whereby certain lands in the Dominion of Canada or the rights and interests of the Company therein have been transferred to the said Francis Douglas Grey and Sir John Robert Heron Maxwell for the purpose of providing additional funds for the payment of the interest on the said Bonds and for the redemption of the 20 Bonds by purchase in the market at any price lower than 120 per cent. or in redeeming at the price of 120 per cent. such of the said Bonds as shall be drawn for redemption and for other purposes.

“ This Bond shall not be obligatory until authenticated by a certificate endorsed hereon and signed by the said Trustees or their successors in office to the effect that it is one of the Bonds secured by the said Indenture of trust and mortgage and that it has been duly issued in accordance with the provisions thereof. It is issued and shall be received and held subject to the terms of said Indenture of trust and mortgage and said Indenture of additional security. 30

“ In witness whereof the Manitoba and North Western Railway Company of Canada has caused its corporate seal to be hereunto affixed and these presents to be signed by its President Secretary and Treasurer this sixteenth day of April 1886.

“ The Manitoba and North Western Railway Company of Canada, by

“ A. Allan, President.

“ F. H. Brydges, Secretary.

“ W. R. Baker, Treasurer.

“ And each of the said coupons is in the form following and signed and authenticated by the engraved signature of the Secretary thereon that is 40 to say:—

“ The Manitoba and North Western Railway Company of Canada will pay the bearer three pounds sterling at the office of the Clydesdale

Bank Limited 30 Lombard Street London England on the 1st day of
 18 being half-yearly interest on the First Division
 First Mortgage Bond secured. No.

“ F. H. Brydges, Secretary.”

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8. At the said date the said Railway Company had constructed and in
 operation one hundred and thirty (130) miles only of the said railway and
 were engaged in building an additional fifty (50) miles the said one hundred
 and thirty miles (130) extending from Portage la Prairie to the town of
 Solsgirth and the said additional fifty (50) miles extending from the latter
 10 place to Langenburg.

9. For the purpose of securing the said Bonds the said Company executed
 an Indenture bearing date the 16th day of April 1886 by which the Defendant
 Company granted and conveyed to your Petitioners the said one hundred
 and eighty (180) miles and other properties in the words and figures
 following :—

“ All and singular the first division or portion of the railway and electric
 telegraph of the Company extending from the point of junction with the
 Canadian Pacific Railway at Portage la Prairie in the Province of
 20 Manitoba to a point distant 180 miles therefrom measured along the
 track of the said railway as the same is now located and constructed or
 in course of construction or as the same may hereafter be changed
 located and constructed together with all and singular rights of way,
 road beds, depôt grounds and lands used for the purposes of construction
 or running of the first division or portion of the said railway and
 telegraph and all tracks, bridges, viaducts, culverts, fences, depôts,
 stations, station houses, engine houses, car houses, freight houses, wood
 houses, machine shops and all other shops and all other structures and
 buildings whatsoever now held and acquired or hereafter to be in any-
 wise held or acquired by the Company its successors or assigns for
 30 use in the construction maintenance and operation of and for use in
 connection with the running of such first division or portion of the said
 railway and telegraph or of any part thereof now owned by or hereafter
 constructed or in anywise acquired excepting however from such grant
 bargain and sale the municipal bonuses and the land other than
 aforesaid granted or to be granted by way of bonus or gift to the Com-
 pany by the Government or by any incorporation. And also by way of
 grant and not of exception all the locomotives, tenders, passenger,
 baggage, freight and other cars and all other rolling stock and equipment
 whatsoever and all machinery tools and implements and all fuel supplies
 40 and materials the particulars of which are contained in the second
 schedule thereto and all other if any the rolling stock, equipment, fuel,
 supplies and materials now held or acquired or thereafter to be held

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or acquired by the Company its successors or assigns for constructing maintaining operating repairing or replacing the said first division or portion of the said railway or telegraph between the points aforesaid or any part thereof or any of the equipment or appurtenances thereof and also all revenues freights, tolls, income, rents, issues profits and sums of money arising or to arise from the use of the said first division or portion of the said railway or telegraph or of the property hereby conveyed or any part thereof subject nevertheless to the working expenses of the said railway and telegraph and to all rates, taxes, and assessments and other Government charges. And also all rights, 10 privileges, powers, immunities, and exemptions and all corporate and other franchises now owned held and enjoyed by the Company or hereafter to be held and enjoyed or conferred upon it its successors or assigns in any way connected with it or relating to the said division or portion of the said railway or telegraph constructed and to be constructed and the reversion and reversions remainder and remainders thereof.”

10. It was in and by the said Indenture provided as follows :—

“If the Company or its assigns shall well and truly pay the principal of each and every of the said Bonds secured by this instrument when the 20 same shall become payable and all interest thereon as such interest shall from time to time mature according to the tenor of such Bonds respectively and shall well and truly do and observe every other matter and thing provided or mentioned in these presents to be by it or them done and observed then and in that case all the estate right title and interest of the Trustees by these presents created shall cease determine and become void otherwise the same shall remain in full force and virtue. And upon any such determination of such interest the said parties of the third part or their successors or successor in the trust shall execute such re-conveyance and re-assignment of the premises as 30 may be necessary or expedient.”

11. And it was further in and by the said Indenture provided as follows :—

“In case default shall be made in the payment of any half-yearly instalment of interest on any of the said Bonds when interest shall become payable according to the tenour of said Bond or of any coupon thereto annexed and such instalment of interest shall remain unpaid and in arrear for a period of twelve months after the same shall have become payable as aforesaid and been demanded then and from thenceforth the principal sum of each and every of the Bonds hereby secured shall at 40 the option of the Trustees become and be immediately due and payable notwithstanding the time limited in the said Bonds for the payment thereof may not then have elapsed.”

12. In and by the said Indenture the said Company also covenanted with our Petitioners in the words and figures following that is to say :—

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10 “ And the Company for itself and its assigns hereby covenants and agrees to and with the Trustees and their successors in the trust created by these presents that the Bonds hereby secured or intended so to be shall be issued only at such times and in such amounts as hereinbefore limited; that the Company will duly pay and discharge the interest and principal of the said Bonds in accordance with the tenour thereof and will for that purpose in each and every year ensuing the date hereof faithfully use and apply the net earnings and income to be from time to time derived from the said division or portion of the said railway and telegraph or from any part thereof after discharging its obligations upon or with respect to prior liens thereon or so much of such net earnings and income as may be necessary for that purpose to the payment of the same and when the same shall become due until all the said Bonds shall be fully paid and satisfied and that it will seasonably in each and every year pay and discharge all taxes and assessments of every sort and description which may be lawfully imposed levied or assessed upon all or any part of the franchises or other property herein and hereby conveyed or intended or contemplated so to be so as to keep the mortgaged premises free and clear from any incumbrances by reason thereof and that it will from time to time and at all times hereafter and as often as thereunto requested by the Trustee under this Indenture execute deliver and acknowledge all such further deeds conveyances and assurances in the law for the better securing unto the Trustees upon the trusts herein expressed the said first division or portion of the railway and telegraph constructed or to be constructed together with its equipment appurtenances and franchises and all and singular the lands property and things hereinbefore mentioned or described and granted or conveyed or agreed or intended or contemplated to be granted or conveyed to the Trustees or their successors in the trust created by these presents as by the said parties of the third part or their successors or successor in the trust hereby created or by their Counsel learned in the law shall be reasonably advised or required and that the Company will not execute do or suffer any act deed matter or thing whereby the mortgage lien or charge hereby created or intended so to be shall be in anywise prejudicially or injuriously affected or whereby any mortgage lien or charge shall be created having equality or priority over the mortgage lien or charge hereby created over the premises herein comprised or any of them or the premises at any time hereafter forming part of the security for the said Bonds or any of them.”

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13. It was further in and by the said Indenture provided as follows :—

“ And the Company in consideration of the premises hereby covenants and agrees to and with the Trustees and their successor in the trust created

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by these presents that whenever and as often as the Company shall hereafter acquire any additional property rights franchises or things whatsoever for the construction of or for the use upon the said first division or portion of the said railway and telegraph or upon any part thereof the Company and its assigns shall and will acquire possess and hold the same and every part and parcel thereof upon and subject to the trusts of this Indenture until conveyance thereof in pursuance of the covenants herein contained shall be duly made and delivered to the Trustees for the benefit of the trust by these presents created."

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14. It is further in and by the said Indenture provided as follows:—

"The office of the Clydesdale Bank Limited 30 Lombard Street London in England shall be the place of payment of the interest coupons and the principal of the said Bonds unless and until a change in the place of payment thereof shall be made of which due notice shall be given by advertisement published in two daily newspapers in the city of London and presentation of the said Bonds or of the said coupons at the said Bank or the place so advertised (as the case may be) shall be a valid presentation thereof for any of the purposes for which according to the tenor of the said Bonds presentation in the said city may be made and default of payment upon such presentation shall be followed by all the consequences of default which are hereinbefore provided for."

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15. It was also in and by the said Indenture provided as follows:—

"In case default shall be made in the payment of interest on the said Bonds or any of them as aforesaid and shall continue as aforesaid for the period of twelve months thereafter or in case default shall be made in the payment of the principal of the said Bonds or any of them or any part thereof it shall be lawful for the trustees after such entry as aforesaid or after other entry or without entry personally or by their attorneys or agents to sell and dispose of the said division or portion of the said railway and telegraph and of all and singular the property rights and franchises hereinbefore expressed to be conveyed and which shall be then subject to the lien of these presents either separately or in conjunction with the owner or owners for the time being of the remaining portions of the said line at public auction in the City of Winnipeg in the Province of Manitoba or elsewhere in North America or Europe and at such time as the Trustees shall appoint having first given notice of the time and place of such sale by advertisement published not less than three times a week for six successive weeks in one or more daily newspapers in the City of Winnipeg and in one or more daily newspapers in the City of London England and the City of Toronto and after such notice it shall be lawful for the Trustees to make such sale or to adjourn such sale from time to time in their discretion and if so adjourning to make the same without further notice of the time and

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place to which the same shall be so adjourned and if the premises shall not be sold by public sale as aforesaid to sell the same by private contract with power to the Trustees to make any such sale as aforesaid subject to such conditions as the Trustees think fit and to vary any contract for sale and to buy in at any public sale and to fix any reserve price and to rescind any contract for sale and to resell without being answerable for any loss occasioned thereby and to make and deliver to the purchaser or purchasers of the said railway and premises or any part thereof good and sufficient deed or deeds in the law for the same in fee simple which sale made as aforesaid shall be a perpetual bar both in law and equity against the Company and its assigns and all other persons claiming the said premises or any part or parcel thereof by from through or under the Company or its assigns and the title of the purchaser shall not be impeachable upon the ground that no case had arisen to authorise the sale or that the power was otherwise improperly or irregularly exercised and after deducting from the proceeds of such sale just allowances for all expenses thereof including advances or liabilities which may have been made or incurred by the Trustees in operating or maintaining the said railway and premises or in managing the business thereof and all payments by them made for taxes or assessments and for charges and liens prior to the lien of these presents on the said premises or any part thereof as well as a reasonable compensation for their own services in addition to the amount of 100% per annum for each Trustee hereinafter mentioned it shall be lawful for the Trustees and it shall be their duty to apply the residue of the moneys arising from such sale to the payment of the principal and accrued and unpaid interest on all the said Bonds which shall then be outstanding whether the same shall or shall not have arrived at maturity without discrimination or preference as between principal and accrued and unpaid interest or as between the holders of said Bonds or of any coupons issued therewith but equally and rateably to all such Bond and coupon holders and if after the payment and satisfaction of said Bonds principal and interest a surplus of the said proceeds shall remain to pay such surplus to the Company or its assigns and it is hereby declared and agreed that the receipt of the Trustees shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money and that after payment of such purchase money and having such receipt such purchaser or purchasers shall not be obliged to inquire into the application of such purchase money upon or for the trusts or purposes of these presents or be in any manner whatsoever answerable for any loss misapplication or non-application of such purchase money or of any part thereof and if any of the premises herein comprised shall after the power of sale hereinafter contained shall have arisen remain unsold it shall be lawful for the Trustees to hold the premises and exercise all the powers and authorities in the preceding article contained or to let the premises for such term and

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in such manner as shall in their or his discretion seem fit and they shall reserve the net monies rents and profits to arise thereby to be applied to the payment of the said Bonds upon a sale of the said railway and premises."

16. The chattels hereinbefore referred to as being "contained in the second schedule" to the said Indenture are as follows:—4 locomotives numbers 1, 2, 3, and 4; 5 passenger, baggage and mail cars numbers 01, 02, B1, B2 and B3; 1 conductor's van No. C1; 2 boarding cars numbers 1 and 3; 43 platform freight cars numbers 5 to 89 inclusive by odd numbers; 1 wrecking car, number 2; 5 cattle cars numbers 4, 6, 8, 10 and 12; and 50 box freight cars numbers 14 to 102 inclusive and 106 to 114 inclusive by even numbers and the following machinery:—Engine and boiler, planer, lathes, drills &c. &c. and all machinery and tools necessary for repairs required on first division and all contained in the Company's repair shop at Portage la Prairie. All the said rolling stock and machinery the Company agree to have identified in the following manner:—The rolling stock by having the words printed thereon "M. & N.W. 1st Division Trust" and the machinery &c. by having painted thereon three white stars.

17. The said Bonds were issued and the said Indenture executed under and by virtue of the powers conferred upon the Company by the Act of the Dominion of Canada known as 46 Victoria cap. 68 sec. 5 and the said Bonds were duly and properly executed and issued in accordance with the provisions of the said statute.

18. Instalments of interest fell due upon the said Bonds on the first day of June and the first day of December 1893 and the first day of June 1894, each of such instalments amounting to the sum of sixteen thousand two hundred pounds but the said Company paid nothing on account of the interest that so fell due on the said dates nor have they paid anything subsequently and the said Company has made default within the meaning of the said indenture in payment of the interest which accrued due on all of the said Bonds and more than three months have elapsed from the time of the first two of such defaults and more than ~~twelve months since the first of such defaults.~~

19. After the first of said defaults and lapse of three months thereafter a demand was made upon the said Company to deliver possession of the said first division or portion of the said railway to the Trustees but the Company has neglected and refused and still neglects and refuses to deliver the same and the said coupons for the instalment of interest which fell due on the first day of June 1893 were on that date presented at the office of the said Clydesdale Bank for payment and no change of the place for payment has ever been made.

20. Since the execution of the said deed the Company has built the fifty miles additional road referred to in paragraph two of this petition and the said one hundred and eighty miles of the said railway have been for a long time

completed and running and are now in operation under the management of the Company and the Defendants have since the date of the said Indenture acquired other rolling stock, equipment, fuel, supplies and materials for constructing maintaining operating repairing and replacing the said first division or portion of the said railway or telegraph and of the equipment and appurtenances thereof.

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21. The Defendants deny the validity of the said Bonds and pretend that the said Indenture was *ultra vires* of the Defendants and they deny the right of the Plaintiffs to sell the said first division of the said railway and the said
10 Defendants will not unless compelled by this Honourable Court give possession to any purchaser of the said first division. Owing to the antagonistic position of the Defendants and for the reasons elsewhere in this bill set forth the Plaintiffs show that a sale of the said first division could not be so effectually made otherwise than under the direction of the Court.

22. The Defendants are in possession of the said first division of the said railway and are working the same as a railway in connection with the other portions of the railway. The Defendants have since the date of the said Indenture purchased other plant machinery and rolling stock for use upon the said railway to a portion of which the Plaintiffs are entitled under and by
20 virtue of the said Indenture but the Plaintiffs are not aware and are not able to allege specifically the number or character of such plant machinery and rolling stock and discovery thereof from the Defendants will be necessary before the Plaintiffs can definitely give the particulars thereof or sell the same.

23. The income of the said one hundred and eighty miles is not and since the year 1892 has not been sufficient to pay the interest due upon the said Bonds.

24. The Defendants pretend that any income derived from the said first division in excess of the working expenditure thereof ought to be applied in
30 payment and discharge of the working expenditure of the other portions of the railway and the Defendants have been and now are applying large amounts of such excess in payment and discharge of such working expenditure of such other portions and have refused and still refuse to pay the same to the Plaintiffs or to the holders of the said Bonds.

25. For the purpose of further securing payment of the said Bonds and interest as aforesaid by Indenture bearing date the sixteenth day of April 1886 the Company did grant bargain sell assign release and confirm unto the Plaintiff Sir John Robert Heron Maxwell his heirs and assigns certain lands to
40 of the lands of the Dominion of Canada by virtue of the building of the said one hundred and eighty miles of the said railway, namely one million and seventy-eight thousand (1,078,000) acres of land to have and to hold the said lands and

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premises unto the Plaintiff Sir John Robert Heron Maxwell his heirs and assigns to the only use and behoof of the Plaintiffs their heirs and assigns as joint tenants and not as tenants in common to the intent that the same might be held by the Plaintiff upon certain trusts in the said Indenture more fully set forth.

26. In and by the said Indenture it was stipulated and agreed that until default should be made in payment of the said bonds or the interest due thereon that the Company should be permitted to make arrangements from time to time for the sale of the said lands and premises or any part or parts thereof subject to certain restrictions and conditions with reference to such sales. 10

27. It was further in and by the said Indenture stipulated and agreed that the Company should in each half-year at a period of not less than twenty-one days before the half-yearly interest on the said Bonds should become due submit to the Trustees an account of the Company setting forth the net earnings derived from the first division or portion of the railway and telegraph for payment of the next half-yearly interest upon the said Bonds in accordance with the terms of the deed securing the same, and it was further provided that the Company should forthwith pay to the Plaintiffs the amount as shown to be available for payment of the next half-yearly interest so far as might be necessary for the payment of the same. And it was further provided that in 20 case the fund so paid by the Company to the Plaintiffs should be insufficient to meet such next half-yearly interest it should be the duty of the Plaintiffs out of the moneys for the time being in their hands to provide an amount sufficient to meet such deficiency and it should be the duty of the Plaintiffs to pay promptly on presentation of them all or any of the coupons pertaining to the said Bonds as the same should become due and payable out of any cash for the time being in their hands.

28. The Company did not prior to the falling due of the last three instalments of interest upon the said Bonds render to the Plaintiffs any account as required by the said deed setting forth that there were earnings available for the payment 30 of the next accruing half-yearly interest upon the said Bonds and the Company did not make any payments to the Plaintiffs of any amounts whatever and the Plaintiffs had no moneys in their hand wherewith to provide for payment of the said interest upon the said Bonds.

The Plaintiffs therefore pray—

1. That the Defendants may be ordered to discover what personal property is now embraced in or included in the security referred to in this Bill namely the Indenture of sixteenth April 1886.
2. That all the property described in and included under the said Indenture may be sold under the direction of this Honourable Court 40 and that the Plaintiffs may have liberty to bid at such sale.

- 3. That a Receiver may be appointed of the revenues tolls and profits of the first division of the said railway and that the same may be applied in payment of the amount secured by the Bonds hereinbefore referred to.
- 4. That the Plaintiffs may have such further and other relief as to your Lordships shall seem meet and as shall not interfere with the possession of the Receiver in the suit hereinbefore referred to of Allan vs. The Manitoba and North Western Railway Company.
- 5. That the Defendants may be ordered to pay the costs of this suit.

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 No. 1.
 Bill of
 Complaint.
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 tinued.

10 And the Plaintiffs will ever pray.

(Sgd.) R. J. WILSON.
 Clerk of R. and W.



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No. 2.
 Answer, 3rd
 Aug. 1894.

In the Queen's Bench (in Equity).

Between

Francis Douglas Grey and Sir John Robert Heron-
 Maxwell - - - - - Plaintiffs,
 and
 The Manitoba and North Western Railway Company of
 Canada - - - - - Defendants.

The Answer of the Manitoba and North-Western Railway Company of Canada
 the above-named Defendants to the Bill of Complaint of Francis Douglas
 Grey and Sir John Robert Heron-Maxwell the above-named Plaintiffs. 10

In answer to the said Bill we the said The Manitoba and North Western
 Railway Company of Canada say as follows:—

1. All admissions made herein are made for the purposes of this suit
 only.

2. We admit the allegations contained in the first second third fourth and
 fifth paragraphs of the Plaintiffs' said Bill of Complaint.

3. We deny that the Plaintiffs did ever demand from the Defendant
 Company possession of the first division of the said Company's railway and of
 the trains running thereon but we say that if any demand was made that the
 Plaintiffs had at the time such demand was made no right to enter into 20
 possession of or to receive possession of any portion of the said railway and
 that such possession if given would have been illegal and we say that the
 Plaintiffs have not now and never had the right to take possession of any
 portion of the said railway and such possession if taken would have been and
 would now be illegal and we say that we have not now and never have had the
 power if we so desired to give up possession of any portion of the said railway
 to the Plaintiffs or agreed so to do and any agreement to the contrary was and
 is *ultra vires* and beyond our power.

4. We put the Plaintiffs to the proof of the allegations contained in the
 seventh ninth tenth eleventh twelfth thirteenth fourteenth fifteenth sixteenth 30
 seventeenth eighteenth nineteenth twentieth and twenty-first paragraphs of the
 said Bill of Complaint.

5. We further say that the right of the Plaintiffs to sell the first division
 of the Defendant Railway or the right of a purchaser of the said first division
 to take possession thereof has never been discussed between the Plaintiffs and
 us and it is not correct that we have denied such right as alleged in the twenty-
 first paragraph of the Bill.

6. We further say that we have never expressed opposition to giving up
 possession of such first division to any purchaser thereof provided the sale be
 regularly and properly made to such purchaser pursuant to any powers given 40
 to the Plaintiffs and provided that such purchaser be legally entitled thereto

and we have never adopted any antagonistic position to the Plaintiffs as set out in the twenty-first paragraph of the said Bill.

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7. We further say that the Plaintiffs have not by reason of any fact set out in the said Bill of Complaint any right to ask this Honourable Court to decree a sale of any portion of the said railway or other property referred to in the said Bill.

No. 2.
Answer, 3rd
Aug. 1894—
continued.

8. We further say that any rights the Plaintiffs may have in the premises as stated in the said Bill are by reason only of an instrument in writing made between the Plaintiffs and the Defendants dated the sixteenth day of April
10 A.D. 1886 to which we crave leave to refer when the same shall be produced to this Honourable Court.

9. We further say that the instrument last referred to secures or creates no debt by the Defendants to the Plaintiffs and that the Defendants are not indebted to the Plaintiffs in any sum whatever by reason of or under the said document or otherwise and that such instrument merely contains bare powers purporting to authorise the Plaintiffs upon the happening of certain events and the performance by the Plaintiffs of certain conditions to sell certain portions of the Defendant Railway all as in the said document more fully set forth and we say that such instrument confers no equity upon the Plaintiffs enabling
20 them to obtain a sale of any portion of the Defendant Railway or of any property described in said Bill by or through the order or decree of this Honourable Court, and except by virtue of such instrument the Plaintiffs have no rights in the premises and we submit that the Plaintiffs ought to be left to the remedies provided by the said instrument.

10. We further say that the said last-mentioned instrument was executed to the Plaintiffs and the powers therein contained were given to the Plaintiffs as security only for an indebtedness by us to certain persons firms and corporations other than the Plaintiffs and which persons firms and corporations are unknown to us. By virtue of certain Bonds of the Defendant Company
30 issued to and held by the said several persons firms and corporations for whom the Plaintiffs act as Trustees merely and which Bonds are payable to bearer and are transferrable by delivery all in accordance with the said last-named document and said Bonds and that if the Plaintiffs have any right to ask a sale through this Honourable Court of the first division of the Defendant Company's Railway or any other portion thereof or other property described in the said Bill of Complaint (which we deny) it is only for the purpose of satisfying the debt secured by the said Bonds and except by virtue of the said document last named we say the Plaintiffs have no rights whatever against us and no right to ask a sale as in the said Bill prayed, of any portion of our
40 railway or personal property and that before this Honourable Court can decree a sale of any portion of our railway or any personal property an account must be taken of the amount due to the holders of the said Bonds and that we should have an opportunity of paying or otherwise satisfying the amount so found due and in the event of a sale and the realization of more than the amount so secured that we may be declared entitled to receive the same and

RECORD.

we therefore submit that the holders of the said Bonds are necessary parties to this suit.

No. 2.

Answer, 3rd
Aug. 1894—
continued.

11. In further answer to the said Bill of Complaint we say that if the Plaintiffs are entitled to receive any portion of the revenues, tolls and profits of the first division of the said railway (which we deny) it is only such portion thereof as may remain after payment of the working expenses of the whole of the said railway and of the telegraph operated as part thereof and of all taxes rates and assessments and other Government charges charged thereon and we say that if the Plaintiffs have any lien or charge on any portion of the revenues tolls or profits of the first division of the said railway (which we deny) it is only on any surplus as such after payment by us of the said last-named working expenses and taxes rates and assessments and other Government charges. 10

12. The railway of the Defendant Company was built and has been and is now operated under the provisions of the several Acts of Parliament referred to in the Bill of Complaint and of the Railway Act.

13. The line of the Defendant Company's Railway extends from the town of Portage la Prairie in the Province of Manitoba to the town of Yorkton in the North West Territories of Canada a distance of two hundred and twenty-three miles or thereabouts, and in addition thereto a branch line has been built and is being similarly operated from Binscarth a point on the main line of the Defendant's railway to Russell a distance of eleven miles or thereabouts and in addition thereto the Defendant Company has leased and similarly operate a line of railway belonging to the Saskatchewan and Western Railway Company extending from the town of Minnedosa a point on the main line of the Defendant Company's Railway a distance of eighty miles or thereabouts from Portage la Prairie aforesaid in a westerly direction for a distance of fifteen miles or thereabouts to the town of Rapid City and all of the said lines are operated by the Defendant Company and as one railway. 20

14. The Defendants' railway connects at Portage la Prairie aforesaid with the main line of the Canadian Pacific Railway Company and arrangements have been made and are now in force between the two companies for the interchange of traffic and much the largest proportion of freight and passengers transported and hauled by the Defendant Company originate from or are destined to some point on or over the line of the said Canadian Pacific Railway Company, and the principal business of the Defendant Company is done by the interchange of passengers and freight as aforesaid under the said agreements with the said The Canadian Pacific Railway Company. 30

15. A large proportion of the passengers and freight transported and hauled by the Defendant Company has its origin upon the main line of the Defendants' railway at a point west of the one hundred and eightieth mile thereof or upon the branch line or the line of the Saskatchewan and Western Railway Company and passes over the whole or a portion of the first one hundred and eighty miles of the Defendant Company's main line and in a similar way other large numbers of passengers and quantities of freight 40

carried by the said railway over the whole or some portion of the first one hundred and eighty miles of its main line are destined to other points on the said railway or to points on the line of the said Saskatchewan and Western Railway Company.

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Answer, 3rd
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continued.

16. Under the various Acts of Parliament hereinbefore referred to the Company are compellable to run their railway as one line and they are now operating the same as one railway and as a going concern.

17. The Plaintiffs contend that by reason of the provisions set forth in the Bill of Complaint herein they are entitled to all of the earnings of the first division or one hundred and eighty miles of the Defendant Company's railway and to return to us only sufficient to operate the said first division and that in ascertaining what are the earnings of the said first divisions the receipts from freight and passengers carried over the portions of the said two railways should be divided on a mileage basis but we submit that the rule for such division is not as contended for by the Plaintiffs but that on the contrary a much larger proportion than a mileage proportion should be given to the portions of the railway other than the first division.

18. On the eighth day of June A.D. 1893 H. Montagu Allan and others filed their Bill of Complaint to this Honourable Court as judgment creditors of the said railway praying *inter alia* that a Receiver should be appointed to the revenues tolls and profits of the Defendant Company and such proceedings were then had and taken in this Honourable Court that on the eighth day of June aforesaid an Order was made in the words and figures following:—

“ In the Queen’s Bench (in Equity).

“ The eighth day of June one thousand eight hundred and ninety-three.

“ Before the Honourable the Chief Justice.

Between

30 “ Andrew Allan, H. Montagu Allan and Bryce J. Allan, and H. Montagu Allan and Andrew A. Allan, Trustees of the Estate of Arthur E. Allan - Plaintiffs,

and

“ The Manitoba and North Western Railway Company of Canada - - - - - Defendants.

“ Upon the application of the Plaintiffs, upon hearing read the Bill of Complaint herein the two affidavits of Walter Barwick filed herein and the several exhibits referred to therein and upon hearing Counsel for both the Plaintiffs and Defendants—

40 “ 1. This Court doth order that H. Montagu Allan of the City of Montreal in the Province of Quebec the Vice-President of the Defendant Railway Company be and he is hereby appointed Receiver of the undertaking and assets of the Defendant Company until the hearing or other final disposition of this cause.

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No. 2.
Answer, 3rd
Aug. 1894—
continued.

“2. This Court doth further order that the said Receiver do give security satisfactory to the Master of this Court and that the said Master do fix the amount and approve the security to be given by such Receiver and that such security be given to the satisfaction of the said Master as aforesaid on or before the eighth day of July one thousand eight hundred and ninety-three or within such further time as the Master shall determine.

“3. This Court doth further order that the said H. Montagu Allan out of the moneys to be received by him as such Receiver do provide for the working expenses of the railway and other outgoings in respect of the undertaking and management and collection of its assets including any 10 repairs necessary to keep the said railway in running order and that he do from time to time pass his accounts as such Receiver and pay the balances to be certified to be due from him or such part thereof into Court as shall be certified to be proper to be so paid into Court to the credit of this cause.

“4. This Court doth further order that the said H. Montagu Allan have liberty from time to time to apply to a Judge of this Court for further directions.

“ R. J. WILSON, Registrar.”

“ Entered June 3/93.

“ Book O, folio 158. J. G. C. C.”

20

19. Afterwards this Honourable Court pronounced their decree also in the said suit which decree was in the words and figures following :—

“ In the Queen’s Bench (in Equity).

“ The thirteenth day of July one thousand eight hundred and ninety-three.

“ Before the Honourable Mr. Justice Bain.

Between

“ Andrew Allan, H. Montagu Allan and Bryce J.
Allan and H. Montagu Allan and Andrew A. Allan,
Trustees of the Estate of Arthur E. Allan -

- Plaintiffs, 30

and

“ The Manitoba and North Western Railway Company
of Canada - - - - -

- Defendants.

“ This cause coming on to be heard before this Court on the twelfth day of July instant this Court was pleased to direct that it stand enlarged until this day and the same coming on this day on motion for decree in presence of Counsel for the Plaintiffs and Defendants upon opening of the matter upon hearing read the pleadings and other proceedings herein and a certificate of the state of the cause dated the twelfth day of July instant and upon hearing what was alleged by Counsel for the parties—

40

“ 1. This Court doth declare that the Plaintiffs are entitled to have a Receiver appointed of the undertaking assets and property of the Defendant Company and doth order and decree the same accordingly.

"2. And it appearing that by an Order made herein on the eighth day of June one thousand eight hundred and ninety-three this Court did order that H. Montagu Allan of the City of Montreal in the Province of Quebec the Vice-President of the Defendant Company be and he was thereby appointed Receiver of the undertaking and assets of the Defendant Company doth order and decree that the said H. Montagu Allan be continued as such Receiver.

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No. 2.

Answer, 3rd
Aug. 1894—

continued.

10 "3. And it appearing that the said H. Montagu Allan pursuant to the said Order gave security to the satisfaction of the Master of this Court this Court doth order and decree that the security so given by the said H. Montagu Allan do stand good and be deemed sufficient for the purposes of this decree.

20 "4. And this Court doth further order and decree that the said H. Montagu Allan out of the moneys to be received by him as such Receiver do provide for the working expenses of the railway and other outgoings in respect of the undertaking and management and collections of its assets including any repairs necessary to keep the said railway in running order and that he do from time to time pass his accounts as such Receiver before the Master of this Court and pay the balances to be certified to be due from him or such part thereof into Court as shall be certified to be proper to be so paid into Court to the credit of this cause.

"5. And this Court doth further order and decree that it be referred to the said Master to inquire what is due to the Plaintiffs for principal interest and costs.

30 "6. And this Court doth further order and decree that it be referred to the said Master to inquire and state what are the debts of the said Company and whether the same and which of them are encumbrances or charges on the undertaking of the Company its land grant and other assets or the tolls and moneys arising out of the same and what part of the same respectively, and how the same respectively were created and to settle the rights and priorities of the persons for the time being interested therein and to tax them the costs of proving their claims and the said Master is to add such of the parties as have such encumbrances.

"7. And this Court doth further order and decree that the said Receiver be at liberty from time to time to apply to this Court as to any payments to be made by him and otherwise generally as he may be advised.

"8. And this Court doth reserve further directions and the question of costs until after the said Master shall have made his report.

" R. J. WILSON, Registrar."

40 " Entered July 13, 1893.

" Book O, folio 203. J. Y. C. E. C."

20. Pursuant to the said order and decree the said H. Montagu Allan received the said revenues tolls and profits of the said railway and still receives the same and acts as such Receiver.

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 No. 2.
 Answer, 3rd
 Aug. 1894—
 continued.

21. On the first day of November A.D. 1893 the Plaintiffs presented their petition to this Honourable Court in the words and figures following :—

“ In the Queen’s Bench (in Equity).

Between

“ Andrew Allan, H. Montagu Allan and Bryce J. Allan, and H. Montagu Allan, and Andrew A. Allan, Trustees of the Estate of Arthur E. Allan - Plaintiffs,

and

“ The Manitoba and North Western Railway Company of Canada - - - - - By Bill, 10

and

“ Francis Douglas Grey and Sir John Robert Heron Maxwell, George Hague, William Miller Ramsay, Andrew Allan, H. Montagu Allan, Bryce J. Allan, and Andrew A. Allan and Hugh Montagu Allan, Trustees of the Estate of Arthur E. Allan, deceased, Andrew Allan, Frederick Henderson Brydges, William Rae Allan, doing business as Allan, Brydges, & Co., the Government of the Province of Manitoba and Her Majesty the Queen, represented herein by the Honourable the Minister of the Interior, made parties in the Master’s Office - - - - - Defendants. 20

“ To the Honourable the Judges of the Court of Queen’s Bench, in Equity.

“ The humble petition of Francis Douglas Grey of East Sheen in the County of Surrey in England, Lieutenant-Colonel, and Sir John Robert Heron Maxwell, Baronet, of Hamilton House, Tooting, in the County of Surrey, England, sheweth as follows :—

“ 1. The Defendants are an incorporated railway company owning and running a line of railway commencing at the town of Portage la Prairie and extending in a north-westerly direction a distance of about two hundred and twenty-three miles in a direct line. It has also a branch connected with the said direct line running from Binscarth Station to Russell known as the Shell River branch. 30

“ 2. Prior to the sixteenth day of April 1886 the said Railway Company had borrowed a large sum of money namely the sum of five hundred and forty thousand pounds (540,000*l.*) and had issued its bonds therefor.

“ 3. At the said date the said Railway Company had constructed and in operation one hundred and thirty (130) miles only of the said railway and were engaged in building an additional fifty (50) miles the said one hundred and thirty (130) miles extending from Portage la Prairie to the town of Solsgirth and the said additional fifty (50) miles extending from the latter place to Langenburg. 0

“ 4. For the purpose of securing the said Bonds the said Company executed an Indenture bearing date the 16th day of April 1886 by which were granted and conveyed to your petitioners the said one hundred and eighty (180) miles and other properties in the words and figures following :—

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—
No. 2.
Answer, 3rd
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continued.

10 “ ‘ All and singular the first division or portion of the railway and electric telegraph of the Company extending from the point of junction with the Canadian Pacific Railway at Portage la Prairie in the Province of Manitoba to a point distant 180 miles therefrom measured along the track of the said railway as the same is now located and constructed or in course of construction or as the same may hereafter be changed located and constructed together with all and singular rights of way, road beds, depôt grounds and lands used for the purpose of constructing or running of the first division or portion of the said railway and telegraph and all tracks, bridges, viaducts, culverts, fences, depôts, stations, station houses, engine houses, car houses, freight houses, wood houses, machine shops, and all other shops and all other structures and buildings whatsoever now held and acquired or hereafter to be in any wise held or acquired by the Company its successors or assigns for use in the construction and maintenance and operation of and for use in connection with the running of such first division or portion of the said railway and telegraph or any part thereof now owned by or hereafter constructed or in anywise acquired excepting however from such grant bargain and sale the municipal bonuses and the lands other than aforesaid granted or to be granted by way of bonus or gift to the Company by the Government or by any incorporation.

20

30 “ ‘ And also by way of grant and not of exemption all the locomotives tenders passenger baggage freight and other cars and all other rolling stock and equipment whatsoever and all machinery tools and implements and all fuel supplies and material the particulars of which are contained in the second schedule hereto and all other if any the rolling stock equipment fuel supplies and materials now held or acquired or hereafter to be held or acquired by the Company its successors or assigns for constructing maintaining operating repairing or replacing the said first division or a portion of the said railway or telegraph between the points aforesaid or any part thereof or any of the equipment or appurtenances thereof and also all revenues freights tolls income rents issues profits and sums of money arising or to arise from the use of the said first division or portion of the said railway or telegraph, or of the property hereby conveyed or any part thereof subject nevertheless to the working expenses of the said railway and telegraph and to all rates taxes and assessments and other government charges.

40

“ ‘ And also all rights privileges powers immunities and exemptions and all corporate and other franchises now owned held and enjoyed by the Company or hereafter to be held and enjoyed or conferred upon it its successors or assigns in any way connected with it or relating to the said division or portion of the said railway or telegraph constructed and to be constructed, and the reversion and reversions, remainder and remainders thereof.’

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No. 2.

Answer, 3rd
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continued.

“ 5. In and by the said Indenture the said Company also covenanted with your petitioners in the words and figures following that is to say :—

“ “ And the Company for itself and its assigns hereby covenants and agrees to and with the Trustees and their successors in the trust created by these presents that the bonds hereby secured or intended so to be shall be issued only at such times and in such amounts as hereinbefore limited that the Company will duly pay and discharge the interest and principal of the said bonds in accordance with the tenor thereof and will for that purpose in each and every year ensuing the date hereof faithfully use and apply the net earnings and income to be from time to time derived from the said division or portion of the said railway and telegraph or from any part thereof after discharging its obligations upon or with respect to prior liens thereon or so much of such net earnings and income as may be necessary for that purpose to the payment of the same and when the same shall become due until all the said bonds shall be fully paid and satisfied and that it will seasonably in each and every year pay and discharge all taxes and assessments of every sort and description which may be lawfully imposed levied or assessed upon all or any part of the franchises or other property herein and hereby conveyed or intended or contemplated so to be so as to keep the mortgaged premises free and clear from any incumbrance by reason thereof and that it will from time to time and at all times hereafter and as often as thereunto requested by the Trustees under this Indenture execute deliver and acknowledge all such further deeds conveyances and assurances in the law for the better assuring unto the Trustees upon the trust herein expressed the said the first division or portion of the railway and telegraph constructed or to be constructed together with its equipments appurtenances and franchises and all and singular the lands property and things hereinbefore mentioned or described and granted or conveyed or agreed or intended or contemplated to be granted or conveyed to the Trustees or their successors in the trust created by these presents as by the said parties of the third part or their successors or successor in the trust hereby created or by their counsel learned in the law shall be reasonably advised or required and that the Company will not execute do or suffer any act deed matter or thing whereby the mortgage lien or charge hereby created or intended so to be shall be in anywise prejudicially or injuriously affected or whereby any mortgage lien or charge shall be created having equality or priority over the mortgage lien or charge hereby created over the premises herein comprised or any of them or the premises at any time hereafter forming part of the security for the said Bonds or any of them.’

“ 6. In and by the said Indenture it was also provided that in case default should be made in the payment of any interest to accrue on any of the aforesaid bonds to be issued by the Company when such interest shall become payable according to the tenor of such Bonds or the terms of any coupon thereto annexed and such default shall continue for the period of three months or in case default shall be made in the observance or performance of any

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continued.

10 other matter or thing in these presents mentioned or agreed or required to be observed and performed by the Company and such default shall continue for the period of three months then and from thenceforth and in either of such cases it shall be lawful for the Trustees personally or by their attorneys or agents to enter into and upon all and singular the said first division or portion of the said railway and telegraph and the premises hereby conveyed or intended so to be (acquired or constructed and to be acquired or constructed) or any part thereof and from thenceforth to have hold possess and use the said railway and premises and each and every part and parcel thereof then

20 subject to the lien of these presents with full power to operate and conduct the business of the said first division or portion of the said railway and telegraph by their superintendents managers and servants attorneys or agents either in conjunction with the persons or companies operating and conducting the other portions of the said railway or otherwise and to make from time to time all repairs and replacements and such useful alterations additions and improvements thereto as may seem to them judicious and to collect and receive all tolls fares freight incomes rents issues and profits of the same and of every part thereof and after deducting the expenses of operating the said division or portion of the said railway and telegraph and conducting the business thereof and of all the said repairs replacements alterations additions and improvements and all payments which may be made or which may be due for taxes assessments charges or liens prior to the lien of these presents upon the said premises or any part thereof as well as just compensation for their own services and for the services of such attorneys and counsel and all other agents and persons as shall have been by them employed the Trustees shall apply the money arising from such collections and receipts as aforesaid to the payment of interest on the said Bonds in the order in which such interest shall have become and shall become due rateably to the persons entitled to such interest and if after

30 paying in full the interest which shall have accrued on the said Bonds a surplus of the moneys arising as aforesaid shall remain and the principal of said Bonds shall not be due and such surplus or any part thereof shall not be required in the judgment of the Trustees for the protection of the property or to provide for the instalment of interest next thereafter to fall due the same shall be paid over to the Company but in case the principal of said Bonds or any of them shall have become due the surplus arising as aforesaid shall be reserved to be applied to the payment of said Bonds upon a sale of the said railway and premises as hereinafter provided.

40 "7. An instalment of interest fell due upon the said Bonds on the first day of June last amounting to the sum of sixteen thousand two hundred pounds but the said Company paid nothing on account of the interest that so fell due on the said date nor have they paid anything subsequently and the said Company has made default within the meaning of the said Indenture in payment of the interest which accrued due on all of the said Bonds and more than three months have elapsed from the time of such default.

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continued.

"8. After the said default and lapse of three months a demand was made upon the said Company to deliver possession of the said first division or portion of the said railway to the Trustees but the Company has neglected and refused and still neglects and refuses to deliver the same.

"9. Since the execution of the said deed the Company has built the fifty miles additional road referred to in paragraph two of this Petition and the said one hundred and eighty miles of the said railway have been for a long time completed and running and are now in operation under the management of the Company. The Company has also further extended its line for twenty-three miles beyond the town of Langenburg 10 and has built two short branches.

"10. Since the construction of the said fifty miles of railway from Solsgirth to Langenburg the Trustees have requested the Company to execute a further conveyance and assurance of the said fifty miles for the purpose of better securing unto the Trustees upon the trust in the said Indenture expressed the said fifty miles but the Company has neglected and refused and still neglects and refuses to execute said conveyance and assurance giving as an excuse for such non-execution the fact that a Receiver has been appointed by the Court in this suit.

"11. On or about the eighth day of June last the Plaintiffs filed their 20 Bill in this cause alleging amongst other things that they were judgment creditors of the Railway Company and that they held Bonds issued by the Railway Company in connection with the Shell River branch of the said railway and by the said Bill the Plaintiffs prayed that a receiver might be appointed of the revenues rents issues and profits of the Company as well as for other relief but the Plaintiffs did not so far as your Petitioners are aware claim any priority over your Petitioners or the Bonds payment of which are secured by the said Indenture in respect of the said first division of the said railway.

"12. By an Order made in this cause bearing date the eighth day of 30 June last upon application of the Plaintiffs and upon hearing Counsel for both Plaintiffs and Defendants by Bill who consented thereto this Court did order that the Plaintiff H. Montagu Allan should be appointed Receiver of the undertaking and assets of the Railway Company until the hearing or other final disposition of the cause and that the said Receiver should out of the moneys to be received by him provide for the working expenses of the railway and other outgoings in respect to the undertaking and management and collection of its assets including any repairs necessary to keep the said railway in running order.

"13. Afterwards by the same consent and on the 13th day of July 1893 40 a decree was made in this cause continuing the appointment of the said H. Montagu Allan as Receiver and making the same provision as in the said Order with reference to the payment out of the moneys received by such receiver and the said Receiver is now acting in the discharge of the duties in the provision of the said order and decree.

"14. The revenues from the said one hundred and eighty miles or first division of the said railway are more than sufficient to pay the running

expenses of that division but the receipts from the additional twenty-three* miles and the said two branches are not sufficient to pay the running expenses thereof and the said H. Montagu Allan has applied moneys which he has received from the said first division in and towards the running expenses of the other portions of the road.

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continued.
* Sic.

10 “ 15. Your Petitioners are unable as they are advised to take proceedings for the purpose of enforcing the said Indenture and to obtain possession of the said first division of the said railway and to obtain a receiver of the receipts thereof and to obtain a further conveyance or assurance of the said fifty miles without the sanction of the Honourable Court which sanction your Petitioners claim that they are entitled to receive.

20 “ 16. On or about the day of the persons above named as Defendants made parties in the Master’s office were by the Master directed to be made parties in this office and the two first named are your Petitioners but they have not yet been served with any notice of having been made parties in the Master’s office as aforesaid and they intend to dispute the right of the Plaintiffs or the said Master to make them parties to this suit upon the ground that the only claim that they have in respect of the said railway is one in priority to any claim asserted by the Plaintiffs or any of them and your Petitioners intend when served if they are served with the said order or direction as aforesaid to move to rescind the same and if necessary to vary the decree in so far as it authorises their being made parties to this suit.

“ Your Petitioners therefore pray :—

30 “ 1. That leave may be granted to them to take such proceedings in this Honourable Court as they may be advised for enforcing their rights to enter upon possession of the said first division or 180 miles of railway and the other property conveyed to them under the said Indenture and to obtain possession thereof.

“ 2. That leave may be granted to your Petitioners to take such proceedings in this Honourable Court as they may be advised for the appointment of a manager and receiver or for such other redress as they may be advised and also for a foreclosure of the mortgaged premises.

“ 3. That leave may be granted to your Petitioners to take such proceedings in this Honourable Court as they may be advised to enforce the execution by the Defendant Company of a deed of further assurance of the said fifty miles to the said Trustees upon the trusts mentioned in the said Indenture.

40 “ 4. And that leave may be given to them to take such other proceedings as they may be advised for enforcing their rights in the premises.

“ 5. And that the reasonable costs of your Petitioners incurred on this petition may be allowed and paid to them.

“ And your Petitioners will ever pray.”
p. 4983. E

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continued.

22. On the ninth day of June last this Court made an Order pursuant to the said petition which Order is in the words and figures following:—

“ The appeal of Francis Douglas Grey and Sir John Robert Heron Maxwell from an order made in this cause bearing date the 31st January 1894 upon the petition of the said Francis Douglas Grey and Sir John Robert Heron-Maxwell for leave to institute certain proceedings coming on for argument on the sixteenth and seventeenth days of February 1894 in presence of Counsel for all parties upon hearing what was alleged by Counsel aforesaid this Court did order the same should stand over for judgment and the same coming on this day for judgment—

10

“ 1. This Court doth order that that part of the said Order which directs that the said petition be dismissed with costs be rescinded.

“ 2. This Court doth further order that the Petitioners be at liberty to file a bill in this Court praying that the premises comprised in the security referred to in the said petition being the mortgage bearing date the 16th day of April A.D. 1886 may be sold and that a receiver of the revenues tolls and profits may be appointed thereof.

“ 3. And this Court doth further order that the Petitioners be at liberty if they so desire to take proceedings for the sale of the said premises or any part thereof under or in pursuance of any power which they may have under the said security.

20

“ 4. And this Court doth further order that the Plaintiffs and Defendants both by bill and as made in the Master's office except the said Petitioners and the Government of the Province of Manitoba and Her Majesty the Queen represented herein by the Honourable the Minister of the Interior do pay to the Petitioners their costs of this appeal forthwith after taxation thereof and that the costs of the said petition exclusive of the appeal be taxed and added to any costs they may be entitled to as mortgagees when enforcing their security.

“ G. H. WALKER, Prothonotary.” 30

And except as set forth in the said Order the Plaintiffs have not been authorized to take any proceedings in respect of or affecting the rights of the said Receiver or the property in his possession as such.

23. By an Indenture of Mortgage dated the 17th day of February 1887 we granted and mortgaged to the Plaintiffs herein as trustees that portion of our railway described in the said mortgage and generally known and referred to as the Shell River branch of our railway to secure payment of certain Bonds issued by us to the amount of 34,000/. to which Indenture we crave leave to refer when produced to this Court.

24. The said Bonds form no part of the issue of Bonds in respect of which the Plaintiffs hold the instrument of the 16th April 1886 under which they claim to be entitled to maintain this suit and the said Shell River branch

40

forms no part of the first division of the said railway but is part of the railway as a whole and is worked as part of the railway and contributes to its earnings.

RECORD.

No. 2.

Answer, 3rd
Aug. 1894—

continued.

25. The Bonds secured by the said mortgage of the Shell River branch have been issued and are now held by purchasers thereof to the full amount of such issue and the interest payable in respect thereof is in arrears.

26. It is the interest of the holders of the said Bonds to contend against the claim made by the Plaintiffs as to the method of division of the earnings of the said first division and as to the apportionment of the earnings of the railway as a whole and also to contend against the disturbance of the said H. Montagu Allan in his office of Receiver in regard to any part of the said railway and the appointment of any receiver of the first division and we submit that they are necessary parties to this suit.

27. We further submit that under the circumstances the said H. Montagu Allan as such Receiver is a necessary party to this suit.

28. In case this Honourable Court should appoint a receiver to the said first division as prayed by the Plaintiffs we submit that the Court should at the same time settle the property of which the Receiver is so appointed and determine the proper division of earnings between the first and second divisions of the Defendant Railway Company and give specific directions to the said Receiver as to his dealings with the same and as to his relation towards the said H. Montagu Allan as Receiver as aforesaid as otherwise pending such decision great contention will arise to the detriment of the Defendants' property.

29. We further submit that this Honourable Court has no jurisdiction to appoint a receiver to a portion of a railway being run and operated as a going concern or to a portion of the revenues tolls and profits thereof.

30. We pray to be hence dismissed with our costs.

In testimony whereof the common seal of the said Defendants the Manitoba and North Western Railway Company of Canada has been hereunto affixed this third day of August A.D. 1894.

(Sgd.) ANDREW ALLAN, President.

(Seal.)
(M. & N. W. Ry. Co.)

RECORD.

No. 3.
Plaintiffs'
Admissions.

In the Queen's Bench (in Equity).

Between

Francis Douglas Grey and Sir John Robert Heron-
Maxwell - - - - - Plaintiffs,

and

The Manitoba and North Western Railway Company of
Canada - - - - - Defendants.

The following facts are hereby admitted by the Plaintiffs for the purposes of this suit only, said admissions to have the same effect at the hearing of this cause as if the said facts were proved in the usual manner :—

10

1. If the proceedings referred to in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second paragraphs are held to be admissible in evidence, the Plaintiffs will admit that the said paragraphs correctly set forth such proceedings and that the said paragraphs be taken as if copies of the said original proceedings had been put in instead of the originals, and that under the decree referred to in paragraph nineteen, the Plaintiffs were made parties to the said suit in the Master's office, but upon application to the Court the direction or order making them parties was rescinded and the sixth paragraph of the said decree amended by adding thereto the words following :—" As are subsequent encumbrancers of the Plaintiffs."

20

2. The execution by the Saskatchewan and Western Railway Company of Canada and the Manitoba and North Western Railway Company of Canada of a certain Indenture of Lease, dated the 28th day of May one thousand eight hundred and eighty seven, a copy of which is identified by being marked as exhibit " A " to these admissions.

3. The execution by the Canadian Pacific Railway Company and the Defendants of three agreements between the said Canadian Pacific Railway Company and the Manitoba and North Western Railway Company of Canada which said agreements are identified by being marked as exhibits " B " " C " and " D " to these admissions and which are dated as follows :—" B " the third day of August A.D. 1889, " C " the twenty-seventh day of October A.D. 1883, " D " the first day of April A.D. 1890.

30

4. That the Bonds secured by the mortgage referred to in the twenty-fifth paragraph of the Defendants' Answer have been issued and are now held by the Messrs. Allan of Montreal.

5. The execution by the Defendants of a document dated the seventeenth day of February one thousand eight hundred and eighty-seven made between the Defendants and the Plaintiffs a copy of which is now produced and marked as exhibit " E " to these admissions, and that the Defendant Railway issued Bonds to the amount of thirty-four thousand pounds secured by the said

40

Indenture which Bonds have since been transferred by the Railway to various persons firms and corporations. RECORD.

EWART, FISHER AND WILSON,
Solicitors for Plaintiffs.
MACDONALD, TUPPER, PHIPPEN AND TUPPER,
Solicitors for Defendants.

No. 3.
Plaintiffs'
Admissions
—continued.

In the Queen's Bench (in Equity).

Between

10 Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs,
and
The Manitoba and North Western Railway Company of
Canada - - - - - Defendants.

No. 4.
Defendants'
Admissions,
4th Jan.
1895.

The following facts are hereby admitted by the Defendants for the purpose of this suit only—such admissions to have the same effect at the hearing of this cause as though the said facts were proved in the usual manner:—

20 The execution by the Defendants of the two documents both dated 16th April 1886 being (1) an Indenture made between the Defendants of the first part and the Honourable George Granville Campbell commonly called Lord George Campbell and the Plaintiff Grey of the second part and the Plaintiffs of the third part and (2) an Indenture made between the Defendants of the first part the Honourable George Granville Campbell above referred to of the second part and the Plaintiffs of the third part which the undersigned have identified by marking them as exhibits "A" and "B" referred to in this admission.

30 And also that instalments of interest fell due on all of the Bonds referred to in the Bill on the first day of June and the first day of December 1893, and the first day of June 1894, each of such instalments amounting to the sum of 16,200*l.* and that the Defendants made default in payment thereof, after presentment of the coupons therefor according to the tenor of the said Bonds, and such default still continues as to the whole amount of the said interest.

And also that the Plaintiffs had not nor have any moneys in their hands applicable to the payment of the coupons in respect of which such default was made.

Dated 4th January A.D. 1895.

MACDONALD, TUPPER, PHIPPEN AND TUPPER,
for Defendants.

EWART, FISHER AND WILSON,
for Plaintiffs.

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RECORD.

No. 5.
Replication
(Joinder of
Issue), 5th
Jan. 1895.

In the Queen's Bench (in Equity).

Between

Francis Douglas Grey and Sir John Robert Heron-
Maxwell - - - - - Plaintiffs,

and

The Manitoba and North Western Railway Company of
Canada - - - - - Defendants.

The Plaintiffs join issue with the Answer of the Defendants.

Dated at Winnipeg, this 5th day of January A.D. 1895.

EWART, FISHER AND WILSON, 10
Pliffs' Solrs.

No. 6.
Minutes of
Proceedings
on Hearing
of Action,
1st Feb.
1895.

In the Queen's Bench (in Equity).

Between

Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs,

and

The Manitoba and North Western Railway Company
of Canada - - - - - Defendants.

Court House, Winnipeg, 1st February 1895.

Present: His Lordship Mr. Justice Killam. 20

J. S. Ewart, Q.C., and C. P. Wilson appear for the Plaintiffs; H. A. Maclean for the Provincial Government; J. S. Tupper, Q.C., and F. H. Phippen for the Defendant Company.

Mr. Ewart.—The execution of the mortgage deed upon which the Bill is filed, and a deed of further security, being a mortgage upon the lands of the Railway Company—the mortgage is to secure the same Bonds, so that we really have the two—are admitted. It is admitted that default has been made in payment of the instalments of interest which fell due on the Bonds, after proper demand had been made in accordance with the mortgage deed. We have given some admissions to my learned friend. We will admit copies of the proceedings taken in the other case, if your Lordship thinks the originals would be admissible. We admit also the execution of a lease from the Saskatchewan and Western Railway Company to the Defendant Company, that is the branch from Minnedosa to Rapid City. That is no part of our line; it belongs to another Company, and we admit the execution of that lease. We admit the execution of this Traffic Agreement with the C. P. R. referred to in the Answer. And we admit that the Shell River branch has been mortgaged and that the Bonds have been issued and are held by the Allans. We admit the execution of the deed. 30

Upon these admissions we are prepared to argue the case. 40

Mr. Phippen.—You are not going to call any evidence at all then ?

Mr. Ewart.—No.

Mr. Tupper.—I don't think that it is quite necessary but I demur, *ore tenus*, for the want of parties. I don't intend to argue the point just now.

His Lordship.—That term is only applicable when there is a demurrer on the Record, though we have done what is the same thing sometimes.

Mr. Tupper.—We take the point in our Answer that these people should have been made parties, and are not made so.

His Lordship.—If that objection was open to you in the first place it is
10 still open, I suppose.

Mr. Tupper.—I would ask Mr. Ewart if he will admit that Mr. Montague Allan, who was appointed Receiver, deposited the security, the \$10,000 ?

Mr. Ewart.—Oh, yes.

Mr. Wilson says that this sum has been paid in cash into Court.

W. R. Baker sworn :—

By Mr. Tupper.—*Question.* You are the General Manager of the Manitoba and North-Western Railway Company, the Defendant Company ?—*Answer.* I am.

Q. How long have you been General Manager ?—*A.* Since the 1st of
20 September 1892.

Q. What position did you occupy prior to that date ?—*A.* General Superintendent.

Q. How long did you fill that position ?—*A.* Since the 1st of June 1883.

Q. Will you just describe generally the Defendant Company's railway ?—*A.* As to its location, do you mean ?

Q. Yes, its general location ?—*A.* It starts at Portage la Prairie and runs 223 miles in a north-westerly direction to Yorkton; it connects with the Canadian Pacific and Northern Pacific and Manitoba Railway at Portage la Prairie, and it runs 223 miles in a north-westerly direction to Yorkton, that is
30 the main line; then there is the Saskatchewan and Western starts at Minnedosa and runs to Rapid City a distance of fifteen and a half miles ($15\frac{1}{2}$). The Saskatchewan and Western connects with the main line of the Defendant Company at Minnedosa; it is $78\frac{1}{8}$ miles from Portage la Prairie; then there is the Shell River branch, which starts at Binscarth and runs north about $11\frac{1}{2}$ miles.

Q. Binscarth is a station on the main line ?—*A.* Yes.

Q. What distance from Portage la Prairie ?—*A.* 155 miles.

Q. How many miles of the main line are in the province of Manitoba ?—*A.* $170\frac{1}{2}$.

Q. And the balance of the line is where ?—*A.* In the North-West
40 Territories.

Q. Will you state how many miles of the division known as "the First Division" is in the province of Manitoba, and how many in the North-West Territories ?—*A.* There would be $170\frac{1}{2}$ in the province, and $9\frac{1}{2}$ miles in the North-West Territories.

Q. How is this railway operated ?—*A.* It is operated as one railway.

RECORD.

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Minutes of
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tinued.

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—
No. 6.
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tinued.

Q. By the Defendant Company?—*A.* By the Company.

Q. The earnings go into one pocket, and the expenses are paid out of there?—*A.* They were prior to the appointment of the Receiver for the first division.

Q. Would you describe shortly where the traffic going over the first division of the railway, or to points in the first division, originates?—*A.* Do you mean the west-bound, or the east-bound traffic?

Q. Take both?—*A.* The west-bound traffic the great bulk of it originates at points on the Canadian Pacific Railway.

Q. And that is received under certain agreements with the Canadian Pacific Railway made between that Company and the Defendant Company?—*A.* For the interchange of traffic, yes. 10

Mr. Tupper.—These are the agreements that were to be put in under the admissions.

Q. To what points does that traffic go on the line of the Defendant Company which comes from the Canadian Pacific?—*A.* To all points

Q. Where does the traffic coming to the 1st division from the west originate?—*A.* From various points along the whole of the railway.

Q. From where, the balance of the main line of the railway?—*A.* From the balance of the main line, from the main line itself and from the Sas-katchewan and Western Railway, and the Shell River branch. 20

Q. You are aware that Mr. Montague Allan was appointed as Receiver in June, 1893, of the Defendant Company's railway, and that he acted as such until August of 1894 when Mr. Nanton was appointed Receiver for the 1st division?—*A.* Yes.

Q. Did he take an active interest in the receivership?—*A.* Yes.

Q. Who has represented him here?—*A.* His solicitors have represented him, and I have represented him in the active management of the work.

Q. In constant communication with him regarding matters arising?—*A.* Constant, yes.

Q. Are you able to state whether the Bonds issued on the Shell River branch form any part of the Bonds included in the deed of the 16th of April 1886, upon which the Plaintiffs are now proceeding?—*A.* The Shell River branch was bonded separately, I know that. 30

Q. Going back to the 9½ miles in the North West Territories, would you describe, generally, the country through which these 9 miles run?—*A.* It is the ordinary prairie country, rather an easy country for railway construction—just west of the Assiniboine River.

Q. Is there any settlement there?—*A.* Not very much just along there.

Q. What is the nature of the land?—*A.* It is only fair in that district; we don't consider it a good district. 40

Q. How does it compare with other sections of the 1st division?—*A.* The section west of the Assiniboine River for some distance we look upon as the poorest section of our whole line. I mean just west of the Assiniboine River for some distance.

Q. How many miles from Portage la Prairie does the land you speak of

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Minutes of
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tinued.

commence?—A. 167 miles; that is the top of the hill on the other side of the Assiniboine River.

Q. You consider that the poorest section on the line?—A. Yes, by comparison.

Q. Could that 9½ miles you speak of, if sold separately, be operated as a railway?—A. It could be operated, certainly. It is physically possible to operate it.

Q. What do you mean by that?—A. I can't imagine anybody operating it as a separate railway.

10 Q. Why do you say that, state. Do you mean on account of its length, and the country through which it passes as distinct from the remainder of the line?—A. On account of its length, and the country through which it passes it would have to have a separate—

Mr. Ewart.—I think I will have to object to this evidence. There is nothing of this sort set up in the answer.

Mr. Tupper.—We take the point in our answer that it is not within the power of the Court to direct a sale of this railway, and I shall endeavour to show that nine miles of the 180 miles being in the North West Territories, and in that way a foreign country so far as we are concerned, the Court would not
20 have any jurisdiction to sell, or order a sale of that portion of the railway; and that not having such jurisdiction it would not order a sale of the balance of the first division. It would not have the power, and if it had it would not exercise it if by so doing it would depreciate the value of the security which the Defendant Company gave the Plaintiffs. That was, shortly, the object I had in view in giving this evidence, and I submit the answer is quite wide enough to cover the point I am now taking. (Reads Clause 7.) When brought to the notice of the Court that it is asked to do something outside of its own jurisdiction it will at once refuse to act, irrespective of any objection to the jurisdiction.

30 His Lordship.—The Court not having jurisdiction to authorise a sale of the part outside of the province, it would on account of the existence of these facts, order a sale of the part inside the province, and I should think if you wanted to raise a question of that kind you should set that up in your answer.

Mr. Tupper.—In reference to the point you just mention our contention here is that we, by virtue of the mortgage deed given to the Plaintiffs, gave the Plaintiffs certain rights and certain remedies, and that if they exercise those remedies in this way they will depart from the intention of that mortgage deed, and it seems to me that in that view, at all events, it is pertinent.

40 His Lordship.—I don't think so. Of course you have already got in the evidence of the location of a portion of the road, and it was not objected to.

Q. How did you keep the accounts of the Defendant Company since the first receiver was appointed?—A. We kept them as a whole in such a way that we could at any time show what the earnings and expenses were.

Q. Could you show at any time what the earnings of any part of the road were if you were granted a rule of division?—A. Yes.

RECORD.

No. 6.

Minutes of Proceedings on Hearing of Action, 1st Feb. 1895—continued.

Q. There would be no difficulty at any time ascertaining that fact?—
A. No.

Cross-examined by Mr. Ewart.—Q. At the time of the execution of the mortgage deed under which the Plaintiffs are proceeding, in 1886 I believe 130 miles of the railway were built?—A. Yes.

Q. The other 50 miles included in the first division were built afterwards?—A. Yes.

Q. And are now a part of the railway?—A. Yes.

Q. Prior to the filing of the Bill in this case, I believe for a couple of years, the receipts of the railway had not been sufficient to pay the working expenses?—A. Oh yes, they had been more than sufficient to pay the working expenses.

Q. Including rental?—A. Yes, and more than sufficient to pay rentals of rolling stock.

Q. What other interest do you refer to?—A. I thought you meant the interest on the Saskatchewan and Western Bonds, which is a rental.

Q. Do I understand you that the receipts of the road were always sufficient to pay the rentals, rolling stock, and renewals, &c.?—A. Yes, for the last four or five years they have been.

Q. Since 1890 all working expenses, including the rentals of the rolling stock have been paid?—A. No, I don't say that they have been paid, but the actual operation of the road would have paid them.

Q. But it did not?—A. No.

Q. Why?—A. There were other expenses.

Q. What other expenses?—A. It is almost impossible for me to say off-hand what they were, but I can say that we had not the cash at the time.

Q. Was there sufficient to pay all the expenses of the road?—A. No, not including the Land Department's expenses, there would not have been.

Q. There has not been nearly enough any way to pay the interest on the Bonds?—A. No.

Q. On either division?—A. No.

Q. Not for a great many years?—A. Never has been.

Q. The head office of the road I believe is at Portage la Prairie?—
A. Yes.

Q. You said the accounts were so kept that you could always ascertain where the receipts came from for each division?—A. Yes.

Q. I believe you have some arrangement with Mr. Nanton as to the way in which they are to be kept, so that there is really no difficulty whatever now?—A. None whatever. The accounts are made up every month, both by the Receiver of the first division and the Receiver of the Railway Company.

Q. Have there been any other articles of rolling stock purchased since our mortgage of 1886?—A. Except those enumerated in the schedule?

Q. Yes?—A. Yes.

Q. I mean articles of rolling stock that have been used in connection with the first division?—A. Yes.

Q. And machinery too?—A. Yes, some machinery too.

Map showing the line of the railway put in as Exhibit No. "1."
Mortgage deed filed Exhibit "2."
Deed of additional security "3."

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No. 6.
Minutes of
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tinued.

Mr. Tupper puts in the lease of the Saskatchewan and Western Railway
No. "4." Three contracts with the Canadian Pacific Railway Company filed
as Exhibits "5" "6" and "7." Mortgage Shell River branch filed No. "8."

It is admitted that if any of the former proceedings in Court are receivable
in evidence those set out in the Answer are to be taken as proved, and no
objection is made to their reception, Mr. Ewart saying he makes none.

10 (This admission was read aloud).

Mr. Phippen.—It is further admitted that they are receivable, I believe.

Mr. Ewart.—We don't object that they are not receivable in evidence, but
I would say if the object my learned friend has in putting them in is to limit
us in any way it should not be taken in that way, but he should have moved to
have taken the Bill off the files, and not put it in the Answer in that way, but I
don't think anything turns on it.

This concluded the evidence, and at the close of the arguments of
Counsel His Lordship reserved judgment, delivering it on 17th April 1895, as
follows :—

[Reasons for Judgment p. 42.]

In the Queen's Bench (in Equity).

Wednesday, the Seventeenth day of April A.D. 1895.

Before the Honourable Mr. Justice Killam.

Between

Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs,

and

The Manitoba and North Western Railway Company of
Canada - - - - - Defendants.

No. 7.
Decree of
17th April
1895.

30 This cause coming on for the examination of witnesses and hearing of
causes on the first day of February A.D. 1895 in presence of Counsel for all
parties; upon opening of the matter and upon hearing read the pleadings and
upon hearing the evidence adduced on the part of the Plaintiffs and the
Defendants and what was alleged by Counsel aforesaid

This Court did order that this cause should stand over for judgment and
the same coming on this present day for judgment—

1. This Court doth order and decree that the receiver appointed in this
cause of the revenues tolls and profits of the first division or one hundred and
eighty miles of the Defendants' railway be continued.

40 2. And this Court doth further order and decree that the said Receiver do
apply the said revenues tolls and profits in accordance with the terms of the
Indenture of the sixteenth day of April one thousand eight hundred and eighty-

RECORD.

No. 7.
Decree of
17th April
1895—con-
tinued.

six, except in so far as such Indenture directs payment of any of such moneys to the Plaintiffs and that such moneys if any last referred to be paid into Court to the credit of this cause to abide the further order of this Court or a Judge thereof.

3. And this Court doth further order and decree that the said Receiver do give such further security (if any) as the Master shall deem necessary.

4. And this Court doth further order and decree that it be referred to the Master to make an inquiry as to what personal property now exists embraced or included in the Plaintiffs' mortgage.

5. And this Court doth further order and decree that all necessary 10 inquiries be made, accounts taken, costs taxed and proceedings had for redemption or sale and that for these purposes the cause be referred to the Master.

6. And this Court doth further order and decree that the Defendants do forthwith after the making of the Master's report pay to the Plaintiffs what shall be found due to them for principal money interest and costs of this suit including the application for the Receiver at the date of the said report and upon payment of the amount due to them before the sale hereinbefore directed shall have taken place that the Plaintiffs do assign and convey the mortgaged premises free and clear of all encumbrances done by them and deliver up all 20 deeds and writings in their custody or power relating thereto upon oath to the Defendants or to whom they may appoint.

7. And this Court doth further order that in the event of a sale the same shall be put up at public auction in the City of Winnipeg and that notice of such sale shall be given by advertisement published not less than three times a week for six successive weeks in one or more daily newspapers in the City of Winnipeg and in one or more daily newspapers in the City of London, England and the City of Toronto. If such auction shall prove abortive then the sale may be made by tender or private contract as to the Master shall seem meet.

8. And this Court doth declare that it does not at present see fit to 30 determine whether the Defendant Company is entitled to have the revenues, freights, tolls, income, rents, issues, profits or sums of money arising or to arise from the use of the first division or portion of the railway and telegraph and other property mortgaged to the Plaintiffs or any part thereof applied to the working expenses of any portion of such railway telegraph or other property not comprised in the Plaintiffs' mortgage or any portion thereof or to meet any other payments or disbursements in respect of property not comprised in such mortgage and leave to apply in respect thereof is reserved.

9. And this Court doth further order and decree that in case of a sale of 40 the premises aforesaid the Master shall settle the conveyance to the purchasers thereof and all parties are to join therein as the Master shall direct.

10. And this Court doth further decree that in case the parties differ it be referred to the Master to inquire and settle the proper method of division of the gross receipts and expenditures of the whole railway as between the first division and the other portions thereof, with power to the Master to take evidence upon commission at the instance of either party.

11. And this Court doth further decree that leave be reserved to the Plaintiffs or those beneficially interested under the said mortgage in the Bill of Complaint mentioned to apply for leave to those so interested or any of them to bid at any sale under this decree.

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No. 7.
Decree of
17th April
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tinued.

R. J. WILSON, Registrar.

Ent. 3rd June 1895.
Book P. Folio 144. J. Y. C. E. C.

In the Queen's Bench (in Equity).

No. 8.
Præcipe of
Appeal,
14th June
1895.

Between

10 Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs,
and
The Manitoba and North Western Railway Company of
Canada - - - - - Defendants.

Set this cause down before the Court of Queen's Bench *in banc* by way of appeal by the Defendants from the Decree pronounced herein by the Honourable Mr. Justice Killam on Wednesday the seventeenth day of April A.D. 1895, entered on or about the third day of June, A.D. 1895, upon the following amongst other grounds :—

20 1. The evidence taken and exhibits filed at the hearing of the cause showed that if the Plaintiffs are entitled to receive any portion of the revenues tolls or profits of the first division of one hundred and eighty miles of the Defendant Railway (which the Defendants deny) it is only such portion thereof as may remain after payment of the working expenses of the whole of the said railway and the telegraph operated as part thereof and of all taxes rates and assessments and other Government charges thereon, and that if the Plaintiffs have any lien or charge on any portion of the revenues tolls or profits of the first division of the said Railway (which the Defendants deny) it is only on any surplus of such after payment of the said last-named working expenses and
30 taxes rates and assessments and other Government charges, and that the learned Judge should have so ordered and decreed.

2. The judgment was erroneous in holding that the Plaintiffs were entitled to a sale of the first division. Section 278 of "the Railway Act" does not confer jurisdiction on the Courts to order the sale of a railway. It merely provides for the case of a sale of a railway incorporated under a Dominion Act or declared to be for the general advantage of Canada which sale is authorized under any system of jurisprudence that may prevail in any of the Provinces of Canada.

40 3. That there was no evidence that the one hundred and eighty miles of the Defendant Company's railway mortgaged to the Plaintiffs formed an integer

RECORD.
 —
 No. 8.
 Præcipe of
 Appeal,
 14th June
 1895—con-
 tinued.

or section of the road within the meaning of "the Railway Act" and in the absence of any such evidence the learned Judge was wrong in decreeing a sale of that portion of the road.

4. That the evidence showed that about nine and one-half miles of the said one hundred and eighty miles of the Defendant Company's railway was outside the Province of Manitoba and the learned Judge had no power to authorise a sale of this portion of the road.

5. That even if it were shown to the satisfaction of the Court that the said one hundred and eighty miles do form an integer of the Defendant Company's railway within the meaning of "the Railway Act" then there was no evidence that the remaining one hundred and seventy miles or thereabouts, the portion of the said railway within the Province of Manitoba, form an integer of the Defendant Company's railway, and the learned Judge was in error in decreeing a sale of that portion of the road within the Province of Manitoba. 10

6. That the learned Judge had no authority to decree a sale of any portion of the Defendant Company's railway because foreclosure of the road could not be granted according to law and because there is no authority to decree a sale except as an alternative relief to foreclosure or except where special circumstances are shown, none of which were shown in this case.

7. That the learned Judge was wrong in decreeing a sale because the document on which the Plaintiffs relied, being the Trust Deed dated the sixteenth day of April A.D. 1886, is merely a conveyance in trust with certain specified powers, according to the terms of which alone the property could be dealt with, and the learned Judge had no authority to direct a sale of the said portion of the railway as that was not one of the methods contemplated by the terms of the said deed. 20

8. That the learned Judge was in error in directing a sale of the said one hundred and eighty miles because there is no person before the Court from whom the Defendants could redeem the said portion of the road directed to be sold and with whom an account could be taken. 30

9. That the Plaintiffs have not shown any reason for appealing to the equitable jurisdiction of the Court and the evidence shows that the relief sought for may be obtained at law.

10. No case was made for the appointment of a receiver herein. The evidence established that the Court had on the eighth day of June, A.D. 1893, at the instance of a judgment creditor, appointed a receiver of all the undertaking property and assets of the Defendant Company, with directions to pay thereout the expenses of operating the railway as a whole, which he had done, and that he had kept the accounts on a system by which the earnings of any portion of the railway could be easily ascertained whenever the proper method of division was ascertained. 40

11. The learned Judge erred in appointing a receiver before the determination of the question as to the liability of the revenues of the first division to the operation of the second division.

The appeal is against the whole of the said decree and the nature of the relief sought is to have the said decree varied and set aside and a decree pronounced in favour of the Defendants.

Dated Winnipeg, 14th June 1895.

MACDONALD, TUPPER, PHIPPEN AND TUPPER,
Solicitors for the Defendants.

RECORD.
—
No. 8.
Præcipe of
Appeal,
14th June
1895—con-
tinued.

In the Queen's Bench (in Equity).

Between

Francis Douglas Grey and Sir John Robert Heron

10

Maxwell - - - - - Plaintiffs,

and

The Manitoba and North Western Railway Company
of Canada - - - - - Defendants.

No. 9.
Notice of
Appeal,
14th June
1895.

Take notice that we have this day set this cause down for argument before the Court of Queen's Bench *in banco* for the Province of Manitoba by way of appeal from the decree pronounced herein by Mr. Justice Killam on Wednesday the seventeenth day of April A.D. 1895 and entered on or about the third day of June A.D. 1895 and that on the argument of the appeal we will ask the said Court to set aside or vary the said decree and
20 pronounce a decree herein in favour of the Defendants upon the grounds set out in the præcipe setting down the said appeal a copy of which is annexed hereto.

Dated Winnipeg, 14th June A.D. 1895.

MACDONALD, TUPPER, PHIPPEN AND TUPPER,
Solicitors for the Defendants.

To Messrs. Ewart, Fisher and Wilson,
Solicitors for the Plaintiffs.

In the Queen's Bench.

Monday, the tenth day of February A.D. 1896.

30

Before the Honourable the Chief Justice, Mr. Justice Dubuc, and
Mr. Justice Bain (*in banco*).

Between

Francis Douglas Grey and Sir John Robert Heron

Maxwell - - - - - Plaintiffs,

and

The Manitoba and North Western Railway Company
of Canada - - - - - Defendants.

No. 10.
Decree on
Appeal, 10th
Feb. 1896.

This cause coming on the twelfth day of July A.D. 1895, to be heard by the Full Court on the matter of the rehearing by the Defendants of the decree

RECORD.

No. 10.
Decree on
Appeal, 10th
Feb. 1896—
continued.

pronounced herein by the Honourable Mr. Justice Killam on the seventeenth of April A.D. 1895 upon opening a debate of the matter and hearing read the said decree, the præcipe setting this cause down by way of appeal therefrom, the notice of said appeal served herein, the evidence taken at the hearing of this cause and what was alleged by Counsel for the Plaintiffs and the Defendants this Court did order that the same should stand over for judgment and the same came on this present day for judgment.

1. This Court doth order and decree that the said decree be and the same is hereby reversed so far as it directs a sale of any portion of the Defendants' railway other than the personal property. *Solely whilst it appears to be* 10

2. And this Court doth further order and decree that the mortgage by the Defendant Company to the Plaintiff referred to in the Bill of Complaint herein ~~of~~ the revenues, freights, tolls, incomes, rents, issues and profits of the first division of the Defendant Company's railway and telegraph were mortgaged to the Plaintiffs, subject to the payment in priority to said mortgage of the working expenses of the Defendant Company's entire railway and telegraph, and that the appointment of the Receiver herein to receive the revenues, freights, tolls, incomes, rents, issues and profits of the first division of the Defendant Company's railway and telegraph be varied and the said Receiver is hereby declared to be, and since his appointment to have been Receiver of so much of the revenues, freight, tolls, incomes, rents, issues and profits of the Defendant Company's railway and telegraph as may be applicable to the first division of the Company's railway and telegraph subject to and after the payment of the working expenses of the said Defendant Company's entire railway and telegraph, but this Court does not see fit at the present to declare the rights of any parties in respect of such priorities after any sale of the first division of the railway. 20

3. This Court doth further order and decree that the said decree in so far as it directs the payment of costs by the Defendant Company to the Plaintiffs be reversed and that there be no costs to either party up to and including the hearing of this cause, and the proceedings hereinbefore taken under the said decree in the Master's office, and that the Plaintiffs do pay to the Defendant Company their costs of this appeal forthwith after taxation thereof. 30

4. This Court doth further order and decree that subject to the aforesaid variation the said decree be and the same is hereby affirmed.

(Sgd.) AUGUSTUS MILLS,
Dep. Prothonotary.

Entered 28th February 1896.
Book P. Folio 259. (Sgd.) J. Y. Cain. E. C.

In the Queen's Bench (in Equity).
Wednesday the eleventh day of March A.D. 1896.
Mr. Justice Killam.

RECORD.
No. 11.
Order granting leave to appeal to Her Majesty in Council, 11th March 1896.

Between
Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs,
and
The Manitoba and North-Western Railway Company of
Canada - - - - - Defendants.

40 Upon motion by counsel for the Plaintiffs in presence of counsel for the Defendants upon reading the affidavit of Charles Patrick Wilson and hearing what was alleged—

This Court doth order that the Plaintiffs do have leave to appeal from the first three paragraphs of the Order made in this cause bearing date the 10th day of February A.D. 1896 to Her Majesty in her Privy Council.

And by consent of all parties this Court doth further order that the Plaintiffs be at liberty to pay into Court to the credit of this cause the sum of two thousand dollars as security for the said appeal.

G. H. WALKER,
Prothonotary.

20 Ent. 26th March 1896.
Book P. Folio 281. J. Y. C. E. C.

In the Queen's Bench (in Equity).
Wednesday the twenty-fifth day of March A.D. 1896.
Mr. Justice Killam.

No. 12.
Order admitting Appeal, 2th March 1896.

Between
Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs,
and
The Manitoba and North-Western Railway Company of
Canada - - - - - Defendants.

30 Upon motion by counsel for the Plaintiffs in presence of counsel for the Defendants and the parties consenting thereto—

This Court doth order that the appeal of the Plaintiffs to Her Majesty in Her Privy Council for which leave was given by the Order made on the eleventh day of March instant be and the same is hereby admitted and that the Plaintiffs shall be at liberty to prefer and prosecute the same.

G. H. WALKER,
Prothonotary.

Ent. 26th March 1896.
Book P. Folio 282. J. Y. C. E. C.

RECORD.

In the Queen's Bench (in Equity).

Between

Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs,

and

The Manitoba and North-Western Railway Company of
Canada - - - - - Defendants.

I, Geoffrey Henry Walker, Prothonotary of the Court of Queen's Bench for the Province of Manitoba, do hereby certify that annexed hereto are the Reasons given by Mr. Justice Killam for the decree entered herein at the 10 hearing.

Witness my hand and seal of the Court of Queen's Bench for Manitoba at Winnipeg, this thirteenth day of April A.D. 1896.

G. H. WALKER,
Prothonotary.

(L.S.)

 Judgment.

Gray v. M. & N.W. Ry. Co.

Killam J.

The Plaintiffs sue as mortgagees in trust for bondholders, of the Defendants' railway and appurtenances, and of its tolls and revenues, for a sale of the 20 property and in the meantime for a Receiver.

The Bill shows that the Company was incorporated by Act of the Legislature of Manitoba; that subsequently by Act of the Parliament of Canada, the Company's railway was declared to be a work for the general advantage of Canada, and an extension thereof into the North-West territories was authorised; that the Company's head office is at Portage la Prairie in Manitoba; that on the 16th April 1886 the Company had already constructed 130 miles of its railway extending from Portage la Prairie to Solsgirth, and was then engaged in building an additional 50 miles thereof from Solsgirth to Langenburg; that on that date the Company by the mortgage on which the 30 Plaintiffs sue conveyed to the Plaintiffs these 180 miles of railway constructed and to be constructed under the description of the first division of the railway, extending from the point of junction with the Canadian Pacific Railway at Portage la Prairie to a point distant 180 miles therefrom measured along the track of the railway, as then located or as it might thereafter be located; and that the Company has since constructed the additional 50 miles, and the whole 180 miles of railway have for a long time been completed and running, and are now in operation under the management of the Company.

By the Answer several objections for want of parties were taken, but the only one pressed at the hearing was the non-joinder of the bondholders for 40 whose benefit the mortgage was made. In *Fraser v. Sutherland*, 2 Gr. 442, a suit for foreclosure, the Court of Chancery for Upper Canada expressed the opinion that a mortgagee trustee could sue by himself without joining the *cestuis que trustent* and I agree with this view.

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Whether the suit be for sale or foreclosure it is brought in the interests of the *cestuis que trustent* and to realize upon the property for their benefit. In suits for redemption and other cases cited for the Defendants, the relief sought is antagonistic to the interests of those beneficially interested in the mortgages, and there is more reason for requiring them to be before the Court.

There could be no more reason for requiring the *cestuis que trustent* to be parties for the purpose of taking the accounts in a suit for sale than in a foreclosure suit. The Trustees have, under the mortgage deed, a full power of sale with authority to receive the purchase money. And even if they had not, the
10 Court could effectually control the application of the proceeds of the property.

I feel myself precluded by the decision of the Full Court, upon the Plaintiffs' application for leave to sue, from considering the objections to mortgagees of such property under an instrument such as that in question, being granted a decree for sale of the property.

The opinion indicated by the Court was that the Plaintiffs had a right to this relief, and although the decision created no estoppel upon the point, I feel it to be binding upon a single judge, even if I did not, as I do, notwithstanding the further argument, concur in that opinion.

It is argued now that the jurisdiction to decree a sale, under the Act
20 15 and 16 Vic. c. 86, sec. 48 (Imp. 1852), and our General Order, No. 417, is given only where there is jurisdiction to decree foreclosure, and that as it has already been decided that the Court cannot decree foreclosure of a mortgage of a statutory railway, it has no power to direct a sale. But the Court has abstained from granting foreclosure of a mortgage of such property only on grounds of public policy. It was merely the nature of the property that prevented it from decreeing foreclosure or sale, and the Legislature having now provided the means for transferring the possession of and power to operate the railway, it would seem upon the principles laid down in *Redfield v. The Corporation of Wickham*, 13 A.C., 467 that the alternative jurisdiction to decree sale may be
30 invoked by the Plaintiffs. Even before the Act 15 and 16 Vic. c. 86, the Court would grant a decree for sale in certain special cases in which foreclosure would be an inadequate remedy, which shows that the jurisdiction was in the Court in a proper case. The fact that foreclosure can not be granted would seem a ground for exercising such jurisdiction.

In *Hutton v. Sealey*, 4 Jur, N. S. 450 where objection was made that the mortgagee was confined to his remedy under a power of sale in his mortgage deed, Sir John Stuart V.C., considered the circumstances that the proceeds of a sale under the power were to be held in trust as a ground for the trustees asking that the sale be made under the directions of the Court.

40 A more important objection to a decree for sale was raised by evidence showing that Langenburg, the terminal point of the mortgaged division, and the last nine and a half miles of that division are situated in the North-West Territories, and not within the territorial jurisdiction of this Court. This evidence was given without objection, but when evidence was being offered on the part of the defence of circumstances which might lead the Court to decline a decree for sale of the portion situated in Manitoba by itself, the Plaintiffs' counsel objected that no such point was raised by the pleadings, and I refused to allow it to be given.

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continued.

Handwritten notes:
Shall be
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Shall be

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continued.

Upon the argument however it was contended by the Plaintiffs' counsel that the objection to the jurisdiction of the Court was not open neither it nor the facts on which it was based being raised by the pleadings, and that at any rate a decree could be made for sale of the portion of the railway within the province.

Upon the latter point I agree entirely with the argument for the defence. Before the enactment of the provisions now found in the Railway Act, 51 Vic. c. 29 ss. 278-280 (D 1888), there were no means by which the purchaser of a statutory railway, upon a sale under a mortgage could obtain power to operate it and exercise the franchises of the Company. But in consequence of the similar clauses in the previous Act, 46 Vic., c. 24 (D. 1879) the Judicial Committee of the Privy Council held, in *Redfield v. The Corporation of Wickham*, 13 Ap. C., 467, "that a railway or section of a railway may, as an integer, be taken in execution and sold like other immeubles, in ordinary course of law." But the judgment contains the qualification that these enactments "do not suggest that, according to the policy of Canadian law, a statutory railway undertaking can be disintegrated by piecemeal sales at the instance of judgment creditors or incumbrancers."

The word "section" then cannot be taken as meaning any piece cut off from a railway. The Court, upon the principles prevailing before these enactments, cannot decree a sale of a portion of the railway unless that portion be a section which the purchaser can obtain power to operate under the statute. The Company under the authority of an Act of Parliament has mortgaged a certain portion or division of the railway. That, at least, seems to be thus set apart, under Parliamentary authority, as a section which could properly be dealt with separately. But to divide this again by cutting off 9½ miles to be dealt with by the Courts of the North West Territories, and perhaps transferred to a different purchaser, would seem to come within the mischief suggested by the Judicial Committee. At any rate, it appears to me that, to obtain a decree for sale of a portion only of the division mortgaged, the Plaintiffs should have shown that it was a section proper to be cut off from the balance of the railway and operated separately.

In my opinion also the Defendant Company is not precluded from raising, without pleading it, the objection that a portion of the mortgaged property is beyond the territorial jurisdiction of the Court.

It would not have been a case for a technical plea to the jurisdiction. In the case of the *Mayor of London v. Cox* L. R. 2 H. L. at p. 261, Wills, J. said:—"And even in Superior Courts themselves, where the subject matter is such as to imply a local limit of jurisdiction the exception is preemptory; there is no necessity for a dilatory plea, nor is the objection waived by pleading in chief. Thus, if an action of trespass to land situate abroad were brought in the Queen's Bench, the defendant need not plead a dilatory plea showing what Court has jurisdiction; but if the foreign locality appear upon the count he might demur, and if it did not appear he might plead in chief or bar a denial of the trespass (which would be assumed as alleged within the jurisdiction) and at the trial the Plaintiff would be nonsuited or lose the verdict."

And in *Penn v. Lord Baltimore*, 1 Ves. Sr. at p. 446 Lord Hardwicke,

L. C. is thus reported:—"To be sure a plea to the jurisdiction must be offered
 "in the first instance, and put in *primo die*; and answering submits to the
 "jurisdiction; much more when there is a proceeding to a hearing on the
 "merits, which would be conclusive at common law; yet a court of equity,
 "which can exercise a more liberal discretion than common law courts, if a
 "plain defect of jurisdiction appears at the hearing, will no more make a
 "decree than where a plain want of equity appears."

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The Plaintiffs' Bill shows that the Company was authorized to extend its
 line of railway into the North West Territories, and that the 180 miles extended
 10 to Langenburg, without mentioning the situation of the last named point. The
 Answer sets up that the railway extends from Portage la Prairie in Manitoba
 to Yorkton in the North West Territories, a distance of 223 miles, which the
 evidence proves to be the case. It appears to me that the onus was upon the
 Plaintiffs, where a portion of the mortgaged property might or might not be
 situated within Manitoba, to show that all of it was so if this Court could not
 exercise jurisdiction in respect of the portion without the Province. The Bill
 might perhaps be taken as suggested in the Lord Mayor of London *v.* Cox of
 a declaration in trespass, to allege the situation of all the property in Manitoba
 if that were a condition precedent to the jurisdiction; but it certainly seems
 20 open to the Defendant to show the real situation, about which there can be
 no doubt. The Court of Chancery in England has from a very early date
 entertained suits of various kinds relating to real property situate in other
 countries, and there can be no doubt of the jurisdiction of this Court to do so
 in many cases.

Mr. Westlake in his work on Private International Law 163, expressed the
 opinion that in some cases in England no ground existed for interference but
 the personal jurisdiction of the Court over the parties; but he and other leading
 writers upon the subject are now agreed that such a doctrine must be received
 with qualification. See Westlake, paras. 162-6; Story's Conflict of Laws,
 30 paras. 424, 543, 551; Wharton's Conflict of Laws, paras. 288, 289.

Mr. Westlake says, in para. 162, "A proprietor of foreign immovables or
 "person interested in such may be compelled by the English Court, if it has
 "personal jurisdiction over him, to dispose of his property or interest therein
 "so as to give effect to any obligation relating to them which arises from, or as
 "from his own contract or tort, and that obligation will not be measured by
 "the *lex situs* of the foreign immovables to which it relates, but in accordance
 "with the rules of private international law." And, further, in para. 163,
 "But where the relief which might affect the foreign immovables is not sought
 "on any ground falling under the last paragraph the English Court will decline
 40 "to make its mere personal jurisdiction over the Defendant a ground for
 "determining the right either to the property or the possession of foreign
 "immovables, but may perhaps assume to determine such right on the ground
 "of moveable property being mixed up in the same proceedings." In para-
 graph 164 he deals with mortgage suits, and while he shows that suits both for
 foreclosure and for redemption have been entertained, he seems to doubt
 whether the Court of Chancery has not gone somewhat too far in respect of
 them.

In *Massie v. Watts*, 6 Cranch, 148, that eminent Judge Chief Justice

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Marshall, of the United States Supreme Court, said (at p. 157) : " Was this case, therefore, to be considered as involving a naked question of title, was it for example a contest between Watts and Pavell, the jurisdiction of the Circuit Court of Kentucky would not be sustained. But where the question changes its character, where the Defendant in the original action is liable to the Plaintiff either in consequence of contract or as Trustee, or as the holder of a legal title acquired by any species of *mala fides* practiced on the Plaintiff, the principles of equity give a Court jurisdiction, wherever the person may be found, and the circumstance that a question of title may be involved in the inquiry, and may even constitute the essential point on which the case depends, does not seem sufficient to arrest the jurisdiction." Then, (after referring to several cases,) " Upon the authority of these cases, and of others which are to be found in the books, as upon general principles, this Court is of opinion that, in a case of fraud, or trust, or contract, the jurisdiction of a Court of Chancery is sustainable wherever the person may be found, although lands not within the jurisdiction of the Court may be affected by the decree."

These principles are practically the same as those laid down by the Chief Justice of our own Supreme Court in the late case of *Henderson v. The Bank of Hamilton*, 23 S.C.R. 716 (p. 719) " When law and equity were administered by separate courts, courts of equity held that where personal equities existed between parties over whom they had jurisdiction, though such equities might have reference to lands situate without the jurisdiction they would give relief by a decree operating not directly upon the lands, but strictly *in personam* But in all such cases there was some personal obligation in the nature of a trust or other equity which the Court enforced as it was said by affecting the conscience of the party against whom it decreed relief. This indirect mode of affecting lands over which the Court could not properly have any direct judicial authority was, however, confined to the class of cases mentioned, and was never extended so far as to give direct relief in respect of charges on lands by decreeing a sale in the nature of an equitable execution, or the raising of a bare charge such as the statute has conferred on the Appellant in the present case. Such decrees would have been unenforceable in the foreign jurisdiction and might have brought the Courts decreeing them into collision with the forum within whose local jurisdiction the lands were situated. . . . The tendency of modern decisions has been to decline jurisdiction with reference to foreign land, and when we consider that if the arguments invoked for the Appellants were to prevail we might be asked to uphold a judgment of a Quebec Court in a hypothecary action respecting lands in Ontario or *vice versa* a judgment in an action in the Ontario Courts directing a sale of hypothecated immovables in the Province of Quebec, the convenience, good sense and sound jurisprudence of the rules laid down in the later English authorities, which have now culminated in the decision of the House of Lords in the case of *The British South African Co. v. The Companhia de Moçambique* became at once apparent."

In *Henderson v. The Bank of Hamilton* the Plaintiff, claiming under a certificate of judgment registered under our statutes, sued in Ontario to redeem a mortgage of lands in Manitoba. It was held that he could not have

Dust

such relief, as he had only a statutory claim, by a local law, to have the lands sold for satisfaction of his judgment, which could not be carried out without the aid of the Courts of this Province, especially as the judgment debtor was without both jurisdictions and "the title of a purchaser could not be perfected without a conveyance from him, or a vesting order, which the Manitoba Courts alone would have jurisdiction to grant and enforce."

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Norris v. Chambers, 29 Beav. 246, 3. D.F. & J. 583 is another case which shows that there must ordinarily be some privity or relationship between the parties to warrant the interference of the Court in respect of lands abroad.

10 In Burns v. Davidson 21 O. R. 547, it was held by Boyd C. and Ferguson J. that an Ontario Court should not interfere to declare fraudulent as against creditors a conveyance of land in the State of Oregon. After referring to one class of cases, Chancellor Boyd said: "All these cases depend on a privity existing between the parties arising from contract, or from some personal obligation moving directly from the one to the other. They have gone to the very limit of the jurisdiction and were always encumbered with this difficulty, that the decree may be a mere *brutum fulmen*, incapable of being practically enforced against the Defendant's property."

20 Massie v. Watts 6 Cranch, 148, Watts v. Waddle, 6 Pet. 389, Boyce v. Grundy, 9 Pet. 289 and Watkins v. Holman, 16 Pet. 25 are decisions of the Supreme Court of the United States that conveyances by an officer of a Court of one State under authority of a decree of the Court, of lands situated in another State, do not operate to pass the title in the State where the land lies, at least without proceedings in the Courts of the latter State.

Having thus considered some of the principles upon which the Court has to act in respect of foreign immovables, I will examine some of the cases as to mortgages.

30 It has been held, in cases which I deem of binding authority upon me, that the Court of Chancery in England would decree foreclosure of a mortgage of lands abroad, where the mortgage was made in England and the mortgagor resided there. Toller v. Carteret, 2 Vern., 494; Paget v. Ede, L. R. 18 Eq., 118.

In Beckford v. Kemble, 1 Sim. and St. 7, Sir John Leach, V.C., not only made a decree for redemption of a mortgage of lands in Jamaica, but also granted an injunction to restrain the mortgagee from proceeding with a suit for foreclosure in the Courts of Jamaica. And upon the argument the Plaintiff's Counsel stated that there were cases in which the English Court of Chancery noticing the law of Jamaica had upon foreclosure decreed a sale of the estate in the West Indies.

40 In Mr. Coote's Treatise on The Law of Mortgage, 4th Ed. at p. 992 it is stated, "In Ireland and the Colonies it is the practice, instead of a foreclosure, "to pray that the estate may be sold, and the moneys applied," &c. . . . "Where, therefore, the mortgaged estate is situate in Ireland or the Colonies, "and a suit is instituted in the English Courts by the mortgagee, the proper course is to pray a sale." The authorities cited for these propositions are Perry v. Barber, 13 Ves., 205; Hutton v. Mayne, 3 J. & L., 586; McDonough v. Shewbridge, 2 Ba. & Be., 555; Drew v. O'Hara, *id.*, 562 n.; Wilson v. Dunsany, 18 Beav., 293, 18 Jur., 762; 2 Spence Eq. Jur., 678; Beckford v.

RECORD. *Kemble*, 1 S. & S., 115; *Gordon v. Rasfall*, 5 Mo. P. C. 393; and *Willink v. Bentink*, 1 C. P. Coop. t. Cott 288.

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I have not had an opportunity of referring to Mr. Spence's work on Equity Jurisprudence. The only cases of those cited which bear upon the action which the Court in England would take with reference to lands in Ireland or the Colonies are *Beckford v. Kemble* and *Willink v. Bentink*. In the former there is nothing but the statement of Counsel already mentioned.

In *Willink v. Bentiuk*, the report shows that a decree had been made at the instance of a mortgagee of an estate in Demarara, for sale of the estate, and for the appointment in the meantime of a manager of the estate; and that this decree had only been granted after opposition. I have not been able to find any report of the argument or judgment at the time of the making of the decree. 10

The case came up subsequently on a motion to compel the mortgagee to make certain steps, or allow them to be taken, for the protection of the estate, and on a rehearing of this motion Lord Cottingham, L. C., suggested some doubts as to the correctness of the decree, but did not distinctly specify what these were.

In *ex parte Pollard*, 1 Jur. 288, 6 L. J., N.S., Bk'y. 95, there was a petition to the Bankruptcy Court to have it declared that the bankrupts had created an equitable mortgage upon lands in Scotland by deposit of title deeds, and to have the lands sold. This was refused, but on appeal the decision was reversed by Lord Cottingham L. C. Pending the proceedings on appeal the land had been sold by the assignees, and the Chancellor merely decreed that the proceeds should be applied in discharge of the debt, to secure which the deposit was made. See 4 Jur., 489; Westlake's Private International Law, s. 162; Ch. Dig., Vol. 1, p. 728, Vol 3, p. 2619 (2).

In *Strange v. Radford*, 15 Ont. R. 145 Boyd C. refused a decree for sale of lands in Manitoba under a mortgage.

In *McElrath v. The Pittsburgh and Steubenville R. R. Co.*, 55 Penn. St. 189, a suit for foreclosure and sale under a mortgage, the Supreme Court of Pennsylvania decreed a sale of a railway situated partly in Pennsylvania and partly in West Virginia. The Court held that without deciding what estate would pass by the conveyance, it might by a decree operating on the mortgagee, authorize and compel him to sell and convey whatever interest would pass under the terms of the mortgage. 30

In *Muller v. Dews*, 94 U.S. 444, there was an appeal to the Supreme Court of the United States from a decree of an Iowa Court for sale under mortgage of a railway partly in Iowa and partly in Missouri, and directing the Master of the Court to execute the deed or deeds to the purchaser, that the railway company should surrender the property to the purchaser on execution and delivery of the Master's deed, and that as a further assurance, the Company should convey to the purchaser. This decree was affirmed. Strong J., who delivered the judgment of the Supreme Court, said: "Without reference to the English Chancery Decisions, where this objection to the decree would be quite untenable, we think the power of Courts of Chancery in this country is sufficient to authorize such a decree as was here made. It is here undoubtedly a recognized doctrine that a Court of Equity sitting in a State 40

“ and having jurisdiction of the person, may decree a conveyance by him of
 “ land situate in another State, and may enforce the decree by process against
 “ the Defendant. True, it cannot send its process into that other State, nor
 “ can it deliver possession of land in another jurisdiction; but it can command
 “ and enforce a transfer of the title. And there seems to be no reason why
 “ it cannot, in a proper case, effect the transfer by the agency of the Trustees
 “ when they are complainants. . . . The mortgagors here were within
 “ the jurisdiction of the Court. So were the Trustees of the mortgage. It
 “ was at the instance of the latter that the Master was ordered to make the
 10 “ sale. The Court might have ordered the Trustees to make it. The mort-
 “ gagors, who were foreclosed, were enjoined against claiming the property
 “ after the Master’s sale, and directed to make a deed to the purchaser in
 “ further assurance. And the Court can direct a Trustee to make a deed to
 “ the purchaser in confirmation of the sale.”

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continued.

I feel very strongly impressed with the reasons advanced by Chancellor
 Boyd, and if this were a case of lands wholly out of Manitoba I might feel at
 liberty notwithstanding the English authorities cited, to take the same course.
 A sale is very different from simple foreclosure. The latter would operate to
 bar a right to enforce redemption in the Courts of the country where the decree
 20 is made, and those Courts might go as far as in *Beckford v. Kemble*, 1 S. & S.
 7, and enjoin the mortgagor from seeking redemption in the Courts of the
situs.

So long as the mortgagor or owner of the equity of redemption is within
 the jurisdiction of the foreign Court, he might be thus enjoined from asserting
 any rights as against the purchaser under its decree, and he might be compelled
 to join in a conveyance, But he may move out of the jurisdiction, or he may
 have already disposed of some interest or created some encumbrance upon the
 property, or he may do this before the conveyance is completed. And the
 Courts of the *situs* may refuse to recognise the right of the purchaser.

30 If there are subsequent encumbrancers, the Court cannot enforce their
 compliance with its decree if they are without the jurisdiction; and in case
 they are within the jurisdiction, the mere fact of their having such interests in
 lands wholly without the jurisdiction would not seem to create such a privity
 or relationship with the mortgagee as to entitle him to proceed against them
 here for sale or foreclosure.

But the jurisdiction of this Court to decree a sale, under a mortgage, of
 lands within the Province is unquestionable. The only difficulty in the present
 instance, lies in the nature of the property. As I have already intimated,
 upon the evidence before me, I am of opinion that the portion of the railway
 40 within Manitoba or any portion less than the whole mortgaged division cannot
 be considered to be a “section” within the meaning of Section 278 of The
 Railway Act, and cannot, therefore, be sold separately. Is it not then
 necessary for some Court to exercise the jurisdiction to decree a sale of the
 whole division? The Courts of the North West Territories are in no better
 position than this Court for the purpose, and there is no other Court which
 could possibly interfere.

Under the principles enumerated by Sir John Stuart, V.C., in *Hutton v.*
 p. 4983. H

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Sealey, 4 Jur. N.S., 450, where the mortgagees are Trustees, they have peculiarly a right to ask that the Court shall protect them by assuming the control of the sale. The case of *In re Orr Ewing, Orr Ewing v. Orr Ewing* 22 Ch. D. 456, 9 App. C. 34, and others there cited afford examples how the jurisdiction to administer the portion of an estate within the jurisdiction draws with it the jurisdiction to administer also the portion situated abroad.

I do not think however that this Court could act as the Supreme Court of Pennsylvania felt at liberty to do in *McElrath v. The Pittsburg and Steubenville R. R. Co.* 55 Penn. St. 189, and decree a sale of the whole property without considering whether it could give effect to its decree as to the portion of the railway outside of Manitoba. In accordance with the views which I have already expressed, the Court cannot act except with respect to the whole of the mortgaged division, and it must therefore ascertain before acting that it can confer a title to the whole division. 10

The usual decree for sale in this province directs the Master to inquire as to subsequent encumbrancers and make them parties to the suit and then, after enquiries as to the amounts due and allowing a proper time for payment, it authorizes a sale, which is subsequently had under an order obtained *ex parte* in Chambers.

If such a decree were made in a case like the present and there were found to be encumbrancers residing out of Manitoba they at any rate could not be bound to join in a conveyance or be bound in the North West Territories by any conveyance in which they did not join, unless one made by the present Plaintiffs would be effectual under the power of sale contained in their mortgage. I have hesitated somewhat as to whether the usual decree should be made or whether there should be a preliminary inquiry as to encumbrances and as to the effect which, under the laws of the North West Territories a conveyance by the Plaintiffs under a decree of this Court and in compliance with the conditions of the power of sale, would have in the territories as against subsequent encumbrancers if such should be found. 20 30

At one time this Court had an appellate jurisdiction in respect of the North West Territories, and it might have been possible for it then, in all cases, to take judicial notice of the laws of the Territories. That jurisdiction was abrogated by the Act 49 Vic. c. 25 s. 32 (D. 1886), brought into force by proclamation of the Governor-General on the 18th February 1887. See *Sta. Can.* 1887. p. clvi. It would be an interesting question to consider how far this Court could now take judicial notice of the validity and effect in the North West Territories of the power of sale in the Plaintiffs' mortgage, which bears date the 16th April 1886.

At any rate, I think I can judicially notice, for present purposes, the 11th section of the North West Territories Act R. S. C. c. 50 by which the laws of England of the 15th July 1870 are in force in the territories, so far as applicable to the territories and save as repealed altered varied modified or affected by any Act of the Imperial Parliament applicable to the Territories of the Parliament of Canada or any Ordinance of the Lieutenant Governor or of the Territories in Council. 40

And I think that I can also notice the laws of England at that date, those

*Valid / its validity
 effect depends
 on act of Canada*

being the basis of our own jurisprudence. But I do not conceive that I could take notice of any alteration of or whether any alteration has been made in those laws by the Legislature of the North West Territories since the 18th February 1887, which would affect an attempt to exercise this power of sale. It appears to me that under the law of England as well as that of Manitoba, the Plaintiffs acting under and in compliance with the terms of the power of sale, could make a valid and effectual sale and conveyance of the mortgaged property and thereby transfer a good title as against the Defendant Company and all claiming any title or interest in the property subsequent to the Plaintiffs' mortgage. I think then, that I may properly assume as against the Defendant Company in the absence of allegation or evidence to the contrary, that such a sale and conveyance under a power contained in the Company's own deed, would be similarly valid and effectual as to the portion of the mortgaged property situated in the North-West Territories. If this be the case, the only obstacle to the exercise by this Court of its jurisdiction to decree a sale of mortgaged property within Manitoba—the circumstance that it must assume also to decree a sale of immovable property out of Manitoba—disappears; and if it can be surmounted it seems to me that the Court is bound to make the decree taking care only that the decree shall require the conditions of the power of sale to be complied with.

As to the appointment of the Receiver, the fact of a portion of the mortgaged property being without Manitoba can be no bar.

In *Houlditch v. the Marquess of Donegal*, 2 Cl. and F. 470 on an appeal from Ireland, the House of Lords not only upheld the jurisdiction of the Court of Chancery in England to grant a Receiver of the rents and profits of an estate in Ireland, but also held that it was the duty of the Courts in Ireland to assist the Receiver. See also *Hibbert v. Hibbert* 3 Mer. 681; — *v. Lindsay* 15 Ves., 91; and *Bunbury v. Bunbury* 1 Beav., 318, 8 L. J. Ch. 297.

There will be a decree continuing the present Receiver on his giving such further security if any as the Master shall deem necessary, with other usual provisions; directing an inquiry as to the personal property embraced or included in the Plaintiffs' mortgage; and directing the usual inquiries &c. as in an ordinary suit for sale under a mortgage, showing however that the conditions of the power of sale contained in the mortgage deed are to be complied with before sale.

The decree should also declare that the Court does not, at present see fit to determine whether the Defendant Company is entitled to have the revenues, freights, tolls, income, rents, issues, profits or sums of money arising or to arise from the use of the 1st division or portion of the railway and telegraph and other property mortgaged to the Plaintiffs or any part thereof applied to the working expenses of any portion of such railway telegraph or other property not comprised in the Plaintiffs' mortgage or any portion thereof, or to meet any other payments or disbursements in respect of property not comprised in such mortgage, and leave to apply in respect thereof should be reserved.

According to the statements made by counsel at the hearing, it seems unnecessary for present purposes to settle this controversy and it may never

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RECORD. become necessary to do so, and even if such a determination were made between the present parties it would not affect subsequent encumbrancers who might litigate it again.

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continued.

Delivered this 17th April 1895.

Certified true copy.

WM. PERKINS,
Official Stenographer, Court of Queen's Bench, Manitoba.

JUDGES' REASONS IN COURT OF APPEAL.

No. 14.
Judgments of the Judges of Appeal.

In the Queen's Bench in Equity.

10

Between

Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs,
and

The Manitoba and North Western Railway Company of
Canada - - - - - Defendants.

I, Geoffrey Henry Walker, Prothonotary of the Court of Queen's Bench for the Province of Manitoba, do hereby certify that annexed hereto are the Reasons given by the Judges of the Court of Queen's Bench for the Judgment herein, on appeal from the Decree made at the hearing.

20

Witness my hand and the Seal of the Court of Queen's Bench for Manitoba at Winnipeg this thirteenth day of April A.D. 1896.

(Sgd.) G. H. WALKER, Prothonotary.

(L.S.)

Judgments.

Gray v. the Manitoba and North Western Railway Company.

The Hon. Chief Justice Taylor.

Taylor C. J.

The Defendants are a Railway Company, incorporated originally by an Act of the Legislature of Manitoba, 43 Vict., c. 35 as the Westbourne and North Western Railway Company. This Act was amended by 44 Vict., c. 41, (3rd Sess.), and the name of the Company changed to the Portage Westbourne and North Western Railway Company. Under these Acts the Company had power to construct and operate a line of Railway, commencing at a point on the Canadian Pacific Railway between Poplar Point and the western boundary of the Province, thence running north-westerly east of the Riding Mountains to the northern or western boundary of the Province.

In 1882 by 45 Vict. c. 80, (D) the Defendants' Railway was declared to be a work for the general advantage of Canada, and they were given power and

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authority to extend their line of railway in a north-westerly direction to a point at, or near, Prince Albert, and were also authorized to issue Bonds for the purpose of raising money for the prosecution of their undertaking. In the year 1883 the name of the Defendants was changed to the Manitoba and North Western Railway Company of Canada by 46 Vict., c. 68 (D), and that Act also contained a section as to the issue of Bonds for raising money. Three subsequent Acts were passed the 48 and 49 Vict. c. 86 (D); the 49 Vict. c. 75 (D); and the 56 Vict., c. 52 (D) all dealing with the affairs of the Defendants' Railway. By section 4 of the last-mentioned Act the Head Office of the
10 Company was to be at Portage la Prairie, subject to being changed to some other place in Canada by by-law to be passed as provided for in that section.

On the 16th of April 1886 the Defendants had constructed 130 miles of their line of railway extending from Portage la Prairie to Solsgirth, all of which is within the Province of Manitoba, and were then engaged in constructing 50 miles additional of their line from Solsgirth to Langenburg. Of the 50 miles nine and a half miles lie outside of the Province of Manitoba. Since then the Defendants have carried their line of railway about 43 miles further to Yorkton, and have also constructed a branch known as the Shell River Branch, starting at Binscarth on their main line and running north a
20 distance of about eleven and a half miles, all of which is in Manitoba. They have also leased, what is known as the Saskatchewan and Western Railway, a short line beginning at Minnedosa on the main line of the Defendants' railway in Manitoba, and extending fifteen and a half miles to Rapid City. This whole line of 223 miles, and the two branches, the Defendants have, ever since their construction been, and are now operating as one line of railway.

In April 1886 the Defendants issued a large number of bonds for the purpose of raising money for the prosecution of their undertaking, these bonds being a series of 5,400 bonds, issuable at the rate of three thousand pounds sterling per mile of the road from Portage la Prairie to a point distant
30 180 miles therefrom, measured along the track of the railway. At the same time they executed, under the provisions of 46 Vict., c. 68, s. 5 (D), a mortgage upon the first 180 miles of the line of railway, therein called the first division of the railway, to the Plaintiffs as trustees for the holders of the bonds, and to secure the bonds so issued.

The Plaintiffs have filed their Bill as such mortgagees, alleging default in payment of certain interest due upon these bonds, and praying the appointment of a Receiver of the revenues, tolls and profits of the first division of the railway, and a sale of all the property described in, and included under, their mortgage. To this Bill the Defendants put in their answer, and the case
40 having been brought to a hearing, a decree was made, appointing a Receiver, directing all necessary inquiries to be made, accounts taken, costs taxed, and proceedings had, for redemption or sale, and for these purposes directing a reference to the Master.

This Decree has been re-heard before a Full Court at the instance of the Defendants.

In a suit of Allan v. Manitoba and North Western Ry., 10 M.R. 106, the present Plaintiffs presented a petition praying for leave to take proceedings

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for enforcing their rights as mortgagees. The petition came before the Full Court upon a re-hearing, and it was then held that upon default in the payment of interest, the Trustees, the present Plaintiffs, could have filed a Bill for sale of that division of the railway mortgaged to them, and an order was made giving them leave to take such proceedings as they might be advised, for, among other things, a sale of the property embraced in their security. What the Court when it so held was dealing with was, the contention of the Plaintiffs in that suit, that the mortgage containing a power of sale, the rights of the Trustees, the present Plaintiffs, must be governed by that, and there could be no sale until after default for twelve months in the payment of 10 interest upon the bonds.

Bearing in mind the question with which the Court was then dealing, I cannot see in that judgment anything to prevent the Defendants from taking, as they now do, the objection that the property covered by the Plaintiffs' mortgage, the 180 miles, or as it is called, the first division of the railway, is not, or at all events has not been shown to be, liable to be sold under Section 278 of the Railway Act, 51 Vic., c. 29 (D). In *Redfield v. Wickham*, 13 A. C., 467, the Judicial Committee of the Privy Council dealing with sections of the 46 Vic., c. 24, which are identical with Sections 278, 279, and 280 of the Railway Act, said:—"They do not suggest that according to the 20 "policy of Canadian law, a statutory railway undertaking can be disintegrated "by piecemeal sales at the instance of judgment creditors or encumbrancers; "but they clearly show that the Dominion Parliament has recognized the rule "that a railway or a section of a railway may, as an integer, be taken in "execution and sold like other immovables, in ordinary course of law." The Defendants' contention is, that the sale of a railway having been held to be against public policy, and Parliament having by statute modified the law, and permitted a sale under certain limitations, the onus lies on the Plaintiffs to bring themselves clearly within the provisions of the statute. The Plaintiffs answer to this, that the Defendants having given a mortgage upon the first 30 180 miles, with a power of sale, they have by their own deed established, as against them, that this portion of the railway is a section which may be sold, does not seem to me conclusive upon the subject. The statute permits the sale of a section, which it has been decided must be an integer, if this 180 miles is not such a section within the meaning of the statute then the deed cannot be any estoppel, for if a deed has been executed in contravention of a statute the law of estoppel does not apply. *Bigelow on Estoppel*, 351. It is not competent to parties to a contract to estop themselves or anybody else in the face of an Act of Parliament, *Barrows' case*, 14 Ch. D., 441. If it were held otherwise, then as *Patterson, J.*, said in *Doe d. Chandler v. Ford*, 40 3 A. & E. 649, "An instrument which the parties might choose to prepare would defeat the statute from beginning to end."

The question remains, is the 180 miles, known and spoken of as the first division, such a section as is saleable under the Railway Act? In my opinion it lies upon the Plaintiffs to show that it is, and they offered no evidence on the subject. The only evidence touching upon it came from the Defendants, that the railway, starting at Portage la Prairie, and running 223 miles in a north-

westerly direction to Yorkton, is with the Shell River branch operated as one railway.

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10 But the Plaintiffs in support of their contention appeal to the whole course of legislation in connection with the Bonds which their mortgage was given to secure. The 46 Vict. c. 68, s. 5, under which the Bonds were issued, and the mortgage given, provides, that the Company may issue Bonds, which "shall constitute a first mortgage and privilege upon the said undertaking and upon the said railway constructed, and to be thereafter constructed;" that the Bonds may be so issued in proportion to the length of railway constructed or under contract to be constructed. And it further provides that the Company may secure the Bonds to be issued, "by mortgage deed creating such mortgage liens and incumbrances upon the whole or any part of such property, assets, and revenues of the Company present or future, or both, as shall be described in the said deed." This, standing alone, could not be relied on as establishing that any particular portion of the line of railway described in a mortgage is a section, for if the Company found a lender willing to advance money and take a mortgage upon a single mile, or upon a few miles of the railway, it would be difficult to hold such a portion to be a section within the Railway Act.

20 But the 49 Vict. c. 75 s. 4 which deals with the Bonds and mortgage now in question, says that such bonds shall "be the first lien and charge on such first division of the railway comprising 180 miles as aforesaid as provided by the said mortgage deed." There Parliament seems to have dealt with the 180 miles as a distinct and separate portion of the road. Then the 56 Vict. c. 52, deals with securities set out in Schedule 2 to the Act, the first item of these being the Bonds secured by the Plaintiffs' mortgage, and Section 18 provides, that the schedule securities, "shall remain until cancellation or redemption thereof, or until payment or discharge in full of the principal and interest thereby secured the first preferential claims and charges upon the respective portions of the Company's undertaking or property affected or charged as security for such payment in each case, and according to the tenor or effect of any by-law, or any deed of mortgage conveyance or assurance in each case." Now do not the section and the schedule referred to, not only recognise the distinct and separate character of the portion of the railway upon which the Bonds are made a charge, but also that it may be sold as a distinct and separate portion, as a section within *Redfield v. Wickham*. How otherwise can the bonds be a charge upon this portion of the railway according to the tenor or effect of the mortgage deed, which contains a power to sell this 180 miles in case of default in payment. During the argument it was said that the existence of this power of sale cannot be relied upon or referred to because it is not set up in the pleadings. But it is so in paragraph 16 of the Bill.

40 Another objection taken by the Defendants is, that the Court cannot grant the relief asked, because in doing so it must deal with lands lying outside of this Province. The Plaintiffs reply, that this objection is not open to the Defendants because it is not properly raised by their Answer. It is said, a plea to the jurisdiction, must, in order to prevail, set up not only that the Court has no jurisdiction, but show what Court has. In support of this several

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passages in Lewis' Equity Drafting and Daniel's Chancery Practice were referred to. But the cases cited by these writers are all cases in which some Court in England had jurisdiction, not cases in which the objection was that the subject matter was outside of the jurisdiction of the Courts of the country. And that is quite a different thing. Dealing with this very point in *Companhia de Moçambique v. The British South Africa Company* (1892), 2 Q.B., 358, Wright, J., said: "It is argued that every plea to jurisdiction must show a competent Court to which the Plaintiff could have resorted. This argument would have been well founded if the plea had been a technical plea to the jurisdiction—that is, a dilatory plea in the nature of a plea in abatement, admitting a cause of action cognizable by the law of England, but objecting that the Plaintiff had come to the wrong one out of the various Courts amongst which the judicial powers of the Crown are parcelled out. It has no application where the objection is to the general jurisdiction of the Crown by any of its Courts, and where the plea is really a plea in bar, on the ground that the matters alleged are such that no Court in this country can take cognizance of them." Here there is not in the Answer a formal allegation that the Court has not jurisdiction, but it does allege that part of the lands in question lie out of this Province and beyond the jurisdiction of this Court. Having done so, and the fact having been proved, it would seem, especially in view of the judgment of Willes, J., in *Mayor &c. of London v. Cox*, L.R., 2 H.L., 239, that it is open to the Defendants to raise this objection.

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Handwritten notes in cursive script, including "OK", "Yes", "No", and "I don't know".

The argument of the Plaintiffs, that even if the property is outside the jurisdiction, they can invoke the assistance of the Court, because they are Trustees, and the money to be realized by a sale of the property is to be dealt with and distributed as trust money seems untenable, for no such case is made by the Bill.

Will the Court entertain a suit to sell lands lying outside the territorial limits of its jurisdiction? No doubt old cases can be found in which jurisdiction as to lands abroad was entertained. In every case, I think, as to lands in dependencies of England, in the Colonies and Plantations, as the expression then used was. This jurisdiction was, perhaps, carried further by Lord Hardwicke, than by any other Judge, and seems to have been founded on some vague idea that the Courts in England had a general jurisdiction over all parts of the Empire. What Lord Macclesfield called "the superintendent power of the Courts in this country" in *Fryer v. Bernard*, 2 P.W., 261.

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In *Roberdeau v. Rous*, 1 Atte., 543, in which, however, even Lord Hardwicke refused to order delivery of possession of lands on the Island of St. Christopher, this language occurs, "Plantations are originally members of England, and governed by the laws of England, and persons went out originally subject to the laws of England, unless in some regulations and customs which they have a power of making."

40

The modern cases disclaim the exercise of any such wide jurisdiction, although, no doubt where the parties are within the jurisdiction the Courts may, and do, act *in personam*.

Among the cases cited *Hendrick v. Wood*, 9 W. R. 588, was a case for winding up a partnership in Jamaica, three executors living in England, and three in Jamaica who had appeared to the suit, and an arrangement having been made in England before the testator's death for the winding up. There the Court was acting *in personam*. In *Central Rail. and Banking Co. v. Mitchell*, 11 Jur. N. S., 258, the Court was asked to protect a fund, the proceeds of the sale of the assets of a steamship company in the United States which had, by an express agreement among the shareholders, been remitted to England for the purpose of being divided there. The Court was there dealing with a fund remitted to and in the hands of a firm in Liverpool. The plea was not to the jurisdiction on the ground that the subject-matter of the suit was abroad, but simply, that the fund was not invested in any Government or public stock in England. *Orr-Ewing v. Orr-Ewing*, 22 Ch. D., 456; 9 A. C., 34, was also a case for the administration of an estate, some of the executors living in England, and some in Scotland, but the latter having been served there, had appeared without objection, and submitted to the jurisdiction.

In *Smith v. Henderson*, 17 Gr. 6, the Court acting *in personam* as against a Defendant within the jurisdiction decreed a trust of land abroad. In *Grant v. Eddy*, 21 Gr., 45, the estate assigned for the benefit of creditors was in Quebec, and the assignor lived there, but the Plaintiff and the trustees were resident in Ontario, and the assignment provided for the trust funds being, when collected, paid into a bank in Ottawa.

These were all cases in which the Courts professed to act, and did act, upon persons within the jurisdiction, *in personam*. A foreclosure decree being a decree *in personam* depriving the mortgagor of his personal right to redeem, the Court may, where the parties are within the jurisdiction, make a decree foreclosing a mortgage upon lands abroad, as was done in *Paget v. Ede*, L. R. 18 Eq., 118, but it is different where the relief sought is a sale of the land. That is a proceeding against the land directly. And as was said by the Master of the Rolls in *Lord Cranston v. Johnston*, 3 Ves. 170, "Bills are often filed upon mortgages in the West Indies. The only distinction is, that this Court cannot act upon the land directly, but acts upon the conscience of the person living there." So in *Carteret v. Petty*, 2 Swanston 323 N. the Court made a decree for an account of waste committed in Ireland, but refused to order partition for that was a proceeding *in rem*. A decree for the sale of mortgaged lands seems to be a proceeding *in rem*, for although there is a money demand, on which the Court first adjudicates, it proceeds to act upon the property directly, and decrees a sale of it in satisfaction of the demand. That a decree for sale is a proceeding *in rem* seems to have been held by Boyd, C., in *Strange v. Radford*, 15 O. R., 145. In all the modern cases where it has been sought to affect not the parties *in personam* but to affect directly lands abroad the Courts have disclaimed jurisdiction.

In *Norris v. Chambers*, 29 Beav., 246, a bill was filed by an administrator to recover money alleged to have been advanced by the intestate towards purchase of a mine in Prussia, and claiming a lien on the mine for the amount. Lord Romilly said, "It is a suit by a Plaintiff residing in England against Defendants also residing here to enforce a lien on immoveable property of

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“ the Defendants situate out of the jurisdiction of this Court. The bare statement of such a proposition requires that some special state of circumstances should exist in order to enable the Court to give any relief of this description.” And again he said, “ If the owner of an estate in Prussia mortgages that estate to an Englishman, it is new to me that the Courts of Equity in this country will administer as between those parties, the law obtaining in England with relation to mortgages and foreclose or direct a sale of the Prussian estate if payment be not made of the amount due.”

In Ontario there have been several cases in which this question has been considered. One of these relied on by the Plaintiffs was *Robertson v. Robertson*, 22 Gr., 449. But there was in that case no sale of land, or direct dealing with land. There, there was a sale, and following that, a vesting order, vesting in the purchaser certain bounty land warrants, which seem to have given the bearer of them a personal right to locate and obtain from the Crown, so many acres of unascertained lands in Manitoba, and the question disposed of by Proudfoot, V.C., was that infants being like adults bound by proceedings in a suit in which they are Plaintiffs, the decree and proceedings would be an answer and bind them and estop them from disturbing any title acquired under the sale of the warrants.

Strange v. Radford, 15 O. R., 145 was an action against a Defendant living 20 in Ontario upon a mortgage of land in Manitoba, for sale delivery of possession and relief under the covenant for payment, and the relief prayed was refused by Boyd, C., who while he held the Plaintiff might have an order of foreclosure which operates only as an extinction of the mortgagor's personal right of redemption, said, “ to carry out a sale it is essential that the Court should have territorial jurisdiction over the land.” In *Burns v. Davidson*, 21 O. R. 547, the Court was asked, all parties living in Ontario, to set aside as fraudulent, a conveyance made by a debtor of land in a foreign country, and a demurrer to the Statement of Claim was allowed. *Boyd, C.*, after speaking of the earliest cases found in the books, went on to say, “ But these cases if ever safe guides 30 “ (which is much to be doubted) do not justify a Provincial Court inter- “ meddling with territorial rights, acquired or subsisting in a foreign country.” He said further, that as against the general expressions used in earlier cases, he preferred to follow the more guarded lines of jurisdiction which obtain in recent decisions, of which one of the most important was *Harrison v. Harrison*, L. R. 8 Ch. 346. In that case a decree of the Master of the Rolls made in an Administration Suit and holding Scotch real estates liable to the payment of debts, as between the heir and the pecuniary legatees, was reversed by Lord Selborne and Lord Justice Mellish, the former saying, “ As against the real estate in Scotland the Courts of England have no jurisdiction at all.” 40

In *Ross v. Ross*, 23 O.R., 43, Street, J., held that the Court could not entertain an action for determining the title to land in the North West Territories even where the parties were resident within the jurisdiction.

The next case was *Henderson v. The Bank of Hamilton*, 23 O.R., 327; 20 App. R., 646; 23 S.C.R., 716, in which all parties being domiciled in Ontario, the Defendants having a mortgage against lands in Manitoba, the Plaintiffs had obtained and registered here a judgment against the mortgagor,

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cases

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brought an action to redeem the mortgaged lands. At the trial, Armour, C.J., dismissed the action, but on a motion in the Divisional Court, Falconbridge and Street, J.J., set aside his judgment and gave the relief asked. The case was then taken to the Court of Appeal, where the judgment of the Divisional Court was reversed, and in the Supreme Court the judgment of the Court of Appeal was upheld. The present learned Chief Justice of the Supreme Court said: "The tendency of modern decisions has been to decline jurisdiction with
" reference to foreign land, and when we consider that if the arguments invoked
" for the present Appellant are to prevail we might be asked to uphold the
10 " judgment of a Quebec Court in an hypothecary action respecting land in
" Ontario, or *vice versa* a judgment in an action in the Ontario Courts directing
" a sale of hypothecated immovables in the Province of Quebec, the con-
" venience, good sense and sound jurisprudence laid down in the late English
" authorities . . . become at once apparent."

The most recent case is *Companhia de Moçambique v. British South Africa Co.* (1892), 2 Q.B. 358; (1893) A.C. 602. The learned Chief Justice of the Supreme Court said, that the rules laid down in the later English authorities have now culminated in the decision of the House of Lords in that case, and it does seem to be conclusive upon the subject. It was an action in
20 which the Plaintiffs alleging that they were owners of mines in South Africa claimed against Defendants within the jurisdiction a declaration of title to the lands, an injunction, and damages in respect of trespasses on the lands. The Divisional Court held that the Court would not entertain an action for directly determining the title to land in a foreign country. In the Court of Appeal it was held that the Court had jurisdiction, but Lord Esher dissented holding that, the cause of action being a wrongful entry upon lands abroad the Court could not entertain the cause at all; it could not make a declaration as to the title; it could not issue an injunction, and it could not award damages. In the House of Lords this dissenting judgment of Lord Esher was sustained
30 and the judgment of the majority of the Court of Appeal reversed. The judgments of Lord Herschell and Lord Halsbury are exceedingly instructive.

In my opinion the Court cannot consistently with the authorities make a decree for the sale of land over which it has not territorial jurisdiction. While the 180 miles, forming the first division of the railway, may be a section capable of being sold under the Railway Act, there is nothing to warrant a sale as a section of that part which lies within the Province. As then the Court cannot sell the whole, because part lies outside the jurisdiction, it follows that no decree for sale can be made at all.

It was argued that if this Court cannot order a sale there is no other
40 Court can do so, and that seems to have weighed with the learned Judge at the original hearing in coming to the conclusion he did. That argument was most effectually disposed of by Lord Esher in the case last referred to, where he said:—"As to the contention that the Courts of a country can
" assume jurisdiction in respect of extra-territorial acts over which they have
" otherwise no jurisdiction, on the mere ground that, if they do not, the Plaintiff
" has no remedy anywhere, I am of opinion that it does not bear examination.

RECORD. "It is claiming too ambitious a province. It was a noble ambition, but it is
"without recognition or authority."

No. 14.
Judgments
of the Judges
of Appeal—
continued.

There still remains the question of the working expenses of the railway. Are the working expenses of the entire railway entitled to priority in order of payment over the Bonds, or only the working expenses of the 180 miles, or first division, upon which payment of the Bonds has been secured?

The Company, although in the first instance incorporated by an Act of the Legislature of Manitoba, was by 45 Vic., c. 80 (D), declared to be a work for the benefit of Canada, and it was authorised to extend its line of railway to Prince Albert. Of the whole line of railway provided for in this Act, the Company has constructed and has in operation 223 miles, but of this the Plaintiffs' security covers only 180 miles, called the first division. That Act gave the Company power to issue Bonds for the purpose of raising money for the prosecuting of their undertaking, and they were empowered to secure these Bonds by a mortgage deed creating such mortgages, charges and encumbrances upon the whole, or any part, of the property, assets, rents and revenues of the Company, present or future, or both, as shall be described in the deed, "but such rents and revenues shall be subject in the first instance to the payment of the working expenses of the railway." The 46 Vic., c. 68, s. 5, authorised the issue of Bonds which should constitute a first mortgage and privilege upon the undertaking, and upon the railway constructed, and to be thereafter constructed, and upon the property of the Company acquired, or which might be thereafter acquired—excepting therefrom municipal bonuses—and upon the tolls and revenues derived from operating the railway, "after deducting from such tolls and revenues of working expenses." And provision was made for securing the Bonds by mortgage deed upon the whole or any part of the property, assets and revenues of the Company present or future, or both, as shall be described in the deed, "but such revenues shall be pledged in the first instance to the payment of the working expenses of the railway."

The words used in these sections in their ordinary and natural meaning apply to the entire railway then constructed, or which the Company had power to construct thereafter. I do not see how they can be limited to a portion only of the railway which may be described in a mortgage deed.

Turning now to the mortgage under which the Plaintiffs claim it will be seen that the construction of a railway 430 miles in length is plainly referred to, and the entire railway is throughout spoken of as "the said railway," or, "the railway of the Company." What the deed conveys to the Plaintiffs is, the first division, or portion of the railway and electric telegraph of the Company extending from the point of junction with the Canadian Pacific Railway to a point distant 180 miles therefrom, &c., with all the other real and personal property, rolling stock, &c., held or belonging to, or thereafter to be acquired by the Company, for use in the construction, maintenance and operation of such first division or portion of the said railway and telegraph, and all revenues, freights, tolls, income, rents, issues, profits, and sums of money to arise from the use of the said first division or portion of the said railway or telegraph, &c., "subject nevertheless to the working expenses of the said

railway and telegraph." In that part of the deed the first division which the mortgage covers, is carefully distinguished from "the said railway." The words "the said railway," there, must refer to the entire line of railway, and cannot be confined to the first division only. In no other place in the deed can they be confined to the first division, and it is most unlikely that they are so here.

RECORD.
No. 14.
Judgments
of the Judges
of Appeal—
continued.

10 The Plaintiffs argue that the language used in the second article explains the meaning of that used in the earlier part of the deed. That article empowers the Plaintiffs, in the event of default, to enter into possession of, and to operate and conduct the business of the said first division of portion of the railway and telegraph, and after "deducting the expenses of operating the "said division or portion of the said railway and telegraph and conducting "the business thereof" to apply the moneys, &c. But the meaning of the language used in the operative and granting part of the deed seems too distinct to admit of its being explained away by a subsequent and subsidiary clause.

20 Another article relied on by the Plaintiffs is the 18th, but that does not assist in explaining the meaning, because it is only a covenant by the Defendants to pay the interest and principal of the Bonds and that they will for that purpose, "faithfully use and apply the net earnings and income to be "from time to time derived from the said division or portion of the said railway and telegraph, or from any part thereof after deducting its obligations "upon or with respect to prior liens thereon." What the prior liens may be, it is not said. The net earnings may very well be the earnings after the working expenses of the entire railway have been provided for.

30 Even if it could be successfully argued that the mortgage intended to make, and does make, only the working expenses of the first division a charge in priority to the Bonds, then, I think, it would be necessary to hold that such a provision is *ultra vires*. There can be, I think, no doubt that the statute under which the Bonds were issued makes any Bonds issued under its provisions, even if a charge upon part only of the railway subject to payment of the working expenses of the entire railway. It may be that to so hold will lessen the value of the Bonds materially, but that is not a question to be dealt with by me. Public policy seems to be that a railway shall be kept in operation for the benefit of the public by the Company. No doubt it is to secure this that the Statutes say, the earnings of the whole road, and of every part of it, must in the first place go to meet the expenses of working the road and keeping it in operation. The interest of the public is placed before that of private individuals.

40 The Plaintiffs are, however, entitled to part of the relief sought. They are entitled to have a receiver; an account of the amount due upon the bonds, and an order for the payment of that amount into Court. They are also entitled to an inquiry what personal property is embraced or included in their security, and to have that sold. The decree may contain a declaration that the working expenses of the entire railway are a charge in priority to the Bonds.

The decree made at the original hearing must be varied accordingly.

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RECORD.
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No. 14.
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of the Judges
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continued.

There should be no costs up to and including the original hearing, and the Defendants should have the costs of the rehearing as they have succeeded in all their main contentions.

Bain, J.

The Hon.
Mr. Justice
Bain.

It would be a somewhat difficult matter to define precisely what is meant by the words "any section of any railway" in Section 278 of the Railway Act; but whatever they mean, it is clear that a Railway Company cannot make any particular portion of its road a section merely by calling it a section, or by dealing with it as such. As Parliament, however, has expressly recognised these 180 miles as a division of the Defendants' railway separately charged by the Bonds and mortgage, it seems reasonable to suppose that in so recognizing it, it was intended that the division would be deemed to be a section of the railway in respect of which the holders of the charge could exercise the remedies the Act gives them for enforcing or realizing the charge. But if the Court has jurisdiction to decree a sale of only a railway or any section of it, there clearly would not be jurisdiction to order the sale of anything less than the whole division of 180 miles. There is nothing before us that would justify the Court in treating any portion of the division as a separate section; and as Lord Watson said in *Redfield v. Wickham*, 13 Ap. Cas., 467, it is still the policy of the law that a railway is not to be disintegrated piecemeal.

The Plaintiffs' Bill is substantially the usual one on a mortgage for redemption or sale, and the prayer for sale is, "that all the property described " in said Indenture may be sold under the directions of this Honourable Court, " and that the Plaintiffs may have liberty to bid at such sale." The decree directs that all necessary inquiries be made, accounts taken and proceedings had for redemption or sale, and that for these purposes the cause be referred to the Master. In making such a decree, the Court is, as I understand it, undertaking to deal directly with the property in question, and not merely indirectly through the Defendants; and the decree is one *in rem* and not *in personam*. But part of the immovable property that, if it is sold at all, must be sold as a whole, lies in the North West Territories, outside territorial jurisdiction of this Court; and on this ground exception is taken to the jurisdiction of the Court to make the decree for sale.

Most of the difficulty there is in deciding this question arises from the fact that it is only a portion of this property that is outside of the Province. Had the whole of it been outside the Province, I would hold without hesitation, on the case made by the Bill, that the Court should refuse to make a decree for sale; and I gather from the judgment of the learned Judge who made the decree that this would have been his opinion also. But I venture to think that, on principle, the objections to the Court undertaking to make a decree directly affecting this property are just the same and as weighty as they would be were the property wholly outside the Province, and all the difficulties that *Boyd, C.*, suggests in *Strange v. Radford*, 15 Ont. 145, might be found in the way of enforcing the decree. And the consideration that if this Court will

not decree a sale the Plaintiffs will be practically unable to enforce their remedy is not one, I think, that should influence the Court to assert a wider jurisdiction than principle and authority warrant. This is a consideration for Parliament to deal with rather than the Court.

RECORD.

No. 14.
Judgments
of the Judges
of Appeal—
continued.

The English Court of Chancery, it is said, has pushed its jurisdiction with respect to foreign lands farther than any other Court, and farther than the general principles of jurisprudence warrant. But, except perhaps in a few cases where decrees were made directly affecting lands in the view that the process of the Court would extend to the British Plantations and Colonies, the principle has never been lost sight of that the Court cannot directly interfere with foreign lands; though it has attempted to do indirectly what it could not do directly. The doctrine of the Court is, that the Court having authority to act upon the person may indirectly act upon real estate situate in a foreign country through the instrumentality of the person; and it is altogether on this doctrine that the jurisdiction the Court takes to decree foreclosure of foreign mortgages is exercised. A decree for foreclosure, as Bacon, V.C., explained in *Paget v. Ede*, L.R. 18 Eq., 118, is a decree *in personam* depriving the mortgagor of his personal right to redeem, and it does not directly affect the mortgaged land. On the other hand, the case of *Roberdeau v. Rous*, 1 Atk. 543, is one that shows emphatically that the Court will not make a decree that directly affects foreign land. There a Bill had been filed for the partition of an estate in the West Indies. But Lord Hardwick said, "This Court has no jurisdiction so as to put persons in possession in a place where they have their own methods on such an occasion to which the parties may have recourse; . . . lands in the plantations are no more under the jurisdiction of this Court than lands in Scotland, for it only *agit in personam*." An authoritative statement of the principle on which whatever jurisdiction the English Courts have assumed over foreign lands is based and of the limitations of that jurisdiction, is found in the judgment of the Lord Chancellor in *Orr-Ewing v. Orr-Ewing*, 9 App. Cas., at p. 40, a case that was relied on for the Plaintiffs. He says: "The Courts of Equity in England are, and always have been, Courts of conscience operating *in personam* and not *in rem*, and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts and trusts as to subjects which were not either locally or *ratione domicilii* within their jurisdiction. They have done so as to land in Scotland, in Ireland, in the Colonies, in foreign countries." This was a suit against trustees for the administration of an estate real and personal, part of which was in England, and part in Scotland, but three of the trustees were resident in England and the others, who resided in Scotland, had been served with process and had joined in defending the suit. The House of Lords held that the Court had jurisdiction to make a decree for the administration of the whole estate and for enforcing performance of the trusts under the will, but only on the ground that such a decree was a personal one. "The Court acts upon the person within its jurisdiction and compels him to perform the duty which he owes to the Plaintiff," (Lord Blackburn, p. 46).

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RECORD.
No. 14.
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of the Judges
of Appeal—
continued.

In the suit before us, however, no case is made for relief on this personal ground. The Court is asked, not to compel the Defendants personally to perform or carry out any duty or obligation they owe to the Plaintiffs, but to make a decree that would directly affect and deal with land that is out of its jurisdiction. On the authority of the cases I have cited, as well as of the numerous cases that the Chief Justice has just referred to, I agree that it should decline jurisdiction to do this.

These considerations do not apply to the decree so far as it directs an account and sale of the personal property covered by the mortgage. "*Mobilia sequuntur personam*"; or, in other words, as Lord Selborne said in *Feak v. Carbery*, L. R. 16 Eq., 466, "When *mobilia* are in places other than that of the person to whom they belong, their accidental *situs* is disregarded, and they are held to go with the person."

Sometime ago on a petition in a suit of *Allan v. the M. & N. W. Ry. Co.*, the present Defendants, I had to consider the question that is raised in this suit, whether the working expenses of the whole railway or of the division of 180 miles only are the first charge on the tolls and earnings of the division? The opinion I then expressed was, that the tolls and earnings of the division were mortgaged to the Trustees subject to the payment of the working expenses of the entire railway; and I am of that opinion still.

On the other questions raised I agree with the Chief Justice.

I think the decree made at the hearing should be varied as indicated, and that there should be no costs to either party up to and including the hearing and that the Defendants should have the costs of the re-hearing.

The Hon.
Mr. Justice
Dubuc con-
curred.

Mr. Justice Dubuc concurred.

Certified correct.

WM. PERKINS,
Official Reporter.

EXHIBITS.

No. 15.
Exhibit 1.
Map.

Exhibit 1.—Map.

RECORD.
No. 16.
Exhibit 2.
First
Division
First
Mortgage of
16th April
1886.

Grey v. M. & N. W. Ry. Co.

I certify that this document is a true copy of Exhibit 2 filed herein at the trial of this cause.

G. H. WALKER, Prothonotary.

Grey v. M. & N. W. Ry. Co.

This is Exhibit 2 produced by the Plaintiff at the hearing 1st February 1895.

(Sd.) R. J. WILSON, Regr.

Exhibit 2.

10 This Indenture made the sixteenth day of April 1886 between The Manitoba and North Western Railway Company of Canada a body corporate and politic duly incorporated under and by virtue of the provisions of the Acts of the Legislature of the Province of Manitoba in the Dominion of Canada and of the Acts of Parliament of Canada hereinafter recited hereinafter called the Company of the first part. The Honourable George Granville Campbell commonly called Lord George Campbell of Lombard Street in the City of London in England Henry William Cobb of Salisbury in England Esquire and Francis Douglas Grey of East Sheen in the County of Surrey in England Lieutenant-Colonel of the second part and the said Francis Douglas Grey and 20 Sir John Robert Heron Maxwell Baronet of Hamilton House Tooting in the County of Surrey England (hereinafter called the Trustees of these presents) of the third part.

Whereas by an Act of the Legislature of Manitoba passed in the forty-third year of the reign of Her Majesty Queen Victoria Chapter 35 and entitled an Act to incorporate the Westbourne and North Western Railway Company the said Railway Company was duly incorporated with the powers and authorities thereby conferred.

30 And whereas the said Act was amended by an Act passed by the Legislature of Manitoba in the forty-fourth year of the reign of Her Majesty Chapter 41 and the name of the said Company was changed to the Portage Westbourne and North Western Railway Company.

And whereas by an Act passed by the Parliament of Canada in the forty-fifth year of the reign of Her Majesty Chapter 80 entitled an Act respecting the Portage Westbourne and North Western Railway Company the said railway was declared to be a work for the general advantage of Canada and all contracts made powers exercised and rights acquired by the said Company were declared to remain valid and binding and become and be the contracts powers rights and property of the said Portage Westbourne and North Western Railway Company and certain other powers were thereby conferred.

40 And whereas by an Act passed by the Parliament of Canada in the forty-sixth year of the reign of Her Majesty chapter 68 the name of the said Company p. 4983.

RECORD. was changed to the Manitoba and North Western Railway Company of Canada and certain other amendments were made in the Acts hereinbefore recited.

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And whereas under and by virtue of the said Acts power and authority is conferred upon the said Company among other things to lay out construct make finish and operate a double or single track railway and an electric telegraph commencing at the town of Portage la Prairie in the province of Manitoba a town at the junction of the railway of the said Company with the Canadian Pacific Railway thence in a north westerly direction to a point at or near Prince Albert on the north branch of the Saskatchewan River and with power to build and operate branch lines from some point between Westbourne and Beautiful Plains north westerly in the direction of Lake Dauphin or Duck Mountains. 10

And whereas under or by virtue of the said Acts the Directors of the Company under the authority of the shareholders to them given by resolution at a special meeting called for that purpose may issue bonds signed by the President or Vice-President and countersigned by the Secretary and under the seal of the Company for the purpose of raising money for the prosecution of the said undertaking.

And whereas at a meeting duly convened and held on the sixteenth day of April 1886 the shareholders have by the needful majority authorised the Directors to enter into these presents and make all and every the arrangements hereinafter appearing. 20

And whereas by an Indenture dated the first day of December 1883 and made between the Company of the first part and the said Lord George Campbell (therein called by mistake Lord George Gordon Campbell) Henry William Cobb and Francis Douglas Grey of the second part the Company granted bargained sold assigned released and confirmed unto the said Lord George Campbell Henry William Cobb and Francis Douglas Grey their heirs assigns and successors the railway of the Company extending from Portage la Prairie in the Province of Manitoba to Prince Albert in the North West Territory of Canada being an estimated distance of 430 miles as the same was then located and constructed or in course of construction or as the same might thereafter be changed located and constructed together with all such rights of way road beds depôt grounds lands tracks bridges and other structures works locomotives tenders cars rolling stock and equipment machinery implements fuel supplies and materials revenues freights tolls income rents issues profits and sums of money rights privileges powers immunities and exemptions corporate and other franchises whether acquired or thereafter to be acquired by the Company as therein more particularly appearing in trust as in such indenture more particularly mentioned to secure the bonds of the said Railway Company then intended to be issued as in such indenture of the 1st day of December 1883 set forth being bonds at the rate of 4,100%. per mile of railway actually constructed and made ready for operation. 30 40

And whereas the said Indenture of the 1st of December 1883 was duly deposited with the Secretary of State for Canada as required by the laws of Canada.

And whereas by an Indenture dated the 15th day of May 1884 and made between the Company of the one part and the said Lord George Campbell Henry William Cobb and Francis Douglas Grey of the other part it was agreed that the Indenture now in recital should be read as supplemental to the hereinbefore recited Indenture of the 1st day of December 1883 and that the Bonds of the Company should be issued at the rate of 3,000% per mile of the railway and not at the rate of 4,100% per mile of railway as contemplated and provided for in the said Indenture of the 1st December 1883.

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10 And whereas the said last-mentioned Indenture was duly deposited with the Secretary of State for Canada.

And whereas the Company has created or issued 3,280 Bonds entitled to the benefits of the said Indenture of the 1st of December 1883 numbered from 1 to 3,280 inclusive and has not issued or created any other such Bonds.

20 And whereas by the several deeds the dates of and parties to which are specified in the first schedule hereto and which are hereinafter referred to as the "Scheduled deeds" certain lands of the Dominion of Canada granted or agreed to be granted by the Dominion Government to the Company or the rights and interests of the Company to and in such lands were transferred to the said Lord George Campbell and Francis Douglas Grey for the purpose of providing additional funds for the payment of the principal moneys and interest of the Bonds so issued by the Company in pursuance of the said Indenture of the 1st December 1883 as varied by the said Indenture of the 15th of May 1884 as aforesaid and numbered from 1 to 3,280 inclusive.

30 And whereas by an Act of the Parliament of the Dominion of Canada 48 and 49 Vic. c. 86 after reciting that in accordance with the provisions of a previous Act of the said Parliament the Directors of the Company under the authority of the Shareholders to them given did issue bonds to the amount of 14,600 dollars (say 3,000%) per mile such Bonds being the first mortgage Bonds of the Company and that it had been found that the said sum was not sufficient to enable the Company to construct their road and they had found it necessary to issue second mortgage Bonds to the amount of 5,400 dollars (say 1,100% sterling) per mile and that doubts had arisen as to the legality of such second Mortgage Bonds it was declared and enacted that the Bonds of the said Company issued to the amount of 14,600 dollars (say 3,000% sterling) per mile under the said Indenture of 1st December 1883 as modified by the hereinbefore recited Indenture of the 15th day of May 1884 were the first Mortgage Bonds of the Company and that the second Mortgage Bonds thereinbefore referred to and each and every of them were thereby legalised and confirmed.

40 And whereas the whole of the said second Mortgage Bonds have been surrendered to the Company by the holders thereof for valuable consideration and the said second Mortgage Bonds and the Indenture securing the same have been cancelled.

And whereas the Company is desirous of varying the arrangements contained in the said deed of 1st December 1883 as modified by the said deed of 15th May 1884 and in the scheduled deeds by substituting therefor the arrangements contained in these presents and an Indenture of even date herewith and

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supplemental hereto and made between the same parties as are parties hereto and in the same order being an Indenture of additional security and charge on certain lands as more particularly set forth therein or the rights and interests of the Company to and in such lands and the Company has applied to the holders of the said 3,280 Bonds so entitled to the benefits of the said deeds of the 1st December 1883 and 15th May 1884 and the scheduled deeds as aforesaid to put an end to the arrangements created and made by the said deeds and to accept in substitution therefor the arrangements created and made by these presents and the said Indenture of even date herewith and to exchange the Bonds or securities so held by them and entitled to the benefits of the said deeds as aforesaid for bonds or securities of the Company issued under the provisions of these presents and all the holders of all the said Bonds have consented thereto and have placed their bonds in the hands of the said Lord George Campbell Henry William Cobb and Francis Douglas Grey for the purpose of carrying out such exchange. 10

And whereas the whole of the said Bonds have been cancelled in the presence of a Notary Public and surrendered to the Company as the Company and the Trustees of the said deed do hereby certify and declare.

And whereas the said Lord George Campbell Henry William Cobb and Francis Douglas Grey have agreed to release and discharge the Company from 20 all the covenants and obligations made by the Company towards them and persons claiming under them by the said Indentures of the 1st December 1883 and the 15th May 1884.

And whereas a portion of the railway of the said Company from Portage la Prairie north westerly for a distance of 130 miles to the town of Solsgirth has been completed by the said Company and its railway for a further consecutive 50 miles has been put under contract.

And whereas the said Company has resolved that the Bonds to be issued under these presents shall be in form following that is to say:—

No.	Dominion of Canada.	No.	30
	The Manitoba and North Western Railway Company of Canada.		
100l. stg.	First Mortgage Bond.	100l. stg.	

Part of a total of 540,000l. secured on the first division of 180 miles of the railway and on land grants as stated in the Indentures hereinafter mentioned—bearing interest 5 per cent. till 1st December 1890 and 6 per cent. thereafter till 1st December 1933.

The Manitoba and North-Western Railway Company of Canada for value received hereby promises to pay to the bearer the sum of 100l. 40 sterling on the 1st day of December 1933 (unless the same shall have been previously redeemed or become payable as provided herein and in the Indenture of trust and mortgage hereinafter mentioned) on presentation of this Bond at the office of the Clydesdale Bank Limited 30 Lombard Street London England with interest thereon at the rate of

5 per cent. per annum until the 1st December 1890 and 6 per cent. per annum from the 1st December 1890 until the 1st December 1933 payable half-yearly on the 1st day of June and on the 1st day of December in each year on presentation and surrender at the said office in London England of the coupon hereto annexed for the same.

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Provided that the Company may upon any of the half-yearly days herein provided for payment of the interest coupons before the date at which the principal money secured by this Bond shall become due and payable as hereinbefore provided redeem the same upon payment of a sum of 120% sterling provided that the Company shall have given not less than three months previous notice by advertisement in three daily newspapers circulating in London and one daily newspaper circulating in Canada and that this Bond shall have been drawn for redemption as provided in the Indenture securing the same.

The interest upon the amount secured hereby shall cease to accrue from and after the day on which the Company shall have become entitled to redeem the same as aforesaid unless from the default of the Company it shall not be redeemed accordingly.

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All immature coupons must be surrendered with the Bond and the amount of any such coupons not so surrendered will be deducted from the principal sum payable.

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This Bond is one of a series of 5,400 Bonds of 100% sterling each all of like tenor and date numbered consecutively from 1 to 5,400 inclusive issuable at the rate of 3,000% sterling per mile of the road from Portage la Prairie in the Province of Manitoba to a point distant 180 miles therefrom measured along the track of the said railway. None of the said Bonds shall be certified or issued by the Trustees hereinafter mentioned except in respect of the length of the road actually constructed and ready for operation. All the said Bonds are issued under the provisions of the Acts incorporating or regulating the said Company and the payment thereof and the interest thereon is secured without reference to the time when they shall be actually issued by an Indenture of trust and mortgage dated the 16th day of April 1886 made between the Company of the first part the Honourable George Granville Campbell commonly called Lord George Campbell Henry William Cobb and Francis Douglas Grey of the second part and Francis Douglas Grey and Sir John Robert Heron Maxwell Bart. of the third part by which Indenture there is conveyed to the parties thereto of the third part as Trustees by way of mortgage free from incumbrances so much of the railway of the said Company built and

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to be built in the Dominion of Canada as extends from Portage la Prairie to a point distant therefrom 180 miles measured along the track of the said railway under the authority of the said Acts and all the property rights and privileges forming part thereof or used and operated in connection therewith (other than Government land grants and Provincial subsidies) and all the stations fixtures rolling stock plant and appurtenances thereof now owned or held or that may be hereafter acquired owned or held by the said Company in connection with the said portion

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of the said railway the whole as described in the said Indenture of trust and mortgage.

All the said Bonds are further entitled to the benefit of an Indenture of additional security dated the sixteenth day of April 1886 duly executed by the Company to the said Francis Douglas Grey and Sir John Robert Heron Maxwell Bart. as Trustees whereby certain lands in the Dominion of Canada or the rights and interests of the Company therein have been transferred to the said Francis Douglas Grey and Sir John Robert Heron Maxwell for the purpose of providing additional funds for the payment of the interest on the said Bonds and for the redemption of the Bonds by purchase in the market at any price lower than 120 per cent. or in redeeming at the price of 120 per cent. such of the said Bonds as shall be drawn for redemption and for other purposes. 10

This Bond shall not be obligatory until authenticated by a certificate endorsed hereon and signed by the said Trustees or their successors in office to the effect that it is one of the bonds secured by the said Indenture of Trust and Mortgage and that it has been duly issued in accordance with the provisions thereof. It is issued and shall be received and held subject to the terms of said Indenture of trust and mortgage and said Indenture of additional security. 20

In witness whereof the Manitoba and North Western Railway Company of Canada has caused its corporate seal to be hereunto affixed and these presents to be signed by its President Secretary and Treasurer this day of 188 .

The Manitoba and North Western Railway Company of Canada by

-- President.
 Secretary.
 Treasurer.

And each of the said coupons is in form following and signed and authenticated by the engraved signature of the Secretary thereon that is to say:— 30

The Manitoba and North Western Railway Company of Canada will pay the bearer sterling at the office of the Clydesdale Bank Limited 30 Lombard Street London England on the 1st day of 18 being half yearly interest on the first division first Mortgage Bond secured. No.

Secretary.

The certificate of the Trustees to be placed upon each of the said Bonds issued is in the form following that is to say:—

Trustees' Certificate as to verifying this Bond. 40

The undersigned certify that this Bond is one of the Bonds the payment of which is secured by the Indenture of trust or mortgage within mentioned and has been duly issued in accordance with the provisions thereof and

that no more than the amounts therein authorised have been countersigned by us.

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} Trustees.

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And such certificate signed by the Trustees upon each Bond shall be sole and conclusive proof that such Bond is secured by this Indenture.

And whereas by way of consideration for the execution by them respectively of these presents the Company has paid to the said Lord George Campbell Henry William Cobb and Francis Douglas Grey the sum of one dollar and to **10** the said Francis Douglas Grey and Sir John Robert Heron Maxwell Bart. the sum of one dollar (the receipt of which respective sums they the said Lord George Campbell Henry William Cobb and Francis Douglas Grey and they the said Francis Douglas Grey and Sir John Robert Heron Maxwell Bart. do respectively acknowledge).

Now this Indenture witnesseth that the said Lord George Campbell Henry William Cobb and Francis Douglas Grey by the direction of the Company (testified by its execution of these presents) have and the Company has by way of confirmation and for and in consideration of the premises and for the purpose of securing the payment of the Bonds so to be issued and the interest **20** thereon as specified in the interest coupons thereto attached and every part of the said principal and interest as the same shall become payable according to the tenor of the said Bonds granted bargained sold assigned released and confirmed and by these presents they the said parties hereto of the second part and the said Company do and each of them doth grant bargain sell assign release and confirm all and singular the first division or portion of the railway and electric telegraph of the Company extending from the point of junction with the Canadian Pacific Railway at Portage la Prairie in the Province of Manitoba to a point distant 180 miles therefrom measured along the track of **30** of construction or as the same may hereafter be changed located and constructed together with all and singular rights of way road beds depôt grounds and lands used for the purpose of construction or running of the said first division or portion of the said railway and telegraph and all tracks bridges viaducts culverts fences depôts stations station houses engine houses car houses freight houses wood houses machine shops and all other shops and all other structures and buildings whatsoever now held and acquired or hereafter to be in anywise held or acquired by the Company its successors or assigns for use in the construction maintenance and operation of and for use in connection with the running of such first division or portion of the said **40** railway and telegraph or of any part thereof now owned by it or hereafter constructed or in anywise acquired excepting however from such grant bargain and sale the municipal bonuses and the land other than aforesaid granted or to be granted by way of bonus or gift to the Company by the Government or by any corporation. X And also by way of grant and not of exception all the locomotives tenders passenger baggage freight and other cars and all other rolling stock and equipment whatsoever and all machinery tools and imple-
ments and all fuel supplies and materials the particulars of which are contained

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RECORD. in the second schedule hereto and all other if any the rolling stock equipment machinery tools and implements fuel supplies and materials now held or acquired or hereafter to be held or acquired by the Company its successors or assigns for constructing maintaining operating repairing or replacing the said first division or portion of the said railway or telegraph between the points aforesaid or any part thereof or any of the equipment or appurtenances thereof and also all revenues freights tolls income rents issues profits and sums of money arising or to arise from the use of the said first division or portion of the said railway or telegraph or of the property hereby conveyed or any part thereof subject nevertheless to the working expenses of the said railway and telegraph and to all rates taxes and assessments and other Government charges. And also all rights privileges powers immunities and exemptions and all corporate and other franchises now owned held and enjoyed by the Company or hereafter to be held and enjoyed or conferred upon it its successors or assigns in any way connected with or relating to the said division or portion of the said railway or telegraph constructed and to be constructed. And the reversion and reversions remainder and remainders thereof.

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As regards so much of the said hereinbefore mentioned premises as consist of personal estate unto the Trustees of these presents their executors administrators and assigns and as regards so much thereof as consists of real estate unto the said Sir John Robert Heron Maxwell his heirs and assigns to hold the same to him the said Sir John Robert Heron Maxwell his heirs and assigns to the only use and behoof of the Trustees of these presents their heirs and assigns as joint tenants and not as tenants in common.

And it is hereby agreed and declared that notwithstanding anything in the hereinbefore recited Acts of Parliament or in any other Acts of Parliament now existing the Company shall have full power to mortgage pledge assign and otherwise deal with all and every its railway property and undertaking freed and discharged from any lien or mortgage claim of the bonds secured hereby except such portion of the said railway property and undertaking as is hereby mortgaged and pledged for the security of the same.

And it is further agreed and declared that the Trustees of these presents and the survivors and survivor of them and their successors in the Trust shall hold all the premises hereby conveyed real as well as personal.

In trust nevertheless to and for the uses and purposes and with the powers and authority and upon the conditions hereinafter mentioned and set forth that is to say :—

Article 1.—Until default shall be made by the Company in the payment of the principal or interest of the said bonds hereby secured or some one or more of them or until default shall be made by the Company in respect of something herein required to be done or kept by it the Company shall be suffered and permitted to possess manage and enjoy the said first division or portion of the said railway and telegraph expressed to be conveyed hereby together with the equipments and appurtenances thereof and the franchises appertaining thereto and to take and use the rents incomes profits tolls and issues thereof in the same manner and with the same effect as if this deed had

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not been made but subject or to be subject nevertheless to the lien of these presents.

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Article 2.—In case default shall be made in the payment of any interest to accrue on any of the aforesaid bonds to be issued by the Company when such interest shall become payable according to the tenor of such bond or the terms of any coupon thereto annexed and such default shall continue for the period of three months or in case default shall be made in the observance or performance of any other matter or thing in these presents mentioned and agreed or required to be observed and performed by the Company and such

10 default shall continue for the period of three months then and from thenceforth and in either of such cases it shall be lawful for the Trustees personally or by their attorneys or agents to enter into and upon all and singular the said first division or portion of the said railway and telegraph and the premises hereby conveyed or intended so to be (acquired or constructed and to be acquired or constructed) or any part thereof and from thenceforth to have hold possess and use the said railway and premises and each and every part and parcel thereof then subject to the lien of these presents with full power to operate and conduct the business of the said first division or portion of the said railway and telegraph by their superintendents managers and servants attorneys or agents either in

20 conjunction with the persons or companies operating and conducting the other portions of the said railway or otherwise and to make from time to time all repairs and replacements and such useful alterations additions and improvements thereto as may seem to them judicious and to collect and receive all tolls fares freights incomes rents issues and profits of the same and of every part thereof and after deducting the expenses of operating the said division or portion of the said railway and telegraph and conducting the business thereof and of all the said repairs replacements alterations additions and improvements and all payments which may be made or may be due for taxes assessments charges or liens prior to the lien of these presents upon the said premises or any part thereof as well

30 as just compensation for their own services and for the services of such attorneys and counsel and all other agents and persons as shall have been by them employed the Trustees shall apply the money arising from such collections and receipts as aforesaid to the payment of interest on the said bonds in the order in which such interest shall have become and shall become due rateably to the persons entitled to such interest and if after paying in full the interest which shall have accrued on the said bonds a surplus of the moneys arising as aforesaid shall remain and the principal of said bonds shall not be due and such surplus or any part thereof shall not be required in the judgment of the Trustees for the protection of the property or to provide for the instalment of

40 interest next thereafter to fall due the same shall be paid over to the Company but in case the principal of said bonds or any of them shall have become due the surplus arising as aforesaid shall be reserved to be applied to the payment of said bonds upon a sale of the said railway and premises as hereinafter provided.

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Article 3.—In case default shall be made in the payment of interest on the said Bonds or any of them as aforesaid and shall continue as aforesaid for the p. 4983. L

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period of twelve months thereafter or in case default shall be made in the pay-
 ment of the principal of the said Bonds or any of them or any part thereof it
 shall be lawful for the Trustees after such entry as aforesaid or after other
 entry or without entry personally or by their attorneys or agents to sell and
dispose of the said first division or portion of the said railway and telegraph and
 of all and singular the property rights and franchises hereinbefore expressed
 to be conveyed and which shall be then subject to the lien of these presents
 either separately or in conjunction with the owner or owners for the time being
 of the remaining portions of the said line at public auction in the city of
 Winnipeg in the province of Manitoba or elsewhere in North America or 10
 Europe and at such time as the Trustees shall appoint having first given notice
 of the time and place of such sale by advertisement published not less than
 three times a week for six successive weeks in one or more daily newspapers
 in the City of Winnipeg and in one or more daily newspapers in the City of
 London England and the City of Toronto and after such notice it shall be
 lawful for the Trustees to make such sale or to adjourn such sale from time to
 time in their discretion and if so adjourning to make the same without further
 notice of the time and place to which the same shall be so adjourned and if the
 premises shall not be sold by public sale as aforesaid to sell the same by private 20
 contract with power to the trustees to make any such sale as aforesaid subject
 to such conditions as the Trustees think fit and to vary any contract for sale
 and to buy in at any public sale and to fix any reserve price and to rescind any
 contract for sale and to resell without being answerable for any loss occasioned
 thereby and to make and deliver to the purchaser or purchasers of the said
railway and premises or any part thereof good and sufficient deed or deeds in
 the law for the same in fee simple which sale made as aforesaid shall be a
 perpetual bar both in law and equity against the Company and its assigns and
 all other persons claiming the said premises or any part or parcel thereof by
 from through or under the Company or its assigns and the title of the purchaser
 shall not be impeachable upon the ground that no case had arisen to authorise 30
 the sale or that the power was otherwise improperly or irregularly exercised
 and after deducting from the proceeds of such sale just allowances for all
 expenses thereof including attorneys' and counsels' fees and all other expenses
 advances or liabilities which may have been made or incurred by the Trustees
in operating or maintaining the said railway and premises or in managing the
business thereof and all payments by them made for taxes or assessments and
for charges and liens prior to the lien of these presents on the said premises or
 any part thereof as well as a reasonable compensation for their own services in
 addition to the amount of 100% per annum for each Trustee hereinafter 40
 mentioned it shall be lawful for the Trustees and it shall be their duty to apply
 the residue of the moneys arising from such sale to the payment of the principal
 and accrued and unpaid interest on all the said Bonds which shall then be out-
 standing whether the same shall or shall not have arrived at maturity without
 discrimination or preference as between principal and accrued and unpaid
 interest or as between the holders of said Bonds or of any coupons issued
 therewith but equally and rateably to all such Bond and coupon holders and if
 after the payment and satisfaction of said Bonds principal and interest a surplus

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of the said proceeds shall remain to pay such surplus to the Company or its assigns and it is hereby declared and agreed that the receipt of the Trustees shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money and that after payment of such purchase money and having such receipt such purchaser or purchasers shall not be obliged to inquire into the application of such purchase money upon or for the trusts or purposes of these presents or be in any manner whatsoever answerable for any loss misapplication or non-application of such purchase money or of any part thereof and if any of the premises herein comprised shall after the power of sale hereinafter contained shall have arisen remain unsold it shall be lawful for the Trustees to hold the premises and exercise all the powers and authorities in the preceding article contained or to let the premises for such term and in such manner as shall in their or his discretion seem fit and they shall reserve the net monies rents and profits to arise thereby to be applied to the payment of the said Bonds upon a sale of the said railway and premises.

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Article 4.—It shall be the duty of the Trustees to exercise the power of entry hereby granted or the power of sale hereby granted or both or to proceed by suit or suits in equity or at law to enforce the rights of bondholders in the several cases of default herein specified on the part of the Company or its assigns in the manner and subject to the qualifications herein expressed upon the requisition of bondholders as herein prescribed as follows :—

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1. In case default shall be made in payment of interest to accrue on any of the said Bonds to be issued as herein provided and such default shall continue as aforesaid for a period of 12 months then in every such case upon a requisition in writing signed by the holder or holders of said Bonds to an aggregate amount of not less than one-fifth of the amount of said Bonds then outstanding and adequate and proper indemnification of the Trustees against the costs expenses and liabilities to be by them incurred it shall be the duty of the Trustees to proceed to enforce the rights of the bondholders under these presents by such proceeding authorised by these presents or by law as they shall be in such requisition directed to take or if such requisition contains no such direction then by entry sale or suit or suits in equity or at law as they being advised by Counsel learned in the law shall deem most expedient for the interest of the holders of said Bonds the rights of entry and sale hereinbefore granted being intended as cumulative remedies additional to all other remedies allowed by law for the execution and enforcement of the trusts hereof. Provided nevertheless that it shall be lawful for a majority in interest of the holders of said Bonds for the time being by an instrument under their hands and seals or by a vote at a meeting duly convened and held as hereinafter provided to direct the Trustees to waive such default upon such terms as may be directed by such majority in such instrument or by such vote and thereupon and upon proper indemnity being given to them the Trustees shall waive the said default accordingly. And it is hereby

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provided and expressly agreed that no holder of Bonds or Coupons secured to be paid hereby shall have the right to institute any suit or proceeding for the foreclosure of this Indenture or the execution of the trusts thereof except upon and after the refusal or neglect of the Trustees hereunder to proceed to act in the premises upon requisition and indemnification aforesaid but it shall nevertheless be lawful for a majority in interest of the holders of said Bonds for the time being to direct the party or parties bringing any such suit or proceeding to waive the default or defaults on which it is founded in like manner as is hereinbefore provided for a direction to the Trustees to waive default and thereupon and upon proper indemnity being given to the party or parties bringing such suit or proceeding he or they shall waive such default accordingly. And it is hereby further declared and provided that no action taken by the Trustees or by the bondholders under this clause shall prejudice or in any manner affect the powers or rights of the Trustees or of the Bondholders in the event of any subsequent default or breach of condition or covenant herein. 10

2. If the Company shall make default or breach in the performance or observance of any other condition obligation or requirement by the said Bonds or by this present deed imposed on them then and in such case the Trustees shall upon a requisition in manner aforesaid of not less than one-fifth in interest of the bondholders for the time being and upon adequate and proper indemnification of the Trustees against the costs expenses and liabilities to be by them incurred proceed to enforce the rights of the bondholders under these presents in the manner by the first clause of this Article provided subject to a power in such majority at any time to direct in manner aforesaid the Trustees to waive such default or breach upon reparation therefor to the satisfaction of such majority being made and the said Trustees shall upon proper indemnity being given to them waive the same accordingly. And it is hereby provided that no action taken by the Trustees or by the bondholders under this clause shall prejudice or in any manner affect the powers or rights of the Trustees or of the bondholders in the event of any subsequent default or breach of condition or covenant herein. 20 30

Article 5.—In case default shall be made in the payment of any half-yearly instalment of interest on any of the said Bonds when interest shall become payable according to the tenor of said Bond or of any coupon thereto annexed and such instalment of interest shall remain unpaid and in arrear for a period of twelve months after the same shall have become payable as aforesaid and been demanded then and from thenceforth the principal sum of each and every of the bonds hereby secured shall at the option of the Trustees become and be immediately due and payable notwithstanding the time limited in the said Bonds for the payment thereof may not then have elapsed but a majority in interest of the holders of all the said Bonds which shall be then outstanding and upon which default in the payment of interest shall have been made and shall be continuing shall have the power by an instrument in writing under 40

their hands and seals or by a vote at a meeting duly convened and held as hereinafter provided at any time before the actual payment and acceptance of the interest in arrear to instruct the Trustees to declare the said principal due or to waive the right so to declare on such terms and conditions as such majority in interest shall prescribe and such majority in interest may by such instrument in writing or such vote annul or reverse any declaration of the Trustees in respect of said Bonds becoming or not becoming immediately payable provided always that no act or omission either of the Trustees or of the bondholders in the premises shall extend to or be taken in any manner
 10 whatsoever to affect any subsequent default or the rights resulting therefrom.

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Article 6.—The Trustees shall at all times during the continuance of the trusts hereby created have power and authority to be exercised in their own discretion and not otherwise to convey or release from the lien and operation of these presents to any party who may be designated in writing by the Company to receive the same any portion of the lands and premises conveyed hereby or at any time required* or held by the Company for use in connection with the said division or portion of the said railway and telegraph or the construction maintenance or operation thereof but which in the judgment of the Trustees shall be unnecessary to be longer retained for use in connection
 20 therewith and the Trustees shall also have power and authority to allow the Company from time to time to dispose of in its discretion such portions of the equipment machinery and implements at any time acquired or held for the use of the said division or portion of the said railway and telegraph as shall have become unfit or unnecessary for such use. And also power if and when they shall be in possession of the said division or portion of the said railway and telegraph or previous to a sale thereof by them out of the assets in their hands for the time being to expend such a sum or sums of money upon the residue of the Company's line or to enter into such agreement in relation to the working thereof as may in their or his discretion be necessary or advisable in
 30 order to promote the traffic and to increase the revenue and income of the division or portion of the said railway and telegraph comprised in this security and for the purpose of ascertaining the proportion of the revenues and income derived from the through traffic of the said entire line and telegraph which is referable to (and the proportion of the general expenses of the said entire line and telegraph which ought to be borne by) the division or portion thereof comprised in this security to submit the same to arbitration and to arrange with the Company or other the person or persons interested therein a proper system of division by which such proportion may be ascertained.

* Sic.

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Article 7.—None of the Bonds of the issue provided for in these presents
 40 shall become obligatory upon the Company nor shall the payment of any Bond of the said issue become secured thereby until the certificate of the Trustees shall be endorsed thereon to the effect and in the form herein above set forth. The Bonds of the said issue shall be so certified by the said Trustees as hereunder stated and not otherwise namely 130 miles of the said road having been completed at the time of the execution of these presents Bonds to the amount of 390,000%. sterling may and shall be forthwith certified by the

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Trustees and may be issued by the Company and the remaining Bonds of the issue hereby provided for shall be kept in reserve and issued from time to time as the remaining portion of the said road shall be constructed and made ready for operation at the rate of 3,000%. sterling per mile and such fact may be made to appear to the Trustees hereunder by the certificate of the President or Vice-President and the Chief Engineer or General Manager of the Company showing the exact length of the additional railway so constructed and made ready for operation in the form following that is to say :—

Mileage Certificate.

The undersigned certify that the length of railway constructed and made ready for operation by the Manitoba and North-Western Railway Company of Canada in addition to and beyond the first 130 miles from Portage la Prairie and _____ miles heretofore certified by the officers of the Company as constructed and made ready for operation being in all _____ miles of railway is _____ miles making the total mileage for which Bonds at the rate of 3,000%. sterling per mile may be certified and issued by the Trustees including the length now certified _____ miles from the point of commencement all forming part of the first 180 consecutive miles of the said railway.

President (or Vice-President). 20
Chief Engineer (or General Manager).

Dated this _____ day of _____ 18 _____ .

The Trustees upon the request of the Company shall certify and the said Company thereupon have the right to receive and issue from the said reserve Bonds at the rate of not exceeding the sum of 3,000%. sterling per mile of the additional railway so constructed and made ready for operation as aforesaid until the whole amount of the said reserve shall be exhausted. And it is the intention hereof and the same is so hereby declared that all of the Bonds issued under the provisions of this instrument shall be equally in all respects secured by these presents upon all the property covered thereby without preference priority or discrimination on account of or with reference to the times of the actual issue thereof or of any of them but such reserved Bonds shall bear interest respectively only from the commencement of the semi-annual interest period in which they shall be issued and the past due coupons (if any) shall be cut off and cancelled before the certification or issue of the said Bonds.

Article 8.—All Bonds to be secured by this deed of trust and mortgage shall be payable to the bearers thereof and be negotiable and pass by delivery.

Article 9.—The word "Trustees" wherever used in this Indenture shall in all cases be construed to mean the person or persons who for the time being shall be charged with the execution of the trusts of these presents whether such person or persons be the said parties of the third part or either of them or any successor or successors of said parties of the third part appointed hereunder. In case of a vacancy in the said trust the surviving or continuing

Trustees or Trustee if there shall be any shall be competent to exercise any and all powers and authorities herein granted to the said parties of the third part.

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Article 10.—The Trustees or any Trustee hereunder may take such legal advice and employ such assistance as may be necessary in their or his judgment to the proper discharge of their duties and shall be entitled during the subsistence of this trust to an annual remuneration of 100% per annum for each Trustee of these presents for the time being for any and all services which may hereafter be rendered by them or either of them in said trust which
10 remuneration the Company hereby promises and agrees to pay but in case the Company should make default in such payment the same may be retained by the Trustees out of any trust moneys coming into their hands.

Article 11.—The Trustees shall not nor shall any Trustee hereunder be answerable for the default or misconduct of any agent or attorney by them appointed under or pursuant to these presents if such agent or attorney be selected with reasonable care nor for any error or mistake made by them in good faith but only for personal misconduct or gross negligence in the execution of said trusts.

Article 12.—Either of the Trustees may resign his trust and be discharged
20 from all further duty thereunder or liability thereafter accruing upon giving three months' notice in writing to the Company and calling a meeting of the bondholders or upon such shorter notice as the Company and a majority in interest of said bondholders may accept as sufficient. Either of the Trustees may be removed from office by the vote of a majority in interest of the holders of said bonds passed at a meeting of the said bondholders duly held and attested by an instrument in writing under the hands and seals of the persons so voting.

Article 13.—The Company may by deed poll executed under its Corporate
30 Seal appoint a third Trustee of these presents and in case of the resignation death removal from office or incapacity to act of one or more of the Trustees a successor or successors shall be at once appointed to fill such vacancy by the surviving or continuing Trustees or Trustee if any with the consent of the Board of Directors of the Company or of its assigns or in case no Trustee survives or continues by the said Board of Directors. If such vacancy is not filled within 30 days after it occurs any competent Court may appoint a Trustee to fill such vacancy on the petition or application of any holder or holders of said Bonds to the amount of not less than one-fifth part in interest of all such
40 Bonds then outstanding upon reasonable notice to the Company its successors or assigns and to the surviving Trustees or Trustee if any. The person (if any) so appointed by the Company as aforesaid and the person or persons so appointed as aforesaid to fill any vacancy shall be a Trustee or Trustees under this instrument and from thenceforward each person so appointed shall be vested with the same powers rights and interest and charged with the same duties and responsibilities as if he had been named among the parties of the third part

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to this instrument in addition to the Trustees hereby appointed or in place of the Trustee to whom he succeeds (as the case may be) without any further assurance conveyance act or deed. The Trustees hereby appointed or the surviving or continuing Trustees or Trustee if any as the case may be for the time being shall immediately execute all such conveyances or other instruments as may be necessary or suitable for the purpose of assuring to the new Trustee or Trustees so appointed a full joint estate in the premises.

Article 14.—Meetings of the bondholders under this deed of trust may be called in such mode as may be fixed by regulation prescribed or established by the bondholders and the bondholders may vote at such meetings personally or by proxy and the quorum may be defined and such other regulations or byelaws in respect of such meetings may be from time to time established altered or repealed by the Bondholders acting by the majority in interest as to them shall seem expedient and until the Bondholders shall define the quorum and make such regulations or byelaws such powers may be exercised by the Trustees and the Trustees shall have the right at or before any meeting of Bondholders to require that any act or resolution of the Bondholders affecting the duties of the Trustees shall be authenticated by the signatures of all the persons assenting thereto as well as by a minute of the proceedings of the meeting. And whenever and as often as any contingency shall arise in which the action of the holders of the Bonds secured hereby shall be necessary or in which the said bondholders are herein declared to have any discretionary voice or power it shall be the duty of the Trustees and such Trustees shall be and are hereby authorised and required to call a meeting of the holders of Bonds secured hereby to be held in the City of London England and in the absence of any regulation or byelaw determining the notice to be given of such meeting it shall be notified to the Bondholders by advertisement (the expenses whereof shall be a liability of the Company and may be defrayed if necessary from the trust fund) to be published twice in each week for two successive weeks in at least two daily newspapers of good circulation among the business community in said City and also for a like number of times in one daily newspaper in like circulation in the City of Winnipeg (the last of such notices to appear not less than 14 clear days before the date fixed for such meeting) and in default of such meeting being called by the Trustees within 30 days after notification to them in writing by any Bondholder of the necessity therefor or in case the trust shall be wholly vacant it shall be competent for any holder or holders of said Bonds to the aggregate amount of at least one-fifth of the entire outstanding Bonds of the Company of the issue hereby secured to call the said meeting and at such meeting so convened the holders of said Bonds shall be competent to exercise in person or by proxy all the powers and authorities conferred upon them by these presents each holder being entitled to a vote for each bond held by him. But until otherwise provided pursuant to the provisions of this instrument in that behalf a majority in interest of the holders of the outstanding Bonds hereby secured for the time being shall be required to be present in person or by proxy to constitute a quorum at any such meeting.

Article 15.—The office of the Clydesdale Bank Limited 30 Lombard Street London in England shall be the place of payment of the interest coupons and the principal of the said bonds unless and until a change in the place of payment thereof shall be made of which due notice shall be given by advertisement published in two daily newspapers in the City of London and presentation of the said bonds or of the said coupons at the said Bank or the place so advertised (as the case may be) shall be a valid presentation thereof for any of the purposes for which according to the tenor of the said bonds presentation in the said city may be made and default of payment upon such presentation shall
 10 be followed by all the consequences of default which are hereinbefore provided for.

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Article 16.—If the Company or its assigns shall well and truly pay the principal of each and every of the said bonds secured by this instrument when the same shall become payable and all interest thereon as such interest shall from time to time mature according to the tenor of such bonds respectively and shall well and truly do and observe every other matter and thing provided or mentioned in these presents to be by it or them done and observed then and in that case all the estate right title and interest of the Trustees by these presents created shall cease determine and become void otherwise the same
 20 shall remain in full force and virtue. And upon any such determination of such interest the said parties of the third part or their successors and successor in the trust shall execute such re-conveyance and re-assignment of the premises as may be necessary or expedient.

Article 17.—And the Company in consideration of the premises hereby covenants and agrees to and with the trustees and their successors in the trust created by these presents that whenever and as often as the Company shall hereafter acquire any additional property rights franchises or things whatsoever for the construction of or for the use upon the said first division or portion of the said railway and telegraph or upon any part thereof the Company and its
 30 assigns shall and will acquire possess and hold the same and every part and parcel thereof upon and subject to the trusts of this Indenture until conveyance thereof in pursuance of the covenants herein contained shall be duly made and delivered to the trustees for the benefit of the trust by these presents created. And that they will at all times during the continuance of this security maintain all and singular the locomotives tenders passenger luggage freight and other cars and all other rolling stock and equipment whatsoever and all machinery tools and implements which now are or hereafter at any time shall be comprised in the security hereby created or intended so to be in a good and serviceable state of repair and working order and whenever during the
 40 continuance of the security any of the said premises shall be worn out or rendered unserviceable will as soon as may conveniently be replace such of them as shall be so worn out or rendered unserviceable by others of at least equal value so as at all times to keep up and maintain the total value of the said locomotive tenders passenger luggage freight and other cars and all other rolling stock and equipments for the time being comprised in this security and

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that they will in addition to the provisions aforesaid supply keep up and maintain any further rolling stock locomotives tenders passenger luggage freight and other cars equipment and materials necessary for the working of the said first division of the said line in a satisfactory and adequate manner. And that they will immediately upon the execution of these presents cause to be affixed to the locomotives tenders passenger luggage freight and other cars and all other rolling stock implements and equipment whatsoever and all machinery tools and implements which now are or hereafter at any time shall be comprised in the security hereby created or intended so to be some badge mark or device to be approved by the trustees of these presents by which it shall appear that such rolling stock equipment machinery tools and implements are held by the Company for the purposes of the security given by these presents and will do all things necessary according to law so far as possible to secure that the said rolling stock equipment machinery tools and implements are subject to and constitute an effective security for the purposes of these presents according to the terms hereof and will in like manner mark all rolling stock equipment machinery and tools implements and other property hereafter acquired by them for the purposes of the said first division or portion of the said railway in accordance with the provisions hereinbefore contained and will in like manner do all things necessary to constitute the same an effectual security for the purpose of these presents.

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Article 18.—And the Company for itself and its assigns hereby covenants and agrees to and with the Trustees and their successors in the trust created by these presents that the Bonds hereby secured or intended so to be shall be issued only at such times and in such amounts as hereinbefore limited that the Company will duly pay and discharge the interest and principal of the said Bonds in accordance with the tenor thereof and will for that purpose in each and every year ensuing the date hereof faithfully use and apply the net earnings and income to be from time to time derived from the said division or portion of the said railway and telegraph or from any part thereof after discharging its obligations upon or with respect to prior liens thereon or so much of such net earnings and income as may be necessary for that purpose to the payment of the same as and when the same shall become due until all the said Bonds shall be fully paid and satisfied and that it will seasonably in each and every year pay and discharge all taxes and assessments of every sort and description which may be lawfully imposed levied or assessed upon all or any part of the franchises or other property herein and hereby conveyed or intended or contemplated so to be so as to keep the mortgaged premises free and clear from any incumbrance by reason thereof and that it will from time to time and at all times hereafter and as often as thereunto requested by the Trustees under this Indenture execute deliver and acknowledge all such further deeds conveyances and assurances in the law for the better assuring unto the Trustees upon the trusts herein expressed the said first division or portion of the railway and telegraph constructed or to be constructed together with its equipments appurtenances and franchises and all and singular the lands pro-

perty and things hereinbefore mentioned or described and granted or conveyed or agreed or intended or contemplated to be granted or conveyed to the Trustees or their successors in the trust created by these presents as by the said parties of the third part or their successors or successor in the trust hereby created or by their counsel learned in the law shall be reasonably advised devised or required and that the Company will not execute do or suffer any act deed matter or thing whereby the mortgage lien or charge hereby created or intended so to be shall be in anywise prejudicially or injuriously affected or whereby any mortgage lien or charge shall be created having equality with or
 10 priority over the mortgage lien or charge hereby created over the premises herein comprised or any of them or the premises at any time hereafter forming part of the security for the said Bonds or any of them.

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 tinued.

Article 19.—If and whenever the Company shall be desirous of redeeming any of the Bonds of this issue in pursuance of the powers in that behalf given to it therein before the date named in such Bonds for payment of the principal thereof it shall cause a drawing of Bonds to be held in London in the presence of a Notary Public and at least one of the Directors or duly authorised agents and representatives of the Company at a date not more than five nor less than
 20 three months before the next half-yearly date provided for the payment of the interest coupons at which the Company shall desire to redeem the bonds as aforesaid. The denoting numbers of the Bonds when drawn shall forthwith from time to time be published at least once in three daily newspapers in London and one daily newspaper in Canada such advertisements appearing not less than three months before the said next half-yearly day. The Bonds so drawn and advertised shall become due and be payable by the Company at the price of 120% for each 100% Bond in British sterling as aforesaid on the next
 30 half-yearly date fixed for payment of the interest coupons. The interest upon the amount secured by the Bonds so drawn shall cease to accrue from and after the date on which the Company shall be entitled to redeem the same as aforesaid unless from default of the Company it shall not be redeemed accordingly. The bonds drawn with interest coupons not then due shall be cancelled in London in the presence of a Notary Public and at least one of the Directors or duly authorised agents and representatives of the Company.

In witness whereof the Manitoba and North Western Railway Company of Canada has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and Secretary and the said parties of the second and third parts have likewise signed and sealed these presents.

40 G. G. CAMPBELL. (L.S.)
 H. W. COBB. (L.S.)
 F. D. GREY. (L.S.)
 J. R. HERON MAXWELL. (L.S.)

Signed, sealed, and delivered by the said Lord George Campbell in the presence of Henry J. Heath, Clerk to Messrs. Norton, Rose, Norton & Co., 24 Coleman Street, London, E.C., Solicitors.

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Exhibit 2.
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tinued.

Signed, sealed, and delivered by the said Hy Wm. Cobb, Francis Douglas Grey and Sir John Robert Heron Maxwell in the presence of Chas. Lock, Clerk to Messrs. Norton, Rose, Norton & Co.



The Manitoba and North Western Railway
Company of Canada by—
Andrew Allan, President.
F. H. Brydges, Secretary.

THE FIRST SCHEDULE.

Date.	Parties.
1st March 1884 -	The Company of first part William Lewis Boyle Alpheus Beede Stickney and Frederick Henderson Brydges of second part and Lord George Campbell and Francis Douglas Grey of third part. 10
15th May 1884 -	The Company of first part William Lewis Boyle Alpheus Beede Stickney and Frederick Henderson Brydges of second part and Lord George Campbell and Francis Douglas Grey of third part.
16th July 1884 -	The Company of first part William Lewis Boyle Alpheus Beede Stickney and Frederick Henderson Brydges of second part and Lord George Campbell and Francis Douglas Grey of third part.

THE SECOND SCHEDULE.

Rolling Stock, &c.

20

Locomotives.

4 locomotives, Nos. 1, 2, 3, and 4.

Cars.

- 5 passenger, baggage, and mail cars, Nos. 01, 02, B 1, B 2, B 3.
- 1 conductor's van, No. C 1.
- 2 boarding cars, Nos. 1 and 3.
- 43 platform freight cars, Nos. 5 to 89 inclusive by odd numbers.
- 1 wrecking car, No. 2.
- 5 cattle cars, Nos. 4, 6, 8, 10, 12.
- 50 box freight cars, Nos. 14 to 102 inclusive, and 106 to 114 inclusive by 30 even numbers.

Machinery, &c.

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Engine and boiler, planer, lathes, drills, &c., and all machinery and tools necessary for repairs required on first division, and all contained in the Company's repair shop at Portage la Prairie.

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tinued.*

The above-mentioned rolling stock and machinery, and all other rolling stock and machinery, &c., included in this mortgage will be identified in the following manner.

The rolling stock by having the following words plainly painted thereon
M & N W 1ST DIVISION TRUST.

10 The machinery, &c., by having plainly painted thereon three white stars.

(Endorse.)

In the Queen's Bench (in Equity).

Between

Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs,

and

The Manitoba and North Western Railway Company of
Canada - - - - - Defendants,

This is Exhibit A referred to in the admission of facts signed by the
20 undersigned and dated the 4th day of January 1895.

(Sgd.) MACDONALD, TUPPER, PHIPPIN AND TUPPER,
for Defendants.

(Sgd.) EWART, FISHER AND WILSON,
for Plaintiffs.

I certify that an original deed of which the within is a true copy and duplicate original has been deposited in the office of the Secretary of State of Canada.

No. 17.
Exhibit 3.
Deed of
Additional
Security of
16th April
1886.

Ottawa, 21st April 1886.

G. POWELL,
Under Secretary of State.

30

B. (in Equity) R.

Grey v. M. & N. W. Ry. Co.

I hereby certify that this document is a true copy of Exhibit "3" filed herein at the trial of this cause.

G. H. WALKER, Prothonotary.

Grey v. M. & N. W. Ry.

This is Exhibit 3 produced by Plaintiffs at the hearing 1st February, 1895.

(Sgd.) R. J. WILSON, Registrar.

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No. 17.
Exhibit 3.
Deed of
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tinued.

Exhibit 3.

This Indenture made the 16th day of April 1886 between The Manitoba and North Western Railway of Canada a body corporate and politic duly incorporated under and by virtue of provisions of Acts of the Legislature of the Province of Manitoba in the Dominion of Canada and of Acts of Parliament of Canada hereinafter called the Company of the first part The Honourable George Granville Campbell commonly called Lord George Campbell of Lombard Street in the City of London in England and Francis Douglas Grey of East Sheen in the County of Surrey in England Lieutenant-Colonel of the second part and the said Francis Douglas Grey and Sir John 10 Robert Heron Maxwell Baronet of Hamilton House Tooting in the County of Surrey England (hereinafter called the Trustees of these presents) of the third part made supplemental to the following Indentures namely an Indenture bearing date the 1st day of December 1883 and made between the Company of the first part and the said Lord George Campbell Henry William Cobb of Salisbury England Esquire and the said Francis Douglas Grey of the second part an Indenture bearing date the 1st day of March 1884 and made between the Company of the first part William Lewis Boyle therein described Alpheus Beede Stickney therein described and Frederick Henderson Brydges therein described of the second part and the 20 said Lord George Campbell and Francis Douglas Grey of the third part an Indenture dated the 15th day of May 1884 and made between the Company of the one part and the said Lord George Campbell Henry William Cobb and Francis Douglas Grey of the other part made supplemental to the hereinbefore mentioned Indenture of the 1st of December 1883 another Indenture also dated the 15th May 1884 but made between the Company of the first part the said William Lewis Boyle Alpheus Beede Stickney and Frederick Henderson Brydges of the second part and the said Lord George Campbell and Francis Douglas Grey of the third part supplemental to the said Indenture of the 1st day of March 1884 an Indenture dated the 16th day of July 1884 30 and made between the said Company of the first part the said William Lewis Boyle Alpheus Beede Stickney and Frederick Henderson Brydges of the second part and the said Lord George Campbell and Francis Douglas Grey of the third part made supplemental to the said Indenture of the 1st March 1884 and to the last hereinbefore mentioned Indenture of the 15th of May 1884 all which deeds have been duly registered with the Secretary of State for Canada as required by the laws of Canada and an Indenture of the 16th day of April 1886 herewith made between the Company of the first part the said Lord George Campbell Henry William Cobb and Francis Douglas Grey of the second part and the said Trustees of the third part being a deed of mortgage 40 and trust to secure bonds of an issue of first division first mortgage gold Bonds to a total amount of 540,000£. on the first division of the said Manitoba and North Western Railway being a length of 180 miles of the said line at the rate of 3,000£. a mile of line completed or to be completed.

Whereas the said Company has issued divers Bonds created under the

provisions of the said Indenture of the 1st day of December 1883 as modified by the firstly hereinbefore mentioned Indenture of the 15th day of May 1884 entitled to the benefits of the said Indenture of the 1st day of March 1884 and the said recited deeds supplemental thereto and the number of Bonds created or issued under the said Indenture of the 1st December 1883 is 3,280 numbered 1 to 3,280 inclusive and no more* of all the said Bonds have been duly cancelled in the presence of a notary public as the said Company and the said Lord George Campbell and Francis Douglas Grey do hereby testify and declare and the holders thereof have consented in writing to the release and discharge of
 10 the lands now held by the said Trustees or to which they are now entitled from all the liens claims and demands of the said Bonds or created by the said deeds or any of them.

And whereas by an Act of the Parliament of Canada (48 and 49 Vic. cap. 60) it was enacted that the Governor in Council might grant to the Company Dominion lands to the extent of 6,400 acres for each mile of the Company's railway for the whole distance from Portage la Prairie to the crossing of the south branch of the Saskatchewan River 20 miles from Prince Albert (equal to about 430 miles of railway) and that the said grant should be a free grant subject only to the payment by the grantees respectively of the
 20 cost of survey of the lands and incidental expenses at the rate of 10 cents per acre in cash on the issue of the patents therefor.

And whereas the Governor in Council has by orders dated the 4th day of October 1884 the 6th of May 1885 and the 1st December 1885 made the said grants subject only to the payment by the grantees of the cost of survey of the lands and incidental expenses at the rate of 10 cents per acre in cash on the issue of the patents therefor and subject also to certain provisions therein contained with reference to *bonâ fide* squatters upon the said lands and as regards the lands to be granted in respect of portions of the line not yet completed to the completion of such portion at the rate of not less than 50 miles per year.

And whereas by reason of having constructed 130 miles of the said railway
 30 the Company became authorised under the terms of the said Orders in Council to select and acquire out of 2,752,000 acres of land reserved for it under the said recited Act of Parliament and Orders in Council lands to the extent of 832,000 acres and on completion of 50 miles more of the said railway will be entitled to so select and acquire 320,000 additional acres making a total of 1,152,000 acres in respect of the first 180 miles of the railway but the Company have out of the amount aforesaid disposed of not exceeding 74,000 acres as hereinafter mentioned.

And whereas by virtue of the Indenture of the 1st of March 1884 the
 40 second Indenture of the 15th of May 1884 and the Indenture of the 16th of July 1884 the right of the Company to a portion of the land in the said Orders in Council mentioned and the land warrants created by the Company in respect of the same being the land (namely 320,000 acres) which the Company is entitled to acquire in respect of the first 50 miles of railway actually constructed by it were transferred to the said Lord George Campbell and Francis Douglas Grey for the purpose of providing additional funds for the payment of the principal moneys and interest of the Bonds issued or to be issued by the

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* Sic.

RECORD. Company in pursuance of the said Indenture of the 1st of December 1883 and numbered from 1 to 3,280 inclusive.

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And whereas Her Majesty by and with the advice and consent of the Legislative Assembly of Manitoba has enacted by an Act passed on the 2nd of May 1885 (Manitoba Act 48 Victoria cap. 42) that an aid might be granted of a sum not exceeding one dollar for each acre of land granted to railway companies in respect of each five continuous miles of railway constructed and that after the Company had satisfied the Lieutenant Governor of the Province in Council of the completion of such portion of the railway and before such aid should be granted such Company should transfer to the Provincial Treasurer of the Province the land or warrants for the land so granted or to be granted in aid of such railway and that such land or warrants might be held by the Provincial Treasurer in trust for the Province and might be disposed of in such manner from time to time and at such price and upon such terms as the Lieutenant Governor in Council might approve and that the proceeds to be derived from the disposal of such land or warrants should be held by the Provincial Treasurer and should be applied by him for the purpose of paying the interest and charges upon and redeeming the Debentures to be issued by the Province in payment of such aid and that whenever any Company had before the passing of that Act land or warrants for land already earned such Company should not have the right to sell such land or warrants for land in preference over land or warrants for land held by the Provincial Government and that in case such sale should be made the Provincial Government should be entitled to one half of the proceeds of any sale after the passing of such Act until such aid was paid up. And that so long as such aid and any interest thereon remain unpaid the Company so aided should pay into the Treasury of the Province 3 per cent. of the gross earnings of the Company over the portion of the road so aided which should be in lieu of all taxes provincial or otherwise and that during the currency or until repayment of such aid by the Company its road bed ties rails and other property as defined in the Act should for the portion of the road so aided be exempt from all other Provincial and municipal taxes whatever.

And whereas the Lieutenant Governor of the Province of Manitoba has by Order in Council dated the 7th day of March 1886 declared that the effect of the said Act is to enable the Provincial Government to hold the said land grant by way of security only and not by way of purchase and that the Provincial Government will not sell the land so held by them or any part thereof without the consent of the Railway Company at any price less than 2½ dollars per acre.

And whereas the Government of the Province of Manitoba has granted or will grant an aid of 686,000 dollars to the said Company in respect of the first division of the said line as hereinbefore defined and the land or land warrants of the Company to the extent of 686,000 acres have been or will be transferred to the Provincial Treasurer of the Province accordingly to be held by him upon the trusts hereinbefore mentioned and the Company has the full and absolute right power and authority to deal with the residue of its land grant subject to the rights of the Province of Manitoba under the said Act and to the security created by the hereinbefore

mentioned Indentures of the 1st of March 1884 the 15th of May 1884 and the 16th of July 1884 and subject also to the land and land warrants not exceeding 74,000 acres so disposed of by it as aforesaid.

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tinued.

And whereas the Company is desirous of dealing with the land grant so secured and acquired by it as aforesaid in respect of the first 180 miles of its line by conveying the same in manner hereinafter more particularly appearing to the Trustees of these presents by way of providing an additional fund for the due payment of the principal and interest of the Bonds issued or to be issued by it under the principal Indenture of even date herewith.

10 And whereas a portion of the railroad of the said Company from Portage la Prairie north-westerly for a distance of 130 miles has been completed by the said Company and its railroad to a further point distant 50 miles therefrom measuring along the track of the said railway has been put under contract.

Now this Indenture witnesseth that in consideration of the premises and of one dollar to the Trustees of these presents paid by the said Company the receipt of which dollar is hereby acknowledged the said Lord George Campbell and Francis Douglas Grey by the direction of the Company and the Company by these presents do and each of them doth according to their respective rights and interests grant bargain sell assign release and confirm unto the said
20 Sir John Robert Heron Maxwell his heirs and assigns all and singular the lands granted as aforesaid or to be granted by way of bonus or gift to the said Company by the Government of Canada and which may not be required for the right of way or for the actual use and operation of the railway being the lands granted or to be granted in respect of the said 180 miles of railway to the extent of 1,078,000 acres or thereabouts (being 1,152,000 acres less the land sold as aforesaid not exceeding 74,000 acres) together with all land warrants for the said lands that have already been issued and have not been sold and disposed of by the said Lord George Campbell and Francis Douglas Grey but subject to the payment of a sum of ten cents per acre to the
30 Government of Canada by the said law of the Dominion and to the payment of one dollar per acre to the extent of 686,000 acres and interest to the Government of the Province of Manitoba and the rights and remedies of the said province for the recovery thereof and as to the lands still to be granted in respect of the 50 miles of line not completed if and as and when the Company shall receive the same but otherwise freed from incumbrances.

To have and to hold the said lands and premises unto the said Sir John Robert Heron Maxwell his heirs and assigns to the only use and behoof of the Trustees of these presents their heirs and assigns as joint tenants and not as tenants in common subject nevertheless to the rights of the Government of
40 Manitoba under the hereinbefore mentioned Act and to the disposition made by the said Company of its land and land warrants as hereinbefore mentioned but otherwise free from incumbrances and to the intent that the same may be held by the Trustees upon the trusts and for the purposes applicable thereto by virtue of any statute and in particular—

Upon trust until the Company shall make some default in payment (out of the net earnings of the Company or out of the proceeds of the trust securities as hereinafter mentioned or otherwise) of principal or

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interest of any of the said Bonds issued upon the security of the said Indenture for securing the said First Mortgage Gold Bonds and of these presents to permit and suffer the Company to make arrangements (but as to the 686,000 acres upon which the Provincial Government of Manitoba has a charge subject to the rights of such Government) from time to time for the sale of the lands and premises hereby conveyed or any of them or any part or parts thereof and to sell the same by public auction or private contract or by the issue of land warrants as customary with railway lands in Canada or otherwise at such price upon such terms and generally as the Railway Company may from time to time think fit provided always 10 that the price to be paid for the same shall not without the consent of the Trustees be less than the sum of $2\frac{1}{2}$ dollars per acre the purchaser paying or recouping to the Company the proportionate amount per acre of the sums claimed by the Government for the survey of the said lands. And the Trustees may give or except in the case hereinafter mentioned withhold their consent to sales at a price less than $2\frac{1}{2}$ dollars per acre as in their absolute discretion they may think fit and may (but without prejudice to the right of the Railway Company to sell and dispose of the said land at a price not less than $2\frac{1}{2}$ dollars per acre as aforesaid as the said Company may think fit) consent to the sale of the said lands either 20 in whole or in part in large or small quantities for cash payable at once or by instalments at such times and in such manner as the Trustees in their absolute discretion shall think fit provided that in each case whether sold by the railway as aforesaid or with the consent of the Trustees as aforesaid the first instalment of the said purchase money shall not be less than 20 per cent. of the whole purchase money (except in cases of sale in lots not exceeding 320 acres to persons represented by the Railway Company to be reputed *bonâ fide* settlers when the amount of the said first instalment may if the Trustees think fit be reduced to 10 per cent.) 30 the Trustees retaining a vendor's lien on the property so sold for the balance of the purchase money unpaid and interest if any. If the Railway Company shall agree to sell any quantity of land not less than 300,000 nor more than 500,000 acres at one time at a net price not less than two dollars per acre (the purchaser paying or recouping the Company the proportionate amount per acre of the sums claimed by the Government for the survey of the said land) and upon the terms of not less than 20 per cent. of the purchase money being paid as the first instalment and the Trustees retaining a vendor's lien as aforesaid the Trustees shall consent to such sale and shall sell the said land accordingly. Provided always that the Trustees may from time to time assign 40 transfer and make over to the purchasers or as they shall direct portions of the land sold under any of the powers or provisons aforesaid free and discharged of and from all lien or liability for the balance of the purchase money upon payment to the Trustees further on account of the total purchase money and in addition to the said first instalments of 20 per cent. or 10 per cent. as the case may be of an amount of money bearing the same proportion to the total purchase money agreed to be paid by such

10 purchaser as the land so transferred bears to the total amount of land agreed to be purchased by such purchaser. The net proceeds from such sales after payment of the expense connected with the acquisition survey management and sale of the said lands shall subject to the discharge of the prior liens and charges thereon be paid to and received by the Trustees. And upon and at any time after any such default shall have been made by the Company upon trust either to permit the Company to continue such sales in manner aforesaid or themselves if they shall so think fit to dispose of so much of the lands then remaining unsold at such price and upon such terms and conditions as to them shall seem fit and shall in their or his discretion be necessary in order to ensure the due provision from time to time of sufficient sums of money to meet the payment of the interest and principal of the said Bonds when or as they shall become due and payable in accordance with the terms thereof and of the deed securing the same.

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20 Article 1.—The Company shall in each half year at a period of not less than twenty-one days before the half-yearly interest on the said Bonds shall become due submit to the Trustees an account duly countersigned for the sake of accuracy by the President and Treasurer of the Company setting forth the amount of the net earnings derived from the said First Division or portion of the railway and telegraph forming the security of the said Bonds available for payment of the next half-yearly interest of the said loan in accordance with the terms of the deed securing the same. The Company shall forthwith pay to the Trustees the amounts so shown to be available for payment of the said next half-yearly interest so far as is necessary for the payment of the same. In case the funds so paid by the Company to the Trustees are insufficient to meet such next half-yearly interest it shall be the duty of the Trustees out of the moneys for the time being in their hands to provide an amount sufficient to meet such deficiency and it shall be the duty of the Trustees to pay promptly on presentation to them all or any of the coupons pertaining to the said Bonds as the same shall become due payable out of any cash for the time being in their hands.

40 If and whenever the Trustees shall have in their possession funds which shall be more than sufficient to meet the payment of the interest on the said loan for a period of two years thereafter they shall if and when requested to do so by the Company in writing under its seal or may without such request if they think fit so to do employ the excess of the funds in their hands for the time being in the redemption of the said bonds by purchase in the market when the same can be purchased at any price lower than 120 per cent. or in paying off and redeeming at the price of 120 per cent. such of the said Bonds as shall be drawn for redemption in the presence of a notary public in the manner prescribed by the deed of trust and mortgage securing the said Bonds and the Bonds so redeemed by purchase or otherwise shall be forthwith cancelled by the Trustees in the presence of a notary public.

And subject as aforesaid in trust from time to time to invest the same in such investments as Trustees may hold by the Law of England and from time

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to time as necessary to realise the same and to apply the interest or the proceeds of such investments in paying the interest on the said Bonds or in purchasing or redeeming Bonds as aforesaid or in providing for the payment of the said Bonds at maturity. Provided always that it shall be lawful for the Trustees in their discretion at any time whether they have funds in hand for future interest or not to apply any capital money arising from the sale of the 686,000 acres forming the security to the Provincial Government for the moneys advanced or to be advanced by it (whether such moneys shall actually be advanced or not) which shall remain in their hands after payment of the prior liens and charges thereon in the improvement of the property mortgaged 10 either by additions to the rolling stock or outlay in permanent way as the Trustees in their discretion may consider most desirable for the interests of the bondholders. And subject as aforesaid and after the whole of the said Bonds shall be fully discharged and paid off both principal as well as interest the said Trustees shall hold the residue if any of the said trust funds and the investments thereof in trust for the Company.

Article 2.—And the Company do hereby covenant with the Trustees of these presents that they will from time to time and at all times if and when required by the Trustees for the time being of these presents but not otherwise consent to the sale by the Provincial Government of Manitoba of the lands held 20 by it by way of security so assigned or any part thereof for a price of less than $2\frac{1}{2}$ dollars per acre and they hereby authorise the said Trustees to exercise such consent for them and on their behalf and for that purpose irrevocably appoint them their lawful and sole attorney and attorneys to exercise the same of which appointment they hereby undertake to inform the said Provincial Government.

Article 3.—The word "Trustees" wherever used in this Indenture shall in all cases be construed to mean the person or persons who for the time being shall be charged with the execution of the trusts of these presents whether such person or persons be the said parties of the third part or either of them or any 30 successor or successors of said parties of the third part appointed hereunder. In case of a vacancy in said trust the surviving or continuing Trustees or Trustee if there shall be any shall be competent to exercise any and all powers and authorities herein granted to the said parties of the third part.

Article 4.—The Trustees or any Trustee of these presents may take such legal advice and employ such assistance as may be necessary in their judgment to the proper discharge of their duties and shall be entitled during the subsistence of this trust to the annual remuneration of 100% per annum for each Trustee of these presents from time to time for any and all services which 40 may hereafter be rendered by them or either of them in said trust which remuneration the Company hereby promises and agrees to pay but in case the Company should make default in such payment the same may be retained by the Trustees out of any trust moneys coming into their hands.

Article 5.—The Trustee shall not nor shall any Trustee hereunder be answerable for the default or misconduct of any agent or attorney by them

appointed under or pursuant to these presents if such agent or attorney be selected with reasonable care nor for any error or mistake made by them in good faith but only for personal misconduct or gross negligence in the execution of said trusts.

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Article 6.—Either of the Trustees may resign his trust and be discharged from all further duty thereunder or liability thereafter accruing upon giving three months' notice in writing to the Company and calling a meeting of the bondholders or upon such shorter notice as the Company and a majority in interest of said bondholders may accept as sufficient. Either of the Trustees
10 may be removed from office by a vote of the majority in interest of the holders of said Bonds passed at a meeting of the said bondholders duly held and attested by an instrument in writing under the hands and seals of the persons so voting.

Article 7.—In case of the resignation death removal from office or incapacity to act of one or more of the Trustees a successor or successors shall be at once appointed to fill such vacancy by the surviving or continuing Trustees or Trustee if any with the consent of the Board of Directors of the Company or of its assigns or in case no Trustee survives or continues by the
20 said Board of Directors. If such vacancy is not filled within 30 days after it occurs any competent court may appoint a Trustee to fill such vacancy on the petition or application of any holders or holder of said bonds to the amount of not less than one-fifth part in interest of all such Bonds then outstanding upon reasonable notice to the Company its successors or assigns and to the surviving Trustees or Trustee if any and the person or persons so appointed shall be the Trustee or Trustees under this instrument. And from thenceforward each
30 person so appointed shall be vested with the same powers rights and interest and charged with the same duties and responsibilities as if he had been named among the parties of the third part to this instrument in place of the Trustee to whom he succeeds without any further assurance conveyance act or deed but the surviving or continuing Trustees or Trustee if any shall immediately execute all such conveyances or other instruments as may be necessary or suitable for the purpose of assuring to the new Trustee or Trustees so appointed a full joint estate in the premises. The requisition or decision of any meeting of the bondholders held in accordance with provisions of the deed securing the said Bonds with reference to anything herein contained shall be binding upon the bondholders and upon the Trustees of these presents in such and the like manner as it would have been binding upon the bondholders and the Trustess of the said Indenture in case it had referred to anything therein contained.

40 In witness whereof the Manitoba and North Western Railway Company of Canada has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and Secretary and the said parties of the second and third parts have likewise signed and sealed these presents.

G. G. CAMPBELL. (L.S.)
F. D. GREY. (L.S.)
J. R. HERON MAXWELL. (L.S.)

RECORD.

No. 17.
Exhibit 3.
Deed of
Additional
Security of
16th April
1887—con-
tinued.

Signed, sealed, and delivered by the above-named Lord George Campbell in the presence of Dan Clarke, footman to Mrs. Alexander, 56, Great Cumberland Place.

Signed, sealed, and delivered by the above-named Colonel Francis Douglas Grey and Sir John Robert Heron Maxwell, Bart., in the presence of Charles Lock, clerk to Messrs. Norton, Rose, Norton & Co., 24, Coleman Street, London, Solicitors.

(Seal) The Manitoba and North Western Railway Company of
of the Company.) Canada by—
Andrew Allan, President. 10
F. H. Brydges, Secretary.

(Endorse.)

In the Queen's Bench (in Equity).

Between

Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - Plaintiffs,

and

The Manitoba and North Western Railway Company
of Canada - - - - Defendants.

* Sic. This is Exhibit " B " * referred to in the admission of facts signed by the 20
undersigned herein and dated the fourth day of January A.D. 1895.

(Sd.) MACDONALD, TUPPER, PHIPPEN, AND TUPPER,
for Defendants.

(Sd.) EWART, FISHER, AND WILSON,
for Plaintiffs.

Exhibit 4.

No. 18.
Exhibit 4.
Lease of
Saskatche-
wan and
Western
Railway,
28th May
1887.

This Indenture made this twenty-eighth day of May one thousand eight hundred and eighty-seven between the Saskatchewan and Western Railway Company a body corporate and politic (herein called "the lessors") of the first part Francis Douglas Grey of East Sheen in the county of Surrey in England 30 Lieutenant-Colonel and Sir John Robert Heron-Maxwell Baronet of Hamilton House Tooting in the county of Surrey England for themselves and all other the persons or person who for the time being shall be charged with the execution of the trusts of an indenture of mortgage dated the twenty-eighth day of May A.D. 1887 and made between the lessors of the one part and the said Francis Douglas Grey and Sir John Robert Heron-Maxwell of the other part, hereinafter more particularly recited hereinafter collectively called "the Trustees" of the second part and the Manitoba and North Western Railway

Company of Canada a body corporate and politic (herein called "the lessees") of the third part.

RECORD.

Whereas by an Act of the Legislature of Manitoba passed in the forty-ninth year of the reign of Her Majesty Queen Victoria chapter fifty-nine and entitled "An Act to incorporate the Saskatchewan and Western Railway Company" the said Railway Company was duly incorporated with the powers and authority thereby conferred.

No. 18.
Exhibit 4.
Lease of
Saskatche-
wan and
Western
Railway,
28th May
1887—con-
tinued.

10 And whereas under and by virtue of the said Act the said Company was empowered to enter into an agreement with any other Company for conveying or leasing to such other Company the railway of the lessors and generally to make any agreement with any other Company touching the use of the railway and the moveable property of the lessors and the compensation therefor for any period or term provided that any such agreement lease or contract should be first approved of and authorised by the shareholders of the Company at an annual general meeting or special general meeting called for that purpose.

20 And whereas at a special general meeting of the shareholders of lessors duly called and held at the City of Winnipeg in the Province of Manitoba on the twenty-eighth day of May one thousand eight hundred and eighty-seven at which meeting more than two-thirds in amount of the whole of the shareholders of the lessors were present it was resolved unanimously that the lessors should lease to the lessees the said railway line upon the terms and conditions contained in the draft lease submitted at the said meeting and approved by the said shareholders and an indenture of lease in conformity with the said draft was then and there ordered to be executed and delivered by the executive officers of the Company and these presents have been made in conformity with the said draft indenture.

30 And whereas, by an Indenture of mortgage dated the twenty-eighth day of May A.D. 1887 the lessors have conveyed to the Trustees by way of mortgage free from incumbrances the railway of the lessors built and to be built in the Dominion of Canada under the authority of the said Act and all the property rights and privileges forming part thereof used and operated in connection therewith and all the stations fixtures rolling stock plant and appurtenances thereof now held or owned or that may hereafter be acquired owned or held by the lessors except municipal bonuses and lands that may be granted or set apart to be granted to the lessors by the Government of Canada or by individuals or corporations, by way of bonuses or gifts for the construction of the road upon the trusts in the now reciting Indenture more particularly declared for securing the issues of a series of Bonds to be payable 25 years from the date thereof with interest at 5 per cent. per annum payable half-yearly each Bond in the sum of 40 100%. sterling and the whole in an amount not exceeding in the aggregate 2,400%. sterling to the mile of road then constructed or thereafter to be constructed as aforesaid and by the now reciting Indenture it was provided that until default should be made by the lessors in the payment of the principal or interest of the said Bonds or some or one of them or in respect of something in the now reciting Indenture required to be done or kept by them the lessors should be suffered and permitted to possess manage and enjoy the said line of railway expressed to be thereby conveyed together with the equipments and appurtenances thereof, and the franchises appertaining thereto and to take and

RECORD.

No. 18.
Exhibit 4.
Lease of
Saskatche-
wan and
Western
Railway,
28th May
1887—con-
tinued.

use the rents incomes profits tolls and issues thereof in the same manner and with the same effect as if the now reciting Indenture had not been made, but subject or to be subject nevertheless to the lien thereof.

And whereas by an Act of the Legislature of Manitoba, passed in the forty-third year of the reign of Her Majesty Queen Victoria chapter thirty-five and intituled "An Act to incorporate the Westbourne and North-Western Railway Company" the said Railway Company was duly incorporated with the powers and authority thereby conferred.

And whereas the said Act was amended by an Act passed by the Legislature of Manitoba in the forty-fourth year of the reign of Her Majesty Queen Victoria chapter forty-one and the name of the said Company was changed to "The Portage Westbourne and North-Western Railway Company." 10

And whereas by an Act passed by the Parliament of Canada in the forty-fifth year of the reign of Her Majesty chapter eighty intituled "An Act respecting the Portage Westbourne and North-Westbourne Railway Company" the said railway was declared to be a work for the general advantage of Canada and all contracts made powers exercised and rights acquired by the said Company were declared to remain valid and binding and become and be the contracts powers rights and property of the said Portage Westbourne and North-Western Railway Company and certain other powers were thereby conferred. 20

And whereas by an Act passed by the Parliament of Canada in the forty-sixth year of the reign of Her Majesty chapter sixty-eight the name of the said Company was changed to "The Manitoba and North Western Railway Company of Canada" and certain other amendments were made in the Acts hereinbefore recited.

And whereas under and by virtue of the said Acts power and authority are conferred upon the said Company among other things to enter into any agreement with any other Company for leasing or for hiring from any such other Company its railway or part thereof or the use thereof or for leasing or hiring any locomotives tenders or moveable property of such other Company for any period and the compensation therefor. 30

And whereas at a special general meeting of the shareholders of the lessees duly called and held at Winnipeg aforesaid on the twenty-eighth day of May one thousand eight hundred and eighty-seven at which were present more than two-thirds in amount of the whole of the shareholders of the lessees it was resolved unanimously that the lessees should lease from the lessors the railway of the lessors upon such terms and conditions as were embodied in a draft Indenture of Lease laid before the said meeting which was the same draft Indenture of Lease which had been previously approved by the shareholders of the lessors and an Indenture of Lease in conformity with the said draft was then and there ordered to be executed and accepted by the Executive Officers of the Company and these presents have been made in conformity with the said draft Indenture. 40

And whereas upon the treaty for the hereinbefore recited Indenture of Mortgage of the twenty-eighth day of May A.D. 1887 it was agreed and it was by such Indenture stipulated and provided that the Trustees should join and concur in the execution of these presents in manner hereinafter appearing.

Now therefore this Indenture witnesseth that the lessors and the Trustees

each of them according to their respective rights powers and interests over and in the said premises do hereby demise and lease to the lessees the railway of the lessors as now constructed from Minnedosa in the Province of Manitoba to Rapid City and also that portion of the railway of the lessors which they were and are authorised to build by their Act of Incorporation extending from Rapid City in a westerly direction to the Assiniboine River in the said Province of Manitoba the whole of the said railway whether constructed or to be constructed lying within the Province of Manitoba.

To have and to hold the said railway to the lessees for the term of ninety-
 10 nine years from the execution of these presents together with the rolling stock stations station grounds freight houses shops engine houses water tanks sidings turn tables water and water rights and all other buildings and structures whatsoever belonging or hereafter to belong to the said lessors and now or hereafter to be constructed created and acquired or used for the purposes of the said railway together with all cars locomotives materials plant and machinery now or hereafter to be held or owned by the said railway and all the franchises of the Company.

And the lessors covenant and agree with the lessees to proceed forthwith with the completion of their railway from the said Rapid City to the Assiniboine
 20 River and that the said portion of the said railway shall be constructed and completed in an efficient and workmanlike manner with all rolling stock stations station grounds freight houses shops engine houses water tanks sidings turn tables buildings and structures of a standard of quality and work and materials in all respects equal to the average of the railway of the lessors lying between Rapid City and Minnedosa and in as direct and short a line between the points aforesaid as is reasonably possible consistent with having grades and curves not exceeding in difficulty the grades and curves on the completed portion of the lessors railway aforesaid and in default of such
 30 construction the lessees shall have the right to take such proceedings as may be advised by counsel learned in the law to enforce the fulfilment of the conditions of these presents in respect of the standard of the said work and materials and other matters hereby covenanted to be performed and to have the same raised to the standard hereby fixed or otherwise performed or their non-performance compensated for.

The portion of the railway already constructed by the lessors shall be delivered to the lessees on or before the first day of July one thousand eight hundred and eighty-seven with all the appurtenances thereof plant materials and rolling stock and the remaining portions of the said railway so soon as each ten miles are completed respectively.

This lease is made for and in consideration of a rental to be composed of
 40 a sum equal to the following amounts :—

(a) The interest at the rate of 5 per cent. per annum upon the bonds of the lessors (being the bonds hereinbefore referred to) issued or to be issued at any time during the currency of this lease to the extent of two thousand four hundred pounds sterling per mile of the main line of their railway for the time being actually constructed from Minnedosa in the Province of Manitoba to a point on the Assiniboine River being about eighty-five miles of line more or less and upon any bonds of the lessors to be issued by them in renewal of or

RECORD.

No. 18.
 Exhibit 4.
 Lease of
 Saskatchewan and
 Western
 Railway,
 28th May
 1887—con-
 tinued.

RECORD.

No. 18.
Exhibit 4.
Lease of
Saskatche-
wan and
Western
Railway,
28th May
1887—con-
tinued.

in substitution for any of the aforesaid bonds which shall have been paid off by the Company during the continuance of the term hereby created but so that at no time shall there be bonds outstanding to a value exceeding 2,400l. sterling per mile of the said railway as aforesaid.

(b) The interest at the rate of five per cent. per annum upon the preference stock of the lessors issued or to be issued at any time during the currency of this lease to the extent of five thousand dollars per mile of the main line of their railway for the time being actually constructed from Minnedosa to the Assiniboine River being about eighty-five miles of line more or less such interest to commence and be payable one year after the date of issue of the above bonds. 10

(c) A sum of 500l. per annum to be paid to the lessors for the purpose of enabling them to pay the costs and expenses of administration as the same may arise and to purchase from time to time all necessary stores.

The said rental shall commence to run accrue and become due as follows viz. :—

Upon the portion of the railway of the lessors lying between Minnedosa and Rapid City the rental shall commence to run accrue and become due from the first day of July one thousand eight hundred and eighty-seven and as to the rental of the remainder of the said railway the rental of each of the said sections thereof hereinbefore described shall commence to run accrue and become due upon and from the day on which delivery of such sections shall be made to the lessees complete and in running order to their satisfaction and as regards the said sum of 500l. a year from the date of these presents. The rental hereinbefore agreed to be paid by the lessees shall be so paid half-yearly. 20

To avoid expense and circuitry the lessees have agreed to pay and they do hereby covenant with the lessors and as a separate covenant with the Trustees and bind and oblige themselves to pay the said rental but only out of the monies out of which the same is hereinafter declared to be payable and so far as such monies will extend direct to the holders of the said Bonds and preference stock respectively until the Trustees shall by a notice in writing require the payment thereof to them the Trustees from which time the lessees shall pay the same to the Trustees to be held by them upon the trusts declared by the said Indenture of Mortgage of the twenty-eighth day of May A.D. 1887 but nothing herein contained shall give to the bondholders or stockholders of the lessors any right of action against the lessees their property or effects the liability of the lessees being to the lessors and to the Trustees only. 30

The lessors covenant and agree with the lessees that in the event of the principal money of any bonds issued or to be issued by them becoming due at any time during the currency of this lease they will pay off such Bonds or issue new Bonds in renewal of or for the purpose of obtaining money to pay the said Bonds to the end that the lessees may at all times during the currency of this lease have quiet possession of the premises hereby demised free from any claim in respect of the principal money of the said Bonds or any renewals thereof provided always that any Bonds issued in pursuance of this covenant in renewal of or for the purpose of paying off the said Bonds shall be entitled to such security including priority over the provisions of these presents and the demise hereby created as shall be agreed upon between the lessors and lessees. 40

The lessors covenant and agree with the lessees that they will not at any time during the existence of this lease issue Bonds or preference stock of the Saskatchewan and Western Railway Company in excess of 2,400l. sterling and five thousand dollars respectively per mile of their railway actually constructed or bearing interest in excess of five per cent. per annum payable half-yearly.

During the continuance of the present lease the lessees shall have the right to enjoy all the franchises and powers of the lessors or the trustees in respect of the line of the said railway and of each and every part thereof and shall also be entitled to use and enjoy the franchises and powers of the lessors and of the trustees in respect of the acquisition of increased areas of land for station grounds right of way protection against snow sidings and other purposes and they are hereby authorised by the lessors to take any legal proceedings that may be necessary in the exercise of the said franchise and powers and for that purpose to use the name of the lessors and of the officers thereof which officers are hereby authorised and required upon demand of the lessees to append their signatures and to affix the seal of the said lessors to any document or instrument that may be necessary or useful in the exercise or use of the said franchises.

The lessors covenant to and with the lessees that the lessees shall have peaceable and undisturbed possession of the railway and other the premises hereby demised and leased and that upon notice of any approaching trouble or disturbance they will at their cost and charges defend the title of them the lessors in default whereof the lessees may either declare these presents to be null and void and the same shall be null and void accordingly or may take such proceedings as they may be advised.

The lessors agree that they will keep a proper and correct bond register and register of preference shareholders containing true and correct lists of the names and addresses of the registered bondholders and the preference shareholders of the lessors' Company and will from time to time furnish the same or a duly certified copy thereof to the lessees as may be necessary to enable them without trouble or expense on their part to ascertain the names of such registered bondholders and preference shareholders and will render to the lessees all proper and reasonable facilities for ascertaining the validity of any coupons presented to them for payment and will at the request of the lessees affix the name and seal of the lessors and do all acts matters and things as and when necessary for the convenient efficient and effectual working of the railway and for carrying out and giving effect to the lease hereby made; and they further agree that the lessees shall have the right to make and enforce such lawful rules regulations and by-laws touching or concerning the running and operation of the said railway as shall be required for the efficient and advantageous administration management and operation thereof and for the preservation of order thereon and as the lessors are authorised to make under and by virtue of their charter and of the Manitoba Railway Act of 1881 and the amendments thereof and any general Railway Act of the Dominion that is or may be applicable to the said railway and shall also have the right to fix and regulate and from time to time to make alter or amend the tariff of rates and tolls to be exacted for the carriage of freight and passengers over the said railway and in the event of the lessees deeming it expedient that such by-laws rules and regulations or such tariff or both should be made by the lessors they

RECORD.

No. 18.
Exhibit 4.
Lease of
Saskatchewan and
Western
Railway,
28th May
1887—continued.

RECORD.
—
No. 18.
Exhibit 4.
Lease of
Saskatche-
wan and
Western
Railway,
28th May
1887—con-
tinued.

the lessors covenant and agree to make and pass such by-laws rules or regulations or tariff or both as shall reasonably be required by the lessees but such by-laws rules and regulations and such tariff by whomsoever made and passed shall be subject to the provisions of the Manitoba Railway Act of 1881 and amendments thereof and of any general Railway Act of the Dominion applicable to the said railway and the lessors will allow the lessees to use the lessors' name in any suit or proceeding in which it may be necessary to use the same in connection with the working of the railway but all costs damages and expenses which may arise from the use of the name of the lessors shall be borne and paid by the lessees. The lessees shall protect the lessors against any loss damage or claim that may arise in working the traffic of the said railway under the present lease other than and except any loss or damage arising from or caused by a defect in the construction of the said railway line or the materials used in such construction or of the rolling stock plant or effects station buildings and structures comprised in the present demise and shall do and perform all acts conditions matters and things which the lessors are bound by their charter to do and perform in respect of the said railway and the lessees shall bear and pay all the expenses incurred in the issue of bonds and preference stock of the lessors and in doing and performing all such acts matters and things and in providing all matters and things required for the maintenance and operation of the railway in conformity with the laws of Canada. 10

The lessees shall during the continuance of the term hereby created keep the said railway rolling stock plant and effects in good and substantial repair and condition and the same in such good and substantial repair deliver up to the lessors or to the trustees at the end or other sooner determination of the said term and will at all times keep all the stations and buildings and structures upon or belonging to the said railway insured against loss or damage by fire in a reasonable and sufficient amount and will cause all moneys received in respect of such insurance to be forthwith laid out in the re-instating of the premises and will whenever so required to do so by the lessors or by the trustees produce to them the policy of such insurance and the receipt for the last premium and will also pay all rates and taxes payable in respect of the said railway rolling stock plant and effects stations buildings and structures hereby demised or intended so to be. 30

In the event of non-payment of the full amount of any instalment of the rent hereinbefore reserved within ninety days after the time hereinbefore named for the payment of such instalment or in the event of substantial failure to maintain work repair or operate the said railway for the space of ninety days continuously after written demand the present lease shall at the option of the lessors with the consent of the Trustees or at the option of the Trustees or in the event of any principal moneys being due and owing in respect of the aforesaid Bonds or any of them shall at the option of the Trustees become void and the lessees shall in that event yield up possession of the said railway and other the premises hereby leased to the lessors or in the event of notice to that effect being given to them by the Trustees then to the Trustees in as good order and condition as the same shall be delivered to them under the present lease. 40

The rental hereinbefore agreed to be paid by the lessees and the arrears

thereof (if any) shall be payable only out of the net earnings of the lessees declared by the Board of the lessees to be such and before any dividend shall be paid on the share or share stock capital of the lessees and so far as such net earnings shall from time to time extend and nothing herein contained shall entitle the Trustees or the lessors or the bondholders or shareholders of the lessors or any of them to have a Receiver appointed of the lessees' property and railway or any part thereof or in anywise to interfere or intermeddle with the management by the lessees of their said property or railway. Subject to the payment of the rental for the time being due and of the arrears thereof
 10 (if any) the lessees shall be entitled from time to time to deal with such net earnings or the net proceeds arising from the sale of any portion of the lessees land grants or the balance of such net earnings or proceeds in such manner as they shall from time to time determine.

RECORD.
 No. 18.
 Exhibit 4.
 Lease of
 Saskatchewan and
 Western
 Railway,
 28th May
 1885—con-
 tinued.

Nothing in this Indenture shall affect the rights of present or future bondholders against the lessors or their rights and remedies against the property hereby demised or expressed so to be or other the property of the lessors all of which shall be and remain unaffected in any respect by the terms and conditions thereof except as herein specially provided.

In witness whereof the parties hereto have caused these presents to be executed in triplicate and their respective seals to be attached hereto at the times
 20 and places respectively set opposite the signature of their executive officers.

For the Saskatchewan and Western Railway Company,

	(Signed)	H. MONTAGU ALLAN, Vice-President.
	(Signed)	W. R. BAKER, Secretary.
(L.S.)	(Signed)	F. D. GREY.
	(Signed)	J. R. HERON-MAXWELL.

For the Manitoba and North Western Railway Company of Canada,

	(Signed)	D. McARTHUR, Vice-President.
(L.S.)	(Signed)	GEO. E. STEVENS, Deputy Secretary.

(Endorse.)

30

Grey v. M. & N. W. Ry. Co.

This is Exhibit 4 produced by Defendants at the hearing, 1st February 1895.

(Sgd.) R. J. WILSON, Registrar.

Copy Lease of the Saskatchewan and Western Railway.

Grey v. M. & N. W. Ry. Co.

I certify that this is a true copy of Exhibit 4 filed herein at the time of this cause.

(Sgd.) G. F. WALKER, Prothonotary.



RECORD.

Exhibit 5.

No. 19.
Exhibit 5.
Agreement
with
Canadian
Pacific
Railway,
3rd Aug.
1889.

Articles of Agreement made this 3rd day of August 1889 by and between the Canadian Pacific Railway Company hereinafter called the first party and the Manitoba and North Western Railway Company of Canada hereinafter called the second party witnesseth :—

That whereas the first party has constructed and has in operation in a trans-continental line of railway through the Dominion of Canada with various branch lines and leased lines in connection therewith.

And whereas the second party has under construction and partly completed a line of railway from a junction with the line of railway of the first party at the town of Portage la Prairie in the Province of Manitoba in a north-westerly direction to Prince Albert in the North West Territories, with certain branch and leased lines in connection therewith, which railway and branch leased lines are owing to their geographical position feeding roads to the railway of the first party. 10

And whereas the parties hereto have heretofore exchanged traffic the one with the other under the terms and conditions of a certain contract entered into by the said parties hereto on the seventh day of October 1883, a copy of which contract is attached hereto.

And whereas the operation of the said traffic contract has been mutually satisfactory and it is desirable that the present friendly relations between the parties hereto shall be maintained. 20

And whereas the Northern Pacific and Manitoba Railway Company a Corporation of the Dominion of Canada has in course of construction and in part constructed a system of railway throughout the Province of Manitoba and the North West Territories, which system of railway will come into competition with the lines of the first party.

And whereas the said Northern Pacific and Manitoba Railway Company is desirous of effecting a junction with the line of the second party at Portage la Prairie and also at other points and of entering into certain traffic arrangements with the second party. 30

And whereas the first party is desirous of retaining for its line the carriage of the business originating on or destined for the lines of the second party and in order to secure this has expressed its willingness to protect the second party from the effect of any competition which may arise by reason of the construction of the system of railway by the Northern Pacific and Manitoba Railway Company aforesaid.

Wherefore the first party hereby in consideration of the premises and of other valuable considerations agrees with the second party as follows :—

1st. That in the event of any competition arising by reason of the construction of the lines of the Northern Pacific and Manitoba Railway Company aforesaid the first party hereby agrees to protect the second party against such competition to the utmost extent of its power by arranging suitable and convenient connections of trains by affording every facility for the prompt and satisfactory handling of business interchanged between the two companies and generally by affording all the facilities and assistance to the second party 40

for the transaction of its business as are usual between companies occupying similar positions to each other as the parties hereto.

And more particularly the first party in consideration of the refusal by the second party to enter into any traffic arrangement with the Northern Pacific and Manitoba Railway Company except such as it may be by law required to make hereby agrees to protect the second party from any loss of revenue which might arise by reason of the competition occasioned by the construction of the lines of the said Northern Pacific and Manitoba Railway Company in the following manner, that is to say,—

RECORD.

No. 19.
Exhibit 5.
Agreement with Canadian Pacific Railway, 3rd Aug. 1889—continued.

10 That notwithstanding any rates which the first party may find it necessary to make to or from points on its lines to meet the competition arising from the construction of the lines of the Northern Pacific and Manitoba Railway Company aforesaid or any reduction which it may find it necessary to make in the rates as existing at this date the first party hereby agrees that the second party shall have the right to make the same rates to and from points on its lines in the territory affected by such competition and points on the first party's lines as are made by the first party on its own lines for a similar business for a like distance and in the event of the extension of lines controlled by the Northern Pacific and Manitoba Company north of the main line of the first party and into the territory of the second party the second party shall have the right to make rates corresponding to such rate as may be made by said Northern Pacific and Manitoba Company and in either case the second party shall always be entitled to receive as its share of the through rate an amount not less than it now receives under its traffic contract with the first party of the 7th day of October 1883 aforesaid on similar business at the rates existing at the date of this contract the amount which the second party would be entitled to receive under this agreement for the haul over its line being shown in the column marked M. & N.W. proportion on the proportion sheets attached hereto marked A, B, C, D, E, sheets 1, 2, 3, & 4, F sheets 1 & 2, G & H and I to
20
30 which proportion sheets reference is made and which form part of this contract.

The first party further agrees that in the event of any future extensions of any of the second party's lines the second party shall be entitled to receive its share of the through rates on business exchanged with the first party to and from points on such extensions as large an amount as it would have been entitled to receive under the terms of the aforesaid traffic contract of the 7th October 1883 and of this contract had the said extension been in operation at the date of the making of this contract.

This contract shall remain in force concurrently with the contract of 7th October 1883, hereinbefore referred to provided that the second party shall (so far as it legally may) control in favour of the first party all traffics passing
40 between its lines and points reached by the lines of the first party and its connections which the second party hereby agrees to do.

In witness whereof the parties hereto have executed these presents in duplicate and affixed their respective corporate seals on the date named.

For the Canadian Pacific Railway Company,

W. C. VANHORNE, President.
C. DRINKWATER, Secretary.

RECORD.
 No. 19.
 Exhibit 5.
 Agreement
 with
 Canadian
 Pacific
 Railway,
 3rd Aug.
 1889—con-
 tinued.

Signed, sealed, and delivered in presence of
 (Seal.)

For the Manitoba and North Western Railway Company.

ANDREW ALLAN, President.
 HENRY FRY, Dep. Secretary.

As to the signatures of
 (Seal.)

and

(Endorse.)

Grey v. M. & N. W. Ry. Co.

I certify that this document is a true copy of Exhibit 5 filed herein at 10
 the trial of this cause.

G. H. WALKER, Prothonotary.

B. (in Equity) R.

Grey v. M. & N. W. Ry.

This Exhibit 5 is produced by Defendants this 1st February 1895.

(Sd.) R. J. WILSON, Clerk of R. & W.

No. 20.
 Exhibit 6.
 Agreement
 with
 Canadian
 Pacific
 Railway,
 1st April
 1893—con-
 tinued.

Exhibit 6.

Memorandum of Agreement made this first day of April 1890 between the
 Canadian Pacific Railway Company of the first part hereinafter called
 the first party and the Manitoba and North Western Railway Company of 20
 Canada of the second part hereinafter called the second party witnesseth:—

That whereas the first party has constructed and now operates a trans-
 continental line of railway through the Dominion of Canada.

And whereas the said railway passes through the City of Winnipeg and
 the town of Portage la Prairie in Manitoba.

And whereas the said first party is possessed of certain terminal facilities
 in the said City of Winnipeg.

And whereas the second party has under construction and in part con-
 structed a line of railway from a junction with the line of railway of the
 first party at the town of Portage la Prairie in the Province of Manitoba in 20
 a north-westerly direction to Prince Albert in the North West Territories
 with certain branch and leased lines in connection therewith.

And whereas the said second party is desirous of obtaining an entrance
 into the said City of Winnipeg for its passenger trains over the tracks of the
 first party between the said town of Portage la Prairie and the said City of
 Winnipeg and of obtaining the use of the terminal facilities belonging to the
 first party at the City of Winnipeg aforesaid as hereinafter mentioned.

And whereas it is believed that such an arrangement will be in the interest
 of both parties hereto and in the interest of the public.

Now therefore in consideration of the premises and of the agreements herein- 40
 after contained they the parties hereto covenant promise and agree as follows:—

RECORD.

No. 20.
Exhibit 6.
Agreement
with
Canadian
Pacific
Railway,
1st April
1890.

1. The said first party hereby agrees to allow the said second party during the continuance of this contract to run one passenger train per day, or if desired by the said second party, one passenger train per day each way, between the said town of Portage la Prairie and the said City of Winnipeg over the tracks of the first party such trains to be run on a time schedule to be mutually agreed upon and while such trains are on the tracks of the first party to be subject to all the rules and regulations and all orders of the said first party so far as the running of the said trains is concerned such trains however to be at all times treated as first class trains of the first party and to have all the
10 rights thereof but first class trains of the first party to have precedence over first class trains of the second party.

2. The first party further agrees to allow the second party the use of its station and platforms at Winnipeg and all facilities connected therewith for the convenience of the said trains and passengers of the second party and of any other business which would ordinarily be transacted by regular passenger trains.

3. The first party further agrees to allow the said second party the use of the following additional facilities at Winnipeg namely:—

One stall in the Round House for the use of the engine or engines of the said second party the use of its turntable and storage room for the coaches
20 composing the said trains of the said second party.

4. The first party further agrees to do all necessary labour and supply all the necessary material for cleaning the said engines and coaches of the said second party and to bestow the same attention thereon in regard to cleaning and care as though the said engines and coaches were the property of the said first party.

5. The first party further agrees to do all necessary shunting and making up of the said trains at Winnipeg of the said second party.

The second party hereby agrees to pay for the foregoing privileges as follows:—

30 For the use of the first party's tracks between Portage la Prairie and Winnipeg the sum of forty cents per train mile for each mile run by the second party's trains over the tracks of the said first party.

For the use at Winnipeg of the station platforms and of the facilities connected therewith as aforesaid the sum of fifty dollars per month. This charge to include the cost of selling tickets handling of baggage express matter mails and all other services necessary and incident to the proper handling of passenger trains.

For the use of one stall in the Round House of the first party the sum of ten dollars per month.

40 For the heating and lighting of such one stall the sum of ten dollars per month.

For the cleaning of the engines of the second party being for one engine each alternate night Sundays excepted the sum of thirteen dollars per month or at the rate of one dollar for each engine so cleaned.

For the cleaning and ordinary inspection of the coaches of the second party being for three coaches each alternate night Sundays excepted the sum of forty dollars per month or at the rate of one dollar for each coach so cleaned.

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Pacific
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1st April
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tinued.

For the shunting of the coaches of the second party and the standing of the same on sidings being for three coaches each alternate night the sum of ten dollars per month or at the rate of twenty-five cents for each coach so shunted and given standing room.

It is mutually agreed between the parties hereto that all fuel or small stores required at Winnipeg by the said second party for the requirements of said trains shall be supplied by the said first party at the same price as the said fuel and small stores are charged out by the first party to its own trains plus ten per cent.; water to be furnished by the first party for the engines of the second party at the rate of fifty cents for each tender. 10

It is further mutually agreed that the said second party shall retain all the earnings on all business destined to or originating at points on its lines west of Portage la Prairie done by its trains between Winnipeg and Portage la Prairie.

It is further mutually agreed that the trains of the second party shall not ordinarily be expected to stop at the stations of the first party between Winnipeg and Portage la Prairie but that such trains shall stop if properly flagged by the agent of the said first party at such station and shall do any local business which may offer at such station and on all local business done by the trains of the second party between Winnipeg and Portage la Prairie and intermediate stations the earnings shall go to the said first party less twenty 20 per cent. to the second party.

It is further mutually agreed that the second party shall pay to the first party all loss occasioned to said first party directly or indirectly by any negligence on the part of the second party or its servants in running the trains of the said second party over the tracks of the first party as aforesaid or by the second party using thereon any insufficient or unsuitable rolling stock and shall indemnify the first party against all damages and expenses which it may be required to pay to any third party in consequence of alleged breach of the law or negligence or use of insufficient or unsuitable rolling stock on the part of the second party or its servants while using the said tracks as aforesaid 30 and that the first party shall pay to the second party all loss occasioned to the said second party directly or indirectly by any negligence on the part of the first party or its servants. In case of loss or damage occasioned without negligence by either party each party is to bear its own loss. The shunting of the passenger coaches between the station and the coach yard also while being shunted in the coach yard at Winnipeg or at the station at Winnipeg of the first party shall be at the risk of the second party. The said first party however hereby agrees to use the same care and diligence in performing such shunting as it would were such rolling stock its own property.

It is hereby expressly agreed and declared that the intention of this 40 contract is to allow the second party to run its passenger trains into Winnipeg over the tracks of the first party and to afford the said second party all the necessary facilities for so doing and for transacting its business with the fullest convenience and dispatch.

It is further mutually agreed that no person shall be employed on the trains of the second party whilst such trains are using the tracks of the first party who shall be objectionable to the General Superintendent of the Western Division of the said first party.

It is further mutually agreed that the passes of either party to this contract shall not be honoured on the said trains of the second party between Portage la Prairie and Winnipeg except however in the case of officers of either Company holding the annual pass of their said Company who may require to use the said train in the interest of the business of their said Company.

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No. 20.
Exhibit 6.
Agreement
with
Canadian
Pacific
Railway,
1st April
1890—con-
tinued.

The payments to be made under the terms of this Contract by the second party shall be made monthly for each calendar month within twenty-one days after the termination thereof, or as soon thereafter as the accounts can be properly made up and presented.

10 In the event of any misunderstanding of the within agreement or any of the conditions thereof it is hereby mutually agreed that such question in dispute shall be referred to Mr. Justice Killam of the City of Winnipeg whose decision in such dispute shall be accepted by the parties hereto as final and conclusive.

This agreement shall remain in force until such time as it may be found impracticable or inconvenient with power to either party to terminate the said agreement at any time by giving to the other party one month's notice in writing of their intention so to do.

20 In witness whereof the said parties have severally caused their corporate seals to be impressed hereon and the signatures of their Presidents and Secretaries to be hereto affixed the day and year first above written.

Canadian Pacific Railway Company by

(Sgd.) W. C. VAN HORNE, President.
(Sgd.) C. DRINKWATER, Secretary.

Manitoba and North-Western Railway Company of Canada.

(Sgd.) ANDREW ALLAN, President.
(Sgd.) E. W. RILEY, Secretary.

(Endorse.)

Grey v. M. & N. W. Ry. Co.

30 I certify that this document is a true copy of Exhibit 6 filed herein at the trial of this cause.

G. H. WALKER, Prothonotary.

B. (in Equity) R.

Grey v. M. & N. W. Ry.

This Exhibit 6 is produced by Defendants this 1st February 1895.

(Sd.) R. J. WILSON, Clerk of R. & W.

140

RECORD.

Exhibit "7."

No. 21.
Exhibit 7.
Agreement
with
Canadian
Pacific
Railway,
27th Oct.
1883.

Articles of Agreement made this twenty-seventh day of October 1883 by and between the Canadian Pacific Railway Company hereinafter called the first party and the Manitoba and North Western Railway Company of Canada hereinafter called the second party witnesseth :—

That whereas the first party has under construction and in part constructed a line of railway from Montreal in the Province of Quebec westward through Port Arthur on Lake Superior, the city of Winnipeg, Manitoba, and the town of Portage la Prairie in said Manitoba westward to the Pacific Ocean with branches from Winnipeg southward to the international boundary line 10 between the Dominion of Canada and the United States of America.

And whereas the second party is engaged in constructing and has partially constructed a line of railway from a junction with the railway of the first party at the town of Portage la Prairie aforesaid in a north westerly direction to Prince Albert a town situate on the north Saskatchewan River in the North West territory of Canada which road owing to its geographical position is a feeding road to the railway of the first party.

And whereas the second party is desirous of availing itself of the advantages of the through line of the first party, and the first party is desirous of facilitating the traffic arrangements of the second party ; therefore the first 20 party hereby in consideration thereof agrees to and with the second party as follows, to wit : That during the continuance of this contract the second party may make such rates as it shall see fit for the carriage of freight between points on its own line and the city of Winnipeg and the international boundary line aforesaid, Port Arthur or any competitive point on the first party's road east of Port Arthur both to and from said points provided that said rates shall never be less than the rate then in force on the first party's railway for an equal distance.

1st. To and from Winnipeg.

That on all freight between points on the second party's railway to and 30 from the city of Winnipeg, the first party will accept as its proportion of said through rate an amount equal to such percentage of the rate then in force on its line to points equally distant from Winnipeg westwardly on its main line as is specified on a schedule hereto attached marked Schedule A to which reference is made and which is made a part of this contract.

2nd. To and from Emerson or Gretna.

That on all freight between points on the second party's railway to and from the international boundary, viz. : Emerson or Gretna, the first party will accept as its proportion of said through rate an amount equal to such 40 percentage of the rate then in force on its line to points equally distant from said international boundary west of Winnipeg on its main line as is specified on a schedule hereto attached marked Schedule B to which reference is made and which is made a part of this contract.

3rd. To and from Port Arthur.

That on all freight between points on the second party's railway to and from Port Arthur the first party will accept as its proportion of said through rate an amount equal to such percentage of the rate then in force on its railway to points equally distant from Port Arthur west on its main line as is specified on a schedule hereto attached marked Schedule C to which reference is made and which is made a part of this contract.

RECORD.
No. 21.
Exhibit 7
Agreement
with
Canadian
Pacific
Railway,
27th Oct.
1883—con-
tinued.

10 4th. That on all freight between points on the second party's road to and from all competitive points on the first party's road east of Port Arthur the joint rate shall be divided *pro rata* on the basis of mileage, except that on such freight the second party shall always be entitled to receive as its proportion as large an amount as it would at the same time be entitled to under this agreement had the same freight been transported between the same point on the second party's road and Port Arthur.

This contract shall take effect the first day of November 1883 and continue in force for the period of twenty years thereafter.

In testimony whereof the parties hereto have executed these presents in duplicate and affixed their respective corporate seals on the date named.

2)

For the Canadian Pacific Railway Company,

(Signed) R. B. ANGUS, Vice-President.
(Signed) C. DRINKWATER, Secretary.

Signed, sealed, and delivered in presence of (signed) A. Browning, Montreal.

For the Manitoba and North Western Railway Company,

(Signed) D. McARTHUR, Vice-President.
(Signed) F. H. BRYDGES, Secretary.

As to the signatures of D. McArthur and F. H. Brydges (signed)
A. A. Jackson, Accountant, Winnipeg.



RECORD.

No. 21.
Exhibit 7.
Agreement
with
Canadian
Pacific
Railway,
27th Oct.
1883—con-
tinued.

Schedule "A."
Winnipeg.

On freight to or from Winnipeg and
stations on the Manitoba and
North-Western Railway distant
from Portage la Prairie.

The Canadian Pacific Railway
Company will accept of the rate
named in the annexed contract as
the rate to be divided.

10 miles.	60 per cent.	
15	60	
20	55	
25	53	10
30	49	
35	46	
40	43	
45	41	
50	39	
55	37	
60	36	
65	35	
70	33	
75	33	20
80	32	
85	32	
90	31	
95	31	
100	31	
105	31	
110	31	
115	31	
120	31	
125	31	30
150	28	
175	26	
200	24	
225	22	
250	21	
275	20	
300	19	
325	19	
350	18	
375	17	40
400	17	

(Sgd.) C. DRINKWATER,
Secy., C. P. R. Co.

Schedule "B."

Emerson and Gretna.

RECORD.

No. 21.
Exhibit 7.
Agreement
with
Canadian
Pacific
Railway,
27th Oct.
1883—con-
tinued.

On freight to or from Emerson and Gretna and stations on the Manitoba and North-Western Railway distant from Portage la Prairie.

The Canadian Pacific Railway Company will accept as their proportion of the rate named in the annexed contract as the rate to be divided.

	10 miles.	82 per cent.
	15 "	77 "
10	20 "	73 "
	25 "	71 "
	30 "	68 "
	35 "	65 "
	40 "	63 "
	45 "	60 "
	50 "	59 "
	55 "	57 "
	60 "	56 "
	65 "	54 "
20	70 "	53 "
	75 "	52 "
	80 "	52 "
	85 "	51 "
	90 "	51 "
	95 "	50 "
	100 "	50 "
	105 "	50 "
	110 "	50 "
	115 "	50 "
30	120 "	49 "
	125 "	49 "

(Sgd.) C. DRINKWATER,
Secy., C. P. R. Co.



RECORD.

Schedule C.

No. 21.
Exhibit 7.
Agreement
with
Canadian
Pacific
Railway,
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tinued.

Port Arthur.

On freight to or from Port Arthur
and stations on the Manitoba and
North-Western Railway distant
from Portage la Prairie.

The Canadian Pacific Railway
Company will accept as their
proportion of the rate named in
the annexed contract as the rate
to be divided.

10 miles.	80 per cent.	
20	75	
30	75	10
40	75	
50	75	
60	75	
70	75	
80	74	
90	72	
100	71	
125	67	
150	64	
175	61	20
200	58	
225	56	
250	55	
275	53	
300	52	
325	51	
350	50	
375	50	
400	50	

(Sgd.) C. DRINKWATER, 30
Secy., C. P. R. Co.

(Endorse.)

7.

Grey v. M. & N. W. Ry. Co.

I hereby certify that this is a true copy of Exhibit 7 filed herein at the
trial in this cause.

J. H. WALKER,
Prothonotary.

Grey v. M. & N. W. Ry. Co.

This Exhibit 7 is produced by Defendants this 1st February 1895. 40

R. J. WILSON,
Clerk of R. & W.



Exhibit 8.

RECORD.

Mortgage Securing Bonds on the Shell River Branch, Manitoba and North Western Railway.

No. 22.
Exhibit 8.
Mortgage securing Bonds of the Shell River Branch, 17th Feb. 1887.

This Indenture made the seventeenth day of February in the year of Our Lord eighteen hundred and eighty-seven between the Manitoba and North Western Railway Company of Canada a body corporate and politic duly incorporated under and by virtue of the provisions of the Acts of the Legislature of the Province of Manitoba in the Dominion of Canada and of the Acts of the Parliament of Canada hereinafter recited of the first part hereinafter called
10 the Company and Francis Douglas Grey of East Sheen in the county of Surrey in England Lieutenant Colonel and Sir John Robert Heron Maxwell Baronet of Hamilton House Tooting in the County of Surrey England parties hereto of the second part hereinafter called the Trustees.

Whereas by an Act of the Legislature of Manitoba, passed in the 43rd year of the reign of Her Majesty Queen Victoria chapter 35 and entitled An Act to incorporate the Westbourne and North Western Railway Company the said Railway Company was duly incorporated with the powers and authority thereby conferred.

And whereas the said Act was amended by an Act passed by the
20 Legislature of Manitoba in the 44th year of the reign of Her Majesty chapter 41 and the name of the said Company was changed to the Portage Westbourne and North Western Railway Company.

And whereas by an Act passed by the Parliament of Canada in the 45th year of the reign of Her Majesty chapter 80 entitled an Act respecting the Portage Westbourne and North Western Railway Company the said railway was declared to be a work for the general advantage of Canada and all contracts made powers exercised and rights acquired by the said Company were declared to remain valid and binding and become and be the contracts powers rights and property of the said Portage Westbourne and North Western
30 Railway Company and certain other powers were thereby conferred.

And whereas by an Act passed by the Parliament of Canada, in the 46th year of the reign of Her Majesty chapter 68 the name of the said Company was changed to the Manitoba and North Western Railway Company of Canada, and certain other amendments were made in the Acts hereinbefore recited.

And whereas by Acts passed by the Parliament of Canada in the 47th and in the 48th and 49th years of Her Majesty's reign chaptered respectively 69 and 86 certain other amendments were made in the Acts hereinbefore recited.

And whereas under and by virtue of the said Acts power and authority is
40 conferred upon the said Company among other things to lay out construct make finish and operate a double or single track railway and an electric telegraph commencing at the town of Portage la Prairie in the Province of Manitoba a town at the junction of the railroad of the said Company with the Canadian Pacific Railway thence in a north-westerly direction to a point at or near Prince Albert on the north branch of the Saskatchewan River and with

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power to build and operate branch lines from some point between Westbourne and Beautiful Plains north-westerly in the direction of Lake Dauphin or Duck Mountains, and also from a point at or near Birtle to the northern or western boundary of the said Province at or near Shellmouth and it is by the said Acts provided that all the powers of the Company to issue Bonds and secure the same by mortgage and for all other purposes shall apply to such branches or any other branch authorised to be built by the Company as if they were part of the main line.

And whereas under and by virtue of the said Acts the Directors of the Company under the authority of the shareholders to them given by resolution at a special meeting called for that purpose are authorised to issue Bonds under the seal of the Company signed by the President or other presiding officer and countersigned by the Secretary and such Bonds may be made payable at such times and in such manner and at such place or places in Canada or elsewhere and bearing such rate of interest as the Directors should think proper and it is also thereby provided that the Directors should have power to issue and sell or pledge all or any of the said Bonds at the best price and upon the best terms and conditions which at the time they might be able to obtain for the purpose of raising money for the prosecution of the said undertaking and that such Bonds should without registration or formal conveyance constitute a first mortgage and privilege upon the said undertaking and upon the said railway constructed and to be thereafter constructed and upon the property of the Company acquired or which may be thereafter acquired excepting therefrom municipal bonuses and upon its tolls and revenues derived from operating the said railway after deducting from the tolls and revenues the working expenses and upon the franchise of the Company save as therein provided for and it thereby further provides that each holder of the said Bonds shall be deemed to be a mortgagee upon the said securities *pro rata* with the other bondholders and have priority as such provided that the amount of Bonds so issued sold or pledged shall not exceed twenty thousand dollars (\$20,000) per mile to be issued in proportion to the length of railway constructed or under contract to be constructed but notwithstanding anything in the said Acts contained it was thereby declared that the Company might secure the Bonds to be issued by them by mortgage deed creating such mortgages liens and encumbrances upon the whole or any part of such property assets and revenues of the Company present or future or both as should be described in said deed but that such revenues should be pledged in the first instance to the payment of the working expenses of the railway and that by the said deed the Company might grant to the holders of such Bonds or to the Trustee or Trustees named in such deed all and every the powers and remedies granted in the said Acts in respect of the said Bonds and all other powers and remedies not inconsistent with the said Acts or that it might restrict the bondholders in the exercise of any such power privilege or remedy as the case might be and that all such powers rights and remedies as shall be so contained in such mortgage deed shall be valid binding and available to the bondholders in manner and form as therein provided.

And whereas a portion of the branch line of the said Company from

Binscarth a station on the main line of railway of the Company running northerly for a distance of eleven miles has been completed by the said Company and the said branch for a further consecutive 164 miles to a point at or near the northern boundary of the Province of Manitoba has been put under contract to be constructed.

And whereas the said branch is known as the Shell River branch of the Company's railway.

And whereas a special general meeting of the shareholders of the Company was duly called and held on the 17th day of February 1887 in the City of Winnipeg in the Province of Manitoba for the purpose of authorising the Directors of the Company to make and issue under the said recited Acts Bonds secured by deed of mortgage on the said branch railway and undertaking containing such of the conditions stipulations and provisions authorised by the said Acts as the shareholders should approve of and for the purpose of considering and approving of the form of such Bonds and of such mortgage.

And whereas resolutions were duly passed at the said meeting whereby it was resolved in effect that the Company should issue bonds under the said authority to the amount of fourteen thousand six hundred dollars say 3,000% sterling per mile for each mile of branch railway actually constructed or now under contract to be constructed between the point of commencement of the said branch line at Binscarth and a point at or near the northern boundary of the Province of Manitoba an estimated distance of 175 miles. All such bonds to be secured by a mortgage of the said branch railway and electric telegraph of the Company and its franchises and property real and personal now owned and to be hereafter acquired in connection with the said branch railway except municipal bonuses and except the lands granted or to be hereafter granted to the Company by the Government of Canada and excepting also such lands as may have been or may hereafter be granted to the Company by individuals or corporations by way of bonus or gift for the construction of the said branch railway and which may not be required or used for the right of way station grounds yards or other purposes in connection with the construction running or use of the said branch railway and telegraph and that said mortgage should contain a description of the property mortgaged thereby conditions respecting the payment of the bonds secured thereby and of the interest thereon and remedies to be enjoyed by the holders thereof the enforcement of such remedies and provisions for forfeitures and penalties in default of payment and all as specified in general terms in the said resolution and hereinafter more particularly described in detail. Provided however that none of such bonds should be certified by the Trustees under the said mortgage and issued by them except at the rate aforesaid for each mile of the said branch railway actually constructed and ready for operation.

And whereas a draft of the said deed of mortgage and of the Bond therein referred to was duly submitted at the said meeting to the said shareholders and each was duly approved and confirmed by resolution passed at the said meeting and this deed and the bonds hereinafter set forth conform in all respects to the said draft.

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And whereas it was resolved that the bonds to be so made and issued should be payable 46 years from the date thereof with interest at 5 per centum per annum payable half-yearly each bond in the sum of one hundred pounds sterling and the whole in an amount not exceeding in the aggregate fourteen thousand six hundred dollars say 3,000*l.* sterling to the mile of such branch line now completed or under contract to be constructed as aforesaid and it was also resolved at the said meeting that inasmuch as eleven miles of the said road are now actually constructed and in operation bonds to the extent of thirty-three thousand pounds sterling should be certified by the Trustees and issued to and by the Company at once and that thereafter as additional miles are constructed and ready for operation Bonds to the extent of fourteen thousand six hundred dollars say 3,000*l.* sterling per mile shall be certified by the Trustees and issued to and by the Company. 10

And whereas a meeting of the Directors of the Company duly called and held on the 17th day of February A.D. 1887 at the city of Winnipeg aforesaid it was resolved to issue the said Bonds as authorised by the shareholders and the Company has caused such Bonds to the extent aforesaid as authorised by the said resolution to be signed by its President or Vice-president and countersigned by its Secretary and duly sealed. The said Bonds being in the form following that is to say:— 20

No.

No.

Dominion of Canada.

The Manitoba and North Western Railway Company of Canada.

100*l.* stg.100*l.* stg.

First Mortgage Bond.

The Manitoba and North Western Railway Company of Canada for value received hereby promises to pay to the bearer the sum of 100*l.* sterling on the 1st day of December 1933 (unless the same shall have been previously redeemed or become payable as provided herein and in the Indenture of Trust and mortgage hereinafter mentioned) on presentation of this Bond at the office of the Clydesdale Bank Limited 30 Lombard Street London England with interest thereon at the rate of five per cent. per annum until the 1st of December 1933 payable half-yearly on the 1st day of June and on the 1st day of December in each year on the presentation at the said office in London England of the coupon hereto annexed for the same. 30

Provided that the Company may upon any of the half-yearly days herein provided for payment of the interest coupons before the date at which the principal money secured by this Bond shall become due and payable as hereinbefore provided redeem the same upon payment of a sum of 115*l.* sterling provided that the Company shall have given not less than three months previous notice by advertisement in three daily newspapers circulating in London England and one daily newspaper circulating in Canada and that this Bond shall have been drawn for redemption as provided in the Indenture securing the same. The interest upon the amount secured hereby shall cease to accrue from and after the day on which the Company shall have become 40

entitled to redeem the said Bond as aforesaid unless from the default of the Company it shall not be redeemed accordingly.

All immature coupons must be surrendered with the Bond and the amount of any such coupons not so surrendered will be deducted from the principal sum payable.

This Bond is one of a series of Bonds of 100% sterling each, all of like tenor and date numbered consecutively from one upwards issuable at the rate of 3,000% sterling per mile of the branch railway from Binscarth in the Province of Manitoba to a point at or near the northern boundary of the Province of Manitoba an estimated distance of 175 miles. None of the said Bonds shall be certified or issued by the Trustees hereinafter mentioned except in respect of the length of the branch railway actually constructed and ready for operation.

All the said Bonds are issued under the provisions of the Acts incorporating and regulating the said Company and the payment thereof and the interest thereon is secured without reference to the time when they shall be actually issued by an Indenture of trust and mortgage dated the day of 1887 made between the Company of the first part and Francis Douglas Grey and Sir John Robert Heron Maxwell Bart. of the second part by which Indenture there is conveyed to the parties thereto of the second part as Trustees by the way of mortgage free from incumbrances the branch railway of the said Company built and to be built in the Dominion of Canada under the authority of said Acts from Binscarth to a point at or near the northern boundary of the Province of Manitoba an estimated distance of 175 miles and all the property rights and privileges forming part thereof or used and operated in connection therewith and all the stations fixtures rolling stock plant and appurtenances thereto now held or owned or that may be hereafter acquired owned or held by the said Company in connection with the said branch railway except municipal bonuses and lands granted or that may be granted to the Company by the Government of Canada or by individuals or corporations by way of bonus or gift for the construction of the said branch railway the whole as described in the said Indenture of trust and mortgage.

This Bond shall not be obligatory until authenticated by a certificate endorsed hereon and signed by the said Trustees or their successors in office and is issued received and held subject to the terms of said deed of trust and mortgage.

In witness whereof the Manitoba and North Western Railway Company of Canada has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and Secretary this day of 188 .

The Manitoba and North Western Railway Company of Canada by

President.
Secretary.

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said branch railway and telegraph or of any part thereof now owned by it or hereafter constructed or in anywise acquired and also all the locomotives tenders passenger baggage freight and other cars and all other rolling stock and equipment whatsoever and all machinery tools and implements and all fuel supplies and materials now held or acquired or hereafter to be held or acquired by the Company its successors or assigns for constructing maintaining operating repairing or replacing the said branch railway and telegraph between the points aforesaid or any part thereof or any of the equipments or appurtenances thereof and also all revenues freights tolls income rents issues profits and sums of

10 money arising or to arise from the use of the said branch railway or telegraph or of the property hereby conveyed or any part thereof subject nevertheless to the working expenses of the said branch railway and telegraph and also all rights privileges powers immunities and exemptions and all corporate and other franchises now owned held or enjoyed by the Company or hereafter to be held and enjoyed or conferred upon it its successors or assigns in any way connected with or relating to the said branch railway and telegraph constructed and to be constructed and the reversion and reversions remainder and remainders thereof in trust however for the uses and purposes hereinafter mentioned but excepting nevertheless the municipal bonuses aforesaid and the lands granted as aforesaid

20 or to be hereafter granted by way of bonus or gift to the said Company by the Government of Canada or any Corporation or individual and which may not be required for the right of way or for the actual use and operation of the said railway.

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 tinued.

To have and to hold the above described premises things rights privileges immunities and franchises acquired and to be acquired and hereby expressed to be conveyed and intended so to be unto the Trustees as joint tenants and not as tenants in common and to the survivor of them and to the heirs and assigns of such survivor and to their successors in said trust to the only use and behoof of the Trustees and of the survivor of them and of their successors

30 in the trust.

In trust nevertheless to and for the uses and purposes and with the powers and authority and upon the conditions hereinafter mentioned and set forth.

Article first.—None of the Bonds of the issue provided for in this instrument shall become obligatory upon the Company nor shall the payment of any Bond of the said issue become secured thereby until the certificate of the Trustees shall be endorsed thereon to the effect and in the form hereinabove set forth. The Bonds of the said issue shall be so certified by the said Trustees as hereunder stated and not otherwise viz. :—11 miles of said road having been completed at the time of the execution of this mortgage Bonds to the

40 amount of 33,000£ sterling may and shall be forthwith certified by the Trustees and may be issued by the Company the remaining bonds of the issue hereby provided for shall be kept in reserve and issued from time to time as the remaining portion of the said road shall be constructed and made ready for operation at the rate of three thousand pounds sterling per mile and such fact may be made to appear to the Trustees hereunder by the certificate of the President or Vice-President and the Chief Engineer or General Superintendent

RECORD. of the Company showing the exact length of the additional railway so constructed and made ready for operation in the form following that is to say:—

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Mileage Certificate.

The undersigned certify that the exact length of branch railway constructed and made ready for operation by the Manitoba and North Western Railway Company of Canada in addition to and beyond the first eleven miles from Binscarth and _____ miles heretofore certified by the officers of the Company as constructed and made ready for operation being in all _____ miles of railway is _____ miles making the total mileage for which Bonds may be certified and issued 10 by the Trustees including the length now certified to _____ miles from the point of commencement.

President (or Vice-President),
Chief Engineer (or General Superintendent).

Dated this _____ day of _____ 18 .

The Trustees upon the request of the Company shall certify and the said Company thereupon have the right to receive and issue from the said reserve Bonds at the rate of not exceeding the sum of Fourteen thousand six hundred dollars (say 3,000 $\frac{1}{2}$ sterling) per mile of the additional railway so constructed and made ready for operation as aforesaid until the whole amount of the said 20 reserve shall be exhausted. And it is the intention hereof and the same is so hereby declared that all of the bonds issued under the provisions of this instrument shall be equally in all respects secured by these presents upon all the property covered thereby without preference priority or discrimination on account of or with reference to the times of the actual issue thereof, or of any of them but such reserve bonds shall bear interest respectively only from the commencement of the semi-annual interest period in which they shall be issued and the past due coupons (if any) shall be cut off and cancelled before the certification or issue of the said Bonds.

Article second.—Until default shall be made by the Company in the 30 payment of the principal or interest of the said bonds hereby secured or some one or more of them or until default shall be made by the Company in respect of something herein required to be done or kept by it the Company shall be suffered and permitted to possess manage and enjoy the said branch railway expressed to be conveyed hereby together with the equipments and appurtenances thereof and the franchises appertaining thereto and to take and use the rents incomes profits tolls and issues thereof in the same manner and with the same effect as if this deed had not been made but subject or to be subject nevertheless to the lien of these presents.

Article third.—In case default shall be made in the payment of any 40 interest to accrue on any of the aforesaid Bonds to be issued by the Company when such interest shall become payable according to the tenor of such Bond or the terms of any coupon thereto annexed and such default shall continue for the period of three months or in case default shall be made in the

observance or performance of any other matter or thing in these presents mentioned and agreed or required to be observed and performed by the Company and such default shall continue for the period of three months then and from thenceforth and in either of such cases it shall be lawful for the Trustees personally or by their attorneys or agents to enter into and upon all and singular the portion of the said branch railway and premises hereby conveyed or intended so to be acquired or constructed and to be acquired or constructed or any part thereof and from thenceforth to have hold possess and use the said branch railway and premises and each and every part and parcel thereof then subject to the lien of these presents with full power to operate and conduct the business of the said railway by their superintendents managers and servants or attorneys or agents and to make from time to time all repairs and replacements and such useful alterations additions and improvements thereto as may seem to them to be judicious and to collect and receive all tolls fares freight income rents issues and profits of the same and of every part thereof and after deducting the expenses of operating the said branch railway and conducting the business thereof, and of all the said repairs replacements alterations additions and improvements and all payments which may be made or may be due for taxes assessments charges or liens prior to the lien of these presents upon the said premises or any part thereof, as well as just compensation for their own services and for the services of such attorneys and counsel and all other agents and persons as shall have been by them employed the Trustees shall apply the moneys arising from such collections and receipts as aforesaid to the payment of interest on the said Bonds in the order in which such interest shall have become and shall become due rateably to the persons entitled to such interest; and if after paying in full the interest which shall have accrued on the said Bonds a surplus of the moneys arising as aforesaid shall remain and the principal of said Bonds shall not be due and such surplus or any part thereof shall not be required in the judgment of the Trustees for the protection of the property or to provide for the instalment of interest next thereafter to fall due the same shall be paid over to the Company but in case the principal of said Bonds or any of them shall have become due the surplus arising as aforesaid shall be reserved to be applied to the payment of said Bonds upon a sale of the said railway and premises as hereinafter provided.

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Article Fourth.--In case default shall be made in the payment of interest on the said Bonds or any of them as aforesaid and shall continue as aforesaid for the period of twelve months thereafter or in case default shall be made in the payment of the principal of the said Bonds or any of them or any part thereof it shall be lawful for the Trustees after such entry as aforesaid or after other entry or without entry personally or by their attorneys or agents to sell and dispose of the said branch railway and of all and singular the property rights and franchises hereinbefore expressed to be conveyed and which shall be then subject to the lien of these presents at public auction in the City of Winnipeg in the Province of Manitoba and at such times as the Trustees shall appoint having first given notice of the time and place of such

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sale by advertisement published not less than three times a week for six consecutive weeks in one or more daily newspapers in the City of Winnipeg and in one or more daily newspapers in the City of Toronto. And after such notice it shall be lawful for the Trustees to make such sale or to adjourn such sale from time to time in their discretion and if so adjourning to make the same without further notice at the time and place to which the same shall be so adjourned and to make and deliver to the purchaser or purchasers of the said branch railway and premises or any part thereof good and sufficient deed or deeds in the law for the same in fee simple which sale made as aforesaid shall be a perpetual bar both in law and equity against the 10 Company and its assigns and all other persons claiming the said premises or any part or parcel thereof by from through or under the Company or its assigns. And after deducting from the proceeds of such sale just allowances for all expenses thereof including attorneys' and Counsel fees and all other expenses advances or liabilities which may have been made or incurred by the Trustees in operating or maintaining the said branch railway and premises or in managing the business thereof and all payments by them made for taxes or assessments and for charges and liens prior to the lien of these presents on the said premises or any part thereof as well as a reasonable compensation for their own services it shall be lawful for the Trustees and it shall be their duty 20 to apply the residue of the moneys arising from such sale to the payment of the principal and accrued and unpaid interest on all the said bonds which shall then be outstanding without discrimination or preference as between principal and accrued and unpaid interest or as between the holders of said bonds or of any coupons issued therewith but equally and rateably to all such bond and coupon holders; and if after the payment and satisfaction of said bonds principal and interest a surplus of the said proceeds shall remain to pay such surplus to the Company or its assigns. And it is hereby declared and agreed that the receipt of the Trustees shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money; and that after 30 payment of such purchase money and having such receipt such purchaser or purchasers shall not be obliged to inquire into the application of such purchase money upon or for the trusts or purposes of these presents or be in any manner whatsoever answerable for any loss misapplication or non-application of such purchase money or any part thereof or be obliged to inquire into the necessity expediency or authority of or for any such sale.

Article fifth.—In case default shall be made in the payment of any half-yearly instalment of interest on any of the said Bonds when interest shall become payable according to the tenor of said Bond or of any coupon thereto annexed and such instalment of interest shall remain unpaid and in arrear for 40 a period of twelve months after the same shall have become payable as aforesaid and been demanded then and from thenceforth the principal sum of each of the Bonds aforesaid shall at the option of the Trustees become and be immediately due and payable notwithstanding the time limited in the said Bonds for the payment thereof may not then have elapsed but a majority in interest of the holders of all the Bonds aforesaid which shall be then outstanding

and upon which default in the payment of interest shall have been made and shall be continuing shall have the power by an instrument in writing under their hands and seals or by a vote at a meeting duly convened and held as hereinafter provided at any time before the actual payment and acceptance of the interest in arrear to instruct the Trustees to declare the said principal due or to waive the right so to declare on such terms and conditions as such majority in interest shall prescribe and such majority in interest may by such instrument in writing or such vote annul or reverse any declaration of the Trustees in respect of said Bonds becoming or not becoming immediately payable. Provided always that no act or omission either of the Trustees or of the Bondholders in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or the right resulting therefrom.

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Article sixth.—It shall be the duty of the Trustees to exercise the power of entry hereby granted or the power of sale hereby granted or both or to proceed by suit or suits in equity or at law to enforce the rights of Bondholders in the several cases of default herein specified on the part of the Company or its assigns in the manner and subject to the qualifications herein expressed upon the requisition of bondholders as herein prescribed as follows:—

I. In case default be made in payment of any semi-annual instalments of interest to accrue on any of the said bonds to be issued as herein provided and such default shall continue as aforesaid for a period of twelve months then and in every such case upon a requisition in writing signed by the holder or holders of said bonds to an aggregate amount of not less than one-fifth of the amount of said bonds then outstanding and adequate and proper indemnification of the Trustees against the costs expenses and liabilities to be by them incurred it shall be the duty of the Trustees to proceed to enforce the rights of the bondholders under these presents by such proceeding authorised by these presents or by law as they shall be in such requisition directed to take by the said proportion of bondholders or if such requisition contains no direction then by entry sale or suit or suits in equity or at law as they being advised by Counsel learned in the law shall deem most expedient for the interest of the holders of said Bonds the rights of entry and sale hereinbefore granted being intended as cumulative remedies additional to all other remedies allowed by law for the execution and enforcement of the trusts hereof. Provided nevertheless that it shall be lawful for a majority in interest of the holders of said bonds for the time being by an instrument under their hands and seals or by a vote at a meeting duly convened and held as hereinafter provided to direct the Trustees to waive such default upon such terms as may be directed by such majority in such instrument or by such vote. And it is hereby provided and expressly agreed that no holder of bonds or coupons secured to be paid hereby shall have the right to institute any suit or proceedings for the foreclosure of this Indenture or the execution of the trusts thereof except upon and after the refusal or neglect of the Trustees hereunder to proceed to act in the premises upon requisition and indemnification as aforesaid but it shall nevertheless be lawful for a majority in interest of the holders of said Bonds for the time being to direct the party or parties bringing

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any such suit or proceeding to waive default or defaults on which it is founded in like manner as is hereinbefore provided for a direction to the Trustees to waive default. And it is hereby further declared and provided that no action taken by the Trustees or by the bondholders under this clause shall prejudice or in any manner affect the powers or rights of the Trustees or of the bondholders in the event of any subsequent default or breach of condition or covenant herein.

II. If the Company shall make default or breach in the performance or observance of any other condition obligation or requirement by the said Bonds or by this present deed imposed on them then and in such case the Trustees shall upon a requisition in manner aforesaid of not less than one-fifth in interest of the bondholders for the time being and upon adequate and proper indemnification of the Trustees against costs expenses and liabilities to be by them incurred proceed to enforce the rights of the bondholders under these presents in the manner by the first clause of this article provided subject to a power in such majority at any time to direct in manner aforesaid the Trustees to waive such default or breach upon reparation therefor to the satisfaction of such majority being made. And it is hereby provided that no action taken by the Trustees or by the bondholders under this clause shall prejudice or in any manner affect the powers of rights of the Trustees or of the bondholders in the event of any subsequent default or breach of condition or covenant herein.

Article seventh.—The Trustees shall at all times during the continuance of the trust hereby created have powers and authority to be exercised in their own discretion and not otherwise to convey or release from the lien and operation of these presents to any party who may be designated in writing by the Company to receive the same any portion of the lands and premises conveyed hereby or at any time acquired or held by the Company for use in connection with the said branch railway or the construction maintenance or operation thereof but which in the judgment of the Trustees shall be unnecessary to be longer retained for use in connection therewith and the Trustees shall also have power and authority to allow the Company from time to time to dispose of in its discretion such portions of the equipment machinery and implements at any time acquired or held for the use of the said branch railway or the extension thereof as shall have become unfit or unnecessary for such use.

Article eighth.—All Bonds to be secured by this deed of trust shall be payable to bearer and be negotiable and pass by delivery unless registered for the time being in the name of the owner thereof in the manner hereinafter provided and the Company shall keep at its transfer offices in the city of Winnipeg and at its agency office in the city of London a bond register in which every holder of a Bond shall be entitled to have his name and address and the number of the Bond held by him entered upon presenting at any one of the said offices a written statement of the said particulars and verifying his title to such Bond by the production thereof and every such registration of ownership shall be properly certified on the Bond. After such registration of

ownership of any such Bond so certified thereon no transfer shall be made or shall be valid except in writing in a suitable transfer book to be kept by the Company at each of the said offices for such transfers signed by the party registered as the owner thereof for the time being or his legal representatives or his or their agent or attorney thereunto duly authorised And the fact of every such transfer shall be entered upon the said last-mentioned transfer book so as to show the number of the Bond transferred and the name and address of the transferee unless any such transfer shall be to bearer in which case it shall be so entered and every such transfer shall be noted on the bond and if the last transfer be to bearer it shall restore to it transferability by delivery but every such Bond shall be subject to successive registrations and transfers to bearer as aforesaid at the option of each holder.

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Article ninth.—The word "Trustees" wherever used in this Indenture shall in all cases be construed to mean the person or persons who for the time being shall be charged with the execution of the trusts of these presents whether such person or persons be the said parties of the second part or any successor or successors of said parties of the second part appointed hereunder. In case of a vacancy in said trust the surviving or continuing Trustees or Trustee if there be any shall be competent to exercise any and all powers and authorities herein granted to the said parties of the second part.

Article tenth.—The Trustees or any Trustee hereunder may take such legal advice and employ such assistance as may be necessary in their judgment to the proper discharge of their duties and shall be entitled to reasonable compensation for any and all services which may hereafter be rendered by them or either of them in said trust which compensation the Company hereby promises and agrees to pay but in case the Company should make default in such payment the same may be retained by the Trustees out of any trust moneys coming into their hands.

Article eleventh.—The Trustees shall not nor shall any Trustee hereunder be answerable for the default or misconduct of any agent or attorney by them appointed under or pursuant to these presents if such agent or attorney be selected with reasonable care, nor for any error or mistake made by them in good faith but only for personal misconduct or gross negligence in the execution of said trusts.

Article twelfth.—Either of the Trustees may resign his trust and be discharged from all further duty thereunder or liability thereafter accruing upon giving three months' notice in writing to the Company and calling a meeting of the bondholders or upon such shorter notice as the Company and a majority in interest of said bondholders may accept as sufficient. Either of the Trustees may be removed from office by the vote of a majority in interest of the holders of said Bonds had at a meeting of the said bondholders duly held and attested by an instrument in writing under the hands and seals of the persons so voting.

Article thirteenth.—In case of the resignation death removal from office or incapacity to act of one or more of the Trustees a successor or successors shall

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be at once appointed to fill such vacancy by the surviving or remaining Trustees or Trustee if any with the consent of the Board of Directors of the Company or of its assigns or in case no Trustee survives or remains by the said Board of Directors. If such vacancy is not filled within thirty days after it occurs any competent Court may appoint a Trustee to fill such vacancy on the petition of any holder or holders of said Bonds to the amount of not less than one-fifth part in interest of all such bonds then outstanding upon reasonable notice to the Company its successors or assigns and to the surviving Trustees or Trustee if any and the person or persons so appointed shall be the Trustee or Trustees under this instrument. And from thenceforward each 10 person so appointed shall be vested with the same powers rights and interest and charged with the same duties and responsibilities as if he had been named among the parties of the second part to this instrument in place of the Trustee to whom he succeeds without any further assurance conveyance act or deed but the surviving or remaining Trustees or Trustee if any shall immediately execute all such conveyances or other instruments as may be necessary or suitable for the purpose of assuring to the new Trustee so appointed a full joint estate in the premises.

Article fourteenth.—Meetings of the bondholders under this deed of trust may be called in such mode as may be fixed by regulations prescribed or 20 established by the bondholders and the bondholders may vote at such meetings personally or by proxy and the quorum may be defined and such other regulations or by-laws in respect of such meetings may be from time to time established altered or repealed by the bondholders acting by the majority in interest as to them shall seem expedient and until the Bondholders shall define a quorum and make such regulations or by-laws, such powers may be exercised by the Trustees and the Trustees shall have the right at or before any meeting of bondholders to require that any act or resolution of the bondholders affecting the duties of the Trustees shall be authenticated by the 30 signatures of all the persons assenting thereto as well as by a minute of the proceedings of the meeting. And whenever and as often as any contingency shall arise in which the action of the holders of the Bonds secured hereby shall be necessary or in which the said bondholders are herein declared to have any discretionary voice or power it shall be the duty of the Trustees and such Trustees shall be and are hereby authorised and required to call a meeting of the holders of Bonds secured thereby to be held in the City of London England and in the absence of any regulation or by-law determining the notice to be given of such meeting it shall be notified to the bondholders by advertisement (the expenses whereof shall be a liability of the Company and may be defrayed 40 if necessary from the trust fund) to be published three times in each week for six weeks in at least two daily newspapers of good circulation among the business community in said city and also for a like number of times in two daily newspapers in like circulation in the City of Winnipeg and in default of such meeting being called by the Trustees within thirty days after notification to them in writing by any bondholder of the necessity therefor or in case the trust shall be wholly vacant it shall be competent for any holder or holders of

said Bonds to the aggregate amount of at least one-fifth of the entire outstanding bonds of the Company to call such meeting and at such meeting so convened the holders of said Bonds shall be competent to exercise in person or by proxy all the powers and authorities conferred upon them by these presents each holder being entitled to a vote for each bond held by him. But until otherwise provided pursuant to the provisions of this instrument in that behalf a majority in interest of the holders of the outstanding Bonds for the time being shall be required to constitute a quorum at any such meeting.

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10 Article fifteenth.—The office of the Clydesdale Bank Limited 30 Lombard Street London in England shall be the place of payment of the interest coupons and the principal of the said Bonds unless and until a change in the place of payment thereof shall be made of which due notice shall be given by advertisement published in two daily newspapers in the City of London England and presentation of the said Bonds or of the said coupons at the said Bank or the place so advertised (as the case may be) shall be a valid presentation thereof for any of the purposes for which according to the tenor of the said Bonds presentation in the said City may be made and default of payment upon such presentation shall be followed by all the consequences of default which are hereinbefore provided for.

20 Article sixteenth.—If the Company or its assigns shall well and truly pay the principal of each and every of said Bonds secured by this instrument when the same shall become payable and all interest thereon as such interest shall from time to time mature according to the tenor of such Bonds respectively and shall well and truly do and observe every other matter and thing provided or mentioned in these presents to be by it or them done and observed then and in that case all the estate right title and interest of the Trustees by these presents created shall cease determine and become void otherwise the same shall remain in full force and virtue. And upon any such determination of such interest the said parties of the second part or their successors or successor in the trust shall execute such reconveyance and reassignment of the premises as may be
30 necessary or expedient.

40 Article seventeenth.—And the Company in consideration of the premises and of one dollar to it duly paid by the Trustees the receipt whereof is hereby acknowledged hereby covenants and agrees to and with the Trustees and their successors in the trust created by these presents that whenever and as often as the Company shall hereafter acquire any additional property rights franchises or things whatsoever for the construction of or for use upon the said branch railway or upon any part thereof the Company and its assigns shall and will acquire possess and hold the same and every part and parcel thereof except the municipal bonuses aforesaid and the lands granted or to be granted by way of bonuses or gift to the said Company by the Government of Canada or any corporation or individual and which may not be required for the right of way or for actual use and operation of the said railway upon and subject to the trusts of this Indenture until conveyance thereof in pursuance of the covenants herein contained shall be duly made and delivered to the Trustees for the benefit of the trust by these presents created.

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Article eighteenth.—And the Company for itself and its assigns hereby covenants and agrees to and with the Trustees and their successors in the trust created by these presents that the Bonds hereby secured or intended so to be shall be issued only at such times and in such amounts as hereinbefore limited that the Company will duly pay and discharge the interest and principal of the said Bonds in accordance with the tenor thereof and will for that purpose in each and every year ensuing the date hereof faithfully use and apply the net earnings and income to be from time to time derived from the said branch railway and telegraph or from any part thereof after discharging its obligations upon or with respect to prior liens thereon or so much of such net earnings and income as may be necessary for that purpose to the payment of the same as and when the same shall become due until all the said Bonds shall be fully paid and satisfied and that it will seasonably in each and every year pay and discharge all taxes and assessments of every sort and description which may be lawfully imposed levied or assessed upon all or any part of the franchises or other property herein and hereby conveyed or intended or contemplated so to be so as to keep the mortgaged premises free and clear from any encumbrance by reason thereof and that it will from time to time and at all times hereafter and as often as thereunto requested by the Trustees under this Indenture execute deliver and acknowledge all such further deeds conveyances and assurances in the law for the better assuring unto the Trustees upon the trusts herein expressed the said branch railway and telegraph constructed or to be constructed together with its equipments appurtenances and franchises and all and singular the lands property and things hereinbefore mentioned or described and granted or conveyed or agreed or intended or contemplated to be granted or conveyed to the Trustees or their successors in the trust created by these presents as by the said parties of the second part or their successors or successor in the trust hereby created or by their counsel learned in the law shall be reasonably advised devised or required and that the Company will not execute do or suffer any act deed matter or thing whereby the mortgage lien or charge hereby created or intended so to be shall be in any wise prejudicially or injuriously affected or whereby any mortgage lien or charge shall be created having equality with or priority over the mortgage lien or charge hereby created over the premises herein comprised or any of them or the premises at any time hereafter forming part of the security of the said Bonds or any of them.

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Article nineteenth.—If and whenever the Company shall be desirous of redeeming any of the Bonds of this issue in pursuance of the powers in that behalf given to it therein before the date named in such Bonds for payment of the principal thereof it shall cause a drawing of Bonds to be held in London England in the presence of a notary public and at least one of the directors or duly authorised agents and representatives of the Company at a date not more than five nor less than three months before the next half-yearly date provided for the payment of the interest coupons at which the Company shall desire to redeem the bonds as aforesaid. The denoting numbers of the Bonds when drawn shall forthwith from time to time be published at least once in three

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daily newspapers in London England and one daily newspaper in Canada such advertisements appearing not less than three months before the said next half-yearly day. The Bonds so drawn and advertised shall become due and be payable by the Company at the price of 115% for each 100% Bond in British sterling as aforesaid on the next half-yearly date fixed for payment of the interest coupons. The interest upon the amount secured by the Bonds so drawn shall cease to accrue from and after the date on which the Company shall be entitled to redeem the same as aforesaid unless from default of the Company it shall not be redeemed accordingly. The Bonds drawn with interest coupons not then due shall be cancelled in London in the presence of a notary public and at least one of the directors or duly authorised agents and representatives of the Company.

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In witness whereof the Manitoba and North Western Railway Company of Canada has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and Secretary and the said parties of the second part to evidence their acceptance of the said trust have likewise signed and sealed these presents.

For the Manitoba and North Western Railway Company of Canada.

20 D. MACARTHUR,
 Vice-President. (Sic.)
 GEORGE E. STEVENS,
 Deputy Secretary.
 F. D. GREY. (L.S.)
 J. R. HERON MAXWELL. (L.S.)

Signed, sealed, and delivered in the presence of J. Steward Tupper.

Signed, sealed, and delivered by the above-named Francis Douglas Grey and Sir John Robert Heron Maxwell, Baronet, in the presence of Chas. Lock, clerk to Messrs. Norton, Rose, Norton, and Co., 24, Coleman Street, London, Solicitors.

30 (Endorse.)

This is Exhibit "E" referred to in the Admissions by the Plaintiffs in the suit of Grey *et al.* v. The Manitoba and North Western Railway Co. of Canada.

(Signed) EWART, FISHER, AND WILSON,
 For the Plaintiffs.
 (Signed) MACDONALD, TUPPER, P. & T.,
 For Defendants.

Grey v. M. & N. W. Ry. Co.

This is Exhibit 8 produced by Defts. this 1st February 1895.

40 (Sd.) R. J. WILSON, Clerk R. & W.
 S
 p. 4983.

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RECORD.

B (in Equity) R.
Grey v. M. & N. W. Ry. Co.

I certify that this document is a true copy of Exhibit "8" filed herein at the trial of this Cause.

G. H. WALKER, Prothonotary.

In the Queen's Bench (in Equity).
Manitoba.

Between

Francis Douglas Grey and Sir John Robert Heron
Maxwell - - - - - Plaintiffs, 10
and

The Manitoba and North Western Railway Company of
Canada - - - - - Defendants.

I, Geoffrey Henry Walker, Prothonotary of the Court of Queen's Bench for the Province of Manitoba, do hereby certify that annexed hereto is a true and exact copy of all evidence, proceedings, judgments, and orders made herein relating to the Appeal in this cause to Her Majesty's Privy Council.

Witness my hand and the Seal of the Court of Queen's Bench for Manitoba at Winnipeg this thirteenth day of April A.D. 1896.

(L.S.)

G. H. WALKER, Prothonotary. 20

No. 23.
Certificate of
Protho-
notary as to
correctness
of Transcript
Record,
13th April
1896.

IN THE PRIVY COUNCIL.

No. 21 of 1896.

ON APPEAL FROM HER MAJESTY'S
COURT OF QUEEN'S BENCH FOR MANITOBA.

BETWEEN

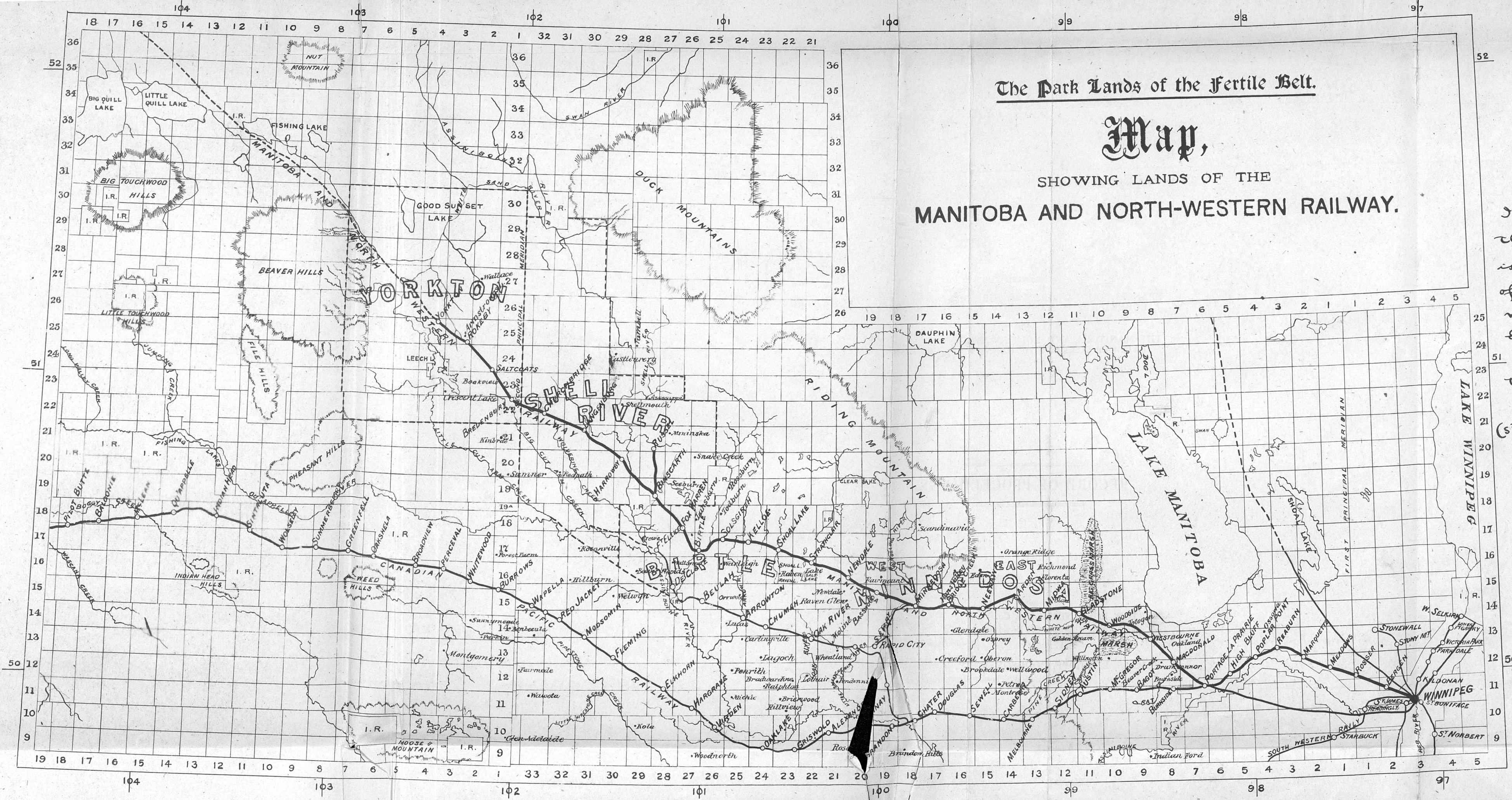
FRANCIS DOUGLAS GREY AND SIR JOHN
ROBERT HERON MAXWELL - *Appellants,*
AND
THE MANITOBA AND NORTH-WESTERN
RAILWAY COMPANY OF CANADA - *Respondents.*

RECORD OF PROCEEDINGS.

NORTON, ROSE, NORTON & Co.,
57½, Old Broad Street, E.C.,
for Appellants.
BOMPAS, BISCHOFF, DODGSON, COXE, and BOMPAS,
4, Great Winchester Street, E.C.,
for Respondents.

p. 4983.

The Park Lands of the Fertile Belt.
Map,
SHOWING LANDS OF THE
MANITOBA AND NORTH-WESTERN RAILWAY.



I certify that
this document
is a true copy
of the Map
marked as
Exhibit I filed
herein at the
trial of this
cause -
(s^d) G. H. Walker
Bartholomew