

In the Privy Council.

No. 33 of 1896.

UNIVERSITY OF LONDON
W.C. 1
24 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

29458

ON APPEAL
FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE GREAT NORTH-WEST CENTRAL RAILWAY COMPANY, JAMES BOGLE DELAP, INDIVIDUALLY AND AS A SHAREHOLDER ON BEHALF OF HIMSELF AND ALL OTHER SHAREHOLDERS OF THE GREAT NORTH-WEST CENTRAL RAILWAY COMPANY (EXCEPT THE DEFENDANT JOHN ARTHUR CODD), AND LOUISA H. MANSFIELD.
(Plaintiffs) Appellants.

AND

ALPHONSE CHARLEBOIS, ALEXANDER MACDONALD, WILLIAM ALFRED PRESTON, JOHN S. SCHILLER, FRANK S. NUGENT, THE COMMERCIAL BANK OF MANITOBA, THE UNION BANK OF CANADA, WILLIAM ANDERSON ALLAN, ROBERT J. DEVLIN, AND WILLIAM JAMES CROSSEN, FREDERICK JOHN CROSSEN, AND JOSEPH HENDERSON, EXECUTORS OF THE WILL OF JAMES CROSSEN, DECEASED.
(Defendants) Respondents.

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 33 of 1896.

ON APPEAL
FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE GREAT NORTH-WEST CENTRAL RAILWAY COMPANY, JAMES BOGLE DELAP, INDIVIDUALLY AND AS A SHAREHOLDER ON BEHALF OF HIMSELF AND ALL OTHER SHAREHOLDERS OF THE GREAT NORTH-WEST CENTRAL RAILWAY COMPANY (EXCEPT THE DEFENDANT, JOHN ARTHUR CODD), AND LOUISA H. MANSFIELD,

(Plaintiffs) Appellants;

AND

ALPHONSE CHARLEBOIS, ALEXANDER MACDONALD, WILLIAM ALFRED PRESTON, JOHN S. SCHILLER, FRANK S. NUGENT, THE COMMERCIAL BANK OF MANITOBA, THE UNION BANK OF CANADA, WILLIAM ANDERSON ALLAN, ROBERT J. DEVLIN, AND WILLIAM JAMES CROSSEN, FREDERICK JOHN CROSSEN, AND JOSEPH HENDERSON, EXECUTORS OF THE WILL OF JAMES CROSSEN, DECEASED,

(Defendants) Respondents.

RECORD OF PROCEEDINGS.

IN THE SUPREME COURT OF CANADA.

Alphonse Charlebois *et al* - - - (Defendants) Appellants,

and

J. B. Delap *et al* - - - - - (Plaintiffs) Respondents.

I, Robert Cassels, Registrar of the Supreme Court of Canada, hereby certify that the printed documents annexed hereto, marked A, A 1, A 2, A 3, A 4, and A 5, are a true copy of the original Case filed in my Office in the above Appeal ; that the printed documents, also annexed hereto, marked B, B 1, B 2, B 3, B 4, and B 5, are true copies of the Factums of the Appellants ; that the printed documents, also annexed hereto, marked C and C 1, are true copies of the Factums of the Respondents respectively deposited in said Appeal ; and that the document marked D, also annexed hereto, is a true copy of the Formal Judgment of this Court in the said Appeal ; and I further certify that the document marked E, also annexed hereto, is a copy of the Reasons for Judgment delivered by the Judges of this Court when rendering judgment, as certified by C. H. Masters, Esquire, the Official Reporter of this Court.

Dated at Ottawa, this 22nd day of May, A.D. 1896.


 L. S.

 ROBERT CASSELS,
 Registrar.

"A."

In the Supreme Court of Canada.

In Appeal from the Court of Appeal for Ontario.

Between :

Alphonse Charlebois, Alexander Macdonald, William Alfred Preston, John S. Schiller, Frank S. Nugent, The Commercial Bank of Manitoba, The Union Bank of Canada, William Anderson Allan, Robert J. Devlin, and William James Crossen, Frederick John Crossen, and Joseph Henderson, Executors of the last Will and Testament of James Crossen, deceased,

(Defendants) Appellants ;

and

James Bogle Delap, individually and as a Shareholder on behalf of himself and all other Shareholders of the Great North-west Central Railway Company (except the Defendant, John Arthur Codd), Louisa H. Mansfield, and the Great North-west Central Railway Company,

(Plaintiffs) Respondents ;

an

The Honourable Francis Clemow, James Murray, Daniel McMichael, John Arthur Codd, and the Right Honourable Edric Frederick Baron Gifford, and Robert Lothian Curzon,

Defendants.

STATEMENT OF CASE IN APPEAL.

The Appellants (Defendants), A. Charlebois, MacDonald and Preston, Schiller, Nugent, the Liquidators of the Commercial Bank of Manitoba, the Union Bank of Canada, Allan and Devlin, now appeal to the Supreme Court of Canada from the judgment herein of the Court of Appeal for Ontario, pronounced on 14th May, 1895, dismissing their appeals to the Court of Appeal from the judgment of the Chancellor, who had given judgment in favour of the Plaintiffs, Respondents herein.

The action was tried before the Chancellor without a Jury, at Ottawa, on the 31st October and the 1st, 2nd, 3rd and 4th days of November, 1893, and the trial was continued at Toronto on the 13th, 14th, 15th, 16th and 17th days of November, 1893, and judgment was then reserved.

RECORD.

No. 1.
Statement
of Case in
Appeal—
continued.

The Chancellor delivered judgment on the 25th November, 1893, overruling the Demurrer of the Defendant Charlebois, and granting relief to the Plaintiffs (Respondents); and the Chancellor's reasons for judgment will be found on page 122 of this Record.

This judgment was settled before the Chancellor on 22nd January, 1894, and as finally settled will be found on page 129 of this Record.

From the Chancellor's judgment all the above-named Appellants (Defendants) appealed to the Court of Appeal for Ontario.

The said appeals to the Court of Appeal were argued before that Court on the 14th, 15th, 16th, 19th, 20th and 21st days of November, 1894, and judgment thereon was reserved.

The Court of Appeal, consisting of four judges, delivered its judgment on the 14th May, 1895. The Chief Justice and Mr. Justice Osler decided to dismiss the appeals, and Mr. Justice Burton and Mr. Justice MacLennan were in favour of allowing the appeals from the Chancellor's judgment. The result of this was that the appeals were dismissed with costs.

The minutes of judgment were spoken to, before the Court of Appeal, on the 25th June, 1895, on motion by the Appellants to vary the judgment of the Court; whereupon the judgment of the Court was varied by directing (amongst other things) that the action of the Respondent Delap be dismissed without costs. The certificate of the judgment of the Court of Appeal, as finally settled, is printed on page 152 of this Record.

The Defendants, other than the present Appellants, in the Style of Cause above set out, did not appeal from the Chancellor's judgment.

Since judgment the Appellant, Alexander MacDonald, has died, and the action has been revived by order of Revivor, in the name of Isabella Jane MacDonald, executor to the last will and testament of the said Alexander MacDonald, deceased.

STATEMENT OF CLAIM.

Amended this fifth day of April, 1893, under Order dated the fourth day of 30 April, 1893.

No. 2.
Amended
Statement
of Claim,
5th April
1893.

1. The Plaintiffs, the Great North-West Central Railway Company, hereinafter for brevity referred to as the Company, is a corporation incorporated under the laws of Canada by Letters Patent, under the Great Seal of Canada, granted by virtue of an Act of Parliament of Canada, passed in the forty-ninth year of Her Majesty's reign, chapter 11, and confirmed by an Act of the same Parliament, passed in the fifty-first year of Her Majesty's reign, chapter 85.

2. The subscribed capital of the Company is the sum of five hundred thousand dollars, divided into five thousand shares of one hundred dollars each, of which the Plaintiff, James Bogle Delap, is the holder in his own name of one thousand five hundred and seventy-five shares of the said capital stock (\$157,500) and the other shares in the capital stock of the Company are held by numerous people residing in different parts of Canada and in England.

RECORD.
—
No. 2.
Amended
Statement
of Claim—
continued.

3. The head office of the said Company is at the City of Ottawa, in the Province of Ontario.

4. The Defendant, Alphonse Charlebois, is a contractor for the building of 10 railways and other works, and resides in the Province of Quebec.

5. The said Act of the Parliament of Canada, forty-nine Victoria, chapter 11, among other things provided that the Governor-General in Council might grant to any persons undertaking the construction of the railway hereinafter mentioned (being the Company's railway) from Brandon Station on the Canadian Pacific Railway to Battleford, under such corporate name as he should deem expedient, a charter conferring upon them the franchise privileges and powers requisite for the said purposes, provided always that in the event of a company being so incorporated, it should be provided in the charter that such company should be subject to all the then legal obligations of the North-West 20 Central Railway Company, in relation to the said railway. The legal obligations referred to in the last mentioned Act of the North-West Central Railway Company included certain liabilities previously incurred by the Souris and Rocky Mountain Railway Company.

6. The Defendant, Alphonse Charlebois, together with the Defendants, the Honourable Francis Clemow and William Anderson Allan, one Charles Thornton Bate (afterwards replaced by the Defendant Robert J. Devlin, who took and accepted the position of the said Bate, subject to all liabilities appertaining thereto) and the Defendant, James Murray, agreed and undertook with the Government of Canada to construct the said railway, and applied for and 30 received incorporation for the aforesaid purposes under and by virtue of the said Acts, under the name of the Great North-West Central Railway Company, and became the sole shareholders and directors of the said Company, and in accepting such charter the Defendant Charlebois and the said other corporators assumed as a company, and became liable for and agreed to pay and discharge all the said debts which were due on or before the second day of June 1886 by the North-West Central Railway Company for railway construction, and the said corporators became personally liable for such obligations to the extent of their several subscriptions of shares in the said Company, amounting in the aggregate to \$500,000, being the only shares allotted by the said Company. 40 Ten per cent. of the amount of the said shares was paid up by the said corporators, and deposited with the Government by way of security for the fulfilment of their said contract, and save such 10 per cent. and a premium of 25 per cent. allowed by the directors in part payment thereof, pursuant to a provision in the said charter in that behalf, the said shares were wholly unpaid on the 16th September 1889.

RECORD.

—
No. 2.
Amended
Statement
of Claim—
continued.

7. Under and by virtue of an agreement made the 12th day of September 1887, between Her Majesty Queen Victoria, as representing the Dominion of Canada therein represented, and the Honourable John Henry Pope, Minister of Railways and Canals, and the Great North-West Central Railway Company, hereinafter called the Company, the said Great North-West Central Railway Company (constituted as hereinbefore stated), further contracted under the seal of the Company with the Government of Canada that the said Company would pay and discharge the said debts, and did further contract and agree that the said Company would construct and equip the whole of the first 50-mile section of the said railway, from Brandon Station on the Canadian Pacific Railway, to the satisfaction of the Governor in Council, pursuant to the specification and description accompanying the said contract.

8. One of the claims against the Company charged by the said Act of Parliament upon the said railway was a claim of the Defendants, Alexander Macdonald and William A. Preston, doing business under the firm-name of Macdonald and Preston, for work done in the construction of the Souris and Rocky Mountain Railway in the year 1887. After the said corporators had assumed and made themselves liable for the said claims by accepting the charter of the said Company and subscribing the said shares, but before they had executed the contract in the seventh paragraph hereof set forth, the said Macdonald and Preston and the Company constituted as aforesaid, settled an account with each other and fixed the said claim at the sum of \$75,000, of which the said Company afterwards paid the sum of \$30,122.72 out of the deposit in the hands of the Government of Canada, and the balance of the said claim being the sum of \$44,877.22 was agreed by the said Company to be paid out of the proceeds of the sale of the bonds of the said Company of \$50,000 face value, to be sold by the said Company when issued, and when the general bond issue of the Company was sold or floated, and the said Macdonald and Preston agreed to accept the same in full payment of their said claim, and the said Defendants are still bound to accept the same.

30

8a. On or about the 9th day of April, 1888, the Defendants Charlebois, Clemow, Allan, Devlin and Murray entered into an agreement with the Defendant Codd, whereby they undertook to complete and equip the first fifty miles of the Company's railway, and to sell all the shares in the capital stock of the said railway, fully paid up and free from all liability whatsoever, for the sum of £200,000 sterling, and by further agreement, part and parcel of the said agreement of the 9th day of April 1888, between the same parties, the said Defendants, Charlebois, Clemow, Allan, Devlin and Murray agreed that they would accept in payment of £100,000 of the said price bonds of the said Plaintiff Company, when issued at the price of £80 for every £100 of the face value of such bonds. The said agreement of the 9th day of April 1888 was based upon a certain prior agreement between the same parties, bearing date the 6th day of March 1888, which was also part and parcel of the same and is in the words and figures following, that is to say :—

“ To all to whom these presents shall come,

“ Greeting:

“ Whereas, John Arthur Codd, of the City of London, England, acting
“ as he represents on behalf of certain capitalists, his undisclosed principals,

“ has made us, the Honourable Francis Clemow, William Anderson Allan, Robert J. Devlin, Alphonse Charlebois, and James Murray, being all the present holders of the stock of the Great North-West Central Railway Company, an offer for the purchase of our said shares of stock at the price or sum of £200,000 (two hundred thousand pounds sterling) upon the terms and conditions set out in said offer as embodied in the recitals of the power of attorney bearing even date herewith given by the said the Honourable Francis Clemow, William Anderson Allan, Robert J. Devlin, and Alphonse Charlebois to the said James Murray, authorizing the latter, who is at present in England, in his discretion to accept said offer on the terms and conditions therein set out :

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“ Now this is to testify that in the event of said offer being accepted through our said attorney and the sale consummated by payment in full (but not otherwise), we consent that portion of said consideration money, namely, the sum representing the difference between eight hundred thousand dollars (\$800,000) and two hundred thousand pounds sterling (£200,000) shall be paid over to Daniel McMichael, Q.C., of Toronto, in place of to ourselves, to be by him held to the order and use of the said John Arthur Codd, to cover commissions, etc.; and we further consent and agree in like event, but not otherwise, to pay the said John Arthur Codd, out of the sum of fifty thousand pounds (£50,000) cash payable to us on transfer of shares, the sum of one thousand pounds sterling (£1,000), but nothing herein contained shall be construed as recognizing or giving, or shall give the said John Arthur Codd any claim for or right to demand any sum by way of commission or for expenses against us, or any of us, or against said company, in case said prospective sale shall fall through or not be closed.

In witness whereof we have hereunto set our hands at Ottawa, the 6th day of March, 1888.

“ FRANCIS CLEWOW,
“ W. A. ALLAN,
“ A. CHARLEBOIS,
“ R. J. DEVLIN.”

8b. At the time the last-mentioned agreement was entered into, the Plaintiff Company had in fact entered into a contract with one John C. Sproule for the construction of the said first fifty miles of the said railway, for the sum of \$4,000 per mile, exclusive of the rails, fishplates, and spikes, the rolling stock fencing and train ballasting, and the work by the said Sproule had been undertaken and was, in fact, proceeding when the said agreement of April 1888 was entered into, and though subsequently work was stopped thereon by the said Defendants, Charlebois, Clemow, Allan, Devlin and Murray, the said contract with the said Sproule was actually subsisting and ready to be carried out at the time of the alleged construction contract of September 16th 1888 with the Defendant Charlebois hereinafter mentioned.

8c. The Defendant Codd, as the Defendants Charlebois, Clemow, Allan, Devlin and Murray well knew, had not at the date of the said agreement of April 1888, or at any time, any valid claim against the Plaintiff Company for the said sum of \$173,000, or any part thereof, and he did not, in fact, then or

RECORD. thereafter at any time claim to be, and he was not, in fact, a creditor of the said Company for any sums whatever.

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8d. The effect of the said agreement of April 1888 was, and is, that on the said sum of £200,000 being paid, as therein mentioned, to the Defendants Charlebois, Clemow, Allan, Devlin and Murray, the Plaintiff Company would have had the first fifty miles of its railway completed and 320,000 acres of land grant earned and free from debt, and the Company would have been free from liability except in respect of the capital represented by its share capital of \$500,000, which would, by the terms of the said agreement, be paid up.

8e. The whole cost of the construction of the company's first fifty miles of 10 railway, and the payment of the liabilities provided for by the charter, would not have exhausted the \$500,000 represented by the paid up capital of \$500,000, and the surplus thereof should be in the Company's treasury. The balance of the said £200,000 sterling being \$443,000, or thereabouts, in fact, was profit or premium to the Defendants Charlebois, Clemow, Allan, Devlin and Murray on the sale of their shares in the Plaintiff Company.

8f. By the said agreements of April 1888, and by their dealings together subsequent thereto the Defendants Charlebois, Allan, Devlin and Murray in fact constituted the Defendant Codd their agent for the sale of the said railway and the shares in the Plaintiff Company on the terms of the said agreement, and they 20 authorized the Defendant Codd on their behalf to procure English capitalists to furnish the money required to construct the said fifty miles, and to purchase the same and its shares from them on the terms of the said agreement, and for this purpose to represent to such capitalists that the price was in fact £200,000 sterling, and that the point of commencement of the said first fifty miles of the said railway to be constructed was located at Brandon Station on the line of the C.P.R., and that the said Defendants Charlebois, Clemow, Allan, Devlin and Murray would construct the said road from Brandon Station aforesaid, and that the same would be a lawful junction with the Canadian Pacific Railway and would enable the Plaintiff Company to exchange traffic with the Canadian 30 Pacific Railway, and give the Plaintiff Company all the rights and benefits of interchange of traffic under the Railway Act, and that the equipment to be provided for the said first fifty miles of the said railway would be complete in all respects, and in respect of rolling stock and buildings such as would be required to conduct promptly and efficiently the traffic and business of the line, and such as were called for by the true construction of the specifications annexed to the contract between the Company and Her Majesty the Queen, and that the Company's railway when constructed would not be a prairie railway, and that the said sum of £200,000 was a fair price for the construction thereof, and that the land grant would ultimately pay the price thereof, and that the terms of the 40 said agreement of April 1888 would be adhered to.

8g. None of the said representations were ever made good by the Defendants Charlebois, Clemow, Allan, Devlin, and Murray, or by the said Defendant Codd. The Defendant Codd did, in fact, as agent for the last named Defendants, make the said representations and other similar representations to a firm of solicitors, Messrs. Stevens, Bawtree and Stevens, in London in England,

and procured them, on the faith thereof, to enter into an agreement with him for sharing the profits of the financing of the said scheme of the Company's railway between the said firm and the said Codd, but the said Codd did not disclose the fact that he was to receive for his own benefit \$173,000 as aforesaid out of the said £200,000 as a commission, and the said firm of Stevens, Bawtree and Stevens were deceived and misled by the said misrepresentations of the said Defendant Codd.

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8h. The Plaintiff Delap was a client of the said firm of Stevens, Bawtree and Stevens, and they, relying upon the good faith of the Defendant Codd, together with the Defendant Codd as agent for the Defendants Charlebois Clemow, Allan, Devlin, and Murray, made the same representations to the Plaintiff Delap and applied to him to advance the sum of £50,000, stating and representing, the Defendant Codd so doing as agent as aforesaid, to the Plaintiff Delap that the balance of £150,000 which they stated would be required for the completion of the 50 miles of railway would be otherwise provided, and the Plaintiff Delap, relying upon the said representations, thereupon entered into an agreement in writing with the Defendant Codd in the words and figures following, that is to say:—

“ Heads of Agreement between John Arthur Codd and James Bogle Delap.

20 “ Under an agreement dated ninth April, one thousand eight hundred and
“ eighty-eight, and made between the Honourable Francis Clemow and others
“ of the first part, being all and the only shareholders in the capital stock of
“ the Great North West Central Railway Company of Canada, and John
“ Arthur Codd of the other part (a copy of which agreement is hereunto
“ annexed), the said John Arthur Codd is entitled to all the shares in the capital
“ stock of said Company, together with fifty miles of the said railway, complete
“ and fully equipped to the satisfaction of the Canadian Government, so as to
“ earn the land grant in the said agreement mentioned, together with all other
“ interest in the property belonging to the parties of the first part of and in
30 “ the said railway and land grant, upon payment by the said John Arthur Codd,
“ to the parties of the first part, of the sum of two hundred thousand pounds
“ sterling, payable as follows:—

“ Fifty thousand pounds on account thereof, on the execution of the
“ transfers of the said stock to the said John Arthur Codd, and upon other
“ terms mentioned in Clause 3, Section 1, of the agreement hereunto annexed;
“ the supply of certain steel rails as mentioned in Clause 3, Section 2, of the
“ annexed agreement, and the balance of the said sum of two hundred thousand
“ pounds, as mentioned in Clause 3, Section 3, of the said agreement. Of such
“ balance the parties of the first part have agreed to take one hundred thousand
40 “ pounds in bonds of the said Company.

“ 1. In order to comply with said agreement the said James Bogle Delap
“ agrees to guarantee to the said John Arthur Codd the payment of the first
“ sum of fifty thousand pounds mentioned in the said agreement, and to give to
“ the said John Arthur Codd a banker's reference that the amount will be duly
“ paid.

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“ 2. The said John Arthur Codd, upon receiving such banker’s reference,
 “ undertakes to provide fifty thousand pounds in Canada, upon a bill of exchange
 “ at sixty days, renewable for a further period of sixty days if so desired by the
 “ said James Bogle Delap.

“ 3. The banker’s reference to be given by the said James Bogle Delap as
 “ aforesaid shall be to the effect that the bill of exchange before mentioned will
 “ be met at maturity.

“ 4. That before such bill of exchange shall be drawn as aforesaid the
 “ said John Arthur Codd shall prove to the satisfaction of the said James
 “ Bogle Delap—

10

“ A. That the Company has been legally established in Canada.

“ B. That a land grant has been made by the Canadian Government,
 “ whereby the Company will be entitled to six thousand four
 “ hundred acres of land for every mile of railway constructed.

“ C. That a contract for the construction of the first one hundred miles
 “ of railway has been duly executed by contractors of sufficient
 “ ability and financial strength, who will undertake to construct
 “ and complete the first fifty miles of the line before the first
 “ December one thousand eight hundred and eighty-nine,
 “ thereby entitling the Company to three hundred and twenty
 “ thousand acres of land.

“ D. That ninety thousand pounds of the shares of the Company,
 “ carrying with them the concessions and powers of the Company,
 “ and the right of the land grant, have been transferred to the
 “ said James Bogle Delap or his nominees.

“ 5. That in case the said James Bogle Delap shall be called upon to pay
 “ the said sum of fifty thousand pounds the said John Arthur Codd will deposit
 “ with him ninety thousand pounds of the capital stock of the said Company,
 “ together with the benefit of any land grant that may then have been
 “ earned, and also the contracts before referred to for the construction of the
 “ said railway.

“ In consideration of the said James Bogle Delap carrying out the matter
 “ as above mentioned the said John Arthur Codd will pay the said James Bogle
 “ Delap for giving such guarantee as aforesaid the sum of five thousand pounds
 “ in cash payable out of the proceeds of the first issue of bonds, and five
 “ thousand pounds in shares of the capital of the said Company, but if the said
 “ James Bogle Delap shall be called upon to pay the said sum of fifty thousand
 “ pounds the said John Arthur Codd shall pay interest at ten per cent. per
 “ annum, and an additional sum of five thousand pounds in cash.

“ 7. If required by either of the parties hereto, a formal agreement shall
 “ be prepared embodying the above terms, and in case any difference shall arise
 “ the same shall be referred to Augustus Beddall, barrister, 1, New Court,

40

‘ Lincoln’s Inn, who shall settle such agreement on behalf of both parties, and **RECORD.**
 “ whose decision shall be final.

“ (Signed) JAMES BOGLE DELAP.
 “ (Signed) J. A. CODD.

“ July 20th, 1889.”

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The collateral agreement referred to in paragraph 8a of this Statement of Claim was not annexed to the foregoing agreement between the Plaintiff Delap and the Defendant Codd, and the same was withheld from him, and he had no knowledge or notice thereof until shortly before this action, and the Plaintiff
 10 Delap had not any notice or knowledge until shortly before this action, of any claim or right (if any) on the part of the Defendant Codd to the said \$173,000, or any other sum, out of the said £200,000.

8i. For more than a year before the said agreement was entered into, and more than a year before the Plaintiff Delap was applied to for the advance aforesaid, and subsequently and up to the institution of this action, unknown to the Plaintiff Delap, the said firm of Stevens, Bawtree and Stevens were employed by the said Defendant Codd, and acted as his solicitors, and by his instructions for the Company and for themselves individually, and they are so acting and instructed in the year 1889 and thereafter, while assuming to advise the
 20 Plaintiff Delap also as his solicitors, and in the month of September 1889 one C. R. Stevens, a member of the said firm, came to Canada, entrusted, so far as the Plaintiff Delap was concerned, with authority limited to carrying out the said agreement between the Plaintiff Delap and the Defendant Codd, and he thereupon proceeded, without the knowledge or assent of the Plaintiff Delap, to carry out the said agreement between the said firm of Stevens, Bawtree and Stevens and the said Defendant Codd, to share the profits of financing the railway enterprise of the Company, acting therein for his own benefit and for the benefit of his said firm and the Defendant Codd, and without the knowledge
 30 of the Plaintiff Delap, and being in fact in partnership with the Defendant Codd, and in furtherance of the interest of his said partnership with the Defendant Codd all his acts in Canada hereinafter complained of were done and not on behalf of the Plaintiff Delap, and subsequently, after the transaction with the Defendant Charlebois hereinafter mentioned, the agreement between the said Stevens and the Defendant Codd was reduced to writing on or about the 16th day of September 1889, and is hereinafter set forth.

8j. On the 9th day of September 1889 the said Codd, with the concurrence of his said partner Stevens, and without the knowledge or the consent of the Plaintiff Delap, entered into a certain agreement with the Defendant Charlebois in the words and figures following :—

40 “ Heads of proposed Agreement between Mr. Charlebois and
 “ Mr. Codd.

“ 1. Mr. Charlebois to arrange with Clemow, Allan and Devlin that
 “ they will assign to him all their interests in the undertaking, provided
 “ that, when the fifty thousand pounds is paid, Clemow, Allan and Devlin

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“ shall take thereout such amounts as Mr. Charlebois shall agree to pay
“ them.

“ 2. Mr. Charlebois to obtain Mr. Murray's consent to the above
“ arrangement, or to purchase his share in the same way as the
“ others.

“ 3. Mr. Charlebois and Mr. Murray (or Mr. Charlebois, as the case
“ may be) to carry out the terms of the agreement of the 9th April 1888,
“ subject to the present modifications, and Clemow, Allan and Devlin to join
“ in guaranteeing that the stock is free of debts.

“ 4. Mr. Charlebois to take up and pay for the 1,160 tons of rails ¹⁰
“ already lying at Montreal, but the balance of the rails to be delivered to
“ Mr. Charlebois will be delivered in due time for the execution of the
“ contract, chargeable to the balance due at the rate of £5 13s. 6d. free in
“ Montreal.

“ 5. Mr. Charlebois to transfer the whole of the stock as per
“ present agreement of 9th April 1888, but on completion of the first
“ fifty miles to have paid him an additional \$50,000, or at Mr. Codd's
“ option to transfer to Mr. Charlebois its equivalent in stock of the Com-
“ pany.

“ 6. Mr. Charlebois to be repaid the amount paid by him for rails on 20
“ or before the 1st October.

“ 7. The purchaser to give within thirty days satisfactory evidence to
“ Mr. Charlebois' bankers that all payments will be made according to the
“ terms of present agreement.

“ The above terms to be embodied in an agreement to be supplemented
“ to the present agreement of 9th April 1888, and subject to D. McMichael's
“ approval.

“ Dated at Toronto, 9th September 1889.

“ J. A. CODD.

“ A. CHARLEBOIS. 30

“ Witness, G. Duval.

“ Approved 16th September 1889.

“ D. McMichael.”

8k. Later, when it came to carrying out the said last-mentioned agreement by the Defendant Charlebois, he was called upon by the said Codd and Stevens to transfer paid-up shares and to leave in the Company's treasury or in work done on the said railway an equivalent amount, and it was then communicated to the said Stevens for the first time that the said shares were not paid up, or work to the amount to be paid thereon done on the said railway, and that the Defendant Charlebois was unable to carry out his contract specifically. 40

8l. The said Defendant Charlebois being not in a position to carry out his said agreement, then obtained from the said Stevens directly, without the know-

ledge or consent of the Plaintiff Delap, the sum of \$228,000 out of the said RECORD. moneys of the Plaintiff Delap, in his hands under a new and special contract, namely, by way of preliminary loan or advance payment on account of the purchase of the shares to enable the said Defendant Charlebois to remove the liability resting on the said shares. The said \$228,000 was sufficient with twenty-five per cent. discount on the par value of the said shares to pay up the balance unpaid on the shares.

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This sum at the request of the Defendant Charlebois was paid directly to the shareholders, the Defendants Charlebois, Clemow, Allan, Devlin and Murray, by
10 Stevens in proportion to their shares. It was agreed and understood that the shares should be paid up with the said moneys, and the allowance of the said discount by the directors and the said loan or advance was charged and secured on the said shares. The said Defendants last named had notice and knew that the said moneys were not the moneys of the said Stevens, but were moneys intrusted to him for investment by the Plaintiff Delap upon the faith of the representations hereinbefore set forth, and upon the terms of the said contract of April 1888, and that the said Stevens had no authority to use the same in any other manner, and that the said Stevens was to hold the said shares as trustee for the Plaintiff Delap, who was advancing the said moneys, and to
20 secure the repayment of the said moneys. The said last named Defendant with the said moneys then paid up their shares, and leaving the money in the Company's treasury severally transferred their shares to the said Stevens, save ten per cent. thereof, which they transferred to nominees of the said Defendant Codd, to the number necessary to constitute a board of directors, and to keep up the number of corporators required by the charter of incorporation. Stevens then advanced out of the moneys of the Plaintiff Delap to the Company \$15,555.55, making up with the \$228,000 the balance of the sum of £50,000 sterling.

8/, 2. On the 11th day of September 1889, the said Defendants Charlebois, Clemow, Allan, Devlin and Murray were the directors of the Plaintiff Company.
30 They and the Defendant Codd were aware that the said Stevens was intrusted with the £50,000 of the Plaintiff Delap to be advanced under the terms of the agreement hereinbefore referred to. The said Defendants Charlebois and his co-directors aforesaid in fraud of their duty to the Company as trustees thereof, and in fraud of the Plaintiff Delap, determined to put an end to the agreement previously entered into on the 9th day of April 1888, by themselves as shareholders with the said Codd, and to enter into the scheme hereinafter set out. They terminated the said agreement with Codd of 9th April 1888, and having terminated the same on the 11th September 1889, they, while directors of the Company, and while the Defendant Charlebois was a director, entered into a
40 binding agreement with the said Charlebois, of which the Defendant Codd was at the time well aware and consenting to, whereby they agreed to bind the Plaintiff Company to give to the said Charlebois a contract for £200,000 sterling as hereinafter stated, and on the said date the said Charlebois entered into a binding agreement with his co-directors aforesaid, and with the said Defendant Codd that out of the said sum of £200,000 sterling he would pay the said directors, including himself, the sum of \$228,000, partly in cash, and partly as he received moneys from the Company, also that he would pay Codd \$10,000

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and the further sum of \$173,000. In addition to the sum which the Company was to be pledged to pay Charlebois, including the said sums of \$228,000, \$10,000, and \$173,000, the sum of \$70,000 was added into the said contract price in order that the said Charlebois might receive out of the Company's assets the amount of his own stock.

8l, 3. On and prior to the sixteenth day of September 1889, the Defendants Charlebois, Clemow, Allan, Devlin and Murray were the directors of the Plaintiff Company, and on and prior to the said last-mentioned date it was agreed by and between the said directors and the Defendant J. A. Codd, without the knowledge or consent of the Plaintiff Delap that the said pretended contract between 10 the Plaintiff Company and the Defendant Charlebois should be entered into, and that out of the pretended contract price of £200,000 the Defendant Charlebois should pay to the said other Defendants, Clemow, Allan, Devlin and Murray, the price stipulated by them for the transfer to him of their shares, including the repayment to them of the amount which was required to be paid in to make them paid-up shares as aforesaid, as their share of the profits to be derived from the enterprise, and should also pay to the Defendant John A. Codd as and for commissions the sum of \$10,000, besides the sum of \$173,000 hereinbefore mentioned, and in pursuance of the said scheme after such agreement and in execution of the same on the said 16th day of September 1889, the said 20 Charlebois, Clemow, Allan, Devlin and Murray retired from being directors successively, and in the place of each one retiring a new director was appointed by the continuing directors, the result being that the said C. R. Stevens, the Defendant J. A. Codd and three others, nominees of the said Defendant Codd, were appointed as the new directors on the agreement and understanding that such new directors should formally execute the said pretended contract under the corporate seal, and should enter into the other pretended contracts hereinafter mentioned between the Plaintiff Company and the said Defendant Charlebois.

8l, 4. On and prior to the said sixteenth day of September 1889, the said 30 parties were severally the holders on the books of the said Company of the shares of the said Company as follows:—

<div style="text-align: right; margin-right: 10px;"> <i>5800</i> <hr style="width: 50px; border: 1px solid black;"/> </div>	The Defendant Clemow, 1,000 shares	-	-	-	100,000
	The Defendant Allan, 1,600 shares	-	-	-	160,000
	The Defendant Devlin, 1,200 shares	-	-	-	120,000
	The Defendant Charlebois, 700 shares	-	-	-	70,000
	The Defendant Murray, 500 shares	-	-	-	50,000

8m. After the execution of the pretended contract hereinafter mentioned between Charlebois and the Company of the construction of the first fifty miles 40 of the said railway, the new directors paid the sum of £59,000 (being the moneys of the Plaintiff Delap so used to pay up the said shares and the said additional advance of \$15,555.55 made to the Company out of moneys of the Plaintiff Delap) by cheque of the Company to the Defendant Charlebois as the first payment upon the said alleged contract, and in pursuance of and fulfilment of the agreement entered into between the former directors, the said Charlebois, and the said Codd as aforesaid.

8m. 2. The Defendant Charlebois, pursuant to the said agreement between him and the Defendants Clemow, Allan, Devlin, Murray and Codd, out of the said sum of £50,000 sterling so paid to him, repaid to the said Defendants Clemow, Allan, Devlin and Murray, and to himself that portion of the said sum of \$228,000 which had been so paid in to make the said shares paid-up shares, and he also paid to the said Defendant Codd the said sum of \$10,000, and agreed to pay to the said Defendant Codd the said further sum of \$173,000 hereinbefore mentioned out of the moneys thereafter to be received upon the said contract and in respect of the further moneys which the said Defendants Clemow, Allan, 10 Devlin and Murray were entitled to from him the said Defendant Charlebois in respect of the said transfer of their shares, the Defendant Charlebois gave equitable assignments by way of order upon the Plaintiff Company in favour of the said Defendants Clemow, Allan, Devlin and Murray, which the Defendant Codd procured the newly-elected directors to accept to the amount of \$100,687.89, payable out of the moneys to become due to the Defendant Charlebois under the said pretended contract. The amount of the said last-mentioned orders payable to the said Defendants Clemow, Allan, Murray and Devlin is embraced in the moneys ordered to be paid to the Defendant Charlebois by the judgment hereinafter mentioned, being represented therein 20 by the sum of \$108,842 mentioned in sub-paragraph D. of Section 2 of the said judgment, and the moneys which represented the price and premium payable to the Defendant Charlebois for and in respect of his shares aforesaid form part of the other moneys by the said judgment ordered to be paid to the Defendant Charlebois by the Plaintiff Company.

8n. The said Stevens then held the said ninety per cent. of the said shares as bare trustee to transfer the same to the Plaintiff Delap to secure the said sum of £50,000 pursuant to the said agreement, and the said Stevens held the shares for no other purpose, and no meeting of shareholders was called to authorise the said directors to enter into and execute the said pretended 30 contract.

8o. Afterwards the said Stevens and the Defendant Codd executed an agreement hereinbefore referred to, defining the terms of partnership aforesaid between them, subject to the rights of the Plaintiff Delap in the words and figures following, that is to say :—

“ Heads of Agreements between John Arthur Codd and Charles Richard
“ Stevens.

“ 1. In consideration of Charles Richard Stevens having obtained the
“ sum of £50,000 to enable Mr. Codd to obtain the transfer from the
“ present shareholders of the Great North-West Central Railway Com-
40 “ pany of Canada of the whole share capital of the said Company, the said
“ J. A. Codd agrees to transfer to C. R. Stevens one half of the shares of
“ the said company.

“ 2. Out of such one half of the said shares of the said Company,
“ the said C. R. Stevens is to give up any shares that may have been agreed
“ to be given to the persons providing the above-mentioned sum, and also

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“ to give up any further shares that may have been agreed to be given to the
“ persons who have signed the syndicate agreement, and also to give up
“ any further shares that the said C. R. Stevens has already consented to
“ give in carrying out the matter up to the present date.

“ 3. All payments agreed to be made in cash up to the present date to
“ the persons providing the necessary moneys, or to the members of
“ the said syndicate, or to other persons who have assisted in carrying out
“ the agreement of the 9th April 1888, up to the present date, are to be
“ paid by the said Company.

“ 4. All payments made by C. R. Stevens or by his firm to the 10
“ said J. A. Codd, or on his behalf, and all costs and charges of the said
“ C. R. Stevens or his said firm relative to this matter, including all
“ charges for raising and procuring the moneys required in connection with
“ the matter, and also including the proper charges and expenses of C. R.
“ Stevens' journey to Canada, are to be paid by the said Company.

“ 5. In case it shall be necessary to give up any further shares to any
“ person or persons in completing the necessary arrangements to carry out
“ the matter, it is understood that any such arrangement is to be made in
“ such way as the said J. A. Codd and C. R. Stevens, or the then share-
“ holders, shall mutually agree upon. 20

“ 6. Until all moneys already advanced, or hereafter to be advanced,
“ by the said C. R. Stevens, or any of his clients, are repaid, the said
“ C. R. Stevens is to hold 90 per cent. of the paid-up shares of the said
“ company as security for such repayments.

“ 7. All profits arising out of, or in connection with, the said under-
“ taking in any way whatsoever, are to be divided equally between J. A.
“ Codd and C. R. Stevens.

“ 8. J. A. Codd to have the voting power at ordinary general meetings-
“ but this is not to extend to power to increase capital or issue bonds or
“ sale or amalgamation to and with other company or companies, or person 30
“ or persons, or other acts prejudicially affecting the security of C. R. Stevens
“ or his clients.

“ 9. Any moneys coming to J. A. Codd out of the £200,000 are to
“ belong to him absolutely.

“ 10. The said J. A. Codd will on demand execute any documents or
“ document as the said C. R. Stevens may require him to do for carrying
“ out the above arrangement and for securing the said C. R. Stevens and
“ his clients.

“ 11. In case of dispute upon any point whatever, the same to be
“ referred to and settled by A. Beddall of New Court, Lincoln's Inn, 40
“ London, whose decision shall be final and binding on both parties
“ hereto.

“ Dated 16th September 1889.

“ J. A. CODD,
“ C. R. STEVENS.”

8p. The Defendant Charlebois did not by reason of the transactions aforesaid acquire any higher rights or position than he and the Defendants Clemow, Allan, Devlin and Murray possessed under the agreement of April, 1888, and the Company was not in any way liable to pay the said sum of £200,000, nor could any part thereof, other than expenses of construction, be made a charge upon or become a debt or liability of the Company.

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8q. The said Stevens had not in law or in fact any right or authority as holder of the said 90 per cent. of the said shares for the Plaintiff Delap to vote or assent to the Company being made liable for the said sum of £200,000 or any part thereof, and the Company could not be so made liable without the funds of the Company being used for the purpose of purchasing its own shares contrary to the Railway Act, and the Plaintiffs set up the Railway Act, and claim that the said contract is void on this ground.

8r. The said Stevens had not in fact nor had the Plaintiff Delap any notice or knowledge that the moneys coming to J. A. Codd out of the £200,000, as mentioned in the agreement between the said Stevens and the said Defendant Codd hereinbefore set forth, consisted of the said sum of \$173,000 mentioned in the agreement of the 6th March 1888, hereinbefore mentioned, or that such moneys were a claim of the said Defendant Codd upon the Defendants Charlebois, Clemow, Allan, Devlin and Murray, personally, and the said agreement of the 6th day of March 1888, was in reality concealed from the said Stevens, and the said moneys so referred to were represented to the said Stevens to be and he believed the same in fact represented a valid claim on the part of the said Codd against the Plaintiff Company for cash expended in construction of the railway, which was and is contrary to the fact.

8s. The Plaintiff Delap did not become aware of the agreement to pay the said \$173,000 to the Defendant Codd, or of the terms of the said agreement between the said Codd and Stevens until lately, and he has always repudiated the same and refused in any way to agree to or acquiesce in or adopt the same.

8t. The Plaintiff Delap is entitled to hold the said 90 per cent. of the said shares of the Plaintiff Company until he is repaid the said sum of £50,000 sterling, and his other advances hereinafter mentioned, made to the Plaintiff Company, and after the Plaintiff Delap the Plaintiff Mansfield is entitled to be secured thereon for her advances to and for the Company.

9. Notwithstanding the facts hereinbefore appearing the Defendant Charlebois and the Defendant Codd entered into a scheme together to charge the said Company with the whole of the said sum of £200,000, and for this purpose contemporaneously with the transfer of the said shares to the said Stevens and others as aforesaid, a certain instrument was drawn up and executed by the said Defendant Charlebois, and execution thereof by the Company was by the Defendants Charlebois and Codd procured, bearing date the 16th day of September 1889, between the Defendant Alphonse Charlebois of the first part, and the Defendants the Company of the second part, whereby after reciting as is therein recited, the said Defendant Charlebois being therein referred to as the contractor, it is witnessed as follows :—

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“ That the said contractor in consideration of the premises and of the sum
“ of fifty thousand pounds sterling (£50,000) to him in hand, paid on account
“ thereof by the Company (the receipt whereof is hereby acknowledged) and
“ of the covenants and agreements on the part of the Company, hereinafter
“ contained, and of the further payment to him, the said contractor, of the sum
“ of one hundred and fifty thousand pounds sterling (£150,000) to be paid as
“ hereinafter expressed, doth, for himself, his executors and administrators,
“ covenant, promise and agree to and with the Company, its successors and
“ assigns, the latter on their part, performing and fulfilling their covenants and
“ obligations hereunder, in manner following, namely :—

10

“ (1.) That the said contractor will at his own expense cause the first fifty
“ miles of the Company’s line commencing at or near Brandon, in
“ the Province of Manitoba, and thence proceeding as at present
“ projected, located and partially constructed, to be constructed,
“ equipped and running to the satisfaction of the Minister of
“ Railways and Canals, and of the Chief Engineer of Government
“ Railways, on the 1st day of December next (1889), or should
“ good and satisfactory progress be made and further time be
“ requisite for the completion of said fifty miles and be accorded
“ by the Government, then or on, or before the 31st of December 20
“ 1889 (nine) or if absolutely essential through unforeseen events
“ then if agreed to by the Company within such further time
“ as may be accorded by the Government to the Company, for
“ such completion in accordance with the terms and conditions in
“ that regard (as modified and verified by Orders in Council as in
“ recital mentioned) of said Government contract in part recited
“ and of the specification thereto attached, copies whereof are
“ hereto annexed, to be read and form portion hereof, so far as
“ applicable, and including also the right of way of the first fifty
“ miles of railway and including a completed telegraph line subject 30
“ to the fulfilment by the Company of their covenants and agree-
“ ments in the premises as hereinafter expressed.

“ (2.) That upon the Minister of Railways and Canals being satisfied by
“ and through the report of the Chief Engineer of Government
“ Railways, or Inspector of Railways, or other official detailed for
“ that purpose, that the said first fifty miles had been completed,
“ equipped and in running order, and that such portion of said
“ railway (namely, fifty miles) do as constructed comply in that
“ regard with the requirements of said Government contract (or
“ otherwise to like effect), and upon the said contractor tendering 40
“ delivery to the Company of said completed fifty miles, free and
“ clear of all liens or charges for, or in respect of work done,
“ or materials provided thereon by the contractor and those under
“ him, the Company do hereby covenant, promise and agree to
“ pay at the City of Ottawa to the said contractor, his executors,
“ administrators or assigns, the further sum of one hundred and
“ fifty thousand pounds sterling (£150,000) money, making in all

“ the sum of two hundred thousand pounds sterling (£200,000) RECORD.
 “ in full payment and satisfaction for said completed fifty miles
 “ of railway to be delivered to the said Company, after said inspec- No. 2.
 “ tion and approval thereof. Amended
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‘ (3.) That the Company shall as the condition precedent to the fulfilment
 “ by the contractor of this contract and to its completion within
 “ the time limited in that regard supply and deliver at Montreal
 “ to the contractor, cost, freight, and insurance prepaid to Mon-
 “ treal, all steel rails and accessories requisite for the track and
 “ track-laying of said first fifty miles in due and sufficient time
 “ to enable the contractor (himself using due diligence) to com-
 “ plete said fifty miles according to contract and in due time, the
 “ amount of the costs, freight and insurance of said rails in
 “ Montreal to be charged thereupon to said contractor on account
 “ of the one hundred and fifty thousand pounds sterling (£150,000)
 “ hereinbefore agreed to be paid to said contractor, but interest
 “ on said amount shall not be chargeable to or against such
 “ contractor.

“ (4.) The contractor shall have, in addition to such protection and lien
 “ (if any) as the law allows and accords him, a full, complete lien
 “ and first charge upon and over the said first fifty miles of
 “ railway and its appurtenances, including rails, ties, buildings,
 “ equipments, road-bed, right of way, right to the land grant
 “ thereto appertaining if and when fully earned, right of operation
 “ of said railway and upon the whole property, enterprise and
 “ undertaking (including the works already in course of operation),
 “ until he the said contractor is and shall be paid the full sum of
 “ one hundred and fifty thousand pounds sterling (£150,000) as
 “ aforesaid, nor shall the Company be at liberty to take possession
 “ of or exercise any acts of possession over or respecting the
 “ said fifty miles of railway or the appurtenances afore-
 “ mentioned while or so long as any sum remains due and unpaid
 “ the contractor under this contract, and the full, absolute and
 “ sole possession thereof shall in such case remain and be vested
 “ meanwhile in the contractor ;” and it was also part of the said
 “ contract that if the said Defendant Company should by writing
 “ require the Defendant Charlebois to accept payment of one
 “ hundred thousand pounds of the above-mentioned consideration of
 “ £200,000 sterling in bonds of the said Defendant Company, instead
 “ of payment in cash, that the said Defendant Charlebois would
 “ be bound to and would accept said bonds, for which purpose the
 “ said bonds were to be taken as of the value of eighty pounds for
 “ each one hundred pounds of the face denomination thereof.

10. At the time the said alleged contract was so entered into the contract
 aforesaid, with John C. Sproule, by the said Company, was still subsisting for the
 construction of the said fifty miles of railway, and the Defendants Macdonald
 and Schiller had become entitled to perform the same, and in further pursuance

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11. Thereafter the said Defendant Charlebois procured the Defendants Macdonald and Schiller, representing themselves and the said Sproule to enter into a sub-contract with him for the construction of the said fifty miles of railway, on the same terms as those contained in the said contract between the 10 Company and the said Sproule, in which they agreed to take over the works done by the said Sproule, and to credit upon their contract price of \$200,000 the sum of \$70,000 in respect of the work which Sproule had theretofore performed under his said contract, which sum of \$70,000 represented all the work which had theretofore been done towards the construction of the said fifty miles of railway, except a drawback theretofore retained by the Company from the said Sproule, the payment of which the Defendant Charlebois assumed.

11a. The said sum of \$173,000 if there was any liability to the said Defendant Codd in respect thereof was and is a liability personally of the 20 Defendant Charlebois and not of the Company, and the liability in respect of the said \$50,000 mentioned in section five of the agreement between the Defendants Codd and Charlebois, set forth in paragraph 8j., of the Statement of Claim, was a personal liability of the Defendant Codd and not of the Company.

12. The total sum payable by the Defendant Charlebois to the said Macdonald and Schiller under the said contract the sum of \$130,000 or thereabouts; and subsequent to the execution of the contract between the Company and the said Defendant Charlebois, the said agreement between the Defendants Macdonald and Schiller and the 30 said Charlebois was consummated by contract in writing bearing date the third day of October, A.D. 1889, under which the Defendants Macdonald and Schiller proceeded to carry on the works thereby undertaken, and in respect of which their claim hereinafter mentioned accrued, and the Plaintiffs shows that the Company paid for the rails, fishplates and spikes - - - - - 129,000 and that the additional works to complete the said railway on the line adopted by the Defendant Charlebois would be the following amounts:—

Train ballasting at \$900 per mile - - - - -	54,000 40
Fencing at \$600 per mile, which was not done - - - - -	30,000
Rolling stock which was not furnished - - - - -	30,000
	<hr/>
	\$373,000

Making the whole liability necessary to be incurred on the part of the said Defendant Charlebois, to complete the line upon the location on which he actually constructed the same, the sum of \$373,000; and the Plaintiffs further show that in fact the said Defendant

Charlebois did not expend out of the said sum the sums above mentioned for—

Fencing	-	-	-	-	-	-	-	-	-	\$30,000
Rolling stock	-	-	-	-	-	-	-	-	-	30,000

60,000

\$313,000

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making the total liability incurred by the said Charlebois for the construction of the lines \$313,000, and this state of facts was well known to the Defendants
10 Charlebois, Allan, Clemow, Devlin and Murray, and to the Defendant Codd.

12*a.* And the Plaintiffs further show, as the fact is, that while the Company paid for the said rails, included in the said amount, the Defendant Charlebois did not pay any part of the balance thereof, but that the whole of the said amount is outstanding as indebtedness represented by the debts due to the Defendants Macdonald and Schiller, and to the Defendant W. A. Preston and others.

13. And the Plaintiffs further show that no part of the sum of \$243,000 paid to the Defendant Charlebois on the day he entered into the said alleged contract by the Company was ever expended in the construction of the said
20 road; and of the exorbitant character of the said contract price, and of the comparatively small amount required as aforesaid to construct the said railway, and of the fact of the said agreement with the Defendants Macdonald and Schiller the Defendants Codd and Charlebois were well aware at the time the said contract was entered into.

14. The Defendants Codd and Charlebois together procured the said Company to enter into the said alleged contract, none of the other shareholders of the Company at the time the same was entered into being aware of the facts hereinbefore stated in regard to the same, and depending so far as they took part in the said transaction upon the good faith of the Defendants Codd and
30 Charlebois.

15. At the time the agreement of April, 1888, was entered into, the Defendant Codd assigned or otherwise provided that his claim in respect of the said \$173,000 should be payable to the Defendant Daniel McMichael to hold as bare trustee for him, the said Defendant Codd, and the said Defendant Daniel McMichael thenceforward was and continued to be, and he is bare trustee of the same for the Defendant Codd.

16. The Defendants John Arthur Codd and Daniel McMichael were de facto directors of the Company at the time of the making of the said contract and agreements between the Company and the Defendant Charlebois, and at the
40 time of the making and execution of the said contract for the construction of the said railway, and the sum which the said Company was thereby intended to be made liable to pay the said Defendant Charlebois was the sum of \$800,000, and no more, in fact, and not the sum of £200,000 sterling as therein mentioned.

16*a.* The Plaintiffs submit that the said alleged contract was and is under all the circumstances aforesaid a fraud upon the Company and the shareholders

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16b. The said alleged contract by the Company was and is a breach of trust on the part of the Defendant Codd and the other directors committed with the knowledge, and at the instance and request of the Defendant Charlebois, and should be set aside.

16c. The Plaintiff submits that the Defendants Charlebois, Allan, Clemow, Devlin and Murray as directors of the Plaintiff Company, and the directors who succeeded them as aforesaid on and prior to the sixteenth day of September 1889, were trustees for the shareholders, and that the bargain and agreement entered into by them with the Defendant Charlebois hereinbefore mentioned for the payments aforesaid to them in respect of their said shares, and for the payments to the Defendant Codd and to the Defendant Charlebois were and are breaches of trust on their part, and that the Plaintiff Company is not bound thereby, and that the said Defendants Charlebois, Clemow, Allan, Devlin and Murray are liable to repay to the Plaintiff Company the said sum of \$228,000, so paid to them together with interest thereon, and that they are not entitled to be paid the amount of the said orders or equitable assignments aforesaid, and that the Defendant J. A. Codd is liable to repay to the Plaintiff Company the said sum of \$10,000.

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16d. Even if the judgment hereinafter mentioned, is not set aside, the amount of the indebtedness of the Plaintiff Company to the Defendant Charlebois, ought to be reduced by the following sums :—

The said sum of - - - - -	\$ 228,000
The said sum payable to Codd, of - - - - -	173,000
The said sum paid to Codd - - - - -	10,000
The amount represented by the price of the Defendant Charlebois shares, say - - - - -	70,000
	<hr/>
	\$481,000

30

And interest.

17. The Company, under the terms of the said alleged contract, was in any event entitled to call upon and require the said Defendant Charlebois to accept in payment of the one hundred thousand pounds of the alleged contract price bonds of the Company at the price of eighty pounds sterling for every one hundred pounds of the face denomination value of the same, when the said Defendant Charlebois should be entitled to the same upon completion and fulfilment of his said alleged contract.

18. The Company paid to the said Charlebois the cash sum of fifty thousand pounds sterling in the said alleged contract mentioned, and thereafter paid for and supplied to him the steel rails necessary for the construction of the first fifty miles of the said railway at a cost of twenty-seven thousand pounds, and the Company in all other respects on their part duly performed and carried out all obligations resting upon them under the terms of the said contract, and all necessary times have elapsed and things happened and were done to entitle the

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Company to a performance of the said alleged contract by the Defendant Charlebois, but the said Defendant Charlebois never did perform the said alleged contract or become entitled to payment of the said balance of the contract price, which, after deducting said payment and the said \$173,000 hereinbefore mentioned, would be \$425,000 upon the full completion and fulfilment of the said alleged contract.

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19. The Defendant Charlebois never did complete the said fifty miles of the said railway in accordance with the terms of the said alleged contract as hereinbefore mentioned, nor did he tender delivery to the Company of the same completed free and clear of all liens or charges for or in respect of work done or materials provided thereon by the said Defendant Charlebois, and those under him, nor did he at any time, nor has he up to the present time, become entitled to the payment of the balance of the said alleged contract price, or any part thereof, under the terms of the said alleged contract.

20. The Plaintiffs say that among other things which the Defendant Charlebois was bound to do under the terms of the said alleged contract, and which he failed to do up to the time of the bringing of this action against the Company, and the recovery of his judgment against the Company herein-after mentioned, and which he has up to the present time failed to do, are the following :—

- (a) The Defendant Alphonse Charlebois did not complete or in fact construct a line of railway commencing at Brandon Station on the Canadian Pacific Railway, or connecting with the Canadian Pacific Railway at Brandon Station, but on the contrary diverted the line of the Company's railway in another direction and away from Brandon.
- (b) The said Defendant Alphonse Charlebois did not make any lawful connection with the Canadian Pacific Railway in compliance with the 173rd or 240th section of the Railway Act, 1888, in that behalf, by reason of which default the Company was unable lawfully or safely to work or operate its line as a line connected with the Canadian Pacific Railway pursuant to the said contract and specification.
- (c) The Defendant Charlebois did not acquire all the right of way necessary for the construction of the said railway, and right of way which he did acquire he never paid for, and the said Defendant Charlebois never acquired three miles or more of right of way necessary to carry the said railway to the line of the Canadian Pacific Railway in order to make the connection therewith hereinbefore mentioned, and he never acquired five miles of right of way necessary to reach Brandon Station on the Canadian Pacific Railway.
- (d) The Defendant Charlebois sublet the contract for the construction of the said fifty miles of railway to a firm of contractors named Macdonald and Schiller, and he failed to pay them the amount he

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contracted to pay them in such sub-contract for the construction of the said railway and the same still remains unpaid to them, and the Defendant Charlebois incurred other liabilities, liens and debts upon and in respect of the said fifty miles of railway, which are still unpaid and undischarged, and all such liabilities, liens, and charges were incurred long prior to the bringing of the said action by the Defendant Charlebois against the Company hereinafter mentioned.

- (e) The Defendant Charlebois failed to furnish locomotives.
- (f) The Defendant Charlebois failed to furnish any cars. 10
- (g) The Defendant Charlebois failed to provide terminal buildings and other works and erections necessary at the terminal of the said road, and he failed to provide water tanks at the terminal of the said road.
- (h) The Defendant Charlebois failed to complete the stations on the line of the said road.
- (i) The Defendant Charlebois did not fence said road.
- (j) The Defendant Charlebois did not provide crossings or cattle guards upon the said road.
- (k) The Defendant Charlebois did not provide any turntables for the said 20 road.

21. In consequence of the default of the Defendant Charlebois and his breaches of the alleged contract, hereinbefore mentioned, the Company acting under the control of the Defendant Codd recognising the said contract for his own ends and contrary to the interests of the shareholders and creditors of the Company, were obliged and did upon entering into possession of the said road as hereinafter mentioned, expend large sums of money in acquiring right of way and providing engines and cars and other of the said matters and things which the Defendant Charlebois had failed to provide and do under the terms of his said contract in order to be enabled to run the said railway by the date then 30 named and insisted on by the Government of Canada in that behalf, and the said Company was obliged to and did thus expend moneys to the extent of \$100,000 or thereabouts after the judgment hereinafter mentioned was obtained by the said Defendant Charlebois as hereinafter stated.

22. Instead of starting the line of the said railway from Brandon Station of the Canadian Pacific Railway, the Defendant Charlebois had diverted the line so that the same struck the Canadian Pacific Railway line about three miles east of Brandon Station where he had devised a temporary point of junction with the Canadian Pacific Railway, which prior to the judgment hereinafter mentioned the Canadian Pacific Railway had notified him they would not allow to be continued, 40 and the Company on taking possession of the line found that owing to the diversion of the line as constructed by the Defendant Charlebois, they would be obliged to purchase right of way for and construct five miles of new line to get to Brandon Station on the Canadian Pacific Railway, which there was not then time to do.

In this difficulty the Company, in order to have the railway running in

time, were obliged to and did purchase three miles or thereabouts of right of way and constructed three miles of new line to connect with Chater Station on the Canadian Pacific Railway, a point seven miles or thereabouts east of Brandon Station on the Canadian Pacific Railway, being the only point where it was possible to make a junction with the Canadian Pacific Railway within the time then allowed by the Government, and in fact the line from Brandon Station as required by the said contract and by the said charter and statutes has never been constructed.

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23. After the advance of the £50,000 by the Plaintiff Delap aforesaid, the directors of the said Company applied to the Plaintiff Delap to assist the Company to raise the further sum of £27,000 to enable the Company to pay for the said rails furnished or to be furnished to the said Charlebois under the said contract, and the said Stevens and the said J. A. Codd proposed to secure the further advance of £27,000 by transferring the said shares then held in trust for the said Plaintiff Delap, or a sufficient portion thereof, to a corporation called The International Trustee Assets and Debenture Corporation, Limited, which had agreed to advance the said sum upon the said security and upon the agreement that the same should also be secured by bonds of the Company, and upon the further condition that the said Plaintiff Delap should become surety for the said sum. 1,250 of the said shares so held by the said Stevens in trust were thereupon transferred by the said Stevens to the said corporation, and the said Plaintiff Delap pursuant to the foregoing agreement became surety for the said corporation, which thereupon advanced the said sum of £27,000 to the Great North-West Central Railway Company, and the Plaintiff Delap has since been obliged to pay the same with interest. Neither the Plaintiff Delap nor the said International Trustee Assets and Debenture Corporation, Limited, had any notice or knowledge of the terms of the contract with the said Charlebois or of facts herein set forth showing the invalidity of the said contract as hereinbefore set forth. The said International Trustee Assets and Debenture Corporation, Limited, by the transaction aforesaid, became transferees of the said 1,250 shares for value without notice of any of the transactions, facts or circumstances hereinbefore set forth, and the Plaintiff Delap is now entitled to the said shares and to the benefit and advantage in all respects of the position of the said International Trustee Assets and Debenture Corporation, Limited, in respect of the said 1,250 shares of stock of the Plaintiff Company, and of the agreement entered into by the Company with the said International Trustee Assets and Debenture Corporation, Limited, dated December 18th 1889.

23a. Afterwards from time to time the Plaintiff Delap at the request of the Company, and with the knowledge of the Defendants Charlebois and Codd, advanced other and further large sums of money, amounting to £20,000 sterling or thereabouts, to the Company for their uses and purposes.

24. All such moneys so advanced by the Plaintiff Delap have not been, nor has any part thereof, or any interest thereon, been paid to the Plaintiff Delap, but the same are now due and owing to the Plaintiff Delap, and the total amount of the indebtedness of the Company to the Plaintiff Delap is the sum of \$500,000, or thereabouts.

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25. The Plaintiff Mansfield also at the request of the Company advanced to and paid to and for the purposes of the Company, subsequent to the month of September 1889, from time to time moneys amounting in all to the sum of £20,000 sterling, and the same have not nor has any part thereof been repaid to the Plaintiff Mansfield. All of such moneys were expended in and about construction of works left undone as aforesaid by the Defendant Charlebois, and in operating the said railway.

26. All such moneys so advanced by the said Plaintiffs Delap and Mansfield were so advanced by them upon the express agreement that the same should be repaid out of the moneys to be realised from the sale of bonds issued, 10 or to be issued, by the Company.

27. Subsequently to the month of September 1889, the Company duly issued bonds of the Company to the amount of \$1,250,000, and executed a mortgage deed securing the same upon the railway of the Company constructed and to be constructed, and all other the property, assets, rents, and revenues of the Company, both present and future, and the right to all subsidies of land when granted to the Company by the Dominion Government, such mortgage bearing date the second day of June 1890, being made by the Company for the purposes aforesaid to the Defendants the Right Honourable Edric Frederick Baron Gifford and Robert Lothian Curzon as trustees.

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28. Immediately upon the issue of the said bonds the same were duly deposited and pledged by the Plaintiff Company with the Plaintiff Delap to secure the moneys then already advanced, and thereafter to be from time to time advanced as aforesaid by the Plaintiffs Delap and Mansfield, and the same have ever since been and still are held by the Plaintiffs Delap and Mansfield to secure the moneys aforesaid and moneys advanced by other persons to the said Company, and the Plaintiffs Delap and Mansfield have always been, together with such other persons not parties to this action, and they were at the time of the action and judgment hereinafter mentioned, entitled to a lien and charge upon the whole bond issue of the Company in their hands, for the moneys so 30 advanced by them, and interest thereon, and for the moneys advanced by other persons as aforesaid, of which the Defendants Charlebois and Codd were always well aware.

29. At the time of the commencement of the action against the Company hereinafter mentioned by the Defendant Charlebois, as the Defendants Codd and Charlebois well knew, the Company besides being indebted to the Defendants MacDonald and Preston as aforesaid and to the other charges under the Company's charter in large sums of money, was indebted to the Plaintiffs Delap and Mansfield in the sum of \$600,000, or thereabouts, charged on the said bonds as aforesaid, in respect of which it was urgently necessary to provide for pay- 40 ment, as the Defendants Charlebois and Codd well knew.

30. By reason of the non-completion of the said contract, as the said Defendant Charlebois well knew, the Company would be, and in fact was, prevented from negotiating sales of the bonds of the Company wherewith to pay the indebtedness of the Company, and to liquidate the amount which the said Defendant Charlebois would become entitled to upon the completion of his said contract, and the Defendant Charlebois well knowing this fact contrived and

formed in his mind the scheme of harassing the Company and tying up their property so as to prevent their realizing their said bonds, and in order to procure payment by the Company of the \$50,000 aforesaid agreed to be paid by the said Codd to him on completion of the said railway, and in order that the property of the Company might be depressed and depreciated, and that he might procure the same to be put up for sale, and that he might through himself or his friends acquire the same at a depreciation and to the great loss and injury of the Plaintiffs and the other shareholders and of the creditors of the said Company.

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- 10 31. The Defendant Charlebois by fraud and deceit, and without the knowledge and consent, and against the wish of the Company, and in their absence and by falsely pretending that he was applying therefor on behalf of the Company, obtained an order of the Governor-General in Council altering the terms as to gradients, location and other material particulars of the contract between the Company and the Government to which the contract between the said Charlebois and the Company referred, and obtained from the Chief Engineer of Government Railways a report thereon to the Department of Railways and Canals to the effect that the said railway had been completed, except certain grading and unimportant work therein referred to, and thereupon the said
- 20 Defendant Charlebois in the same manner and by the same means obtained an order of the Governor-General in Council, bearing date the 19th day of March 1890, allotting to the Company three hundred and twenty thousand acres of land, being the land subsidy which would be earned by the completion of the said first fifty miles of railway, and by the same means on or about the 10th day of August 1890, procured the Chief Engineer of Government Railways to report that the said railway had been fully completed, and in all such transactions with the Government of Canada and the officers thereof they were deceived by the plans and profiles filed in this among other things, that the same did not disclose that the said railway had not been constructed from Brandon Station on the
- 30 Canadian Pacific Railway, as hereinbefore stated, and in this that the said plans and profiles do not show that the said railway was constructed in a different direction and with a different starting-point contrary to the statutes and contracts aforesaid.

32. Thereupon the Defendant Charlebois, in pursuance of the scheme which he had conceived as aforesaid of harassing the Company, in or about the month of September 1891, commenced an action in the Chancery Division of the High Court of Justice for Ontario, in which the Defendant Alphonse Charlebois is Plaintiff and the Company are Defendants, falsely setting up and claiming that the said contract had been fully and completely performed by him, and that all

40 other acts had been done and things happened to entitle him to payment of the moneys contracted to be paid to him on the completion of the said railway under his said contract with the Defendant Company, and thereupon falsely alleging the facts aforesaid by affidavit and using the Orders in Council and the reports of the Chief Engineer of Government Railways hereinbefore mentioned, procured from the said Court an *ex parte* order bearing date the 12th day of September 1891, by which the said Court ordered as follows, that is to say :—

“ (2) This Court doth order that the Defendants, their directors, officers and
“ servants, agents and workmen, be and they are, and each of them is

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“ hereby restrained from in anywise encumbering, assigning, trans-
 “ ferring or hypothecating the land grant to the Defendants of
 “ 320,000 acres allotted to them by Order in Council, of date the
 “ 19th March 1890, and particularly referred to in the affidavit of
 “ the Plaintiff above mentioned, or the right of the Defendants to
 “ said land grant, or their interest therein to the trustees under the
 “ mortgage deed to secure the Defendant’s bond issue, which deed
 “ is dated the 2nd June, 1890, and registered with the Secretary of
 “ State for Canada on the 4th of July 1890, or to either of said
 “ trustees, or to any other person or persons or corporation 10
 “ whatsoever, and from in anywise dealing with the said land grant
 “ or the right of the Defendants thereto or their interest therein, and
 “ from further issuing and from negotiating, pledging or selling the
 “ Defendants’ mortgage bonds or debentures, or any of them upon
 “ or purporting to cover the first fifty miles of the Defendant’s
 “ railway constructed by the Plaintiff, and its appurtenances and
 “ equipment particularly referred to in the said affidavit of the
 “ Plaintiff, and from leasing, selling, transferring, encumbering or
 “ disposing of said fifty miles of railway, its equipment or appur-
 “ tenances, until the 15th day of September 1891, or until the motion 20
 “ on that day to be made to continue and extend this injunction
 “ shall be determined.

“ (3). This Court doth further order that service of the notice of motion to
 “ continue and extend this injunction if made at or before the hour
 “ of 12 o’clock noon, on Monday, the 14th inst., be deemed sufficient
 “ service of said notice.”

The Defendant, J. A. Codd, had theretofore become the president of the Company, and the said Defendant Charlebois caused the Company to be served with the writ of summons in the said action, and with the said order and a notice of motion to continue the injunction thereby granted, and to extend the same by 30 serving the said J. A. Codd, as president of the Company, as aforesaid.

33. At the time of the service of the said writ the Defendant McMichael, being in fact trustee of the claim to the said sum of \$173,000, for Defendant Codd, claimed to be payable by the Company, as part of the contract price in the construction contract with the Defendant. Charlebois was a director of the Company of which the Defendant Codd was president, as aforesaid, and upon service of the said writ of summons in the said action, the Defendant McMichael was instructed by the Defendant Codd to act, and he did act as solicitor and as counsel for the Company, and appeared upon the return of the notice of motion aforesaid to represent and he did represent the said Company throughout the 40 said action, and particularly in consenting to the judgment, and upon the pronouncing of the order hereinafter set forth, and this was all done on the part of the Defendants Codd and McMichael without any consultation of, or meeting of, and without the knowledge of the Plaintiff Delap and the other shareholders of the said Company, as the Defendant Charlebois well knew.

34. Thereafter, without any pleadings in the said action, on the 28th day of September 1891, a judgment—or order was made by the said Court, in the said action, in the words and figures following, that is to say :—

" In the High Court of Justice, Ontario.

" Chancery Division.

" Before Mr. Justice Ferguson. Monday, the 28th of September, A.D. 1891.

" Between

" Alphonse Charlebois Plaintiff,

and

" Fos. 25.

" The Great North West Central Railroad Company . Defendants.

RECORD.

No. 2.
Amended
Statement
of Claim—
continued.

10 " Upon motion made unto this Court by Counsel for the Plaintiff, to continue and extend injunction granted herein on the 12th day of September instant, in presence of Counsel for the Defendants, and Counsel aforesaid consenting that the said motion be turned into a motion for Judgment, and
" consenting to this Judgment :

" (1) This Court doth declare that the Plaintiff has a lien on all the property, including the line of railway, lands, land grant, and other assets of the said Defendants, as set out in the contract for the building of the first 50 miles of railway, between the Plaintiff and the Defendants for the sum of \$622,226, and doth order and adjudge the same accordingly.

20 " (2) And this Court doth further order and adjudge by the like consent that the Defendants do within six months from the date of this Judgment pay the said sum, \$622,226 and interest, in the manner following, that is to say:—The amount of said first lien and charge which the Plaintiff is hereby declared to have upon the said railway, its right of way, road-bed, rails, surplus land, rolling stock, chattels, land grant, or right to land grant, and which lien is declared to have priority over any mortgage or bond or other encumbrance made by the Company which is settled as above mentioned at the sum of \$622,226 is payable to the parties and in the order hereinafter set forth with interest at the rate of 6 per cent. per annum on the sum of \$518,384, and at the rate of 4 per cent. per annum on the sum of \$108,842 in
30 " six months from the date hereof, during banking hours, on the 31st day of March 1892, at the office of the Bank of Montreal, in the City of Ottawa, Ontario. The said sum of \$622,226 is at the request of the said Plaintiff declared to be payable to the following persons in the following order of priority, and the said fund is charged accordingly in favour of such persons:—

" (a) To Macdonald and Schiller, the sub-contractors on the road, \$60,640, and \$3,789 for interest on the said sum to date, in all \$64,429, which sum includes the order for \$20,000 dated the 10th of June 1890, accepted by the Defendants, and now in possession of Frank S. Nugent, Esq., which lien

RECORD.
 —
 No. 2.
 Amended
 Statement
 of Claim—
 continued.

“ the said parties represented herein by their solicitor and Counsel, the said Mr. Nugent agreed to accept as cash, and to credit the same in the suit now pending in the Courts of Manitoba by the said Macdonald and Schiller against the said Plaintiff, as if paid into Court in the said suit. The said sum is paid as the amount found due by the final certificate of J. H. E. Secretan, civil engineer, the Plaintiff's engineer, with interest as agreed upon, the said Macdonald and Schiller being at liberty to continue their action in the Province of Manitoba for the recovery of any alleged balance that may be claimed by them against the Plaintiff.

“ (b) To W. A. Preston, fencing contractor, \$7,810, and for interest \$590, 10 in all \$8,400, the said Preston hereby accepting the provisions of this Judgment by the said solicitor and Counsel, the said Nugent consenting thereto in full of his claims against the said Plaintiff.

“ (c) To the Crossen estate or company for their judgment and costs against the Plaintiff, \$39,000. The three preceding claims are to rank as between themselves *pari passu*, and these claims are payable by the Defendant Company in six months from this date, with interest on their respective sums of principal money from this date. And these parties accepting the provisions hereof, do so in full of all other liens now claimed, and deliver up possession of the said railway and all the property thereof to the Defendants. 20

“ (d) The second charge on the said fund is to be the sum of \$380,397 with interest at 6 per cent. on \$271,555, and at 4 per cent. on \$108,842, which is payable to the Plaintiff for his own use or for the use of any person or corporation to whom he may have heretofore assigned the moneys, payable to him or a portion thereof under his said contract, according to their several present priorities, if any, payment to any holder of any such order or orders to be considered as payment to the Plaintiff by the Defendants.

“ (e) The third and last charge on the said fund is to be the residue, namely, the sum of \$130,000, with interest thereon to date, payable to Daniel McMichael, Esq., Q.C., as trustee, in full satisfaction of all claims 30 under a certain order or agreement for the payment of a sum stated therein at \$173,333.33 in full adjustment of all matters in dispute between the said parties hereto, J. A. Codd, the said D. *McMichael, trustee, the Defendants, and all other persons, waiving and declaring all personal claims against the Plaintiff under the said order or agreement as satisfied and discharged.

* Sic.

“ (3) And this Court doth further order and adjudge that in default of such payments, or any of them, being made within six months from this date, the Plaintiff may proceed to exercise all his rights as chargee of the said premises and all of them ; the said rights being in full rights of a mortgagee with judgment for sale, the Company to be subject to the Order of the Court 40 as to any conveyance required to be executed to carry out any sale upon default.

“ And this Court doth further order and adjudge that the defendants be at liberty to pay the sums mentioned in Clause 2 of this Judgment, at any time

“ with interest to date of payment, by depositing the same in the branch of
 “ the Bank of Montreal, in the City of Ottawa, and the certificate of the
 “ manager of such bank of the non-payment of the said sums of money is to
 “ be *prima facie* evidence of such non-payment.

RECORD.
 No. 2.
 Amended
 Statement
 of Claim—
continued.

“ (4) And this Court doth further order and adjudge that the immediate
 “ possession of the said line of railway, rolling stock, property and all the
 “ assets connected therewith in its present condition, subject to the said lien or
 “ charge and right of the plaintiff to have possession upon default on the order
 “ of this Court, are hereby vested in the said defendants, who are entitled to
 10 “ immediate possession and control thereof until default shall be made in the
 “ conditions of this Judgment.

“ (5) And this Court doth further order and adjudge that the proceeds
 “ of any lands of the land grant contemplated by the charter of the Defendants
 “ be applied as contemplated by the said charter and mortgage deed for the
 “ benefit of the bonds of the said Company, or of any bonds that may
 “ hereafter be issued in substitution for such present existing bonds, and so
 “ much of the proceeds of said bonds or substituted bonds as may be necessary
 “ to discharge the indebtedness mentioned in the first clause of this Judgment
 “ is to be applied forthwith on such sale, and no sum, the proceeds of such
 20 “ sale, is to be applied in any other way until such payment is fully made.
 “ The whole of the said bonds, the issue of which is not to exceed £515,600
 “ sterling, are to be deposited forthwith, or remain with the Safe Deposit
 “ Company, No. 1, Queen Victoria-street, London, England, under the terms
 “ of this Judgment, and are not to be pledged except to pay the Plaintiff's
 “ claim, and are there to remain until the sale or pledge thereof; and the
 “ proceeds of all such bonds when dealt with are forthwith to be transmitted to
 “ the said branch of the Bank of Montreal, in Ottawa, until the payment of
 “ the amount payable under the first Clause of this Judgment. And in case the
 “ whole of the said bonds are not so deposited within one month from this
 30 “ date, such non-deposit shall be a default making the whole of the moneys
 “ secured hereby at once due and payable, and the lien hereby given may at
 “ once be enforced.

“ (6) And this Court doth further order and adjudge, that the further
 “ construction, contract, or contracts held by the Plaintiff in respect of a
 “ portion of the road of the Defendants is or are to be forthwith transferred
 “ by the Plaintiff to the nominee of the Defendants without any covenant
 “ or responsibility by the Plaintiff in respect thereof. The Plaintiff is to
 “ retain all material and plant, including cars, in connection with the said
 “ contract or contracts. The three engines placed on the road by the Plaintiff
 40 “ are likewise to be retained by him.

“ (7) And the Plaintiff by his said Counsel hereby undertaking,

“ This Court doth further order and adjudge that any liability under which
 “ the Plaintiff rests for the discharge of the claims referred to in Section 27
 “ of the Act, of the Defendant's incorporation be, notwithstanding this
 “ Judgment, discharged by the said Plaintiff, who is claimed by the Defendants

RECORD. "to be bound to indemnify the Defendants in respect thereof, this Judgment
 — "being intended not to add to any liability that now exists in respect thereof,
 No. 2. "but simply to declare and order that under any existing liability the
 Amended "Defendants are to be indemnified in respect thereof by the Plaintiff. All
 Statement "rights under this head are to remain unaffected either way by this
 of Claim— "Judgment.
continued.

"(8) And the Defendant Company having been allowed in the afore-
 mentioned sum of \$130,000 the sum of \$3,000 as a deposit against right
 of way claims and the expenses and costs connected therewith, in respect of
 the said first 50 miles contract: This Court doth by the like consent order 10
 and adjudge that any portion of the said sum of \$3,000 that may not be
 needed for the purposes aforesaid shall be added to the lien hereby created in
 favour of the Plaintiff and be payable by the Defendants to the Plaintiff.

"Judgment signed this 3rd day of October 1891.

"(signed) GEORGE S. HOLMESTED,
 "Registrar.

"Entered 3rd October, 1891.

"J. B., 16 P.—76.

"(signed) W. O'N."

[L.S.]

35. On the motion on which the said Judgment was pronounced the 20
 Defendant Charlebois admitted as the fact was, and is, that he had not
 completed the said railway as he was bound to do by the said alleged contract,
 and he was not, in fact, entitled to any relief, but he falsely represented and
 caused the said Defendants Codd and McMichael to believe, and they did
 believe, that the said road was constructed to and had a lawful junction with
 the Canadian Pacific Railway and was ready to be run as a railway in lawful
 connection with the Canadian Pacific Railway, and that if he gave them
 possession thereof they would be able to run the same immediately and comply
 with the time condition imposed in that respect by the Government of Canada,
 all of which was contrary to the fact. 30

36. The Defendants Charlebois and Codd thereupon for their mutual
 advantage, with a full knowledge of, but without regard to the true interests
 of the Company and the interests of the Plaintiff Delap and the other
 shareholders, and the interests of the Plaintiffs Delap and Mansfield as chargees
 of the said bonds, and of the other creditors of the Plaintiff Company, and,
 in fact, with the intention and design of gaining priority over the Plaintiffs
 and all other creditors of the Company, agreed together in the manner set
 forth in the said Judgment and consented to in Court in manner and form
 aforesaid.

37. The Defendants Codd and McMichael were by their interests in the 40
 said Charlebois contract, the subject of the said action and Judgment, and
 the moneys claimed by him from the Company thereunder and by the
 agreement between the Defendant Codd and Charlebois, hereinbefore mentioned

in respect of the said \$50,000, and also by reason of certain other claims made by the Defendant Charlebois against the Defendant Codd personally, as hereinafter mentioned in fact interested adversely to, and were incapacitated from acting for or representing the Company and the shareholders and creditors thereof, including the Plaintiffs Delap and Mansfield, and from taking upon themselves the defence of the said action or consenting to the said judgment in the name of the Company, as they did do, and of the incapacity for the reasons aforesaid of the Defendants Codd and McMichael, the Defendant Charlebois was well aware when he brought the said action and
 10 obtained the said judgment.

RECORD.
 No. 2.
 Amended
 Statement
 of Claim—
 continued.

38. Under the circumstances aforesaid the Defendants Codd and McMichael were, by reason of the provisions of the Railway Act, not in the position of directors of the Company, and the Defendant Codd was not the lawful President of the Company, and the said two Defendants did not, in fact, represent the Company, as the Defendant Charlebois well knew.

39. At the time of ascertaining the sum to be ordered to be paid by the said judgment, the Defendant Charlebois claimed that the Defendant Codd personally owed to him the following sums, viz.:

20	The said sum of	-	-	-	-	-	\$50,000	00
	Two orders by Codd upon him	-	-	-	-	-	32,866	00
	Money loaned	-	-	-	-	-	10,000	00
							<hr/>	
							\$92,866	00

And the amount of the said judgment was arrived at between them upon a statement of the account between them to the following effect, that is to say:

	Contract price under contract	-	-		\$973,133	00
	Balance of Government deposit	-	-		24,105	00
					<hr/>	
					\$997,238	00
	Received by Charlebois thereon £50,000					
	sterling	-	-	-	-	\$243,333 00
30	Rails	-	-	-	-	129,574 00
	Balance Government deposit	-	-	-	-	24,105 00
					<hr/>	
					\$397,012	00
					<hr/>	
					\$600,226	00
	Allowed for interest upon settlement to date	-	-		22,000	00
					<hr/>	
					\$622,226	00

Which sum is by the said judgment directed to be paid in different amounts to the persons therein mentioned, including the sum of \$130,000 to the Defendant McMichael, which was arrived at upon the following basis:

Commission to Codd	-	-	-	-	-	\$173,133	00
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RECORD.

No. 2.
Amended
Statement
of Claim—
continued.

	ADD.	
Allowance for engines - - -	\$20,000 00	
Allowance for fencing - - -	13,000 00	
Right of way - - -	3,000 00	
Rolling stock - - -	25,000 00	
	<u>\$ 61,000 00</u>	

Allowance to Company and commissions - - \$234,133 00

	LESS.	
Items claimed from Defendant Codd as		
above set forth - - -	\$92,866 00	
Costs of surveys - - -	5,128 00	10
Costs of spikes - - -	5,940 00	
Duty paid on rails - - -	144 00	
	<u>\$104,078 00</u>	

Total amount payable to Defendant
McMichael, trustee for Defendant Codd - - \$130,055 00
Say \$130,000.00.

40. The said account shows that the Defendant Charlebois admitted that he had not completed the said railway in certain respects, and allowed to the Company items in respect of such admitted non-completion to the amount of \$61,000, in reduction of what was claimed by him under his contract, but he in effect set off against this sum only \$11,212 of alleged liabilities of the Company, and extinguished the balance by setting off debts claimed to be owing him personally by Defendant Codd to a greater amount, for which debts the Company was in no way responsible, and thus got a judgment wrongfully against the Company for payment thereof to the amount of \$49,788.

41. In the said account also, the Defendant Charlebois added to his contract price of \$800,000 the sum of \$50,000, agreed to be paid to him personally, and by purporting to deduct the same from the said sum of \$173,000 hereinbefore mentioned, which the Company was not liable to pay thereby obtained a judgment against the Company for that amount of \$50,000 which was (if a debt at all) only a personal debt of the Defendant Codd to him for which the Company was not liable.

42. In order to enable the said Defendant Charlebois to obtain judgment improperly for the sums aforesaid against the Company, he and the Defendant Codd agreed together, that the said sum of \$173,000 should be treated as part of the contract price in fixing the amount of the said judgment.

43. In the said account the Defendant Charlebois was wrongfully allowed interest on his claim as if in fact the same had been actually earned and payable at a time prior to the said judgment.

44. After the said judgment was consented to and pronounced, the Defendant Codd continued to act as the President of the Company and as a director

thereof, and called upon the Defendant Charlebois to give to the Company, whom he assumed to represent, possession of the said railway that he might comply with the time condition imposed by the Government as aforesaid as to the running of the railway, but the Defendant Charlebois neglected and refused to deliver possession and was in fact unable to, and he never did in fact deliver or cause to be delivered possession of the said railway to the Company or to the said Defendant Codd, the fact was, and is, that the Defendants Macdonald and Schiller were in possession of the same and they refused to deliver up possession of the same notwithstanding the terms of the said judgment unless they were paid the sum of \$64,429, or thereabouts, claimed to be due to them by the Defendant Charlebois.

RECORD.
—
No. 2.
Amended
Statement
of Claim—
continued.

45. In consequence of the facts last aforesaid the Defendant Codd, after several weeks of delay in waiting for action on the part of Defendant Charlebois, entered into separate and independent negotiations with the said Defendants Macdonald and Schiller, and obtained possession of the said railway from them by an agreement independent of the said Charlebois in the month of December 1891, and the Defendant Codd assuming to represent the Plaintiff Company as President thereof has ever since been and is now in possession of the said railway by virtue of such independent contract with the Defendants Macdonald and Schiller.

46. Under the conditions imposed by the Government the Company was obliged to have the said railway running on or before the 15th day of December 1891, as a line in connection with the Canadian Pacific Railway, and upon obtaining possession thereof as aforesaid found for the reasons hereinbefore stated that three miles of new line had to be constructed to reach Chater Station, there being no time to construct to Brandon, and therefore the Company was obliged to and did expend moneys that had theretofore been provided for working capital in building the said connecting link, and were also obliged to and did expend various other large sums of money in providing locomotives and rolling stock and other matters and things omitted to be done by the Defendant Charlebois, and so expended in all \$100,000 or thereabouts, all of which formed part of the moneys advanced by the Plaintiffs Delap and Mansfield aforesaid.

47. The Company was desirous of realising the said bonds in order to carry out the agreement aforesaid with the Plaintiffs Delap and Mansfield, and with the Defendants Macdonald and Preston, and to provide for payment of all lawful demands against the Company, and for this purpose it was absolutely necessary that the said railway should be running and complete, and of this the Defendant Charlebois was well aware.

48. The Company was hindered and delayed by the said judgment and by the delay in getting possession of the said railway aforesaid caused by the Defendant Charlebois from realising the Company's bonds.

49. While the said Company was so hindered and delayed the Defendant Charlebois in further pursuance of his scheme aforesaid applied for and obtained an order in the said action three months before the expiry of the time limited

RECORD. for payment of the said judgment, which order is in the words and figures following, that is to say :—

No. 2.
Amended
Statement
of Claim—
continued.

“ In the High Court of Justice,

“ Chancery Division,

“ The Honourable Mr. Justice Ferguson,

“ Monday, 29th day of February 1892.

“ Between

“ Alphonse Charlebois - - - Plaintiff,

“ and

“ The Great North-West Central Railway Company - - Defendants. 10

“ Upon motion made unto this Court by Mr. Osler, Q.C., of Counsel for
“ the Plaintiff, on the 15th day of February instant, and again this day in the
“ presence of Counsel for the Defendant Company, for an Order declaring that
“ the Defendant Company has made default in fulfilling the requirements of the
“ consent judgment herein dated the 28th day of September 1891, in that the
“ whole of the bonds of the Defendant Company have not been deposited as
“ required by the terms thereof within the time therein limited, and for an
“ Order that the sum of \$622,226.00 and interest as in said judgment mentioned
“ be paid forthwith, and that the Plaintiffs' rights and remedies under said
“ judgment might be at once enforced, and for such further Order as to this 20
“ Court should seem meet, upon opening of the matter, and upon hearing read
“ the injunction Order of the 12th day of September last, the depositions
“ of John Arthur Codd, taken on the 19th day of September last, the said
“ consent Judgment of the 28th day of September last, and the several affidavits
“ of Arthur Guy Ellis, of the Plaintiff, and of James H. E. Secretan, C.E.,
“ of Gordon S. Henderson, and of W. Elgin Dunn, filed, and the several
“ exhibits thereto, and upon hearing read the depositions of John Arthur Codd,
“ taken on the 20th day of February instant, upon cross-examination on his said
“ affidavit filed the affidavit of Charles D. Fripp, filed in reply, and the bank
“ manager's certificate verifying the same, and the Plaintiffs' affidavit of non- 30
“ payment filed by leave of this Court, and upon hearing what was alleged
“ by Counsel aforesaid :

“ (1) This Court doth declare that the bonds of the Defendant Company,
“ referred to in paragraph No. 5 of the said judgment of the 28th day of
“ September last, have not been and are not deposited as required by the fifth
“ clause of the said judgment, and that default having been so made by the
“ Defendant Company, the whole of the moneys, viz. : \$622,226 and interest
“ secured by the said judgment, is now due and payable, and that the Plaintiff
“ is entitled to enforce his rights and remedies under the said judgment forth-
“ with, and doth order the same accordingly :

“(2) And this Court doth further order and adjudge that the Defendant Company do forthwith pay the said sum of \$622,226 with interest from the 28th day of September last on \$513,384 thereof at the rate of six per centum per annum, and on \$108,842 thereof at the rate of four per centum per annum.

RECORD.

No. 2.

Amended
State ment
of Claim—
continued.

“(3) And this Court doth further order and adjudge, pursuant to said consent judgment, that the Defendant Company do forthwith deliver up immediate possession to the Plaintiff, or his agent, of the constructed line of the Great North-West Central Railway from its junction with the Canadian Pacific Railway, and thence north-westwardly, and of all the rolling-stock, property and assets heretofore taken possession of by the Defendant Company under said judgment, and Clause 4 thereof; and that the Plaintiff do have, and be given, and accorded by the Defendant Company possession thereof, and of the right-of-way, road-beds, rails, ties, buildings, equipment, telegraph line, rolling stock, chattels, and surplus lands; and also of the land grant of 320,000 acres allotted to the Defendant Company by Order in Council of date the 19th day of March 1890, and of all right thereto, and of all other property both real and personal, appurtenant to the said constructed line of railway, or used in connection therewith; and of all deeds, documents and evidence of title, and of all plans, profiles and drawings thereof.

“(4) And this Court doth further order and adjudge that the constructed line of the Great North-West Central Railway, from its junction with the Canadian Pacific Railway and thence north-westerly, and its right of way, road-beds rails, ties, buildings, equipment, telegraph line, rolling stock, chattels, and surplus lands, and also the land grant of 320,000 acres allotted to the Defendant Company by the Order in Council of date the 19th day of March 1890, and all the Defendant Company's rights thereto, and all other property both real and personal appurtenant to the said constructed line of railway, or used in connection therewith, or a competent part thereof, be forthwith sold, and that for such purpose it be referred to W. M. Matheson, Esquire, one of the Masters of this Court at Ottawa, that all necessary inquiries may be by him made, accounts taken, costs taxed and proceedings had for such sale, which shall be by public auction, tender, or private contract, at such place and date as to the said Master shall seem best, such sale being subject to the standing conditions of sale of this Court, save and except that the Plaintiff shall be at liberty to bid and buy at any such sale, which shall be without reserve, and the said Master shall appoint a solicitor to conduct such sale: And this Court doth further order that in the event of a sale the said Master shall execute a conveyance or conveyances to the purchaser or purchasers, such conveyance to be settled by the said Master, and that the purchaser or purchasers do pay their purchase-moneys into Court to the credit of this action, subject to the order of this Court, and to be thereafter paid out to the parties the said Master shall find entitled thereto: And this Court doth further order and adjudge that the Defendant Company do thereupon convey the property so sold to said purchaser or purchasers, and do sign and seal and execute all conveyances, assignments, assurances, deeds and papers which shall, in the opinion of the said Master, be necessary and expedient for the purpose of carrying out or perfecting any such sale.

RECORD.

No. 2.
Amended
Statement
of Claim—
continued.

“(5) And this Court doth further order and adjudge that the Defendant Company, its directors, officers, servants, workmen, and agents be, and they are and each of them is, from the date hereof, hereby perpetually restrained from in anywise negotiating, pledging, selling, delivering, or otherwise dealing with the bonds or debentures of the Defendant Company which may have been heretofore made or signed in pursuance of the mortgage trust deed of date the 2nd day of June 1890, or of any other deed, or otherwise howsoever, and from making, signing, or issuing any bonds or debentures whatever, and also from in anywise transferring, encumbering, assigning, pledging or mortgaging to any person or persons, corporation 10 or otherwise, dealing with the land grant of 320,000 acres allotted to the Defendant Company by Order in Council of date the 19th day of March 1890, or the right of the Defendant Company thereto or its interest thereon or from purporting so to do, and also from leasing, selling, transferring encumbering or disposing of the said constructed line of railway and the property and rights both real and personal, mentioned and set out in paragraph No. 3 hereof, or from purporting so to do, or from in anywise exercising any acts of possession or ownership with respect to the aforesaid constructed line of railway and the said property and rights, or from in anywise interfering with or molesting the Plaintiff, his servants or agents, or 20 those claiming under him or them, or any purchaser or purchasers thereof, or any other person or persons in the free exercise of the possession, ownership, control, and management thereof.

“(6) And this Court doth further order and adjudge that the Plaintiff may add his costs of this action, incurred since the consent judgment of the 28th of September last to his debt, such costs to be taxed in the usual way.”

50. The third paragraph of the said Order of the 29th day of February 1892, orders the Plaintiff Company to deliver possession to the Defendant Charlebois, not only of that part of the said railway which he alleged that he constructed under his said contract, but also of the three miles thereof 30 constructed and paid for by the Plaintiff Company after the said judgment was pronounced, and of the locomotives, cars and equipment which the said Company had also supplied and furnished at their own costs and charges after the said Defendants Macdonald and Schiller ceased to have possession of the said railway after the said judgment.

51. The said Order goes beyond the relief given by the said consent judgment, and was and is beyond the jurisdiction of the Court, and should be so declared.

52. The said Defendants Codd and McMichael on the application of the said Order, and after the making of the same, being incapacitated as aforesaid 40 wrongfully, further assumed to represent the Company, and they failed to raise the true defences of the Company as herein set forth, and they never at any time brought the said Judgment and Order before the Company or the shareholders thereof, but the said Defendant Codd, as the Defendant Charlebois well knew, acted as aforesaid, and in not informing the Company and

shareholders and creditors thereof for his own purposes and in his own interest, and not in those of the parties he purported to represent as president and director. The Defendant McMichael was the personal solicitor of, and instructed by, the Defendant Codd alone.

RECORD.
—
No. 2.
Amended
Statement
of Claim—
continued.

53. The said Defendant Charlebois did not pay and discharge the said claims of the said Macdonald and Preston, and with the knowledge of the said Defendant Charlebois the said Defendants Macdonald and Preston brought suit in the Province of Manitoba against the Company, and recovered judgment on the 12th day of September, A.D. 1892, for the sum of \$44,877.22, being the amount
10 claimed by the said Macdonald and Preston to be due to them in respect of their claim aforesaid, with interest from the first of January 1888, and costs, making in all the sum of \$57,340.69, and the same with interest thereon, is claimed by the said Macdonald and Preston to be payable by the Company to them, and should be ordered to be paid by the said Charlebois, and is a first charge on any moneys he may be, or become entitled to be, paid.

54. The said Defendant Charlebois falsely represented to the Company at and before the time of obtaining the said judgment, that the said Charlebois had duly discharged and satisfied all claims upon the said railway charged thereon by the said charter of incorporation, and produced a certificate from
20 proper officers of the Government of Canada certifying that the said claims had been settled, which was and is untrue.

55. After taking possession of the said railway the Company discovered and the fact is that the said Defendant Charlebois had not settled or discharged the claim of the said Macdonald and Preston aforesaid, and that the said certificate had been improperly obtained, and the said Macdonald and Preston afterwards recovered judgment against the Company therefor as above stated, and the said claim and judgment embarrass the Company in disposing of its said bonds, and the terms of the said judgment prevent the said Company from
30 theretofore contracted and agreed to pay out of the proceeds of the said bonds to the said Macdonald and Preston as hereinbefore stated.

56. The Company is in any event entitled to set off and deduct from the moneys which the Defendant Charlebois claimed to be entitled to under his said alleged contract so far as the Plaintiffs have been able to ascertain the following sums, that is to say:—

(a) The amounts charged upon the undertaking of the Defendant Company by their charter due to Macdonald and Preston on which there is unpaid for principal interest and costs up to the 17th September
40 1892 - - - - -

\$ 57,340 69

(b) The amount payable to the said John A. Codd as aforesaid - - - - -

173,000 00

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No. 2.
Amended
Statement
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continued.

(c)	The amount due to the sub-contractors Macdonald and Schiller, who claim a charge upon the said undertaking of the said Company in respect thereof as stated in the said judgment	64,429	00
(d)	The amount of cash paid by the Company to the Defendant Charlebois on the execution of the said contract	250,000	00
(e)	Cash paid by the Company for rails, etc.	129,574	00
(f)	Amount expended by the Company in works necessary to enable them to run their said railway	100,000	00 10
(g)	Amount yet to be expended to complete the said railways as required by the said contract to Brandon Station	80,000	00
(h)	Other deficiencies, damages by loss of revenue, etc., to the Plaintiff Company by the breach of contract of the Defendant Charlebois and by his interference, which sum is in excess of the sum of \$973,000 (£200,000 sterling) named as the contract price in the said contract	300,000	00

57. The Company was not at any time in default to the said Defendant Charlebois, and no sum at any time remained due and unpaid to the said Defendant Charlebois under the said alleged contract, and he was not at the date of the said judgment or at any time entitled to the possession of the said railway or any part thereof. 20

58. In any event under the said alleged contract, as hereinbefore stated, when by the completion of the works in accordance therewith the contract moneys are payable to the Defendant Charlebois, the Company is entitled to pay \$486,500 (£100,000 sterling) thereof in bonds of the Company in lieu of cash, the same to be taken and accepted by the Defendant Charlebois in that case at eighty cents in the dollar of the face value of such bonds, and bonds of the Company to the requisite amount have been always available to pay the said Defendant Charlebois when he shall be entitled to receive the same if the affairs of the Company shall at that time render it expedient to give him the said bonds instead of money, but in the said action the Defendants Codd and Charlebois agreed together for their own purposes and against the interests of the Company to, and they have by the said judgment and order allowed the said provisions of the said contract to be ignored and overruled to the great damage of the Plaintiffs. 30

59. Up to, and at the time that the said judgment was pronounced, the Company and the Shareholders thereof, including the Plaintiffs, believed the representations of the said Defendant Charlebois, and were not in a position to impugn or attack the reports and certificates of the Chief Engineer of Government Railways, and they were endeavouring to dispose of the bonds of the said Company, to raise money to pay the liabilities of the said Company, including what (if anything) 40

the Defendant Charlebois might be entitled to, but they were not assisted in so doing, but were secretly opposed and hampered by the said Defendant Charlebois, and they had not at the time of the commencement of the said action been able to realise the said bonds for these reasons, and the Defendant Charlebois so hampered and obstructed them in the sale of the said bonds, as part of the scheme which he conceived as aforesaid.

RECORD.

—
No. 2.
Amended
Statement
of Claim—
continued.

60. The Plaintiffs Delap and Mansfield had not, and the shareholders and creditors of the Company had not until shortly before the commencement of this action, any notice or knowledge of the true position of matters between the
10 Defendant Codd and Charlebois, as hereinbefore set forth, or of the illegality of the said alleged contract or of the fact that the said Codd was interested, as aforesaid, in the said contract money to the extent of \$173,000, or of the mode in which the said sum in the said judgment mentioned had been arrived at, as aforesaid, or any other of the circumstances hereinbefore mentioned, surrounding the pronouncing of the said judgment and order.

61. The consent which is recited in the said judgment on the part of the Company was never authorised or given by the said Company, or by anyone on their behalf, with power to authorise the same as competent to represent the Company. No meeting of the shareholders had been called, or has ever been
20 called to authorise, or sanction, or adopt the same, and the shareholders of the Company repudiate the said consent alleged to have been given on the part of the said Company to the said judgment.

61a. In and by the said mortgage deed to secure the said bonds of the Company made to the Defendants Gifford and Curzon, the Company after reciting that the Company is entitled to a free grant of 320,000 acres of land in respect of the first 50 miles of the Company's railway aforesaid, the Company covenants with the Defendants Gifford and Curzon in the words following:—

“ The Company shall diligently prosecute the construction and equip-
ment of the said railway, and will do all things necessary to entitle itself to
30 “ grants of land at the rate aforesaid and to obtain such grants so soon as
“ the Company is entitled to the same and will forthwith as to the said
“ three hundred and twenty thousand acres and as to the remainder of the
“ said land, so soon as the same is granted to the Company, at its own
“ expense execute all instruments and do all things necessary to vest the
“ same in the trustees upon the trust and for the purposes hereinafter
“ declared and set forth.”

61b. The trusts of the said mortgage deed are for the security of the holders of the said bonds so held by the Plaintiffs Delap and Mansfield, and the last named Plaintiffs are entitled to the benefit of the said trusts and are entitled
40 to have the contracts of the Company in the said mortgage deed specifically performed and carried out for their benefit.

61c. Since the date of the said mortgage deed the said 320,000 acres of land have been granted by the Government of Canada to the Plaintiff Company within the terms of the said mortgage deed and the said Defendants Gifford and
p. 5240.

RECORD. Curzon are entitled to have the same conveyed to them by the said Company pursuant to the covenant aforesaid.

No. 2.
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of Claim—
continued.

61*d.* The Plaintiff Company is willing to perform the said covenant by conveying the said 320,000 acres to the Defendants Gifford and Curzon, but the said Company is prevented from so doing by the judgment and order aforesaid as the Plaintiffs submit wrongfully, and the restraint thereby imposed should be removed.

61*e.* The Plaintiffs have requested the Defendants Gifford and Curzon to join them as Plaintiffs in this action to enforce the rights of the Plaintiffs Delap and Mansfield, as holders of the said bonds, but the said Defendants Gifford and Curzon have refused to incur the liability for costs in this action by joining them as Plaintiffs or to accept any indemnity for so doing, and the Plaintiffs are compelled to join them as Defendants. 10

61*f.* The Defendants Gifford and Curzon are ready and willing to accept a conveyance of the said 320,000 acres of land in accordance with the trusts of the said mortgage deed.

62. The Company has not at any time had notice or knowledge of the wrongful acts, matters and things, or of the several agreements and transactions hereinbefore stated and referred to between the Defendants Codd and Charlebois, or between the Defendant Codd and the said Stevens, or any of them, or that the said Defendants Codd and McMichael were not entitled to act as directors of the Company. 20

63. The said alleged consent judgment was entered into, and the said order following thereon was submitted to without the authority, knowledge, or consent of the Plaintiffs, and was and is a fraud upon the said Company and the rights of the Plaintiffs.

64. The Plaintiffs Delap and Mansfield are and were, at the time of the commencement of the said action by the Defendant Charlebois, holders of the said bonds as aforesaid, and they had not nor had either of them any notice or knowledge of the said action or the proceedings thereunder, and were not in any way, directly or indirectly, represented therein, and the said judgment and order are void as against the said Plaintiffs Delap and Mansfield. 30

65. The bonds of the said Company are, by the charter of the Company and the statutes aforesaid, declared to be and they are thereby made the first preferential claims and charges upon the said Company, and the undertaking, tolls, and income, and real and personal property thereof, at any time acquired, and it is thereby enacted that each holder of the said bonds shall be taken to be a mortgagee and encumbrancer upon the said securities, and shall have priority as such, and it was beyond the jurisdiction of the Court, and *ultra vires* of the parties to the said action by the said judgment and order, or either of them, to declare or to give priority to the claim of the said Charlebois, or any part thereof, over the said bonds or the rights of the Plaintiffs Delap and Mansfield, as chargees and holders of liens thereon as aforesaid. 40

66. The fourth clause of the said contract as hereinbefore set forth was and is *ultra vires* of the Company, and the Plaintiffs say that all the clauses, matters and things in the said judgment and order set forth for the enforcement of the said clause, or for the extension of the claims of the Defendant Charlebois under the said claim were, and are, *ultra vires* of the Company in so far as the same purport to be a mortgage, or charge in favour of the said Defendant Charlebois upon the first fifty miles of the Company's railway and its appurtenances, including rails, ties, buildings, equipment, road-bed, right of way, right to the land-grant thereto appertaining, if and when fully earned,
10 right of operation of the said railway, and upon the whole property, enterprise, and undertaking.

67. The clauses, matters and things in the said judgment alleged to have been consented to by the Company, and in the said order contained if allowed to stand, form a new and distinct contract on the part of the said Company with the Defendant Charlebois which was not assented to by the Company or by directors or shareholders thereof, and the Plaintiffs say that without the consent of the shareholders of the Company, duly obtained at a meeting called for that purpose, the said consent of the Company to the judgment was, in any event, *ultra vires* and void, and in any event the same is not binding upon the Company
20 or the shareholders thereof, and should be set aside.

68. It was not competent to the Company to create, and they did not create by contract, or by consent, a mortgage debt or charge such as is mentioned in the said judgment and order upon the whole property, enterprise and undertaking of the Company for moneys which were not in fact due or owing in any event without the authority of a general meeting of the shareholders of the Company, or to agree to surrender their possession and control of the road, land grant, bonds, property, enterprise and undertaking of the Company, upon such conditions as are contained and set forth in the said judgment and order, and the said Defendants Codd and McMichael were not competent to act as directors
30 of the Company, or to represent the Company, or to instruct solicitors or Counsel in the said action as hereinbefore stated, as the Defendant Charlebois well knew.

69. The railway of the Plaintiff Company is a public enterprise of very great importance and for the benefit of the public, and in order that the same may be constructed and operated, the Government of Canada has by the statutes aforesaid, provided for the subsidising of the Company by grants of land in aid of the said railway, and it was and is the intention of the charter and the statutes under which the Company was brought into existence and the said railway authorised to be constructed, that the same should be constructed
40 and be maintained as a public enterprise, and it would be contrary to the spirit and intention of the charter and of the said statutes that the said railway should be destroyed, or that the same should be taken up, or the rails, property, rolling-stock, and effects thereof should be sold separately, and the existence and running of the said railway as a public enterprise be destroyed or imperilled. Nevertheless by the said order of the 29th day of February, 1892, the Court purports to order, in the fourth paragraph thereof, as hereinbefore set forth, the sale of the

RECORD. said railway from its junction with the Canadian Pacific Railway, and thence northwesterly, and its right of way, road-bed, rails, ties, building equipment, telegraph line, rolling stock, chattels, and surplus lands, and also the land grant of three hundred and twenty thousand acres allotted to the Company by Order in Council of date the 19th day of March 1890, and all the Company's rights thereto, and all other property, both real and personal, appertaining to the said constructed line of railway, or used in connection therewith, or a competent part thereof to be forthwith sold. The Plaintiffs submit that such order was and is *ultra vires* and void, and should be so declared, or in any event that it should be declared that in so far as the said order purports to order a sale of the road-bed, 10 rails, ties, buildings, equipment, telegraph line and rolling stock, or a competent part thereof, that the same is *ultra vires*, and should be so declared.

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of Claim—
continued.

70. The charter and statutes of the Company provide that lands to be acquired by the Company, or granted by the Government, shall be held for sale by the Company, and that the proceeds thereof shall be applied first, in payment of the expenses connected with the acquisition, survey, management, and sale of the lands ; secondly, in payment of dividends and interest of the bonds, from time to time, payable in cash by the Company ; thirdly, in payment and redemption of the said bonds when and as they become due, respectively ; and fourthly, for the general purposes of the Company ; and it was *ultra vires* of the Com- 20 pany to create any lien thereon in favour of the Defendant Charlebois, under the terms of the said Act, and in so far as the said judgment and order declare or enforce any such lien, the same are *ultra vires* and void.

71. Under the charter and statutes aforesaid, the rents and revenues of the Company are made subject, in the first instance, to the payment of the working expenses of the railway and the said contract, and the said judgment and order, in so far as the same create any pledge thereon, or grant any relief to the said Charlebois in respect thereof, are *ultra vires* and void, and should be so declared.

72. The Defendants, Macdonald and Preston, and the Defendants, Macdonald and Schiller, have assigned their claims thereinbefore mentioned, 30 including the claim of Macdonald and Schiller, mentioned in the said judgment, to the Defendant Nugent, as security for certain claims of third parties represented by the said Nugent ; and all such parties, and the said Defendants had, prior to such assignments, actual notice, and knowledge of the agreements, matters, and things herein set forth and alleged.

73. Out of the moneys claimed by the Defendant Charlebois to be payable by the Company to him, the Defendant Charlebois, at the time of the pronouncing of the judgment aforesaid, had assigned portions thereof to the following Defendants, that is to say : the Honourable Francis Clemow, William Anderson Allan, Robert J. Devlin, James Murray, and the Union Bank of Canada, and 40 these several Defendants are the persons and corporations in that behalf mentioned in the said judgment ; and all such Defendants, prior to such assignments to them respectively, had actual notice and knowledge of all the agreements, matters, and things, herein set forth and alleged.

74. The Defendants Macdonald and Schiller further assigned a portion of their said claim to the Defendants The Commercial Bank of Manitoba, who took with knowledge and notice of all the agreements, matters and things herein set forth and alleged.

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—
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continued.

75. All of the assignments aforesaid, of the claim of the said Charlebois, or parts thereof, were by way of equitable assignment made by the Defendant Charlebois in writing to each of the said several Defendants, with notice of the agreements, matters and things herein set forth and alleged.

76. The Defendants William James Crossen, Frederick John Crossen and
10 Joseph Henderson, executors of the last will and testament of James Crossen, deceased, also claim to be equitable assignees of part of the claim of the Defendant Charlebois, and are the parties referred to in the said judgment as the Crossen estate, and took with notice of all the agreements, matters and things herein set forth and alleged.

77. None of the parties defendants in this action, except the Defendant Charlebois, were parties to the said action in which the said judgment and order were pronounced, and they are not entitled to the benefit thereof, or to enforce the same against the Company. The said Defendant Charlebois alone claims to be and is, if any one is, alone entitled to enforce the said judgment.

78. The Defendant Charlebois, in further pursuance of his said scheme,
20 has commenced an action in the Court of Queen's Bench, equity side, in the Province of Manitoba, wherein the said Defendant Charlebois is Plaintiff and the Company are Defendants, to enforce the said judgment, and the said Order of the 29th day of February, 1892, and within a few days past amended his bill in the said action, whereby he now asks that a receiver may be forthwith appointed of the said railway, and that the Company may be restrained in accordance with the terms of the said Order of the 29th day of February, 1892, from remaining in possession of the said railway, and from dealing therewith, and from disposing of their bonds and debentures, or their property in any
30 way; and the Defendant Charlebois is pressing the said action, and the Company is without defence to the said action in the said Province of Manitoba, and the Defendant Charlebois will obtain the said injunction and receiver unless the proceedings upon his said judgment and the said Order of the 29th day of February, 1892, are restrained by this Honourable Court.

79. The Company is suffering great loss and damage from its inability to deal with its property, and to dispose of the said bonds, and to pay off its creditors, and if the said Defendant Charlebois is allowed to obtain the said receiver, and further to hamper the operations of the said Company by the said judgment and order, irreparable loss and damage will be caused to the said
40 Company, and the Company will be practically ruined, and the Plaintiff Delap and the Plaintiffs Delap and Mansfield, and the other creditors and the other shareholders thereof, will lose the value of their property and suffer great loss and damage.

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—
No. 2.
Amended
Statement
of Claim—
continued.

80. The Defendant Charlebois threatens and intends to, and he will offer the said railway and property of the Company for sale, by virtue of the said order of the 29th day of February, 1992, and he will, unless restrained by the order and injunction of this Honourable Court, do so to the irreparable damage of the Company, and the shareholders thereof and the Plaintiffs.

81. The Defendant Charlebois constantly presses and threatens to take possession of the said railway, and to exclude the Company therefrom, and to defy the shareholders thereof, and he thereby harasses the Company and prevents their dealing with the said property, and realising their said bonds, and the continuance of this course is ruinous to the said Company, the share- 10 holders thereof and to the Plaintiffs.

The Plaintiffs claim :—

1. That the said alleged contract of the 16th day of September, purporting to be made between the Company and the Defendant Charlebois, for the construction of the said 50 miles of railway for £200,000, may be declared to be a fraud upon the Plaintiff Company, and to be void against the Plaintiffs, and that the same and the said Judgment and Order, and all the proceedings founded thereon in the said action may be set aside, and that the Company may be declared at liberty to convey the said land grant to the Defendants Gifford and Curzon on the trusts of the said mortgage 20 deed.

1a. That it may be declared that the Plaintiff Company is not chargeable with the moneys received by or payable to the Defendants Charlebois, Allan, Devlin, and Murray in respect of their shares aforesaid, or to the Defendant Codd, amounting to \$481,000 hereinbefore mentioned, and interest thereon.

1b. That the Defendants Charlebois, Clemow, Allan, Devlin, Murray and Codd may be declared to have been guilty of a breach of trust as hereinbefore mentioned, and that they may be ordered to repay to the Plaintiff Company the said sums of \$228,000, \$70,000, and \$10,000 herein- 30 before mentioned, and interest thereon.

1c. That the Defendant Charlebois may be declared entitled in respect of work done by him under the said pretended contract, to a *quantum meruit* only, if anything.

2. That it may be declared that the said fourth clause of the said contract between the Company and the Defendant Charlebois was, and is, *ultra vires* of the said Company as hereinbefore stated, and that the said alleged consent to the said Judgment and the said Judgment itself, and the said Order, were, and are, and that each of them was, and is, *ultra vires* of the said Company, as hereinbefore stated. And that the said Judgment 40 and Order were *ultra vires* of the Court which pronounced the same.

3. That in any event the said Judgment may be declared to be fraudulent and void, as against the Plaintiffs, and that the said Judgment and the said

Order of the 29th of February 1892, and all proceedings founded thereon RECORD, may be set aside.

4. That all proceedings upon or under the said judgment and Order may be perpetually stayed. No. 2.
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continued.

5. That the Defendant Charlebois may be restrained from proceeding further with the said action in the province of Manitoba, and from proceeding with any action or actions in any other province of Canada founded upon, or to enforce, the said judgment and Order, and that such restraint be enforced by stay of proceedings under the said judgment and Order, and by controlling the defence of the said Charlebois in this action by imposition of such terms as may seem proper.

6. \$300,000 damages caused to the said Company by the breaches of the contract of the Defendant Charlebois, hereinbefore set forth.

7. That an account may be taken of what the Defendant Charlebois shall be found to be entitled to be paid.

7a. That, even if the said judgment be not set aside and vacated, the Defendants Charlebois, Clemow, Allan, Devlin, Murray, and Codd may be declared liable in respect of the moneys paid to them, as hereinbefore stated, and that the said moneys payable under the said judgment to the last-named Defendants, and every of them, may be reduced by the sum aforesaid of \$481,000 and interest.

8. That the Defendant Charlebois may pay the cost of this action, and for the purposes aforesaid that all proper directions may be given and accounts taken, and that the Plaintiffs may have such further and other relief as may seem meet.

The Plaintiffs propose that this action be tried at the City of Ottawa.

Delivered, as amended, this 5th day of April 1893, by Messrs. Howland, Arnoldi, and Bristol, of the City of Toronto, in the County of York, solicitors for the Plaintiffs above named.

RE-AMENDED STATEMENT OF DEFENCE OF DEFENDANT CHARLEBOIS.

(As re-amended this 14th April, under Order dated 4th April 1893.)

1. The Defendant Charlebois admits the 1st, 3rd, and 4th paragraphs of the Plaintiffs' Statement of Claim. No. 3.
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1893.

2. All admissions made herein are so made for the purposes of this action only.

3. The Defendant Charlebois denies and puts the Plaintiffs to the proof of

RECORD. all the statements and allegations in the Plaintiffs' Statement of Claim, save
 and except those which are herein expressly admitted.

No. 3.
 Re-Amended
 Statement of
 Defence of
 Charlebois
 —continued.

4. As to the matters alleged in the other paragraphs of the Plaintiffs' Statement of Claim, the Defendant says that the true state of facts is as hereinafter set out.

5. The Souris and Rocky Mountain Railway Company was incorporated by an Act of the Parliament of Canada passed in the year 1880, and the charter of the said Company was amended and supplemented by further Acts of the said Parliament passed in the years 1881, 1882, and 1884, to which for greater certainty the Defendant Charlebois craves leave to refer; and by the said Act passed in the year 1884 the name of the said Souris and Rocky Mountain Railway Company was changed to "The North West Central Railway Company," and by the same Act it was, amongst other things, enacted that the latter-named Company should be given and accorded certain further time, viz., until the 19th of October 1885, wherein to complete the first 50 miles of its railway, commencing on the line of the Canadian Pacific Railway at Melbourne, or at such other point as its directors should determine, with the sanction of the Governor General in Council.

6. Prior thereto, and during the summer and autumn of the year 1883, the Souris and Rocky Mountain Railway Company had caused a considerable portion of its line, commencing at Melbourne Station aforesaid, to be graded by its contractors, the present Defendants, Macdonald and Preston, and said contractors thereafter claimed large sums of money, amounting to \$126,000 and upwards, to be owing to them in respect of said work.

7. By a further Act passed by the Parliament of Canada in the year 1886 (49 Victoria, Chapter 74) the said North West Central Railway Company was further given unto the 1st December 1886 wherein to complete the first 50 miles of its said railway, but, by Clause 4 thereof, the said Act was not to come into force or have any effect unless on or before the 1st June 1886 the said North West Central Railway Company should establish to the satisfaction of the Governor in Council that it had made effective provision for such due completion, nor unless and until a proclamation should be issued declaring said fact and authorising the said Company to proceed with the work, but the said North West Central Railway Company failed to establish the said fact, and no such proclamation was in fact issued.

8. By a further Act passed in the same year (1886) by the Parliament of Canada (49 Victoria, Chapter 11) it was, amongst other things, by Clause 2 thereof, enacted that the Governor in Council may grant to the said North West Central Railway Company, or to such other company as may undertake the construction of the said railway, Dominion lands to the extent of 6,400 acres for each mile of the Company's railway, for the whole distance from Brandon Station on the Canadian Pacific Railway to Battleford, about 450 miles; and, further, it was, by Clause 5 of said Act, enacted as follows:—

"For the purpose of incorporating the persons undertaking the construction of the said railway, or a railway from a point on the Manitoba

“ and North Western Railway, *viâ* Rapid City westward, and for the incor- RECORD.
 “ poration of those who shall be associated with them in the undertaking, —
 “ the Governor in Council may grant to them, under such corporate name as No. 3.
 “ he shall deem expedient, a charter conferring upon them the franchises, Re-Amended
 “ privileges, and powers requisite for the said purposes which shall be Statement of
 “ similar to such of the franchises, privileges, and powers granted to railway Defence of
 “ companies during the present session, as the Governor shall deem most Charlebois
 “ useful or appropriate to the said undertaking ; and such charter, being pub- —continued.
 “ lished in the *Canada Gazette*, with any Order or Order in Council relating
 10 “ to it, shall have force and effect as if it were an Act of the Parliament
 “ of Canada ; provided always, that in the event of a company being so
 “ incorporated, it shall be provided in the charter that such company shall
 “ be subject to all the present legal obligations of the North West
 “ Central Railway Company, in relation to the said railway.”

9. Sometime between the first June 1886, above mentioned, and the
 22nd July 1886, the Defendants Clemow, Charlebois, Allan, Murray, and one
 Charles T. Bate (since deceased, and whose stock was thereafter and on or about
 the first March 1887 purchased by the Defendant Devlin) made application to
 the Governor-in-Council for a charter of incorporation under the last mentioned
 20 Act for the construction of a railway from a point on the Canadian Pacific
 Railway, at or near Brandon in the Province of Manitoba, to the Rocky
 Mountains *viâ* Battleford, and did then deposit with the Government of
 Canada the sum of \$50,000.00 as security as hereinafter mentioned, and on the
 22nd July 1886 a charter was made and executed under the Great Seal of
 Canada incorporating the said parties accordingly, under the name of the Great
 North West Central Railway Company, for the purposes aforesaid, which said
 charter and an Order-in-Council of 3rd August 1886, as to the bonding powers
 of the company, were duly published in the *Canada Gazette* of 7th August,
 1886, and which charter was thereafter duly confirmed by Act of the Parliament
 of Canada passed in the year 1888 (51 Victoria, Chapter 85).
 30

10. The said charter dated 22nd July 1886, and so confirmed by Act of
 Parliament as aforesaid, was and is the only statutory authority authorizing the
 Great North West Central Railway Company to build a railway, and in and by
 said confirmed charter and Clause 2 thereof it is provided as follows :—

“ The Company may lay out, construct, and operate a railway from a
 “ point on the Canadian Pacific Railway at or near Brandon, in the
 “ Province of Manitoba, to the Rocky Mountains *viâ* Battleford ; and also
 “ build and operate branch lines of railway from the first above described
 “ line,—all such lines to be approved by the Governor in Council,” and by
 Clause 27 thereof as follows :—

40 “ Provided always that the Company hereby incorporated shall be and
 “ remain liable for, and shall pay and discharge all debts which were due on
 “ or before the 2nd day of June last past, by the North West Central
 “ Railway Company, and the Souris and Rocky Mountain Railway Company,
 “ or either of them, for railway construction, and which have not since been
 “ paid and discharged, and the said Company hereby incorporated in

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—continued.

“accepting this charter, do for themselves and their successors, covenant, promise and agree to and with her Majesty the Queen, her heirs and successors, that they will fully pay and discharge all such debts, and will cause all just claims for labour, board of labourers employed in or about such construction, due by contractors to be paid by such contractors.”

10*a*. Except as provided in and by the said Clause 27, of the last mentioned Act, the Company did not assume or become liable to pay any of the debts or obligations of the Souris and Rocky Mountain Railway Company, or of the North West Central Railway Company, and their statutory liability under the said clause was to the Crown only, and not to the creditors of either of the 10 former companies.

10*b*. It is not true that the said corporators became personally liable for any debt or obligation of the two former companies, but, on the contrary, their liability was solely that of shareholders in the Great North West Central Railway Company.

11. Before accepting said charter or organising thereunder, the above-named corporators deemed it expedient to ascertain as far as practicable who were the chief claimants or creditors under said Clause 27 of the Charter, and having been informed that the Defendants Macdonald and Preston and the Defendant John Arthur Codd, and one Archibald Young, alleged that they 20 severally had large claims under said 27th Section of said charter in respect of railway construction against the aforesaid Souris and Rocky Mountain Company and the North West Central Railway Company, the said corporators entered into long and protracted negotiations with said claimants for settlement which resulted in articles of agreement under seal being made and entered into on the 26th February 1887 between the said Defendants Macdonald, Preston, and John Arthur Codd, and the said Archibald Young of the one part, and the said corporators under the aforementioned unaccepted charter of the other part, whereby the said Defendants Macdonald, Preston, and Codd, in order to enable the said corporators to proceed to make necessary financial arrangements for 30 the building of the railway, agreed with the said corporators not to assign or transfer their respective claims against the said Souris and Rocky Mountain Railway Company and the North West Central Railway Company, or the Great North West Central Railway Company, until at least 25 miles of the Great North West Central Railway should be built, and the said Defendants did thereby also covenant and agree with the said corporators not to make, present, institute, or press upon, to, or against the Great North West Central Railway Company, or upon, to, or against the Government of Canada, or the deposit of \$50,000 therefore made by the said corporators with the Dominion Government, or claim to rank thereon in respect of any claims whatsoever which any of them 40 professed to have against the said railway companies, until at least 25 miles of the line of the Great North West Central Railway Company should be built and equipped and passed by Government, the expressed intention therein being that no such claim should be preferred or pressed against the Great North West Central Railway Company, or against the said Government deposit until

the Great North West Central Railway Company should have perfected such financial arrangements as should enable the said Company to build and equip, to the Government's satisfaction, at least 25 miles of its line.

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12. Meanwhile the said corporators endeavoured to obtain the necessary moneys for the purpose of commencing and completing the first 50 miles of the said railway, but were embarrassed in their efforts in that regard, owing (amongst other things) to the indefiniteness and uncertainty of the amount of the claims of the said Defendants Macdonald, Preston, and Codd, under the 27th section of the said charter, and, during a period of upwards of a year after the publication of said charter in the *Canada Gazette*, the said corporators refrained from accepting the issue of the said charter, or organising thereunder until the said liabilities should be more clearly defined by agreement or otherwise. During said period, the said corporators negotiated with the Defendants Macdonald and Preston for the purpose of settling their said claim, and on or before the 12th September 1887 an agreement was arrived at by the said corporators with the Defendants Macdonald and Preston, whereupon the said corporators on that day accepted the said charter and organised thereunder.

13. The said Agreement of the 12th September 1887, between the Defendants Macdonald and Preston and the Great North West Central Railway Company is under seal and in the words following :

Memoranda of an Agreement entered into at the City of Ottawa this 12th day of September, A.D. 1887.

Between

Alexander Macdonald, of the City of Toronto, in the Province of Ontario contractor, and William Alfred Preston, of the same place and occupation, both severally and as members of and now representing the late firm of Macdonald and Preston, under which name and style the said parties heretofore carried on business together as contractors, of the first part, and the Great North West Central Railway Company, hereinafter called the Company, of the second part.

Whereas the Company has been chartered for the purposes expressed therein, as appears by the Letters Patent of the Dominion of Canada dated the 22nd day of July 1886, wherein, amongst other things, it is provided that the Company shall be and remain liable for and shall pay and discharge all debts which were due on or before the 2nd day of June 1886, then last past, by the North West Central Railway Company and the Souris and Rocky Mountain Railway Company, or either of them, for railway construction, and which have not since been paid and discharged, and that the company in accepting the said charter does, for itself and its successors, covenant, promise, and agree to and with Her Majesty the Queen, her heirs and successors, that it will fully pay and discharge all such debts, and will cause all just claims for labour, board of labourers employed in or about such construction, and building materials in respect of such construction, due by contractors, to be paid by such contractors :

RECORD. And whereas the Company, having made a deposit of \$50,000 with the
 No. 3. Government of the Dominion of Canada, is about to enter into and execute a
 Re-Amended contract with said Government that the same shall be a guarantee that the
 Statement of Company will on or before a time limited build, equip, and have running to the
 Defence of satisfaction of said Government the first fifty miles of the railroad of said
 Charlebois Company, and also as security for the payment on or before a limited time of
 —continued. all debts aforesaid for which under such charter the Company is liable.

And whereas the parties hereto of the first part were heretofore the contractors for certain works for the said the Souris and Rocky Mountain Railway Company, and as such are, or allege to be, claimants against that 10 Company in respect of such works of the sum of one hundred and twenty-six thousand dollars and interest, and whereas the said parties of the first part are also themselves largely indebted to various creditors for construction work done, labourers' wages, board of labourers, and material supplied upon such construction in respect of their said contract with the Souris and Rocky Mountain Railway Company.

And whereas the said deposit of the Company upon the execution of the contract with the Government above referred to, may be or be rendered liable to be utilized by Government in the liquidation of certain of the claims of the parties of the first part against the said the Souris and Rocky Mountain Railway 20 Company, and of certain of the claims of the aforesaid creditors against the parties of the first part, in accordance with the terms of the Company's charter above referred to, and with the terms of its said deposit hereinbefore set out, but until a settlement is effected with the parties of the first part, the Company is unwilling to enter into the aforesaid contract with the Government, touching its said deposit and the building of the line.

Now therefore these presents witness that the parties hereto of the first part jointly and severally for themselves and each of them for himself, their and each of their heirs, successors and assigns in consideration of the premises and of the covenants and agreements herein contained covenant, promise and agree 30 with and to the Company, the parties hereto of the second part, their successors and assigns in the manner following:—

1. The parties in the first part alleging that they had on the 2nd day of June 1886, and still holds claims against the Souris and Rocky Mountain Railway Company for railway construction, amounting in all on that date to one hundred and twenty-six thousand dollars and interest, hereby declare and covenant with the Company, the parties of the second part, that they, the parties of the first part, have not and will not assign all or any of such claims to any person whatever, and that the same have not been attached by others or devolved by process of law into other hands.

40

2. The parties of the first part are willing and hereby agree to assign to the Company, the parties of the second part, all their said claims against the Souris and Rocky Mountain Railway Company, and its successors, and all their right, title and interest therein and thereto by an instrument under seal as fully and effectually as is possible, upon receipt of what is hereby deemed

to be an equivalent of seventy-five thousand dollars, payable only in the way and manner and on the conditions hereinafter expressed, the parties of the first part undertaking and agreeing that the said last-mentioned fund or consideration will pay and be utilized as hereinafter mentioned to pay and fully satisfy and discharge in manner hereinafter stated all claims of the creditors of them, the said parties of the first part, and all debts by them incurred upon and during the progress of or in respect of the works done on their former contract with the Souris and Rocky Mountain Railway Company, including all claims against them which the Company, the parties of the second part, as above recited, may by the terms of their charter or the contract with Government above mentioned, covenant with the Crown to pay or cause to be paid, or be otherwise liable for.

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3. That the fund or consideration above referred to as the equivalent of seventy-five thousand dollars is to consist (first) of the net proceeds of the sale of fifty thousand dollars face value of the Company's bonds when issued and when the general bond issue of the Company is sold or floated, the said bonds upon issue thereof to remain for the present in the hands and sole control of the Company for the ultimate benefit of the parties of the first part or their assigns, and (secondly) of one half of the sum of fifty thousand dollars now lodged with the Government by the Company, and held by them as in recital mentioned.

4. Nothing herein contained shall, it is hereby provided and agreed, have any force or effect unless and until the parties of the first part produce and file within thirty days from the date hereof, with the President of the Company, a full and clear statement, verified by the statutory declaration of the parties of the first part, exhibiting in detail their present indebtedness, and all claims heretofore preferred against them in respect of their said former contract work and yet unpaid, and unless and until the parties of the first part shall within said limited time also file or cause to be filed in like manner all the several claims of their own creditors referred to in the last preceding paragraph, properly verified likewise by the statutory declaration of the claimants (or, in case of the physical impossibility of obtaining such from the claimants themselves, then of the parties of the first part, who shall verify such claims in full) and each exhibiting under the hand of the said creditors the amount in bonds or cash or partly in both which said creditors will accept in satisfaction thereof, said claims further to be certified correct or otherwise, by them the parties of the first part.

5. Provided the conditions of the last preceding paragraph are fulfilled and also provided that the aggregate amount necessary to fully liquidate and discharge in proceeds of bonds and in cash all the said claims of the creditors of the parties of the first part, as must appear on the face of such claims under the hand of each creditor filed as aforesaid, does not exceed in all the amount whatsoever of the net proceeds derived from the future sale by the Company of the said fifty thousand dollars of the Company's bonds, as aforesaid, and the sum of twenty-five thousand dollars in cash payable in

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thirty days, making in all seventy-five thousand dollars or what is hereby deemed its equivalent, and provided further that said cash balances shown to be due on such claims against the parties of the first part when thus vouched, certified by the parties of the first part as correct and admitted to an extent not exceeding \$25,000.00, shall prove satisfactory to the Company, and be allowed by Government against the Company's said deposit after same shall, if necessary, have been adjudicated upon by Government or its appointee, prior to the general advertisement for creditors and adjudication of claims provided for by the subsidy contract of the Company with Government, and provided that, on such a prior allowance thereof, the Government 10 is agreeable thereupon, and before advertising to pay and will then pay out of the Company's said deposit the amount of such balance due on said claims, not exceeding in all \$25,000.00, then and upon the fulfilment and occurrence of all the foregoing conditions of which time shall be the essence, but not otherwise, the Company agrees upon receiving the full assignment of the claims of the parties of the first part aforementioned together with all proofs thereof and books and documents relating thereto in their hands, and receipts and releases or discharges in full form all the latter's creditors, but not otherwise, to appropriate, upon the creation and issue thereof in the future, fifty thousand dollars face value of the bond issue of the Company 20 upon the successful sale, but not otherwise, of the Company's bond issue to hold the net proceeds of fifty thousand dollars face value thereof for and pay the same or the money the equivalent thereof thereupon, to the parties of the first part, or their assigns, the Company in the meantime to solely control such bonds, and the Company further agrees, upon the fulfilment of all said conditions in like manner and not otherwise, to facilitate in every manner possible the payment by Government out of their said deposit of a sum not exceeding \$25,000.00, such bonds and the proceeds thereof, so to be held and paid and such sum to be paid, if feasible, out of the Government deposit of the Company to be thus payable and paid only in full liquidation and 30 discharge as aforesaid of the said claims of the creditors of the parties of the first part, and in full consideration for the assignment to the Company of the aforementioned claims of the parties of the first part.

6. In the event of the whole claims of the creditors of the parties of the first part filed and allowed, not aggregating in all to the sum of twenty-five thousand dollars in cash (thirty days) and the proceeds, as may be, of fifty thousand dollars face value of the Company's bonds, the balance of both cash and bonds proceeds shall be held and be payable to the parties of the first part, the Company being, however, hereby authorized to withhold payment of any such balance till itself satisfied beyond doubt that the claims of 40 all creditors of the parties of the first part are presented and paid, and should the Company learn to the contrary within such time as may be limited by Government for the filing of same pursuant to any advertisement, the Company is hereby authorized to utilize any such aforementioned balance coming to the parties of the first part in settlement and liquidation of any such claims thus arising.

Provided nothing herein contained shall establish or admit to be construed to establish or admit any right of the parties of the first part to claim against the Company, or any other rights or demands whatsoever, or alter the mutual or other rights of the parties hereto in any way in case by reason of the failure of the parties of the first part or others in the fulfilment of the conditions hereof the settlement hereby contemplated be not perfected, but in any such event nothing herein contained shall at the option of the Company, be of any effect whatever.

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In Witness Whereof the parties hereto of the first part have hereunto set
10 their hands and seals, and the Company has hereto affixed its corporate seal, and witnessed the same by the hands of its president and secretary, the day and year first above written.

14. Subsequently, on or about the 17th November 1887, the Great North West Central Railway Company, being still composed of the aforementioned corporators, agreed with the said Defendants, Macdonald and Preston, that the legal costs and expenses of the said Company while engaged in settling the claims of the creditors of the said Defendants, Macdonald and Preston, should also be charged to the said Defendants under said last recited agreement, and the said Company up to and prior to the 27th April 1889, paid to the creditors of
20 the said Defendants, Macdonald and Preston, upon the order of the latter, upwards of the aforementioned sum of \$25,000.00 in cash, and afterwards received from the Government the amount so paid out of the amount of the \$50,000 deposit aforementioned.

15. The Defendant Charlebois denies the other allegations contained in clause eight of the Plaintiffs' Statement of Claim, and says that the Company's bond issue has not yet been sold and that no further sum is yet due the said Defendants Macdonald and Preston.

15a The Defendant Charlebois further alleges and the fact is that the said Company did not become liable to the said Macdonald and Preston for payment
30 to them of any indebtedness of Souris and Rocky Mountain Railway Company, and that except under the terms of the said recited agreement of the 22nd September 1887, the sole right of the said Macdonald and Preston was limited to the amount which they could establish under said Clause 27 of the charter and the remedy thereby given them, and that the Plaintiff Company are not now and never have been indebted to the said Macdonald and Preston for any amount whatever.

16. On the same date, namely, the 12th September 1887, the said corporators as a company, under the name of the Great North West Central Railway Company, entered into a contract with Her Majesty, therein represented and
40 acting by the Honourable John Henry Pope, Minister of Railways and Canals, wherein after reciting, amongst other things, that the said Company was incorporated as aforementioned for the purpose of constructing and working a railway from a point on the Canadian Pacific Railway, at or near Brandon aforesaid, to the Rocky Mountains *via* Battleford, and that the said deposit of \$50,000 had been made with the Government as a guarantee that the said Company would on or before the 1st January 1888, build, equip and have running to the satisfaction of the Government the first fifty miles of the said

RECORD. railway, and as security for the payment on or before the said date of all debts
 No. 3. for which under the said charter the said Company was liable, it is witnessed
 Re-Amended that the Government and the great North West Central Railway Company
 Statement of contracted and agreed with each other as follows :—
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I. The Company shall lay out, construct, equip and have running to the satisfaction of the Minister of Railways and Canals the following sections of its road on or before the following dates, respectively, that is to say : By the first day of January, A.D. 1888, not less than fifty miles ; by the first day of January, A.D. 1889, a further distance of not less than one hundred miles ; by the first day of January, A.D. 1890, a further distance of 10 not less than one hundred and fifty miles ; by the first day of January, A.D. 1891, a further distance of not less than one hundred and fifty miles or whatever distance may be necessary to complete the whole road to its terminus on the river Saskatchewan at such point as may be indicated by the Minister of Railways and Canals.

II. The said railway shall be constructed in every respect of a character equal to that of the Canadian Pacific Railway through similar country, and in accordance with specification hereto attached.

III. Plans of location showing the alignments and curvature and also profiles showing the surface of the ground, and proposed gradients shall 20 be submitted by the Company to the Minister of Railways and Canals and be approved by the Governor-in-Council before the commencement of any work to which they apply.

IV. Should any question or dispute arise respecting any work done or to be done hereunder, the decision of the Chief Engineer of Government Railways, approved by the Minister of Railways and Canals, shall be final and conclusive.

V. In consideration of the premises, the Government shall grant to the Company a subsidy of 6,400 acres of land per mile for the whole distance from Brandon station on the Canadian Pacific Railway to Battleford, for 30 which subsidy the construction of the said railway between Brandon and Battleford shall be completed and equipped in accordance with the specifications, and same shall be maintained and operated to the satisfaction of the Governor-in-Council.

VI. The Company shall construct and equip the whole of the first fifty miles section of the said railway to the satisfaction of the Governor-in-Council before any portion of the said land subsidy is granted, but upon such completion and equipment within the time hereinbefore limited, the Company shall be entitled to receive such subsidy at the rate of 6,400 acres per mile, and the remaining portion of the road shall be divided into sections 40 of ten miles in length, and upon the completion and equipment of each

such section within such time as the Chief Engineer of Government Railways shall consider reasonable, in view of the times hereinbefore limited for the completion and equipment of such remaining portions respectively, the Company shall be entitled to receive a portion of such subsidy, at the rate of 6,400 acres for each mile so completed, such completion and equipment to be established by the report and certificate of the Chief Engineer of Government Railways.

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VII. The Company shall be and remain liable for and shall pay and discharge all debts which were due on or before the second day of June 1886, by the North West Central Railway Company and the Souris and Rocky Mountain Railway Company or either of them for railway construction and which have not since been paid or discharged, and the Company for itself and its successors covenants, promises and agrees to and with Her Majesty, her heirs and successors, that it will fully pay and discharge all such debts and will cause all just claims for labour, board of labourers employed in or about such construction and building materials, in respect of such construction due by contractors, to be paid by such contractors.

VIII. The said sum of fifty thousand dollars paid by or on behalf of the Company to the Honourable the Receiver General shall be and remain as security on the part of the Company that the first fifty miles of the Company's line will be built and equipped in accordance with the terms hereof, and the requirements of the Chief Engineer of Government Railways hereunder within the time above limited, or within such extension thereof, if any, as may be granted the Company for the entire completion of such first fifty miles, and further, the said sum shall also be security for the due payment by the Company of the debts mentioned in the last preceding paragraph, with respect to which statement of claims, properly verified by statutory declarations, are filed with the Minister of Railways and Canals, or with such person as he may appoint, within forty days after the first insertion in the *Canada Gazette* of a notice calling for such claims of such creditors of the North West Central Railway Company, and of the Souris and Rocky Mountain Railway Company, and which shall, after examination, be adjudicated upon and allowed against the said deposit of the Great North-West Central Railway Company, by the said Minister of Railways and Canals, or by such person as the said Minister may appoint for that purpose, the Company hereby agreeing to abide by such adjudication and allowance with respect to their said deposit, and upon failure of the Company to pay and discharge all claims for construction thus allowed by said Minister or his appointee within thirty days after notice given said Company of such adjudication and allowance, the Government is hereby authorised to utilise and apportion said deposit towards the liquidation and payment of said allowed claims, returning the balance, if any, of said deposit to the Company when otherwise thereto entitled hereunder, but upon payment thereof by the Company, or on the production by the Company of satisfactory receipts or discharges, from all such creditors whose claims have been thus allowed, and upon the completion and

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equipment by the said Company of the first fifty miles as hereinbefore stated, the said deposit shall be returned to the Company.

IX. The grant to the Company at the rate of 6,400 acres per mile shall be selected from the odd-numbered sections at the disposal of the Government, at the time when such selection is made, or from lands which may be surrendered by any of the colonisation companies along the route of the said railway, contained within a belt twelve miles wide on each side of the line, the belt to commence at the point where the line of the Great North West Central Railway passes out of the northern limit of the Canadian Pacific Railway belt, and which point is marked "A" on the map attached 10 to the Order in Council of the 13th of January 1887, relating to such grant. From thence the belt shall run in a north-westerly direction to its intersection with the northern boundary of the district of Assiniboia, being the 52nd parallel of latitude, this being marked "B" on the said map and forming the southerly boundary of the tract reserved by Order in Council of the 24th October 1882, out of which the Canadian Pacific Railway Company might depend on getting in odd-numbered sections at least one-half their land grant.

Should it be found that the odd-numbered sections which are or may be so at the disposal of the Government within this belt are not sufficient to 20 give the required area, estimated at 2,880,000 acres, the balance will be granted out of such unoccupied and unclaimed odd-numbered sections as may be so at the disposal of the Government, along the line of the Company's road, between the point marked "B" on the said map and Battleford, when and if the provisions of the second clause of the schedule to the Act 49 Vict. chap. 9, relating to the reduction of the land-grants to the Canadian Pacific Railway Company, shall have been given effect to, so as to make the said odd-numbered sections available for disposal by the Government.

Any deficiency in the area shall be made up of any available odd- 30 numbered sections of land in the North West territories in the discretion of the Governor-in-Council.

X. Each *bona fide* settler found on land which may be set apart for the Company at the time such grant is earned (the Minister of the Interior being the judge in the event of any disputes as to such *bona fides*) shall have the right to retain the lands occupied by him, to an extent not exceeding three hundred and twenty acres, on paying the Company therefor at a rate not exceeding in any case two dollars and fifty cents per acre, payable one quarter in cash, and one quarter in each of the three succeeding years, with interest of the unpaid balances, at a rate not exceeding six per 40 centum per annum.

XI. The Company shall pay to the Government the sum of ten cents per acre of the land to be so granted, to cover the costs of the survey of such land and incidental expenses.

17. On the same date, viz., 12th September 1887, the Great North West Central Railway Company, still being composed of the said corporators, entered

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into a contract with one John C. Sproule for the building and completion of the first fifty miles of the Company's railway, commencing at such junction point of the Company's railway with the line of the Canadian Pacific Railway at or near Brandon, as might be indicated by the engineer of the Company in the specifications or plans to be made by the said engineer, for the sum of \$4,000 per mile of railway so constructed, including the clearing, grading, bridging, culverts, cattle guards, ties, track-laying, surfacing, station building, water tanks and stations, section houses, sidings and section equipments, and other works and materials, according to the specifications, plans and details attached to said contract with said Sproule, or which should be thereafter prepared by the Company's chief engineer, but not including the purchase price and delivery at Brandon of rails, fish-plates and spikes necessary, nor rolling stock, fencing, nor train ballasting, which excepted works and materials formed no part of said contract, the whole of said works to be completed on or before the 1st January 1888, to which contract the Defendant Charlebois for greater certainty craves leave to refer.

18. The said contractor Sproule proceeded with his contract work in September 1887, under the direction of J. H. E. Secretan, C.E., the Company's Chief Engineer, who, with the approval of the Company's Directors, commenced the eastern end of the line at a point on the Canadian Pacific Railway distant about three miles east of Brandon Station on the Canadian Pacific Railway, the Directors of the Company considering it inexpedient to commence the railway either on the westerly side of the Assinaboine River at Brandon, and thereby entail the great expense of a railway bridge across said river, or yet further east at Chater Station on the Canadian Pacific Railway, until either the City of Brandon or the municipality of Chater should agree to assist or bonus the company's railway for that purpose. Accordingly, plans and profiles of the said railway, commencing at said point about three miles east of Brandon, and thence running westwardly *via* Rapid City, a distance of fifty miles, were duly prepared by the Company's said engineer, and the line was thus located and graded and partially constructed for a distance of about 26 miles and upwards from said point of commencement by the said contractor Sproule, according to said plans and profiles which were duly deposited in the Department of Railways and Canals as required by said recited subsidy contract, and approved by orders of the Governor General in Council, dated respectively the 25th March and 16th August, 1888, with the exception of the first mile of the said railway from the point of its junction with the Canadian Pacific Railway aforementioned, which was not thus approved inasmuch as the permanent grades of the first half mile were not shown on said profiles; and the Great North West Central Railway Company, then composed solely of the Defendants Clemow, Allan, Charlebois, Murray and Devlin, who were then the sole Shareholders and Directors of said Company, during the said years 1887 and 1888 expended large sums of money upon the construction and in respect of said railway, amounting to the sum of \$147,000.00 and upwards, of which the sum of \$70,678.00 was paid by the said Company so constituted to its said contractor Sproule under his said construction contract.

19. Meanwhile the Defendant Codd had been constantly and urgently pressing his claim upon the Company and its then Directors, alleging that he, the said Defendant Codd, had spent many years and much labour and money in

RECORD. prompting the enterprise while in the hands of the Souris and Rocky Mountain Railway Company and in aiding the construction of the latter railway, and that
 ——— he, the said Defendant Codd, had incurred large liabilities to creditors in connection therewith, and various negotiations were had by and between the then
 No. 3. directors of said Company and the Defendant Codd for the settlement of his said
 Re-Amended Statement of Defence of claim, and for the purpose also of raising money to prosecute the undertaking.
 Charlebois Ultimately, in the spring of 1888, the Defendant Murray visited England and, being fully authorised by all his said co-shareholders, after much negotiation with Defendant Codd and one Charles Richard Stevens, closed an agreement with Defendant Codd for the sale to the Defendant Codd of all the shares 10
 of the capital stock of the Company, of which the Defendant Clemow then held 1,000 shares, the Defendant Allan 1,600 shares, the Defendant Devlin 1,200 shares, the Defendant Charlebois 700 shares, and the Defendant Murray 500 shares, for the sum of £200,000 upon the terms and conditions set out in the agreement in that regard under seal and dated the 9th April 1888, as follows:—

Memorandum of Agreement, made this ninth (9th) day of April, one thousand eight hundred and eighty-eight, between the Honourable Francis Clemow, William Anderson Allan, and Robert James Devlin, all of the City of Ottawa, in the Province of Ontario and Dominion of Canada, and James Murray, 20
 of the City of St. Catharines, in the said Province of Ontario, and Alphonse Charlebois, of the City and Province of Quebec, in the said Dominion of Canada, of the first part, and John Arthur Codd, of the City of Toronto, in the said Province of Ontario, Dominion of Canada, but presently residing in London, England, of the second part.

Whereas the said Honourable Francis Clemow, William Anderson Allan, Robert James Devlin, James Murray, and Alphonse Charlebois, the parties of the first part, now are all and the only shareholders in the capital stock of the Great North West Central Railway Company, being a Company chartered under the authority of the Parliament of Canada by letters patent bearing date the 30
 twenty-second day of July, one thousand eight hundred and eighty-six, to build and operate a railway from a point on the Canadian Pacific Railway, at or near Brandon, in the Province of Manitoba, to Battleford, in the North West Territories of Canada, *via* Rapid City, which said Company will, upon the fulfilment of the terms and conditions of the contract in that regard with the Government of Canada and of the Orders in Council thereto relating, now made or hereafter passed in that regard, become entitled to a certain land grant to be earned by the said Company, and allotted by the Government as therein may appear:

And whereas the said John Arthur Codd, the party of the second part, did, upon the seventh day of December, one thousand eight hundred and eighty-seven, 40
 make an offer to the said parties of the first part by telegraph message through the cable of the Anglo-American Telegraph Company, addressed to the Honourable Francis Clemow, one of the parties of the first part and the president of the aforesaid Railway Company, to purchase all the shares in the capital stock of the said Company for the sum of two hundred thousand pounds upon the terms and conditions set forth in the said message :

And whereas the said Honourable Francis Clemow did by telegraph message through the cable of the said Telegraph Company, addressed to the registered cable address of the said John Arthur Codd, accept the said offer with slight variation and stipulation :

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Now these presents witness that, in consideration of the premises and for the purpose of more perfectly setting forth the terms and conditions of the said offer and the acceptance of the same, it is agreed by and between the parties of the first and second parts as follows :—

First. That for and in consideration of the sum of two hundred thousand
10 pounds sterling, to be paid as hereinafter provided, the parties of the first part agree to assign, set over and sell to the party of the second part, or to his nominees, all the shares in the capital stock of the said Great North West Central Railway Company, together with fifty miles of the said railway to be completed at the cost of the said parties of the first part, and in operation by the first of August next, to the satisfaction of the Dominion Government, so as to earn the land grant, and all the right, title, or interest which they or any of them the said parties of the first part may now or hereafter possess in the right of way on the line of the railway wherever the same has been or may be hereafter acquired by them or either of them, and all their interest in the property of the
20 railway of whatever kind, including the franchise and right to the land grant which has been or may be hereafter made by the Dominion Government, and all plans, profiles, or other documents relating to the line of railway.

Second. The parties of the first part agree that, upon transferring all shares in the capital stock of the said Company to the party of the second part or to his nominees, they will guarantee that the said shares are clear of all liability imposed upon the said Company by the terms of the twenty-seventh section of its charter, and from any liabilities incurred by the present shareholders to date of transfer, other than the agreement made by the Company with the Dominion Government as to the construction of the railway on the terms and conditions required to earn
30 the land grant.

Third. It is agreed that the before-mentioned sum of two hundred thousand pounds sterling shall be payable as follows :—

(1.) Fifty thousand pounds (£50,000) on account thereof on the execution of the transfers of the said stock to the party of the second part or his nominees, and the execution by the parties of the first part or some of them of a contract in consideration of the sum of two hundred thousand pounds, undertaking to build, equip, and complete the first fifty miles of the said railway to the satisfaction of the Dominion Government on or before the first day of August next, or within such further time as may be accorded to the Company by the Government with the approval of the party of the
40 second part or his nominees.

(2.) Steel rails and accessories for the first fifty miles of railway shall, if so ordered by the contractors, be supplied by the party of the second part, or his nominees, at prices to be approved by the parties of the first part or the contractors, and the cost charged as a payment made on account of the two hundred thousand pounds (£200,000).

RECORD.

—
No. 3.
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Charlebois
—continued.

(3.) The balance of the said two hundred thousand pounds shall be paid on the completion of the first fifty miles of railway to the satisfaction of the Dominion Government and the production of a Government certificate to that effect, and certifying that the Company is thereby entitled to receive the land grant of three hundred and twenty thousand acres.

Fourth. It is agreed that the following shall be conditions to be fulfilled and performed, precedent to or at the time of the first payment of fifty thousand pounds (£50,000) being made ; and the execution of the contract and transfers :—

(a) That proof of the legal position of the Company and of the land 10 grant having been made and located to Battleford shall be produced to the satisfaction of the party of the second part or his nominees or their solicitors, and that evidence as to the ability and financial strength of the contractors shall also be produced to the satisfaction of the same.

(b) That the party of the second part or his nominee shall produce a banker's guarantee for the payment of the balance of one hundred and fifty thousand pounds to the satisfaction of the parties of the first part.

Fifth. It is agreed by the party of the second part that if at the time of execution of the aforesaid transfers of shares there shall be any sum to the credit of the Company in the hands of the Dominion Government forming 20 part of the original deposit of fifty thousand dollars made by the Company in accordance with the terms of their charter as mentioned in the letters patent granting the same, the said sum shall be paid to the parties of the first part in addition to the said sum of two hundred thousand pounds as and when the same is received by the Company from the said Government or as may be hereafter agreed.

Sixth. It is agreed that unless the party of the second part, or his nominee, shall within one month of the date hereof or within such further time as may be hereafter accorded by the parties of the first part, deposit in a bank the sum of fifty thousand pounds for the purpose of carrying out 30 this agreement, or otherwise give satisfactory evidence to the parties of the first part of his financial ability to carry out the same, that this agreement shall become and be absolutely null and void for all purposes whatsoever, and the said party of the second part shall have no claim against the parties of the first part for expenses or otherwise howsoever.

Seventh. It is agreed that time shall be the essence of this agreement.

In witness whereof we have hereunto set our hands and seals at Ottawa, Canada, on the day and year aforementioned.

19 (a) The said agreement of the ninth day of April 1888, in paragraph 19 recited, did not provide for the sale of paid-up shares of the Company's stock, 40 but the shareholders in and by the said agreement did agree to guarantee that the shares should be free from all liability imposed upon the Company by the terms of the twenty-seventh section of its charter, and from any liabilities of the Company incurred by the said shareholders up to the completion of the sale then

agreed upon, but the said shareholders did not then or at any time agree, nor did they authorize any one to agree on their behalf that the said shares should be fully paid up, and this Defendant denies the said statement in paragraphs 8 (a) and 8 (d) of the amended Statement of Claim.

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—continued.
* sic.

19 (b) The said shareholders did not agree with the said Codd as in paragraph 8 (a) of the Statement of Claim alleged that they would accept in payment of £100,000 of the prices* bonds of the Plaintiff Company when issued at the price of £80 for every £100 of the face value of the bonds of the Company.

10 19 (c) In answer to paragraph 8 (c) of the amended Statement of Claim this Defendant says that he has no knowledge whether the Defendant Codd had or has a valid claim against the Souris and Rocky Mountain Railway Company, for which the Plaintiff Company would be liable under Clause 27 of their charter, but the Defendant Codd constantly and persistently asserted that he had such claims, and the fact of his so doing rendered it necessary for the then shareholders to settle or arrange with him in some way before making financial arrangements for the building of the road.

20 19 (d) This Defendant expressly denies the statements contained in paragraph 8 (f) of the amended Statement of Claim, and he says that the Defendants, Charlebois, Allan, Devlin, and Murray, did not by the said agreements or by any dealings subsequent thereto constitute the Defendant Codd their agent for the sale of the said railway and the shares in the Plaintiff Company, and they did not nor did any of them authorize the said Codd to make any representations whatever as their agent or on their behalf, but on the contrary the true facts as to the relation of the Defendant Codd to this Defendant and the other former shareholders of the Company are fully and truly set forth in paragraphs 19, 20, and 21 of this defence.

30 19 (e) As to paragraphs 8 (h), 8 (i), 8 (n), and 8 (o) of the amended Statement of Claim, this Defendant says that he had not on the 16th September 1889, any notice or knowledge of any interest of the Plaintiff Delap, and he has not now any knowledge of any interest of the Plaintiff Delap in the Plaintiff Company, except the allegations contained in the pleadings and proceedings in this suit, and he dealt with the said Stevens therein and hereinafter named as a principal and believed him to be a principal and acting on his own behalf in the said transactions, and he has not now and never had any knowledge of any dealings or transactions between the Defendant Codd and the said Stevens and the Plaintiff Delap, except as aforesaid, and he denies the allegations in the said paragraphs, and says that they do not in any way affect or prejudice his rights, and that they are irrelevant to the matters in question in this action.

40 19 (f) As to paragraph 8 (j) of the amended Statement of Claim this Defendant says that the memorandum of agreement therein recited was made and entered into under the circumstances set forth in paragraph 21 of this defence and not otherwise, and most of the terms of the said temporary agreement were merged in the full and complete agreement and transfers which were made and executed on the 16th day of September 1889, as hereinafter mentioned.

RECORD. 19 (g) The said memorandum of agreement in paragraph 8 (j) of the amended Statement of Claim recited was drawn by the said Stevens, and is in his handwriting and was entered into at his request and with his knowledge and approval, and the said Stevens, who is the person referred to in the seventh paragraph of the said memorandum as the purchaser, endorsed upon the said agreement an undertaking in the words following : —

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“ With reference to the within heads of agreement, I hereby undertake
“ that so soon as the within arrangements are carried out, I will take the
“ necessary steps to prove to Mr. Charlebois’ bankers that all payments
“ which will become due under the said agreement will be paid at the times 10
“ mentioned, and that the rails will be provided as arranged, such proofs to
“ be in such form as Mr. Charlebois’ bankers may desire, and to be given
“ within 30 days.

“ 9th September 1889.

“ (Signed) CHAS. R. STEVENS.

“ Witness :—

“ (Signed) Harold Knight Gregson.”

19 (h) The said provisional agreement in paragraph 8 (j) of the amended Statement of Claim recited did not provide for or contemplate the sale by the Defendant Charlebois of fully-paid-up shares, and the Defendant Charlebois 20 never covenanted or agreed with the Defendant Codd or with the said Stevens to sell and transfer paid-up shares of the Plaintiff Company.

19 (h) 2. Between the said 9th day of September and the 16th day of September 1889, the Defendants, Clemow, Allan, Devlin, and Murray, agreed to give this Defendant an option to purchase all the shares of the Plaintiff Company belonging to them, as in paragraph 22 hereinafter mentioned, but it is wholly untrue that this Defendant or the said Clemow, Allan, Devlin, Murray, or any of them, while Directors of the Company, entered into a binding agreement, whereby they agreed to bind the Plaintiff Company to give to this Defendant a contract on behalf of the Company, but on the contrary, the said Clemow, 30 Allan, Devlin, and Murray had no knowledge of the arrangement entered into by this Defendant with the said Stevens, or the said Codd, and this Defendant had no agreement with anyone as to taking a contract from the said Company, except the proposed agreement in paragraph 8 (j) of the amended Statement of Claim, which was only intended to take effect if and when the said Stevens should become the owner of the shares of the Company, and this Defendant expressly denies the allegations of the Plaintiff’s re-amended Statement of Claim, contained in paragraphs 8 (l), 8 (l) 2, 8 (l) 3, 8 (m), and 8 (m) 2, so far as the allegations relate to this Defendant, and all charges of fraud or breach of trust, and says that he has not committed or been a party to any 40 fraud or breach of trust as a director of the Plaintiff Company.

19 (i) In answer to paragraph 8 (n) of the amended Statement of Claim, this Defendant says that the two contracts between this Defendant and the Plaintiff Company were submitted to and approved of by resolution of the shareholders and directors at a meeting held on the said 16th day of September 1889.

19. (*j*) This Defendant denies that the Plaintiff Delap advanced the said sum of £50,000 in paragraph 8 (*h*) of the amended Statement of Claim mentioned, or any part thereof, to the Plaintiff Company, and the Plaintiff Delap is not entitled to hold ninety per cent., or any shares of the Plaintiff Company for advances made to the Plaintiff Company, as in paragraph 8 (*t*) of the amended Statement of Claim mentioned, and this Defendant denies that the Plaintiff Delap made any other advances or loans to the Plaintiff Company, as in paragraphs 23 and 23 (*a*) of the amended Statement of Claim alleged.

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—continued.

19. (*k*) This Defendant further says that the Plaintiff Delap is not a shareholder of the Plaintiff Company.

19. (*l*) If the Defendant Delap has had any shares in the stock of the Plaintiff Company assigned to him, which this Defendant does not admit but denies, the said shares have been assigned to him from shares transferred and assigned by this Defendant and the other former shareholders, to the said Stevens and his nominees, under and by virtue of the agreement for sale thereof made by this Defendant with the said Stevens, and the Plaintiff Delap acquired the said shares from the said Stevens with notice of all the facts in regard to the contracts of this Defendant with the said Stevens and the Plaintiff Company.

20. In consideration of the execution by the Defendant Codd of a release under seal bearing date the 8th April 1888, whereby the Defendant Codd released the Company of and from all claims and demands arising from, with respect to, or in connection with, any action, debt, claim or demand which he, said Defendant Codd then had, or ever had, against either the Souris and Rocky Mountain Railway Company or the North West Central Railway Company, and for which the said released Great North West Central Railway Company might, under its said charter, be liable to the said Defendant Codd, the said five shareholders of the Great North West Central Railway Company in good faith, and with the intention of satisfying and discharging the claims of the said Defendant Codd against the Company, by agreement bearing date the 6th day of March 1888, but not delivered as an operative agreement until the ninth day of April A.D. 1888, agreed to pay to the Defendant McMichael, as trustee, for the use of the said Defendant Codd, the difference between \$800,000 and £200,000 sterling, in the event of the sale of the said railway being effected for the latter sum, the said difference to be paid to the said McMichael as aforesaid only out of and upon payment of the proceeds of such sale, which is the agreement recited in paragraph 8 (*a*) of the Plaintiff's amended Statement of Claim.

21. Over a year elapsed after the making of said agreements before the Defendant Codd announced, during the summer of 1889, that he was ready to complete the same by payment of £50,000, mentioned in the said agreement dated the 9th April 1888, and in September 1889 the Defendant Codd and one Charles Richard Stevens, an English solicitor, and one Harold S. K. Gregson, another English solicitor, arrived from England and informed the said five shareholders of the Great North West Central Railway Company that the Defendant Codd was ready to carry out his agreement with them of the 9th April 1888, above set forth, but the said five shareholders refused to do so inasmuch as the time had expired thereunder, and for other reasons, whereupon the said Stevens

RECORD. requested the Defendant Charlebois to himself procure from his co-shareholders and thereafter assign to him all the shares of the said railway company's stock, and himself to enter into an arrangement with the Company, then to be composed of the Defendant Codd and the said Stevens and Gregson, of a somewhat similar character to that made on 9th April 1888, above set out, and the Defendant Charlebois agreed provisionally on the 9th September 1889 with the said Stevens and the Defendant Codd so to do, with the knowledge and approval of the Defendant McMichael.

—
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—continued.

22. Subsequently, on the 11th September 1889, the Defendant Charlebois succeeded in securing an option to purchase all the shares of his said four 10 co-shareholders for the sum of \$226,632.89, of which \$125,945.00 was to be paid to them in cash by the Defendant Charlebois, and the balance of \$100,687.89. was to be secured to the satisfaction of the said four co-shareholders.

23. The said Defendants Codd and McMichael and the said Stevens and Gregson then came to Ottawa on or about the 15th September 1889, and the whole matter was frequently and fully discussed by and between all the said parties and the said Defendants Clemow, Allan, Devlin, Murray, and Charlebois, the then sole shareholders and directors of the said railway company, with the result that on the 16th September 1889 the said Defendants Clemow, Allan, and Devlin assigned in writing, according to the form set out in Section 22, 20 Sub-section 2, of the Railway Act of 1879, but without covenant or warranty whatsoever, all their respective shares of stock, at the request of and by agreement with the Defendant Charlebois, to the said Charles Richard Stevens, to whom also the Defendant Charlebois assigned all his own seven hundred shares, and the Defendant Murray, at the like request of the Defendant Charlebois, assigned 300 of his shares to the said Stevens, giving the said Stevens out of a total of 5,000 shares a total aggregate stockholding of 4,800 shares, 50 more of his said shares to the Defendant Codd, 50 more thereof to the Defendant McMichael, 50 more thereof to the said Gregson, 50 more thereof to one George W. H. B. Aird, whereupon the Defendant Charlebois received on account of the 30 said 5,000 shares from said Stevens the sum of £50,000 sterling, and thereout the Defendant Charlebois did then pay on account of the price of said stock to the said Defendant Clemow \$29,100, to the Defendant Allan \$46,340, to the Defendant Devlin \$35,580, and to the Defendant Murray \$14,925, and did also give to each the further considerations hereinafter mentioned.

24. Thereupon the five new shareholders whom the said Defendants Charlebois, Allan, Murray, Clemow, and Devlin alone knew in the matter, then and there met and elected themselves the new directors of the Company, viz.: Charles R. Stevens, aforementioned, president; the Defendant Codd, secretary; the Defendant McMichael, a director, and the said Gregson and Aird directors. 40

25. The Railway Company had still subsisting at this time the contract for the construction of the first fifty miles of its line with the said Sproule above-mentioned, of which the new directors were well aware, but the new board of the Company immediately resolved to make, and did thereupon, on the said 16th September 1889, enter into the two contracts with the Defendant Charlebois, as follows:—

CONSTRUCTION CONTRACT.

RECORD.

This Indenture, made in duplicate this 16th day of September A.D. 1889 (nine), between

Alphonse Charlebois, of the City and Province of Quebec, contractor, hereinafter called the contractor, of the first part,

No. 3.
Re-Amended
Statement of
Defence of
Charlebois
—continued.

and

The Great North West Central Railway Company, hereinafter called the Company, of the second part :

Whereas the Company did on the 12th day of September 1887 (seven),
10 enter into a contract with the Government of the Dominion of Canada, therein represented by the Honourable John Henry Pope, Minister of Railways and Canals, whereby, amongst other things, the Company did agree, in consideration of the land grant or subsidy therein mentioned, to lay out, construct, equip and have running to the satisfaction of the said Minister the Company's line from Brandon to Battleford within the times and according to the terms thereof, and of the specification attached thereto, and to the satisfaction, in case of dispute, of the Chief Engineer of Government Railways, and otherwise as therein expressed :

And whereas the said contract has been from time to time with the assent
20 of the Company modified, varied and supplemented by Orders in Council, and the times for the completion of the railway have been also extended, so that at present the date fixed for the completion of the first fifty miles of said railway with regard to the land grant appertaining to that portion of the undertaking is the first day of December 1889 (nine) :

And whereas, if reasonable progress towards completion has been made and the iron laid for the said first fifty miles of said railway by said date, it is anticipated that the time for the actual completion and equipment in running order of said fifty miles may, if necessary, be extended by Government as heretofore, and as permissible by said contract :

And whereas the Company have agreed with the contractor to enter into a
30 contract with him whereby the latter agrees to cause the first fifty miles of the Company's line from Brandon, in the Province of Manitoba, as at present projected, located and partially constructed, to be constructed, equipped and running to the satisfaction of the Minister of Railways and Canals, and of the Chief Engineer of Government Railways, on the first day of December next (1889), or under certain circumstances within such further time as hereinafter expressed in accordance with the terms, as modified and varied as aforesaid by Order in Council, of said contract with Government, and of the specification thereto attached, for the considerations and on the terms and conditions
40 hereinafter expressed :

Now, therefore, this Indenture witnesseth that the said contractor, in consideration of the premises, of the sum of fifty thousand pounds sterling (£50,000), to him in hand paid on account thereof by the Company, the receipt

RECORD. whereof is hereby acknowledged, of the covenants and agreements on the part of the Company hereinafter contained, and of the further payment to him, the said contractor, of the sum of one hundred and fifty thousand pounds sterling (£150,000) to be paid as hereinafter expressed, doth for himself, his executors and administrators covenant, promise and agree to and with the Company, its successor and assigns, the latter on their part performing and fulfilling their covenants and obligations hereunder, in manner following, namely :—

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—continued.

1. That the said contractor will at his own expense cause the first fifty miles of the Company's line, commencing at or near Brandon, in the Province of Manitoba, and thence proceeding as at present projected, 10 located and partially constructed, to be constructed, equipped and running to the satisfaction of the Minister of Railways and Canals, and of the Chief Engineer of Government Railways, on the 1st day of December next, 1889, or, should good and satisfactory progress be made and further time be requisite for the completion of said fifty miles and be accorded by the Government, then on or before the 31st December 1889 (nine), or, if absolutely essential through unforeseen events, then, if agreed to by the Company, within such further time as may be accorded by the Government to the Company for such completion in accordance with the terms and conditions in that regard, as modified and varied by Orders in Council as in 20 recital mentioned, of said Government contract, in part recited, and of the specifications thereto attached, copies whereof are hereto annexed, to be read with and form portion hereof so far as applicable, and including also the right of way of the said first fifty miles of railway, and including a completed telegraph line, subject to the fulfilment by the Company of their covenants and agreements in the premises as hereinafter expressed.

2. That upon the said Minister of Railways and Canals being satisfied by and through the report of the Chief Engineer of Government Railways, or Inspector of Railways, or other official detailed for that purpose, that the said first fifty miles have been completed, equipped and in running order, 30 and that portion of said railway, namely fifty miles, do as constructed, comply in that regard with the requirements of said Government contract, or otherwise to like effect, and upon the said contractor tendering delivery to the Company of said completed fifty miles free and clear of all liens or charges for or in respect of work done, or materials provided thereon, by the contractor and those under him, the Company do hereby covenant, promise and agree to pay at the City of Ottawa to the said contractor, his executors, administrators, or assigns, the further sum of one hundred and fifty thousand pounds sterling (£150,000) money, making in all the sum of two hundred thousand pounds sterling (£200,000) in full payment and 40 satisfaction for said completed fifty miles of railway to be delivered to the said Company after said inspection and approval thereof.

3. That the Company shall, as a condition precedent to the fulfilment by the contractor of this contract and to its completion within the time limited, in that regard, supply and deliver at Montreal to the contractor, cost, freight and insurance prepaid to Montreal, all steel rails and accessories requisite for the track and track-laying of said first fifty miles in due and

sufficient time to enable the contractor himself, using due diligence, to complete said fifty miles according to contract and in due time, the amount of the cost, freight and insurance of said rails at Montreal, to be charged thereupon to said contractor on account of the one hundred and fifty thousand pounds sterling (£150,000), hereinbefore agreed to be paid to said contractor, but interest on such amount shall not be chargeable to or against said contractor.

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10 4. The contractor shall have, in addition to such protection and lien, if any, as the law allows and accords him a full and complete lien and first charge upon and over the said first fifty miles of railway and its appurtenances, including rails, ties, buildings, equipment, road-bed, right of way, right to the land-grant thereto appertaining, if and when fully earned, right of operation of said railway, and upon the whole property, enterprise and undertaking, including the works already in course of completion, until he, the said contractor, is, and shall be paid the said full sum of one hundred and fifty thousand pounds sterling (£150,000) as aforesaid, nor shall the Company be at liberty to take possession of, or exercise any acts of possession over, or respecting the said fifty miles of railway, or its appurtenances aforementioned while or so long as any sum remains due and unpaid to the contractor under this contract, and the full absolute and sole possession thereof, shall, in such case remain and be vested meanwhile in the contractor.

20 5. The contractor agreeing as aforesaid to provide the right of way for said first fifty miles shall not be deemed to be in default hereunder, if, at that date of his tender of delivery of said fifty miles of railway, any portions of said right of way remain unsettled for, or unpaid for, but the contractor shall acquire and pay for all of same practicable, and the Company may deduct a sufficient sum from the contractor out of his contract price to meet payment in future of any outstanding claims for right of way as may be agreed upon between the parties hereto.

30 6. Should any dispute arise as to the interpretation hereof, or of any of the contracts, or specifications referred to herein, or respecting the work done or to be done hereunder, the decision of the Chief Engineer of Government Railways, or such other departmental official as may be detailed to act in the matter, shall be final and conclusive upon the parties hereto.

40 7. The contractor will become responsible to the public and to the Company for all damages whatsoever arising out of the works hereunder during the progress thereof until completion and delivery of the works, and shall and doth hereby indemnify the Company from all such and from all failure in the said works arising out of bad workmanship or defective materials until approval thereof by the Government.

RECORD.

COLLATERAL AGREEMENT *re* SPROULE, &c.

No. 3. Memorandum of Agreements made and entered into this 16th day of
 Re-Amended September 1889 (nine)
 Statement of
 Defence of
 Charlebois
 —continued.

Between

Alphonse Charlebois, of the City and Province of Quebec, contractor,
 (hereinafter called the Contractor), of the first part,

and

The Great North West Central Railway Company (hereinafter called the
 Company), of the second part.

Whereas the parties hereto have by an indenture bearing even date herewith 10
 this day entered into a contract whereby the contractor for the considerations
 and on the terms therein stated (to be read with and form portion hereof)
 agrees to cause the first fifty miles of the Company's railway to be built and
 completed as and when therein expressed.

And whereas by indenture bearing date the 12th September 1887, the said
 Company entered into a contract with one John Carlton Sproule, of the City of
 Winnipeg, for the construction of portion of the works upon the first fifty miles
 of the Company's road upon the terms and for the consideration therein
 appearing, copy whereof being hereto annexed, and a large amount of work has
 been already done and large sums of money paid thereon. 20

And whereas the Company have temporarily suspended the work on said
 contract, according to the provisions thereof, and same is now suspended.

And whereas the Company has been notified that one Alexander Macdonald
 and one William Alfred Preston, both of Winnipeg, have some interest by
 assignment or as partners or otherwise in and under said contract, which said
 notice is in the hands of the Company's solicitor at Brandon.

And whereas (unless otherwise arranged) the said Sproule, his partners and
 assigns may continue the works on his said contract, and it is the wish and
 intention of the parties hereto in such event to subject the said Sproule contract
 as far as possible to the Company's contract with the party hereto of the first 30
 part.

And whereas it is desirable to settle other matters relating to said under-
 taking and contract in and by these presents.

And whereas there is now in the hands of the Receiver-General of Canada
 the sum of \$24,119.15, or thereabouts, balance of the \$50,000.00 referred to in
 the Company's contract with Government of the 12th September 1887.

Now therefore these presents witness that in consideration of the premises, of
 the said contract of even date herewith, of the mutual covenants herein contained,
 and of one dollar in hand paid by the contractor to the Company, the receipt
 whereof is hereby acknowledged, it is agreed by and between the parties hereto 40
 as follows :—

1. The contractor, the party of the first part, agrees with the Company, for the consideration aforesaid and in further consideration of the agreement on their part to fulfil the covenants and agreements with the said party of the first part in the premises, to indemnify and save harmless the said Company of and from all payments, expenses, debt, demand or claim whatsoever now due, owing or payable or which may hereafter be or become due, owing or payable, for estimates both progress and final or otherwise howsoever, to the said John C. Sproule, his partners and assigns, upon or under his contract in recital mentioned, and from all actions, claims and demands whatsoever of said Sproule, his partners or assigns, and from all costs, charges and expenses in connection therewith, and that he the party of the first part will pay all moneys due to or earned by the said Sproule, according to the terms of the said Sproule contract, or which may hereafter be due to or earned by said Sproule, his partners or assigns as aforesaid, or will cause same to be paid, if the said Sproule, his partners or assigns should proceed with the works embraced in said contract.

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2. And in consideration of the premises, the Company agrees with the said party of the first part to facilitate the latter at his request in every way so as to enable him to cause the works embraced in said Sproule contract, should it be proceeded with, to be energetically proceeded with by the said Sproule, his partners or assigns, and conducted and completed in such a manner and within such time as the party of the first part may require, having regard to his contract hereunder as a whole, and to grant, and the Company do hereby grant, to the said party of the said part full power and authority in the name and stead of the Company, but for the use and benefit of the party of the first part, to do, use and exercise all and every of the acts, rights, powers, duties, authorities and things which the Company may or might do, use or exercise, under said Sproule contract and the terms thereof or otherwise in the premises with respect thereto, including the appointment and payment by the Company for and in respect of said contract work of an engineer with full and like authority as hitherto from the Company in the premises, the Company agreeing at the request of the party of the first part to give and sanction the giving of all necessary notices to the said contractor Sproule or his partners or assigns, and to discharge or otherwise deal with the latter according to the terms of said contract if deemed fit by the party of the first part, and to do all other things necessary to be done for the protection or benefit of the party of the first part, and to ratify and confirm all that the party of the first part shall lawfully do in the premises hereunder.

3. And the party of the first part agrees hereby to indemnify and save harmless the Company with respect to the exercise by him of all or any of the powers accorded him as aforesaid.

4. It is further agreed between the parties hereto that the Company shall pay to the contractor for the plans, profiles (if any), papers, surveys and reports made of the location and survey of the mileage heretofore made beyond the first fifty miles, such sum as same actually cost as certified to in detail by J. H. E. Secretan, C.E., upon tender and delivery of the aforementioned plans, &c., to the Company.

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—continued.

5. It is further agreed by and between the parties hereto that the sum of money or balance in recital mentioned, now held by the Honourable the Receiver-General of Canada, shall upon payment thereof to the Company as provided by said Government contract be at once thereupon paid to the said contractor, the party of the first part, as a further consideration for the building of fifty miles of railway aforementioned, over and above the two hundred thousand pounds sterling consideration mentioned in said construction contract.

6. And it is understood and agreed that the contractor shall have nothing to do with the getting and obtaining for the Company of the land-grant 10 appertaining to said fifty miles of railway, the Company themselves undertaking to do so, the contract of the said contractor of even date herewith being to build and complete thereunder the said fifty miles for the considerations and on the terms herein mentioned.

In witness whereof the party hereto of the first part, the said contractor, hath hereunto set his hand and seal, and the said Company have hereunto set their corporate seal and testified the same, in pursuance of a resolution of the Directors of the Company to that effect, by the hands of their President and Secretary.

(In Duplicate.)

20

(Signed)	A. CHARLEBOIS.	[Seal]
(Signed)	CHAS. RICHARD STEVENS, President.	[Seal]
(Signed)	J. A. CODD, Secretary.	

Signed, Sealed and Delivered in the presence of :—

J. Travers Lewis, of Ottawa, Canada,
Solicitor, etc.

26. Before executing the two last recited contracts, the Defendant Charlebois discussed with the new Directors and the said Charles Stevens how the former agreement of the 9th April 1888, made with the Defendant Codd by the former shareholders should be dealt with, and the whole matter was fully explained to 30 the said Stevens and the other new Directors, including the proposed payment to the Defendant McMichael for the Defendant Codd, whereupon it was determined that the said former agreement by the Defendant Codd to purchase the shareholders' stock, dated 9th April 1888, should be cancelled and released by the Defendant Codd and that all the former shareholders, except the Defendant Charlebois, should be released from the collateral document of the sixth day of March 1888, in paragraph 20, hereof above recited.

26 (a.) The Defendant Codd accordingly with the knowledge and in the presence of the said Stevens, then did, by writing under seal endorsed thereon, wholly release and discharge the said recited agreement of the 9th day of April 40 1888, and the said Codd did therein further covenant and declare that the said agreement had not been in any way assigned in whole or part, and that he was entitled to discharge the same.

26. (b.) The Defendant Charlebois thereupon stated that he would carry out the same arrangement with respect to the difference between the £200,000 and \$800,000, under his construction contract, as he and his former associates had previously agreed to do under the said agreement of the 6th March 1888, but only out of and upon payment of the balance of £150,000 agreed to be paid on the said contract of the 16th September 1889, and also subject to certain deductions theretofore assented to by the Defendant Codd and the said Stevens, and embodied in the memorandum of the 9th September 1889, above referred to.

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26. (c.) The said Defendant Codd and the Defendant McMichael accordingly executed a short release under the seal of the said memorandum of agreement of the 6th day of March 1888, exonerating and discharging the Defendants Clemow, Allan, Devlin and Murray, from all liability thereunder, and accepting the Defendant Charlebois alone with respect to the undertaking therein contained, but the said Charlebois refused to execute the said release, or any binding agreement in favour of the said Codd, and declined to make himself personally liable to pay any amount thereunder.

27. Afterwards with the full knowledge of all the facts above stated as to the interests of the said Defendant Codd and the Defendant McMichael, the new shareholders of the Company elected the said Defendant Codd to be a director and president and general manager of the Company, and the said Defendant McMichael as director and solicitor of the Plaintiff Company, and authorised them to act for and represent the Plaintiff Company in the transaction of the affairs of the Company, and particularly in the defence of the action in which the said judgment and order were obtained, and the Plaintiffs should not be permitted to repudiate the acts and agreement of the Defendants Codd and McMichael, instructing counsel to consent to the judgment of the 28th September 1891.

28. At the same time and place aforementioned, the Defendant Charlebois then signed four orders or equitable assignments of part of the moneys thereafter to become payable to him under his above recited construction contract, said orders being drawn upon the Railway Company by the said Defendant and thereupon accepted by the Railway Company under its corporate seal, and delivered to the Defendants Clemow, Allan, Devlin and Murray, as and in further consideration and payment for the assignment aforementioned of their stock in the Company to the then shareholders, as follows:—To the Defendant Clemow an order for \$23,415.79, to the Defendant Allan an order for \$37,465.27, to the Defendant Devlin an order for \$28,098.94, and to the Defendant Murray an order for \$11,707.89, with interest on all said sums at 4 per cent. per annum until paid, the said four Defendants accepting same in full of the balance due to them on their said respective shares so assigned as aforesaid.

29. Between the 16th and the 21st days of September 1889, the Defendant Charlebois, aided and assisted in that regard by the Directors of the Company, negotiated for the release and surrender to the said Company by the Company's contractor Sproule of his subsisting construction contract, under which the Company's railway had already been projected, located and partially constructed as aforementioned, and on the 21st September 1889, the said Sproule, and the

RECORD, Defendants Macdonald and Preston, who claimed to be partners with said Sproule therein, released and surrendered said construction contract of 12th September 1887, for the considerations in and by said releases and surrenders appearing, to which the Defendant Charlebois craves leave to refer, and accordingly on or about the 3rd October 1889, the Defendant Charlebois, with the full knowledge of the Company and its directors, entered into a sub-contract with the Defendants Macdonald and Schiller for the completion of such of the works on the first 50 miles of the Company's railway as the said Sproule had formerly undertaken, and at the same price, subject, however, to the conditions and terms of said sub-contract, to which the Defendant Charlebois craves leave to refer; and the Defendant Charlebois did also, in pursuance of said agreement, enter into a sub-contract with the Defendant Preston for fencing a portion of the said railway, although at that date the fencing of railways across the prairie was unusual and not exacted by Government under land subsidy contracts.

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30. It had been part of the original bargain of the 8th April, above set out and cancelled as aforementioned, that steel rails should be furnished the contractor by the Defendant Codd at such prices as could be agreed upon, and a price had been therefore fixed for rails thereunder, but between the date of said agreement and the making of the contract of the 16th September 1889, the Defendant Charlebois claimed that the price of steel rails had risen considerably, and to equalise matters the Defendant Codd agreed with the Defendant Charlebois that the sum of \$32,866.00, representing the said difference, should be made good to the Defendant Charlebois by being deducted from the amount payable upon the completion of the contract to the Defendant McMichael aforementioned, and two orders on the Defendant McMichael were made to that effect and signed by the Defendant Codd for said sum, and the said orders were duly accepted by the Defendant McMichael.

31. The Defendant Codd and the said directors Stevens and Gregson immediately after the happening of the foregoing events, early in October 1889, left for England, and the said Stevens and Gregson have remained there ever since, and the Defendant Codd was thereupon made and still is the president of the Defendant Company.

32. Previous to the departure of the said directors the Defendant Charlebois had many conversations and interviews with the said directors, and the subject of the grade of the first mile of railway from its junction with the Canadian Pacific Railway was referred to, whereupon the said directors requested the Defendant Charlebois not to do more work on that portion of the line (then already built) than was necessary, for that ultimately, and after the completion of the Defendant Charlebois' contract, the Plaintiff Company would determine for itself whether it would build a bridge over the river into Brandon, or extend the line further eastward into Chater, which events depended on the prospects of a municipal bonus as aforementioned, but that so far as the Defendant Charlebois was concerned the main object of his contract was to earn the land grant for the Company as speedily as possible, so as to enable the Company to raise money for the further prosecution of its undertaking, and the Defendant Charlebois was repeatedly informed that in the absence of the said directors in

England he must look to the Defendant McMichael as the Company's RECORD.
representative.

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33. Before the said directors left Canada, and on the 7th October 1889, the Board of the Plaintiff Company passed a resolution in Montreal authorising the Defendant Charlebois as its contractor to draw orders upon the Plaintiff Company to pay to third parties various amounts out of the balance payable to him upon completion of his contract work, and agreeing to accept such orders, provided the same did not exceed in the aggregate the balance due to the said Defendant Charlebois, and the Defendant Charlebois thereupon drew orders (amongst others) in favour of Defendants the Union Bank of Canada for \$150,000, and subsequently in favour of the Defendants the Commercial Bank of Manitoba for \$20,000, all of which orders the Plaintiff Company accepted under its corporate seal.

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34. The Defendant Charlebois thereupon immediately proceeded with the work of completion of the said 50 miles of railway, and did duly complete the same according to the terms of his said contract with the Plaintiff Company, and duly supplied all material, and he purchased and placed upon the said railway the rolling stock required by the terms of the said contract, and built and completed all the fencing and lines of telegraph, together with the stations and other buildings which were required to be so built and completed by him, and in every way performed the said contract on his part, all of which was so built, completed, and finished by the Defendant Charlebois before he commenced his action against the Plaintiff Company, referred to in the Plaintiff's Statement of Claim herein.

34. (a.) This Defendant says that he has expended in and about the performance of the said contract for construction of the said railway, including payments by himself and the other four shareholders associated with him prior to the said 16th day of September 1889 upwards of \$527,000.00, and that he is indebted for amounts charged upon his judgment in favour of Macdonald and Schiller the sum of \$64,000; W. A. Preston \$8,400; and Crossen Co. \$39,000—making in all, with the said sum of \$527,000, a total of at least \$638,000, without including any profit to himself for his time, labour, risk, capital, and interest upon his outlay, except the actual bank charges paid by him, and this Defendant denies the statements contained in paragraph 12 of the Plaintiff's Statement of Claim, and says that the figures therein contained are wholly incorrect.

34. (b.) As to paragraph 20 (b) of the Statement of Claim, the Defendant Charlebois says that he did not agree to obtain the order of the Railway Committee of the Privy Council, authorizing the junction with the Canadian Pacific Railway, pursuant to the 173rd section of the Railway Act, 1888, and the same formed no part of his contract, but on the contrary it was the duty of the Company to procure the said order, and only the Company had power to do so.

34. (c.) As to paragraph 23 of the amended Statement of Claim, this Defendant says that by the construction contract of this Defendant with the Plaintiff Company, dated the 16th day of September 1889, in paragraph 25 of this defence recited, the Company covenanted with him to supply and deliver at Montreal all steel rails and accessories necessary for track laying of the first

RECORD. 50 miles, the cost of the said rails to be charged on the balance of £150,000 therein agreed to be paid.

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34. (*d.*) The said Defendant Codd on or about the 9th day of September 1889, and at different times until the 4th day of October 1889, represented to this Defendant that the necessary rails had already been purchased in Scotland, and had been shipped to Montreal, and that they had been paid for. Some days after the said construction contract had been signed between this Defendant and the Plaintiff Company, this Defendant made inquiry for the said rails and whether they had arrived, so that his work could be proceeded with without delay, and then found that a portion of the said rails had arrived, but that they had been 10 shipped to the order of the vendors, and could not be delivered until after payment of the price.

34. (*e.*) The said Stevens thereupon professed to be very much disappointed and proposed to this Defendant that the Defendant Codd would make a draft upon the Plaintiff Delap, and that he would be able to get the said draft discounted and pay for the rails. The Defendant Codd thereupon made a draft upon the said Delap for the sum of £25,000, payable sixty days after date, to the order of this Defendant and the said Stevens procured the said draft to be discounted.

34. (*f.*) This Defendant had never before heard of the Plaintiff Delap, and 20 the said Stevens represented that the said Delap was a very old friend of his father's, and that he would be able to get his acceptance of the draft.

34. (*g.*) The said draft was afterwards accepted and paid, but this Defendant has no knowledge whether the same was paid by the Plaintiff Delap, but this Defendant charges and alleges the fact to be that any amount advanced by the Plaintiff Delap to provide money for payment of the rails was so advanced by him as principal of the said Stevens, or as a joint adventurer with him for the purchase of the said railway, and not as a lender to the Plaintiff Company, and this Defendant says that the Plaintiff Company is not now and never was indebted to the Plaintiff Delap for any sum of money on account of the said transaction. 30

34. (*h.*) This Defendant further charges and submits that the Plaintiff Delap by the acceptance and payment of the said draft, if he did pay the same, which this Defendant does not admit, adopted and ratified the said construction contract of the sixteenth September 1889, and made such payment as a part payment of the balance of £150,000, payable to this Defendant under the said contract.

35. Some time prior to January 1890, the said directors of the Plaintiff Company having repeatedly urged upon the Defendant Charlebois to procure an early inspection by the Government Inspector of the said 50 miles of railway, so that the land grant might issue as soon as possible, the Defendant Charlebois 40 requested the Department of Railways to have the said section of the railway inspected, and during the month of January 1890, the same was inspected by the officer of the Department.

36. At this date it was found that certain of the grades on said section of railway exceeded the grades shown on the profiles thereof, theretofore approved

in 1888, as aforementioned, and the Defendant Clemow, who was then and for a long time thereafter a director of the Plaintiff Company, acting, as the Defendant Charlebois believes, under the instructions of and with the full knowledge of the other directors, applied on behalf of the Plaintiff Company for an Order in Council, approving of the grades of said section as the same had been constructed, including the grade of the first mile of said railway out from the junction above referred to, which the then Minister of Railways, Sir John A. Macdonald, since deceased, assented to, in order to facilitate the issue to the Company of its land grant, which the Company had all along urgently desired, 10 so as to enable the Company to place its bonds on the market in England, but on two conditions, namely, that the contractor, the Defendant Charlebois, would at once reduce all grades upon said section to the minimum required by the contract of 60 feet in the mile, and that the balance of the Company's deposit with the Government (which amounted to upwards of \$24,000.00) should remain deposited as security therefor, and an Order in Council was accordingly passed approving of said grades on the 6th March 1890, and a copy of it was sent to the Defendant McMichael immediately after it was issued.

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37. On the 12th March 1890 the Government chief engineer reported to the said Department of Railways in the following terms :—

20 “ Referring to the Great North West Central Railway being constructed
“ from Brandon to Battleford under contract dated 12th September 1887,
“ in connection with a land grant of 6,400 acres per mile, I have the honour
“ to report that the first fifty (50) miles out from its junction with the
“ Canadian Pacific Railway near Brandon has been constructed and equipped
“ within the time limited by the Company's contract above referred to, as
“ amended by Order in Council dated 16th November last, and this portion
“ of road has been built and completed in accordance with the requirements
“ of the said contract, as amended by Order in Council dated 6th March
30 “ 1890, with the exception of a few braces and gravel, planks of bridges,
“ planks on road crossings, all very small matters, and the greater part of
“ the ballasting, all of which can be readily completed in the approaching
“ spring. The road is reported by Mr. Forrest, the inspecting engineer,
“ to be in fair running condition.” And a copy of said report was
immediately furnished the Defendant McMichael, who thereupon cabled to
the President, the Defendant Codd, to England on the 14th March 1890,
as follows :—“ Desire to inform you before departure (meaning Codd's
“ departure for Canada), Government Engineer Schreiber just reported
“ 50 miles completed and equipped, with certain small exceptions. The
“ land grant issues at once ; I therefore recommend £50,000 be placed at
40 “ Charlebois' credit at Union Bank ; ” which, however, was not done.

38. The Plaintiff Company then applied for and obtained an Order in Council dated 19th March 1890, authorising the grant of 320,000 acres of land to be forthwith allotted to the Plaintiff Company in accordance with the conditions of the Act of Incorporation, and the existing Orders in Council in that behalf, and directing that patents therefor should issue to the Company upon their application.

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39. The Plaintiff Company and the Defendant Codd immediately took the benefit and advantage of the issue of the land grant of 320,000 acres to said Company, and issued a prospectus in England for an issue of bonds, in which prospectus the fact of completion of the first 50 miles of railway and of the grant of Dominion lands aforementioned fully appears, and subsequently, on or about 12th June 1890, authorised the withdrawal of the balance of the Government deposit referred to in the Government subsidy contract above recited, amounting to \$24,000.00 and upwards, which was subsequently withdrawn and paid over to the Defendant Charlebois, as agreed by the terms of the collateral contract of said Defendant with the Plaintiff Company, dated 16th September 10 1889, as part of the consideration for the completion of said first 50 miles of railway.

40. The Defendant Charlebois did not thereupon claim payment by the Company under his said contract, but, as soon as the spring season of 1890 permitted operations, he immediately proceeded to complete his work, and to have the said grades reduced, and he employed the Defendants Macdonald and Schiller to at once correct said grades, and the same were thus all reduced, at great expense to the Defendant Charlebois, to the minimum of 60 feet in the mile (save and except the said one grade occurring in the first half-mile of said railway, which was not so reduced for the reasons aforementioned), and all the 20 other incompleted works mentioned in said report of the 19th March 1890 were fully executed and completed during said season by the Defendant Charlebois, so that when, on or about the 22nd July, 1890, a further inspection of said 50 miles was made by the Government engineer, under said subsidy contract, it was found that all the works aforementioned had been carried out in accordance with the requirements of the said subsidy contract, and the Government chief engineer made his report thereon on the 10th August 1890, in the following words :—

“On the 12th March last I reported that the first 50 miles section out from Brandon, of the Great North West Central Railway was completed in 30
“accordance with the requirements of the Land Grant Contract, as amended
“by Order in Council dated 6th March 1890, with the following exceptions,
“viz., a few braces and gravel, planks of bridges, a few planks on road
“crossings, and the greater part of the ballasting.

“On the 20th June last I instructed that a further inspection of this
“section be made, and I find that all of these works have been carried out
“in accordance with the requirements of the contract, so that this section
“of the road may now be considered as completed and equipped, and in
“good running condition.”

41. At the date of said last inspection the Defendant President Codd, a 40
director, and other directors, Hon. J. B. Robinson, the Plaintiff Company's consulting engineer, Murdoch, the Defendant Charlebois and his engineer, Secretan, and the Defendants Macdonald and Preston and others, went over the said 50 miles of railway together, and the said Defendant Codd and the said directors saw and had their attention called to the condition of the junction with the Canadian Pacific Railway, and the first mile of the railway out from said junction, and the said president and directors discussed the same with the Defendant Charlebois and were satisfied therewith, then stating that the Company

hoped to get a bonus from Brandon, and to build into that city itself, and the matter was then discussed with the Company's engineer Murdoch, who refers thereto in his report to the Plaintiff Company, dated 22nd July 1890, to which this Defendant craves leave to refer.

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42. From the time that the Defendant Charlebois entered upon his construction contract, 16th September 1889, until the consent judgment of the 28th September 1891, quoted in the Plaintiff's Statement of Claim herein, was entered in this Court, the Defendant Charlebois was in absolute and complete possession of the said 50 miles of railway, with all its appurtenances, and was
10 also in possession of all the rolling stock and chattels belonging to the said 50 miles of railway, and the Defendant Charlebois continued in such possession until the said consent judgment was entered, which possession the Defendant Charlebois was entitled to, and held as security for the balance due to him upon his said construction contract, in accordance with the terms and provisions thereof, and the said 50 miles of railway was then free and clear of all liens or charges for and in respect of work done or materials provided thereon by the Defendant Charlebois and those claiming under him.

43. No complaint whatever was made at or before the date of the commencement of proceedings in the suit of Charlebois v. the Great North West
20 Central Railway Company in the Plaintiffs' Statement of Claim referred to by the Defendant Codd or by the said railway company respecting the performance by the Defendant Charlebois of his contract, save and except the matters mentioned and referred to in the resolution of directors passed on the 9th October 1890, in the following terms :—

Toronto, 9th October 1890.

Moved by Mr. Clemow,
Seconded by Mr. Robinson,

Resolved—

30 “ That the Company will on the first day of November next accept the
“ said roads at the hands of Mr. Charlebois, if he is ready then to deliver
“ the same, on the understanding and subject to the conditions hereinunder
“ mentioned.

40 “ 1. That the contractor will permit them to retain out of the money
“ coming to him under the contract the sum of \$20,000.00, to be employed
“ by them in the purchase of two new engines for the road, and the sum of
“ \$13,000.00, to be employed in finishing the fencing on the said road, and
“ the sum of \$3,000 as security for the completion of the title for the
“ right of way to the said 50 miles, and the sum of \$40,000 to be paid to
“ Macdonald and Schiller on the order of the contractor and also on the
“ like order to Preston on the fulfilment of their contract, and that Mr.
“ Charlebois consent that the question whether the box cars and platform
“ cars furnished are sufficient to meet the requirements of the contract of
“ Mr. Charlebois, as well as the question whether Macdonald and Schiller's
“ fulfilment of their contract answers the requirements of Mr. Charlebois'
“ contract, be left to Mr. Collingwood Schreiber, or, if he decline to act, then

RECORD. " to Mr. Shanly and Mr. Light, who, if they cannot agree, may choose a
 — " third. Any amounts remaining after payment of said claim, when the
 No. 3. " amount has been decided as hereinbefore provided, to be paid to the said
 Re-Amended " contractor."
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—continued.

* *sic.*

In accordance with the foregoing resolution of the Plaintiff Company, the question as to the sufficiency of rolling stock, as well as the question of the sufficiency of siding accommodation, stations, tanks, turntables or* ys, and such other structures as were necessary to meet the requirements of traffic, were submitted by the Plaintiff Company and the Defendant Charlebois to the arbitration of Messrs. Shanly and Light, which was by its terms declared to be 10 final, and without appeal, to which submission the Defendant Charlebois craves leave to refer, and the said arbitrators, on the 11th November 1890, made their award in favour of the Defendant Charlebois, to which the Defendant Charlebois also craves leaves to refer.

45. Shortly after the making of the said award the Defendant President Codd, in December 1890, left Canada for England ostensibly for the purpose of raising the necessary funds to pay the Defendant Charlebois, but the Plaintiff Company, which then owed the Defendant Charlebois upwards of the sum of \$600,000, failed to pay any part of the said amount to the Defendant Charlebois under the said construction contract, and accordingly, after the lapse of nearly 20 another whole year from the date of said arbitration and award, namely, on or about the 11th September 1891, the Defendant Charlebois commenced proceedings in the Chancery Division of this Court, within the jurisdiction of which the Company's head office and chief place of business was situate, and within the jurisdiction of which the president and the majority of the directors of the said Company then resided and were domiciled, for the purpose of enforcing payment of the balance due to the said Defendant Charlebois, and for the purpose of enforcing the rights secured to the Defendant Charlebois under the said contract. Accordingly, an action was commenced by writ of summons issued by the said Charlebois against the said railway company, in which writ 30 the Defendant Charlebois was Plaintiff, and the Plaintiff Company were Defendants, said writ being specially endorsed, and the said railway company appeared thereto and accepted the jurisdiction of this Court.

46. An interim injunction having been obtained in said action by the said Charlebois, referred to in paragraph 32 of the Plaintiff's Statement of Claim herein, upon the return of the motion to continue said injunction before his Lordship Mr. Justice Ferguson, the Plaintiff Company duly appeared by its counsel, Mr. S. H. Blake, Q.C., and the Defendant McMichael, and vigorously contested the claim of the said Charlebois, whereupon, adjournments having taken place for the purpose of cross-examination both of the said Charlebois 40 and the said President Codd upon their affidavits filed, upon the subsequent return of the said motion, long arguments ensued and evidence was adduced, and the said Company through its counsel having declared that the Company's bonds were unsold and unpledged, and that if given six months' further time the necessary funds could be raised by the said Company wherewith to pay the said Charlebois, it was suggested by counsel that the said motion should be

turned into a motion for judgment, if terms of settlement could be agreed upon. RECORD.

47. To this end the Company's counsel aforesaid spent a week's time with counsel for the said Charlebois, in endeavouring to arrive at a settlement of all matters of difference subsisting between the parties, the Defendant Nugent being also present and representing the Defendants Macdonald, Schiller and Preston. No. 3.
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48. All the 23rd, 24th, 25th and 26th days of September, 1891, were thus spent by said counsel in reaching a settlement, and on Saturday evening, the 26th September, 1891, consent minutes of judgment were signed by Mr. S. H. Blake, Q.C., for the said railway company, by Mr. B. B. Osler, Q.C., for the said Charlebois, and by Mr. Nugent on behalf of his said clients, said consent minutes being so signed at the residence of said counsel for the railway company, and on the following Monday, the 28th September, 1891, Mr. S. H. Blake, of counsel for the railway company, moved for and insisted upon judgment in the terms of the said consent minutes, which was granted by the Hon. Mr. Justice Ferguson, after long discussion.

49. The consent judgment was then taken out and issued by the solicitors for the railway company on the 3rd October, 1891, who immediately proceeded to take and did take possession of the line of railway and its appurtenances under said consent judgment, and the Defendant Charlebois immediately delivered up possession of the said fifty miles of railway, with its buildings and appurtenances, and all the said rolling stock to the railway company, in pursuance thereof, and ever since the said consent judgment was pronounced the railway company have retained possession thereof by virtue of the said judgment, and have enjoyed all the benefits thereof, while the Defendant Charlebois shows, as the fact is, that acting upon the said judgment he has materially altered his position and been greatly prejudiced thereby, while the railway company have received and enjoyed, and retain, valuable rights and benefits under the said judgment.

50. Upon said motion, and previous to the entry of said judgment, the said railway company contended, as it does now, that the Defendant Charlebois was then in fact over paid, and claimed large amounts from the Defendant Charlebois as deductions against his contract price, amongst other items \$20,000 for two new engines, \$13,000 for fencing, \$3,000 for balance due on right of way, upwards of \$50,000 for further rolling stock, \$20,000 for the cost of correcting the grades on the first mile out from said junction aforementioned, and \$15,000 and upwards for stations, buildings, and terminal facilities, etc., and all such matters of difference were fully discussed by counsel, and the said consent judgment was agreed upon in good faith and by way of a compromise.

51. The Company did not within one month after the date of the said consent judgment, nor have they since, deposited the whole of the bonds issued by the Company, as required by the 5th paragraph of the said judgment, nor any part thereof, nor has the Plaintiff Company in any way complied with the said 5th paragraph of the said judgment, or any part thereof.

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—continued.

51 (a) The Plaintiffs now falsely pretend that the said bonds were, immediately after the issue thereof, duly deposited and pledged by the Plaintiff Company with the Plaintiff Delap, but this Defendant says that the Plaintiff Delap never obtained possession of the said bonds until long after the judgments of this Court, in paragraphs 34 and 49 of the amended Statement of Claim recited, and that the said Delap had actual notice of the said judgment before he obtained possession thereof.

51 (b.) The Plaintiff Delap admits that the said bonds were in the possession of the said Stevens until the month of August 1892, and this Defendant says, that the said bonds were held by the said Stevens, not on his own behalf, 10 but as solicitor for the trustees, and that in parting with the possession of the said bonds, the said Stevens was guilty of a breach of trust, with the knowledge of the Plaintiff Delap, and the said bonds were so delivered, if they were delivered, which this Defendant does not admit, but denies, in breach of the injunction contained in the said judgments above mentioned.

51 (c.) The said bonds and the mortgage in the 27th paragraph of the amended Statement of Claim mentioned, in any case were, and are, illegal and void, and were not executed or made in accordance with the requirements of section 14 of the Company's charter, or of the Railway Act, and the pretended issue thereof to the Plaintiff Delap was wholly void, and the said Plaintiff 20 Delap in now pretending to hold the same does so illegally and wrongfully to secure the payment to him of a private debt due to him by the said Stevens and the said Codd, or one of them, and in defiance of the order and injunction of this Court and the said bonds should be ordered to be delivered up and cancelled, and the said defendants, the trustees, should be ordered to execute a release of the said mortgage.

51 (d.) The said bonds never were in fact issued at all, but the Plaintiff Delap has, if the statements of the amended Statement of Claim are true, been allowed to take into his possession the bonds of the Company without having given any value or consideration therefor, and now claims to hold the same as 30 his absolute property, instead of applying them to the only purpose to which they can legally be applied under the said charter.

52. There was due by the Plaintiff Company to the Defendant Charlebois the sum of \$622,226.00, on account on the said work, and under the said contract on the date of the consent judgment, out of which the Defendant Charlebois had previously assigned the various sums herein mentioned to the Union Bank of Canada, the Commercial Bank of Manitoba, and the Defendants Clemow, Allan, Devlin and Murray ; and the amount so found due by the said judgment to the Defendant Charlebois is proper and correct, and is still wholly due and unpaid, and the Company have not paid the said sum or sums mentioned in the said 40 judgment nor have the said Company paid any sum in the manner provided by the said judgment, and the said Company, except by taking possession of the said road and rolling stock, and by taking the further time for payment in the said judgment, have not in any way complied with any of the provisions of the said judgment, but the said railway company have wholly made default.

53. After the Plaintiff Company had so made default in the performance of the terms and conditions of the said consent judgment, and of Clause 5 thereof, and so soon thereafter as the said Defendant Charlebois became aware of the failure by the Company to deposit its bonds as herein provided, the said Defendant Charlebois applied in the said action, in the Chancery Division of this Court, against the Plaintiff Company, for the purpose of enforcing the said consent judgment, in which proceedings the said railway company again duly appeared by its said counsel, and defended itself and accepted the jurisdiction of this Court, and much evidence was taken and adduced on such application, where-
 10 upon the final judgment set out in paragraph 49 of the Plaintiff's Statement of Claim herein was pronounced by His Lordship Mr. Justice Ferguson on the 29th February 1892, but said final judgment was not actually signed and entered until the 16th April 1892, which was over two weeks after the 31st March 1892, the date on or before which the said Railway Company had been ordered by said consent judgment to pay the said sum of \$622,226 and interest into the Bank at Montreal.

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54. The said final judgment was not a consent judgment, but a judgment obtained as aforesaid after considerable evidence adduced and strongly against the wish of the said railway company, who thereupon appealed therefrom to
 20 the Chancery Divisional Court, which dismissed said appeal, whereupon the said railway company gave notice of appeal from said judgment to the Court of Appeal for Ontario, but did not further prosecute its said appeal.

55. The Defendant Charlebois, who had previously as aforementioned surrendered possession of the said 50 miles of railway and its appurtenances to the Plaintiff Company under and upon the terms and conditions of Clause 4 of said consent judgment, subject to his right to have, upon the order of this Court, re-possession thereof upon default of the said Company in the performance of the terms imposed by the consent judgment, thereupon demanded possession of the said railway and property, both from the proper officers of the company in
 30 Ontario, and also from the servants and agents of the said Company, who hold possession thereof in the Province of Manitoba, but the Company and their said officers, servants and agents refused, and still refuse, to deliver up possession of the same or any part thereof, and the Company and their servants actively prevent the said Defendant Charlebois from taking possession thereof, but continue in possession thereof themselves in breach of the injunction contained in the said final judgment.

56. The said Defendant Charlebois submits that the said judgments in the 34th and 49th paragraphs of the Plaintiff's Statement of Claim are an estoppel, and are binding upon the Plaintiff Company and the other Plaintiffs, and that
 40 the other matters anterior to the said judgment cannot be inquired into, unless and until the said judgments are set aside.

57. The said Defendant Charlebois further submits that the Statement of Claim does not allege fraud in obtaining the said recited judgment and order, so as to entitle the Plaintiffs to impugn the said judgment and order, or either of them, upon the ground of fraud, and the said Defendant claims the same benefit from this objection as if he had demurred to the said Statement of Claim.

RECORD. 58. The said Defendant Charlebois further submits that this action to set
 ——— aside the said judgments, upon the ground of matters subsequently discovered,
 No. 3. can only be brought after leave given, and that, in order to obtain such leave, the
 Re-Amended Statement of Plaintiffs must establish the fact that such matters were in fact subsequently
 Defence of discovered, that such facts could not, by the exercise of due dilligence, have
 Charlebois been discovered earlier, and that if discovered and adduced at the trial, they
 —continued. would have caused the judgment to result differently, and the said Defendant
 claims the same benefit from this objection as if he had demurred to the
 Statement of Claim.

59. The said Defendant Charlebois further says that any party entitled to 10
 vary or reverse a judgment or order upon the ground of matter subsequently
 discovered, or to impeach a judgment upon the ground of fraud, or to suspend
 the operation of a judgment or order, must proceed by petition in the cause in
 which such judgment or order was obtained, and the said Defendant claims the
 same benefit from this objection as if he had demurred to the Statement of
 Claim.

60. The said Defendant Charlebois further submits that the Plaintiffs
 have no right to maintain this action to set aside the said judgment and order upon
 the ground of matter subsequently discovered, or upon the ground of error
 apparent upon the face of the said judgment and order, so long as they are in 20
 default in not performing the orders and injunctions of the said judgment and
 order, and the said Defendant avers, as the fact is, that the Plaintiff Company
 have, amongst other things, failed to perform the said judgment in the follow-
 ing respects :—

(1) They have not paid the sum of money directed to be paid by the
 said judgment and order.

(2) They have not deposited the bonds, as directed by Clause 5 of the
 said judgment.

(3) They have refused to deliver possession of the said railway to the
 said Defendant Charlebois, as directed by clause 3 of the said order. 30

(4) The Plaintiff Company have refused, and still refuse, to deliver to
 the Defendant Charlebois the material and plant, including cars, which they
 were, by clause 6 of the said judgment, directed to deliver to the said
 Defendant. And the said Defendant Charlebois submits that the said
 Plaintiffs should not be permitted to relitigate the matter in question in the
 said former action without performing or giving security for the per-
 formance of the said judgment and order, and the said Defendant claims
 the same benefit from this objection as if he had demurred to the said State-
 ment of Claim.

60 (a.) The Plaintiff Delap now asserts that he has possession of the bonds 40
 of the Plaintiff Company, and that they are out of the jurisdiction of this
 Honourable Court, and the Defendant submits that the said Plaintiff should be
 forthwith ordered to bring into Court in the said action of Charlebois v. The
 Great North-West Central Railway Company to answer the said judgment of
 this Defendant, the Plaintiff therein, the said bonds and deposit them there,
 subject to further order of this Court, and that the said Plaintiff should not be
 permitted to further prosecute this action until he has done so.

61. By clause six of the said judgment recited in paragraph thirty-four of the said Statement of Claim, this Court did order and adjudge that the further construction contract or contracts, then held by the said Defendant Charlebois in respect of the second fifty miles of the line of railway of the Plaintiff Company, should be forthwith transferred by the said Charlebois to the nominee of the Plaintiff Company, and after the said judgment of the 28th September 1891, the Plaintiff Company requested the Defendant Charlebois to execute a transfer or assignment of the contract, then held by him, for the construction of the second fifty miles of the said railway to the Defendant Frank S. Nugent as their
 10 nominee, under the said clause six of the said judgment, and the said Plaintiff Company were parties to and executed the said assignment, and the said Defendant in good faith and relying upon the Plaintiff Company to carry out the terms and conditions of the said judgment executed the said assignment of the said construction contract, and the same has ever since been held and is now retained by the said Plaintiff Company through their nominee, the said Defendant Nugent.

RECORD.
 No. 3.
 Re-Amended
 Statement of
 Defence of
 Charlebois
 —continued.

62. The said Defendant Charlebois submits, that he has throughout acted upon the said judgment in good faith, has given up possession of the said railway and rolling stock to the Plaintiff Company, has given time for payment of the
 20 amount due to him, according to the terms and conditions of the said judgment, and has pursuant to the terms of the said judgment assigned the contract for the construction of the second fifty miles of the said railway, as in the preceding paragraphs of this statement mentioned, and the said Defendant Charlebois has given up and surrendered these and other valuable rights and advantages and has otherwise altered and prejudiced his position, and the position of those parties to this action who are entitled to be paid out of the proceeds of the said judgment.

63. The said Defendant Charlebois further submits that the Plaintiffs have debarred themselves from any relief in the premises by their laches and delay.

30 64. The Defendant Charlebois says that the Plaintiffs Delap and Mansfield have not, nor have either of them, any status to maintain this action or any part thereof, and the said Defendant Charlebois claims the same benefit from this objection as if he had demurred to the Statement of Claim.

65. The said Defendant Charlebois further denies that the said Plaintiff Delap is a shareholder in the said Plaintiff Company, or is a holder of any bonds of the said Plaintiff Company, or has any lien or charge upon any bonds of the said Company, and the Defendant Charlebois says, and the fact is, that he has not now and never at any time had any notice or knowledge that the said Delap advanced or loaned any amount to the Plaintiff Company or to the Defendant
 40 Codd, for any purpose whatsoever.

66. The said Charlebois further denies that the Plaintiff Mansfield is a holder of any bonds of the said Plaintiff Company, or has any lien or charge upon the bonds of the said Company, and the Defendant Charlebois says, and the fact is, that he has not now and never at any time had any notice or knowledge that the said Plaintiff Mansfield advanced or loaned any money to the Plaintiff Company, or to the Defendant Codd for any purpose whatsoever.

RECORD. 67. The said Defendant Charlebois further alleges, and the fact is, that the Plaintiff Company and the Defendant Codd repeatedly asserted that the alleged bonds of the Company were not issued, or pledged, or charged in any way, but that on the contrary the said bonds were absolutely at the disposal of the Company, and were in the custody of the trustees for the Company, and clause five of the said judgment in paragraph thirty-four of the statement of claim mentioned was consented to by counsel for this Defendant, upon the assurance of the Plaintiff Company that the said bonds were so held by them, and the Defendant Charlebois avers, and the fact is, that the said bonds never have been in fact issued by the trustees named in the mortgage, in paragraph twenty-seven of the statement of claim mentioned. 10

No. 3.
Re-Amended
Statement of
Defence of
Charlebois
—continued.

68. The said Defendant Charlebois further says that the said pretended mortgage referred to in paragraph twenty-seven of the Plaintiffs' Statement of Claim was made to two trustees as in the said paragraph mentioned, and, if the said mortgage ever were made, which this Defendant does not admit, the said trustees only are entitled to enforce any remedy in respect of the said bonds, or any of them.

69. The Defendant Charlebois further says that the said pretended mortgage and the pretended bonds are wholly illegal and void, and beyond the power of the Plaintiff Company to make or issue. And the Defendant Charlebois takes 20 exception to the insufficiency of the allegations of the Statement of Claim of the Plaintiffs Delap and Mansfield to maintain any action against him in the character of holders of bonds of the Plaintiff Company, and asks that his said exception may be given effect to, as if he had demurred to that portion of the Statement of Claim.

70. The said Defendant Charlebois avers, as the fact is, that the claim of the Defendant Codd to be paid the sum of one hundred and seventy-three thousand, three hundred and thirty-three dollars (\$173,333) in the twenty-sixth paragraph of this defence mentioned was known to and assented to by the Plaintiff Company, and by the Plaintiff Delap both before and after he became 30 a shareholder in the Plaintiff Company, if he ever did become such shareholder which this Defendant does not admit, but denies.

71. As to paragraph 36 of the Plaintiffs' Statement of Claim, the Defendant Charlebois denies that he agreed with the Defendant Codd, or colluded with him in any way in regard to the said consent judgment, and he denies that he had any, other design in pressing for the said judgment, or in any other proceedings taken by him in the said action, except to secure and obtain payment of the large amount of money justly due to him as aforesaid, and he had no meeting or discussion of any kind with the Defendant Codd, prior to, or in reference to the consent judgment of the 28th September 1891, but on the contrary, the negotia- 40 tions leading up to the settlement of the minutes of the said consent judgment were conducted wholly through counsel and were earnestly and even bitterly contested in the manner and under the circumstances already mentioned in paragraphs 44, 45 and 46 of this statement.

72. The Defendant Charlebois denies the allegations contained in the 9th, 17th and 59th paragraphs of the Plaintiffs' Statement of Claim, and says that an agreement to take payment in bonds in whole or part, formed no part

of the Defendant Charlebois' contract with the Plaintiff Company, but the fact is that on the 16th September 1889, after making his said construction contract with the Plaintiff Company, he, the said Defendant, made an offer to the Secretary of the Plaintiff Company to accept £100,000 of the balance of £150,000 due, under said contract in bonds of the Company at 80 cents in the dollar, if the Company should require him in writing so to do, but the said offer when made was never intended to be acted on, was made voluntarily, and without consideration, was inconsistent with arrangements for payment made at the time, and was wholly abrogated by the resolutions and dealings of the

RECORD.

No. 3.

Re-Amended
Statement ofDefence of
Charlebois

—continued.

10 Company then and since, particularly by the said company's said above recited resolution passed in Montreal on the 7th October 1889, and acted on ever since. The Defendant Charlebois further says, that if the said offer ever had any validity (which he denies), the said Company never have required him in writing to take bonds in payment, but the said Company on the contrary accepted under its corporate seal orders for the payment of large sums of money to third parties, much exceeding in the aggregate the cash balance, which would have been payable to the said Defendant, if there had been any intention, or power to pay him £100,000 in the bonds of the Company, on account of his said contract price and, further, that on or about the 29th
20 August 1890, the Defendant Charlebois, by notice to the Plaintiff Company wholly revoked and withdrew his said offer, and thereby required payment of the balance due on his said contract in cash.

73. In answer to Paragraph 54 of the said Statement of Claim the said Defendant Charlebois denies that the Plaintiff Company entered into any other agreement or engagement to pay or settle with the said firm of Macdonald and Preston, except the agreement set out in paragraph 13 of this Statement, and the said Defendant Charlebois says that the pretended judgment in said paragraph 54 of the Statement of Claim mentioned was obtained wrongfully without his knowledge by collusion between the said Macdonald and Preston
30 and the said Company, and is not binding upon the Defendant Charlebois and that he, this Defendant, first became aware of the action taken by Macdonald and Preston in the Court of Queen's Bench in Manitoba after they had entered the said pretended judgment, and the Defendant says that the said judgment was so obtained at the instance of the Plaintiff Company, with the design and purpose of hampering and delaying the Defendant Charlebois in the recovery of his claim against the Plaintiff Company, and the said Defendant Charlebois denies the validity and regularity of said pretended judgment, and says that there was not at the date thereof, and there is not now any debt due by the Plaintiff Company to the said Macdonald and Preston.

40 74. In answer to paragraphs 55 and 56 of the Plaintiffs' Statement of Claim, the said Defendant Charlebois expressly denies that he made any false representation or statement to the Plaintiff Company with regard to the claims paid by him, or made any statement or representation of any kind with regard to the matter, but it was and is true, as already stated in paragraphs fifteen and seventy-three of this statement, that nothing was then due to the said firm of Macdonald and Preston.

75. In answer to paragraph 67 of the Statement of Claim the Defendant Charlebois further submits, and the fact is, that the Plaintiff Company had the power under the powers and franchises granted to and conferred upon them by

RECORD. the various Acts relating to the said Company to enter into the contract set out in paragraph twenty-five of this statement, and that the said fourth paragraph of the said contract and the provisions of the judgments of this Court giving effect to the same were not and are not *ultra vires* of the Plaintiff Company, and that the said Defendant Charlebois was entitled to the remedies accorded to him in and by the said judgments, not only under the express provisions of the said contract, but also for his right of lien as an unpaid vendor of the right of way purchased by him, and as a contractor in actual possession of the work so constructed and the material, plant and rolling stock furnished and supplied by him.

No. 3.
Re-Amended
Statement of
Defence of
Charlebois
—continued.

10

76. In answer to paragraph 71 of the said Statement of Claim, the Defendant Charlebois refers to Clauses 19 and 20 of the Company's charter as confirmed by the Act, fifty-one Victoria, chapter eighty-five, and submits that it was not *ultra vires* of the Plaintiff Company to grant a lien upon the company's land-grant in favor of this Defendant, and that the said judgment and order in giving effect to the same in the manner therein provided were not and are not *ultra vires* of the Company as alleged in the said paragraph.

77. The said Defendant further submits that even if the said fourth clause of the said construction contract were *ultra vires* of the Plaintiff Company at the time when the said contract was entered into by the Defendant 20 Charlebois, and the Plaintiff Company, which this Defendant does not admit, it was at all events capable of ratification, and was in fact ratified and confirmed by all the shareholders of the Company, and the Defendant Charlebois has executed the said contract and has built and constructed the said railway, and the Plaintiff Company have accepted the said railway and are now in possession thereof, and they ought not to be permitted to allege that the security, which by said clause four of the said construction contract they covenanted to give to this Defendant, was or is illegal or void.

78. In answer to paragraph 72 of the said Statement of Claim, the Defendant Charlebois submits that the said contract and the said judgment and 30 order in giving relief to the Defendant Charlebois in respect of the lien and pledge created in his favor by the said recited construction contract, were not and are not *ultra vires* of the Company, as alleged in the said paragraph, and the Defendant as to the various objections taken by the said Statement of Claim to the said construction contract and to the said judgment and order as being *ultra vires* of the said Company says that the said allegations are insufficient in law, and asks that the same effect be given to this objection as if he had demurred to the paragraphs of the Statement of Claim in which the said allegations occur.

79. The said Defendant Charlebois expressly denies that he formed any 40 scheme or design of embarrassing or harassing the Plaintiff Company, or that he had any purpose in the proceedings he has taken, except to recover payment under said recited contracts so as to recover the moneys due to himself and to the several persons and corporations, to whom he has given orders upon the fund to arise out of the said contracts, but he says, on the contrary, as shown in the preceding paragraphs of this statement, that he voluntarily waited for nearly a year after the Plaintiff Company agreed to take the work off his hands, and that as his work was completed and inspected in August 1890,

nearly two years and a half have now elapsed during which the Plaintiff Company have been embarrassing, harassing and delaying him in recovering payment of the said sums of money.

RECORD.
—
No. 3.
Re-Amended
Statement of
Defence of
Charlebois
—continued.

80. The said Defendant Charlebois further says that in the action now pending by him in the Court of Queen's Bench in Manitoba against the Plaintiff Company and others, he has sued upon the original contract, as well as upon the said recited judgment and order in this Court, and that he was compelled by the Plaintiff Company to take action against them in Manitoba, because the said Company wrongfully and in contempt and defiance
10 of the said judgment and order of this Court, refused to deliver possession of the said railway and property, which he surrendered to them upon the faith of and pursuant to the said recited judgment of this Court, dated the 28th day of September 1891.

81. The said Defendant Charlebois expressly denies all charges of fraud and improper conduct, either alleged or implied in the Statement of Claim, and particularly all charges of fraud or collusion with the Defendant Codd and the Defendant McMichael, and he alleges, and the fact is, that the Defendant Codd and the Defendant McMichael have sought in every possible way to hinder and delay him in recovering payment of the amount due to him by the Plaintiff
20 Company, and in obtaining judgment to enforce the remedies to which he was and still is entitled against the Plaintiff Company.

82. In answer to such of the said Statement of Claim as seeks to obtain an order or injunction of this Honourable Court to restrain the Defendant Charlebois from taking any proceedings to enforce his rights in the courts of Manitoba or in any other Province in the Dominion, except the Province of Ontario, the said Defendant respectfully submits that this Court has no jurisdiction to restrain him, a resident of the Province of Quebec, and he does not, by appearing or by defending this action, submit to the jurisdiction of this Court to so restrain him from taking proceedings elsewhere out of this Province
30 as he may be advised.

83. The Defendant Charlebois further says that the Plaintiff Delap now has in his possession or power the bonds or debentures of the Great North West Central Railway Company, and that he intends to sell, dispose, pledge, negotiate or otherwise deal with the said bonds or debentures of the said Company to the prejudice of this Defendant unless restrained from so doing by an order of this Honourable Court.

Amended
under Order
dated 25th
March 1893

84. The said Defendant Charlebois therefore claims an injunction restraining the said Plaintiff Delap, his agents or solicitors, from in any wise pledging, negotiating, selling, delivering or otherwise dealing with £515,600
40 face value or debentures of the Great North West Central Railway Company or any of them, or any bonds purporting to have been made and signed in pursuance of the Plaintiff Company's mortgage trust deed, dated 2nd June 1890, or any other deed.

RECORD. Statement of Defence on behalf of the Defendant Alphonse Charlebois, delivered by Chrysler & Lewis, of the city of Ottawa, in the county of Carleton, this twentieth day of January 1893, and Amended Statement of Defence of said Defendant, delivered this twenty-second day of March 1893, by said Chrysler and Lewis, solicitors for Defendant Charlebois, and re-amended Statement of Defence, delivered this 14th day of April 1893, by said Chrysler and Lewis, solicitors for said Defendant.

No. 3.
Re-Amended
Statement of
Defence of
Charlebois
—continued.

DEMURRER of the Defendant Alphonse Charlebois.

No. 4. The Defendant Alphonse Charlebois demurs to the Plaintiffs' Statement of Claim and says that the same is bad in law upon the ground that the Plaintiffs 10 Delap and Mansfield have no status to maintain this action jointly with the Plaintiff Company, and on other grounds sufficiently in law to sustain this demurrer.

Demurrer of
Defendant
Charlebois.
20 January
1893.

Delivered the twentieth day of January 1893, by Chrysler and Lewis, of the city of Ottawa, in the county of Carleton, solicitors for the said Defendant.

No. 5. STATEMENT of Defence of the Defendants Alexander Macdonald, William Alfred Preston, John E. Schiller, and Frank S. Nugent.

Statement
of Defence
of the
Defendants,
Alexander
Macdonald,
William
Alfred
Preston,
John E.
Schiller,
and Frank
S. Nugent.
1 November
1893.

1. These Defendants say that they are and always have been innocent of any fraud or improper conduct and have no knowledge of any fraud or improper 20 conduct on the part of the other Defendants or any of them, if such fraud or improper conduct there was.

2. These Defendants as to their respective positions say that the facts are as follows :—

3. The Defendants Alexander Macdonald and John E. Schiller were partners under the firm name of Macdonald and Schiller, and as such firm took from the Defendant Charlebois the sub-contract for the construction of the first fifty miles of the said railway upon the terms in the said sub-contract set forth bearing date the third day of October, A.D. 1889, to which these Defendants crave leave to refer.

30

4. The said Macdonald and Schiller fully completed their sub-contract to the entire satisfaction of the said Charlebois and also the said Railway Company, and upon the completion thereof there was owing to them a large sum, of which the Defendant Charlebois admitted the sum of sixty-four thousand four hundred and twenty-nine dollars (\$64,429.00) as set forth in the judgment of the 28th Sept. 1891, in the Plaintiffs' Statement of Claim.

5. The said Defendants Macdonald and Schiller under and by the terms of their said sub-contract were entitled to a lien upon the said railway so constructed by them and to retain absolute possession of the said works so constructed by them until the amount of the said moneys owing to them in

respect thereof should be fully paid, of all of which facts the said railway company were fully aware and assented thereto. RECORD.

6. At the time of settling the terms of the said judgment of the 28th Sept. 1891, the said Defendants Macdonald and Schiller expressly refused to give up possession of the said work constructed by them until they should be paid the said sum admitted by said Charlebois to be still owing to them with interest, amounting together on the 26th Sept. 1891, to sixty-four thousand four hundred and twenty-nine dollars (\$64,429.00), whereupon the said railway company by J. A. Codd as president and D. McMichael as director, entered into an agreement with the said Macdonald and Schiller and their co-Defendant Preston in writing, in the words and figures following:—

No. 5.
Statement
of Defence
of the
Defendants
Alexander
Macdonald,
William
Alfred
Preston,
John E.
Schiller,
and Frank
S. Nugent—
continued.

“ Toronto, September 26th 1891.

“ The Great North West Central Railway Company, by J. A. Codd as
“ its president and D. McMichael as director, hereby undertakes and agrees
“ that Macdonald and Schiller and W. A. Preston be allowed to remain in
“ possession of its first fifty miles of railway and works now constructed
“ until they are paid the sum of sixty-five thousand dollars (\$64,429.00) to
“ the former or their order and the sum of eight thousand five hundred
“ and thirty-nine dollars (\$8,400) to the latter or his order on account of
20 “ their claims against A. Charlebois as sub-contractors under him. And
“ they further agree that the said Company will forthwith pay the above
“ sums to the said persons or their order.

“ It being clearly understood and agreed that upon payment of the
“ said \$64,429.00 the \$20,000.00 order given said Macdonald and Schiller
“ by said Charlebois on the Company shall be surrendered to the
“ Company.

“ (Signed)

“ J. A. CODD,

“ as President G. N. W. C. Ry. Co.

30

“ (Signed)

“ D. McMICHAEL,

“ as Director G. N. W. C. Ry. Co.”

7. The said Defendants Macdonald and Schiller and W. A. Preston, confidently relying upon the faithful carrying out of the said agreement of the 26th Sept. 1891, above set forth, consented to the terms of the said judgment of the 28th Sept. 1891, but notwithstanding which judgment they thereafter, with the knowledge and consent of the said railway company, continued to hold and retain the actual possession of the said first fifty miles of the said railway constructed by them until on or about the second day of December
40 1891, when the said J. A. Codd, as president of the said railway company, stated to the Defendant Nugent, as solicitor for the said Defendants Macdonald and Schiller and W. A. Preston, that under his arrangements with his English syndicate he required to be able to assure them that he was in actual possession of the said fifty miles of railway, and that it was a running concern, and that upon his being able to do this he would within a few weeks be placed in funds

RECORD. to pay off in full the claims of the said Macdonald and Schiller and W. A. Preston, and thus carry out his agreement of the 26th Sept. 1891, and that if he failed to so pay them within a few weeks they would be restored to their former possession, whereupon the Defendant Nugent wrote the said J. A. Codd a letter dated 2nd Dec. 1891, defining the terms on which the Defendants Macdonald and Schiller and W. A. Preston allowed the railway company to enter into possession of the said railway, which letter is in the words and figures following :—

No. 5.
Statement
of Defence
of the
Defendants,
Alexander
Macdonald,
William
Alfred
Preston,
John E.
Schiller,
and Frank
S. Nugent—
continued.

“ J. A. Codd Esq.,
“ President G. N. W. C. Ry. Co.,
“ Ottawa.

10

“ My Dear Sir,—

“ Toronto, 2nd Dec. 1891.

“ In order to place you in a position to carry out your arrangements
“ with your English syndicate by being able to assure them that the first
“ 50 miles of the G. N. W. C. Ry. is in reality a running concern, on
“ behalf of my clients Macdonald & Schiller, I hereby consent for you to
“ enter upon the operation of the said road notwithstanding the agreement
“ that they should be first paid, upon the express understanding that if
“ the \$64,429.00 and interest thereon payable to them or their order under
“ the judgment in the suit of Charlebois v. G. N. W. C. Ry. be not paid 20
“ on or before the 1st February 1892, that your right to operate said
“ 50 miles shall cease, and the said agreement that they should be first
“ paid before delivering up of said 50 miles shall be deemed and be in full
“ force and effect as if this letter had never had any existence.

“ Yours, &c.,

“ FRANK S. NUGENT.”

8. Pursuant to the terms of the said letter, the said railway company obtained possession of the said fifty miles of railway, and have ever since remained in possession thereof, and these Defendants submit that under and by virtue of their lien under their said sub-contract and the said agreement of 26th September 1891, and the said letter of 2nd December 1891, the said railway company should be ordered to forthwith pay the said sums so agreed to be paid to the said Macdonald & Schiller and W. A. Preston or their assignee, and that in default of such payment that the said railway company do restore the said Macdonald & Schiller and W. A. Preston to their former possession of 2nd December 1891, and that they be allowed to retain such possession until fully paid the sums mentioned in the said agreement of 26th September 1891. 30

9. The said Macdonald & Schiller, by an indenture of assignment dated the 6th October 1891, duly assigned to the said Frank S. Nugent all and every 40 of their interest in the said judgment of the 28th September 1891, in the Plaintiffs' Statement of Claim mentioned, and all the sum of sixty-four thousand four hundred and twenty-nine dollars (\$64,429.00) and interest thereon payable thereunder to hold the same as trustee for himself, the said Nugent, and the other creditors of the said Macdonald & Schiller, as in the said assignment, and the declaration of trust, thereto attached set forth, to all of which for greater

certainly these Defendants crave leave to refer, of all of which the said railway company were duly notified, and accepted acknowledgment by a resolution of the board of directors under the corporate seal of the Company, on the 30th November, 1891, to all of which for greater certainty these Defendants crave leave to refer.

RECORD.
No. 5.
Statement
of Defence
of the
Defendants,
Alexander
Macdonald,
William
Alfred
Preston,
John E.
Schiller,
and Frank
S. Nugent—
continued.

10 10. As to the statements in paragraph eight of the Plaintiff's Statement of Claim relating to the claim of Alexander Macdonald and W. A. Preston, as the firm of Macdonald & Preston, these Defendants say that they were to have been paid the proceeds of the sale of the said \$50,000.00, face value of the
20 bonds of the said Company on or before the first day of January, 1888, but they were not so paid the same, whereupon they caused a writ of summons to be issued out of the Court of Queen's Bench of the Province of Manitoba, against the said railway company for the balance owing to them for work, labour and materials, etc., done and supplied by the said Macdonald & Preston in the construction of the Souris and Rocky Mountain Railway, as reduced and agreed to be paid to them, and on the 6th August, 1892, they obtained a judgment in the said Province of Manitoba against the Great North West Central Railway Company for the sum of fifty-seven thousand three hundred and forty dollars and sixty-nine cents (\$57,340.69), and forthwith issued writs
20 of execution to the sheriff of the central judicial district at Brandon, under which writs the said sheriff seized and took in execution all the rolling stock and chattels of the said railway, and still holds possession thereof, pending the interpleader proceedings being tried in the Courts of the said Province.

11. And the said Macdonald & Preston caused the said judgment to be registered against the lands of the said railway in the said Province of Manitoba and the North-west Territories, and the same still remains so registered and in full force and effect under the Statutes of the said Province of Manitoba and the Ordinance of the said North-west Territories in that behalf.

30 12. The said the Great North West Central Railway Company appealed to set aside the said judgment, and carried their said appeal before the full Court of Queen's Bench of the said Province sitting in term, on which appeal the Great North West Central Railway Company, among other things, set up the agreement of 12th September, 1887, referred to in said Clause 8 of the Statement of Claim herein and set up herein as requiring the said Macdonald & Preston to accept the proceeds of the sale of \$50,000, face value, of the Company's bonds, and the same was so urged before the said Court on the said appeal, but the said appeal was dismissed and the said judgment of the 6th August, 1892, was unanimously confirmed by the full Court of the said Province, which is the last appeal that can be made against the said judgment,
40 and the same stands confirmed, and the said execution and seizure still remains in full force and effect, of all of which the Defendants beg respectfully to inform this Honourable Court and respectfully submit that this Honourable Court ought not to give any judgment in respect of the claim of the said Macdonald & Preston, but that the said railway company should be left to its remedies in the Courts of the said Province of Manitoba in respect of the same.

RECORD.

No. 5.
Statement
of Defence
of the
Defendants,
Alexander
Macdonald,
William
Alfred
Preston,
John E.
Schiller,
and Frank
S. Nugent—
continued.

13. The said Defendants Macdonald & Preston submit that under and by virtue of the provisions of Clause 27 of the said railway company's charter, the said Company became liable to pay the claim of the said Macdonald & Preston, which was incurred for labour, etc., in the year 1883, and that the said railway company ought not to be allowed to evade payment thereof.

14. The Defendant Preston was a sub-contractor under the said Charlebois for fencing the said line of railway, and there was due and owing to him for the same at the date of the said judgment of 28th September, 1891, the sum of eight thousand four hundred dollars (\$8,400) which the said railway company at the time of settling the terms of the said judgment, agreed to pay to him 10 direct, and he submits that he is entitled to have the terms of the said judgment in that regard enforced and sustained.

15. The said Defendants submit their respective rights and interests to this Honourable Court and ask for such relief and redress as they may be entitled to under the said judgment of 28th September 1891, and under the said agreement of 26th September 1891, and said letter of 2nd December 1891, and under the facts and circumstances hereinbefore set forth and referred to.

16. The said Defendants submit that they are entitled to be paid their costs of this action by the said Plaintiffs.

Delivered this first day of November, A.D. 1893, by

20

FRANK S. NUGENT.

as solicitor for the firm of Macdonald & Schiller and for Wm. A. Preston, and the firm of Macdonald & Preston, and for himself in person.

STATEMENT of Defence of the Defendants, the Commercial Bank of Manitoba.

No. 6.
Statement
of Defence
of the
Defendants,
the
Commercial
Bank of
Manitoba.
29 December
1892.

1. The Defendants deny the allegations and statements in the Plaintiffs' Statement of Claim set forth.

2. The Defendants deny that the Plaintiffs, James Bogle Delap and Louisa H. Mansfield, have any right whatsoever as shareholders of the Great North West Central Railway Company to maintain this action as against the Defendants herein.

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3. The Defendants deny that the Plaintiff James Bogle Delap is maintaining this action on behalf of the other shareholders of the Great North West Central Railway Company, and denies that he has any authority or direction or power or right so to maintain said action, and the Defendants further deny that the Plaintiffs as individuals, or the said Company as such, are entitled in any way whatsoever to maintain this action against the said Defendants.

4. The said Defendants are informed and believe that the fact to be that the judgment set forth and referred to in the thirty-fourth paragraph of the Plaintiff's Statement of Claim dated the twenty-eighth day of September, 1891, was regularly and properly obtained and issued and is binding and conclusive upon the parties thereto and upon the individual Plaintiffs in this action.

5. The said Defendants are also informed and believe the fact to be that no motion has been made or petition presented by us on behalf of the said the Great North West Central Railway Company, or by and on behalf of the individual Plaintiffs as shareholders thereof to set aside and vacate or vary the said judgment, and except by such motion or petition the said judgment would not and is not subject to be impeached or attacked.

6. The said Defendants further allege the fact to be that the said judgment of the twenty-eighth of September, 1891, has, since the same was pronounced and issued, been acted upon by the parties thereto, including the said the Great North West Central Railway Company, and by reason thereof the said judgment is not now subject to be impeached.

7. The said Defendants further allege the fact to be that the Plaintiffs in this action were well aware of the proceedings in the suit of Charlebois against the said Railway Company and of the said judgment, and well knew that the various creditors of the said Railway Company, who were parties to said suit relied upon the said judgment for the realization of their respective claims, and are estopped by their acts and by their acquiescence and knowledge and delay from asserting their pretended rights set forth in the Statement of Claim and from maintaining this action.

8. The Defendants have no knowledge of the alleged agreement whereby it is pretended that the Plaintiffs Delap and Mansfield were entitled to be repaid the moneys alleged to have been advanced by them out of the moneys to be realised from the sale of bonds issued, or to be issued, by the said, the Great North West Central Railway Company, and that the said Plaintiffs were entitled to a lien and charge upon the whole bond issue of the Company for the moneys so advanced and interest thereon, and the said Defendants put the Plaintiff to proof of such agreement, if any, and further allege in respect thereto that no such agreement exists in writing and that the said Plaintiffs are therefore estopped by the provisions of the Statute of Frauds from setting up the same as against the said Defendants, and are also estopped by their acquiescence and delays, as hereinbefore referred to, from setting up the said alleged agreement or agreements as against these Defendants.

9. The said Defendants further allege the fact to be that on and prior to the tenth day of June, 1890, their co-Defendants herein, Macdonald & Schiller, who were also referred to in the said judgment of the twenty-eighth of September, 1891, were indebted to the Defendants now pleading, in the sum of \$37,771.45 and interest thereon, and to secure a part of the said indebtedness the said Defendants Macdonald & Schiller made and executed a written order upon the said the Great North West Central Railway Company for the payment to the said Defendants now pleading of the sum of twenty thousand dollars out of the moneys owing by the said last-named Company to or payable to the said Macdonald & Schiller, and thereby duly assigned the said sum to the said the Commercial Bank of Manitoba, these Defendants, and such order or assignment was thereupon immediately fully presented to the said, the Great North West Central Railway Company for payment, and was accepted by them, and the said sum of \$20,000.00 has never been paid to the Defendants now pleading and remains wholly due and unsatisfied.

RECORD.
No. 6.
Statement
of Defence
of the
Defendants,
the
Commercial
Bank of
Manitoba—
continued.

RECORD.

No. 6.
Statement
of Defence
of the
Defendants,
the
Commercial
Bank of
Manitoba—
continued.

10. The said Defendants further say that after the pronouncement of the said judgment, namely of the twenty-eighth September, 1891, and on the sixth day of October, 1891, the said Defendants Macdonald & Schiller did assign unto the Defendant Frank S. Nugent the sum of \$64,429.00 referred to in the said judgment and interest thereon together also with all the interest of the said Defendants Macdonald & Schiller therein, subject to and upon the trusts contained in a declaration of trust executed and delivered on the same day last hereinbefore mentioned by the said Frank S. Nugent, and that by the said declaration of trust, the said Frank S. Nugent did declare that he held the said assignment as trustee for the purposes and upon the trusts following namely: 10

In the first place that as a first charge thereon to pay to himself the sum of \$13,350.10 as settled and agreed upon between the said Macdonald & Schiller and himself in full payment and satisfaction of all costs and charges of himself or of his firm to the date thereof, and also including all claims of his wife, Carrie B. Nugent, under the Walsh mortgage assigned to her, and also including all costs and charges of the said Nugent against the said Alexander Macdonald to the date thereof;

And in the second place, and as a second charge thereon, to pay as so directed by the said Macdonald & Schiller all sums owing by them for wages, salary, labour or for board of labourers, or for employees in connection with the construction of the first fifty miles of the railway; 20

And in the third place, and as a third charge thereon, to pay to the Commercial Bank of Manitoba, these Defendants, the sum of \$20,000 in payment of the \$20,000 order on the Defendants' Company, the Great North West Central Railway Company, given by them, the said Macdonald & Schiller, as hereinbefore referred to, in connection with the construction of the said fifty miles of the said railway;

And in the fourth place, and as a fourth charge thereon, after payment of any expenses incurred in connection therewith, to pay, as should be directed by them, in full, or in the event of the balance remaining not being sufficient to pay all in full, then to pay *pro rata* the balance owing by them to the said, the Commercial Bank of Manitoba, these Defendants, and to all and every other person or corporations to whom or to which they, the said Macdonald & Schiller, or either of them, were then indebted in connection with the said the first fifty miles of the said railway; 30

And in the fifth place, to pay the balance, if any, of the said sum of \$64,429 to the said Alexander Macdonald and John E. Schiller, individually, in such sums or shares as they shall be entitled to under the terms of their partnership agreement.

11. The Defendants, the said railway company, were, on or about the date 40 of the said assignment and the execution of the said declaration of trust, duly notified thereof.

12. The Defendants, now pleading, claim that they are by virtue of the matters hereinbefore referred to, and by virtue of the said judgment, entitled to be paid by the Defendant, the Great North West Central Railway Company, and out of the first \$64,429 to be realised from a sale of the railway and properties, as in the said judgment and subsequent order provided, the sum of

\$37,771.45 and interest thereon at the rate of eight per cent. per annum from the tenth day of June, 1890, and they claim the benefit of the said judgment and of the said order and assignments to them as hereinbefore set forth, and submit that they should not be delayed in the recovery and payment of them and the amount of their said indebtedness with interest as aforesaid; and that they are now entitled to a charge to the amount hereinbefore mentioned against the said railway and the assets of the said Company, and the proceeds of any sale of the said assets.

13. The Defendants, the Commercial Bank of Manitoba, were induced to delay the prosecution of their claim against the said railway company by reason of the obtaining of said decree, and have abstained from proceeding against said railway company for the amount of the said order and against the said Macdonald and Schiller for the balance of the claim of the said bank, by reason of the said bank relying upon the said decree, as they were entitled to do, and the said bank would now be greatly damaged and delayed in the recovery of their said claim and in their position and rights if such decree were set aside.

14. The said Defendants, the Commercial Bank of Manitoba, know nothing whatsoever of the said alleged acts of fraud, covin and collusion referred to in the Statement of Claim, and submit that under the circumstances hereinbefore referred to they cannot and should not be affected hereby, even if the same exist, which they do not admit, and the said Defendants should submit their rights and interests to this Honourable Court and ask for such relief and redress as they may be entitled to under the said judgment of the 28th September, 1891, and under the facts and circumstances hereinbefore set forth and referred to.

15. The said Defendants submit that they are entitled to be paid their costs of this action by the said Plaintiffs.

Delivered this twenty-ninth day of December, A.D. 1892, by Watson, Thorne, Smoke and Masten, of the City of Toronto, in the County of York, solicitors for the Commercial Bank of Manitoba.

STATEMENT of Defence on behalf of the Defendants, the Union Bank of Canada.

Hereinafter for brevity called the Defendants, the Union Bank.

1. The Defendants, the Union Bank, admit the first, third, fourth and thirty-fourth paragraphs of the Plaintiff's Statement of Claim.

2. The Defendants, the Union Bank, admit the judgment or order set out in the forty-ninth paragraph of the said Statement of Claim, and dated the twenty-ninth day of February, 1892, but they deny the other allegations contained in said paragraph forty-nine.

p. 5240.

N

RECORD.
No. 6.
Statement
of Defence
of the
Defendants,
the
Commercial
Bank of
Manitoba—
continued.

No. 7.
Statement
of Defence
of the
Defendants,
the Union
Bank of
Canada.
20 January
1893.

RECORD.

No. 7.
Statement
of Defence
of the
Defendants,
the Union
Bank of
Canada—
continued.

3. The Defendants, the Union Bank, deny and put the Plaintiffs to the proof of all statements and allegations contained in the said Statement of Claim and not herein specially admitted.

4. Some time in or about the month of October, 1889, the Defendant Charlebois applied to the Defendants, the Union Bank, for a loan of money, to enable him to carry on a contract for the construction of a fifty mile section of the line of railway of the Plaintiff Company, and after some negotiation the said bank agreed to make advances to the said Charlebois to an amount not exceeding \$150,000, and to discount three promissory notes of the said Charlebois, all dated the second day of November, 1889, payable three months 10 after the date thereof respectively, and made for the respective amounts of \$75,000, \$50,000 and \$25,000.

5. On or about the said second day of November the Defendant Charlebois gave to the Defendants, the Union Bank, by way of collateral security for the said loan to the said Charlebois three orders or assignment in writing amounting in all to the sum of \$150,000, one of which was in the words and figures following:—

“ To the Great North West Central Railway Company,—Out of the
“ moneys arising from and payable to me under the construction contract
“ with the Great North West Central Railway Company, (dated the 16th 20
“ day of September, 1889, for the first fifty miles of said Company’s line)
“ and payable to me upon completion thereof, pay to the Union Bank of
“ Canada, or order, the sum of \$75,000, and charge the said amount to me
“ upon my said contract. This to be and to be deemed a complete and
“ equitable assignment of so much of said moneys.”

“ Dated at Ottawa this second day of November, 1889.”

6. The said order was by the Defendants, the Union Bank, presented to and accepted by the Plaintiffs the Great North West Central Railway Company, hereinafter called the Plaintiff Railway Company, in writing, and executed by them under their corporate seal in the words and figures following:— 30

“ To the Union Bank of Canada,—The Great North West Central
“ Railway Company, pursuant to resolutions of the Board passed on the 7th
“ October, 1889, and of the Bye-laws of the Company, hereby accept the
“ foregoing assignment and agree to pay the same out of the moneys
“ therein mentioned.”

“ Dated at Ottawa this second day of November, 1889.”

As witness the corporate seal of the Great North West Central Railway Company.

7. Afterwards, on the 2nd November, 1889, the said Great North West Central Railway Company represented and agreed with the said bank, that in accepting 40 the orders of Charlebois on the said railway company for \$150,000 there was sufficient margin in the amount to be paid to the said Charlebois upon completion of his said contract for the first fifty miles of railway to meet the said sum of \$150,000, over and above all similar or other orders previously accepted by the said Plaintiff Railway Company against the amount payable to said Charlebois upon completion of the said first fifty miles.

8. The said loan to the said Defendant Charlebois has not been repaid by him or by anyone on his behalf, and the amount thereof, namely the sum of \$150,000, is now and was on the twenty-ninth day of September, 1891, justly due and payable to the said Defendants the Union Bank.

RECORD.
No. 7.
Statement
of Defence
of the
Defendants,
the Union
Bank of
Canada—
continued.

9. The said the Union Bank rely upon the said judgments in the Chancery Division of the High Court of Justice for the Province of Ontario in the said Statement of Claim mentioned, and say that they have altered their position in consequence of and relying upon the said judgments, and the Plaintiff Railway Company have received and accepted valuable advances and concessions there-
10 under.

10. The Defendants, the Union Bank, have no knowledge of the other matters alleged in the Plaintiff's Statement of Claim, and submit their rights herein to the judgment of this Honourable Court.

11. The Defendants, the Union Bank, submit that the Plaintiffs have no right to maintain this action against them, and they pray to be hence dismissed with their costs of this defence.

Statement of Defence delivered this twentieth day of January, 1893, by Chrysler and Lewis of the City of Ottawa, in the County of Carleton, solicitors for the Defendants, the Union Bank of Canada.

20 AMENDED STATEMENT of Defence on behalf of the Defendant William Anderson Allan.

Amended under Order dated 4th April, 1893.

1. The said Defendant admits the first, third, fourth and thirty-fourth paragraphs of the Plaintiffs' Amended Statement of Claim.

2. The said Defendant admits the judgment or order set out in the forty-ninth paragraph of the said Amended Statement of Claim, dated the twenty-ninth day of February, 1892, but denies the other allegations contained in the said paragraph forty-nine.

3. The said Defendant denies and puts the Plaintiffs to the proof of all
30 statements and allegations contained in the said Amended Statement of Claim and not herein expressly admitted.

3a. This Defendant on and prior to the ninth day of April, 1888, and the other four Defendants, Charlebois, Clemow, Devlin and Murray, were the only shareholders of the Great North West Central Railway Company, and continued to be the only shareholders in the said Company down to the time when they sold and transferred their shares on the sixteenth of September, 1889, as herein-after mentioned.

3b. During the years 1887 and 1888, the said shareholders expended large sums of money upon the construction and in respect of the said railway,

RECORD. amounting to the sum of one hundred and forty-seven thousand dollars (\$147,000.00) and upwards.

—
No. 8.
Amended
Statement
of Defence
of William
Anderson
Allan—
continued.

3c. This Defendant and the said Charlebois, Clemow, Devlin and Murray entered into an agreement with the Defendant John Arthur Codd, by which they agreed to sell to the said John Arthur Codd all the shares of the capital stock of the said Company, of which this Defendant held 1,600 shares, the Defendant Clemow one thousand (1,000) shares, the Defendant Devlin one thousand two hundred (1,200) shares, the Defendant Charlebois seven hundred (700) shares, and the Defendant Murray five hundred (500) shares; upon the terms and conditions set out in an agreement under seal dated the ninth day of April, 1888, to which this Defendant craves leave to refer.

3d. The said agreement of the ninth day of April, 1888, referred to in paragraph 8 (a). of the Amended Statement of Claim, did not provide for the sale of paid up shares of the Company's stock, but the shareholders in and by the said agreement did agree to guarantee that the shares should be free from all liability imposed upon the Company by the terms of the twenty-seventh section of its charter, and from any liabilities of the Company incurred by the said shareholders up to the completion of the sale then agreed upon, but the said shareholders did not then or at any time agree, nor did they authorize any one to agree on their behalf that the said shares should be fully paid up, and this Defendant denies the statements in regard to paid-up stock in paragraphs 8 (a) and 8 (d) of the Amended Statement of Claim.

3e. This Defendant did not agree with the said Codd, as in paragraph 8 (a) of the Amended Statement of Claim alleged, that they would accept in payment of one hundred thousand dollars (\$100,000.00) of the price payable under said agreement bonds of the Plaintiff Company when issued at the price of eighty pounds sterling (£80) for every one hundred pounds sterling (£100) of the face value of the bonds of the Company.

3f. In answer to paragraph 8 (c) of the Amended Statement of Claim, this Defendant says that he has no knowledge whether the Defendant Codd had or has a valid claim against the Souris and Rocky Mountain Railway Company, for which the Plaintiff Company would be liable under Clause 27 of their charter, but the Defendant Codd constantly and persistently asserted that he had such claims, and the fact of his so doing rendered it necessary for the then shareholders to settle or arrange with him in some way before making financial arrangements for the building of the road.

3g. This Defendant expressly denies the statement contained in paragraph 8 (f) of the Amended Statement of Claim, and he says that the Defendants Charlebois, Clemow, Devlin, Murray, and this Defendant did not by the said agreement or by any dealing subsequent thereto constitute the Defendant Codd their agent for the sale of the said railway and the shares in the Plaintiff company, and they did not nor did any of them authorise the said Codd to make any representation whatever as their agent or on their behalf.

3h. As to paragraphs 8 (h), 8 (i) and 8 (n) and 8 (o) of the Amended Statement of Claim, this Defendant says that he had not on the 16th September 1889, any notice or knowledge of any interest of the Plaintiff Delap, and he has not now any

knowledge of any interest of the Plaintiff Delap in the Plaintiff Company, except the allegations contained in the pleadings and proceedings in this suit, and he has not now and never had any knowledge of any dealings or transactions between the Defendant Codd and the said Stevens and the Plaintiff Delap, except as aforesaid, and he denies the allegations in the said paragraphs, and says that they do not in any way affect or prejudice his rights, and that they are irrelevant to the matters in question in this action.

RECORD.
No. 8.
Amended
Statement
of Defence
of William
Anderson
Allan—
continued.

3i. In the month of September, 1889, the Defendant Codd and one Charles R. Stevens arrived from England and was introduced to the Defendant by the
10 Defendant John Arthur Codd as the person who would carry out the said agreement for purchase.

3j. This Defendant went to Toronto and with the other shareholders entered into negotiations with the said Charles R. Stevens, which were broken off by this Defendant because the time had expired and for other reasons, and this Defendant on or about the seventh day of September 1889, returned to Ottawa, and the said agreement of the ninth day of April, 1888, was, as far as this Defendant was concerned, never carried out and the offer therein contained revoked and the said agreement was cancelled and released.

3k. On the ninth day of September 1889, after this Defendant returned to
20 Ottawa, the Defendant Charlebois and the Defendant Codd entered into some arrangement, the particulars of which the Defendant never knew until after the commencement of this action.

3l. Between the said ninth day of September and the sixteenth day of September, 1889, this Defendant agreed with the Defendant Charlebois to give him an option to purchase all the shares of this Defendant in the said Company for the sum of eighty-three thousand, eight hundred and five dollars and twenty-seven cents (\$83,805.27), of which the sum of forty-six thousand, three hundred and forty dollars (\$46,340.00) was agreed to be paid in cash, and the
30 balance of thirty-seven thousand, four hundred and sixty-five dollars and twenty-seven cents (\$37,465.27) to be secured to the satisfaction of this Defendant, but this Defendant had not then any knowledge as to the terms of any agreement between Charlebois and Codd or between Charlebois and Stevens, which this Defendant regarded as a private matter of their own and with which he had no concern.

4. Afterwards, on or about the sixteenth day of September, 1889, the said Charlebois elected to purchase the shares of this Defendant under the said option, and this Defendant and the said Clemow, Devlin and Murray thereupon entered into and executed two agreements under seal with the said Charlebois in regard to the sale of the said shares, bearing date respectively the said sixteenth
40 day of September, 1889, and this Defendant thereupon at the request of the said Charlebois signed a transfer of his share in writing according to the form set out in Section 22, Sub-section 2 of the Railway Act of 1879, but without covenant or warranty whatsoever, to the said Charles Richard Stevens, and received from the said Defendant Charlebois the said Defendant's cheque for the

RECORD, sum of forty-six thousand three hundred and forty dollars (\$46,340.00) cash, and afterwards the Defendant Charlebois signed an order or equitable assignment upon part of the moneys to become payable to him under a certain construction contract with the Plaintiffs, the Great North West Central Railway Company, by the said Charlebois, and the said order or assignment was thereupon accepted by the said Railway Company, under its corporate seal, and delivered to this Defendant in part consideration and payment for the assignment of his stock in the said Railway Company for the sum of \$37,465.27, with interest on the said sum at four (4) per cent. per annum until paid, and the said Defendant accepted the said order on account of the balance payable to him by the said 10 Charlebois for the purchase of his shares in the said Company.

No. 8.
Amended
Statement
of Defence
of William
Anderson
Allan—
continued.

4a. This Defendant says that the true facts in regard to the sale of his shares are herein stated, and he expressly denies the allegations of the Plaintiff's re-amended Statement of Claim contained in paragraphs 8 (1), 8 (1) 2, 8 (1) 3, 8 (m) and 8 (m) 2 so far as the said allegations relate to this Defendant, and all charges of fraud or breach of trust, and says that he has not committed or been as party to any breach of trust as a director of the Plaintiff Company.

5. The amount mentioned in the said order, namely, the sum of \$37,465.27 and interest thereon at the rate of four (4) per cent. per annum, was on the twenty-nine (29th) day of September, 1891, justly due and is now justly due 20 and payable to this Defendant.

6. This Defendant relies upon the said judgment in the Chancery Division of the High Court of Justice for the Province of Ontario in the said Amended Statement of Claim mentioned, and says that he has altered his position in consequence of and relying upon the said judgments, and the Plaintiffs, the Great North West Central Railway Company, have received and accepted valuable advances and concessions thereunder.

7. This Defendant submits his right herein to the judgment of this Honourable Court.

8. This Defendant submits that the Plaintiffs have no right to maintain this 30 action against him and he prays to be hence dismissed with his costs of this defence.

Statement of Defence delivered the twentieth (20th) day of January 1893, and Amended Statement of Defence delivered this fourteenth (14th) day of April 1893, by Chrysler and Lewis of the City of Ottawa, in the County of Carleton and Province of Ontario, solicitors for the Defendant William Anderson Allan.

AMENDED STATEMENT of Defence on behalf of the Defendant,
ROBERT J. DEVLIN.

No. 9.
Amended
Statement
of Defence
of Robert
J. Devlin.
14 April
1893.

Amended under Order dated 4th April, 1893.

40

1. The said Defendant admits the first, third, fourth and thirty-fourth paragraphs of the Plaintiff's Amended Statement of Claim.

2. The said Defendant admits the judgment or order set out in the forty-ninth paragraph of the said Amended Statement of Claim, dated the twenty-

ninth day of February 1892, but denies the other allegations contained in the RECORD. said paragraph forty-nine.

3. The said Defendant denies and puts the Plaintiffs to the proof of all statements and allegations contained in the said Amended Statement of Claim and not herein expressly admitted.

No. 9.
Amended
Statement
of Defence
of Robert
J. Devlin—
continued.

3a. This Defendant on and prior to the ninth day of April 1888, and the other four defendants, Charlebois, Clemow, Allan and Murray, were the only shareholders of the Great North West Central Railway Company, and continued to be the only shareholders in the said Company down to the time when they
10 sold and transferred their shares on the sixteenth of September 1889, as herein-after mentioned.

3b. During the years 1887 and 1888, the said shareholders expended large sums of money upon the construction and in respect of the said railway, amounting to the sum of one hundred and forty-seven thousand dollars (\$147,000.00) and upwards.

3c. This Defendant and the said Charlebois, Clemow, Allan and Murray entered into an agreement with the Defendant John Arthur Codd by which they agreed to sell to the said John Arthur Codd all the shares of the capital stock of the said Company, of which this Defendant held one thousand two hundred
20 (1,200) shares, the Defendant Clemow, one thousand (1,000) shares, the Defendant, Charlebois seven hundred (700) shares, and the Defendant Murray five hundred (500) shares, upon the terms and conditions set out in an agreement under seal, dated the ninth day of April 1888, to which this Defendant craves leave to refer.

3d. The said agreement of the ninth day of April 1888, referred to in paragraph 8a of the Amended Statement of Claim, did not provide for the sale of paid-up shares of the Company's stock, but the shareholders in and by the said agreement did agree to guarantee that the shares should be free from all liability imposed upon the Company by the terms of the twenty-seventh section
30 of its Charter, and from any liabilities of the Company incurred by the said shareholders up to the completion of the sale then agreed upon, but the said shareholders did not then or at any time agree, nor did they authorise any one to agree on their behalf, that the said shares should be fully paid up, and this Defendant denies the statements in regard to paid-up stock in paragraph 8a and 8d of the Amended Statement of Claim.

3e. This Defendant did not agree with the said Codd as in paragraph 8 (a) of the Amended Statement of Claim alleged, that they would accept in payment of one hundred thousand dollars (\$100,000.00), of the price payable under said agreement, bonds of the Plaintiff Company when issued at the price of eighty
40 pounds sterling (£80) for every one hundred pounds sterling (£100) of the face value of the Bonds of the Company.

3f. In answer to paragraph 8 (c) of the Amended Statement of Claim, this Defendant says that he has no knowledge whether the Defendant Codd had or has a valid claim against the Souris and Rocky Mountain Railway Company, for which the Plaintiff Company would be liable under Clause 27 of their Charter, but the Defendant Codd constantly and persistently asserted that he had such

RECORD. claims, and the fact of his so doing rendered it necessary for the then shareholders to settle or arrange with him in some way before making financial arrangements for the building of the road.

No. 9.
Amended
Statement
of Defence
of Robert
J. Devlin—
continued.

3g. This Defendant expressly denies the statement contained in paragraph 8 (f) of the Amended Statement of Claim, and he says that the Defendants Charlebois, Clemow, Allan, Murray, and this Defendant did not by the said agreement or by any dealings subsequent thereto constitute the Defendant Codd their agent for the sale of the said railway and the shares in the Plaintiff Company, and they did not nor did any of them authorise the said Codd to make any representations whatever as their agent or on their behalf. 10

3h. As to paragraphs 8 (h), 8 (i), 8 (n) and 8 (o) of the Amended Statement of Claim, this Defendant says that he had not on the 16th September 1889, any notice or knowledge of any interest of the Plaintiff Delap, and he has not now any knowledge of any interest of the Plaintiff Delap, in the Plaintiff Company, except the allegations contained in the pleadings and proceedings in this suit, and he has not now and never had any knowledge of any dealings or transactions between the Defendant Codd and the said Stevens and the Plaintiff Delap, except as aforesaid, and he denies the allegations in the said paragraphs, and says that they do not in any way affect or prejudice his rights, and that they are irrelevant to the matters in question in this action. 20

3i. In the month of September, 1889, the Defendant Codd and one Charles R. Stevens, arrived from England and was introduced to this Defendant by the Defendant John Arthur Codd, as the person who would carry out the said agreement for purchase.

3j. This Defendant went to Toronto, and with the other shareholders entered into negotiations with the said Charles R. Stevens, which were broken off by this Defendant because the time had expired and for other reasons, and this Defendant on or about the seventh day of September, 1889, returned to Ottawa, and the said agreement of the ninth day of April, 1888, was, as far as this Defendant was concerned, never carried out, and the offer therein contained, 30
revoked, and the said agreement was cancelled and released.

3k. On the ninth day of September, 1889, after this Defendant returned to Ottawa the Defendant Charlebois and the Defendant Codd entered into some arrangement, the particulars of which this Defendant never knew, until after the commencement of this action.

3l. Between the said ninth day of September and the sixteenth day of September, 1889, this Defendant agreed with the Defendant Charlebois to give him an option to purchase all the shares of this Defendant in the said Company for the sum of sixty-three thousand, six hundred and seventy-eight dollars and ninety-four cents (\$63,678.94), of which the sum of thirty-five thousand five 40
hundred and eighty dollars (\$35,580.00) was agreed to be paid in cash, and the balance of twenty-eight thousand and ninety-eight dollars and ninety-four cents (\$28,098.94) to be secured to the satisfaction of this Defendant, but this Defendant had not then any knowledge as to the terms of any agreement between Charlebois and Codd or between Charlebois and Stevens, which this

Defendant regarded as a private matter of their own and with which he had no RECORD concern.

4. Afterwards, on or about the sixteenth day of September 1889, the said Charlebois elected to purchase the shares of this Defendant under the said option, and this Defendant and the said Clemow, Allan, and Murray thereupon entered into and executed two agreements under seal with the said Charlebois in regard to the sale of the said shares, bearing date respectively the sixteenth day of September 1889, and this Defendant thereupon, at the request of the said Charlebois, signed a transfer of his shares in writing according to the form set out in Section 22, sub-section 2 of the Railway Act of 1879, but without covenant or warranty whatsoever, to the said Charles Richard Stevens, and received from the said Defendant Charlebois the said Defendant's cheque for the sum of thirty-five thousand five hundred and eighty dollars (\$35,580.00) cash, and afterwards the Defendant Charlebois signed an order or equitable assignment upon part of the moneys to become payable to him under a certain construction contract with the Plaintiffs, the Great North West Central Railway Company, by the said Charlebois, and the said order or assignment was thereupon accepted by the said railway company under its corporate seal and delivered to this Defendant in part consideration and payment for the assignment of his stock in the said railway company for the sum of twenty-eight thousand and ninety-eight dollars and ninety-four cents (\$28,098.94), with interest on the said sum at four (4) per cent. per annum until paid, and the said Defendant accepted the said order on account of the balance payable to him by the said Charlebois for the purchase of his shares in the said Company.

4a. This Defendant says that the true facts in regard to the sale of his shares are herein stated, and he expressly denies the allegation of the Plaintiffs' re-amended Statement of Claim, contained in paragraphs 8 (l), 8 (l) 2, 8 (l) 3, 8 (m), and 8 (m) 2, so far as the said allegations relate to this Defendant, and all charges of fraud or breach of trust, and says that he has not committed or been a party to any breach of trust as a director of the Plaintiff Company.

5. The amount mentioned in the said order, namely, the sum of twenty-eight thousand and ninety-eight dollars and ninety-four cents (28,098.94), and interest thereon at the rate of four (4) per cent. per annum, was on the twenty-ninth (29th) day of September 1891, justly due, and is now justly due and payable to this Defendant.

6. This Defendant relies upon the said judgment in the Chancery Division of the High Court of Justice for the province of Ontario in the said amended Statement of Claim mentioned, and says that he has altered his position in consequence of and relying upon the said judgments, and the Plaintiffs, the Great North West Central Railway Company, have received and accepted valuable advances and concessions thereunder.

7. This Defendant submits his right herein to the judgment of this Honourable Court.

8. This Defendant submits that the Plaintiffs have no right to maintain this action against him, and he prays to be hence dismissed with his costs of this defence.

RECORD.

No. 9.
Amended
Statement
of Defence
of Robert
J. Devlin—
continued.

Statement of Defence delivered the twentieth day of January 1893, and Amended Statement of Defence delivered this fourteenth day of April 1893, by Chrysler and Lewis, of the city of Ottawa, in the county of Carleton and province of Ontario, solicitors for the Defendant Robert J. Devlin.

STATEMENT of Defence of the Honourable Francis Clemow to the Plaintiffs' Amended Statement of Claim.

No. 10.
Statement
of Defence
of the
Honourable
Francis
Clemow.
14 April
1893.

1. This Defendant admits the first, third and fourth paragraphs of the Plaintiffs' Statement of Claim.

2. This Defendant does not admit any other parts of the said Statement of Claim, except such parts as are expressly admitted hereinafter in this Statement 10 of Defence.

3. This Defendant was, on the ninth day of April 1888, together with the other four persons named in the Statement of Claim, Alphonse Charlebois, William Anderson Allan, Robert J. Devlin, and James Murray, all and the only subscribers and holders of stock in the Great North West Central Railway Company.

4. This Defendant and the other Defendants entered into an agreement dated the ninth April 1888, with the said John Arthur Codd, in which they agreed to sell to the said John Arthur Codd all their shares in the said railway company at a premium, the amount for which they were sold being the sum 20 of two hundred thousand pounds sterling.

5. Fifty thousand pounds, part of the said sum, was to be paid down at the time of the transfer of the said shares.

6. The title to fifty miles of the said road was to be procured by the vendors, and one or more of the five were to enter into a contract to build the railway thereon, so as to entitle the Company to the land grant of 320,000 acres, and upon the delivery of the said fifty miles with the road so built thereon, this Defendant and the other Defendants were to receive together the balance of the said sum of two hundred thousand pounds.

7. It was stipulated in the said agreement that the sum to be named in the 30 said construction contract was the sum of £200,000 sterling, that being the price for which they would fulfil each and every part of the said agreement on their part to be fulfilled.

8. In the month of September 1889, Mr. C. R. Stevens came to this country and was introduced to these Defendants by the said John Arthur Codd as the person who would pay the first instalment of fifty thousand pounds sterling, and take the assignment of the said shares.

9. The Defendant came to Toronto from Ottawa, and the whole five Defendants were then ready to fulfil their part of the said agreement, but neither the said Codd nor the said Stevens was prepared to fulfil their part of the said 40 agreement, and this Defendant thereupon returned to Ottawa, and that agreement

was, as far as this Defendant was concerned, never carried out, and was subsequently cancelled under seal. RECORD.

10. On the ninth day of September, after this Defendant had returned to Ottawa, the agreement mentioned in the paragraph eight (j) of the Statement of Claim, he, this Defendant believes was entered into between the said Codd and the Defendant Charlebois, and by the third clause thereof the Defendant Charlebois became substitute for the five shareholders, and Charlebois undertook to carry out the terms of the agreement of ninth April, already mentioned, subject to the therein contained modifications. No. 10.
Statement
of Defence
of the
Honourable
Francis
Clemow—
continued.

10 11. On the return of the said Charlebois to Ottawa, and after the execution of the said contract of the ninth September, this Defendant agreed with the said Charlebois to sell to the said Charlebois all the shares and interest which he, this Defendant, had in the Company, but he never agreed or undertook either as director or otherwise that the contract which Charlebois would make for the building of said road should be made with the said Company; that was a matter with which this Defendant had nothing to do, and as far as this Defendant understood it, any arrangement that was made was made between Stevens and Charlebois himself.

12. The said C. R. Stevens for his sole use and benefit, and in anticipation of becoming the holder of all the shares and of all the capital stock of the Company as the nominee of A. Charlebois, and in order to carry out the terms of the contract of the ninth April, which the said A. Charlebois and not the Defendant had undertaken to carry out, subject to certain modifications, paid to this Defendant at the request of the said Charlebois a sum sufficient with the discount declared by resolution of the directors to make his shares paid-up shares; this sum was paid by the Defendant to the credit of the capital stock of the Company, and the shares so paid up the Defendants assigned to the said Stevens as the nominee of the said Charlebois, and at his request.

12a. The said payment by C. R. Stevens was in fact but a payment in advance of the balance which might be assessable on the shares to make them paid-up shares, and the amount of the said payment being still to the credit of the Company when the shares were transferred and the contract was entered into with said A. Charlebois, no longer a director or shareholder, it was legally paid over to him by the president, C. R. Stevens, the agent of the said Delap, on account of and as part of the bulk sum provided for in his contract, and the obligations undertaken by him and for moneys previously expended on the construction of the said railway and due by the Company.

13. The moneys so paid formed part of the assets of the Company and this was so when Stevens became the holder of the said shares. After the said shares were so assigned, this Defendant took no further part in the subsequent transaction, but accepted the order of the said Charlebois on the said Company to pay the balance of the money which he had agreed to pay to this Defendant.

14. The only thing he did was to join with the other three in an agreement with Charlebois to guarantee that the said shares and the holder of them, and

RECORD. the said Company's stock be free from all liability, except the liability arising out of the contract with Government.

No. 10.
Statement
of Defence
of the
Honourable
Francis
Clemow—
continued.

15. After the said assignment, this Defendant believes, the said Defendant Charlebois entered into a contract pursuant to the said agreement of the ninth April, to procure the said land and build thereon the said road. The said road has been approved by the Government of Canada as built according to the contract with them, and the Company has received the grant of 320,000 acres, and the said Defendant Charlebois is prepared, as this Defendant believes, to deliver the said road to the said C. R. Stevens or to the said Company, and he is entitled to receive the balance of the said sum of £200,000 pounds sterling, 10 less the sum of £50,000 pounds sterling already paid, and other moneys, if any, which may have been necessarily expended by the said C. R. Stevens or the said Company to render more complete the fulfilment of the said contract, and he, this Defendant, is entitled to receive the balance which, according to his agreement with the said Charlebois, should be paid to him.

15a. After the transfer of all the capital stock and shares of the Company to the nominee of A. Charlebois, and subsequent to the sixteenth September, 1889, the then directors (the president being C. R. Stevens, the agent of the said Delap) were fully capable of making the contract they did make with the said A. Charlebois, who was no longer a shareholder, for the bulk sum of 20 £200,000, and to pay him on account of work already done and still due by the Company, and to be done in completing the fifty miles the said sum of £50,000 out of moneys forming part of the assets of Company.

16. This Defendant particularly denies all the allegations in clauses 8 (l) 2, 8 (l) 4, 8 (m) and 8 (n), and all charges of fraud.

17. He knows nothing about the agreement between the said Codd and the said Stevens.

18. He never was aware or knew that Stevens was acting for Delap. In fact, he never heard of the name Delap until long after the transaction of the sixteenth September.

30

19. He never knew that Stevens was acting for any person who was lending the money. He supposed that Stevens was acting for capitalists who were buying the whole enterprise, and who would be prepared when the road was finished to pay the balance of the money at once, and his only doubt arose when Stevens failed to produce the bank guarantee as provided, and then his only doubt was as to their solvency.

20. He never determined to put an end to the agreement of the ninth April, 1888, the fact was that neither Stevens or Codd was prepared to carry it out, and so far as this Defendant knew, they never would carry it out.

21. The Defendant never made any contract with the Company. He sold 40 and delivered his shares to the said Charlebois before any contract was made by or with the said Company, and whether the contract was made by Charlebois with the said Company is valid or not, he is entitled to receive the purchase money for his shares from the said Charlebois, but he has no reason to believe

that the contract between the Defendant Charlebois and the Plaintiff Company was fraudulent or void. RECORD.

22. The consideration to be paid was in accordance with the arrangement of the ninth April made with Codd. The Company were to get the fifty miles with the road built thereon and all the advantages of the assignment, including the 320,000 acres. The directors were fully capable of making such a contract, and it was not against the wishes of the shareholders but with their distinct approval, for the directors were all and the only shareholders, and in passing the resolution unanimously affirming the said contract they fully expressed
 10 their assent as shareholders. No other meeting of the shareholders could or would be necessary, and besides there is no one to object.

No. 10.
Statement
of Defence
of the
Honourable
Francis
Clemow—
continued.

23. The Plaintiff cannot object, for he, through his agent, brought the whole thing about, the Company having acted cannot undo its own act, unless compelled to do so by some shareholder entitled to complain, and Miss Mansfield, not being a shareholder, has no *locus standi*.

24. Codd was not qualified as a director because the contractor was indebted to him. The fact that a contractor with a company owes one of the directors a personal debt does not disqualify the director.

The Company did not undertake to pay Codd, but as Delap retains the
 20 shares, this Defendant claims that he, this Defendant, should be paid either by the Defendant Charlebois or by the Defendant Stevens or by his principal, who, having acquired all the shares which this Defendant owned, as he, the Plaintiff Delap claims he has, is bound in equity and good conscience to pay to the owner of the shares the purchase money in consideration of which this Defendant parted with the shares.

25. As to the claim made by the Plaintiff Delap that he should not only hold as his own all the shares which this Defendant formerly owned, but shall recover back from this Defendant that portion of the purchase money which this Defendant has received, this Defendant says that so long as the Plaintiff
 30 claims to hold what he received by a contract which he says is fraudulent and void, he is a participator in the fraud and is not entitled to recover, but this Defendant specially denies the fraud and collusion.

26. This Defendant submits that the Defendant Charlebois has not given up the vendor's lien which he has over the land purchased by him for the purposes of the railway, and that this lien must prevail over any bargain made between Codd and Delap, and this Defendant should have the benefit thereof.

27. As to the \$173,000 which the former shareholder agreed that Mr. Codd should receive, it was a matter with which the purchasers who this Defendant alleges had notice, had nothing to do, but whether they had notice
 40 or not, they were bound to pay £200,000 sterling to the vendors, who could do as they liked respecting the disposition of the money.

28. This Defendant claims that the sum of \$23,400, with interest at four per cent. from sixteenth September 1889, be paid to him by the Plaintiff Delap, and in default that the Defendant Charlebois be declared to have a lien on all the

RECORD. property mentioned in the contract of the sixteenth September, and that he the said Charlebois be ordered to hold the said lien as well for the Defendant's benefit as well as for his own, and that this Defendant be paid his costs of this action.

No. 10.
Statement
of Defence
of the
Honourable
Francis
Clemow—
continued.

29. This Defendant, by leave of the Court, also demurs to the statement of claim, and contends that the Plaintiffs have not jointly, nor has either of them separately, shown any cause for action, or right to any relief against this Defendant. It is not shown that the Defendant ever did any act either by joining in any resolution or by procuring the Company's seal to any contract which was injurious to the said Company of which the Plaintiffs as shareholders can 10 complain, or which entitles the other Plaintiffs to join the said Company with them in this action, and he denies that the Company is shown to be legally joined or can appear as a party as against this Defendant. The Plaintiff Mansfield cannot join the Company with her, for she is only a creditor, and as such has no right against this Defendant, and cannot be joined with the Company. The Plaintiff Delap as a creditor cannot be joined with the Plaintiff Mansfield as a creditor.

30. This Defendant contends that this Delap, if he is anything, is only a creditor, and, as such, cannot be joined with the Company against this Defendant as a creditor, and has no rights against this Defendant. 20

Delivered this fourteenth day of April 1893, by McMichael, Mills & McMichael, of 54, Church Street, Toronto, solicitors for the Defendant Clemow.

STATEMENT of Defence of the Defendant James Murray, to the Plaintiffs' Amended Statement of Claim.

No. 11.
Statement
of Defence
of James
Murray.
6 May 1893.

1. This Defendant admits the first, third and fourth paragraphs of the Plaintiffs' Statement of Claim.

2. This Defendant does not admit any other parts of the said Statement of Claim, except such parts as are expressly admitted hereafter in this Statement of Defence. 30

3. This Defendant was, on the ninth day of April 1888, together with the other four persons named in the Statement of Claim, Charlebois, William Anderson Allan, Robert J. Devlin, and the Honourable Francis Clemow, all and the only subscribers and holders of stock in the Great North West Central Railway Company.

4. This Defendant and the other Defendants entered into an agreement dated the ninth April 1888, with the said John Arthur Codd, in which they agreed to sell to the said John Arthur Codd all their shares in the said railway company at a premium, the amount for which they were sold being the sum of two hundred thousand pounds sterling.

5. Fifty thousand pounds of the said sum was to be paid down at the time of the transfer of the said shares. RECORD.

6. The title to fifty miles of the said road was to be procured by the vendors, and any or none of the five were to enter into a contract to build the railway thereon, so as to entitle the Company to the land grant of 320,000 acres, and upon the delivery of the said fifty miles with the road so built thereon this Defendant and the other Defendants were to receive together the balance of the said sum of two hundred thousand pounds. No. 11.
Statement
of Defence
of James
Murray—
continued.

7. It was stipulated in the said agreement that the sum to be named in the said construction contract was the sum of £200,000 sterling, that being the price for which they would fulfil each and every part of the said agreement on their part to be fulfilled.

8. In the month of September 1889 Mr. C. R. Stevens came to this country and was introduced to these Defendants by the said John Arthur Codd as the person who would pay the first instalment of fifty thousand pounds sterling, and take the assignment of the said shares.

9. The Defendant came to Toronto from Ottawa, and the whole five Defendants were then ready to fulfil their part of the said agreement, but neither the said Codd nor the said Stevens were prepared to fulfil their part of the said agreement, and this Defendant thereupon returned home, and that agreement was, so far as this Defendant was concerned, never carried out, and was subsequently cancelled under seal.

10. On the ninth day of September, after this Defendant had returned home, the agreement mentioned in paragraph 8 (j) of the Statement of Claim, this Defendant believes, was entered into between the said Codd and the Defendant Charlebois, and by the third clause thereof the Defendant Charlebois became substitute for the five shareholders, and Charlebois undertook to carry out the terms of the agreement of the ninth April already mentioned, subject to the therein-contained modifications.

11. On the return of the said Charlebois to Ottawa, and after the execution of the said contract of the ninth September, this Defendant agreed with the said Defendant Charlebois to sell to the said Charlebois all the shares and interest which he, this Defendant, had in the Company, but he never agreed or undertook, either as director or otherwise, that the contract with Charlebois would make for the building of the said road should be made with the said Company; that was a matter which the Defendant had nothing to do with, and as far as this Defendant understood it any agreement that was made was made between Stevens and Charlebois himself.

12. The said C. R. Stevens paid to the credit of this Defendant, at the request of the said Charlebois, as part of the said purchase money, a sum sufficient with the discount declared by resolution of the directors to make his shares paid-up shares. This sum was paid to the credit of the capital stock of the Company, and the shares so paid up the Defendant assigned to the said Stevens and his nominees, or the nominee of the said Charlebois, and at his request.

RECORD.

—
No. 11.
Statement
of Defence
of James
Murray—
continued.

13. The moneys when so paid formed part of the assets of the Company, and this was so when Stevens and his nominees became the holders of the said shares. After the said shares were so assigned this Defendant took no part in the subsequent transaction, but really looked to the said Charlebois to pay the balance of the money which he had agreed to pay to this Defendant.

14. The only thing he did was to join with the other three in an agreement with Charlebois to guarantee that the said shares and the holder of them and the said Company's stock be free from all liability, except the liability arising out of the contract with the Government.

15. After the said assignment, this Defendant believes, the said Charlebois 10 entered into a contract pursuant to the said agreement of the ninth April to procure the said land and build there the said road.

The said road has been approved by the Government of Canada, as built according to the contract with them, and the Company has received the grant of 320,000 acres, and the said Defendant Charlebois is prepared, as this Defendant believes, to deliver the said road to the said C. R. Stevens or to the said Company, and he is entitled to receive the balance of the said sum of £200,000 sterling, less the sum of £50,000 sterling already paid, and any other moneys, if any, which have been necessarily expended by the said C. R. Stevens or the said Company, to render more complete the fulfilment of the said contract, and he, 20 this Defendant, is entitled to receive the balance which, according to his agreement with the said Charlebois, should be paid to him.

16. After the transfer of all the capital stock and shares of the Company to the nominees of the said Charlebois, and subsequently to the sixteenth September 1889, the then directors (the president being C. R. Stevens, the agent of said Delap) were fully capable of making the contract they did make with the said Charlebois, who was no longer a shareholder, for the bulk sum of £200,000, and to pay him an account of work already done and still due by the Company, and to be done in completing the fifty miles, the said sum of £50,000 out of moneys 30 forming part of the assets of the Company.

17. This Defendant particularly denies all the allegations in clauses 8 (l) 2, 8 (l) 4, 8 (m) and 8 (n), and all charges of fraud.

18. He knows nothing about the agreement between the said Codd and the said Stevens.

19. He never was aware or knew that Stevens was acting for Delap ; in fact he never heard of the name of Delap until long after the transaction of the sixteenth September.

20. He never knew that Stevens was acting for any person who was lending money. He supposed that Stevens was acting for capitalists who were buying the whole enterprise, and who would be prepared when the road was finished to 40 pay the balance of the money at once, and his only doubt arose when Stevens failed to produce the bank guarantee provided, and then his only doubt was as to their solvency.

21. He never determined to put an end to the agreement of the ninth April

1888 ; the fact was that neither Stevens or Codd were prepared to carry it out, RECORD.
and so far as this Defendant knew, they never could carry it out.

22. This Defendant never made any contract with the Company. He sold and delivered his shares to the said Charlebois before any contract was made by or with the said Company, and whether the contract made by Charlebois with the said Company is valid or not he is entitled to receive the purchase-money for his shares from the said Charlebois ; but he has no reason to believe that the contract between the Defendant Charlebois and the Plaintiff Company was fraudulent or void.

No. 11.
Statement
of Defence
of James
Murray—
continued.

10 23. The consideration to be paid was in accordance with the arrangement of the ninth April, made with Codd. The Company were to get the fifty miles with a road built thereon, and all the advantages of the assignment, including the 320,000 acres. The directors were fully capable of making such a contract, and it was not against the wishes of the shareholders, but with their distinct approval, for the directors were all and the only shareholders ; and in passing the resolution unanimously affirming the said contract, they fully expressed their assent as shareholders. No other meeting of the shareholders could or would be necessary, and besides there is no one to object.

24. The Plaintiff cannot object, for he through his agent brought the whole
20 thing about, the Company having acted cannot undo its own act, unless compelled to do so by some shareholder entitled to complain, and Miss Mansfield not being a shareholder has no *locus standi*.

25. Codd was not disqualified as a director because the contractor was indebted to him. The fact that a contractor with a company owes one of the directors a personal debt does not disqualify the director. The Company did not undertake to pay Codd ; but, as Delap claims that he holds all the shares, this Defendant claims that he, this Defendant, should be paid, whether by the Defendant Stevens or by his principal, who claims that he has acquired all the shares which this Defendant owed, is bound in equity and good conscience to
30 pay to the owner of the shares the purchase-money in consideration of which this Defendant parted with the shares.

26. As to the claim made by the Plaintiff Delap, that he should not only hold as his own all the shares which this Defendant formerly owned, but shall recover back from this Defendant that portion of the purchase money which this Defendant has received, this Defendant says, that so long as the Plaintiff claims to hold what he received by a contract, which he says is fraudulent and void, he is a participator in the fraud, and is not entitled to recover, but this Defendant specially denies the fraud and collusion.

27. This Defendant submits that the Defendant Charlebois has not given
40 up the vendor's lien which he has over the lands purchased by him for the railway, and that this lien must prevail over any bargain made between Codd and Delap, and this Defendant should have the benefit thereof.

28. As to the \$173,000 which the former shareholders agreed that Mr. Codd should receive, it was a matter with which the purchasers, who this Defendant alleges had notice, had nothing to do ; but whether they had notice

RECORD. or not, they were bound to pay £200,000 sterling to the vendors, who could do as they liked respecting the disposition of the money.

No. 11.
Statement
of Defence
of James
Murray—
continued.

29. The Defendant claims that the sum of \$11,707.89 with interest at four per cent. from September sixteenth 1889, be paid to him by the Plaintiff Delap, and in default, that the Defendant Charlebois be declared to have a lieu on all the property mentioned in the contract of the sixteenth September, and that the said Charlebois be ordered to hold the said lien as well for the Defendant's benefit as well as for his own. and that this Defendant be paid his costs of this action.

30. This Defendant, by leave of the Court, also demurs to the Statement of 10 Claim, and contends that the Plaintiffs have not jointly, nor has either of them separately, shown any cause of action or right to any relief against this Defendant. It is not shown that the Defendant ever did any act, either by joining in any resolution, or by procuring the Company's seal to any contract which is injurious to the said Company, of which the Plaintiffs as shareholders can complain, or, which entitled the other Plaintiffs to join the said Company with them in this action, and he denies that the Company is shown to be legally joined or can appear as a party against this Defendant. The Plaintiff Mansfield cannot join the Company with her, for she is only a creditor, and as such has no right as against the Defendant, and cannot be joined with 20 the Company. The Plaintiff Delap, as a shareholder, cannot be joined with the Plaintiff Mansfield, who is a creditor.

31. This Defendant claims that this Delap, if he is anything, is only a creditor, and as such cannot be joined with the Company against this Defendant as a creditor, and has no rights as against this Defendant.

Delivered this sixth day of May, A.D. 1893, by McMichael, Mills & McMichael, of 54 Church-street, in the City of Toronto, solicitors for the said Defendant, James Murray.

No. 12.
Statement of
Defence of
John Arthur
Codd.
17 April
1893.

STATEMENT of Defence of John Arthur Codd to the Plaintiff's Answered
Statement of Claim.

30

1. Save as herein specifically admitted this Defendant denies all the allegations contained in the Statement of Claim of the Plaintiff.

2. The Plaintiff Delap is not a shareholder in the Plaintiff Company within the meaning of the Railway Act, and the said Delap has no right or authority to use the name of the Company as Plaintiffs in this action, and this Defendant submits that the name of the railway company as Plaintiffs should be struck out, and that in any event the Plaintiff Delap should be responsible for all costs of this action.

3. The Plaintiff Delap claims to be a shareholder in the Company, and at the same time a creditor of the Company, and it is submitted that he should be 40 compelled to elect to proceed either as a shareholder or as creditor, as his duty as shareholder and his interest as creditor conflict.

4. The Defendant is a shareholder of the Plaintiff Company in his own right absolutely, and the Plaintiff Delap has no right to sue on his behalf and at the same time proceed against him.

RECORD.

No. 12.

Statement of
Defence of
John Arthur
Codd—
continued.

5. This Defendant admits that an agreement was executed dated the 9th day of April 1888, between the parties in the 7th paragraph of the Statement of Claim mentioned, but he denies that such an agreement was based on the instrument dated 6th of March 1888, in said paragraph set out, and says that said agreement of 9th of April 1888 was merely reducing to writing in formal language an agreement that was entered into in the month of December
10 previous, as will appear by said agreement of 9th of April 1888, when the same is produced to this Honourable Court.

6. This Defendant says he was in England when the instrument of 6th of March 1888, in 7th paragraph set out was executed and delivered to D. McMichael, and he was unacquainted with the exact terms thereof until long after the 6th of March 1888, and the statement therein contained that the money to be paid to him was to cover commission, &c., is untrue, but it was to cover the claim of this Defendant under the 27th Clause of the Charter of the Railway Company against the Souris and Rocky Mountain Railway Company and the North-West Central Railway Company, against which companies this
20 Defendant had a legitimate claim for many years' service, and for large sums of money expended in the construction of the railway in question herein, and he had been pressing same against the corporators of the Plaintiff Company herein, and at the same time he entered into the agreement with the corporators in the month of December 1887, as recited in said agreement of 9th of April 1888, his claim was settled with said corporators at the difference between £200,000 and \$800,000 and thereafter, and on or about the date thereof said corporators executed and delivered to said D. McMichael said instrument of 6th of March 1888.

7. The agreement of 9th of April 1888, if not actually annexed to the
30 agreement of the 20th July 1889, was present and exhibited to the said Delap at the time he signed said agreement of 20th July 1889, and it is untrue that the same was withheld from the said Delap, and it was also stated clearly and specifically to the said Delap at and before the time he executed said agreement of 20th of July 1889, that this Defendant was to receive out of said £200,000 the difference between that sum and \$800,000, and both the said Delap and his solicitors and agents, Messrs. Stevens, Bawtree & Stevens were fully aware of this fact before the said agreement of 20th July 1889, was executed by the said Delap, and said solicitors had in their possession, on the 20th of July 1889, a copy of said instrument of 6th of March 1888.

40 8. Referring to paragraphs 8f and 8g of the Amended Statement of Claim, this Defendant denies that he was the agent for the Railway Company, and further denies that Stevens was solicitor for this Defendant or for the Company, and says that the said Delap and Stevens were the parties sharing profits with each other, and if any partnership existed it was between the said Delap and Stevens or his firm.

- RECORD, 9. This Defendant denies the allegations in the commencement of
 No. 12. paragraph 8*j*, that he was a partner with said Stevens, but says that said Delap's
 Statement of agent drew said agreement wholly at the request of said Charlebois, and not at
 Defence of this Defendant's request or as his solicitor.
 John Arthur
 Codd—
continued.
10. Referring to paragraph 8*k* of the Amended Statement of Claim, so far as
 the name of this Defendant is mentioned therein, said paragraph is untrue. The
 said Stevens and his firm were well aware before he left London for Canada
 that the shares were not paid up. This Defendant was not present, and had
 nothing whatever to do with the matter of carrying out the agreement referred
 to in paragraph 8*k* and 8*l*. 10
11. Referring to 8 (*l*) 2, this Defendant did not at that time know whether
 the £50,000 was Delap's money or not, and it was not until the evening of the
 16th of September, when said Stevens brought the agreement set out in
 paragraph 8 (*o*), which he had previously drawn, to this Defendant for
 signature. This Defendant never heard of the agreement of the 11th of
 September until he read of it in the said Amended Statement of Claim, and he
 has no knowledge, and never had any knowledge of it beyond what he had read
 in the Amended Statement of Claim, and he does not believe that any such an
 agreement was ever made or is in existence, and he was no party to any scheme
 as alleged in said paragraph 8 (*l*) 2, and if any such scheme existed it was not 20
 communicated to this Defendant.
12. Paragraph 8 (*l*) 3, in so far as it refers to this Defendant, is wholly
 untrue. It was not so agreed by this Defendant, and he never heard of such
 a proposal.
13. No moneys were paid by said Charlebois to this Defendant on the
 16th of September 1889, nor until some considerable time afterwards ; nor was
 there any such an agreement or arrangement in regard thereto as alleged in
 paragraph 8 (*m*) 2, and any moneys that were paid to this Defendant by said
 Charlebois were paid thereafter and were paid as a private debt of his, and had
 no connection with the Railway Company or with the contract with his Company. 30
14. As to the \$173,000.00, which the former shareholders agreed to pay this
 Defendant, and which said Charlebois subsequently assumed payment of, that
 was a matter with which said Delap and the Company had nothing whatever to
 do ; but he had notice thereof, and having such notice he entered into the
 agreement of the 20th of July 1889, which was made part and parcel of the
 agreement of 9th of April 1888, whereby the purchasers of the shares were
 bound to pay £200,000 sterling to the vendors of the shares, and the vendors
 had the undoubted right to make what disposition they liked of the purchase
 money, and any disposition which they might make is not a matter which the
 said Delap has any right to interfere with or inquire into ; but so far as it 40
 relates to this Defendant, said Delap had full notice and knowledge before
 executing the agreement of 20th of July 1889, that said \$173,000 was to be
 paid to this Defendant, and with said notice and knowledge entered into said
 agreement, and even if he were otherwise entitled to object to the Plaintiff being
 paid said sum by said Charlebois or by the previous shareholders, he has
 debarred himself of complaining of same.

15. This Defendant admits the execution of the agreement between himself and C. R. Stevens set out in the 15th paragraph of the Statement of Claim, but he says it is untrue as therein alleged that it was a partnership agreement between him and said Stevens, but on the contrary that said Stevens entered into and executed it on behalf of the said Delap, and the said Stevens drew the said agreement and informed this Defendant before the execution thereof that he used his own name because the 90 per cent. of the shares stood in his name, but it was always believed by this Defendant and understood that said agreement was made with said Delap and not with said C. R. Stevens personally, and the said Stevens in entering into said agreement was acting within the scope or at all events within the apparent scope of his authority, and said Delap has ratified and confirmed said agreement on his own behalf.

RECORD.
No. 12.
Statement of
Defence of
John Arthur
Codd
—continued.

16. This Defendant denies the allegations contained in paragraphs 8 r and 8 s of said Amended Statement of Claim, and says that both said Delap and his solicitors Stevens, Bawtree & Stevens had full notice and knowledge of all the matters therein alleged, and said Stevens had in his possession as the solicitor and agent of said Delap prior to the 20th of July 1889, a copy of the said instrument of 6th of March 1888, and the said Stevens was fully aware of all the facts and circumstances connected with the said \$173,000 mentioned in said instrument of 6th of March 1888, and said Delap was personally informed of the same by this Defendant on the 20th of July 1889, before he executed said agreement.

17. This Defendant denies that said Delap is entitled to hold 90 per cent. of the shares until he has repaid any advances he may have made to the Company, and he could only become entitled to hold said shares if he had carried out said agreement of 20th of July 1889, with this Defendant and not having done so he is not entitled to hold any of the shares.

18. If the name Delap through his agent C. R. Stevens, was substituted for the name Codd in lines 2 and 6 in the commencement of paragraph 9 of said amended Statement of Claim the facts would no doubt be true, but it is wholly untrue as therein alleged so far as it refers to this Defendant.

19. This Defendant denies the allegations contained in the 10th and 11th paragraphs of said amended Statement of Claim so far as they refer to him, and says said paragraphs are to that extent untrue.

20. This Defendant admits that the said sum of \$173,000 was a personal liability to him by the said Charlebois, and says it is not a matter in which either the railway company or the said Delap is in any way interested.

21. This Defendant denies the allegations contained in paragraphs 16 b and 16 c, and says that if any breach of trust was committed the said Delap through his agent C. R. Stevens was the party who committed such breach of trust and he is bound thereby.

22. Referring to paragraph 16 (d) this Defendant says that the railway company is not and never was indebted to him, and he never claimed that it was, but the Defendant Charlebois being indebted in the sum of \$173,000 had a perfect right to make an equitable assignment to this Defendant to that extent of any moneys that might be owing to him by the railway company.

RECORD. 23. Referring to paragraph 23 of the Amended Statement of Claim this Defendant says that the facts are not correctly set forth therein, but the fact is that Delap applied to this Defendant to consent to such an arrangement to assist him to meet his own liability, and requested this Defendant to have 1,250 of the shares of this Defendant transferred to said International Trustee Company as security for said Delap, and the liability of this Defendant was subsequent to the liability of said Delap, and said Delap having paid said Company should be compelled to have said 1,250 shares re-transferred to this Defendant.

No. 13.
Statement of
Defence of
John Arthur
Codd
—continued.

24. Referring to paragraph 61 b this Defendant says that the said bonds should be in custody and possession of said trustees, but under and subject to the control of the railway company and the said Delap has illegally and wrongfully obtained possession of the said bonds from the trustees and should be compelled to return them to the trustees.

Delivered this 17th day of April 1893, by Mills & Mills, of 33, Adelaide-street, east, Toronto, solicitors for the above named Defendant J. A. Codd.

STATEMENT of Defence of Daniel McMichael.

No. 13.
Statement of
Defence of
Daniel
McMichael,
6 Feb. 1893.

The Defendant in answer to so much of the Statement of Claim as refers to him and especially to what is alleged in Clauses 10, 12, 14, 15, 23, 28, 33, 38, 52, 61, 63 and 69 of the said Statement of Claim says:—

1. That the first knowledge he had of the proceedings between the said 20 different parties in the suit mentioned was when negotiations were being made between Messrs. Clemow, Allan, Charlebois, Murray and John A. Codd, respecting the purchase of the Great North West Central Railway Company.

2. And afterwards, on the ninth day of April 1888, an agreement was entered between the said the Honourable Francis Clemow, William Anderson Allan, Robert James Devlin, James Murray and Alphonse Charlebois, of the first part, and John Arthur Codd, of the second part by which the parties of the first part, in consideration of the sum of two hundred thousand pounds (£200,000) to be paid as thereafter provided, agreed to assign, set over and sell to the party of the second part, the said John A. Codd, or his nominee, all the shares in the 30 capital stock of the Great North West Central Railway Company, together with fifty miles of the said railway, to be completed at the cost of the said parties of the first part, and in operation by the first of August next, to the satisfaction of the Dominion Government, so as to earn the land-grant and all the right, title and interest which they, or any of them, the said parties of the first part might then or thereafter possess, or the right of way on the line of railway wherever the same had been or might thereafter be acquired by them, and all their interest in the property of the said Company of whatever kind, including the franchise and right to the land-grant which had been or might thereafter be made by the Dominion Government, and all plans, profiles and other documents 40 relating to the line of railway.

3. It was among other things stipulated by the said agreement that fifty thousand pounds (£50,000) should be paid on account thereof on the executions of the transfers of the said stock to the party of the second part, or his nominee, and the execution by the parties of the first part, or some of them, of a contract, and in consideration of the sum of two hundred thousand pounds (£200,000) sterling, undertaking to fulfil, equip and complete the first fifty miles of the said railway on or before the first of August next, or within such further time as might be accorded to the Government with the approval of the party of the second part, or his nominee.

RECORD.
No. 13.
Statement of
Defence of
Daniel
McMichael
—continued.

10 4. It was further agreed among other things that one of the conditions to be fulfilled and performed precedent or at the time of the first payment of fifty thousand pounds (£50,000) was that the party of the second part, or his nominee, should produce a banker's guarantee for the payment of one hundred and fifty thousand pounds (£150,000) to the satisfaction of the parties of the first part.

5. Previous to the execution of this agreement, and while negotiations were proceeding, I am informed and believe that the five persons above named had promised and agreed with the said J. A. Codd, that in case of the said sale being consummated, the difference between eight hundred thousand dollars
20 (\$800,000) and two hundred thousand pounds (£200,000) should be paid to the Defendant in place of themselves, to be held to the order and use of the said John Arthur Codd to cover commissions, etc.

6. The said Codd had written to the Defendant asking him to consent to receive the said money and he had consented, but this was a separate agreement between them and Codd, and did not make the price which was to be paid more or less. Further, it was said it was to be paid out of the amount which they were to receive and not a separate sum, beside that, it is not true, as was alleged in the fifteenth clause, that Codd assigned all his claim, there never was any assignment, except the assignment above mentioned by the vendors, and there
30 never was any agreement whatever respecting any commissions to be paid by the said Codd to the Defendant, nor was there any trust which the Defendant could enforce. The said Codd could have directed the said money to be paid to anyone else and this Defendant could not have prevented them from so doing.

7. When the time came to fulfil the agreement first above named, Mr. C. R. Stevens appeared with Mr. Codd, representing, I understood, the purchasers, and offering to carry out the bargain which the five proprietors of the Great North-West Central Railway Company had entered into with Mr. Codd. But the solicitors for the proprietors raised an objection that the part of the contract that Mr. Codd or his nominee should give a good bank guarantee, was not
40 fulfilled. The contract which had been entered into was then varied, and a contract made between Mr. Codd and Mr. Charlebois, of which a minute was signed between the parties, Charlebois and Codd, and which Mr. C. R. Stevens proceeded to carry into effect. He paid the sum of fifty thousand pounds (£50,000) to Mr. Charlebois, and Mr. Charlebois procured the transfer of all the shares of the said company to Mr. C. R. Stevens, excepting four blocks of fifty shares each, which were transferred to this Defendant, and the other

RECORD. persons whom Mr. C. R. Stevens named as his nominees to receive them in order to make five shareholders, which number was necessary to constitute the Company.

No. 13.
Statement of
Defence of
Daniel
McMichael

8. Mr. James Murray, one of the five proprietors, assigned fifty shares to the Defendant, and fifty shares were assigned to each of three other persons —continued. named by the said Stevens.

9. Previous to the said assignment, the said five shareholders already mentioned were the said Company, and were the only shareholders thereof, and after the said assignment the said Stevens was the principal shareholder, and he and the other four, his nominees, were the only shareholders of the said 10 Company. The said five shareholders were then elected directors, and the said Stevens was elected president, and the said Stevens knew what the contract was, as to the payment of \$173,333, and he knew that the said Charlebois had agreed to carry out the same, all the shareholders were present when this Defendant was elected director, and if he were not eligible, then was the time for the shareholders to object. This Defendant did not then think, and he does not now think, that his having consented to receive it, if Mr. Codd still wished it, the sum which Charlebois had agreed should be paid to him was any objection to his being a director, the money was not a debt of the Company and not to be paid by the Company. The statement made in the last clause of the 20 fourteenth paragraph that the Defendants Codd and Charlebois together procured the said Company to enter into the said contract, none of the other shareholders being aware, etc., is entirely contrary to the fact. Mr. C. R. Stevens then being, except for the two hundred shares held as aforesaid, the only shareholder, entered into the said contract as president of the said Company, he having before that time concluded the arrangement with the previous shareholders in pursuance of which the said contract was entered into, he was the only one who acted or professed to act for the Company, the other shareholders simply acquiesced, being in reality his nominees for the reason already given. This Defendant was present during the greater part of the 30 negotiation, and he does not recollect that Mr. Codd, although appointed director, took any part in these discussions.

10. Mr. Stevens before he left this country resigned his position as president, and Mr. Codd was appointed president, but Mr. Stevens continued to act as director, and during all the time the directors in this country acted under the instructions, or according to the wishes of any who after became shareholders as far as they could understand them, and as they received intimation of their wishes through Mr. Stevens.

11. This Defendant did not wish to act as director, but being asked first by Mr. Stevens and afterwards by Mr. Codd, he continued to act, but if he had 40 known that his doing so was not acceptable to any of the shareholders, or that anyone thought it was illegal for him to do so, he would have taken advantage of the doubt and resigned.

12. This Defendant did not know the names of the shareholders in England, except that of Mr. Stevens, nor did he know whether there were any shareholders, except Stevens ; but he fully believed that through Mr. Stevens

he was in communication with all of the Company in England, and was carrying out their wishes. When Mr. Charlebois made different claims he reported them as soon as he could to England, and was desirous, as far as he could, to avert legal proceedings. When the action was commenced by Mr. Charlebois it was reported at once to Mr. Stevens, but when the motion to continue the injunction was made, there was not time to communicate with England, and he had, as solicitor, to do the best he could. Mr. Codd obtained Mr. S. H. Blake to assist this Defendant, but because of the absence of funds, he was retained at so late a period that there was no time for a consultation, and the Defendant had to commence the argument without any opportunity being given of allowing Mr. S. H. Blake and himself to know each other's mind. This Defendant took the ground that the contract was not fulfilled—which was the fact. But the Plaintiff produced a certificate by Mr. Schreiber, the Minister on behalf of the Government, which certified that the road was finished, equipped and ready for running, and Charlebois' counsel claimed the Company was estopper, and the Judge seemed to think that it was something hard for them to get over; the whole argument of this Defendant was on the issue that there was no fulfilment of the contract. When Mr. Blake took up the argument, he after a while spoke of a compromise, which was the first time that I, this Defendant, had heard it mentioned, and His Lordship adjourned the argument to see if there could be a compromise. It was so manifest that the road was not finished that no suggestion of the kind was made in the consent judgment, but the Plaintiff's counsel allowed certain deductions to be made from the contract price to compensate for certain things which were wanting, but after all, this Defendant was much deceived and misled. The Plaintiff had sworn that the road was finished, and this Defendant believed that the things which the Plaintiff admitted to be wanting were all that were wanting, but he learned afterwards that the road was wholly incomplete, and if he had known that at the time he would more strenuously have opposed the compromise than he did.

12. He understood the compromises were simply to the effect that the Plaintiff was to be paid the £200,000 after giving credit for all he had been paid, and deducting the unfinished work, as to which this Defendant now sees we were deceived and misled by his representations as to things he knew and we did not know, and also he was to be paid the price of the plans for which he had sued, no costs on either side, and other stipulations concerning which there has been no dispute, but he did not fulfil the conditions of the judgment. The contract for the second fifty miles was not given up for a long time and the maps were not forthcoming, and the road was not finished as we had been led to expect. As to the manner in which the money was to be paid, no stipulations were made, except that the road was to be cleared of incumbrance.

13. This Defendant did not ask nor did anyone on behalf of the Defendants ask or stipulate as far as he knows that any of the money should be paid to the Defendant, nor in fact did he think of it, the proposal came from the Plaintiffs and was simply assented to on behalf of the Defendants. This Defendant was not careful how the money was paid so long as the Company was cleared of the liability to the Plaintiffs. It was most important that he should be got rid of,

RECORD. but whether the money was paid to himself or to his creditors or nominees did not matter.

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Statement of
Defence of
Daniel
McMichael
—continued.

14. This Defendant was much hampered in all the proceedings at law by want of funds, which Mr. Stevens well knew.

15. He gave notice of appeal, but having no funds, and no means being provided for him to give security, he could not go on with the appeal. He also gave notice of motion against the judgment to the Court of Chancery, but the Court struck out the notice, because it could only go to the Court of Appeal. Mr. Stevens was notified when the first proceeding at law was taken, but although he had had ample time to have instructed this Defendant and remitted 10 funds he did not do so.

16. As to the fifty-second paragraph of the Plaintiff's bill, this Defendant says: That he kept Mr. Stevens, whom he understood acted for the Company at home, as well informed as he could, but that no help and very little instruction could be got from him. He knew that the Plaintiff was threatening and would soon bring a suit, and a judgment obtained on the sixth of September was sent to him, but he took no steps, nor did he give any instructions as to what was to be done.

17. This Defendant would have been quite justified in letting the Plaintiff take his judgment as a matter of course, as far as any instructions or any help 20 was given from England.

18. As to the sixteenth clause of the said Statement of Claim this Defendant says that if the Plaintiffs Delap and Mansfield did not know the matters mentioned in that claim, their agent and the man who professed to be the solicitor for the Company in England knew well enough. This Defendant prays to be hence dismissed with his costs wrongly incurred.

Delivered this sixth day of February, 1893, by McMichael, Mills & McMichael for the above-named Defendant.

JUDGMENT of The Honourable The Chancellor.

No. 14.
Reasons for
Judgment
of the
Chancellor,
delivered
25 Novem-
ber 1893.

The following propositions of law are justified by the opinions expressed in 30 Mann vs. Edinburgh Tramway Company, 1893. (Appeal Cases 69.)

A Company created by Act of Parliament has no right to spend a penny of its money except in the manner provided by the Act.

The expenditure of money for a purpose unauthorized by the Act is *ultra vires* absolutely.

Such an expenditure cannot be validated by promoters, directors or shareholders for the time being, nor can it be sanctioned by the Company itself.

It follows from that if the act is beyond the power of the Company to do or ratify, no judgment obtained by the consent of the Company treating it

as valid can remove the invalidity, for the virtue of such a judgment rests merely on the agreement of the parties, and the incapacity to do the act involves the incapacity to consent that it be treated as valid. I think, therefore, that the judgment by consent obtained by the Defendant Charlebois against the Company (upon which depends the subsequent judgment *in invitum*) forms no obstacle to the present Plaintiffs if the transaction impeached is inherently *ultra vires*.

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No. 14.
Reasons for
Judgment
of the
Chancellor
—continued.

Upon one of the main questions argued I must hold conformably to the express evidence of Dr. McMichael and the conduct of all the parties, and the
10 frame of all the written instruments, that there was a real payment in full of the stock in the Company held by the then five shareholders, now the Defendants Charlebois, Clemow, Allan, Devlin and Murray. The Directors met, declared 25 per cent. to be a reasonable discount in view of the cash payment in full, and from money advanced by Stevens, \$228,000 was paid to the credit of the Company in behalf of these five shareholders and became part of its capital. It was a condition of Stevens' proceeding with the transaction that the shares should be paid in full before being transferred, and that was thus accomplished. A further sum of \$15,333 was lent to the Company by Stevens at the suggestion of Mr. Lewis (who was apparently solicitor for the shareholders and the Company) and
20 then this whole sum, amounting to something over \$243,000, being the money of the Company, was paid out the same day to Mr. Charlebois on the construction contract contemporaneously executed. As between the Company and Charlebois this sum (representing £50,000 sterling) is acknowledged under seal to be a part payment by the Company of the total sum of £200,000 sterling to be paid for the construction of the first fifty miles of the Company's line.

A large part of that first payment on the construction contract was not so applied by Mr. Charlebois, but went to the four shareholders other than Charlebois in payment for the transfer of their stock to Stevens and Codd, namely, the sum of \$125,945, and the balance equal \$100,687 is to come out of the balance
30 to be paid by the Company for the construction of the road.

Again I find that Mr. Codd had no claim against the Company, yet a large sum, \$173,000 payable to him is included in the construction price of £200,000 sterling to be paid by the Company to Mr. Charlebois.

There is also included in the specified construction price a further sum of \$70,000 standing for the value of Charlebois' stock in the proportion received by the other shareholders for their stock.

These several sums of \$37,000, \$173,000 and \$226,000 (paid and to be paid to the four shareholders) cannot lawfully come out of the assets or moneys of the Company, inasmuch as these assets and this money can only be applied "for the purpose of making, completely equipping and maintaining the railway," and
40 not for the purpose of stock, or the payment of private commissions (see 51 Vic., Cap. 85 and clauses 3, 4, 11, 19 of the charter).

To the extent of these sums the transaction between Charlebois and the Company manifested in the construction contract is impeachable as being *ultra vires* of the Company. But it does not appear to me that the whole contract is vitiated so that the contractor must be left to a *quantum meruit* compensation.

RECORD. Upon the evidence these amounts are severable, and being severed the balance will represent the real contract price recoverable from the Company. From this, however, the Company will be entitled to deduct the value of the work not finished by the contractor, said to be some \$61,000; as to this there will be a reference if the parties cannot agree. I am by no means satisfied with the way in which the figures in the consent judgment were arrived at, and no intelligible explanation has been vouchsafed, so that I feel the less hesitation in letting it be open.

No. 14.
Reasons for
Judgment
of the
Chancellor.
—continued.

In taking the accounts Charlebois must give credit for the first payment of £50,000 sterling as paid upon the construction contract. The effect of this will be to leave the stock in the hands of Delap unpaid for; but the true way of working out relief is to let this claim for the purchase money of the stock, \$226,000 plus \$70,000, remain as a personal or individual claim against Delap, by Charlebois and the other transferors. Delap being a joint Plaintiff with the Company, there arises no difficulty on this head; the stock should also be charged with this amount.

The contract for construction gives the contractor a full and complete lien and first charge upon and over the 50 miles of railway and its appurtenances, including rails, ties, buildings, equipment, roadbed, right of way, right to the land grant thereto appertaining (if and when fully earned), right of operation of said railway and upon the whole property, enterprise and undertaking till he has been paid the full sum of £150,000 sterling, with the full, absolute and sole possession thereof, meanwhile to remain and be invested in the contractor.

The next important question is to what extent is this general comprehensive lien valid? Is it so in whole or in part? This invites to some degree the consideration of the statutes under which the railway company is constituted; besides the special Charter, the choice was said to be between the General Railway Act of 1879 and that of 1888. (See par. 1 of Charter, 51 Vic. Chap. 85.) It was strongly urged that the question as to the validity of the mortgage was determined by the Supreme Court in *Grand Junction vs. Bickford*, to which was answered that the decision of the Court of Appeal adverse to the power of mortgage was more conformable to the present state of authorities. As to the statutes which are to be regarded:—The Con. Railway Act of 1879, 42 Vic., Chap. 9, was repealed by Rev. Stat. of Canada, Chap. 109, a general Act which superseded it from the 1st March, 1887 (see 49 Vic., Chap. 4, Sec. 5, and R.S. Can. 1886, Schedule "A," page 43). This in turn was repealed by the General Act of 1888 (51 Vic., Chap. 29, Sec. 309), which was assented to on the same day (22nd May 1888) as the special Act confirming the charter of the Company. That Act amends the charter by the addition of words as appears in Sec. 2, and declares that the charter set in schedule is to be read with and form a part of this Act, Sec. 3. In clause one of the charter drawn up and executed July 22nd, 1886, it is provided that the Con. R. Act of 1879, and the Acts amending the same, shall as hereby modified apply to the said railway as if this charter were an Act of the Parliament of Canada. This language as to amending Acts means, I think, Acts in substitution of the Act of 1879, and the choice is therefore, I think, between the Railway Act in the Revised Statutes of Canada and the Act of 1888, passed contemporaneously with the special Act amending and confirming the Company's charter. My opinion is that as to all

matters transacted after May 22nd, 1888, the Railway Act of that year (save as modified by the charter) controls the action of the Company. The Railway Act of 1888 differs in many essential points as to the power to mortgage from the Act in force when *Grand Junction v. Bickford* was decided. This is the earliest Act. Under the general head of powers the Company had power of purchase, take and hold of and from any person, any land, &c., necessary for the construction, &c., of the railway, and also alienate, sell, and dispose of the same. (R.S.O. Cap. 109, Sec. 6, Sub-sec. 2.) But in the Act of 1888 this power is restricted to the alienation, &c., of so much thereof as is not necessary for the purposes of the railway (that is, it is expressly limited to certain lands (61 Vict. Chap. 29, Sec. 90, Sub-sec. C). The Act of 1888 contains special clauses as to the borrowing of money for the purpose of prosecuting the undertaking by means of the issue of bonds, to be secured by mortgage deed covering all assets of the Company, present and future, which become a first preferential claim upon the Company's franchise and undertaking, and it is payable *pro rata* among the holders and enforceable through the trustees appointed under the mortgage deed. (Secs. 93 and 97.)

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Judgment
of the
Chancellor
—continued.

Section 278 relates to the sale of a railway under mortgage, but does not indicate that any such power exists under the provisions of the Act 1888. It may refer to special or earlier legislation which, according to *Grand Junction v. Bickford*, is more favourable as regards the capacity to mortgage, but I do not think it has much pertinence to the present discussion. Turning to the special provisions of the charter the following are to be noted. Section 11 enables the Company to receive grants of land, &c., in aid of the construction (meaning, as I take it, free grants), and may purchase from the Government of Canada land in the North-West Territories, and may sell, convey, and mortgage the same for the purpose of raising money for the prosecution of the undertaking. That may be limited to lands so purchased or it may extend to all lands, however acquired, but I think the better reading is to confine it to land purchased in the North-West.

Clauses 14 to 17 empower the Company to issue bonds secured by a mortgage deed for the purpose of raising money for the purpose of undertaking, very much the same as the special sections as to borrowing in the General Act of 1888, Secs. 93 *et seq.*

Clause 19. Lands acquired by the Company and held for sale for the purposes thereof mentioned may be conveyed to trustees to be sold, and moneys be divided as directed.

Clause 20. Lands so sold shall be discharged from all mortgages, liens and charges of any kind or nature by the Company created, and the purchase money arising from sale shall be applied in satisfaction of any mortgage created thereon by the Company, &c.

Clause 23 applies to the disposal of land not required for the right of way or actual working of the railway, which may be mortgaged or sold.

There would seem to be power to mortgage lands acquired by the Company and held for sale, as well as express power to mortgage surplus lands, but there is a prohibition by necessary implication against mortgage of lands required for

RECORD. the right of way or actual working of the railway, and also against mortgaging the franchise and undertaking unless, by means of a mortgage deed securing bonds, which is expressly provided for. The declaration of powers as to lands obtained from the Crown contained in the amendment to the General Railway Act in 1890 (53 Vict. Chap. 28, Sec. 1) does not carry the power to mortgage beyond what is to be found in the charter of the Company, and is to be read as modified thereby.

No. 14.
Reasons for
Judgment
of the
Chancellor
—continued.

The lien and charge created by the mortgage cannot be supported as a whole by *Grand Junction v. Bickford* (1 S.C.R.), for two reasons: (1) The language of the Acts there relied upon was more favourable to the general power to mortgage than those pertinent to the present Company, as has been alluded to already. Besides, in the special Act ample powers are in terms given to meet the claims of the contractor by the creation of paid-up stock, or by the calling in of capital, or by the issue of bonds secured so as not to interfere with the operation of the road (Clauses 4, 9, 10, and 15 of Charter). This clear indication of the means by which the construction of the road can be effected goes a long way to negative the position that another comprehensive method of changing or realising is permissible for the benefit of the contractor. (Refer to what is said by Lord Esher in 36 Chy. Div. 677, note, "where means were put in the hands of the Company for raising capital, &c.")

20

The second reason is, that the fundamental proposition of law on which that judgment rests is not now tenable, in view of other authorities more modern, and not less weighty than those relied upon in that case. I refer to the statement of the present Chief Justice (then Strong, J.) that "no enabling power is requisite to confer the authority to mortgage, but, *primâ facie*, every corporation must be taken to possess it;" page 730, 1 S.C.R. But there are corporations *and* corporations. A distinction is to be drawn between private trading bodies of a corporate character and corporations chartered for purposes public or *quasi*-public, where the establishment of the undertaking is intended for the general advantage of the community. To the Company great tracts of public land were conceded, manifestly with the view of opening up a new region of country in the North-West and expediting its colonisation. The whole scheme of the charter indicates a solicitude to promote the construction of the road and protect it from being mortgaged at the outset in whole or in part, so as to impair its efficiency as a going concern and a working railway. The distinction between trading and other companies is noted, and the cases referred to by Stirling in *Gale v. Smith*, 1891, 3 Chy. at page 442.

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As against the exposition of corporate powers to mortgage, contained in the judgment of the Supreme Court in *Grand Junction v. Bickford*, I must refer to the authority of the House of Lords in several cases, the latest of which in 1885 contains the rule (which I take for guide) thus expressed by Lord Watson:—

"Whenever a corporation is created by Act of Parliament, with reference to the purposes of the Act, and solely with a view of carrying these purposes into execution, not only must the objects which the corporation may legitimately pursue be ascertained from the Act itself, but the powers which the corporation may lawfully use in furtherance of these

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"objects must either be expressly conferred or derived by reasonable
 "implication from its provisions."—(Lord Watson in *Wanlock v. Dee*,
 "L.R. 10 Appeal Cases, 363, 1885.)

RECORD.

No. 14.

Reasons for
Judgment
of the
Chancellor

—continued.

Applying this test, I am decidedly of opinion that the large lien assumed to be given by the construction contract cannot be maintained, and as it stands it is *ultra vires* of the Company. The contract would give a charge as extensive as, and more unlimited as to its realisation than, the charge created by bond and secured by mortgage deed, and it is greatly in excess of the power of direct mortgage contemplated by the statutes. There is no evidence of any surplus
 10 land held by the Company (under Clause 22 of Charter), nor of any land bought by the Company (under Clause 11 of Charter), so that I think the widest effect it can have is to make it applicable to the land grant in the North-West, as to which the fee is in the Crown. Even as to this, the power to mortgage is modified so as not to be paramount to the sale and administration of the proceeds of these lands by the Company or its trustees, under Clauses 19 and 20.

As to the bondholders (Plaintiffs), they are entitled to a declaration that the lien under the construction contract is reduced to a charge upon the land grant for as much as shall be found due to the contractor upon the reference out of
 20 which land grant payment is to be made in priority to the bonds.

It appears to me that the bonds, so far as value is given, were well issued and pledged to Delap and Mrs. Mansfield, but the extent of their interest will be settled on a reference, if desired, by any party interested.

As to costs, the Plaintiffs costs to be paid by Charlebois.

The four shareholders, Defendants, should pay their own costs.

The charges on the fund coming to Charlebois out of the construction contract should add their costs to their claims, except as to those against whom the case was noted *pro confesso*; as to them no costs, except of watching the case, to be added to their claim.

30 Any matters left open are to be disposed of when the balance coming to Charlebois is fixed.

So far as notice is important—which I do not think it is—I do not hold Delap to be affected with notice through Stevens, after he entered into the partnership arrangement with Codd.

ENDORSEMENT of Record.

Saturday, 25th November 1893.

Present :—The Chancellor.

Judgment delivered (written).

Declaring :—

No. 15.
Chancellor's
Endorse-
ment of
Record,
25 Novem-
ber 1893.

40 1. That stock in Plaintiff Company, originally held by Defendants Charlebois, Clemow, Allan, Devlin, and Murray, was paid up in full by the sum of \$228,000 derived from the Defendant Stevens.

RECORD.

No. 15.
Chancellor's
Endorse-
ment of
Record,
25 Novem-
ber 1893—
continued.

2. That Defendant Charlebois was paid \$243,000 of the Company's money, which is to be applied on account of his construction account against the Company.

3. That the Plaintiff Company was not liable for the balance due them for their stock to Clemow, Allan, Devlin, and Murray, and which sum of \$100,687 was included in the amount for which Defendant Charlebois recovered judgment in question against the Company.

4. That Defendant had no claim against the Company for \$173,000 payable to him, and also included in the amount for which Defendant Charlebois recovered judgment in question against the Company. 10

5. That the Company was not indebted in the further sum of \$37,000, the value of Charlebois' stock, also included in the said judgment.

6. That to the extent of these sums, \$100,687, \$173,000, and \$37,000, equals \$310,687, the judgment is in excess of amount due.

7. That from the balance remaining after making the above deduction the Company is also entitled to a further deduction for work not finished, to be fixed at \$61,000 if parties agree, or to be ascertained by the master if any party desire it.

8. That stock of the Company is chargeable with the amounts of \$226,000 and \$37,000 for the benefit of the former shareholders, Charlebois, Clemow, 20 Allan, Devlin, and Murray, in proportion to which they were entitled to the stock.

8a. Reference to the Master-in-Ordinary to take account of amount actually due from the Company to Defendant Charlebois, having regard to the declaration aforesaid, and declare that the judgment in question recovered by Charlebois against the Company ought to be reduced to the amount which shall be so found due.

9. Also reference to the master to take an account of what is due to Charlebois, Clemow, Murray, Allan, and Devlin, in respect of their stock formerly held by them, with power to add any parties interested in the question 30 not already before the Court.

10. Declare that judgment in question, so far as it declares the Plaintiff Charlebois to be entitled to a lien on any property of the Company other than the lands in the territory of Assiniboia or Manitoba as to which Delap Company, under its charter and contract with Her Majesty, is now entitled is void, and that the lien of Charlebois upon such lands is subject to the power of sale and administration of proceeds thereof by the Company, its trustee under Sections 19 and 20 of the charter of the Company, and that Charlebois and his charges are entitled to be paid out of the proceeds of such lands in the amount which may be found due to them in priority to the bondholders. 40

11. Declare that bonds were validly issued, and are as subsisting security for amount actually advanced upon the security of same, and reference to master to ascertain who are entitled to the security of such bonds and for what amount respectively.

12. Defendant Charlebois to pay Plaintiffs' costs to judgment ; no order as to costs of Defendants Clemow, Allan, Devlin, and Murray. The Defendant chargees to add their costs and the claims against Charlebois, but those noted in default of defence only to be entitled to cost of watching case.

13. Further directions and subsequent costs reserved.

RECORD.
No. 15.
Chancellor's
Endorse-
ment of
Record,
25 Novem-
ber 1893—
continued.

FORMAL JUDGMENT, dated Saturday, 25th November 1893, and Monday,
22nd January 1894.

1. This action coming on for trial at the sittings of this Court for trial of actions at the city of Ottawa, on the thirty-first day of October, and the first, second, third, and fourth days of November 1893, in the presence of counsel for all parties, and also upon motion for judgment upon the Statement of Claim against the Defendants, Macdonald, Preston, Schiller, and Nugent, against whom the pleadings are closed, and also upon the motion of the last named Defendants to be let in to defend upon which last mentioned motion the affidavits of Frank S. Nugent and Oliver Aiken Howland are read, and the demurrer of the Defendant Charlebois to the original Statement of Claim adjourned from Judges' Chambers, also coming on to be argued, upon opening of the matter and upon hearing read the pleadings and upon hearing the evidence adduced including the evidence of the Defendant Preston taken under the order *de bene esse* bearing date the 21st day of December 1892, and the evidence of witnesses examined under the Commissions to England, under the orders dated the tenth and seventeenth days of May 1893, respectively, this Court was pleased to order that the trial of this action should stand adjourned to the thirteenth day of November 1893, at eleven o'clock in the forenoon, then to be proceeded with at Osgoode Hall, in the city of Toronto, and pursuant to such adjournment the said trial was proceeded with on the 13th, 14th, 15th, 16th, and 17th days of November 1893, and upon hearing what was alleged by counsel aforesaid this Court was pleased to order that this action should stand over for judgment, and the same coming on the firstly mentioned day for judgment, and on the secondly mentioned day upon motion as to the minutes, in presence of counsel aforesaid.

2. This Court doth declare that by the payment of the sum of two hundred and twenty-eight thousand dollars (\$228,000.00) of the moneys of the Plaintiff Delap, advanced by Charles R. Stevens as in the pleadings mentioned, and the allowance of the discount of twenty-five per cent. in the pleadings and evidence mentioned on the 16th day of September 1889, the subscribed shares in the capital stock of the Plaintiff Company, at the time of such payment held by the Defendants Charlebois, Clemow, Allan, Devlin and Murray, amounting to five hundred thousand dollars (\$500,000), became on the said day fully paid up shares to all intents and purposes, and doth order and adjudge the same accordingly.

p. 5240.

R

RECORD.

Formal
Judgment
of the
Chancellor,
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continued.

3. And this Court doth further declare that the sum of two hundred and forty-three thousand three hundred and thirty-three dollars, paid to the Defendant Charlebois on the last mentioned date, was of the moneys of the Plaintiff Company, and that the Defendant Charlebois was and is bound to give credit for the whole of the said sum of two hundred and forty-three thousand three hundred and thirty-three dollars as a payment to the Defendant Charlebois by the said Company, of part of the consideration or contract price under the construction contract hereinafter mentioned, and doth order and adjudge the same accordingly.

4. This Court doth further declare that the amount directed to be paid by the judgment recovered by the Defendant Charlebois against the Plaintiff Com- 10
pany, in the pleadings mentioned, exceeds the amount justly due and owing from the said Plaintiff Company to the said Defendant Charlebois, inasmuch as the same included various sums which were not justly due by the said Company to the said Defendant Charlebois, that is to say: (1) A sum of two hundred and twenty-six thousand six hundred and thirty-two dollars (\$226,632) being an amount agreed to be paid by the Defendant Charlebois to the Defendants Clemow, Allan, Devlin and Murray, for the price of the shares in the capital stock of the Plaintiff Company held by the last named four Defendants on the 16th day of September 1889; (2) a sum of thirty-six thousand eight hundred and ninety-three dollars (\$36,893) being the value which it is found the Defen- 20
dant Charlebois placed upon the shares of the capital stock of the Plaintiff Company held by the Defendant Charlebois on the 16th day of September 1889; (3) a sum of one hundred and seventy-three thousand one hundred and thirty-three dollars (\$173,133) claimed by the Defendant John Arthur Codd, to be due to him, and agreed to be paid by the Defendant Charlebois out of the moneys recovered under the said judgment to the Defendant Daniel McMichael for and on behalf of the said Defendant John Arthur Codd, and (4) the interest, if any, which may have been improperly included in the said judgment, having regard to the declarations aforesaid, and the reference hereinafter directed.

5. And the Court doth further declare that the said contract whereby the 30
said Company agreed to pay the said sums to the Defendant Charlebois, and the consent of the said Company to the judgment in respect of the said three sums and interest aforesaid were and are to that extent *ultra vires* of the said Company, and doth order and adjudge the same accordingly.

6. And this Court doth further declare that the said judgment ought to be reduced by deducting from the amount payable thereunder the said three sums of two hundred and twenty-six thousand six hundred and thirty-two dollars (\$226,632), thirty-six thousand eight hundred and ninety-three dollars (\$36,893), and one hundred and seventy-three thousand one hundred and thirty-three 40
dollars (\$173,133), making in the aggregate the sum of four hundred and thirty-six thousand, six hundred and fifty-eight dollars (\$436,658), and also the interest, if any, improperly included therein, and to be ascertained as hereinafter directed, such deduction to be made as of the day of the date of the said judgment, and doth order and adjudge the same accordingly.

7. And this Court doth declare that the Plaintiff Company is also entitled further to reduce the principal money payable under the said judgment

by the amount of the value of the work, if any, not finished, and things not supplied by the said Defendant Charlebois under his construction contract in the pleadings mentioned, such amount to be ascertained by the Master as hereinafter directed, and doth order and adjudge the same accordingly.

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No. 16.
Formal
Judgment
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Chancellor,
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continued.

8. And this Court doth further order and adjudge that it be referred to the Master-in-Ordinary to take an account of the amount actually due from the Company to the Defendant Charlebois under the judgment recovered by the said Defendant Charlebois against the Plaintiff Company, after deducting therefrom the amounts wrongfully included therein as aforesaid, and also any sums improp-
10 perly included in the same judgment for interest, and also the amount, if any, he shall find to be the value of the work unfinished, and things not supplied by the said Defendant Charlebois under his contract. And in taking the account of the interest included in the said judgment, the said Master is to ascertain what, if any, interest was properly payable by the Plaintiff Company to the said Defendant Charlebois; and is to deduct the interest, if any, which he shall find to have been improperly charged in the said judgment.

9. And this Court doth order and adjudge that the amount of the said judgment be, and the same is hereby reduced to the amount, if any, which the said Master shall find to have been payable by the said Company to the Defen-
20 dant Charlebois at the date of the said judgment, and the said judgment is hereby vacated and annulled in so far as the same directed payment of any sum over and above what the said Master shall find to have been due and owing by the Plaintiff Company to the said Defendant Charlebois, upon the reference hereby directed.

10. And this Court doth further declare that the charges in favour of the Defendants Macdonald and Schiller, W. A. Preston, the Crossen Estate, and also the persons or corporations referred to in sub-paragraph D, of paragraph two of the said judgment upon the amount payable by the Plaintiff Company to the Defendant Charlebois under the said judgment recovered by the said Charlebois
30 against the said Company are valid, and subsisting charges upon whatever amount may be found to be justly due and owing to the said Defendant Charlebois under the said judgment, having regard to the directions hereinbefore and hereinafter contained, and doth order and adjudge the same accordingly.

11. And this Court doth declare that the contract made by the Plaintiff Company with the said Defendant Charlebois, in the pleadings mentioned, in so far as it purported to give the Defendant Charlebois a lien or charge on any of the property of the Company other than the three hundred and twenty thousand acres of land-grant in the pleadings mentioned in the territory of Assiniboia, or Province of Manitoba, as to which the fee is still in the Crown, but to which
40 the Company under the charter and contract with Her Majesty and the order of the Governor General in Council of the 19th day of March 1890, is now, entitled was beyond the power of the said Company and was null and void and doth order and adjudge the same accordingly.

12. And this Court doth further declare that in so far as the judgment recovered by the Defendant Charlebois against the said Company in the pleadings mentioned and the judgment or order on further directions founded thereon,

RECORD. dated the 29th day of February 1892, in the pleadings mentioned, purports to give the said Defendant Charlebois a lien upon any of the property of the said Company save only as aforesaid, the same ought to be vacated and set aside, and doth order and adjudge the same accordingly.

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Formal
Judgment
of the
Chancellor,
dated 25
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1893 and
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continued.

13. And this Court doth further declare that the said Defendant Charlebois has under his said judgment a lien upon the said three hundred and twenty thousand acres of land-grant in the two next preceding paragraphs of this judgment referred to, subject to the power of sale and administration of the proceeds by the Company or its trustees under the mortgage trust deed, dated the 2nd day of June 1890, hereinafter and in the pleadings mentioned, pursuant to Clauses 19 and 20 of the charter of the Company, and that the Defendant Charlebois and his chargees are entitled to be paid out of the proceeds of such lands (after deducting the necessary expenses connected with the realization thereof) the amount which the said Master may find to be due to the Defendant Charlebois in respect of his said judgment in priority to the holders of the bonds issued by the Company, and doth order and adjudge the same accordingly.

14. And this Court doth further order and adjudge that paragraph No. 1 of the said judgment of the 28th September 1891, in so far as it declares the said Defendant Charlebois entitled to a lien upon any property of the Plaintiff Company other than the said land-grant, for any sum whatever, and also in so far as it declares the said Defendant Charlebois entitled to a lien on the said land-grant for any sum in excess of what shall be found to be due to the said Defendant Charlebois upon the reference hereinbefore directed, and paragraphs Nos. 3, 5, and 8, and all other parts of the said judgment of the 28th day of September 1891, made in the action of Charlebois *v.* The Great North-West Central Railway Company, in the pleadings mentioned which are inconsistent with the declarations hereinbefore and hereafter contained be, and the same are hereby set aside and vacated, but in other respects the said judgment save as hereinafter mentioned is to stand as of the date thereof.

15. And this Court doth further order and adjudge that the said order of the 29th day of February 1892, made in the said action of Charlebois *v.* The Great North-West Central Railway Company be, and the same is hereby set aside and vacated.

16. And this Court doth further declare that the bonds of the said Plaintiff Company in the pleadings mentioned, amounting to five hundred and fifteen thousand, six hundred pounds sterling were duly issued by the said Company, and were and are valid, and that the mortgage trust deed bearing date the second day of June 1890, in the pleadings mentioned made by the Plaintiff Company to the Defendants Gifford and Curzon for the purposes therein set forth, was and is a valid and subsisting security for the payment of the said bonds, and doth order and adjudge the same accordingly.

17. And this Court doth further declare that the said bonds were and are validly pledged by the said Company to the Plaintiffs James Bogle Delap and Louisa H. Mansfield, and that the Plaintiffs Delap and Mansfield are entitled to hold the four hundred and sixty-five thousand, six hundred pounds face value of bonds in their control, brought into Court in this action by the Plaintiff

Delap for all moneys owing to them respectively, and for the repayment of which the said bonds were pledged by the said Plaintiff Company to them, and doth order and adjudge the same accordingly.

18. And this Court doth further order and adjudge that the said Master do take an account of the moneys due and owing to the Plaintiffs Delap and Mansfield respectively, for which they are respectively entitled to security upon the said bonds, upon the footing of the declaration last hereinbefore contained.

19. And this Court doth further order and adjudge that the said four hundred and sixty-five thousand, six hundred pounds of bonds aforesaid, brought into Court as aforesaid, do remain in Court subject to further order, and that the Plaintiffs do also bring in and deposit with the accountant of the Supreme Court of Judicature for Ontario all other, if any, of the bonds issued as aforesaid by the Plaintiff Company now in the control of the Plaintiffs or any or either of them also to be subject to the further order of this Court.

20. And this Court doth not see fit to make any order upon the motion of the Defendants Macdonald, Preston, Schiller and Nugent to be let in to defend.

21. And the Court doth further order and adjudge that the demurrer of the Defendant Charlebois be and the same is hereby overruled.

22. And this Court doth further order and adjudge that the Defendant Charlebois do pay to the Plaintiffs their costs of this action, down to and including this judgment, including the costs of the demurrer forthwith after taxation thereof, and that the said Master do tax to the Defendants, the executors of the Crossen estate, the Union Bank of Canada, and the Commercial Bank of Manitoba, and the Defendants Macdonald, Preston, Schiller and Nugent, their costs of this action down to and inclusive of this judgment, and that the same be added to their respective claims against the Defendant Charlebois, but in the case of the said Defendants Macdonald, Preston, Schiller and Nugent, they are upon such taxation only to be entitled to tax their costs as for watching the case at the trial of this action.

23. And this Court doth further order and adjudge that the Defendants Gifford and Curzon be at liberty to deduct their costs, to be taxed as between solicitor and client out of the trust fund in their hands, without prejudice to the question by whom they should be ultimately borne, to be determined on further directions.

24. And this Court doth not see fit to make any order as to the costs of the Defendants Clemow, Allan, Devlin and Murray of this action up to and inclusive of this judgment.

25. And this Court doth reserve the consideration of further directions, including the question of what, if any, interest is payable upon the said judgment of the Defendant Charlebois against the said Plaintiff Company of the 28th September, 1891, in the pleadings mentioned subsequent to the date thereof, and also all questions as to what rights, charges and interests the Plaintiffs, or any or either of them, and the Defendants, or any or either of them, are entitled to

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continued.

RECORD. respectively upon and in the subscribed capital stock or shares in the said Company, and also the question of subsequent costs until after the said Master shall have made his report.

No. 16.
Formal
Judgment
of the
Chancellor,
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continued.

26. And this Court doth declare that the priorities given to the chargees by the said judgment of the 28th September, 1891, are not at present interfered with, but in the event of the amount which shall be payable to the Defendant Charlebois under the said judgment, having regard to the declarations aforesaid, proving insufficient for the payment of all of the said charges in full, any or either of the chargees are to be at liberty to apply to this Court in reference thereto as they may be advised.

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* *Sic.*

27. And this Court doth further order and adjudge that until the further order of this Court the Plaintiff Company be enjoined from permitting* on the books of the Company, and all other parties to this action, Plaintiffs and Defendants, be also enjoined from making any transfer of any shares of the capital stock of the Plaintiff Company.

28. And this Court doth declare that nothing hereinbefore contained shall be deemed to interfere with the rights of the Defendants Charlebois and Codd as between themselves.

Entered

6th March, 1894.

J. B. 20 p. 18.

(signed) W. O'N.

Signed this 3rd day of March, A.D. 1894.

(signed)

GEO. S. HOLMESTED,
Registrar.

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(The Seal of the High Court of Justice, Chancery Division,
Registrar's Office.)

REASONS of Appeal of the Defendant Charlebois.

No. 17.
Reasons of
Appeal to
the Court of
Appeal of
Defendant
Charlebois.

The Defendant Charlebois submits that the judgment is erroneous and ought to be reversed, on the following grounds:—

1. There was no evidence of collusion or fraud in connection with the recovery of the judgment by the Defendant Charlebois against the Plaintiff Company, which was partially set aside and vacated by the judgment pronounced herein. 30

2. The judgment impeached in this action was obtained, after the case had been partly heard, on the suggestion of the trial judge, Mr. Justice Ferguson, and after full discussion by and with the consent of all parties concerned.

3. It is no ground for impeaching the judgment that it carried into effect, or was based upon, an *ultra vires* contract of the Plaintiff Company; assuming for the sake of argument that the contract between the Defendant Charlebois and

the Plaintiff Company was *ultra vires* of the Company, which is not admitted but denied. RECORD.

No. 17.

a. Because, even if such contract was *ultra vires*, it had been so far executed by the Defendant Charlebois in good faith, and so far acted upon by the Company, as to render it impossible for the Company to repudiate the same on the ground of want of authority to enter into the contract. Reasons of Appeal to the Court of Appeal of Defendant Charlebois

—continued.

b. Because the judgment had been obtained upon the contract in good faith.

10 4. The judgment pronounced by the learned Chancellor is also erroneous, on the ground that the action is improperly constituted, and that the demurrer of the Defendant Charlebois ought to have been allowed.

5. The relief sought for in the action by the Plaintiff Company could only be obtained by and on behalf of the Plaintiff Company, and there was no ground of reason for joining the Plaintiffs Delap and Mrs. Mansfield in relation to the Company's alleged cause of action, nor could their pretended claim as bondholders be litigated jointly with the Plaintiff Company in an action such as this.

20 6. Then as to the judgment, so far as it is in favour of the Plaintiff Company, the Defendant Charlebois submits that the finding of facts upon which the judgment is based by the learned Chancellor is erroneous, without evidence to sustain it, and at all events contrary to the facts which were not in dispute and the proper deductions to be made from them, and to the weight of evidence.

7. The learned Chancellor erred in his finding with reference to the following facts :—

a. That the Defendant Charlebois and the Plaintiff Company had agreed to include in the consideration for the contract, which the Defendants made with the Company for the construction of the first fifty miles of the road, the price which the Plaintiff Delap was giving for the stock which the Defendant Charlebois sold to Delap's agent Stevens.

30 *b.* In finding that the Plaintiff Company and the Defendant Charlebois increased the said contract price by the sum of \$173,000 as a gratuity or in the interest of one Codd, in the pleadings mentioned, and

c. In finding that the Plaintiff Company and the said Charlebois increased the said contract price by the sum of \$36,893 as the value or price of the Defendant Charlebois stock.

40 8. On the contrary and in the truth and in fact the agreement made between the Defendant Charlebois and the solicitor of the Plaintiff Delap and the said Codd was that the Defendant Charlebois would sell and make over to them all the stock in the said Company, namely, 5,000 shares upon which 30 per cent. had been paid up, and would complete the construction of the first fifty miles of the Plaintiff Company's line of road, which had been partially constructed, in consideration of the sum of £200,000 sterling, and the Defendant Charlebois agreed to allow to the said Codd the sum of \$95,000 out of the said £200,000.

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Reasons of
Appeal to
the Court of
Appeal of
Defendant
Charlebois
—continued.

9. The learned Chancellor further erred in finding that the stock of the Company, beyond the thirty per cent. which had been paid in by original shareholders, was paid up ; the truth and the fact being that the form of paying up the said stock was gone through with at the instance and request of Stevens, the solicitor and agent of the Plaintiff Delap ; but that the substance and essence of the agreement between the Defendant Charlebois and the said Plaintiff Delap was never changed, which arrangement was that the said Charlebois should transfer the stock with thirty per cent. paid thereon and agree to finish the construction of the first fifty miles of the road in consideration of the sum of £200,000 sterling. 10

10. Or, the proper finding should have been, if the stock was to be considered as paid up stock, that a new arrangement had been made between the Company and the Defendant Charlebois, by which the Company agreed to give to him £200,000 sterling for the construction of the first fifty miles, which, there being no suggestion of fraud, the Company was perfectly competent to agree to.

11. The Company had full power and authority to use its funds in the construction of its road, and in the absence of any fraud upon the existing shareholders, who all agreed in the arrangement, and in the absence of any intention to issue new stock or to invite the subscription of stock by other shareholders, 20 the court could not inquire into the question as to the amount which the Company thought fit to give for the doing of the work referred to.

12. The judgment is also erroneous in holding that the Plaintiff Company was not competent to agree to give a lien to the Defendant Charlebois to secure him in the sum agreed to be paid for the construction of the road. The Charter of the Company did not expressly prohibit and therefor the power was implied to mortgage the assets of the Company for the purpose of carrying out the object for which the Company was formed.

13. Express power to borrow money is conferred upon this Company by the Consolidated Railway Act of 1879, and also power to alienate and to mortgage 30 the real estate of the Company, while the power to mortgage and alienate personal property is conferred by the Interpretation Act, Sec. 7, Sub-sec. 43.

14. The Defendant Charlebois, at the date of the judgment, was entitled to a lien upon the road and rolling stock for the amount payable to him under the contract, he being the contractor in possession and having constructed the railway upon lands purchased by him.

1. In the nature of a vendor's lien for unpaid purchase money, as to realty.

2. As a promissory lien as to the rolling stock and other personalty.

3. The Defendant Charlebois delivered possession of the railway and 40 equipment to the Plaintiff Company pursuant to the judgment, and possession should be restored as a term of any relief to the Plaintiffs.

15. And in any event the said judgment should only have been set aside

upon the Defendant Charlebois being restored to the position in which he stood at the time the said judgment was consented to by him. RECORD.

16. Then as to the relief granted to the Plaintiffs Delap and Mansfield, the Defendant Charlebois submits that :—

No. 17.
Reasons of
Appeal to
the Court of
Appeal of
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Charlebois
—continued.

a. There is no evidence that the Plaintiff Company ever issued or delivered to them, or either of them, the bonds which the judgment declares them to be entitled to hold.

b. That the mortgage of the second of June 1890, under which the said bonds claimed by the Plaintiffs Delap and Mansfield were alleged to have been issued, was illegal and invalid and *ultra vires* of the Company.

c. The Statute did not authorise the Company to issue bonds in respect to the whole mileage of the railway from Brandon to Battleford, 440 miles, and the pretended mortgage for the sum of \$10,750,000.00 of bonds is *ultra vires* and void.

d. The pretended issue of £515,600 in respect to one hundred miles of railway was illegal and unwarranted, because bonds could only be issued in proportion to the length of railway constructed or under contract to be constructed.

e. The pretended issue of £515,600 of bonds is predicated upon the existence of a valid contract for construction between the Plaintiff Company and the Defendant Charlebois. There were two contracts for construction between the Company and the Defendant Charlebois. The first is the subject of the judgment attacked in this action. The second contract never came into existence, because it was expressly dependent upon a condition that the Company should within three months give the contractor notice to proceed with the work, which they did not do.

f. The provisions of Section 19 of the Charter of the Plaintiff Company merely confer a power upon the Company, which they were not obliged to exercise, and the trusts as to lands, expressed in said Section 19 and in Section 20 of the Charter, could not arise until the Company should make a conveyance to trustees thereunder. The said trusts therefore could have no application to the case of a valid lien upon such lands previously created, and the learned Chancellor has erred in holding that the lien of the Defendant Charlebois is controlled by said Sections 19 and 20 of the Charter.

g. The mortgage of the second of June 1890, is fraudulent and void as against the Defendant Charlebois and the creditors of the Company.

h. The said mortgage was not made in accordance with the Railway Act of 1888, which the learned Chancellor holds, contrary to the contention of this Appellant, is applicable to this railway and not the Consolidated Railway Act of 1879, as the Appellant contends.

i. If the said mortgage is void for any reason, the bonds themselves are in form and substance merely evidence of indebtedness, and do not

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Reasons of
Appeal to
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—continued.

create any lien upon the property of the Company, and are subject to the lien and judgment of the Defendant Charlebois.

17. And at all events, if the said bonds were issued by the Plaintiff Company, that they were issued merely to secure the advances made by the said Plaintiffs, or either of them, subsequent to the 3rd day of July and prior to the 28th September 1891, at which latter date an injunction order was issued in this action prohibiting the Company from dealing with the said bonds.

DALTON MCCARTHY,

F. H. CHRYSLER,

Counsel for the Appellant Charlebois. 10

No. 18.

Reasons of
Appeal
by the
Commercial
Bank of
Manitoba.

REASONS of Appeal by the Commercial Bank of Manitoba.

1. The Defendants, the Commercial Bank of Manitoba, submit that the judgment impeached in this action should not, either in whole or in part, have been interfered with, set aside or vacated, and the said Defendants repeat and rely upon the reasons assigned for this contention by the Defendant Charlebois and by the Union Bank of Canada.

2. These Defendants further submit that the said judgment in any event should not have been set aside as against these Defendants except upon terms of paying or securing to them their claim against the contractors, Macdonald & Schiller. 20

3. These Defendants submit that the contractors, Macdonald, Schiller and Preston, had actual possession of the railway and works constructed by them under a valid and subsisting lien secured to them by their contract until they had received payment, and that the said contractors having abandoned such lien and possession on the faith of the said judgment and on obtaining a first charge on the proceeds thereof, the said judgment obtained on their consent, and that of these Defendants should not have been interfered with, as against the said contractors under whom the said Commercial Bank of Manitoba claim without paying or securing to them or to the said bank their claim, or without restoring them to their former position. 30

4. The advances made by these Defendants to the said contractors were intended and applied for the purposes of constructing the said railway and works, and were made in good faith without notice of any of the matters or things upon which the said judgment has been impeached, and relying upon the lien claimed and possession held by the said contractors.

ROBINSON, O'BRIEN & GIBSON,

Solicitors for the Commercial Bank of Manitoba.

REASONS of Appeal of the Union Bank of Canada.

RECORD.

The said Defendants, the Union Bank, submit that the judgment is erroneous and ought to be reversed, on the following grounds :—

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Reasons of
Appeal of
the Union
Bank of
Canada.

1. That the judgment impeached in this action was obtained after a contract between the parties, as the result of a compromise, and after full discussion by and with the consent of all parties concerned.

2. It is no ground for impeaching the judgment that it carried into effect, or was based upon a contract of the Plaintiff Company which was *ultra vires* of the Company, (which these appellants do not admit but deny) ; and the said judgment can only be impeached upon the ground of collusion or fraud.

3. In any event, the said judgment should not have been interfered with except by way of equitable relief, and upon terms which would restore all parties to the position which they occupied at the time when the original judgment was obtained. If it was not possible to do so, the original judgment ought not to have been disturbed.

4. The judgment in any case should not have been set aside as against these appellants, except upon terms of paying or securing to them the debt secured upon the said judgment.

5. That the Plaintiff Company should not, as against the bank, be permitted to aver that the original contract with the Defendant Charlebois was void as being *ultra vires* of the Company, because the Company is estopped by reason of the matters alleged in the Statement of Defence of these appellants and appearing in the evidence.

6. The Plaintiff Company, in order to assist the Defendant Charlebois in raising money for the purpose of carrying on the contract in the pleadings mentioned, represented to and agreed with the bank, by resolutions and statements under the seal of the Company, that there was a valid and subsisting contract with the said Charlebois, and that there would be money applicable to the payment of the advances of the bank over and above all other moneys payable by the Company to the said Charlebois ; and the bank, relying upon the said representations, thereupon advanced to the said Charlebois the sum of \$150,000.00 upon his several promissory notes for that amount, and took from the said Charlebois, as collateral security for such advances, three several acceptances under seal of the Company, amounting in the aggregate to the said sum of \$150,000.00. The appellant bank submits that the judgment of the 29th September, 1891, is valid and binding upon the Plaintiff Company, and should be enforceable as of its date, to the extent of the indebtedness from the said Charlebois to the bank comprised therein.

7. The bank is a *bonâ fide* holder of the said acceptances and a beneficiary under the said judgment, without notice of any of the matters or things upon which the said judgment has been impeached.

F. H. CHRYSLER,
Counsel for the Appellant Bank.

RECORD.

REASONS of Appeal of the Defendants ALLAN and DEVLIN.

No. 20.
Reasons of
Appeal
of the
Defendants
Allan and
Devlin.

The Defendants Allan and Devlin submit that the judgment is erroneous and ought to be reversed on the following grounds:—

1. The judgment was one obtained upon consent of counsel representing the parties, and having full knowledge of all the matters now complained of ; was obtained in a suit founded upon the contract which is now alleged to be voidable, but which was adopted by the parties through their counsel and judgment allowed to go.

2. Such judgment cannot be disturbed, since it has been acted on by the taking possession of the rolling stock, etc., and parties interested under it have 10 given up rights, and there is no offer to restore any of the parties to the position which they occupied prior to the entry of judgment.

3. It was alleged that there was error upon the face of the judgment, inasmuch as it declared the Defendant Charlebois entitled to a lien upon the railway. But the Company had implied power to give a lien or mortgage to secure payment to the contractor of the price of construction as such a contract was the direct method of carrying out the principal object of the incorporation of the Company. The contractor also had a lien because of his possession of the railway at the date of the judgment, by virtue of his equitable interest in the lands upon which the railway was constructed by reason of his having 20 advanced the money to purchase the right of way. The Consolidated Railway Act of 1879, which is made applicable to this Company by section one of the charter, conferred upon the Company power to mortgage, and such power was also conferred by the express provisions of the Company's charter, and the power to sell is involved in the power to mortgage. (See *Bickford vs. Grand Junction Ry. Co.*, 1 Sup. Ct. Reports, 696, and *Redfield vs. Wickham*, 13 App. 467.)

4. The transaction, so far as the original shareholders were concerned, was a sale to Charlebois by them of their interest, not only in the first fifty miles of the railway, but all their interest in the rights and franchises of the Company 30 for the four hundred and fifty miles, for which they were to receive the sum of two hundred and twenty-six thousand dollars and which was intended to be paid in cash, but owing to a subsequent arrangement they agreed to become creditors of Charlebois to the extent of one hundred thousand dollars, and (as a matter of accommodation to him) they each agreed to accept as security for the one hundred thousand dollars an order upon the Company, upon the first moneys earned by Charlebois in the building of the road.

5. This transaction left the Defendants Allan and Devlin simply as ordinary creditors of Charlebois, receiving from Charlebois an order upon the Company which was accepted by the Company, and they then became ordinary creditors 40 of the Company, and upon this transaction there can be no question as to their right to recover against the Company the amount of such indebtedness, nor can they be affected by any arrangements between Charlebois and the Company, so long as, in fact, there is a sufficient sum coming from the Company to meet the orders accepted in the way indicated.

6. As a consideration for transfer by the shareholders of their interests in the money already paid into the Company, and in the franchises, rights, and privileges of the Company, the real bargain was that they were to transfer their shares to the nominee of Charlebois as they stood, and at the request of the purchaser of the shares from Charlebois, and upon his undertaking that as between him and them the assignment was to be treated as merely an assignment of their rights, these shareholders, in form, assigned the stock as paid-up stock, although the substance of the transaction was as above indicated.

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No. 20.
Reasons of
Appeal
of the
Defendants
Allan and
Devlin
—continued.

7. The arrangement as to the transfer of stock having been made at the instance and request of Stevens, Delap's agent, who thereupon became the transferee of all the shares of the Company, and there being no intention at the time that there should be any further stock issued, or any person defrauded by the form of the transaction, the Company cannot be heard to say, as representing subsequent shareholders or the same shareholders, that there was anything illegal or improper in the transaction, and in any event if the transaction is repudiated it can only be repudiated upon the parties being restored to their original position, which is not offered to be done.

8. The result of the judgment of the Chancellor is, that, without there being any pretence of fraud on the part of the shareholders, they are left without payment of a large portion of the purchase money agreed to be paid by Charlebois, and although they released Charlebois from personal liability upon his giving the security of an order from the Company, they are not restored to the position of holding Charlebois, and are deprived of any claim against the Company for the amount.

9. If the judgment of the Chancellor is adopted, in so far as releasing the Company from the liability on the accepted orders, then these Defendants submit that the trial Judge should have given them a formal order charging the stock in the hands of Delap with the amount of the purchase money due them and remaining unpaid, and should have made a personal order in addition against Delap for such payment, and ask that such judgment, if held to be otherwise corrected, be amended, so as to give such relief.

These Defendants adopt the Reasons of Appeal of the Defendant Charlebois, so far as they relate to the relief granted to the Plaintiffs, Delap and Mansfield, being reasons 15 and 17 of his Reasons of Appeal.

WALLACE NESBITT,
For Defendants Allan and Devlin.

REASONS of the Respondents against Appeal.

The Respondent Plaintiffs submit that the judgment appealed from is right and ought not to be reversed, on the following grounds :—

1. The judgment set aside was a fraud upon the Company and was obtained by the collusion of the Defendant Codd, acting as president of the Company, and the Appellant Charlebois. The judgment was consented to in

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Reasons
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Appeal.

RECORD. consequence of the Appellant Charlebois having agreed to give the Defendant Codd out of it the following sums and advantages at the expense of the Company :—

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of the Re-
spondents
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Appeal
—continued.

(a.) A sum of \$95,000, part of a sum of \$173,000, which had been wrongfully and fraudulently included in the contract price by the contractor the Appellant Charlebois for the benefit of the Defendant Codd as Director of the Company, and as an inducement to the making of the said contract. By the contract as it stood the contractor (Charlebois) had agreed to pay the same to the Defendant Codd only if and when the same was paid to the Appellant Charlebois by the Company. In order to complete the obligation of the Defendant Charlebois to pay the money to the Defendant Codd, the Defendant Codd allowed and assisted the Defendant Charlebois to recover a judgment against the Company, including that amount, knowing his shareholders and the Court to be ignorant of the facts. 10

(b.) A further bonus or sum of \$35,000 was included in the judgment in favour of the Defendant Codd, being further in excess of the amount computed between the Appellant Charlebois and the Defendant Codd to be the amount due by the Company, and was fraudulently added by their collusion to the judgment against the Company for the benefit of the Defendant Codd, as a further inducement to his consent to the judgment. 20

(c.) A further sum of \$43,000, being a sum payable by the Defendant Codd to the Defendant Charlebois, was by their collusion added to the judgment against the Company in relief of the Defendant Codd and for the benefit of the Appellant Charlebois.

(d.) Further sums, aggregating \$263,516, were included in the judgment, being, in fact, the price of shares in the Company which the Defendant Codd had agreed to pay to the Appellant Charlebois at the time of the making of the contract between the Appellant Charlebois and the Company. This sum or price for the shares had, by collusion between the Defendant Codd as a director, and the Appellant Charlebois as a contractor, been added to the contract price payable by the Company for the construction of the Company's railway. The Defendant Codd had no other means of paying for the shares, if the Company was not made to pay for the same out of its assets, and the Defendant Charlebois would have had no security for the sum if it had not been made a part of the judgment against the Company. The Defendant Codd, instead of showing the facts to the Court as a ground of defence, and repudiating the contract on behalf of the Company as it was his duty to do, colluded with the Appellant Charlebois in allowing the latter to recover judgment against the Company, including the said sum as part of the contract price. 40

2. In consequence of the facts aforesaid the Defendant Codd was, to the knowledge of the Defendant Charlebois, interested in the Defendant Charlebois' contract with the Company, and was thereby disqualified to act as president or a director of the Company, or to contract therefor in instructing the consent to the judgment as he did instruct and control the same, to the knowledge of the Appellant Charlebois.

3. Under the agreement of April 8th 1888, and the 6th March 1888, and the transactions therein mentioned between Codd, on the one hand, and Charlebois, Clemow, Allan, Devlin and Murray, on the other, the position of the Company was, that on the carrying out of that agreement the Company would have the fifty miles of road built and equipped and free from all charges whatsoever, except the subscribed capital stock of \$500,000, which the building of the road by the corporators would have paid up.

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against
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4. But by the transactions of September 1889, in the pleadings set forth, the Company's position was radically altered, by the fact of the Company being
10 made contractor under the illegal contract with Charlebois, by which it was sought to make the Company liable for \$173,000 which Codd claimed from the corporation for commission, and for the price he, Codd, was to pay for the shares, and for other moneys not debts of nor chargeable to the Company, and this was a fraud upon the Company. The evidence shows that when these transactions meant to saddle the Company with these sums took place, Charlebois, Clemow, Allan, Devlin and Murray were Directors of the Company, and resigned to allow others to take their places for the purpose of carrying out the scheme they had arranged.

5. One illegal effect of these transactions of September 1889 was and is to
20 put the Company in the position of using its funds to purchase its own shares, contrary to law.

6. The consent decree was not an adjudication, but a ratification by the parties (named by the Defendant Codd, fraudulently acting in the name of the Company on the one hand, and the Appellant Charlebois on the other hand) of a previous illegal contract, incapable of ratification, the true nature of which contract was collusively concealed from the Court.

7. The consent judgment was of the nature of a new contract, the intent and effect of which was to cause the moneys of the Company to be applied in payment for shares of the Company, contrary to the section of the Railway
30 Act; also to direct other moneys of the Company to be payable to the president in respect of an interest in the contract with the Company, contrary to the Railway Act; all these transactions being also forbidden by the provisions of the Railway Act and the Company's charter, which forbid the moneys of the Company being used otherwise than for the purposes of the Company. The contract, whether in the form of a judgment or otherwise, was absolutely *ultra vires* of the Company, being *malum in se* and *malum prohibitum*.

8. The original contract was, for the reasons above indicated, *ultra vires* of the Directors and of the Company and fraudulent and void to the extent of the sums by which the consent judgment founded thereon has been reduced by
40 the judgment appealed against.

9. The Appellant Charlebois and all the Appellants had acquired as Directors of the Company full information as to the work and reasonable price of construction. The Appellant Charlebois undertook to convert the Company's contractors into sub-contractors under himself at an enormously increased price to the Company, and with the assistance and collusion of the other

RECORD. Appellants and others, Respondents, his co-directors, he and they resigned and appointed new Directors to enable such contract to be given to him. Such new Directors were possessed of the same information as the retiring Directors, and they were in collusion with them and the contractor, and the contract was fraudulent and void. It was the duty of the retiring Directors to place their successors in possession of such information as they possessed as trustees of the Company, and if the retiring Directors did not do so they could not lawfully obtain an advantage directly or indirectly through an excessive contract price charged upon the Company, to the knowledge of the retiring Directors through the ignorance of the new Directors of the suppressed facts. 10

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10. The partial execution by the Defendant Charlebois of so much of the contract as related to the construction of the Company's road could not bind the Company to ratify, perform and pay the other contracts, things and sums added thereto illegally, collusively, and in fraud of the Company, such illegal sums being distinguishable, as the learned Judge has distinguished the same, upon the evidence of the Appellant himself.

11. The other Defendants claiming through the Appellant Charlebois are mere equitable assignees of the Appellant, and have no better rights than he had.

12. The sub-contractors, the Defendants Macdonald, Schiller, Preston, 20 Nugent and the Crossen Company, and the Appellants, the Commercial Bank, claiming as equitable assignees, have no better rights than the Appellant Charlebois. In any case any sums to which they may be entitled do not exceed the amount of the unpaid balance payable to the Defendant Charlebois by the terms of the judgment appealed from.

13. The Appellants, the Union Bank, are mere equitable assignees, and their position has not been in any wise changed by the judgment.

14. The Appellants, the Union Bank, cannot rest anything upon the previous acceptance of the assignments by the Defendant Codd purporting to act on behalf of the Company, and other acts of the Defendant Codd, because they had full 30 notice through their solicitor at the time of taking the assignments of the facts making the Defendant Codd incompetent to act on behalf of the Company and making the contract upon which they were equitable assignees illegal and fraudulent as against the Company. Their assignor has never expended in construction under the contract more than he had already received in advance upon the contract, and the Appellants, the Union Bank, have not shown and could not show that the Company has received any benefit of their moneys.

15. The Company cannot be bound to replace the Defendant Charlebois in possession as a term of being relieved from the illegal and fraudulent portions of the contract or judgment founded thereon. 40

16. The Defendant Charlebois was not at the time of the consent judgment entitled to hold possession against the Company, even for such portion of his claim as was not illegal. His utmost legal right was to have a receiver appointed, and such receiver has been appointed and is now in possession.

17. The Company could not by any contract, whether the same took the form of a consent judgment or otherwise, grant or confirm to the Appellant a lien and possession of the railway which was in derogation and violation of the statutory duties and objects of the Company as a public chartered company under the Railway Act and the Company's charter.

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18. The Defendant Charlebois was not in fact in possession or entitled to possession of the rolling stock or of the road bed as he represented at the time of the judgment, and he was unable and failed to fulfil his undertaking to procure the rolling stock and road bed to be delivered to the Company, until several months after the time fixed for delivery in the judgment, to the material prejudice of the Company. There being a peremptory date fixed by the consent judgment for payment of the sum adjudged and possession being necessary to enable the Company to raise the money, time was also of the essence in regard to the precedent undertaking of the Defendant Charlebois to deliver possession. The Defendant Charlebois having failed to perform the contract specifically on his part, is not entitled in equity to re-instatement as a term or condition of the relief to which the Company is entitled.

19. The railway is a public company, and the contract made and sought to be enforced is one prohibited by law as a matter of public policy, for the benefit of the public and not merely for the protection of shareholders and creditors. Therefore the Company is not estopped by the illegal acts and consents of its directors, officers or members from moving against the consent decree and repudiating the illegal contract thereby affirmed.

20. The directors for the time being, of this Company incorporated for public purposes and subject to the Railway Act were not entitled by law to burden the assets of the Company for their own benefit; even with the assent of the shareholders for the time being. These directors were trustees of the perpetual corporation and not the mere agents of the shareholders for the time being.

21. At the time of the contract and consent judgment only one-fourth of the authorized share capital of the Company had been issued. At the same time only one-fourth of the Company's land-subsidized line was under contract, and only one-tenth of the Company's authorized line was under contract. The subscribed capital being at the rate of ten thousand dollars per mile of the line actually under construction, was fully paid up at the time of the illegal contract, and it cannot be presumed, in the absence of any evidence to that effect, that the Company did not contemplate issuing the balance of the capital in proportion as the line proceeded. The contract and consent judgment were a fraud upon future shareholders, and had all the holders of the portion of the capital issued at the time of the illegal contract and of the fraudulent consent judgment been parties consenting thereto it would not have made such contract or consent binding upon the corporation.

22. The parties entitled to the control and voting power of the Company at the time of the illegal contract and of the fraudulent judgment were not present, consenting to or cognizant of the alleged contract and judgment, and have never ratified either had it been in their power to validate the same by their ratification.

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23. Ninety per cent. of the shares were held at the time of the illegal contract by a bare trustee for an absent pledgee, namely, the Respondent, Delap. There is evidence upon which notice is to be imputed to the Appellant, Charlebois, and his co-defendants of the fact that they were not dealing with an owner, but with an agent. The Appellant offered no evidence whatever of any enquiry or representation that the agent authorized to advance upon and receive the shares was also empowered to vote upon them. In any case the Appellant, Charlebois, had reason to believe, and the evidence is, that he must have believed that the agent receiving and temporarily holding the shares had been expected to pay out of his principal's money upon the faith of the contract of the 8th of 10 April 1888, to which the Appellant Charlebois was a party. Upon the fair construction of that contract the vendors of the shares were to hand over the shares upon payment of the first instalment, and some months afterwards to hand over the railway completed by the vendors under a contract to which the Company would not be a party. The natural inference would be and should have been drawn by the Appellant Charlebois, that the principal would not expect that any meeting of the Company would be required to be held or active duties undertaken on its behalf until a later date, when the road would be handed over to the Company completed by the vendor's contractors.

24. The evidence supports the conclusion that the Respondent Delap in fact 20 so construed the contract of the 8th of April, 1888, and did not anticipate that any action would require to be taken by the Company, or that his agent to advance his money would exercise any powers after such advance, and it is proved beyond dispute that he did not in fact expressly or by implication empower his agent to vote on the shares.

25. It is proved beyond question that the Respondent Delap's instructions to his agent were limited to obtaining a strict first charge upon the Company's assets as a condition precedent to the advance of the Respondent's money, an incident of such security consisting of a pledge of the subscribed shares when the agent obtained the shares; his authority from the Respondent Delap to act 30 was exhausted. The agent was not only not authorized to vote at special or any meetings, but any such action of the Company that might involve the Company in contracts or liabilities was prohibited by irresistible implication.

26. The learned Chancellor has held upon the evidence of the Respondent Delap, to which he gave full credit, that the Respondent Delap had no notice at the time or afterwards of the illegal contract, or of the consent judgment, until shortly before he instituted this action.

27. The learned Chancellor found on the same evidence that no notice was to be imputed to the Respondent Delap through his agent of the illegal agreements; such transactions so far as such agent was a party to them, being 40 contrary to the Respondent's instructions, and the agent having entered upon them with a view to an interest of his own in the shares, unknown to the Respondent Delap.

28. The learned Chancellor found that the instructions to the Agent Stevens, which were verbal and were proved by the evidence of the Respondent Delap

without any contradictions, were limited as already stated. The evidence of the respondent Delap in this respect is uncontradicted by any witness and is wholly consistent with the documentary evidence and the evidence of the witnesses examined on the commission, all of whom were also entitled to full credit.

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29. The Respondent Delap never contracted with the Appellant Charlebois either directly, or by agent, and never agreed with him, or with any person to become, nor did he ever become in fact, the purchaser or owner of shares in the Company. He is and has always been and always claimed to be merely pledgee of the shares under the contract with the Defendant Codd, who had
10 contracted with the Appellant Charlebois to purchase the same and with whom the agent of the Respondent Delap contemplated becoming, and afterwards became, a partner in such purchase on his own account. The Respondent Delap voluntarily offered at the trial to surrender the shares to whomever the Court might find entitled to them upon payment of the advances, for which they had been pledged to the Respondent.

30. The shares were really and validly paid up before transfer, as found by the learned judge upon the evidence of the witnesses before him. The Appellant Charlebois and his co-defendants, being the former directors, were found by the learned judge on the evidence to have received the Respondent
20 Delap's money and paid it in upon the shares to the Company. They also caused the shares to be written up as paid, upon the books of the Company, and issued certificates thereof of the Company, as paid-up shares. They cannot now be heard to falsify the same to the injury of the Company, for their own benefit and to the injury of the innocent holders of the shares, some of whom have acquired them for value subsequently, and upon the faith of the books and certificates of the Company.

31. The lien and powers of sale agreed to be given to the contractor by the contract and confirmed by the consent judgment were unlawful and void for the reasons given in the judgment of the learned Chancellor.

30 32. The original illegal contract was not authorized by a special meeting of shareholders called for the purpose with due notice by publication according to the Railway Act, the Company's charter and the Company's by-laws, for the purpose of charging the Company's assets with a mortgage and was not competent to charge the assets of the Company with a mortgage or lien, and otherwise to bind the Company to the other terms of the illegal contract.

33. The incompetency of the meeting being known to all parties, it was immaterial whether the Appellant supposed all parties entitled to the protection of the statute to be represented. In fact they were not. The risk was his, and the contract being for an illegal purpose, no presumption or equitable estoppel
40 will be raised in the Appellant's favor to cure the defect in the legal proceedings against innocent parties. At all events the alleged lien is void against or postponed to the bondholders claiming under the mortgage trust deed.

34. The mortgage trust deed of the second of June, 1890, was duly and lawfully created and the bonds thereunder were duly and lawfully issued and duly and lawfully pledged by the following series of steps: First.—The resolution of the

RECORD. special general meeting of the Company held pursuant to notice under the section of the Company's charter. Second.—Resolution of directors pursuant to the resolution at the special general meeting empowering the president to pledge the bonds. Third.—Execution and issue of bonds and execution and filing of trust deed. Fourth.—Pledge of bonds by president by delivery for value then paid, and so paid on the previous condition expressed in writing and assented to by the president that the bonds should also be security for past and future advances by the Respondents Delap and Mansfield. Fifth.—Prior and subsequent advances upon the faith, first of the promised pledge of the bonds and afterwards consequent upon their actual possession under such pledge. 10

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35. The alleged lien claimed by the Appellant Charlebois under the contract was not a lien or mortgage in possession, but at the utmost, so far as it had any validity, it was a mere contract or agreement for a lien to be given in future, contingent upon the performance of the Appellant's contract by him. Before the time arrived, when the Appellant was in a position if he ever was in a position to claim performance of such promise, the Company lawfully conveyed the lands and railway the subject of the lien, to the trustees under the mortgage deed, and issued and pledged bonds secured by the mortgage deed to *bonâ fide* creditors without notice.

36. The creditors who received the bonds had equities to such security over 20 the lands and assets of the Company, prior in point of time and superior in point of equity to the Appellant's equity, under the agreement in the contract of the 16th September, 1889.

37. As a fact the Appellant has never entitled himself to claim the performance of such promise, if validly made. The contract has never been performed by the Appellant according to its terms. The certificates of completion which the Appellant procured from the Government Engineer and Governor-General-in-Council, and upon which he relies as proof of completion according to his contract, are proof upon their face that the Appellant has not performed the contract made with the Company. The certificates specify that he has completed, 30 not the original contract embodied in the contract with the Company, but a contract altered by the Government at the Appellant's request, without the knowledge or consent of the Company; and the altered contract falls short materially of the terms of the original contract with the Company.

38. If this non-completion was waived by the consent judgment, the waiver was a part of the fraudulent and collusive act of the Defendant Codd and the Appellant Charlebois, and is not binding upon the Company, for the reasons already set forth.

39. Prior to such waiver by the consent judgment the bondholders under the mortgage deed had become assignees by virtue thereof of all benefit of the 40 contract, and were entitled to require strict performance thereof according to its terms, and they would not be bound by the Company's subsequent waiver of such terms.

40. In any event such waiver of terms made a new contract, subsequent and subject to the possession of the bondholders already holding mortgage

security over the land and assets under the mortgage deed, and the Company's subsequent waiver cannot postpone their rights already acquired without notice. RECORD.

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41. The bonds, whenever issued, had statutory priority and charge over all the assets of the Company. The Appellant was aware of this, and was aware also, at the time he contracted, of the Company's intention to issue bonds. An agreement to take £100,000 of his contract price in bonds formed part of his contract.

42. The Appellant's agreement to take bonds for his contract price was an authority to the Company to represent to bondholders and creditors that, so far as the Appellant was concerned, the bond issue would be the only charge on the assets. Such representation was actually made to the Respondents Delap and Mansfield, who made advances upon the faith of it, and the Appellant and those claiming through him are bound by it, as between him and them and the bondholders, notwithstanding any waiver by the Company.

43. The bondholders were properly joined as Plaintiffs with the Company, and the demurrer of Charlebois was properly overruled.

44. There was, moreover, a joint injury to the Company and to the bondholders by the injunction obtained by the Appellant Charlebois, forbidding the Company to negotiate the bonds, and clouding the Respondents' title as pledgees, and at the same time depriving the Company of its lawful rights thereunder, subject to the pledge.

45. The Respondent Delap was, moreover, a proper party, as a shareholder moving the Company, then under the unlawful control of the Defendant Codd, to impeach the contract which the Defendant Codd was interested in maintaining.

46. The Defendant Codd never *bonâ fide* intended to attack or permit an attack on the judgment so far as it confirmed the contract, and as soon as the Respondent Delap discovered the facts and evidences on which it could be so attacked and commenced his action on this ground, the Defendant Codd used all his powers to obstruct the action, and had the Respondent Delap not been a party the action could not have been proceeded with.

47. The learned Chancellor rightly reserved for further directions the questions of the equities relating to the shares purchased by the Defendant Codd and pledged to the Respondent Delap. These questions arose between the parties other than the Company in consequence of the Company's repudiation of the illegal contract. They involve a number of questions of law and fact in which the Company is not concerned, and which were not raised by the Defendants' pleadings.

48. For the foregoing reasons and for other reasons, and for reasons given by the learned Chancellor in his considered opinion, the judgment below should be affirmed and the several appeals therefrom be dismissed.

FRANK ARNOLDI,
O. A. HOWLAND,
Counsel for Respondents.

IN THE COURT OF APPEAL.

RECORD.

No. 22.
 Notice of
 further
 points to be
 argued by
 Respondents
 in Court
 of Appeal,
 18 October
 1894.

Delap v. Charlebois.

Take notice that the Plaintiffs, Respondents, will upon the argument of the appeal in this case contend that in case the judgment of the Court below shall be interfered with by this Court, the same should be varied in respect of the following matters :—

1. That the learned Chancellor should have set aside entirely the judgment of the 28th September 1891, and the order of February 1892, and also the construction contract of the 16th day of September 1889, all in the pleadings mentioned, and should have relegated the Defendant 10 Charlebois to so much as he might be able to recover as a *quantum meruit* in respect of work actually performed and materials supplied upon and in respect of the work in question at such time as he should be entitled to be paid.

2. That the learned Chancellor should have declared that the bonds issued by the Plaintiff Company, and mentioned in the judgment below, to the extent of the moneys for which the same are pledged, and the moneys advanced or intended to be secured thereon were, and are entitled to be, and that the same are the first preferential claim and charge upon the Company, and the franchise, undertaking, tolls and income, rents and 20 revenues, and real and personal property of the Plaintiff Company pursuant to the Statue in that behalf in priority to the claim of Charlebois and all other creditors not being bond creditors of the Company.

3. That in any event the said judgment should not give to the Appellant Charlebois or any other creditor for construction claiming under him any higher position or priority than the persons holding the said bonds as security for moneys advanced to or for the Company.

And further take notice that the grounds of the above-mentioned contentions are those already set forth in the reasons of the Plaintiffs, Respondents, against the appeal of the Appellants printed in the Appeal Case 30 now before this Court for argument.

Dated October 18th, 1894.

Your

HOWLAND, ARNOLDI & BRISTOL,
 Solicitors for Respondents, Plaintiffs.

To Messrs. Chrysler & Lewis, Solicitors for the Defendants Alphonse Charlebois, William Anderson Allan, Robert J. Devlin and the Union Bank of Canada,

And to Messrs. McCarthy, Osler, Hoskin & Creelman, their agents.

To Messrs. Mills & Mills, Solicitors for the Defendant John Arthur Codd.

To Messrs. Riddell, Armstrong & Nesbitt, Solicitors for the Defendants the Crossen Estate, RECORD.

And to Messrs. Millar, Riddell & LeVesconte, their agents.

To Messrs. Watson, Thorne, Smoke and Masten, Solicitors for the Defendants the Commercial Bank of Manitoba. No. 22. Notice of points to be argued by Respondents in Court of Appeal —continued.

To Messrs. McMichael, Mills and McMichael, Solicitors for the Defendants Clemow, Murray and McMichael.

To Mr. R. M. Macdonald, Solicitor for the Defendants Gifford & Curzon.

10 To Messrs. Robinson, O'Brien and Gibson, Solicitors for the Defendants Alexander Macdonald, William Alfred Preston, John S. Schiller and Frank S. Nugent and the Commercial Bank of Manitoba,

And to Messrs. Moss, Barwick & Franks, agents herein for Messrs. Chrysler & Lewis, Solicitors for the Defendants the Union Bank of Canada.

In the Court of Appeal for Ontario.

Between

James Bogle Delap et al. (Respondents) Plaintiffs,

and

20 Alphonse Charlebois et al. (Appellants) Defendants.

The Honourable Mr. Justice Osler, in Chambers.

Friday, the 29th day of June A.D. 1894.

Upon the application of the Appellant Charlebois and upon hearing counsel for the said Appellant and the Respondents,

It is ordered that the printing in the appeal case of Exhibits 111, 112 and 113 at the trial hereof be and the same is hereby dispensed with.

And it is further ordered that the printing in the appeal case of the Style of Cause by order of Revivor be and the same is hereby dispensed with.

30 And it is further ordered that the printing of the Exhibits put in at the trial and on the English Commission, and which are set out in the pleadings herein be and the same is hereby dispensed with.

And it is further ordered that only those portions of the letters from the Stevens or either of them to the Respondent Delap, being Exhibit No. 123, which relate exclusively to the Great North West Central Railway Company be printed in the appeal case, with the exception of such one of the said letters as shall be selected by the Respondents' solicitors which is to be printed in full

No. 23.
Order dated
29 June 1894
dispensing
with certain
printing.

RECORD. Provided always that the Appellants shall first exhibit to the Respondents' solicitor copies of such letters showing the portions struck out which it is proposed to omit, and that in case of any difference the same be settled by the Registrar.

No. 23.
Order dated
29 June 1894
dispensing
with certain
printing —
continued.

And it is further ordered that the printing of the Schedules to those parts of Exhibit 134, dated 16th July 1889, and 17th February 1890, be and the same is hereby dispensed with.

And it is further ordered that the costs of and incidental to this application be costs in the appeal to the successful party.

Tax a fee of \$5 on this.—A. G.

10

(Signed) A. GRANT,

Issued 29th August 1894.

Registrar.

No. 24.
Formal
Certificate of
Judgment
of Court
of Appeal,
14 May
1895 and
25 June
1895.

In the Court of Appeal for Ontario.

Tuesday, the fourteenth day of May 1895, and
Tuesday, the twenty-fifth day of June 1895.

Between

James Bogle Delap, individually and as a shareholder, on behalf of himself and all other shareholders of the Great North West Central Railway Company (except the Defendant John Arthur Codd), Louisa H. Mansfield and the Great North West Central Railway Company 20
(Respondents) Plaintiffs,

and

Alphonse Charlebois, Alexander Macdonald, William Alfred Preston, John S. Schiller, Frank S. Nugent, The Commercial Bank of Manitoba, The Union Bank of Canada, William Anderson Allan, and Robert J. Devlin (Appellants) Defendants,

and

John Arthur Codd, and William James Crossen, Frederick John Crossen, and Joseph Henderson. Executors of the last Will and Testament of James Crossen, Deceased, The Honourable Francis Clemow, James 30 Murray and Daniel McMichael, and The Right Honourable Edric Frederick, Baron Gifford and Robert Lothian Curzon, Defendants.

This is to certify that the appeal of the above named Appellants Alphonse Charlebois and the Commercial Bank of Manitoba, of the Union Bank of Canada, and of William Anderson Allan and Robert J. Devlin, from the judgment of The Honourable The Chancellor of the Chancery Division of the High Court of Justice for Ontario pronounced on the twenty-fifth day of November 1893, and the twenty-second day of January 1894, having come on

to be argued before this Court on the fourteenth, fifteenth, sixteenth, nineteenth, twentieth, and twenty-first days of November 1894, whereupon and upon hearing counsel as well for the respective Appellants as for the Respondents, this Court was pleased to direct that the matter of the said appeal should stand over for judgment, and the same having come on the day firstly above mentioned for judgment, and again before this Court on the day secondly above mentioned, on motion to vary the minutes of the judgment and upon hearing counsel as well for the respective Appellants as the Respondents, this Court was thereupon pleased to direct that the matter of the said motion should stand over for judgment, and the same having come up on the day secondly above mentioned for judgment, this Court did declare that the bonds in question were not validly pledged by the Company to the Plaintiff James Bogle Delap, and that the Plaintiff Delap was not entitled to hold the £465,600 face value of bonds in his control brought into Court in this action by him for all or any moneys owing to him, and that the said bonds were not nor were any of them pledged by the said Plaintiff Company to him for the repayment of all or any moneys owing to him by the Company, and that the claim of the Respondent Delap to a lien or charge on the said bonds and the action of the said Delap to enforce the same should be, and the same was dismissed without costs here or below, and did order and adjudge the same accordingly.

And it was further ordered and adjudged that paragraphs seventeen and eighteen of the judgment of the Honourable the Chancellor entered in the Court below, and appealed from herein, should be and the same were varied to make the same in accordance with the foregoing declaration.

And it was further ordered and adjudged that in all other respects the said appeal of the above named Appellants should be and the same was dismissed with costs to be paid by the Appellants Alphonse Charlebois, the Commercial Bank of Manitoba, the Union Bank of Canada, William Anderson Allan, and Robert J. Devlin to the Respondents other than the Defendant Codd forthwith after taxation thereof.

And it was further ordered and adjudged that the cross appeal of the above named Respondents should be and the same was dismissed without costs.

And this Court did further order that there should be no costs to either party in respect of the motion to vary the minutes of the judgment herein.

(Signed) A. GRANT,
Registrar.

Reasons for Judgment of Court of Appeal, 14 May 1895.

In the Court of Appeal for Ontario.

Delap v. Charlebois.

Tuesday, 14th May 1895.

No. 25.
Judgment
of Hagarty,
C. J. O., 14
May 1895.

Copy of Opinions of the Judges.

Hagarty C. J. O.

Much difficulty has been created in this case by the necessity that exists of separating the claims and rights of the different Plaintiffs.

RECORD. The Defendant could, perhaps, have prevented this by applying to compel the Plaintiffs to elect on which of the claims they or he would proceed.

No. 25.
Judgment
of Hagarty,
C. J. O., 14
May 1895
—continued.

Instead of this, he filed a demurrer “on the ground that Delap and Mansfield “have no status to maintain this action jointly with the Plaintiff Company” I am of opinion that it was properly overruled.

Our Rule 300 allows all parties “to be joined as plaintiffs in whom the “right to any relief claimed is alleged to exist whether jointly, severally, or in “the alternative, and judgment may be found for such one, or more, of the “Plaintiffs as may be found entitled to relief.” Rule 324 declares that no action shall be defeated by reason of the misjoinder of the parties, and that at any stage 10 the Court may order the name of any Plaintiff or Defendant improperly joined to be struck out. This is copied from the English rule which is set out in *Werderman v. Société Générale* 19 Chy. Div., and commented on by Sir George Jessel at p. 251. See also *Young v. Robertson*, 2 O. R. Our Rule 384 allows a demurrer to a pleading setting up a distinct cause of action, &c., but as the learned M. R. points out, this is the only case in which a demurrer is allowed, and that there is no mention of parties. I refer also to a case lately in the Lords, *Smurthwaite v. Hannay*, 71 Law T. J. 157 (Oct. 1894), where the subject of the joinder of Plaintiffs with distinct and separate causes of action is fully discussed, and an order of the Divisional Court, staying the proceedings 20 unless and until Plaintiffs should elect on which distinct cause of action Plaintiffs or one of them should elect to proceed, was upheld. As I understand it, no demurrer lies as to misjoinder or non-joinder, and the Defendant’s demurrer was properly overruled.

In any event it would be too late after all this litigation to allow the whole proceedings to be now defeated.

I propose first to consider the rights of the Railway Company to any relief, as their position as a public Company stands on a much higher ground than that of the Plaintiff Delap.

It is clear that the five original shareholders, representing all the stock of 30 the Company, had agreed to an arrangement with Mr. Codd in substance that, if he could raise £200,000 toward building the first 50 miles, he should, as his commission or reward, have the difference between that sum and \$800,000 (being some \$173,000), and the \$800,000 would be accepted by the Company as the sum available for construction. This agreement as to Codd’s remuneration runs through the whole transaction down to the judgment of my brother Ferguson.

In the arrangements of September 16th 1889, when the construction contract was executed, this was distinctly provided for. Charlebois buys out the other four shareholders, and has all the stock, including his own, transferred to 40 Stevens, representing, as they all understood, parties in England, who were prepared to find the £200,000. The learned Chancellor finds:—“Upon one of the “main questions argued I must hold conformably to the express evidence of Dr. “McMichael and the conduct of all the parties, and the frame of all the written “instruments, that there was a real payment in full of the stock in the Company

“ held by the then five shareholders, now the Defendants, Charlebois, Clemow, RECORD.
 “ Allan, Devlin and Murray. The Directors met, declared the 25 per cent. to No. 25.
 “ be a reasonable discount in view of cash payment in full, and from money Judgment
 “ advanced by Stevens, \$228,000 was paid to the credit of the Company in of Hagarty,
 “ behalf of these five shareholders, and became part of its capital. It was a C. J. O., 14
 “ condition of Stevens’ proceeding with the transaction that the shares should be May 1895
 “ paid in full before being transferred, and that was thus accomplished. A —continued.
 “ further sum of \$15,333 was lent to the Company by Stevens at the suggestion
 “ of Mr. Lewis (who was apparently solicitor for the shareholders and the
 10 “ Company), and then the whole sum, amounting to something over \$243,000,
 “ being the money of the Company, was paid out the same day to Mr. Charlebois
 “ on the construction contract contemporaneously executed. As between the
 “ Company and Charlebois, this sum (representing £50,000 sterling) is
 “ acknowledged under seal to be a part payment by the Company of the total
 “ sum of £200,000 sterling, to be paid for the construction of the first fifty
 “ miles of the Company’s line.

“ A large part of that first payment on the construction contract was not so
 “ applied by Mr. Charlebois, but went to the four shareholders other than
 “ Charlebois in payment for the transfer of their stock to Stevens and Codd,
 20 “ namely, the sum of \$125,945, and the balance, equal \$100,687, is to come out
 “ of balance to be paid by the Company for the construction of the road.

“ Again, I find that Mr. Codd had no claim against the Company, yet a
 “ large sum, \$173,000, payable to him, is included in the construction price of
 “ £200,000 sterling to be paid by the Company to Mr. Charlebois.

“ There is also included in the specified construction price a further sum of
 “ \$70,000, standing for the value of Charlebois’ stock in the proportion received
 “ by the other shareholders for their stock.”

As to one of the main points of the case, I agree with the Charlebois’
 finding that Codd had no valid claim against the Company for this very large
 30 sum.

Defendant Charlebois in his defence states that he agreed and undertook
 to carry out the arrangement with respect to the difference between
 £200,000 and \$800,000 under the construction contract, as he and his former
 associates had previously agreed to do, out of the payment of the balance of
 £150,000 agreed to be paid on said contract of September 1889. That Codd
 and McMichael for him thereupon released the four original shareholders from
 liability thereon, and accepted Charlebois alone with respect to the original
 undertaking.

I think also that under the arrangement all the shares so transferred to
 40 Stevens were to be considered as paid-up shares. The shareholders accepted
 the part payment and also Charlebois’ order on the Company, accepted by the
 Company, payable out of the £150,000 payable on completion of the first fifty
 miles. These amounts payable in cash to the four shareholders were paid by the
 Company’s cheque to Charlebois, and through him to the shareholders.
 Thus the Company would ultimately, if they ever raised the £150,000

RECORD. have it, charged with these large sums in favour of Codd and the old five shareholders, including Charlebois. Charlebois gives receipt to the Company for the £50,000 on his contract. On the 16th of September, as part of the arrangement, the five old shareholders and directors (including Charlebois) retire, and a new board is formed of five others, with Stevens as president, Codd, McMichael, and two others. They were qualified by shares assigned to them by Murray, one of the original five, at Charlebois' request.

No. 25.
Judgment
of Hagarty,
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May 1895
—continued.

The new board the same day executed the construction contract with Charlebois.

By this he agrees to build and equip the first fifty miles of the road for 10 £50,000, then admitted to be paid to him, and £150,000 to be paid on the completion of the first fifty miles, in all £200,000, the Company providing the steel rails, which were furnished as agreed.

It seems to me very clear that for this £200,000 Charlebois had to do other things, besides building and equipping the road. Out of the amount to come to him he was to pay the non-existent claim to Codd, besides the large amounts to the old shareholders and for himself.

The fullest notice and knowledge existed of all the main facts connected with the making of this contract and the money arrangements with Charlebois, as to Codd and the other parties interested in the general arrangement. If all 20 had proceeded smoothly, and the whole £200,000 been paid, it seems clear that, as to Codd's unfounded claim and the payment of the five shareholders, the Company would be heavy losers and a large portion of their funds diverted from their legitimate purposes. The £200,000 was not the lawful price or cost of the road, but included large sums for which the Company was not liable. It is strongly pressed for the Plaintiffs that no such disposition of the moneys of the Company could be lawfully made. An independent contractor could lawfully contract with them to build the road for that or any higher sum he chose to offer, and the Company could honestly accept his tender, however beyond the real value. But can Charlebois do this with the fullest knowledge 30 of the illegal inclusion of this sum to Codd, he being a director up to the last moment, and changing his fiduciary character into that of a contractor for the express purpose of carrying the whole arrangement into effect? It cannot be possible, I think, that under the forms of a construction contract illegal claims on the Company can be included and made binding on them. If this can be done, very large debts, upon which there was no legal liability, are fastened on the Company, and very serious wrong can be perpetrated under an apparently legal form, and the substance of the dealing might be successfully hidden under the shadow. Under the charter all the moneys from stock, &c., of the Company, after paying certain named expenses, &c., "shall be applied to the 40 "making, completing, and equipping and maintaining the railway and for other "purposes of the charter, and for no other purpose whatsoever." Passing from the Codd claim we find clear proof that out of the moneys from the English interveners, the five original subscribers, including Charlebois, have received and are to receive large amounts, \$243,000 are used by the Company from the new source and paid by them to Charlebois who divides it among the old

shareholders direct, in payment for the stock on which they had paid (say) 30 per cent. already in construction, and he undertakes to pay them about \$120,000 additional when he shall get the balance, viz.: £150,000 on the contract. He gives orders to the Company for the last mentioned sum to the shareholders which orders the Company formally accept, payable as he had undertaken. He also charges the Company \$21,000 for the amount he himself had previously paid on his stock. All this is proved by most direct evidence and documents signed by him.

RECORD.
—
No. 25.
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—continued.

I have tried in vain to understand how, under the guise of a construction contract, the Company, to the full knowledge of all the parties interested, could charge the undertaking with his purchase money for the stock of the first holders.

If the whole £200,000 sterling had been received and applied by the Company according to the arrangement of the 16th of September, the road would be built, the stock of all the early holders paid for, and the unfounded claims of Codd paid. The construction of the road is one thing, the buying out and paying off the old shareholders a wholly different matter. I agree with the learned Chancellor as to these payments. Nor can I see how the director who frames the whole scheme by vacating his seat at the board can, in a rapid transformation scene in a few minutes, become an independent contractor to construct the road on the terms fixed by himself as such director.

Then it is urged that all these matters have been cured and settled by the judgment in the suit before my brother Ferguson, in which the Company and Charlebois agreed on certain terms embodied in the decree.

It was declared that Charlebois' claim is \$622,226 for the building of the first fifty miles, and that it be a lien on all the property and land grant and other assets of the Company as set out in the contract. The Company are to pay this sum and interest as there provided. First charge certain sums to contractors under Charlebois.

Second charge for \$380,397 to Defendant for his own, or for any person or corporation to whom he may have assigned the moneys payable under the contract according to their several priorities—payment to any holder of any such order or orders to be considered as payment by Plaintiffs to Defendant. The third charge to be \$130,000 and interest payable to McMichael as trustee in satisfaction of an order or agreement for \$173,330 in full adjustment of all matters in dispute between the parties thereto, J. A. Codd, McMichael (trustee), Defendant, and others waiving all personal claim against Plaintiffs under said agreement. Six months time was given to make these payments. The Company to have possession of the road till default. In default of payment Charlebois might proceed to exercise his rights as chargee of the premises, with full right as a mortgagee with judgment for sale. Company to be subject to the order of the Court as to any conveyance required to be executed to carry out any sale, on default. The decree also declared that Charlebois' lien must have priority over any bonds issued.

For six months the Company had full possession of the road. Afterwards

RECORD. the Court, on Charlebois' motion proving the non-payment of the moneys, ordered immediate payment, and that possession of the road, rolling-stock, &c., be at once delivered to Charlebois, and also the Government land grant and all title deeds, &c. That the road, &c., and the land grants may be sold, subject to the order of the Master at Ottawa, with liberty to Charlebois' to bid and buy. Perpetual injunction against selling or dealing with bonds. In the arrangements between counsel in settling the decrees Mr. Codd as President of the Company seems to have given all instructions. No evidence of any meeting of directors or shareholders on the subject. It is pressed on us that this judgment puts an end to all questions as to the legality of the arrangements of September 16th, 1889. If these arrangements, or some of them, be held illegal and without the Company's powers, it seems difficult to believe that all objection to them is removed by the judgment. We have not to deal with a decree affirming all such matters as *intra vires*, no such question being the issue. We have already to decide whether a judgment submitted or agreed to by the Company to do things wholly beyond their powers, necessarily validates their acts and creates an estoppel, or matter of record, against them. If this be the case, an easy method could always be devised to enable directors of a Company to do wholly unlawful acts and then agree to a judgment against them to make such acts valid and ensure their performance without challenge. I draw no distinction here because it was a consent decree. It seems just the same as if on Plaintiff stating all his claims, lawful and unlawful, the Company either says nothing against them in bar of judgment or formally confesses them to be well founded. The suit was simply for moneys alleged to be due which stand admitted by the Defendants. No case has been cited to us on which such a judgment has been considered as to its effect in validating claims, originally invalid as beyond a Company's powers. If the judgment here was obtained by fraud or concealment or misrepresentation to the Court, there would be no doubt but that it could be set aside. But it seems to me that if the judgment had, with the assent of the Company, fixed large liabilities on them, the payment of which would be in effect wholly beyond their rights, and thereby applying these funds to wholly illegal purposes, it is open to be rescinded. As is said in *Ex-p. Watson*, 21 Q. B. Div., 305.—“Nor does it make any difference that the parties acted as they did in this case with perfect good faith. They are bound by the law though they did not understand it. The question is not, whether in what they did they intended to do wrong, but whether they have between them attempted to accomplish an illegal thing. A Company having no power to borrow did borrow money from an individual. They afterwards gave the lender a deposit note under the Company's seal. It was held they were not estopped from denying liability. Would the decision have been different if judgment had been obtained on this deposit note? I do not think it would. *Girdleston v. Brighton Aquarium Co.* has a discussion as to the setting up or impeaching a judgment as covinous or collusive.”

In bankruptcy or insolvency proceedings, a debtor has been allowed to impeach a judgment against him.

Ex parte Kebble, L. R., 10 Chy., 373; *ex parte* Lennox, 16 Q. B. D. 319; *Flower v. Lloyd*, L. R. 10 Chy., 327; *Jenkins v. Jenkins*, 11 Ap. R. 97; *ex*

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parte 3 M. D. & De G. & J. 72, 73, per Knight Bruce, V. C. The question is fully discussed in a late case, *ex parte* Hawkins 72 L. T. (J) 42, in Court of Appeal (1895) 1 E. B. 404. RECORD.
No. 25.

In my view of the case, any shareholder could have interposed to prevent the making of the contract or to prevent its being proceeded with. Also, that a similar application could have been made against the Company's consenting to the judgment on the terms agreed to, and after the judgment to file a bill to impeach it and to set it aside or restrain its enforcement. Judgment
of Hagarty,
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—continued.

10 It was said in argument that the judgment was not appealed against. It is not easy to see what would be the grounds of appeal or by whom the appeal could be made. It was regular on its face.

If this judgment cannot be impeached on the ground of the illegal origin of the claims and their being beyond the powers of the Company to contract, then it will always be in the power of a Board of Directors, by allowing large money claims to pass into judgment, to commit any wrong or fraud on shareholders. They might possibly be held personally responsible for their misdeeds, but in the meantime the property of the Company and of the shareholders present and future, might be hopelessly squandered and lost.

20 It was argued that the arrangements in question were satisfactory to all the shareholders then in existence, owning all the subscribed stock in the extent of one-fourth of the authorized capital. But the interest of both present and future shareholders must be regarded in such matters, as is well settled by authority. On this point see in *re* Geo. Newman & Co., 11 Times L. R., 292, where the British Seamless Box Co. : Case, 17 Chy. Div. is noticed. In our present case, there is ample provision for the existence of future shareholders.

The only course open was to attack it in an independent proceeding. This action was brought principally for relief. It may be somewhat in the nature of a Bill of Review. It is said in a very recent case—*Scott v. Alvary* (1895) 30 1 Chy. 618, that the Chy. Div. still exercise the jurisdiction of the old Court of Chy., in allowing proceedings by way of review in a proper case, referring to *re* May, 28 Chy. D., 719, *Falken v. Scottish Manufacturing Co.*, 35 W. R., 794. If this judgment be allowed to stand the practical result will be that the road will be sold and the proceeds of the sale applied to pay a fictitious debt and to pay up former shareholders for the value of their stock.

It must be always borne in mind that the whole of this arrangement was made while Charlebois was a director, and his new position as contractor and his contract was based thereon as a substantial part of the agreement between him and the other four directors, and it was arranged while he was a director 40 that he was to be contractor.

Treating it as a *bona fide* contract for construction, we can understand it as not unreasonably providing for the payment of the sums actually expended therefor, out of the 30 per cent paid up by the original five subscribers. Charlebois was to complete the work, and the payments already made in the September, and other contracts, might not unfairly be provided for.

A reference to the minutes of the Company on September 16th, will shew

RECORD. clearly how the whole matter was arranged : The discount of 25 per cent. is declared, and it is declared that the stock was paid in full, and that the contracts between the Company and Charlebois for the completion of the first fifty miles be confirmed and the seal affixed thereto ; that four orders or assignments from Charlebois (to his old Co-Directors) on the first moneys thereafter payable to him on his contract be accepted by the Company, in aggregate \$100,687, under the Company's seal ; and that a cheque for \$243,333, representing the £50,000 sterling, be issued. Stevens signed the minutes as President.

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Stevens leaving for England soon after, J. A. Codd was appointed President. In November 1889 we find Clemow back in the Company by a ¹⁰ transfer of 50 shares from J. A. Codd, and he remained a director till after the Consent Judgment. The work under the Charlebois contract went on.

We find 30th July 1891, transferred to Delap 1,575 shares and to A. Codd 1,625 shares. This, I presume, was in consequence of an agreement between Stevens and J. A. Codd to divide all the stock between them.

Charlebois' suit against the Company was begun 11th September 1891. On the 9th of May 1893, by order of the Court in a suit of Delap *v.* Codd, these 1,625 shares were transferred by Codd to Delap.

In March 1893 a new Board of Directors was formed by assignments of shares from Delap. 20

All the acts as to the Charlebois action and judgment were repudiated.

It was well known both before and after the arrangements of 16th September that the only means to raise the additional £150,000 would be by sale of the Company's bonds.

* Original
Record.

Charlebois was fully aware of this (Vol.* 3, p. 36). On the very day, 16th September, he wrote to the Company :—

“ To the Secretary of the Company.”

“ Dear Sir,—With reference to the contract I have this day entered into
“ with the above Company and to the balance of £150,000 payable to me under
“ the terms of said contract, I am willing, if the Company shall so by writing ³⁰
“ require me, to accept payment of £100,000 of the above mentioned balance in
“ bonds of the said Company instead of payment in cash, such bonds to be taken
“ as of the value of £80 for each bond of 100.”

As to the lien, the Chancellor says :—

“ The contract would give a charge as extensive as, and more unlimited
“ as to its realization than the charge created by bonds and secured by
“ mortgage deed, and it is greatly in excess of the power of direct
“ mortgage contemplated by the statutes. There is no evidence of any
“ surplus land held by the Company (under Clause 22 of Charter), nor of
“ any land bought by the Company (under Clause 11 of Charter), so that ⁴⁰
“ I think the widest effect it can have is to make it applicable to the land
“ grant in the North-West, as to which the fee is in the Crown. Even
“ as to this, the power to mortgage is modified so as not to be paramount
“ to the sale and administration of the proceeds of these lands by the
“ Company or its trustees, under Clauses 19 and 20.”

This is the lien claimed :—

“The contractor shall have, in addition to such protection and lien, if any, as the law allows and accords him, a full and complete lien and first charge upon and over the said first fifty miles of railway and its appurtenances, including rails, ties, buildings, equipment, road-bed, right of way, right to the land grant thereto appertaining, if and when fully earned, right of operation of said railway, and upon the whole property, enterprise and undertaking, including the works already in course of completion, until he, the said contractor, is and shall be paid the full sum of one hundred and fifty thousand pounds sterling (£150,000) as aforesaid; nor shall the Company be at liberty to take possession of, or exercise any acts of possession over, or respecting, the said fifty miles of railway, or its appurtenances aforementioned, while or so long as any sum remains due and unpaid to the Contractor under this contract, and the full absolute and sole possession thereof shall in any such case remain and be vested meanwhile in the contractor.”

After the fullest consideration and examination of the enactments governing his case, I have come to the conclusion that the learned Chancellor as to the lien claimed has on the whole rightly interpreted the law.

20 The question is not free from difficulty, but I think the charter, as conferred by Cap. 85, 51 Vict., passed in 1888, may be read as governed by the new General Railway Act of the same Session, Ch. 29, which repeals the Act of 1879 and substitutes the new Act therefore. The Clause 278, as to the sale of a railway, merely provides certain conditions applicable thereto, but does not give any new or express powers of sale.

I agree with him that the lien, professed to be granted by the construction contract, as it stands is *ultra vires* the Company's powers. As the judgment puts it: “It covers all the assets of the Company, present and future, and becomes a first preferential claim on the Company's franchise and under-
30 “taking.” I do not see how the lien as granted by the contract can be supported. The general law on this point is set forth by Lord Cairns in the well-known *Gardner v. London, Chatham, and Dover Railway*, 2 Chy. D. 217. See the judgment of Lindley, L.J., in *Marshall v. S. S. Tramways Company*, 11 Times L. R., 339.

As to the claims on the Bonds. In October 1889, a general meeting of the Company gave authority to issue Bonds to the extent of \$25,000 per mile under the Statute.

In the following summer of 1890, a clerk of Stevens & Co. came out to get the Bonds, and they were executed and delivered to him. He took them to
40 Stevens in London, with whom they remained till August 1892.

All parties, both in England and in Canada, were fully aware that it was from the sale of these Bonds alone that the remaining £150,000 sterling could be obtained. The most urgent pressure was put by the Board here on Stevens' firm, to endeavour to “float” them, and numerous pressing letters passed as to attempts to do so in London, Paris, and Brussels. While with Stevens in one of his attempts to realise, some £10,000 or £12,000 was obtained from Plaintiff Mansfield, a client of Stevens & Co., and I think it proved that she advanced these moneys on these bonds, and her claim to that extent may be allowed.

RECORD.

No. 25.
Judgment of
Hagarty,
C. J. O., 14
May 1895
—continued.

But as to Delap's alleged claim on them, as securities pledged to him, I hardly see its validity as to the moneys advanced by him up to the remission to England of the executed bonds. Nearly all advances, or securities given to obtain advances, were prior thereto; and apparently without reference to any bargain or contract that he has to have bonds therefor.

On the contrary, it would seem that his advances were to give him the command of the stock, which he has ultimately got into his own hands, by the transfers in the Company's books.

In his present position, as president, and owner of the stock, and with a board friendly to him, he has full control over these bonds. If they could be turned into money all practical difficulties would vanish, as money would then be on hand to start the road and pay all lawful claims.

I am unable to agree that these bonds were or are pledged specially to Delap, but I am unable to see the importance of a decision, one way or the other, on this. The bonds remain ready to be given to investors, if they can be found, and the proceeds applied for all construction purposes.

As to the Appellants, other than Charlebois, they cannot stand on any higher ground than that which he occupies, and their appeals must be dismissed.

No. 26.
Judgment of
Burton,
J. A.

Burton, J.A. :—

The statement of claim, stripped of some redundance of language, would seem to, as I understand it, embrace two entirely separate and distinct causes of action, by two Plaintiffs having no interests in common, one set of Plaintiffs being the Great North West Central Railway Company, which seeks to impeach a judgment obtained against it by the Defendant Charlebois (although it contains allegations of certain matters which more directly affect the Defendant Delap), and the other is a claim by Delap and Mrs. Mansfield, claiming a lien on the Bonds of the Company as pledges. The main object of the Plaintiffs I have named is to have a judgment, delivered by Mr. Justice Ferguson, declared to be fraudulent and void as against the Plaintiffs, on the ground :—

“ That a contract for building the road, dated the 16th September, 1889, between the Company and Charlebois for the construction of 50 miles of the railway for £200,000, was a fraud upon the Company and void, and that it and the judgment and order founded upon it may be set aside, and the Company declared at liberty to convey the land grant to the Defendants Gifford and Curzon on the trusts of a mortgage deed referred to in the statement of claim,” and :—

“ 1. (a) That it may be declared that the Plaintiff Company is not chargeable with the moneys received by or payable to the Defendants Charlebois, Clemow, Allan, Devlin and Murray, in respect of their shares aforesaid, or to the Defendant Codd, amounting to \$481,000 hereinbefore mentioned, and interest thereon.

“ 1. (b) That the Defendants Charlebois, Clemow, Allan, Devlin, Murray, and Codd may be declared to have been guilty of a breach of trust as hereinbefore mentioned, and that they may be ordered to repay to the Plaintiff Company the said

" sums of \$228,000, \$70,000, and \$10,000, hereinbefore mentioned, RECORD.
 " and interest thereon.

" 1. (c) That the Defendant Charlebois may be declared entitled, No. 26.
 " in respect of work done by him under the pretended contract, Judgment of
 " to a *quantum meruit* only if anything. Burton,
 J. A.—

" That it may be declared that the said fourth clause of the said continued.
 " contract between the Company and the Defendant Charlebois was and is
 " *ultra vires* of the said Company, as hereinbefore stated. And that the
 " said alleged consent to the said judgment, and the said judgment itself,
 10 " and the said order were, and are, and that each of them was, and is,
 " *ultra vires* of the said Company as herein stated. And that the said
 " judgment and order were *ultra vires* of the Court, which pronounced
 " the same."

There is nothing peculiar in this contract, which is an ordinary building contract for the construction of the Railway, if we except the fourth clause, which was as follows:—

" The contractor shall have, in addition to such protection and lien
 " (if any) as the law allows and accords him, a full and complete lien and
 " first charge upon and over the said first fifty miles of railway and its
 20 " appurtenances, including rails, ties, buildings, equipment, road-bed,
 " right of way, right to the land grant thereto appertaining, if and when
 " fully earned, right of operation of said railway and upon the whole
 " property, enterprise, and undertaking (including the works already in
 " course of completion), until he the said contractor is and shall be paid
 " the said full sum of one hundred and fifty thousand pounds sterling
 " (£150,000) as aforesaid, nor shall the Company be at liberty to take
 " possession of, or exercise any acts of possession over or respecting the
 " said fifty miles of railway, or its appurtenances aforementioned, while
 " or so long as any sum remains due and unpaid the contractor under
 30 " this contract, and the full, absolute, and sole possession thereof shall in
 " such case remain and be vested meanwhile in the contractor."

It goes without saying that, if the Court was imposed on, in rendering what is referred to as the Consent Judgment, relief could be granted in some form; and, in my opinion, in the present suit. But no such case is established.

There is no finding to that effect, and in my opinion the evidence would not have warranted any such finding.

The propositions referred to by the learned Chancellor as justified by the case in (1893) App. Cases 69, enunciate no new law, so it may be taken as axiomatic that it is *ultra vires* of an incorporated Company to apply its funds
 40 to any purpose other than the completion of the work which it is authorised to construct. But it does not strike me as a necessary corollary that a judgment obtained, as this judgment is shown to have been obtained, can be impeached on that ground. But before deciding that point, it is well to consider whether there was anything that was *ultra vires* in the transaction in respect of which the judgment in question was recovered.

It appears that so far back as the 9th of April, 1888, when Messrs. Clemow, Allan, Devlin, Murray, and Charlebois were directors, and the only shareholders in the Company, they entered into an agreement with Codd, accepting an offer

RECORD. made by him on the 7th of December 1877, to purchase all the shares in the capital stock of the Company and the Railway itself when completed for £200,000 upon certain terms which are set forth in the agreement. The two first clauses in the agreement seem to me to be of so much importance, as throwing light upon what subsequently occurred, that I think it better to transcribe them in full, and they are as follows :—

No. 26.
Judgment of
Burton,
J. A.—
continued.

“First. That for and in consideration of the sum of two hundred thousand pounds sterling to be paid as herein provided, the parties of the first part agree to assign, set over and sell to the party of the second part, or to his nominees, all the shares in the capital stock of the said Great North West Railway Company, together with fifty miles of the said Railway to be completed at the cost of the said parties of the first part, and in operation by the first of August next, to the satisfaction of the Dominion Government, so as to earn the land grant, and all the right, title or interest, which they or any of them, the said parties of the first part, may now, or hereafter possess in the right of way on the line of railway wherever the same has been or may hereafter be acquired by them or either of them, and all their interest in the property of the railway of whatever kind, including the franchise and right to the land-grant which has been or may be hereafter made by the Dominion Government, and all plans, profiles or other documents relating to the line of railway. 10 20

“Second. The parties of the first part agree that upon transferring all shares in the capital stock of the said Company to the party of the second part, or to his nominees, they will guarantee that the said shares are clear of all liability imposed upon the said Company by the terms of the twenty-seventh section of its charter, and from any liabilities incurred by the present shareholders to date of transfer, other than the agreement made by the Company with the Dominion Government as to the construction of the Railway on the terms and conditions required to earn the land grant.” 30

The £200,000 was to be paid as follows :—£50,000 on the execution of the transfer of stock to Codd or his nominees, and the execution by the parties of the first part of a contract to build, equip and complete the first fifty miles by the first of August then next (the Company being under contract with the Government to have the same completed by December). Steel rails and accessories were, if required, to be supplied by Codd at prices to be approved of by the Directors, and the cost charged as a payment on account of the £200,000, and the balance of the £200,000 was to be paid on the completion of the first fifty miles. Then followed certain things which were to be considered as conditions precedent to the first payment of £50,000, among which was one that Codd should produce a Banker's guarantee for the payment of £150,000 to the satisfaction of the Directors. 40

The other stipulations were unimportant, except that time was made the essence of the contract.

This arrangement fell through, Codd having failed to furnish the Banker's guarantee, and the Directors refused to carry it out.

Subsequently, Charlebois secured an option to purchase all the shares of the Company shareholders for \$226,632.89, of which \$125,945 was to paid in

cash, and the balance to be secured to their satisfaction. The result of which was that, on the 9th of September 1889, Clemow, Allan and Devlin transferred their shares at the request of Charlebois to Charles Richard Stevens, to whom Charlebois also transferred his shares, and Murray also assigned 300 of his shares; giving to Stevens (out of the total 5,000 shares) a total shareholding of 4,800. Murray also transferred to Codd 50 shares, to McMichael 50, to Gregson 50, and to one Aird 50.

RECORD.
No. 26.
Judgment of
Burton,
J. A.—
continued.

The learned Chancellor has found, although the matter was stoutly contested before us, that the payment to the first shareholders was a payment in full of the stock held by them. It appears to me that, as between Charlebois and the Company, in this action it was perfectly immaterial whether the payment so operated or not, however it may affect the liability of the other parties.

But it is manifest that on this occasion the whole stock was transferred to the parties named, and that thereupon met and elected themselves Directors of the Company, and immediately thereafter executed two contracts with Charlebois.

Before referring more in detail to those contracts, it may be well here to show how Mr. Stevens became interested, becoming in substance the owner of the whole transaction.

Before the arrangement with Codd, above referred to, had been terminated, that gentleman had fallen in with a firm of solicitors in London, Stevens, Bawtree and Stevens, and influenced them to enter into an agreement to share the profit of financing the Company, and they induced their client (the Plaintiff Delap) to advance £50,000 upon the terms mentioned in an agreement in writing, which I set forth.

“ Heads of Agreement between John Arthur Codd and James Bogle Delap.

“ Under an agreement, dated ninth April, one thousand eight hundred and eighty-eight, and made between the Honourable Francis Clemow and others of the first part, being all and the only shareholders in the capital stock of the Great North West Central Railway Company of Canada, and John Arthur Codd of the other part (a copy of which agreement is hereunto annexed), the said John Arthur Codd is entitled to all the shares in the capital stock of said Company, together with fifty miles of said Railway complete, and fully equipped to the satisfaction of the Canadian Government, so as to earn the land grant in the said agreement mentioned, together with all other interest in the property belonging to the parties of the first part, of and in the said Railway and land grant upon payment by the said John Arthur Codd, to the parties of the first part, of the sum of two hundred thousand pounds sterling, payable as follows :—

“ Fifty thousand pounds on account thereof, on the execution of the transfers of the said stock to said John Arthur Codd, and upon other terms mentioned in clause 3, section 1, of the agreement hereunto annexed; the supply of certain steel rails as mentioned in clause 3, section 2, of the annexed agreement, and the balance of the said sum of £200,000 mentioned in clause 3, section 3, of the said agreement. Of

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No. 26.

Judgment of
Burton,
J. A.—
continued.

“ such balance the parties of the first part have agreed to take one hundred
“ thousand pounds in bonds of the said Company.

“ 1. In order to comply with said agreement, the said James Bogle
“ Delap agrees to guarantee to said John Arthur Codd the
“ payment of the first sum of fifty thousand pounds mentioned
“ in the said agreement, and to give to the said John Arthur
“ Codd a banker's reference that the amount will be duly paid.

“ 2. The said John Arthur Codd upon receiving such banker's refer-
“ ence, undertakes to provide fifty thousand pounds in Canada,
“ upon a bill of exchange at sixty days, renewable for a further 10
“ period of sixty days if so desired by the said James Bogle
“ Delap.

“ 3. The banker's reference to be given by the said James Bogle Delap
“ as aforesaid, shall be to the effect that the bill of exchange
“ before-mentioned will be met at maturity.

“ 4. That before such bill of exchange shall be drawn as aforesaid, the
“ said John Arthur Codd shall prove to the satisfaction of the
“ said James Bogle Delap,

“ A. That the Company has been legally established in Canada.

“ B. That a land grant has been made by the Canadian Govern- 20
“ ment, whereby the Company will be entitled to six
“ thousand four hundred acres of land for every mile of
“ railway constructed.

“ C. That a contract for the construction of the first one hundred
“ miles of railway has been duly executed by contractors
“ of sufficient ability and financial strength, who will
“ undertake to construct and complete the first fifty miles
“ of the line before the first day of December, one
“ thousand eight hundred and eighty-nine, thereby en-
“ titling the Company to three hundred and twenty 30
“ thousand acres of land.

“ D. That ninety thousand pounds of the shares of the Company,
“ carrying with them the concessions and powers of the
“ Company, and the right of the land grant, have been
“ transferred to the said James Bogle Delap or his
“ nominees.

“ 5. That in case the said James Bogle Delap shall be called upon to
“ pay the said sum of fifty thousand pounds, the said John
“ Arthur Codd will deposit with him ninety thousand pounds of
“ the capital stock of the said Company, together with the benefit 40
“ of any land grant that may then have been earned, and also the
“ contracts before referred to for the construction of the said
“ railway.

“ 6. In consideration of the said James Bogle Delap carrying out the
“ matter as above-mentioned the said John Arthur Codd will pay
“ the said James Bogle Delap for giving such guarantee as afore-

“ said the sum of five thousand pounds in cash payable out of RECORD.
 “ the proceeds of the first issue of bonds, and five thousand
 “ pounds in shares of the capital of the said Company, but if No. 26.
 “ the said James Bogle Delap shall be called upon to pay the said Judgment of
 “ sum of fifty thousand pounds, the said John Arthur Codd shall Burton,
 “ pay interest at ten per cent. per annum, and an additional sum J. A.—
 “ of five thousand pounds in cash. continued.

10 “ 7. If required by either of the parties hereto a formal agreement
 “ shall be prepared embodying the above terms, and in case any
 “ difference shall arise the same shall be referred to Augustus
 “ Beddall, Barrister, 1, New Court, Lincoln’s Inn, who shall
 “ settle such agreement on behalf of both parties, and whose
 “ decision shall be final.

“ (Signed) James Bogle Delap.
 “ (Signed) J. A. Codd.

“ July 20th, 1889.”

The Plaintiff Delap alleged that material facts were concealed from him, and that the solicitors were at that time acting for Codd and had entered into the agreement to share the profit ; and in September that year one of the firm
 20 proceeded to Canada with the £50,000, or authority to draw for it, and in connection with Codd represented that he was now prepared to carry out his agreement ; but, as I have already said, the Directors declined to allow it, as the time had expired. That agreement was therefore also entirely at an end ; and Stevens then suggested a new agreement, whereby he and his nominee would secure the control of the undertaking ; whereupon the contracts I have referred to were executed, the first being a contract to complete the construction of the road, and the second to settle with Sproule and others, who were the contractors in charge of the work, and had completed a considerable portion of it.

The Defendant Charlebois on that occasion, it is said, agreed to carry out
 30 the same arrangement with respect to the payment to Codd which the former shareholders had agreed to do under the agreement of the 6th of March, 1888, but only out of the £150,000 when paid, and subject to certain deductions then agreed upon, but he subsequently refused to execute any binding contract to that effect.

Under the circumstances above detailed, it becomes difficult to see how the contracts made by the new Board of Directors, with the full consent of all the shareholders, could at any time have been impeached on the ground of fraud, still less on the ground of its being *ultra vires*. I am of opinion therefore that the first claim fails.

40 The second claim I find it very difficult to understand, and think it must be founded on a misapprehension of the facts.

As I understand these facts, Stevens having Delap’s money in hand, and in anticipation of the proposed transfer to him, paid, by the hand of Charlebois, to the retiring Directors a sum of money equivalent to the balance due upon their shares, which amount (if intended to make their shares paid-up shares) was very properly paid into the coffers of the Company, and at once became part of their assets and could have been disposed of by them in any legitimate

RECORD. way which the directors thought proper ; and it remained there at the time the new Board came into office, and that Board paid over the £50,000, of which these payments formed a portion, to Charlebois, on account of his contract, which was duly credited by him and taken into account in Mr. Justice Ferguson's judgment.

No. 26.
Judgment of
Burton,
J. A.—
continued.

I feel at a loss to see how anyone was hurt by that transaction. The shares so paid up were transferred to the Plaintiff, or this agent Stevens, and they have the benefit of such payment ; but the balance due to those shareholders on the sale has never been paid.

I think this is really a correct version of what occurred ; but under no 10 circumstances can it be said that there was any diversion of the Company's funds. When the payment was made to Charlebois, it either became his money or he held it as agent for Stevens ; and in either case he had a perfect right to apply it to the payment of these shares, or to any other purpose he might choose to, as an agent, or as his principal might direct.

I quite agree that these sums and those mentioned in Par. 1 (b) of the Claim cannot lawfully come out of the assets or moneys of the Company, but at present I have no evidence that there has been any such misapplication.

Before proceeding to the question of lien, it is as well perhaps to inquire what grounds exist for charging that the funds of the Company have been 20 misapplied.

The sum to be paid to Charlebois under his contract				
was £200,000, equal to -	-	-	-	\$973,133
And the balance of the Government deposit	-	-		24,105
				<hr/>
				\$997,238
Less the £50,000 paid -	-	-	-	\$243,333
Government deposit	-	-	-	24,105
Rails -	-	-	-	129,574
				<hr/>
				397,012
				<hr/>
				\$600,226
To which was claimed for interest	-	-	-	22,000
				<hr/>
				\$622,226
				<hr/>

30

This sum was agreed upon and found by the judgment of Mr. Justice Ferguson to be due to Charlebois, \$622,226, but the then Plaintiff, Charlebois, was indebted to several persons, and he consented that the following sums should be paid, instead of to himself, to them :—

1st. This sum to McMichael for Codd - - \$130,055 40

In reference to this, Codd had a claim, and so far as appears, a perfectly legitimate claim, against the Company, under the provisions contained in their charter, and presumably well founded when the other shareholders agreed to pay so large a sum as a compromise (but, whether well or ill founded is not now, I think, material), which he compromised at this sum, but it is a matter of no moment to the Company, so far as the inquiry into this judgment goes, how

this was, as the amount was payable, not by them, but from the sum found to be due from the Company to the Plaintiff. RECORD.

It is quite true that, at the time Charlebois brought his action, he had not completed the building of the road ; and the Company might in strict law have set up that as a defence to this action, but fair-minded men would not have regarded it as a very creditable proceeding on their part, and besides they would thereby have jeopardised their own position with the Government and forfeited their land grant. A compromise was therefore apparently a desirable proceeding all round. No. 26 Judgment of Burton, J. A.— continued.

10 The judgment was, as above, for \$622,226.00 to be paid thus :—

McDonald and Schiller, Preston and the Crossen estate	-	\$111,829.00
To the Plaintiff - - - - -	-	380,397.00

Which latter includes the Union Bank, Frank Ross, A. Charlebois, the Quebec Bank, and the four shareholders in payment of the balance of their stock.

The 3rd and last charge on the fund, Codd's claim for	-	\$173,333.33
Reduced to - - - - -	-	130,000.00

Which exhausted the balance of the sum due to the Plaintiff Charlebois, but not one penny of these sums was abstracted from the assets of the Company. 20

A sum of \$3,000 was, as I understand the evidence, deposited with the Defendants, to meet outstanding right of way claims, and an allowance was made to the Defendants for the work unfinished.

I confess that I find myself unable to discover what there was which could be regarded as *ultra vires*, either in the contract or in the judgment ; but, as I am differing from the Chancellor and also with two Members of this Court, I desire, at the risk of being thought tedious, to re-state my reasons more fully.

I quite agree that the contract with Charlebois, having regard to the facts that he had until immediately before its execution been a Director of the Company, ought to be scanned with great care. I might even say with suspicion ; but, approaching it in that spirit, there is nothing in the evidence to show that any fraud was practised, and it cannot be surmised. That the sum agreed to be paid as the contract price was unreasonable is not alleged or proved ; and the best corroboration of its not being so is to be found in the fact that the old Board proposed to construct the road for the sum of £200,000, paying to Codd, if he had carried out his contract, \$173,333.33 for raising the funds. 30

It cannot be pretended that, if that negotiation had been carried out, the payment of that commission would have been *ultra vires*.

We come then to the arrangement of the 16th of September 1889 and the purchase of the shares of the then existing shareholders. 40

That arrangement, whatever may be its merits or demerits, originated in the fertile imagination of Mr. Chas. Stevens ; it was done with a view of controlling the company and directing its operations.

The directors were all business men, cognizant of everything that was being done, and were the only shareholders of the Company. Their selling out on the terms they did was not a fraud on the Company, and there were no other

RECORD. shareholders whose interests might by any possibility be affected. There was no idea or intention to allot further shares, and there is not the slightest pretence that any fraud was intended upon anyone. Mr. Stevens' or Mr. Delap's money, so far as the unpaid portion of the stock was concerned, was paid into the coffers of the Company and became part of its assets.

—
No. 26.
Judgment of
Burton,
J. A.—
continued.

Mr. Stevens thereby became (in effect) the Company ; and his Board of Directors in good faith entered into a contract with the Defendant Charlebois to build the road for £200,000, less the £50,000 which had been expended.

What is there illegal in that, assuming it all to have been done in good faith, which is not questioned ? 10

It has been suggested that because the sum of \$130,000, and the sum to be paid to the retiring directors, were to be paid by the contractor, the balance only of the contract price was to be looked at as the sum expended on construction ; but surely this is not a *non sequitur*. Pushed to its logical conclusion, it would follow that any contract, under which the contractor receives a large profit over and above the sum actually expended by him in construction, would be liable to be impeached.

If I am right in these conclusions, then the question of *ultra vires* falls to the ground ; with the sole exception of the lien contracted for under Section 4. As to this, after the best consideration I have been able to give to the matter, I am of opinion that it was, if illegal, a point to be raised as a matter of defence in the former action ; and if there is any error in the judgment in that respect it should have been set right on appeal, and could not be questioned in this suit.

I have spoken, as the parties have spoken, of this judgment as a consent judgment, but one cannot fail to see that it was a warmly contested judgment, and that there was not the faintest pretence for saying that it was in any respect collusive. I have therefore come to the conclusion that it stands on the same footing as a judgment *in invitum*, and that it cannot be modified or controlled as has been done by the judgment appealed against, and that as to this portion of the judgment the appeal should be allowed. 30

I have endeavoured to confine myself, as much as possible, to the principal matter calling for decision in this Appeal, viz. : the right of the Company to impeach or vary the judgment. I have not, therefore, considered a point which I apprehend is still open in an independent proceeding, as to whether by reason of his fiduciary position as a director of the Company, Codd would have been disqualified from asserting as against the Company any claim for the \$130,000 referred to in the judgment, and whether it is open in this suit and at this stage for the Court to make a declaration in reference to it. I therefore express no opinion upon it. In any proceeding to that end, it would probably be a pertinent inquiry whether he was originally entitled to anything for services rendered to the former Company which is made a charge under the Company's charter. 40

The claim of the other Plaintiffs, Delap and Mrs. Mansfield, is that they were the holders, as pledgees, of bonds duly issued, and were consequently entitled to a statutory priority and charge over all the assets of the Company. I have seldom read a case more calculated to excite one's sympathy for these

unfortunate victims, and if I could see my way at all to granting them any relief it would afford me most sincere gratification. RECORD.

I have, however, after reading and re-reading the evidence with great care, been unable to find anything which sustains the allegations in their Statement of Claim. No. 26.
Judgment of
Burton,
J. A.—

These allegations are to be found in paragraphs 26, 27, and 28 of that Statement :— continued.

10 “ 26. All such moneys, so advanced by the Plaintiffs Delap and Mansfield, were so advanced by them upon the express agreement that “ the same should be repaid out of the moneys to be realised from the sale “ of bonds issued or to be issued by the Company.

“ 27. Subsequently to the month of September 1889, the Company duly “ issued Bonds of the Company to the amount of \$1,250,000, and executed a “ mortgage deed, securing the same upon the railway of the Company, constructed and to be constructed, and all other property, assets, rents, and “ revenues of the Company, both present and future, and the right to all “ subsidies of land when granted to the Company by the Dominion Government, such mortgage bearing date the 2nd day of June 1890, being “ made by the Company for the purpose aforesaid to the Defendants the 20 “ Right Honourable Eric Frederick Baron Gifford, and Robert Lothian “ Curzon, as trustees.

“ 28. Immediately upon the issue of the said bonds the same were duly “ deposited and pledged by the Plaintiff Company with the Plaintiff Delap to “ secure the moneys then already advanced, and thereafter to be from time to “ time advanced as aforesaid by the Plaintiffs Delap and Mansfield, and the “ same have ever since been and still are held by the Plaintiffs Delap and “ Mansfield to secure the moneys aforesaid and the moneys advanced by “ other persons to the said Company, and the Plaintiffs Delap and Mansfield “ have always been, together with such other persons not parties to this 30 “ action, and they were at the time of the action and judgment hereinafter “ mentioned, entitled to a lien and charge upon the whole bond issue of the “ Company in their hands, for the moneys so advanced by them, and “ interest thereon, and for the moneys advanced by other persons as “ aforesaid, of which the Defendants Charlebois and Codd were always “ well aware.”

I may say, in passing, that it seems difficult, on Delap's theory of his title to the bonds, to understand how he claims also to hold the bulk of the shares in the Company, and to control its operations. The shares, according to the contention, were merely held as security until he obtained the bonds.

40 In order to make my statements intelligible, it becomes necessary to refer somewhat in detail to the origin of Mr. Delap's connection with this unfortunate transaction.

I have, early in this judgment, already referred to the agreement made between Codd and the Plaintiff Delap, under which the latter agreed to become responsible for £50,000 under certain conditions, viz :

1. That the Company had a valid Charter.
2. That a land grant had been made for 6,400 acres of land per mile.

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Judgment of
Burton,
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continued.

3. That a contract had been entered into for the construction of 100 miles of railway, fifty to be completed by the 1st December, 1889.

4. That £90,000 of the shares of the Company should have been transferred to him.

5. That in the event of his being called upon to pay the £50,000, Codd was to deposit with him an additional £90,000 of stock.

In consideration of this guarantee, Mr. Delap was to receive £5,000, payable out of the proceeds of the first issue of bonds, and £5,000 in shares ; but if he was called upon to pay, he was to receive an additional £5,000 in cash, and interest at 10 per cent. per annum. 10

The only security mentioned in the contract is a transfer of a certain sum of the shares of the Company ; and, although Mr. Delap says in his evidence that he did not know the difference between shares and bonds, it is difficult to understand that, when the distinction is so pointedly referred to as it is in this memorandum.

It is true that he now blames his solicitor for not seeing that he was made perfectly secure, but men of very slight knowledge of the world must be well aware that any venture, for which a large commission such as that to be paid here is stipulated for, must be attended with some risk ; and I have no doubt that the large land grant placed the transaction in the eyes of these sanguine 20 adventurers beyond all risk or loss. "There were millions in it," to quote the language of Colonel Sellers. However that may be, when Mr. Charles Stevens accompanied Mr. Codd back to Canada the whole thing fell through, as the Directors refused to entertain Mr. Codd's offer, the time for its completion having expired, and he not being in a position to give a banker's guarantee.

When this occurred, Mr. Stevens looked round for some new arrangement and he carried out the project whereby the directors were replaced, a new board elected, and the contract with Charlebois entered into.

I have no doubt that, upon this arrangement coming to the knowledge of Mr. Delap, he might have repudiated it ; but that could not have entitled him to 30 claim a lien on the bonds.

Whether he ever became aware of the not very creditable arrangement then made between Mr. Charles Stevens and Mr. Codd, is not shown ; and I think it very unlikely that he did. But he must have known that the new arrangement in effect placed the road entirely under his control, as purchaser of the entire paid up capital stock ; and if money could have been found to pay the contractor it would have been a most remunerative investment.

But how did he or Mrs. Mansfield become pledgees of the bonds ? Here again, I must, at the expense of being tedious, enter pretty fully into detail in reference to the issue and disposition of the bonds, and I trust the learned 40 counsel for the Plaintiffs will watch my narrative of what I conceive to be the facts, and correct me if I have inadvertently fallen into any error, which is very possible in the enormous mass of matter found in these Appeal Books, which I have had to read and consider. I am not anxious, if I have fallen into any such error to reconsider the bearing of the correct statement on the judgment I propose to give.

The mode of carrying out the arrangements in connection with the issue of the bonds and the execution of the trust deeds, was very lax ; and in the case of a Company consisting of a large body of shareholders outside of the Board of Directors, could not, I think, be possibly upheld.

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Judgment of
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J. A.—

The first resolution in reference to the issue of bonds was passed at a special general meeting of the Company on the 21st of October, 1889. I quote from the operative parts of this Resolution :—

- 10 “ Be it therefore resolved, that the Directors of the Great North West
“ Central Railway Company be authorized, and they are hereby authorized,
“ in pursuance of the said Act, to issue Bonds under the seal of the said
“ The Great North West Central Railway Company, signed by its President
“ or other presiding officer, and countersigned by its Secretary and
“ Treasurer, payable at such time and in such manner, and at such place or
“ places in Canada, or elsewhere, and bearing such rate of interest as the
“ Directors shall think proper, and to issue or 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 may be able to obtain, *for the purpose of raising*
“ *money for the purpose of prosecuting the said undertaking.*
20 “ Provided that the amount of bonds so issued, sold, or pledged, shall
“ not exceed twenty-five thousand dollars per mile, to be issued in
“ proportion to the length of the railway constructed or under contract to
“ be constructed. And be it further resolved, that the mortgage deed
“ now produced and initialed by the President, be approved ; that the
“ Directors may use the same as security for said bonds, to be, by them,
“ issued with such modifications, *amendments or alterations as they may see*
“ *fit to make.*—Carried.”

30 The words italicized, show, I think, very clearly, that no power was conferred or intended to be conferred upon the Board pledging the Bonds for past debts, but solely for the purpose of raising money for the purpose of prosecuting the undertaking, whilst the words at the end of the resolution show the unusual and extraordinary discretion vested in the Directors in reference to the trust deed of which they had approved. It will be seen that the Directors instead of exercising the discretion delegated it to the President.

This deed was executed in favour of the Imperial and Foreign Investment and Agency Corporation, who at first undertook the floating of the bonds ; but they failed to do so and asked to be relieved of their trust. Thereupon, without calling a fresh general meeting the first issue was cancelled, and under the discretionary power, to which I have referred, the Directors executed a new Trust Deed with several alterations and substituting Lord Gifford and Mr.
40 Curzon as trustees for the new issue.

I have shewn that the Directors were simply authorized to sell or pledge the bonds for cash, to carry on the undertaking ; and that this was so understood by the Directors is manifest when we refer to the Power of Attorney given by them to the President.

In that instrument the President was, *inter alia*, authorized to sell and dispose of the bonds (with this proviso—that he should not make any sales except for such price as the Board should agree to), and to borrow money on

RECORD. the security of the bonds, and to receive and dispose of the money so borrowed
for the benefit of the Company.

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continued.

Now, I am not saying that under this authority the President might not have pledged bonds to Mr. Delap or Mrs. Mansfield for fresh advances up to the time of the issuing of the injunction, but I have searched in vain for any authority from the Board to pledge bonds for any new advances by either of these Plaintiffs, and the President himself denies that any such pledge was made ; but, on the contrary, that the whole of the bonds, with a portion retained in this country for the purpose of being handed to the contractor in the event of his exercising his option, were sent to England for the purpose of being deposited with the trustees, who were undoubtedly the proper custodians of them, assuming the Trust Deed to be a valid instrument. 10

I have said that there is no minute of the Board authorizing a pledge to either of the Plaintiffs, for advances, and I am of opinion that a pledge for past advances would have been illegal.

We now come to the evidence on which the Plaintiffs base their claims.

I should mention in this connection that the bonds were prepared in England, and were sent out by the solicitors in charge of their managing clerk to be executed in this country and returned to them, presumably as Solicitors for the Company or for the Trustees, for safe keeping until negotiated. I say 20
“presumably,” because that is the proper inference in the absence of evidence ; and then we have positive evidence that that was the fact.

I have no doubt that it was then, for the first time, that the idea suggested itself to the Solicitors that (being in possession of the bonds) they might advance a claim for a lien.

*[sic. Qy,
significant.]

On this point, the evidence of their managing clerk is very insignificant.*

He says that he had no personal knowledge of any of these matters until 1890, the same year in which he was sent by his principals to Canada to get the blank bonds sealed by the Company and to bring them back to England, and although he was in no way brought into this matter until 1890, he has no hesitation in swearing that “as security for moneys advanced by him, it was 30
“always the arrangement from the inception of the matter that Mr. Delap
“was to have those bonds as soon as ever they were issued, consequently I
“was simply carrying out the original arrangement in their being handed to
“me.”

Now, whatever claim Mr. Delap may possibly have to a lien on the bonds it certainly formed no part, as we have seen, of the original arrangement ; and I think the first portion of this witness’ answer more correctly expressed his idea of the legal position :—“the mere handling of the bonds made it a first charge.”

If what occurred in this case is sufficient to create a first charge on the 40
bonds of a Joint Stock Company, it is about time for the Legislature to interfere. There will be no security for parties who have taken stock in such undertaking, or to the creditors of the Company.

There is no authority by the Board of Directors (even if they had the power as to past advances) to pledge any of these bonds, and there is no evidence that any of the fresh advances made by any one were made either as purchasers of bonds or on the faith of their being specifically secured by a pledge of them.

I am of opinion, therefore, that the Plaintiffs have failed to make out a case as pledgees of the bonds, and that the appeal on that branch of the case must also be allowed, and that the action of Delap and Mrs. Mansfield as to the lien on the bonds should have been dismissed with costs. The appeal of Crossen & Co., in my view of the main appeal, should be allowed with costs, and I think that the Claimants upon the fund, who were made Defendants, must get their costs.

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No. 26.
Judgment of
Burton,
J. A.—
continued.

As to the mis joinder of causes of action, in which some of the Plaintiffs had no interest, it is clear that upon the motion either to stay the proceedings until the parties had elected, or to dismiss the action, it should have been successful.

Our Rules 300 and 301 are precisely similar to Rules 1 and 4 of Order XVI. Rule 340 is similar to Order XVIII. In construing these rules Lord Justice Bowen, who was in the minority in the Court of Appeal, uses this language:—
“We have to deal first with the right constitution of this action, *i.e.*, the joinder of the right parties. I cannot think it even could have been intended that any number of plaintiffs might take out one writ and join in it any number of causes of action wholly disconnected with one another, which might be vested in them respectively.”

It appears to me that the language used still keeps in sight that, after all, the object of an action is relief in respect of a cause of action, and persons ought not to join as plaintiffs unless in the hope of making themselves out to be interested in such causes of action, either jointly or severally or in the alternative.

Then in reference to Order XVIII., our Rule 340, he says: “That rule, assuming the action to have been rightly constituted under Order XVIII., only provides that when parties have been rightly joined under that rule what may be done to them as to joining separate causes of action,” and he proceeds to show how Lord Selborne emphasized the distinction which he had pointed out between the objects of these orders when he said that “to bring into one claim distinct causes of action against different persons, neither of them having anything to do with the other (and only historically connected in the way he had suggested) and not been contemplated by Order XVIII., R.I., which authorized the joinder of, not of several actions against distinct persons, but of several causes of action.”

The case with which the Court was then dealing had a very persuasive ring about it; because, as was suggested, some of the bales were unmarked, and it was urged that if separate actions were brought the Defendant might attribute those unmarked bales to the particular Plaintiff suing and to meet his claim, but it was shewn to be more apparent than real, and the learned Lords who delivered judgment in the House of Lords were unanimous in the opinion that the several consignees could not join in bringing the action.

That case was not dissimilar in its facts to that in which I expressed the opinion that such joinder was not warranted.

The motion, therefore, which was made in this cause was improperly dismissed, and should have been appealed.

The case was argued before us as if the same question was raised by demurrer, and, if that had been so, it is quite clear that that demurrer should

RECORD. have been disposed of by the learned Judge before whom it came for argument and not postponed to the hearing, inasmuch as it involved the disposal of the action, and would, if successful, have avoided the heavy expenses of a trial and the attendance of witnesses.

No. 26.
Judgment of
Burton,
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continued.

Assuming it to be a demurrer of that kind, I devoted a good deal of time to the consideration of the question of whether it could be raised in that way, but upon examining the demurrer I find that it was not in terms framed to raise the question. As I read the demurrer, though inartificially pleaded, it seems to be confined to discussing the right of Delap and Mansfield to enforce the claim which the Company are endeavouring to enforce, and, so regarded, I can see no answer to it. They have no causes of action in regard to it. It might be that Delap, as a shareholder, but not as pledgee of bonds, might, on showing a refusal of the Company to take proceedings, have had *locus standi*; but he, controlling the Company, has instituted the proceedings taken by the Company, and has no separate cause of action. The demurrer, as so construed, should be allowed.

I am by no means convinced that the objection was not open to demurrer.

No. 27. OSLER, J. A.:—
Judgment of
Osler,
J. A.

I agree in the judgment of the Chancellor for the reasons given by him.

20

No. 28. MacLennan, J. A.
Judgment of
MacLennan,
J. A.

The principal question on this appeal is whether the judgment of the 28th September 1891, by consent, and the further judgment of the 29th February 1892, in invitum, obtained by the Defendant Charlebois against the Plaintiff Company, for the sum of \$622,226 and interest, was properly set aside, and that appears to me to be a very important question indeed.

The action upon which the consent judgment so set aside was obtained was brought upon a contract, for the construction of fifty miles of the railway for a named sum, duly executed under the common seal of the Company, with the full knowledge and consent of all the Directors, who were also at the same time all the Shareholders of the Company; and the allegation of the Plaintiff was that he had performed the work and was entitled to be paid the contract price. In this action, after long discussion by eminent solicitors and counsel on behalf of the respective parties, the terms of a judgment were agreed to, and by consent these terms were made a judgment of the Court.

Five months afterwards, certain defaults having been made in compliance with the terms of that judgment, upon motion duly made by the Plaintiff therein upon notice to the Defendants, and after hearing counsel on their behalf, a further judgment for the payment of the same judgment debt was pronounced by the Court; this time not by consent, but in invitum of the Company. These are the judgments which have been set aside. There is no pretence that any fraud or deception was practised by the Plaintiff on the Court, or upon the Company or its officers, either by false evidence or otherwise, in procuring those judgments. The first judgment is not set aside altogether. What is declared is that it is for more than is justly due, by three named sums; and that the

construction contract and the judgment are, to the extent of these several sums, *ultra vires* of the Company ; and that the judgment ought to be reduced by these sums and certain other sums ; but, except so far as varied, it is to stand. The second judgment is swept away altogether.

I have come to the conclusion that this judgment is erroneous, and that the appeal ought to be allowed, with one exception, which I shall hereafter indicate.

I think none of the cases cited by the learned Chancellor, or by the learned Counsel for the Respondents, is any authority for the judgment ; nor do I think
10 that any such authority can be found.

Prior to the 16th September 1889, Charlebois had been a shareholder in the Company, but it is conceded that on that day he parted absolutely with all his shares and ceased thereupon and thereafter to be a shareholder, or to stand in any other relation towards the Company than that which arose out of the construction contract of that date and the collateral contract also of the same date, relating to the former contract with Sproule.

Before the making of these two instruments, Codd and Stevens had become the owners of all the shares of the Company, a new Board of Directors had been elected, and a sum of \$243,333 had been paid into the Bank by those two
20 shareholders to the credit of, and had become the actual money of, the Company. It may be that the parties had not intended the money to become the Company's money ; but, whether they intended it or not, I am clearly of opinion that such was the effect of what they did. I agree with the Chancellor in thinking that that money was paid in for the purpose, in connection with the 25 per cent. resolution, of making the shares paid-up shares ; and, as between the Company and the new Directors, I think that was the legal effect of it, and an effect which could not be recalled or undone.

It may then be asked how, if that be so, the vendors of the shares were to get paid, or how they got paid ? I do not think that is a matter with which the
30 Company was at all concerned. What alone concerned the Company was that if the shares were to be paid up, the Company should get the money ; except so far as a discount was lawfully agreed to be allowed.

But, in truth, all the shareholders except Charlebois did get paid for their shares. They sold to him for agreed sums, of which they received part in cash and the remainder on orders upon the Company to be paid out of the money which might become due to the contractor upon his contract.

When, therefore, the contracts between the Company and Charlebois came to be executed, the situation was that the two contracting parties were at arms' length, and could contract with each other like strangers ; there being no relation
40 of trust or confidence or duty between them.

The principal contract was for the construction and equipment in running order, to the satisfaction of the Minister of Railways and of the Government Chief Engineer, by the 1st of December following, of fifty miles of the Company's line in consideration of £200,000 sterling, of which £50,000 was to be paid down and the remainder as therein provided. The other contract was that Charlebois was to settle with the former contractor Sproule, and to indemnify the Company as against him and against the debts of the old Companies.

Now these contracts have nothing objectionable on the face of them (apart
p. 5240.

RECORD. from the lien clause, which I pass over for the present). If they had been made with any other person than Charlebois, I fail to see what objection could be raised to their validity, on the ground of *ultra vires* or otherwise. It is so much work and materials, right of way, etc., for so much money.

No. 28.
Judgment of
MacLennan,
J. A.—
continued.

It is said, however, that the Company could have made, and ought to have made, a better bargain for construction than they did ; that the true bargain was that the £200,000 included a secret profit to Codd of \$173,000, and also included part of the price of the shares which Codd and Stevens had agreed to pay to Charlebois, so that Codd and Stevens were enabled to acquire the shares as fully paid-up shares at the expense of the Company, and that in those respects the contract was a fraud upon the Company.

Now, I think having regard to all the evidence of what took place in those days of September 1889, including the documents which were then signed, that the true bargain between the parties really was such as has just been mentioned. Charlebois had purchased the shares of his co-shareholders for \$226,000, which he became liable to pay to them and part of which he did afterwards pay, and he sold the same shares to Codd and Stevens as well as his own shares. Valuing his own 700 shares at the same rate, they would be worth about \$37,000, making the whole value of the shares sold by him \$263,000.

The true bargain, therefore, so far as Charlebois was concerned, was that he transferred shares worth \$263,000, and he contracted to build and equip 50 miles of railway. For this he was to receive £200,000, of which, however, \$173,000 was not for his own benefit, but for the benefit of Codd, a director of the Company. It must be conceded upon the evidence, too, that it was not contended that Charlebois was to be paid for his shares and to have the £200,000 also. Such being the substance of the transaction, the form in which it was put was that of transfers, for a nominal consideration of the shares to Stevens and Codd or their nominees, a construction contract between the Company and Charlebois for £200,000, an actual payment by the Company to Charlebois of \$243,333, and a receipt and release for that money given by him to the Company as part payment 30 of the £200,000.

Now, there was nothing immoral in this transaction on Charlebois' part, except as anything and everything that is illegal is in a very proper sense immoral. What I mean is that there was no deceit practised by Charlebois upon anyone. He dealt with the Company at arms' length, through its lawfully constituted Board. What he did was known to all the Directors, and to all the Shareholders. There was no other human being at that time in existence who had any interest in the business but those who were carrying it out.

There was nothing secret or hidden about any part of it. One of the Company's Directors, who took an active part in the business, was an able and experienced Queen's Counsel, and there were at least two other lawyers also concerned. Charlebois was giving full value for all he was to get. He probably did not know, and perhaps could not have understood if it was explained to him, that the shareholders were not, in law, the same thing as the Company. He was selling his shares for a fair price, and was to build and equip the road for a fair price. He was also to pay Codd \$173,000 ; and for all that he was to have £200,000. The other parties to the dealing, the Company, Directors, Shareholders, and all chose to put the whole matter in the form of the construction

contract, and Charlebois made no objection. He was content to take the Com- RECORD.
pany as his debtor for the whole sum which he was to receive, not only for the
shares which he was selling, but also for the work of construction which he No. 28.
undertook to do. Judgment of
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I have spoken of the \$173,000 as a “secret” profit to Codd, but there was nothing secret about it. The only one who could be supposed not to know about that was Stevens; and it is shown that he also knew of it, either at the time of the signing of the contract or a few days afterwards, as appears by his letter to Dr. McMichael of the 24th September 1889. continued.

10 It follows from all this, that when Charlebois received the sum of \$243,333 he received money to which he was honestly entitled, and for which he had given and agreed to give full value. It is true it was the Company’s money he received, but it was paid to him by the Company’s cheque with the knowledge and consent of the Company, and by the act of its governing body, and with the knowledge and consent of all the shareholders.

He has parted with his shares, valued at \$263,000. He has bound himself to build 50 miles of the line. He is to pay \$173,000 to Codd. And, for all that, he is to have £200,000, of which he has actually received \$243,333.

Now, whatever else may be said of this construction contract, in my judg-
20 ment it cannot be said to be *ultra vires* of the Company. On the face of it, it was good. The railway board could agree for the construction of the fifty miles at any price it thought fit. That was a thing, unquestionably, within its power. It might be improvident. The contract price might be excessive. It might even be fraudulent, but it was not *ultra vires*.

The Board of Directors, dealing with Charlebois at arms’ length, openly and deliberately made this contract with him and covenanted to pay him £200,000. Is there any ground on which it can be said that this contract was not perfectly valid and binding on the parties at law? Is it not clear that the Company could hold Charlebois strictly to its terms, that he could not get back his shares, nor
30 refuse to perform the work of construction, on any ground whatever? Is it not equally clear that it was also binding on the Company at law? It was their deed, duly signed, sealed and delivered by the governing body of the Company; and without any fraud or deceit practised by Charlebois.

In my opinion it was clearly binding on Charlebois both at law and in equity, and without any possible ground on which he could be relieved from it by any Court or on any terms.

And I think it is also unquestionable that it was binding on the Company at law; and, not only so, but that no action at law would have lain to enable them to recover back the \$243,333 which had been paid to Charlebois. Proof of
40 the execution of the deed and the payment of the money, as the deliberate acts of the governing body, in the absence of all fraud and deceit by Charlebois, would be a complete answer to any action at law to recover back the money. It could not be recovered back as an *ultra vires* misapplication of the Company’s money, for it was expressly paid and received for construction and was a legitimate and lawful payment. It is not contended in the present action to have been an *ultra vires* payment, and the formal judgment of the Court expressly declares that Charlebois was and is bound to give credit for it on his construction contract. Yet the learned Chancellor holds, and the judgment declares,

RECORD. that the application of that money to the extent of \$226,000 by Charlebois in paying for the shares which he had bought from his associates, was *ultra vires* of the Company.

No. 28.
Judgment of
MacLennan,
J. A.—
continued.

If, as I think it is clear it is, the \$243,333 became Charlebois' money, and could not be recovered back from him, he could do what he pleased with it; and the Plaintiffs have no right to enquire or to question in this action what he did with it.

Before further considering the transaction of September, it will be well to point out that at that time the Plaintiff Delap had no relation to the Company. He was a mere creditor of Stevens, or of Codd and Stevens. He had lent them 10 money for which he was to have security, and for the use of which he was to be well paid by them, but he had no dealings with the Company. The money which Stevens and Codd produced on that occasion has been spoken of as Mr. Delap's money, but that is not strictly accurate. It was no longer his money, but money which he had lent to those other persons, and which they had borrowed from him on terms which, so far as I am able to see, did not concern either Charlebois or the Company. And I think it clear, therefore, that the transactions of September are not embarrassed in any way by any right or claim which then existed of Mr. Delap against the Company.

I think it well also here to point out that, of the money which Codd and 20 Stevens paid in to the credit of the Company on the 16th September, \$225,000 must be regarded as having been paid in for the purpose (in connection with the 25% discount) of making the shares paid-up shares. They had previously been paid up to 30%. Adding the discount of 25%, it left 45% (or \$225,000) to pay them up in full. They paid in altogether \$243,333, or \$18,333 more than was necessary. By including the price of the shares in the £200,000 to be paid by the Company for construction, the parties made the Company liable to pay for the shares instead of themselves, except to the extent of the sum of \$18,333, which they had paid in beyond the \$225,000.

It was no part of the bargain with Charlebois that he was to make the 30 shares paid-up shares. He was selling his shares just as they were; namely, as shares paid-up to 30% only, for £263,000; and it was the purchasers Codd and Stevens who chose to make them paid-up shares by means of the discount and the money paid by them to the credit of the Company. Therefore, Codd and Stevens, as the result of what took place, became the owners of 5,000 fully paid-up shares, and cast upon the Company the burden of paying for them to the extent of the difference between \$263,000 and \$18,333, or about \$245,000, which they have never paid to the Company, and which they still owe.

It may be that Delap could successfully contend that Stevens was his agent in the September transactions, and that the shares which Stevens then acquired 40 he acquired for him. If so, he must assume responsibility for all that his agent did in acquiring them, and whatever the Company could do in its corporate capacity. Delap, claiming the shares as acquired for him could personally no more find fault with the transactions of September than Stevens, who was one of the chief actors therein.

Now, unquestionably, as between the Company and its directors Codd and Stevens, the former had according to the authorities, the latest of which is *Mann v. The Edinburgh Tramway Company* (1893) A.C. 69, a right to complain of

the transaction with Charlebois, notwithstanding that the latter were then the only shareholders, and that the transaction had the full assent of the Board; and, although there was no fraud or deceit practised by Charlebois, as against the Company those gentlemen had no right, by making it part of the contract price with Charlebois, to pay for their shares in part with the Company's money; nor had Codd any right, as against the Company, to make the contract an occasion and means of a profit to himself of \$173,000. Therefore, if immediately after the 16th of September an action had been brought by the Company against those two directors, they would have been decreed to account to the Company for the value of the shares so bought with the Company's money, or at least for so much of the Company's money as was improperly paid therefor; and Codd would also have been declared a trustee for the Company of the \$173,000. I apprehend also the Company would have been entitled to elect to avoid the contract altogether, even as against Charlebois; not on any ground of actual fraud or deceit on his part, but on the ground of the equity between the Company and its own directors, with a knowledge of which Charlebois was affected.

Undoubtedly, however, it was optional with the Company either to affirm or to rescind the contract with Charlebois, while Charlebois had no corresponding right. The Company could either have set the contract aside, or they could hold him to it, and seek their redress exclusively against the directors. The Company could say:—"We will let the contract with Charlebois stand, but we will call upon Codd or Stevens to pay or indemnify the Company against the \$245,000, the unpaid price of the shares; and we will claim the benefit of the \$173,000 which Codd is to receive;" or they could seek rescission against Charlebois. If they did that, however, they were bound to do it promptly, before he had entered upon his work, and so had altered his position.

His contract was good at law. The payment of \$243,333, which he had received, was also good at law. The Company's ground of relief against him was equitable, not legal. Their equity was an equity against their own Directors primarily; and against Charlebois by reason of his knowledge of the whole matter; and I think it is clear that the Company could only obtain rescission and the recovery of \$243,333 on the terms of restoring to Charlebois the shares which he had parted with as a part of the transaction. It would be an essential part of the Company's case that the transfer of the shares had been a part of the transaction; and, therefore on the simple principle that whoever seeks equity must do equity, if they would have back the money they must see that the shares are restored.

Nothing is better settled than that the condition of rescission, even in cases of fraud, is restitution. *Clark vs. Dickson*, E. B. and E. 148; *Sheffield Company, vs. Unwin*, 2 Q. B. D. 214; *re Ambrose Lake Tin Company*, 14 Chy. D. 390-394; *Chynworth's Case*, 15 Chy. D. 20; *Western Bank vs. Addie*, L. R. 1, H. L. C. 164; *Urquhart v. McPherson*, 3 A. C. 831.

But the Company did not seek rescission. One reason for that, no doubt, being that Codd continued to control the Company until some time in 1893. That however is a reason which did not, so far as I see, concern Charlebois. Instead of seeking to rescind, instead of objecting to the contract as invalid, the Company allowed Charlebois to go on with the work of construction for two years.

RECORD.

No. 28.

Judgment of
MacLennan,J. A.—
continued.

RECORD.

No. 28.
Judgment of
MacLennan,
J. A.—
continued.

In the meantime, the shares or some of them had passed into other hands ; and, on the 11th September, 1891, Charlebois not being paid for his work, brought an action. Now, it cannot be denied that, at that time, Charlebois had done a great deal of work under his contract. He claimed he had finished it and was entitled to be paid in full, but that was disputed.

The judgment now in review recognises that the contract is valid to some extent, that it was binding on Charlebois to the full extent, and that he was entitled to be paid something. That being so, what means were open to him to have his claim against the Company tried and determined ? There were not means but the bringing of an action, and that he did. He could not influence or control the Company's defence. He could not compel them to set up any particular defence, if he was so inclined.

If they had set up any defence in respect of the shares, the price of which was included in £200,000, that could not succeed for several reasons, as I have already indicated ; or, at all events, that would be a question in the action. For anything that Charlebois knew, Codd and Stevens might have long ago made good the \$245,000 to the Company, as he knew they had made it good in part, namely to the extent of \$18,333.

If they had set up any defence as to the \$173,000, that was a question between the Company and Codd, which could not be settled without Codd being a party, and which could not be and was not concluded as between the Company and Codd in or by that judgment. So far as Charlebois was concerned he was bound to recover it for the benefit of Codd, and to pay it for him to Dr. McMichael ; unless the Company chose to object and to establish that objection as against Codd and his trustee.

I think it clear that that was the time for the Company to set up the matters of the present action, and that no valid excuse for not doing so has been given. Charlebois could do nothing by way of re-constituting the Company's board, and he was not bound to defer bringing his action until it was (if ever it should be) differently constituted. It was sufficient that he and the Company were independent of each other, and that each was free to contend for their respective rights against each other before the lawfully constituted Courts of the Province.

That being so, I am unable to see any ground whatever in this case, for holding that the judgment in that action (brought upon the Company's contract for payment) is not binding, in the absence of fraud in procuring it, as in any other case. I fail to see any other way in which Charlebois could have proceeded than the way he adopted.

With regard to its being a consent judgment, I do not think that makes any difference. The evidence satisfies me that the case was fought against most strenuously, by and on behalf of the Company by able Counsel acting *bonâ fide* and that the consent judgment was the result. I think, if the Company had set up in that action all the matters which they have brought forward in the present one, they would have failed ; and it is *a fortiori* that, not having then set them up, they could not bring them forward afterwards.

The defence of *ultra vires* must be set up in the same way as any other defence. This is necessarily so, for it is always a question for the decision of the Court whether anything is or is not *ultra vires*. If these matters had been set up the judgment of the Court would have been obtained thereon ; and,

whichever way that judgment might have been, if not appealed against, it would have been binding on the parties ; and it is now decided that a judgment by consent is just as binding as any other ; re South American and Mexican Company [1895] 1 Chy. 48.

RECORD.
No. 28.
Judgment of
MacLennan,
J. A.—
continued.

The learned Chancellor felt compelled by the case of *Mann v. The Edinburgh Tramway Company* [1893] A. C. 69, to decide the case as he did ; but, with great respect, with whatever force that case and the learned Chancellor's reasoning upon it would apply to a purely collusive judgment obtained in a sham action upon a purely *ultra vires* contract, I do not think they support the pre-
10 sent decision. Charlebois' contract was a real contract. He had a *bonâ fide* claim under it. It was not a sham contract or claim. It was not *ultra vires* the Company.

It is true that the contract was one which, at one time, the Company might have repudiated and might have obtained relief against ; but, being a real and not a sham contract, and one under which Charlebois had a real *bonâ fide* claim, when an action was brought upon it, the Company was bound to bring forward whatever defences they conceived they had. And, whether judgment was obtained by consent, or by default, or after trial and decision by the Court and the exercise thereon of the judicial mind, I know of no principle or authority
20 on which, in the absence of fraud, such a judgment can be set aside in a new action. The case of the New Zealand Land Company, referred to in *Brice on Ultra Vires* is found not to be a case of a judgment at all, but of a compromise out of Court ; and therefore has no application at all.

In the present case, there was not merely the consent judgment in September, but a further judgment, obtained adversely and by no means by consent five months later.

I think it would be an unfortunate state of the law, and productive of the greatest possible confusion in the administration of justice, if judgments obtained under such circumstances as the present were liable to be opened up.

It seems to me that great part, if not all, of the difficulty arises from calling
30 and treating the construction contract as an *ultra vires* contract. It was not *ultra vires* at all in my judgment. What was wrong about it was that, for reasons of their own, it was made by the Directors for a larger sum than it ought to have been made for, and under circumstances which give the Company certain rights of action against its own Directors and also against Charlebois. Therefore Charlebois' action on his contract was no wise different from any other similar action. The Defendants were bound to defend themselves, if they desired to do so, according to the course of the Court ; and whether the judgment was by consent, or by default, or the result of a trial, can in my opinion
40 make no difference.

I am therefore of opinion that the two judgments which have been set aside (postponing for the present the question of lien) are good and valid judgments, and that the appeal ought to be allowed so far as they are concerned.

With regard to the claim of \$173,000 by Mr. Codd, the learned Chancellor finds (and I see no reason to differ from his conclusions) that no such sum was really due to him from the Company, yet it was included in the sum of £200,000 to be paid by the Company for construction. It is part of the case made by the Company in this action that this was a profit for himself, intended to be made by him out of the construction contract, which it was not competent for him as

RECORD. a Director to stipulate for or to receive; and that it is a sum the benefit of which belongs to the Company, and for which the Company ought to have credit as against Charlebois' judgment. I think the Company entitled to that relief, but only to the extent of the balance as found by the consent judgment, reduced by any further sum or sums (if any) paid between the date of the consent judgment and the commencement of this action.

No. 28.
Judgment of
MacLennan,
J. A.—
continued.

Until the Company chose to claim from Codd that sum of \$173,000, or the benefit of it, Charlebois had no option but to claim it, and when recovered to pay it to or for Codd's benefit. I think, however, there is no ground on which Codd could resist the Company's claim to the benefit of that sum, even after recovery and payment, and to be relieved from its payment altogether by a proper deduction from the judgment recovered against them by Charlebois. 10

There remains the question of lien, stipulated for in the construction contract, and provided for in the consent judgment and in the subsequent order.

I think that, as between the Company and Charlebois, the consent judgment and subsequent order are binding *quantum valeant*. If those judgments charge anything which could not in law be charged with Charlebois' claim, no doubt to that extent the judgment may be null and void; and, if so, can hurt no one, and a sale would confer no title. The only parties to the judgments in question were the Company and Charlebois, and no one else is bound by them but those parties and persons claiming under them by matter subsequent, in respect of subjects which could be and were well and legally charged. It seems to me that a judgment, regularly obtained in a court of competent jurisdiction, whether by consent or otherwise, cannot be questioned successfully by any one of the parties thereto on the ground merely that it involved something *ultra vires*. That might, no doubt, be done by other persons whose interests were affected; as, for example, the Attorney General, or other persons not parties thereto. 20

The result, therefore, so far as concerns the Railway Company, is that I think the appeal should be allowed, and the action should be dismissed, except so far as the judgment relates to the sum of \$130,000 payable to the Defendant Codd. As to that, I think the judgment should be varied by declaring that the judgment of the 28th of September, 1891, ought not to be enforced against the Plaintiff Company to the extent of the said sum of \$130,000, or any less sum to which it may have been reduced before the commencement of this action, and to that extent is satisfied and discharged as between the Company and the Defendants Charlebois, Codd and McMichael. 30

As to costs, I think it cannot be said that the Defendant Charlebois has occasioned any additional costs by resisting that part of the relief, and that the Plaintiff Company ought to pay him all his costs of the action and of this appeal. The Company ought, however, to recover against Codd some costs of the action in respect of the relief I think them entitled to against him; and I am disposed to fix those costs at \$100.00, as being the probable amount of costs of an action brought against him for that relief alone; and I think that, as between the Company and Codd, there should be no costs of this appeal.

Thus far, what I have said relates to the questions between the Company

and the Defendants. It remains to consider the case as between the other RECORD.
Plaintiffs and the Defendants. No. 28.

So far as Mr. Delap sues in a representative capacity, I think his case is the same as that of the Company. Having the Company itself as a Plaintiff, it was unnecessary for Delap to sue on behalf of himself and the other Shareholders. Judgment of MacLennan, J. A.—
The Company itself in such a case is the proper representative of the whole body of the Shareholders. *continued.*

But Delap and Mrs. Mansfield are joined as co-Plaintiffs with the Company, and they ask relief on their own behalf distinct from that sought by the 10 Company. I proceed briefly to consider the case made by them. As I understand their claim, it is that, in June, 1890, the Plaintiff Delap (and at a later period the Plaintiff Mansfield) became the holders of mortgage bonds of the Company, as security for advances made by them respectively to the Company; and that such were their respective positions before the commencement of Charlebois' action on the 11th September, 1891, and before the consent judgment obtained therein.

They say that the mortgage to the Defendants Gifford and Curzon, as trustees for bondholders, dated the 2nd June, 1890, gives the bondholders a first charge upon the Company's property, of every kind then existing or afterwards 20 to be acquired; and that the judgment purports to override that mortgage and to give priority to Charlebois over the same property in respect of his judgment.

The Appellants on the other hand set up (among other things) that these Plaintiffs have not proved their title to the bonds; and that, not having done so, they are not in a position to question the Defendant's lien upon the Company's property, or any of them, whatever they may be worth or whatever validity they may possess.

In my judgment this contention of the Appellants ought to prevail. I do not think the bonds in question were ever lawfully delivered to these Plaintiffs 30 by way of pledge or security. They were, as I think, according to the evidence issued and sent to England; not to be pledged or delivered by way of security either for past debts or for present advances, but for the purpose of being sold out and out; and that the Company never authorized any one to deal with them otherwise. It is admitted that, so far as either of them ever had possession of any of the bonds, such possession was obtained after (and not before or at the time) their advances were made. I therefore think the case of these Plaintiffs failed and ought to have been dismissed, and that the appeal ought to be allowed as against them also.

With regard to the demurrer of the Defendant Charlebois, I think if it had 40 been pressed before the learned Chancellor it ought to have been allowed. *Sands vs. Wildsmith*, (1893), I.Q.B. 771; *Smurthwaite vs. Hannay*, (1894), A.C. 494. But I think the learned Judge's attention was not seriously called to it at the trial; and so he takes no notice of it either in his reasons for judgment or in his endorsement upon the record, although it is disallowed in the formal judgment drawn up. I think therefore the Defendant must be taken to have abandoned his demurrer, and to have submitted to fight the case out at the trial on the merits as against both sets of Plaintiffs.

RECORD.

In the Court of Appeal for Ontario.

No. 29.
Order
approving of
Security of
Appellants,
Crossen and
Others,
dated
20 June
1895.

Before The Honorable Mr. Justice Osler.

In Chambers.

Thursday, the 20th day of June, A.D. 1895.

Between :

James Bogle Delap, individually and as a shareholder, on behalf
of himself and all other Shareholders of the Great North-
West Central Railway Company (except the Defendant John
Arthur Codd), Louisa H. Mansfield and the Great North-
West Central Railway Company, (Respondents) Plaintiffs ;

and

10

Alphonse Charlebois, Alexander Macdonald, William Alfred
Preston, John S. Schiller, Frank S. Nugent, the Commercial
Bank of Manitoba, the Union Bank of Canada, William
Anderson Allan, Robert J. Devlin, and John Arthur Codd,
Defendants ;

and

William James Crossen, Frederick John Crossen and Joseph
Henderson, Executors of the last Will and Testament of
James Crossen, Deceased, (Appellants) Defendants ;

and

20

The Honorable Francis Clemow, James Murray and Daniel
McMichael and the Right Honorable Edric Frederic, Baron
Gifford, and Robert Lothian Curzon, Defendants.

Upon the application of the Appellants, upon reading the certificate of the
Accountant and the order bearing date the 15th day of June 1895, and it
appearing that the Appellants have paid into Court the sum of \$500.00 to the
credit of this cause as security for the Respondents' costs of the appeal herein
to the Supreme Court of Canada from the judgment pronounced herein by the
Court of Appeal for Ontario :

It is ordered that the said security be allowed as proper security to the 30
satisfaction of this Court, and that the said appeal be and the same is hereby
allowed.

A. GRANT,
Registrar.

Issued 20th June, 1895.

In the Supreme Court of Canada.

Before the Registrar in Chambers.

Saturday the 22nd day of June, 1895.

Between :

Alphonse Charlebois, Alexander Macdonald, William Alfred Preston, John S. Schiller, Frank S. Nugent, the Commercial Bank of Manitoba, the Union Bank of Canada, William Anderson Allan, Robert J. Devlin, and William James Crossen, Frederick John Crossen, and Joseph Henderson, Executors of the last Will and Testament of James Crossen, deceased, (Defendants) Appellants ;

and

James Bogle Delap, individually and as a shareholder on behalf of himself and all other Shareholders of the Great North-West Central Railway Company (except the Defendant John Arthur Codd), Louisa H. Mansfield and the Great North-West Central Railway Company, (Plaintiffs) Respondents :

and

The Honourable Francis Clemow, James Murray, Daniel McMichael, John Arthur Codd and the Right Honourable Edric Frederick, Baron Gifford, and Robert Lothian Curzon ; Defendants.

Upon the application of the above-named Appellant Alphonse Charlebois, and upon hearing read the affidavit of Charles Downing Fripp, filed, the certificate of payment of five hundred dollars (\$500.00) into Court by the said Appellant Alphonse Charlebois, on the 28th May, 1895, under Section 46 of the Supreme and Exchequer Courts Act, for the purposes of an Appeal from the Judgment of the Court of Appeal for Ontario, pronounced in the said cause on the 14th May, 1895, and upon hearing read the several Notices of Appeal to this Court, served also on behalf of all the other Appellants above-named, and upon hearing Counsel as well for the said Appellants as for the above-named Respondents :

It is ordered that the said deposit of five hundred dollars be and the same is hereby approved as security that the above-named Appellants will effectually prosecute their Appeal from the said Judgment and pay such costs and damages as may be awarded against them by the Supreme Court.

(Signed) ROBERT CASSELS,
Registrar.

Entd Fol. 369, No. 2. J. L.

RECORD.

No. 30.
Order of
Registrar of
Supreme
Court,
approving
Security on
Appeal,
dated
22 June
1895.

RECORD.

In the Court of Appeal for Ontario.

No. 31.
Order of
Osler, J. A.,
settling
Contents of
Case in
Appeal to
Supreme
Court,
19th June
1895.

The Honourable Mr. Justice Osler, Saturday, 19th day of June, 1895.

(Style of Cause.)

Upon the application of the Appellants, upon hearing read the Notice of Motion dated 27th June, 1895, for an order settling the case herein on appeal to the Supreme Court of Canada and the affidavits of service thereof, upon reading the printed Appeal Books herein, being Volumes 1, 2, 3 and 4 of the case in appeal to the Court of Appeal, agreement signed by the respective Appellants' Solicitors other than the Solicitors for the Respondents, James Bogle Delap et al, dated 24th June, 1895, the notice of Plaintiffs' objection to the contents of 10 the proposed case, dated 27th June, 1895, and served on same date, the orders made by The Honourable The Chancellor, The Honourable Mr. Justice Osler, and The Honourable Mr. Justice MacLennan, made on the settlement of the appeal case to the Court of Appeal, and upon hearing what was alleged by Counsel for the Appellants and the Respondents.

It is ordered that the following books and documents do constitute the case on appeal in this action to the Supreme Court of Canada, and they are hereby settled as the said case, namely :—

1. Volume 1 of the Case in Appeal to the Court of Appeal for Ontario, containing the pleadings, judgment of the Chancellor, and reasons for and against 20 appeal.
2. Volume 2 of the Case in Appeal to the Court of Appeal for Ontario, containing the evidence at the trial and the evidence taken on the English Commission.
3. Volume 3 of the Case in Appeal to the Court of Appeal for Ontario containing Exhibits put in on trial and on the said Commission.
4. Vol. 4 of the Case in Appeal to the Court of Appeal for Ontario, containing the depositions of the Appellant Charlebois for discovery, and the memoranda (on page 67 thereof) as to certain exhibits which have not been printed.
5. Case in Appeal to the Court of Appeal for Ontario filed on behalf of 30 the Appellants William James Crossen and others.
6. Formal judgment or certificate of the Court of Appeal, dismissing Appeals.
7. Reasons for judgment of Judges of Court of Appeal pronounced 14th May, 1895.
8. Orders approving of security in appeal to the Supreme Court of Canada.

9. Order of the Honourable Mr. Justice Osler, dated 29th June, 1894, RECORD.
dispensing with the printing of certain Exhibits.

10. Notice of further points to be argued by Respondents on the hearing of appeals dated October 18th, 1894.

And it is further ordered that the costs of and incidental to settling of the said Appeal Case be costs in the cause on the said Appeal.

Tax a fee of ten (\$10) Dollars on this.

F. O." (Signed) A. GRANT,
Registrar.

Issued July 17, '95,
(Signed) A. G.

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No. 31.
Order of
Osler, J. A.,
settling
Contents of
Case in
Appeal to
Supreme
Court,
19th June
1895—
continued.

EVIDENCE AT THE TRIAL.

TRIED BEFORE HON. CHANCELLOR BOYD, AT OTTAWA, OCTOBER 31ST, 1893.

W. R. Meredith, q.c., Walter Cassels, q.c., Frank Arnoldi, q.c., Mr. O. A. Howland and Mr. E. Bristol, for Plaintiff; D'Alton McCarthy, q.c., and Mr. Lewis for Defendant Charlebois; Charles Moss, q.c., and Mr. Chrysler for the Union Bank; G. H. Watson, q.c., for the Commercial Bank of Manitoba; W. R. Riddell, q.c., for the two Crossens and the Defendant Henderson; Mr. McTavish also appears in the same interest; Mr. Hogg appears for the Defendant Codd; Mr. Nugent for Macdonald and Schiller and Macdonald and Preston; Mr. Macdonald for trustees Gifford and Curzon; Mr. Wallace Nesbitt for the other directors, Clemow, Allan, Devlin and Murray.

His Lordship.—I suppose there are some Defendants in chief and some subsidiaries? Is there no division of interests, so that there could be one cross-examination and not long cross-examinations by each.

Mr. McCarthy.—I think all the Defendants except the trustees are in the same interest as my client, and in that sense subsidiary to my client.

His Lordship.—He is the contractor?

Mr. McCarthy.—Yes.

His Lordship.—And these all derive from him in some way?

Mr. McCarthy.—Not altogether.

His Lordship.—Do they claim through him or against him?

Mr. McCarthy.—They do not claim through him or against him, but they claim in co-ordinate interest to a certain point.

His Lordship.—I suppose it will develop as we get on. What is it all about, Mr. Meredith?

Mr. Cassels.—I will just give your Lordship a short outline of the case. This road was once called the old Souris & Rocky Mountain Railway Company. It is a road running through Brandon, with a charter of 1,000 miles.

His Lordship.—In Manitoba?

Mr. Cassels.—Yes, running up to Battleford, in that direction. The charter is a 1,000 mile charter. The Souris & Rocky Mountain Road came to grief, and it was resuscitated under the name of the present Company by a series of Statutes.

His Lordship.—What is the name?

Mr. Cassels.—The great North-West Central.

His Lordship.—Does anyone appear for them?

Mr. Cassels.—They are co-Plaintiffs with Delap. Then an Act was passed in 1882, 45 Victoria, Chap. 79, giving certain powers to construct a railway upon certain terms fixed by the Governor in Council. In the year 1884—that is 47
40 Victoria, Chap. 72—the North-West Central Railway Company were incorporated; that is to say, power was given to the Governor in Council to give

RECORD. them a charter which was to be of the same force and effect as a Statute incorporating them. Then, in 1886, there was power conferred upon the Governor to give them a land grant of 6,400 acres a mile: that is the land grant referred to in the pleadings; that was in the year 1886. Then in 1888 there was a Statute confirming the charter of the railway; it sets out the charter and confirms it. That is the starting point of the Company.

No. 32.
Opening
discussion
at the Trial
—continued.

His Lordship.—What do you say is the starting point?

Mr. Cassels.—It is in 1888, 41 Victoria, Chap. 85, is the complete charter of the Company. The short outline of the transaction was something like this: the first shareholders of the Company were Charlebois, Clemow, Devlin, Bates—10 or rather, Devlin took Bates' place—Murray and Allan. The stock subscribed for was \$500,000, their capital by the charter being something in the neighbourhood of \$2,000,000. These five from the commencement of the Company in 1887 were the sole shareholders, each of them having subscribed for certain amounts of stock in different proportions, and they had paid in about 10 per cent. of their stock. Those payments were subsequently increased, I think, up to 30 per cent., somewhere in that neighbourhood. In the year 1887 they let a contract for the construction of the road to one Sproule. That contract was for the completion of 50 miles of the road, the contract price being \$4,000 per mile, amounting in all to about \$200,000. Sproule's contract did not embrace 20 certain other expenses, amounting in all to the neighbourhood of some \$200,000, I think. The whole road could have been completed, constructed and equipped for about \$400,000. Now, in the year 1888, Codd, who is named in the pleadings, entered into a bargain with Clemow, Devlin, Allan, Murray and Charlebois. These were the five then directors of the road, and also the five shareholders of the road; the bargain that he entered into was this: they agreed to build, and equip and complete the road in every respect, and having complied with their bargain to sell their stock to Codd for £200,000 sterling, that was in the year 1888; the effect of that bargain was simply this; had it been carried out these five would have built the road without any charge to the Company. The Rail- 30 way Company would have had a completed road of 50 miles thoroughly equipped, with the land grant of 320,000 acres of land earned, and there would have been no charge against the road at all, but there would have been simply the stock then subscribed for, amounting to \$500,000. That was the position. The terms of that bargain were that Codd was to pay down £50,000 sterling in cash.

His Lordship.—At once?

Mr. Cassels.—At once, and he was to get security or to satisfy the directors of his ability to pay the balance upon their performing their part of the contract. That was in the year 1888. I may say prior to that these five had by power of attorney instructed one Murray to endeavour to sell the stock if he could and to get English capital. In the year 1888 Codd entered into a bargain with the 40 Plaintiff Delap. The nature of that agreement was this: Codd had his agreement with these five directors of the nature that I have mentioned to your Lordship, and he entered into an agreement with Delap, which is set out in the pleadings, the purport of which was that upon certain things being given satisfactory to Delap or his solicitor, showing the title, that it was free from incumbrance, and so on, Delap was to advance Codd £50,000 sterling, or rather,

he was to give him banking accommodation to that extent, and he was to get as a consideration for his getting the security a small portion of the shares, which were to be paid-up shares, and he was also to get a bonus of £5,000 sterling ; that was the position between Delap and Codd.

His Lordship.—Bonus of £5,000 ?

Mr. Cassels.—Yes, my Lord, £5,000. Stevens, it appears, was a sort of family—(Interrupted).

His Lordship.—Who is he ?

Mr. Cassels.—He is one of the malefactors, or chief wrong-doers.

10 *His Lordship.*—This is the first time you have referred to him.

Mr. Cassels.—He comes on the scene now for the first time. It appears that Stevens was a sort of family solicitor for the family of Delap, and very intimate friend, and it was through Stevens that Delap was induced to enter into this bargain with Codd in the year 1889. Stevens came out to this country somewhere about the beginning of September, in the year 1889, with Delap's £50,000 sterling, and these directors and shareholders met in Toronto somewhere about the 5th September 1889 ; they met Stevens and they met Codd and a gentleman of the name of Gregson, who has given evidence under commission, whereupon they were informed that Codd was prepared to carry out 20 his bargain, and that he had his £50,000 ready to pay. Charlebois, Devlin, Clemow and the other two then took the ground that it was too late, and refused to carry out the bargain, giving as another ostensible reason that no proper security was offered to show that upon the completion of the road Codd would be able to pay the balance, the £150,000. I may say to your Lordship that under that agreement that Codd had made for the payment of £200,000, there was a provision that if he carried out that bargain he was to get \$173,000 as commission.

His Lordship.—From whom ?

Mr. Cassels.—From these shareholders and directors for the sale of their 30 stock ; he was to purchase their stock for £200,000 sterling ; he was to get the difference between £200,000 sterling and £200,000 currency, amounting to about \$173,000. When they met in Toronto with Stevens, Stevens having this £50,000 sterling with him, for some reason or other they refused to carry out the bargain, and thereupon it appears that a new arrangement was entered into ; first of all, Codd and Stevens formed a sort of partnership by a document which will be produced, and then Charlebois made an arrangement with Codd ; the arrangement that Charlebois made with Codd, so far as it reads, was this : Charlebois agreed to purchase from Clemow, Devlin, Allan and Murray their shares, then to sell them to Codd upon the basis of the original agreement of 40 1888, which was that then Charlebois, as shareholder, would have completed the road ; that is the 50 miles of road, and upon the road being completed and thoroughly equipped, he would have sold the stock to Codd for the £200,000 formerly agreed upon, and as part of this arrangement Charlebois was to receive a cash payment of £50,000 sterling ; Charlebois and the others—that is Clemow and the others, the other four—then came to an agreement which is referred to in the written documents, the effect of which agreement was this, that instead of Charlebois building the road and the Company getting the road

RECORD. free from all liabilities, they entered into a contract with Charlebois, whereby
 —————
 No. 32. Charlebois became contractor to construct this road, the Company agreeing to
 Opening pay Charlebois £200,000 sterling, charging upon the road this £200,000
 discussion sterling. In addition to that, the contract which they got was absolutely, in
 at the Trial part at all events, *ultra vires*, and beyond the powers of the corporation, because
 —continued. it gave Charlebois a first lien and charge upon the road, rolling stock, and
 everything else, together with the land grant, with very extensive powers, powers
 enabling him to sell, if necessary, piecemeal, the road after it was constructed,
 to sell the land grant, and to practically wipe it out of existence. The way
 they arrived at this £200,000 sterling was this: Charlebois agreed to pay 10
 to Clemow, Devlin, Allan and Murray, \$228,000 for their shares; of this sum
 he was to pay them the sum of about, I think it was \$126,000, in cash, and he
 was to pay them the balance by giving them orders upon the Company, to pay
 them out of the moneys coming to the Company. Then he recouped himself,
 with the knowledge of these directors, and with the sanction of the directors, by
 adding the amount that he was to pay these four to the contract price, so that
 when his contract was signed for £200,000 sterling, of that sum \$228,000
 was the purchase money for the shares of the directors. In addition to that of
 the £200,000 sterling, \$70,000 was the purchase money of Charlebois' own
 stock, amounting altogether to about \$300,000. Then, under the original 20
 agreement of 1888, Codd, had he sold the shares for these directors, would
 have been entitled to have been paid by them individually a commission of
 \$173,000, and in order that Codd should not suffer, they added on to his
 contract price \$173,000, which was to go to Codd, so that out of Charlebois'
 contract there was in round figures about \$300,000 added, which was not to go
 into the pocket of Charlebois at all, but which was to go from him to these
 directors for the payment of their shares. There was \$173,000 that was to be
 charged against the Company in favour of Codd, which was a claim that never
 was owing by the Company at all; Codd had no claim whatever against the
 Company of any kind, but they were saddling these gentlemen, between them, 30
 to the tune of \$173,000—(Interrupted).

His Lordship.—That was not added to the £200,000 sterling?

Mr. Cassels.—It was, part of it.

His Lordship.—The contract price was nominally put at £200,000
 sterling, but the composition of that amount was these two amounts, the
 \$173,000 to Codd, and this amount to the directors, and the balance was
 construction.

Mr. Cassels.—Yes, the balance was construction, we know that Sproule
 had his contract for doing the very work Charlebois did for \$200,000, plus some
 additional items; the whole thing at the outside could not have cost more than 40
 \$400,000, taking Charlebois' most exaggerated estimate so that he had his profit
 out of the difference between the £200,000 sterling and the \$473,000, which were
 the perquisites of these gentlemen charged upon the road.

Then the next step was this: it appears that while nothing was said in the
 original agreement of 1888 between Codd and these directors that their stock
 was to be paid-up stock, it was plain from the reading of it and purport of it,
 that paid-up stock it was to be before it was transferred, and when they met

together in September of 1889, Dr. McMichael insisted that the stock should be paid-up stock ; it was made paid-up stock in this way : under Charlebois' contract—(Interrupted).

His Lordship.—These five shareholders had the stock all allotted to them at the time ?

Mr. Cassels.—Yes.

His Lordship.—Not paid up in full ?

Mr. Cassels.—No ; they had paid not quite 30 per cent.

His Lordship.—They were proposing to sell out Charlebois' share ; was that 10 fully paid up ?

Mr. Cassels.—No. The effect of their contention is this, that they would have been recouped all they would have paid into the Company, and they would have got the balance charged upon the Company to the tune of \$126,000, that would be the effect of the contention they put forward. However, the other contention was raised, and Stevens, who had this £50,000 sterling, loaned, as we say, to each of these shareholders a sum sufficient, with the discount that was allowed under the charter, to pay their stock up in full. This £50,000 was Mr. Delap's money, it was passed over to the Union Bank.

His Lordship.—What was required to pay up the stock ?

20 *Mr. Cassels.*—It was something like \$228,000, something in that neighbourhood, cheques were passed—it is proved in the English commission—to each one of these directors, including Charlebois ; the memorandum was drawn up, I say, in Mr. Murray's handwriting.

His Lordship.—Who is he ?

Mr. Cassels.—One of these directors ; showing how it should be apportioned ; and then they paid it up and it went into the Company's coffers, the Company then got only in the neighbourhood of \$226,000 or \$227,000, and there was a little surplus over, some \$26,000, and it was suggested that should be loaned to the Company, so that Charlebois should get his first payment, and thereupon 30 give his payment to his fellow directors, and it was loaned to the Company, Stevens having advanced the money to pay up these shares, for the directors insisted as between himself and Codd, his partner, that he should receive these shares, or 90 per cent. of them, as security for this £50,000 sterling of Delap's, and thereupon the stock was assigned to Stevens, and Delap now holds the shares in that way ; then they set to work and put in the £50,000 into the Company, Charlebois immediately paid Clemow, Devlin, Allan, and Murray the cash payment, amounting to some \$126,000, and gave them—(Interrupted).

His Lordship.—He paid what ?

40 *Mr. Cassels.*—As soon as the contract was let on the 16th September 1889 to Charlebois, the Company then hand him over the £50,000 sterling, Charlebois immediately pays Clemow, Devlin, Allan—(Interrupted).

His Lordship.—That is the £50,000 paid to the Company for the shares and the balance lent to them ?

Mr. Cassels.—Yes. He gets £50,000 sterling, and he immediately pays these gentlemen, Clemow \$29,100, Allan \$46,340, Devlin \$35,580, and Murray \$14,925. He also gives them orders upon the Company, pursuant to the bargain that had been made, as follows : Clemow \$23,415, Allan \$37,465, Devlin

RECORD. \$28,093, Murray \$11,707, and they get the Company, or rather they notify the Company of these orders on the fund coming to Charlebois out of his contract. Thereupon there is a change in the directorate, and Charlebois proceeds to complete his contract. In the meanwhile Codd becomes president of the road, and after Charlebois had ostensibly performed his contract, or at all events claimed that he had performed it, he commenced an action against the Company, the Company being the only Defendants, and after lengthy discussions, Dr. McMichael and S. H. Blake, being instructed by Codd, the president of the road, they consent to a judgment bearing date 26th September 1891. This consent is given by Codd, who was then president, and by the terms of the consent Judgment Codd is to receive the sum of \$130,000, being the \$173,000 part of contract price, less the sum of \$50,000, which at the time of the entering into the contract Codd had agreed to pay to Charlebois as a consideration for Charlebois helping him in getting this charge against the Company. This Judgment gave to Dr. McMichael, who is a bare trustee—he does not know anything about it or has no interest in the money—the sum of \$130,000 is payable to Dr. McMichael for Codd; Macdonald and Preston by the Judgment are allotted \$64,429; they were not parties to the action in any way; Preston for fencing gets \$8,400; the Crossen estate gets \$39,000; and to Charlebois personally there is \$380,397; there is a detailed memorandum in the pleadings showing how that was made up, how these figures were arrived at that embraced the balance of the contract price, less certain deductions that were made for non-fulfilment of the contract, and Charlebois himself allotted the payments in the way in which I have indicated. That Judgment, when your Lordship sees it, carries out to the fullest extent the terms of the contract, and it gives, by the consent of Codd, who was an interested party and president of the road, it gives Charlebois a Judgment under which he not merely can sell the land-grant of the road, but he can sell the road-bed piecemeal, acre by acre, if he chooses, and practically and absolutely destroy the undertaking. I may say that prior to this the contract had been let for the completion of another 150 miles of the road. The land was given, as your Lordship will see from the charter, in the public interest, with a view of having the road running in the public interest, and there is a limitation of the power to mortgage or pledge the road-bed in any shape or form; there is no power; it is *ultra vires*; but still this consent Judgment which Mr. Codd consented to gives them these powers. Then, on the 29th February 1892, on further directions, carrying out the consent Judgment, there is a Judgment referring to the Master at Ottawa to sell this road, to sell it in any way he chooses; he can sell it acre by acre. The Company, as a company, claim on that state of facts, first, that the contract with Charlebois is void and should be set aside, and that the highest rights he has are to a *quantum meruit* to prove whatever is properly payable in respect of the work done by himself. They say further, as a lesser relief, but one which we claim in any event, that Clemow, Devlin, Allan, Murray, and Charlebois were trustees of the Company; they occupied a fiduciary position, and to the extent of the charges with which the Company was burdened for their individual benefit, they must disgorge, and that the Judgment must be reduced by that amount, or that they should be ordered to repay what they have received; that is, as to the \$300,000 of stock

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discussion
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—continued.

which was paid for by making it a burden upon the Company ; the Judgment is for the balance of \$600,000 ; taking into account the amounts which had been paid Charlebois, he had received £50,000 sterling.

His Lordship.—I thought Murray and the rest of them were not parties to the consent Judgment ?

Mr. Cassels.—Well, their claim is embraced in the \$380,000 ; they have received their cash payment, you will see, and their only subsequent rights as against the fund was by the orders Charlebois gave them ; they were entitled to receive the balance, \$100,000 odd, out of the contract moneys coming to
10 Charlebois.

His Lordship.—They were not parties to the Judgment ?

Mr. Cassels.—No.

His Lordship.—If Charlebois gets the \$380,000 they derive their payments from him.

Mr. Cassels.—Yes, they have to derive that from Charlebois. They are asking this *pro tanto* to the extent of \$100,000 for the moneys due them ; they have received their first cash payment.

His Lordship.—If the Judgment is set aside then the way would be open for them to come in to prove whatever they were entitled to. If the Judgment
20 stands you have no claim. If you set aside the Judgment all these other things come in.

Mr. Cassels.—If the contract is set aside and the Judgment set aside we have a right to be recouped what they would have received from the Company ; they have received these moneys of the Company. Even if the judgment were not set aside, to the extent that that judgment represents money charged to the Company which goes into the hands of the directors, we say we are entitled to have it reduced ; in other words, they are trustees of the Company, and the Company is entitled to the benefit of that, and the Company would have the additional right to ask them to refund what they have received. Then, there
30 is another branch that comes up incidentally. This judgment restrains the Company from issuing bonds. At the time the contract was entered into with Charlebois it was agreed that one-half of the £200,000 should be taken in bonds of the Company at 80 per cent. ; it does not appear in the body of the contract, but a letter was given contemporaneously with the execution of the contract by Delap to the effect that that was the agreement, and it is sworn to by one of two witnesses on the Commission.

His Lordship.—What was the agreement ?

Mr. Cassels.—That Charlebois was to take half of his £200,000 in bonds of the Company at a discount of 20—at 80, and in his contract for the
40 construction of the second fifty miles there is a contract to the same effect.

His Lordship.—It is not in question now ?

Mr. Cassels.—No ; I merely refer to the bond question to show that it was contemplated, necessarily contemplated, that bonds should issue. In addition to that there were some few prior voting claims of the old Souris and Rocky Mountain Railway Company. Amongst these claims was one of Preston's, which had been settled by the Company, and under that settlement they were to receive bonds of the Company. The directors issued bonds ; there was a

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RECORD. mortgage deed executed to Lord Gifford and Mr. Curzon, who are parties ; that deed was registered with the Secretary of State. The bonds were issued and duly signed and sealed and so on, and amongst other things this consent Judgment restrains the Company from issuing these bonds.

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discussion
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—continued.

His Lordship.—But you say they had been issued ?

Mr. Cassels.—They had been issued, but they are tied up, locked up.

His Lordship.—They are not to be negotiated, then ?

Mr. Cassels.—Not to be negotiated, not to be dealt with.

His Lordship.—Was there any reason given in the judgment ?

Mr. Cassels.—No.

His Lordship.—Simply the judgment restrains the Company ?

Mr. Cassels.—Yes.

His Lordship.—Does it set forth that the bonds were issued ?

Mr. Cassels.—Yes ; the ostensible reason given was this : they say that under Charlebois' contract it is a first lien charged over everything, with full powers to sell, enter, run, do anything he likes, and it is prior to the bonds ; that is their contention. Another way in which the bond issue becomes a little material is this : under the contract with Charlebois, Charlebois was to furnish the rails for the Company, but the Company had agreed to advance the moneys for the purchase of the rails ; it was to be a deduction from the amount coming to Charlebois. This came to something like £47,000 sterling to be deducted from the contract price. The Company then procured a trust company in England to advance the moneys, taking as security the endorsement of Delap and the endorsement, I think, of Lord Gifford, and they were to be secured in certain ways, amongst others, by bonds of the Company. It eventuated in Mr. Delap having to pay £47,000 sterling, leaving him out of pocket about £100,000 sterling.

His Lordship.—And the rails were furnished ?

Mr. Cassels.—And the rails were furnished, and his contention is that, at all events, he is entitled to the bonds to secure that amount. Then Mrs. Mansfield advanced, I think, something like £20,000 sterling for the purposes of the Company, and she was entitled to the bonds. The net result of the whole thing is that Delap has advanced \$500,000—£100,000 sterling, speaking approximately out of his own moneys, and the road is the road of Charlebois as his assignees, and the charter absolutely destroyed, if this matter stands ; that is to say, they can sell that road piece-meal, as they say, and sell the land-grant, there is no road left, the Company is gone ; that is the general outline of the case.

Mr. McCarthy.—In this case there is a demurrer to the whole claim, and we think, my Lord, that that should be first disposed of.

His Lordship.—I scarcely think that would be disposed of now. If you brought your demurrer on in the usual course the matter could be argued and considered, but now with all the witnesses here I should not take up the time arguing that and considering that, and let the witnesses go. I think it is a matter we could not dispose of at all.

Mr. Chrysler.—I think it was rather in your Lordship's deference on the matter when it was before you on a motion to strike out the Plaintiff's claim or part of his claim—(Interrupted.)

His Lordship.—Because it was frivolous, or something like that ?

Mr. Chrysler.—No, but because the whole suit was improperly constituted.

His Lordship.—There was an application to strike out because it was an improper suit, I forget why, but in a summary way.

Mr. Chrysler.—Your Lordship gave leave to bring down the demurrer, and I think at the time it was said it would perhaps be better discussed by the trial judge. There is a very important question arising out of the demurrer, and I do not think it would really delay the progress of the suit.

His Lordship.—I am quite sure it would delay it.

10 *Mr. Chrysler.*—It would enable your Lordship, at all events, even if you decide after hearing it that there is something to try, it will enable your Lordship to see what is relevant and what is not, because I am satisfied as your Lordship proceeds with the evidence your Lordship will find there is a mass of irrelevant matter on the pleadings which will have to be severed at some time, and we will have to find out what the issues are.

His Lordship.—I think the shortest way now of dealing with it is not to take the short cut, but to plough through, and some court will be able to sift the evidence and do justice ; I think it would spoil the symmetry of the whole thing and spoil the case.

20 *Mr. Chrysler.*—If your Lordship will allow us to discuss that at the close of the case ?

His Lordship.—Oh, yes, you are always at liberty to do that.

Mr. Chrysler.—And there are many objections to admissions of evidence which will turn upon your Lordship's ruling on the questions of law.

His Lordship.—I will take the evidence subject to the objection, so that the thing might be fully tried. I will take it for granted there are no improper objections.

Mr. McCarthy.—My learned friend has opened to your Lordship that a judgment was recovered in all these matters ; that becomes *res judicata*.

30 *His Lordship.*—Unless it is formally attacked here:

Mr. McCarthy.—It is *res judicata* and has to be attacked to be disposed of ; the first thing, it seems to me, is to dispose of the judgment. There is no use going behind that, unless my learned friends make a case on which your Lordship would set aside the judgment, and it appears to me it would shorten the case very much if my learned friends confined their attack in the first instance.

His Lordship.—That would seem to me to be so, that the judgment was in the way of any progress, unless you set it aside. I ruled that last night on a judgment. That judgment is conclusive until it is relieved.

40 *Mr. Cassels.*—But the history of the case is necessary to get at what was done at the time of the consent judgment.

Mr. McCarthy.—We dispute that. We say that the allegation being an allegation of fraud in the procuring of the judgment, that that fraud must be shown. But my learned friend's case is, that the contract here on which the action afterwards proceeded, and on which the judgment was afterwards founded, that that contract was a contract which was a breach of trust, and that the Company were put in a wrong position by reason of the conduct of their

RECORD. directors in entering into that agreement. Well, that may or may not be so, but it is quite clear, I think, that that was a matter which the Company and the members could adopt, or might possibly have repudiated. Then the action is brought. In that action the Company defend, and several days' discussion took place before Mr. Justice Ferguson; there is no doubt about that; we have got the evidence here, and we happen to have the shorthand writer's notes of a good portion of that discussion. After it had proceeded a number of days he thought it was a matter of settlement, and the counsel got together and allowances were made, and a settlement was arrived at on the basis of that allowance, and the Plaintiff got judgment; it was simply for the Plaintiff to secure those 10 to whom he had assigned interests, by which the payments were directed to be made to one party and another, and it does not at all affect the question. If this judgment was obtained under these circumstances or any similar circumstances, is it possible to open it now? At all events, is not that the first point of attack?

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His Lordship.—Certainly; it is the first point of attack; but how will they attack it if they must consider themselves. They must use their discretion as to that, but I think it must end in that, setting aside that judgment, before any relief can be given.

Mr. McCarthy.—We think it should be confined to evidence relative to 20 that point.

His Lordship.—I do not think Mr. Cassels will waste any time.

Mr. Cassels.—No, I will not, and even if the judgment stood, there is another claim that must be reduced.

Alphonse Charlebois, sworn; Examined by Mr. Cassels.

No. 33.
Evidence of
Alphonse
Charlebois.

Q. You, I think, reside in Quebec?—*A.* Yes.
Q. You are one of the original promoters of this railway company?—*A.* Yes.
Q. That is, the Souris and Rocky Mountain?—*A.* No, sir.
Q. You had nothing to do with it then?—*A.* No. 30
Q. When did you first become interested in it?—*A.* In 1887.
Q. And who were interested with you then?—*A.* Senator Clemow, Mr. Allan and Mr. Bates, at the time, and Captain Murray, of St. Catherines.
Q. Mr. Bates' place was taken by Devlin?—*A.* The late Mayor of Ottawa; he was Mayor of Ottawa.
Q. He is out of it?—*A.* Yes.
Q. Mr. Devlin represents him in it?—*A.* Mr. Devlin replaced Mr. Bates.

His Lordship.—Charlebois, Devlin; who were the others?

Mr. Cassels.—Charlebois, Murray, Clemow, Devlin, Bates, and Allan. 40 Bates went out, and Devlin came in; that was subsequently.

Witness.—Yes.

Q. In the beginning of the year 1888 there were just the five of you; Clemow, Devlin, Murray, Allan, and yourself?—*A.* Yes.

Q. And how much stock was subscribed ?—*A.* \$500,000.

Q. Do you recollect the holdings of each ; do you remember that ?—*A.* I recollect mine.

Q. Yours was \$70,000 ?—*A.* Yes.

Q. And the others are stated in your evidence before ; Clemow had 1,000 shares ?—*A.* I think so ; it is stated there ; the document will speak for itself.

Q. You told me before ; it is just to simplify it ?—*A.* Well, I do not carry that in my memory.

10 Q. At all events, between you you had the \$500,000 ?—*A.* Yes.

Q. And you were the five directors of the road ?—*A.* Yes.

Q. This road was a road running from Brandon, or near Brandon ; and what was the other terminal point ?—*A.* It was to be Battleford.

Q. That is a distance of how many miles ?—*A.* About 430.

Q. And I understand there was a second contract let for the second 50 miles, which is not built ?—*A.* There was one.

Q. You were the contractor ?—*A.* A conditional contract.

Q. But that has never been proceeded with ?—*A.* No.

20 Q. Now, in 1888 you five were the only directors of the road ?—*A.* The only five directors of the road ; the only five interested in the enterprise.

Q. And all directors ?—*A.* Well, we were directors and proprietors, that is all ; there was nobody outside of us.

Q. You held all the stock ?—*A.* Yes.

Q. With how much paid up ?—*A.* Well, at the time we disposed of it, about 30 per cent.

Q. That is in September 1889 ?—*A.* Yes.

Q. Thirty per cent. paid up ?—*A.* Yes.

Q. But in 1888 there was less paid up ?—*A.* Well, the book of the Company will give the details of these things.

30 Q. In 1888 you recollect Murray was in England ?—*A.* I recollect that Mr. Murray went to England on a trip.

Q. And he was negotiating for the sale of the stock ?—*A.* Well, I do not know ; I cannot tell if he went specially for that.

Q. You can tell us a little, not specially, but perhaps you know it ; there were resolutions in the books of the Company ?

Mr. Nesbitt.—On behalf of Murray, Allan, Clemow, and Devlin, I object to his going into what happened in England in 1888.

His Lordship.—I will note the objection ; I will take the evidence.

40 *Mr. Nesbitt.*—All this evidence behind the judgment is taken, so far as these Defendants are concerned, subject to the objection that it cannot be received, and it will not be necessary to repeat my objection ?

His Lordship.—No ; you can cross-examine without waiving your objection.

Mr. Watson.—That will apply to the other Defendants ?

His Lordship.—Yes, this covers everything.

Mr. Cassels.—Q. Then there was an agreement made with Codd in 1888 ; that was the agreement (*producing document*) ?—*A.* That is my signature. (Exhibit 1.)

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Evidence of
Alphonse
Charlebois.
—continued.

Q. And that is the signature of Senator Clemow ?—*A.* It appears to be.

Q. Do not you know it is ; is not that his signature ?—*A.* I am not familiar enough with Mr. Clemow's signature to say ; I think it is.

His Lordship.—What is the date of that paper ?

Mr. Cassels.—It is dated 6th March, 1888.

Q. And do you know Mr. Allan's signature ?—*A.* It looks like Mr. Allan's signature ; I think it is.

Q. He was secretary for your company ?—*A.* He was.

Q. And you are not sure that that is his signature ?—*A.* Well, it looks like it ; I think it is. 10

Q. And Mr. Devlin's ?—*A.* I do not know enough of his signature.

Q. Then that was released, you know ?—*A.* Yes.

Q. It was released on the 16th September 1889 ?—*A.* Yes.

Mr. McCarthy.—Better read that and see what it is.

Mr. Bristol.—That is Exhibit 1 ; Exhibit 46 in the Commission evidence.

Mr. Cassels.—Q. Now, you were a party to that document, that is your signature ; and it recites the fact that Murray had been authorized by power of attorney to negotiate in England ; does that recall it to your recollection ?—*A.* Well, the document speaks for itself.

Q. I know the document speaks for itself, but your recollection is what I 20 want ; you recollect now the fact that Murray was authorized to negotiate in England ; do you know that ?—*A.* I recognize nothing of that ; I know that when Mr. Murray was in London a power of attorney was sent to him. When he came back he told me that he had not used that power of attorney.

Q. He wanted to get personal—(Interrupted.)—*A.* No ; he told me, as far as I could understand what he told me, that he had prepared himself an agreement, and that he had sent it here for us to sign, and I think that that agreement came from London, and we signed it here and returned it, but that he had not acted on the power of attorney sent to him.

Q. Then the agreement was that if Codd sold your shares you were to pay 30 him a commission of \$173,000 ?—*A.* Nothing of the kind.

Mr. McCarthy.—It speaks for itself.

Mr. Cassels.—Q. What then ?—*A.* Well, the document speaks for itself.

Q. The sale was to be for 200,000 pounds sterling ?—*A.* You have it in your hands.

Q. And the difference between 200,000 pounds sterling and \$800,000 was to go to Dr. McMichael for Codd, in the event of his carrying out the sale. Shall I read it again ?—*A.* It is there.

Mr. McCarthy.—The document speaks for itself.

Mr. Cassels.—He said " Nothing of the kind." 40

Q. He was to get the difference between 200,000 pounds sterling and \$800,000 if he sold the shares ?—*A.* He was to get exactly what the document said.

Q. Was not he to get the difference between 200,000 pounds and \$800,000 if he sold the shares ?—*A.* You have it in your hand.

Q. And it was for commission ?—*A.* There was nothing of the kind ; there was no commission.

Q. "We consent that that portion of the consideration money, namely, the sum representing the difference between \$800,000 and 200,000 pounds sterling shall be paid over to Daniel McMichael, Q.C., of Toronto, in place of ourselves, to be held to the order and use of the said John Arthur Codd, to cover commissions, &c." ?—A. Well, that was in case he would not be able to dispose of it that he would not have any claim against us.

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Evidence of

Alphonse

Charlebois

—continued.

Q. Precisely, if he sold for 200,000 pounds sterling he was to get the difference between \$800,000 and the 200,000 pounds sterling, and he was to have no claim if he did not do it ?—A. If he succeeded he was *not* to have that as a claim for commission.

Sic.

Q. That is what the document says ?—A. The document says what is there.

Q. Then you provide in this way : "We further consent and agree, in like event, but not otherwise, to pay the said John Arthur Codd, out of the sum of 50,000 pounds cash payable to us on transfers of shares" &c. (Reads.) "That nothing herein contained shall be construed as recognizing or giving, or shall give the said John Arthur Codd any right to demand any sum by way of commission against us or against the said Company" &c., "in case the said prospective sale shall fall through" ?—A. That was very reasonable ; if he did not succeed he was to get nothing and had no claim for commission or anything else against us.

Q. Had the Company ever recognized that he was entitled to \$173,000 ? —A. The document speaks for itself.

Q. Had the Company ever recognized that he was entitled to \$173,000 ? I am not talking of the document ?—A. I am talking of the document, and answering the document. (Document put in.)

Q. You were a director of the Company ?—A. Yes.

Q. You were a director down to the 16th September 1889 ?—A. Yes.

Q. And had been from the beginning to that date ?—A. Yes.

Q. I ask you, had the Company ever recognized in any shape or form that Codd was entitled to a claim of \$173,000 ?

Mr. Moss.—I object to that form of question ; I do not think that is the way to prove recognition of a claim by the Company.

His Lordship.—I think the witness can answer in any way ; he may say he does not know anything about it.

Mr. Moss.—I submit, for those I represent, that this form of questioning as to the knowledge of the other Defendants is neither regular nor proper. My learned friend may treat this witness as a party, but he cannot treat him so as against us.

His Lordship.—I cannot discriminate as to you and anybody else. The effect of his admissions against the other Defendants must be gauged.

Mr. Moss.—I refer to *Bryce v. Manning*, in which the rule is laid down by the Court of Appeal in England that a party who calls a party to examine has no right to cross-examine, however hostile he may be.

His Lordship.—Chief Justice Abbott said you could treat him as a hostile witness.

Mr. Moss.—In this case it says you cannot.

His Lordship.—We allow greater latitude when there is a party in the box than in the case of a mere impartial witness.

RECORD. *Mr. Moss.*—I submit no greater latitude can be allowed, as against other parties.

No. 33. *His Lordship.*—I cannot discriminate in one way against himself and in Evidence of other ways against the other parties. The effect of it against you would not be Alphonse the same as against himself. He can get an admission by himself which would Charlebois not be available against you.
—continued.

Mr. Moss.—How could it, even as against him, be said to bind anybody
—(Interrupted.)

His Lordship.—That goes to the effect of the thing ; it may not be worth anything. I cannot tell what the effect of his answer will be, but I do not think the answer is being sought in an illegitimate way or an illegal way.

Mr. Moss.—He is asked to make a statement whether this admission was made by a corporation. That was the form of the question.

His Lordship.—He may be able to tell you all this was entered in the books of the Company and the Company knew it perfectly well. That may be his answer. He may say I do not know or I do know.

Mr. Nesbitt.—The case my learned friend referred to of *Bryce v. Manning* has been followed in our Courts.

His Lordship.—I know the decision and know the effect of it, and I am ruling advisedly. I do not propose to follow *Bryce v. Manning*. 20

Mr. Nesbitt.—Our Common Pleas Divisional Court expressly followed it in a case from St. Thomas, although it was urged our practice had not been following the case.

His Lordship.—There is nothing, however, to offend against the *Bryce* case.

Mr. Moss.—The objection is noted.

His Lordship.—All objections are noted. The reporter will note it. *Bryce v. Savary* says you cannot assume the Defendant is an adverse party until he shows himself so in the box.

Examination by *Mr. Cassels* continues :—

30

Q. Had the Company recognized Codd was entitled to any claim amounting to \$173,000 against them ?—A. No. I want to see the first document. (Document handed witness.) I want to give an explanation ; as far as I can remember, when this writing took place, Codd pretended to have a claim against the former Company, that is the *Souris and Rocky Mountain Railway*, that he had spent a good deal of his time and money there, and that he claimed as much as \$350,000, and we were of the opinion that by our charter that he might come under the clause of that charter, and have some legal claim on us for that, and so we suspended in accepting the contract from the Government until after we came to the understanding with Codd that if he would clear renounce to his claim and negotiate the sale of the thing, that we would give him the difference between the 200,000 pounds sterling and 200,000 pounds currency. 40

Q. That is to say, if he would abandon all claim he was making, then you would enter into the agreement which was embodied in the paper ?—A. That was the consideration he was to get if he succeeded, but if he did not succeed he could not claim anything, either as a commission or otherwise.

Q. If he did not succeed he could not claim anything as commission or anything else ?—*A.* No. RECORD.

Q. Then this document was issued which released the Company, 8th April. (Exhibit.) It is signed by Codd ?—*A.* This I do not know anything about. No. 33.
Evidence of
Alphonse
Charlebois

Q. Do you know his signature ?—*A.* I could not swear to it.

(Document read.)

Mr. McCarthy.—We do not admit that.

Mr. Cassels.—You do not admit that now ?

Mr. McCarthy.—No.

10 *Mr. Cassels.*—Q. You do not know Codd's signature ?—*A.* Well, I could not swear to Codd's signature.

Mr. Cassels.—I put it in in the meanwhile ; I will prove it afterwards.

Mr. McCarthy.—You cannot put it in.

Mr. Cassels.—Q. You mean to say seriously as a director of the Company you do not know that Codd executed that ?—*A.* It is the first time I see it.

Q. And you do not know his signature ?—*A.* I could not know his signature enough to swear on it ; I would not undertake that.

Q. Then in connection with that, this was the formal agreement ; that is your signature, 9th April, 1888 ? (Exhibit 3.)—*A.* That is my signature.

20 Q. And that is the others ?—*A.* Well, they can answer that.

Q. I do not want to call a person to prove a signature if you can prove it. Is not it Clemow's signature ?—*A.* It appears so ; but I am not familiar enough.

Mr. Nesbitt.—I admit the signatures of Clemow, Allan, Devlin and Murray.

(Document read).

Mr. Cassels.—Q. Now that was the agreement which I see you set out in your defence, that was the agreement with Codd of 1888 ; the result of that was that he was to pay £200,000 and you were to hand him over the first 50 miles of the road completed and built, with the land-grant earned ?—*A.* Well, he was 30 to pay the £200,000 first, and then he was to give a bank guarantee for the payment of the balance.

Q. Had he done that you would have completed the 50 miles of road, and having done that you would have got paid your balance and handed over your stock ?—*A.* Well, the difficulty was he was not able to do it.

Mr. McCarthy.—It speaks for itself.

Mr. Cassels.—Q. Now, there had been a contract let to Sproule ?—*A.* Yes, that was by the former Company.

His Lordship.—Q. What do you mean by that ?—*A.* Well, that is our Company.

40 *Mr. Chrysler.*—He means the Company composed of Clemow, Allan, Devlin, Murray and Charlebois.

Witness.—Yes.

Mr. Cassels.—Q. That is the Company composed of Clemow, Devlin, Allan, Murray and yourself.—*A.* Yes.

His Lordship.—The Company as it was in 1887 ?

Mr. Cassels.—Yes.—Q. This is the contract, is it, dated 12th September, 1887 ?—*A.* Yes, I think that is the contract.

Q. That is the Sproule contract ? (Exhibit 4.)—*A.* Yes.

—continued.

RECORD.

No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. That speaks for itself ; it was for \$4,000 a mile, to do certain portions of the work, and the contractor entered upon the performance of his contract ?—

A. Yes.

Q. And was stopped by the Company ; can you tell me when ?—*A.* Well, I could not exactly tell you when.

Q. They had got on some distance, at all events, and then the Company stopped them by a resolution ; it was no fault of Sproule's he did not go on and complete ?—*A.* Well, the book shows.

Q. Now, you prefer speaking from records ; they are less liable to be wrong ?—*A.* Well, I prefer it. 10

Q. Now, there are several document executed ; there is one for instance ?—*A.* What is the date of that ?

Q. That is your signature ?—*A.* I am asking you the date.

Q. I am asking you the signature ; I will tell you the date ?—*A.* That is my signature.

Q. And that is Clemow's and all your signatures ?—*A.* Yes.

Q. That is the 16th September 1889.

Mr. Macarthy.—Which one is that ?

Mr. Cassels.—I am going to put them all in. This is the one between Clemow and Murray and the others and Charlebois. You remember the terms 20 of this document ?—*A.* I asked what was the document and you showed me the signature.

Q. It is between Hon. Francis Clemow, Allan, Devlin, Murray and Alphonse Charlebois ?—*A.* What is it for ?

Q. It is an agreement of indemnity ; I will read you the whole of it. (Reads document Exhibit 5.) You have not got the Macdonald and Preston contract that is referred to here ?—*A.* No.

Mr. Cassels.—Have you got that, Mr. Nugent ?

Mr. Nugent.—I will produce it.

Mr. Cassels.—Then there is another document signed by you and Mr. 30 Clemow, Allan, Devlin and Murray ?—*A.* Yes, that is my signature. (Exhibit 6.)

Q. Dated 16th September 1889, between Charlebois of the first part and these gentlemen of the second. It is the one that provides for payment of the shares. (Reads.) Now, these documents, I see, are witnessed by Mr. Lewis ?—*A.* Yes.

Q. I have read you two documents ; I have read them from the beginning to end ; they were both prepared by Mr. Lewis and both signed by you ?—*A.* I am not prepared to say they were prepared by Mr. Lewis ; they were prepared.

Q. They were the subject-matter of discussion for some days, and I think 40 you told me Mr. McMichael represented one side and Mr. Lewis represented the other ; is not that the case ?—*A.* There were some that were not prepared until late on the 16th.

Q. These were prepared before ?—*A.* Could not say.

Q. There were some discussions going on for some days before the 16th ?—*A.* Between whom ?

Q. Between all parties ; I will read you the recitals. (Reads.) That refers to this agreement ?—*A.* I cannot speak as to those agreements ; they

speak for themselves ; as to say there was some conversation about those agree- RECORD.
ments—I cannot say that. They speak for themselves.

Q. What they say is the fact ?—A. The documents speak for themselves. No. 33.

Q. And so far as you know what they say is the fact ?—A. I presume so. Evidence of

Q. Now that is the document, is it not ?—A. That is the document I signed, yes. Alphonse Charlebois
—continued.

Q. That is the heads of agreement ?—A. Yes.

Q. And that is what is referred to in this recital ?—A. That is my signature.

10 Q. That is the agreement of 9th September 1889, between Charlebois and Codd, and that is the agreement referred to in the recital ?—A. Yes, but that agreement was made in Toronto.

Q. I am not bothering about dates and places ?—A. It is important to know that.

Q. (Reads from Agreement.) That is this agreement, what is called Heads of Agreement, what is referred to in the recital ?—A. Well, each agreement speaks for itself.

Mr. McCarthy.—Better read the whole of it.

Mr. Cassels.—Q. Your answer is that each agreement speaks for itself ?—
20 A. Yes ; and if you want the details as to the agreement of 9th September in Toronto I can give you it, but I do not want the honourable lawyer to mix up that we were all discussing when we were not all discussing.

Q. Written testimony is better than fickle memory ?—A. Well, the document is there, and if it requires some explanation about it I can give it, if I know it.

Q. So far as you know, these documents which I read you from beginning to end, embody the truth ?—A. Yes, but they do not embody your interpretation.

Q. “ Mr. Charlebois to arrange with Clemow, Allan and Devlin that they
“ will assign to him all their interest in the undertaking, provided that when the
“ 50,000 pounds is paid, Clemow, Allan and Devlin shall take thereout such
30 “ amounts as Mr. Charlebois shall have agreed to pay them.” What is the
50,000 pounds referred to there ?—A. This is an entirely new deal I made with Mr. Stevens in Toronto on the 9th September, if you want to get the whole explanation.

Q. I just asked you as to the 50,000 pounds ?—A. You are going to get the whole thing out according to what happened, not according to your own view.

Q. “ Mr. Charlebois to obtain Mr. Murray’s consent to the above arrange-
“ ment to purchase his share in the same way as the others ” etc. (Reads.)
That is \$50,000 out of the \$173,000 ?—A. It is in the document.

40 Q. Is not that \$50,000 out of the \$173,000 ?—A. There was no \$173,000.

Q. You can answer it yes or no ; is not that \$50,000 that is to be paid by Mr. Codd out of the \$173,000 ?—

Mr. McCarthy.—It does not say Codd has to pay that.

Mr. Cassels.—Q. “ Or to transfer its equivalent in stock of the Company.”
Who is to pay the \$50,000 ?—A. Mr. Stevens ; Mr. Stevens was Mr. Codd’s—
(Interrupted.)

Q. Mr. Stevens was Mr. Codd ?—A. Mr. Stevens was Mr. Codd’s nominee.

RECORD.

No. 33.
Evidence of
Alphouse
Charlebois
—continued.

Q. And this is the \$50,000 Mr. Stevens—(Interrupted.)—*A.* If you look at the back of the agreement you will see Mr. Stevens has endorsed—(Interrupted.)

Q. I have examined you before and you explained it ?—*A.* Well, I explain it now, and what I say now must be taken.

Q. That is Stevens' signature of the 9th September ?—*A.* Yes.

Q. (Reads document, marked approved 16th September 1889, D. McMichael.) And then there is an endorsement on the back (Reads) signed by Charles Richard Stevens ?—*A.* Yes, and that is what he has not done yet.

Q. Then the letter, which we may as well read, annexed to it. (Reads the letter, Exhibit 8.) Then this was another document ?—*A.* Well, I have not 10 given my answer on that.

Q. I am going to examine you on the whole thing ?—*A.* Otherwise it might be disagreeable to you ; I will be obliged to apply to the Court, if Mr. Cassels puts his question too long to me, as I am not familiar with the English language, to ask that it be translated to me.

Q. Because you are not familiar with the English language ?—*A.* Yes, so well as you are ; if you put the question straight, I can answer well, but if you put a long one, I will have to have it translated into French.

Q. Is that your signature ?—*A.* I want to answer the first question you put to me first, and then I will go about this. 20

Q. I asked you if the other was your signature ?—*A.* You want to know on what circumstances my signature was attached to that.

Q. We want to get the documents in first ; is that your signature ?—*A.* That is my signature.

Mr. Cassels.—That is the 16th September 1889, between Charlebois and the Great North West Central Railway Company.

Mr. Chrysler.—There is another letter of the 9th ; you are not putting that in.

Mr. Cassels.—I will put everything in. This is the construction contract.

His Lordship.—Why not put all these papers in ?

Mr. McCarthy.—I think you must hear them. 30

His Lordship.—Why should you prove each one seriatim, if they are all authentic ?

Mr. Cassels.—Then comes the contract, this is the construction contract. (Reads Clause 4, document Exhibit 9.)

Q. Then you received the 50,000 pounds sterling ? That is your signature ?

Mr. McCarthy.—Better put in the construction contract first.

Witness.—That is my signature.

Mr. Cassels.—*Q.* You received the 50,000 pounds sterling on the 16th September 1889, and that is your signature to the letter also attached to that 40 construction contract, is not it ? This is to the Secretary of the Great North West Central Company ?—*A.* That is my signature.

Mr. Cassels.—This is annexed to it. (Reads letter.)

Mr. Chrysler.—It was not annexed before. It should be put in separately. (Exhibits 10 and 11.)

Mr. Cassels.—*Q.* They seem to be anxious to sever the letter from the contract ; is there any reason for that ; it was part of the contract, was not it ?—*A.* The letter and the contract speaks for itself.

Q. And the letter was part of the contract ?

Mr. McCarthy.—No.

Witness.—The letter was part of the contract.

Mr. Cassels.—Q. Yes ?—*A.* Oh, no.

Q. It was signed the same day ?—*A.* It was signed in the evening, long after the contract was signed.

Q. And for what purpose ?—*A.* Well, for the purpose that Mr. Stevens had asked me if I would sign that letter, that it would be a great help for him for financing in London.

10 Q. And so you signed that letter to enable him to finance in London ?—*A.* Yes, I did so, and he told me—(Interrupted.)

Q. Never mind what he told you ?—*A.* He told me that I would never be called on to take a cent in bonds, and what he did afterwards proved that he had no intentions—(Interrupted.)

Q. Never mind that.—*A.* It proved that he did not intend to use that letter against me.

Q. That is argument, you have a great array of Counsel. That is another of those contracts signed at the same date (Exhibit 11.) It is the collateral contract ?—*A.* Yes, that is my signature.

20 Q. It refers to this contract. (Reads.) That is the same date, 16th September 1889, and consequent upon that there was a contract entered into with Sproule ?—*A.* The contract with Sproule existed under the old Company, and it was a continuation, it was the Company that gave me by this a power to represent them and to do the same as the Company would have done.

Q. And subsequently there was a contract or agreement made with Sproule, which I will read you, here is a contract 21st September ?—*A.* That is the contract of Macdonald & Schiller, at that time we arranged that Sproule was to go out of it and Macdonald & Schiller were taking the place of Sproule.

Q. Macdonald & Schiller were taking the place of Sproule ?—*A.* Well, he 30 offered to go out.

Q. When did he make that offer to go out ?—*A.* Immediately after the contract was signed.

Q. Then this document was signed ; this is called a release in ink on top ?

Mr. McCarthy.—There is one prior to that.

Mr. Cassels.—We will get that afterwards ; what is the date ?

Mr. Chrysler.—21st September 1889.

Mr. Cassels.—And then there is this one.

Mr. McCarthy.—What is that ?

Witness.—That is the release.

40 *Mr. Cassels.*—21st September 1889, Release by the Company to Sproule (Exhibit 13). I understand that Sproule assigned to Macdonald & Schiller, and then they went on with the work.

His Lordship.—Macdonald & Schiller went on with the work under Charlebois ?

Mr. Cassels.—Yes, under the terms of the old contract. (Reads release.) Then the same date is the assignment Sproule to Macdonald ; this is the one between Sproule of the first part and Macdonald & Schiller of the second part, and Preston of the third part, 21st September 1889. (Exhibit 14.)

RECORD.

No. 33.

Evidence of
Alphonse
Charlebois

—continued.

Witness.—That is not signed by me ; I cannot prove it.

His Lordship.—Who were Macdonald and Schiller and Preston ?

Mr. Chrysler.—They were parties that Sproule had taken in with him ; they were not contractors with the Company.

Mr. Bristol.—The other two are not in my possession. Mr. Lewis has them. I do not know his reason for not producing them.

Mr. Lewis.—You have the originals.

Mr. Bristol.—No, beg your pardon, we have not got them.

Mr. Cassels.—Here is another one, 21st September 1889, between Preston and Macdonald and Schiller (Exhibit 15) ; assignment from Preston to 10 Macdonald & Schiller. Then there is a surrender or release of the same date, 21st September 1889, from Schiller and Alexander Macdonald to the Company, reciting the contract. It recites the contract of the 12th September, made between Sproule and the Company, signed by Macdonald & Schiller (Exhibit 16). Then you made an agreement with them that is dated 3rd of October 1889, Schiller and Alexander Macdonald of the first part and Charlebois of the second part. (Exhibit 17.) The other document which is put in is one of the 12th September 1887 ; that is Macdonald & Preston with the Great North West Central Railway Company. (Exhibit 18.) The Charlebois agreements were referred to. (Reads.)

Q. Sproule was the original contractor to build that fifty miles ?—*A.* 20
Sproule was our contractor.

Q. And he was to build fifty miles of railway at \$4,000 a mile ?—*A.*
\$4,000 a mile—for what he was to do.

Q. Perhaps you would tell me what he was to do for that \$4,000 per mile ?
—*A.* Well, he was to do the grading, and he was to lay the ties, and furnish the ties, and he was to make the wood bridges and trestle work, and he was to lay the rail, but he was not to furnish the rail, or fastening, or spikes, or anything of that kind ; he was to build stations, water tank, and whatever is stated in his contract.

Q. Now, the rails cost how much ? You put in a memorandum, perhaps 30
we have it, showing the cost ?—*A.* Well, that road—(Interrupted.)

Q. Never mind ; I will just give you the memorandum ; you furnished us a memorandum of what you had to do to supplement ?—*A.* I will give you an idea ; Mr. Sproule had \$4,000 to build that road per mile, and that road has cost over \$13,000 a mile ; that is the difference between what Mr. Sproule has got and what it cost me ; so you have got the whole story.

Q. I think you put it a little higher than what you did before by about \$100,000 ?—*A.* I had occasion to go through the figures, and I am telling you that railway cost a little over \$13,000 a mile ; that is including the profit that is 40
generally allowed a contractor in a case of that kind.

Q. Including the profit generally allowed a contractor in a case of that kind ?
—*A.* In construction.

Q. It has cost \$13,000 a mile ?—*A.* Yes.

Q. It is about \$650,000 it has cost ?—*A.* Yes.

Q. That includes the profits which a contractor is justly entitled, you think, to claim ?—*A.* Yes.

Q. I will read you from the memorandum. The first payment was a payment to four shareholders—(Interrupted.) A. This was figures given for your lawyers ; I am speaking of the construction ; you need not put in your head that that road cost \$4,000 a mile ; I am telling you that that is a better road than the C.P.R., because the C.P.R. is not ballasted.

RECORD.
No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. The C.P.R. is not ballasted ?—A. No.

Q. You say it cost \$650,000 and we want to get at how you make it up. It is headed "Summary of amounts expended by Mr. A. Charlebois in connection with the contract for first 50 miles." You remember preparing that in order to be produced ?—A. Yes.

Q. No. 1, payment to four shareholders, \$125,945 ; who were those four shareholders ?—A. This was a statement to show what amount we spent.

Q. Who were the four shareholders ?—A. Mr. Allan, Senator Clemow, Mr. Murray and Mr. Devlin.

Q. How was this \$125,945 divided among these four gentlemen ; what proportion ?

Mr. McCarthy.—It is all shown in the agreement you put in.

Mr. Cassels.—Is it in accordance with that agreement ?

Mr. McCarthy.—Certainly.

20 Mr. Cassels.—Q. I will give you the figures of this \$125,945 ; Senator Clemow got \$29,100 ; that is what the document recites ; it is what you were to pay him under that document ?—A. I paid them \$125,000 each according in proportion to the share they held.

Q. Macdonald & Schiller got \$91,107 and one cent. for construction ?—A. That is beside what was paid to Sproule on his contract ; that is the money I paid these men when I became the contractor.

Q. I am only dealing with you, contractor for the building of this railway. "To contractor Preston, for fencing, \$5,940 ; for freight, \$72,119.70" ; that is freight on what ?—A. That is freight on the rails and spikes and different things 30 from Montreal to Brandon.

His Lordship.—Q. On the materials ?—A. Yes.

Mr. Cassels.—Q. Then for rails and fastenings \$116,948.09 ; for right of way, \$7,700 ?—A. On rails I will call your attention that is only money I had to pay on part, but the rail cost more than that.

Q. You had better explain who paid that additional cost—Codd did not ?—A. No, Stevens paid 20 per cent.

Q. Did not you deduct it out of Codd's \$173,000 ?—A. Never mind whether it had to be deducted or not.

Q. The rails cost more than what you contemplated ?—A. Well, at the 40 time they were delivered by this party, they were worth more than they could be bought for at the time they agreed to supply it.

Q. How much ?—A. Could not remember exactly how much.

Q. In round numbers ?—A. I think about \$28,000.

Q. And how did you get recouped that \$28,000 ?—A. I have not been recouped yet.

Q. What arrangement did you make with Mr. Codd about it ?—The document will speak for itself.

RÉCORD.

—
No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. Here is the document, (Exhibit 19). (Reads.) That is what you refer to, the \$28,000 ?—*A.* I do not refer to that ; I say that the difference of the price of the rail at that date was \$28,000 about, the difference in the quotation of price of rail from that date that I passed the contract and the price that they could be bought at the time.

Q. From the time you signed the contract until you got the rails— (Interrupted) ?—*A.* No. I do not say anything of the kind. I say if those rails had been bought by us at the proper time, we could have bought the rails for \$28,000 less than Codd and Stevens.

Q. And so you considered you were entitled to get from Codd \$28,000 ? 10

His Lordship.—I do not exactly understand how it is put. In that memorandum the rails and fastenings were put \$116,000 odd. Did they cost \$28,000 more than that ? You have put down rails and fastenings \$116,945 ; you have told Mr. Cassels they cost more than this ; how much more than this did they cost ?—*A.* Could not say exactly now.

Q. Did they cost more ?—Yes.

Q. You could not say how much ?—*A.* No.

Q. It was not \$28,000 ?—*A.* I could not say ; if that amount was charged.

Mr. Cassels.—But whatever that addition was, you had an arrangement with Codd, had you not, by which that was to be deducted from the money 20 coming to Codd ? Just answer the question yes or no ?—*Q.* What ?

Q. I say by whatever the additional price was, be it \$28,000 or less or more you had an arrangement with Codd that out of the moneys coming to Codd you would retain that amount.

Mr. McCarthy.—We have got the arrangement shown in the letter of the 9th September.

His Lordship.—I would like to know from Mr. Charlebois whether all you were going to charge the Company was \$116,945 no matter what they cost, or from what source were you going to get paid ; were you going to charge the Company more than \$116,000 odd ? 30

Mr. McCarthy.—He had a contract with the Company, lump sum.

Witness.—I had a contract with the Company, lump sum. I was asked to produce a statement of the money I had disbursed and this is the money I had disbursed myself towards it.

Mr. Cassels.—*Q.* Is not it the fact that whatever the sum was that that cost over the \$116,945—understand me ?—*A.* I understand you.

Q. Whatever they cost over and above that, you had an arrangement with Codd by which you deducted that from what was coming to him ?—*A.* That arrangement was previous to the date of the contract.

Q. I do not care whether it was or not ; was it not to come out of the 40 \$173,000, or to come out of the balance of it ?—*A.* It was to come out of the money I had in my own hands.

Q. Was it not to come out of the moneys that were coming to Dr. McMichael as trustee for Codd ?—*A.* I did not recognize Dr. McMichael at all.

Q. I have not asked you that ?—*A.* I have answered your question.

Q. I am asking you politely, and hoping you will tell the truth, and I am asking it because you have already told me all the story. Is not it the case that

there were certain moneys coming to Codd upon the completion of that contract, and that out of those moneys the difference between the cost of the rails and the \$116,000 was to be retained by you?—*A.* There was money—out of the money I would have in my own hand I was to deduct everything that was due to me and whatever balance would go to Codd.

Q. And one of the items which you were to deduct was the difference in the price of the rails?—*A.* I think so.

Mr. Nesbitt.—Q. To the extent of \$28,000?—*A.* Yes.

Q. And another sum you were to deduct was the sum of \$50,000?—*A.* Yes.

Q. How did you arrive at that \$50,000; why were you to deduct that?—*A.* Because it was agreed between Stevens and Codd that they were to pay me that in excess of the contract.

Q. Out of what was coming to Codd?—*A.* Yes, out of that amount coming to Codd.

Q. Then the right of way cost \$7,700?—*A.* Yes; it will cost more, because there is \$3,500 that the Company retained—that I offered to leave in the hands of the Company to pay the difference.

Q. “For advance to Codd \$9,866.67”; what was that?—*A.* That was cash I took out of the bank on my cheque; it was money lent to him.

Q. That was money lent to him?—*A.* Yes.

Q. And therefore, properly, fairly money that should be deducted out of the moneys coming to him?—*A.* Certainly.

Q. Under the contract?—*A.* Yes.

Q. For engines and construction car \$12,987.20?—*A.* Yes.

Q. For sundry debts while under former shareholders \$5,016.37?—*A.* Yes.

Q. On account of claims on Macdonald & Preston, etc., \$8,391.16; for engineering and sundry disbursements at Brandon and Winnipeg \$13,081.63?—*A.* Yes.

Q. For bank charges, commission discounts, \$40,571.30?—*A.* Yes.

Q. That is a heavy item?—*A.* That is not very heavy.

Q. Pretty heavy item. For professional services, insurance and sundry disbursements \$7,504.69?—*A.* Yes.

Q. For amount formerly paid on stock by A. Charlebois, \$21,000. You were a stockholder to the extent of \$70,000?—*A.* Yes.

Q. And I think you told me that on the 16th September, 1889, you had paid something like 30 per cent. of your stock?—*A.* Yes.

Q. There had been a call of 10 per cent. and a call of half a cent. on the dollar another time, and certain payments were made for work?—*A.* Well, the book of the Company will show it.

Q. But altogether you had paid on the 16th September, 1889, 30 per cent. of your stock?—*A.* Yes.

Q. And this item we have just referred to of \$21,000 is the 30 per cent. of stock which you had paid into the assets of the Company?—*A.* Certainly.

Q. So that the summary of amounts expended by Mr. Charlebois in connection with the contract, if we include all the items to which I have referred, you add them up at \$538,580.32; that is what the figure on my brief adds up?

RECORD.
—
No. 33.
Evidence of
Alphonse
Charlebois
—continued.

RECORD.

Mr. Chrysler.—It is a correct addition.

No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Mr. Cassels.—There is your own memorandum furnished under your affidavit on production.*Mr. McCarthy.*—Had not you better put it in ?*Mr. Cassels.*—I am going to put it in, but I want the original.

Q. So that according to this statement, be it correct, including the stock that you had paid, the amount that you had paid on your stock of \$21,000, and including all these other items and so on, it just foots up \$538,580. Do you mean to tell me that the difference between that figure and the figure that you gave of \$13,000 per mile is the contractor's fair profit ? Is that your opinion ? 10
—*A.* I cannot understand you.

Q. You started off by the statement that the road had cost \$13,000 per mile ; that figures up as far as I can make it out \$650,000 ; the difference between \$538,580 and \$650,000—(Interrupted.)—*A.* But you forget there was more than \$70,000 paid by the former Company in construction.

Q. I beg your pardon ; more than \$70,000 paid ?—*A.* The book will show ; that is the only money that I disbursed.

Q. I am dealing with you, Charlebois, contractor ; that is what I am getting at ?—*A.* I am dealing with Mr. Cassels, very politely ; you need not make any insinuation about Mr. Charlebois. 20

Q. You were out of pocket, you say ?—*A.* And your clients have got it in their pockets.

Q. You are out of pocket according to this memorandum anyway ; you tell me \$538,580 ; now that includes \$21,000 of cash put into your own pocket—(Interrupted).

Mr. McCarthy.—No, paid out of pocket.*Mr. Cassels.*—Same thing.

Witness.—I was asked to furnish a statement of everything that was paid since I took hold of the contract, and I gave it ; it does not mean to say it is the cost of the road. I will excuse you because you are not a railway contractor. 30

Q. Of that \$538,580, \$125,945 and \$21,000 was the value of your own and your four co-directors' stock ; that is the cash payments ?—*A.* The \$21,000 was the money I disbursed during the time I was a shareholder in the Company.

Q. I see that of that \$538,000, \$146,945 was money that you and your four co-directors had paid into the Company on account of their stock ; is not that so ?—*A.* What is that ?

Q. Your first item is payment to four shareholders of \$125,945 ?—*A.* That is the four shareholders, not for me.

Q. And the last is \$21,000 for yourself ?—*A.* Yes.

Q. The \$125,000 and the \$21,000, amounting to \$146,945, was the amount 40 you and your co-directors had paid on account of their stock before the 16th September 1889 ?—*A.* Yes, certainly.

Q. This only foots up \$538,000 ?—*A.* Yes.

Q. Your contract was £200,000 ?—*A.* Mr. Cassels, it is no use ; I am telling you it cost \$13,000 a mile.

Q. I am of such a sceptical turn of mind. What is this you have there ?—*A.* It is just a rough memorandum.

Q. Now, did you get back the money for the rails? Did you pay that yourself? Did you ever pay for the rails? Do not you know that Mr. Delap's money went to pay for those rails?—A. I never knew Delap before I saw him to-day. RECORD.
No. 33.
Evidence of
Alphonse
Charlebois

Q. Call it Stevens' money; did you pay for the rails?—A. I paid for them.

Q. How did you pay?—A. I paid by my cheque on the Bank of Montreal for those rails. —continued.

Q. How much?—A. The full amount.

Q. Were you recouped the money?—Yes, I was recouped afterwards.

10 Q. By whom?—A. By Mr. Stevens.

Q. When?—Oh, some time after; I could not tell you from memory.

Q. Tell me how you came to be recouped it?—I came to be recouped it by draft Mr. Stevens made on London, through the Union Bank at Quebec.

Q. Here?—A. No, not here.

Q. Did you go to the Union Bank with Stevens?—A. No, I did not go to the Union Bank. I went to Quebec.

Q. Did you give him a cheque in Quebec?—A. I did not.

Q. For the amount of the rails?—A. No.

Q. You said you gave him a cheque for the rails?

20 Mr. McCarthy.—No.

A. I did not give him a cheque at all.

Mr. Cassels.—Q. You gave a cheque?—A. I gave a cheque because the rails were delivered to the Bank of Montreal and your client had not the money to pay for it, they had lots of money, but they had no money at the time.

Q. So you went to Quebec with him to the Union Bank?—A. And they said the rails were paid and they were not.

Q. The fact was that you went to Quebec with Stevens to the Union Bank?—A. Cannot say exactly whether I went with Stevens the first time, but I know I went down one time with Stevens, he was called twice.

30 Q. And arranged for a draft, did not he?—A. If you want to know the history I will give it to you, he went down to Quebec, he told me the Hon. Mr. George Irwin was a great friend of his, and he went down to Quebec to see Mr. Irwin. Mr. Irwin went to the Union Bank with him, and after some *pour parler* Mr. Irwin got the bank to consent to discount a draft. Mr. Stevens was told that if he would go back to Montreal and call at their branch in Montreal the next morning that he will find the money there, and Mr. Stevens telegraphed me from Quebec that the matter was all right, that he had settled the matter all right, and now I remember—(Interrupted.)

40 Q. And the result was the draft was drawn?—A. I must finish the story, you wanted it at first.

Q. I am anxious to get it?—A. And Mr. Stevens came back, the next morning we went to the bank, and to his great surprise a contra order had been given from Quebec not to do it, so he was rather a disappointed man, and he telegraphed back to Mr. Irwin to say that his previous engagement had not been carried out, and at nine o'clock he received an answer, I think it was a quarter to ten, we were at the Windsor Hotel, and he received an answer from Mr. Irwin asking Mr. Stevens to go down to the bank, and he went down and the next day he telegraphed again that he had no arrangement, and the day after the money was paid.

RECORD.

No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. There is the draft. (Exhibit 21) ?

Mr. Chrysler.—Are you putting it in ?

Mr. Cassels.—Is it in the Commission ; it will go in later.

Q. That is your signature on the back ?—*A.* Yes.

Q. And that is a draft on James Bogle Delap, care of Messrs. Stevens, Bawtree & Stevens, for £25,000, sixty days after sight ; Alphonse Charlebois, London, 24th October 1889 ; that was cashed, was not it ?—*A.* That was cashed at the Union Bank in Montreal.

Q. And there is your signature on those cheques. (Bundle of cheques.) Is that not your signature on the back ?—*A.* Yes. 10

Q. On one cheque ?—*A.* Yes.

Q. That is the cheque " 7th October 1889, pay to A. Charlebois \$97,204.87, signed, Charles Richard Stevens, President Great North-West Central Railway." (Exhibit 22.)

Mr. McCarthy.—Are they not all Stevens' cheques ?

Mr. Cassels.—Yes.

Mr. McCarthy.—All Company's cheques ?

Mr. Cassels.—No, one is not ; it is signed by Brown ; the second one, 2nd October 1889, \$2,082.10 ?—*A.* Yes, it was for the rails.

Q. So that the result of it all is that the Company negotiated a loan, 20 and that these rails were paid for by the Company or by Delap ?—*A.* The rails were negotiated in Scotland.

Q. The result was that the loan was negotiated by Stevens or Delap or the Company, and the rails were paid for out of the proceeds of that loan ?

Mr. Chrysler.—No, they were paid in advance by him.

Mr. Cassels.—Q. How long in advance did you pay for the rails—because the cheque is 7th October ?—*A.* I cannot tell you by memory.

Q. A day or two ?—*A.* Oh, more than that.

Q. It simply amounts to this ; when you say you paid for the rails yourself, you paid for them, but the amount was paid or repaid in a few days ?—*A.* It 30 simply means this, that they said the rails were paid, and when I got them at the bank of Montreal they were not paid, and they tried to get Mr. Meredith of the Bank of Montreal to advance them, and he would not do it, and I advanced the money myself.

Q. You were repaid in how many days ?—*A.* I could not tell you.

Q. Those are the cheques repaying you ?—*A.* Yes.

Mr. Chrysler.—That is the amount expended by him, and he gets credit for what he received.

Mr. Cassels.—Q. You say the \$538,000 includes all these items ; now, your contract was £200,000 sterling ?—*A.* What has that to do with my 40 contract.

Q. I think it is a pretty big profit ?—*A.* There is no such profit as you imagine.

Q. Was not your contract £200,000 sterling ?—*A.* Yes, but I had other charges.

Q. In addition to this you had charges in favour of your co-directors to the tune of \$100,000 some odd ; \$110,687 ?—*A.* The documents you have got speak for themselves.

Q. But out of your contract price of 200,000 pounds, in addition to what we have spoken of, there were orders given to Clemow, Allan, Devlin and Murray pursuant to that agreement I put in ; is not that so ?—*A.* Out of the £200,000 contract nearly \$600,000 was paid for construction.

Q. And the balance was paid how ?—*A.* The balance was to be applied the way that I agreed between Mr. Stevens and Mr. Codd to do it.

Q. The way that you agreed between Mr. Stevens and Mr. Codd ?—*A.* Well, as far as the obligation that I took at the time when we made the agreement.

10 Q. As far as the obligations that you took at the time you made the agreement ?—*A.* Yes.

Q. And those obligations were that you were to pay so much cash to Clemow, Allan, Devlin and Murray which you have charged for in this statement, and in addition to that—(Interrupted.)

Mr. Chrysler.—No, no.

Mr. Cassels.—Q. And in addition to that you were to give them orders amounting to about \$100,687 ?—*A.* And everything as stated in the agreement—different agreements.

20 Q. Then out of your 200,000 pounds sterling it was agreed that you were to make these payments ?—*A.* It was agreed that I had certain obligations to perform on receiving 150,000 pounds, and which I did not get.

Q. Which you have not got yet ?—*A.* No ; all that we have got now from that was the 50,000 pounds and the rails.

Q. All that you have got so far is the 50,000 pounds and the rails ?—*A.* Yes.

Mr. Chrysler.—He has not got paid for all the rails yet.

Mr. Cassels.—Q. I want to see how much profit you put in your pocket ?—

A. I am afraid if you were to get the profit I made you would not be able to get to Toronto to-night.

30 Q. Let me get at the figures which came out of the 200,000 pounds sterling ?—*A.* Well, you will first take \$678,750 that I first claimed for the contract, for the building of the line ; which is equal to \$13,000 a mile ; more \$28,750.

Q. Tell me how the balance is made up ?—*A.* Well, then, if you refer to the obligation I contracted outside of that and add to the \$678,000 you will see my profits.

Q. There were obligations to the old directors amounting to \$226,000 in rough numbers ?—*A.* Yes.

40 Q. \$226,632 ; there were obligations to Codd for how much ?—*A.* Leave Codd for later on.

Q. I ask you a question which I want you to answer. You have given me the obligations to old directors amounting to \$226,632 ?—*A.* Yes.

Q. Now, I want to see what were the obligations to Codd ?—*A.* Well, the understanding was this : if you want the history of it, I will have to go to the 9th September.

Q. You have given an amount which you say is the proper sum you should get, \$678,000 ?—*A.* That is for the construction.

Q. With profit, however ?—*A.* Yes.

RECORD.

No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. You have got to explain away the difference between that and \$973,000 ; now I want to get at that difference ?—A. Well, take the \$243,000.

Q. What is that ?—A. \$226,000 that I was to pay our directors, and take my proportion that I am entitled as well as them. and put it along with it, take the proportion of \$70,000—(Interrupted.)

Q. You would be entitled to \$40,000 ?—A. Whatever it comes to.

Q. You would be entitled to the difference between \$21,000 and \$70,000 ; that would be \$40,000 ?

Mr. Chrysler.—No, no.

Mr. Cassels.—Q. What do you mean ?—A. I mean I was entitled in proportion to the \$70,000 stock I had in it to the same I was giving—¹⁰ (Interrupted.)

Q. To the same bonus ?—A. Yes.

Q. It would be \$16,000 ?—A. Yes.

Mr. Chrysler.—Take \$16,000 and \$21,000.

Mr. Cassells.—It is included in the \$37,000.

Mr. Chrysler.—No.

Mr. Cassels.—Q. Did you include that as one of your items ?—A. No, I did not include it in the cost of the road.

Q. You want to add to that \$37,000 ?—A. Yes.

Q. What would that represent ?—A. Well, that is not all. ²⁰

Q. What does that represent ?—A. It would represent what I was entitled to supposing we had sold to a party outside of me.

Q. It would have been what you would have been entitled to, supposing you had sold to an outsider ?—A. Yes.

Q. In other words you ought to be on the same footing with Clemow, Devlin, Allan and Murray ?—A. Yes, certainly.

Q. That would make between the five of you, for what you had put in and your profit, about \$263,000 in round numbers ?—A. Yes.

Q. They had \$226,632 and your \$37,000 would make a total of \$263,632 ?—³⁰ A. Yes.

Q. And you thought as they were getting a profit—(Interrupted.)—
A. Never mind, we will make a calculation of what the whole of my obligation was.

Q. No, just keep to this ; so that the outcome of that is this, that by your agreement with Clemow, Devlin, Allan and Murray of 1888, had it been carried out, you would have all got profit on the same basis ?—A. I do not mean to say anything of the kind ; I am not speaking about the agreement previous ; I am speaking on the present issue.

Q. Will you tell me why you should be on the same footing with them ?—

A. Because it is a matter of book-keeping ; I got different offices in the Dominion, and sometimes I am drawing money here and drawing there, and I would have to pay rails and ties, and so on. ⁴⁰

Q. They had paid in cash about \$126,000, and you had paid in cash about \$21,000 ; you think you ought to get that \$21,000 ?—A. I do not say that I should get it, but I say that I ought to be credited with it.

Q. It is the same thing ; so as to put you all on the same par ?—A. No, RECORD.
but to come to your idea what profit has been made on it.

Q. Tell me the other obligations ?—A. I took the whole responsibility, No. 33.
assuming the whole of the debts. Evidence of

Q. And how much have you paid on that account ?—A. There was Alphonse
\$50,000 bonds that had to be handled at certain times. Charlebois
—continued.

Q. \$50,000 of bonds ?—A. Yes, to Macdonald & Preston.

Q. Why had those bonds to be handled ?—A. Well, it was on the former
arrangement that we had made with them, with the former company.

10 Q. There was an existing agreement with Macdonald & Preston by which
they had agreed—(Interrupted) ?—A. It was when we settled with them about
the old debts of the Company.

Q. There was an existing agreement ?—A. Yes ; they agreed to take so
much in money and the remainder in bonds.

Q. And that was an existing agreement ?—A. Yes, it was.

Q. At the time of your contract that was an existing agreement, you say ?
—A. It was an agreement made.

Q. It was existing ; it was still in force ?—A. I understand so.

Q. So that you understood when you took your contract that this agree-
20 ment with Macdonald & Preston was still in force under which they were to get
the bonds for \$50,000 ?—A. I assumed that responsibility on certain conditions.

Q. What other obligations ?—A. Outside of Macdonald there were smaller
debts to be paid by the whole Company, Murdoch and a few.

Q. About how much ?—A. I could not exactly tell you.

Q. You cannot mention that ; how much have you paid ?—A. Well, in
round numbers say \$1,000.

Q. Put Macdonald & Preston out of the question, how much have you
paid ?—A. Well, I do not want to put them out of the question.

Q. You cannot give me any other item except Macdonald & Preston ?—
30 I could not say what we have paid.

Q. What other obligation had you to pay out of that £200,000 sterling ?—
A. Well, from memory I could not tell you all.

Q. How much was Codd originally to get ?—A. Well, he was to get what
would remain after all those things had been paid.

Q. How much was Codd originally to get, supposing there had been plenty
of money ? What was the original sum ? Was it \$173,000 less deductions in
your favour ?—A. Codd, from the last agreement with Stevens and Codd, was
to get whatever would be in my hand after deducting what he owed me.

Q. He was to get \$173,000 less what he owed you ?—A. He was to get
40 \$173,000—that is the difference between the sterling and the currency.

Q. He was to get the difference between the sterling and the currency,
which amounted, roughly speaking, to \$173,000, less what he owed you ; that
was the position ?—A. Yes.

Q. And, therefore, very fairly you say that out of the contract price
£200,000 sterling, that being an obligation, it was a profit into your pocket ?—
A. I do not say anything of the kind.

Q. You do not put it in those words. What did Codd owe you that you
were to deduct out of the \$173,000 ?—A. Well, first, when the agreement

RECORD. of the 9th September, 1889, was entered into in Toronto, and after—
(Interrupted.)

No. 33.

Evidence of

Alphonse

Charlebois

—continued.

Mr. Moss.—Speak louder ?

A. At the date on the 9th September, 1889, the former shareholders—that is my associates and myself—had declined to enter into contract or to carry out the agreement with Stevens and Codd ; they won't have nothing to do with them, because they were not prepared to satisfy us with the banker's security ; they could not satisfy us that when the contract would be completed that the £150,000 remaining would be paid ; and therefore Senator Clemow, Allan, and the rest—I do not think Mr. Devlin was present, but I was present—we 10 declined to enter into that agreement because they were not able to fulfil it.

Mr. Cassels.—*Q.* I am not asking you that ; I want you to answer my question ; I want to get at what was owing to Codd by you ?—*A.* I will give precisely the figures.

Q. I want to get my questions answered, and I will have to read you this clause in the decree ; here was the consent judgment, for instance, Clause E. of Section 2, makes this provision : “ The third and last charge on the said fund “ is to be the residue, namely, the sum of \$130,000, with interest thereon to “ date, payable to Daniel McMichael, Esq., q.c., as trustee in full satisfaction “ of all claims under a certain order or agreement for the payment of a sum 20 “ stated therein of \$173,000 in full adjustment of all matters in dispute between “ the said parties,” and so on. So that you were deducting from what was coming to Codd the sum of \$43,333 ?—*A.* I will arrive at that if you allow me to go on.

Q. I do not want to be bored with the whole of your life ?—*A.* No, that would be too long.

Q. There was an agreement that you made, at all events, with Codd, whereby he was to get \$170,000 ?—*A.* Yes.

Q. He was to get it out of the £200,000 sterling ; who made it with him if you did not make it ?—*A.* I am telling you that on the 9th September the 30 old agreement was no more in existence.

Q. I am asking you how Codd came to have a claim against your contract price of £200,000 sterling, of \$173,000 ?—*A.* If you allow me, that is just about what I was giving.

Q. You agreed to give him that, did not you ?—*A.* I want to state the circumstances.

Q. Answer the question, yes or no ; you agreed to give him that ?

Mr. McCarthy.—Agreed to give him what ?

Mr. Cassels.—*Q.* The difference between £200,000 sterling and £200,000 currency ; your contract was £200,000 sterling ?—*A.* Yes. 40

Q. And out of that Codd was to have the difference ?—*A.* On certain conditions.

Q. Between £200,000 currency and £200,000 sterling ?—*A.* Yes.

Q. That would leave about \$173,000 ; what sums did you become entitled, as between you and Codd, to deduct from that \$173,000 ?—*A.* I told you first—
(Interrupted.)

Q. Was there not an item of \$50,000 ?—A. I told you at first I was to hand RECORD.
Mr. Codd whatever balance—(Interrupted.)

Q. Out of that \$173,000 that was going to Codd out of that contract price, how much were you to get from Codd ?—A. I was to get every cent that he owed me. No. 33.
Evidence of
Alphonse
Charlebois

Q. How much was that ?—I could not tell you by—(Interrupted.) —continued.

Q. Was there not an item of \$50,000 that you were to get ?—Yes.

Q. What was that for ?—A. That was to be an addition of the £200,000 ; that was to be in addition.

10 Q. That was to be in addition to the £200,000 you were to get ?—A. Yes.

Q. Why were you to get that £200,000 ?—A. Because I considered, and I consider yet, that the £200,000 was not sufficient to build that 50 miles of railway.

Q. You thought there would not be profit enough ?—A. I thought it was not sufficient.

Q. You thought it was not sufficient to build the road and meet the obligations you were incurring ?—A. Mr. Stevens admitted that himself.

Q. Therefore you required that Codd should give you \$50,000 out of his \$173,000 ?—A. I required he should give me \$100,000.

20 Q. But he would not agree to that ?—A. Well, Mr. Stevens was willing to do it, but Mr. Codd said, "There will be nothing left for me if you do that."

Q. The result was while you were bargaining for this contract and throwing in the \$173,000 as Codd's and Stevens' share, you wanted \$100,000 to come out of that, and they agreed to give you \$50,000 ?—A. I never said anything of the kind.

Q. They agreed to give \$50,000 ?—A. No, sir, they agreed to nothing. I wanted \$100,000, and Stevens was quite willing, and Codd did not see his way ; and, finally, I accepted \$50,000.

Q. And out of the \$173,000 you have a charge of \$43,000 out of what was 30 coming to Codd ; what other was there ?—A. There was that \$28,000, the difference of rails.

Q. What else ?—A. There was that \$10,000 that I advanced to him.

Q. Of money ?—Yes.

Q. Given to Codd ?—A. Yes.

Q. When was that ?

Mr. Chrysler.—\$9,866.

Witness.—There was the discount on it.

Mr. Cassels.—Q. And what else ?—A. Well, there was another item ; the document will show it.

40 Mr. Cassels.—I cannot get that memorandum on which the consent judgment was based.

Mr. Arnoldi.—It is produced on the affidavit on production.

Adjourned from 1 p.m. till 2 p.m.

RECORD.

After Adjournment.

No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Examination of ALPHONSE CHARLEBOIS by Mr. CASSELS, continued—

Q. You remember when I examined you before there was a statement referred to as having been made up at the time of the consent judgment ; you said you would look for it and let me have it ; will you kindly let me have it ?—
A. I did not have it.

Q. Are you sure Mr. Lewis has not got it ?—A. I do not know.

Q. You recollect the fact ; you know when the consent judgment was made there was a statement—(*Interrupted*).

Mr. Lewis.—I am looking for it.

Mr. Cassels.—Q. For instance, when you made up that \$538,000, you charge for the engines \$12,900 odd ; you did not supply those engines?—

A. Those engines were for the construction of the road, and considered the plant of the contractor.

Q. There were some deductions made ; you had not complied with your contract in its entirety, do you remember?—A. I remember this, that you asked me to give you—I know that during the time of the last examination I had here Mr. Cassels asked me to give a statement the best I could ; I understood that he won't use it against me, but I was prepared to give him from memory the figures.

Q. I meant a different statement altogether?—A. That is the statement you showed me this morning.

Q. The statement I am referring to was the statement upon which the judgment was arrived at ; you proportioned the amounts?—A. I do not know anything about that statement.

Q. Have you searched for it?—A. Yes.

Q. There were certain things not done under your contract according to the claim of the Company, apparently ; do you know how that is, or do you know anything about it?—

Mr. McCarthy.—I have the statement ; he does not know anything about 30 it. It was given by Mr. Osler to Dr. McMichael. (*Statement produced.*)

Mr. Cassels.—Q. There was a report from Mr. Schreiber, I am told, that the engines were unfit ; do you remember that?—A. No recollection of that.

Q. Do you recollect that you had to replace certain engines?—A. It was on the day that the president and I and the engineer of the Company, that Mr. Murdock inspected the road, and I told Mr. Murdock that I had to furnish two new engines, and he took a memorandum of this and explained it to the president, and was very glad to see that the new engine had not been used for the construction of the road.

Q. You got an addition to your contract price of \$973,133, an item of 40 \$24,108 ; that was the surplus in the hands of the Government?—A. That was to be in excess of my contract.

Q. They had deposited, as I understand it, \$50,000 with the Government?—A. We had deposited.

Q. The old directors or shareholders had deposited \$50,000 in the hands of the Government?—A. Yes.

Q. And certain claims had been approved to Mr. Schreiber's satisfaction as outstanding against the old Souris Railway, and there was left a balance of \$24,000 odd?—A. Yes.

Q. And you received that in addition to your contract price?—Yes.

Mr. Cassels.—I put in that statement.

Mr. McCarthy.—He cannot prove it.

Mr. Cassels.—It is produced in your affidavit as the one on which the judgment was based.

Mr. Chrysler.—No, it was not.

10 Mr. Cassels.—Then give it back to me in the meanwhile.

Mr. Chrysler.—It is simply mentioned in the affidavit.

Mr. McCarthy.—It is not produced as the one on which the judgment was obtained.

Mr. Cassels.—Q. Now, bank charges here \$40,571 for discount and so on; have you any idea how that is made up? How did you arrive at that sum?—

A. It is the interest we were paying to the bank, and when I said my commission, it was a bill of exchange sent to Mr. Secretan, our engineer at Winnepeg, and they charged a commission from Ottawa to Winnepeg.

Q. But you had been borrowing from the bank for other purposes?—
20 A. We had \$150,000 advanced from the bank for the special purposes.

Q. How do you make up \$40,000; I cannot grasp it myself?—A. Well, if you calculate the time we had it at 8 per cent. per annum.

Q. It is a lump sum at all events?—A. It is not a lump sum; it has been charged monthly by the banks.

Q. I thought you had got an advance from them on a loan on an order that you gave them?—A. We have got to pay interest on advances.

Q. This is the way that charge is made up; perhaps this account can be put in. There is the account for that?—A. You see "Commission on remittance to Secretan, \$25."

30 Q. That is the account?—Yes.

Mr. Cassels.—We will put in that account,

Mr. Chrysler.—Put in the whole affidavit; it is in as No. 20 already.

Mr. Cassels.—We will put in the account.

Mr. Chrysler.—I do not think you should separate; that is our original affidavit.

Mr. Cassels.—On what?

Mr. Chrysler.—On production; it is filed already. (*Exhibit 20.*)

Mr. Cassels.—Q. Now, on your affidavit on production the details are shown?—A. Yes; it speaks for itself.

40 Q. What is this "Interest to Union Bank on orders"; what does that mean?—A. Well, that was on the orders of the company.

Q. Now, the fifty miles of road were constructed?—A. Yes.

Q. And you have got a contract for the second fifty?—A. I had a conditional contract for the second.

Q. Have you got that here?—A. No, sir.

Q. Where would that be for the second contract, the fifty miles. (*Contract produced.*) This was the contract?—A. That is my signature.

Q. Dated 16th October 1889?—

RECORD.

—
No. 33.

Evidence of
Alphonse
Charlebois

—continued.

RECORD.

No. 33.
Evidence of
Alphonse
Charlebois
continued.—

His Lordship.—That is for the second 50 ?

Mr. McCarthy.—Yes.

Mr. Cassels.—Q. (*Reads document.*) And there is a letter attached to that also signed by you ?

Mr. Chrysler.—You might mention the amount of the contract ?

Mr. Cassels.—\$16,000 per mile for the second 50 miles.

Q. That is your letter ?—A. That is my signature.

Q. That letter is this (*reads*). That is much the same letter as you gave —(*Interrupted*).

Mr. Chrysler.—Are you putting that letter in ?

10

Mr. Cassels.—It is attached to it, yes.

Mr. Chrysler.—It will be a separate exhibit. (*Exhibits 24 and 25*).

Mr. Cassels.—Q. That letter agreed to take bonds, signed by you ?—A. It is signed by me.

Q. And of course it means what it says ?—A. It means what it says.

Q. And you never sign a document, if I understand you right, which does not mean what it says ?—A. What document ?

Q. Any document ; I rather gather you do not sign documents hastily without knowing what they contain ?—A. If that contract had been carried— (*Interrupted*).

20

Q. When you sign papers you generally read them and understand them ?

A. Certainly.

Q. Your reputation as a shrewd business man would show that almost for itself. You would not sign a paper without knowing what was in it ?—A. No.

Q. You would not sign a paper knowingly intending any statement in it is not true ?—A. Sometimes we sign a paper on certain conditions.

Q. But the conditions would be shown ?—A. Sometimes verbal conditions.

Q. I understand you came to Toronto some time about the 4th or 5th September 1889 ?—A. I know that I was in Toronto on the Saturday before the 9th.

30

Q. But you were there some days before that ?—A. It was Friday.

Q. You were there two or three days ?—A. I could not exactly remember.

Q. You were there three or four days ?—A. I was there at the earliest, Friday.

Q. I thought it was Thursday ; however, you went there, and who went with you ?—A. I think I was alone.

Q. Who did you meet there ?—A. I met Mr. Stevens, Mr. Codd and Mr. Gregson.

Q. And who else ?—A. Madame Stevens.

Q. She is not a party to a contract ?—A. But she was there.

40

Q. And who else did you meet ?—A. I met on the Saturday Mr. Clemow and Mr. Allan.

Q. Anybody else ?—A. I think Mr. Murray was there.

Q. Anybody else ?—A. Not that I know of.

Q. Not that you now remember ?—A. No.

Q. What took you to Toronto on that occasion ?—A. We went there to see what Mr. Stevens had to propose.

Q. What Mr. Stevens had to propose ?—A. Yes.

Q. Had you seen him prior to date ?—A. No, sir.

His Lordship.—Was he president of the Company then ?

Mr. Cassels. No, my Lord ; Mr. Clemow, I think, was president. The change of directorate was on the 16th September 1889.

Mr. McCarthy. It would be the Friday before the 9th.

Mr. Chrysler. Monday was the 9th.

Mr. Cassels. The directorate were the four and Charlebois until the 16th.

Q. Well, you went there to see what Mr. Stevens had to say. Now, had you seen him before ?—A. No, sir, this was the first time I met Mr. Stevens.

10 Q. Did you know that Mr. Codd was going there ?—A. I knew that Mr. Codd would be there.

Q. How did you know ?—A. Because he informed me that he would be there, with Mr. Stevens and Mr. Gregson.

Q. He told you that in Ottawa, had he, or how did you know ?—A. No, he informed me in Montreal.

Q. That he would be in Toronto ?—A. Yes.

Q. And he was desirous of meeting you and your co-directors in Toronto ?—A. Yes.

Q. In connection with carrying out your original contract ?—A. No, he 20 did not say that.

Q. That is what he said ?—A. No, he asked us to go to Toronto.

Q. Now, you were told by Codd at all events that he was prepared to carry out his agreement ?—A. I was notified by Mr. Codd to go to Toronto with my associates, and that he wanted to see us there along with Mr. Stevens.

Q. You were informed he wanted you to go to Toronto with your associates ; that is Clemow, Allan, Devlin and Murray, and that he wanted to see you there ?—A. Yes.

Q. Were not you told that he was prepared to carry out his contract ?—

A. Before I went up I saw Mr. Senator Clemow and Mr. Allan and hesitated 30 about going up—(Interrupted).

Q. I am not asking you that ; what Senator Clemow said is not evidence ; there is no use in discussing things which are not evidence ; I ask you a question which you understand ; were you not informed by Mr. Codd that he was desirous of carrying out his contract of 1888 ?—A. He expressed that opinion after we got to Toronto.

Q. After you got to Toronto ?—A. Yes.

Q. Then before you got to Toronto he asked you and your associates to meet him there ?—A. I have no remembrance of that.

Q. What ?—A. Oh yes, he asked us to meet him there.

40 Q. And you knew that it was in connection with the carrying out of this contract ?—A. I knew it was his intention, but we were not prepared—(Interrupted).

Q. That is when you got to Toronto ?—A. Yes.

Q. I am coming to that ; but your object in going to Toronto was with a view of meeting him there with reference to carrying out the contract ?—A. It was with a view to see what they had to suggest—to offer.

Q. When you say to see what they had to offer—to offer to whom ?—A. To offer to us.

RECORD.

No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. You and your associates ?—A. Yes.

Q. Then you and your associates went up there with a view of seeing what they had to offer to you ?—A. Yes.

Q. You got there ?—A. Yes.

Q. You met Mr. Stevens ?—A. Yes, met Mr. Stevens, Mr. Gregson and Mr. Codd.

Q. And Codd wanted to carry out the bargain ?—A. Well, he was very desirous to carry it out.

Q. One thing at a time ; you are not going to be committed ?—A. Oh no ; I am here to tell the truth, and I will tell the truth. 10

Q. And he did offer at all events to carry out the contract ?—A. He expressed his desire that we should accept it.

Q. And carry it out ?—A. Yes, and we refused to do it.

Q. And you were told that the 50,000 pounds sterling was available ?—A. They said so.

Q. Who are they ?—A. Mr. Stevens.

Q. And Mr. Codd ?—A. Yes.

Q. Stevens and Mr. Codd told you that the 50,000 pounds, the first payment, was available ?—A. Would be available.

Q. May I ask you under this last contract, you got the 50,000 pounds 20 sterling ; that is the contract of the 16th September ?—A. Yes.

Q. And you got no other guarantee for the balance, except the Company's guarantee ?—A. I beg your pardon.

Q. You got something else ?—A. If you refer to the agreement of the 9th September, he had undertaken to satisfy my bankers that the 150,000 pounds remaining due would be paid, and I am still waiting for that.

Q. You are still waiting ?—A. Yes.

Q. You are waiting to be satisfied that the balance of 200,000 pounds would be paid ?—A. Yes.

Q. Were you not satisfied at the time ?—A. Well, I had to be satisfied 30 at the time because he promised that he would do it within 30 days, and I was willing to wait that time.

Q. But on the 9th September at all events, all you got was a promise that they would satisfy you. Your contract was executed on the 16th September, and that promise never was fulfilled ; they never satisfied you ?—A. That promise was not fulfilled ; he had thirty days to do it.

Q. What I say is that while on the 9th September the promise was that they would satisfy you. (Interrupted.)—A. Not satisfy me, satisfy my banker.

Q. Satisfy your banker ; they got 30 days within which to satisfy you ?—A. To satisfy my banker. 40

Q. But in the meanwhile, on the 16th, you got your contract ?—A. Yes.

Q. And under your contract, as you know, the only person to pay you was the Company ?—A. Yes.

Q. Now on the same date, on the 9th September, Codd and Stevens told you and your associates that they had the 50,000 pounds sterling ?—A. They said they were expecting it.

Q. But they failed to satisfy you, or your bankers that they would be able to pay the balance of 150,000 pounds ?—A. No.

Q. Why did you throw up that offer?—*A.* Because they were not in a position, they had not brought with them the certificate of bankers as they agreed.

Q. They had not brought with them the certificate of banker; that was as to the 150,000 pounds?—*Yes.*

Q. But as to the 50,000 pounds you were satisfied?—*A.* Well, we were satisfied inasmuch as their statement.

Q. Well, further than that?

Mr. McCarthy.—The 50,000 pounds was paid down; there was no trouble about that.

Witness.—No trouble about that.

Mr. Cassels.—Q. You were satisfied with the 50,000 pounds sterling?
A. Satisfied with the whole transaction—(Interrupted).—

Q. Were you not satisfied on the 9th September, 1889, that they had the 50,000 pounds sterling?—*A.* I was not satisfied they had, but I was satisfied they said they would have it.

Q. Were not you satisfied that they either had it with them or were able to procure it at once to carry out the bargain?—*A.* According to their statement.

20 Q. Were you not satisfied with the truth of their statement?—I could not go as far as that.

Q. There is the heads of agreement that I referred you to; I will have to show you them again, 9th September?

Mr. McCarthy.—That does not show anything more.

Mr. Cassels.—Let me examine him without interrupting.

Witness.—That is the 9th September.

Q. The heads of your agreement with Charlebois and Codd was Mr. Charlebois to arrange with Clemow, Allan and Devlin, that they will assign to him all their interest in the undertaking, provided that when the £50,000 is
30 paid, Clemow, Allan and Devlin shall take thereout such amounts as Mr. Charlebois shall have agreed to pay them?—*A.* Yes.

Q. That was executed on the 9th September?—*A.* Yes.

Q. Were you or were you not satisfied the £50,000 was forthcoming?—*A.* I was satisfied if they carried out what they stated in that document it would be all right; but I had no guarantee that the 50,000 pounds would be forthcoming.

Q. And at this particular time you had no guarantee that the 50,000 pounds would be forthcoming?—*A.* No, no.

Q. And you left them a margin of 30 days in which to agree about that?
40 —*A.* About the balance.

Mr. McCarthy.—Not to agree; they did agree then.

Mr. Cassels.—Q. You and your associates at the same time had the same knowledge about the 50,000 pounds that you had?

Mr. Nesbitt.—I object to that form of question as to his associates; they were not there.

Mr. Cassels.—Q. You went up with your associates, on what day?—

A. This was on the 9th September?—That was two days previous; that was on Saturday.

—
No. 33.
Evidence of
Alphonse
Charlebois

—continued.

RECORD.

—
No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. This was on Saturday ?—*A.* This was on the Monday, 9th

Q. Saturday was the 7th ?—*A.* Yes.

Q. Had you seen anything or heard anything, or been shown anything between the day that you first saw Stevens in Toronto and the Monday that would indicate to you that the 50,000 pounds sterling was forthcoming ?—

A. I saw nothing.

Q. And as soon as you got to Toronto with your associates you were told that the 50,000 pounds would be forthcoming ?—*A.* When I got to Toronto—(Interrupted).

Mr. Nesbitt.—I object to that question because it involves the associate 10 going with him.

Mr. Cassels.—*Q.* When you met your associates in Toronto pursuant to your arrangement with them—(Interrupted) ?—*A.* That is on the 9th.

Q. No, the 9th is Monday ?—*A.* On the 7th, I mean.

Q. When you met them there on the 7th, had you any reason whatever to doubt but that the 50,000 pounds sterling was forthcoming ?—*A.* On the 7th, as I told you before, we came to the conclusion, after hearing the statement of Mr. Stevens and Mr. Codd, that we could not accept their offer.

Q. I did not ask you that question ?—*A.* I am asking you about the 50,000 pounds sterling. Was there anything that transpired while you and your 20 associates were there to lead you to believe that the first 50,000 pounds sterling would not be paid ?—*A.* There was nothing about it, not the slightest idea whether it would be paid or not.

Q. They told you they had it to pay ?—*A.* They may have referred to that.

Q. Did not they tell you that they were prepared to pay it ?—*A.* They might have said so.

Q. But they did, did not they ?—*A.* I do not remember.

Q. You said so, and you have sworn to it once before ; but what was the reason then that you and your associates refused to carry out the old bargain of 1888 made with Codd ?—*A.* I stated before, it was because they were not 30 in a position to satisfy us as to the security that the £150,000 would be paid.

Q. They were not in a position to satisfy you ?—*A.* Or had no reference to any banker at all.

Q. No reference to any banker that the 150,000 pounds would be paid ?—*A.* They had not provided for it.

Q. Is this true, as you state in your defence ; I am going to read you paragraphs 22 and 23 of your defence—"Subsequently, on the 11th of "September, 1889, the Defendant, Charlebois, succeeded in procuring an option "of purchase," etc. (Reads down to the words "Upon the contract moneys hereinafter mentioned.") Is that true ?

40

Mr. Chrysler.—That is not correct. We discovered that was an error, and it was left out.

Mr. Cassels.—(Reading)—"The said Defendants, Codd and McMichael, and the said Stevens and Gregson," etc. (Reads down to the words "With the result that on the 16th September, the contract was entered into.")

Q. Is that true, that statement I have read to you ?

Mr. McCarthy.—That is a pretty long statement.

Mr. Cassels.—*Q.* It is a long question. I read you this, and ask you

is that true: "Subsequently on the 11th September, 1889, the Defendant Charlebois," etc. (*Reads down to the words "Thereinafter mentioned."*) Is that true?—*A.* Well, there is an error in there.

Mr. McCarthy.—That is not the defence.

Mr. Cassels.—Well, it is put in and served on us, and I am asking the witness. I am reading the defence put upon record by you.

His Lordship.—"The balance of \$226,000 was to be secured by the said shareholders." This is the Re-amended Statement.

Mr. Chrysler.—The Statement of Claim was very much altered, and we amended our defence. That is quite correct as the original defence, but it is not the defence upon the record.

Mr. Cassels.—*Q.* Who was your solicitor after you came back? Who was acting for you and your associates?

Mr. Nesbitt.—Which question are you asking?

Mr. Cassels.—Is there a doubt about it?

Mr. Nesbitt.—There is every doubt.

Mr. Cassels.—I would be very much pleased if you would let me handle the witness.

Mr. Nesbitt.—I object to the question; it is two distinct questions.

20 *Mr. Cassels.*—*Q.* Who was the solicitor acting for you and your associates prior to the 16th September, say in the year 1887, as far as you can recollect?—*A.* I had no solicitor for me but the solicitor of the Company.

Q. Who was the solicitor of the Company?—*A.* Mr. Lewis.

Q. Who was the solicitor representing Stevens and Codd?—*A.* Well, I really do not know.

Q. Why, you know, you told me before, you said this was all done between the solicitors, a great part of it, Dr. McMichael—(*Interrupted*)?—*A.* I understood Dr. McMichael acted for them.

30 *Q.* You understood Dr. McMichael was acting for Stevens and Codd, and who was acting for you and your associates?—*A.* Mr. Lewis was acting for the Company.

Q. There are a lot of documents drawn up that I referred you to, they are prepared by somebody?—*A.* After I came back to Toronto—(*Interrupted*).

Q. Who prepared these documents?—*A.* The document was prepared by Mr. Lewis.

Q. Were there or were there not discussions between Mr. Lewis and Dr. McMichael extending over a considerable time?—*A.* I know they were discussing together.

40 *Q.* And that discussion lasted, if Dr. McMichael states correctly, for the better part of two days?—*A.* I do not think so.

Q. For how many days do you think?—*A.* I think the regular discussion lasted from 11 or 10 o'clock on Saturday.

Q. On the 11th?—*A.* No, on the 16th.

Q. I am not talking of the 16th, when you came back from Toronto on the Monday, to Ottawa?—*A.* I did not arrive at Ottawa until on the Wednesday.

Q. What day of the month was that?—*A.* It must be the 11th.

Q. Monday 9th, Tuesday 10th, Wednesday 11th?—*A.* Yes, whether it was 11 at night or 12 in the morning, I could not say.

RECORD.
—
No. 33.
Evidence of
Alphonse
Charlebois.
—continued.

RECORD.

Q. You arrived on the Wednesday, at all events ?—A. Yes.

Q. And Dr. McMichael was telegraphed for on the 11th to come down ?—

No. 33. A. Yes.

Evidence of

Alphonse

Charlebois

—continued.

Q. Telegraphed for by whom ?—A. I do not know about that.

Q. What was he telegraphed for ? Do you know why ?—A. I could not

say if Dr. McMichael was telegraphed for, but I know that I telegraphed Mr. Stevens.

Q. On what date ?—A. Could not say if it was on the 12th or 11th.

Q. You say you cannot say about that ?—A. No.

Q. Do you know that Dr. McMichael was telegraphed for to come down ? 10
—A. That I cannot say.

Q. We will have the telegram later. However, you came to Ottawa, and got there on the Wednesday morning, you think, or what time on Wednesday ?

—A. I could not say exactly.

Q. Cannot you remember ?—A. I cannot remember by memory.

Q. At all events, you got down there prior to the 16th September ?—A. Certainly, I was surely there Thursday, Friday, and Saturday.

Q. And you waited over in Toronto from the Saturday until the Tuesday night, was it ?—A. Tuesday night or Wednesday night.

Q. Clemow and your associates left on Saturday night ?—A. They left on 20 Saturday night.

Q. Before they had left they had refused to carry out the Codd contract ?
—A. Positively they refused.Q. And before they left you had asked them if they would sell to you ?—A. I was to leave with them—(*Interrupted*).Q. Before they left had you not asked them to sell to you ?—A. I was to leave with them, and on our way from the hotel to the station I asked Senator Clemow what they would be willing to take for their shares, including Devlin, Allan, and Clemow ; well, he says, "I do not know ; what do you say about it, Allan ?" And Allan says, "What will you give, Charlee ?" And I said, 30
"Will \$200,000 do ?" And Senator Clemow said, "I will be quite satisfied."Q. This was on the 7th ?—A. This was on the 7th, in the evening, before the train—(*Interrupted*).

Q. 7th September 1889 ; and how long had you and your associates, Clemow, Devlin, Allan and the others been discussing the matter with Codd and Stevens prior to that time ?

Mr. Chrysler.—No others.

Witness.—Devlin was not there and Murray was not there.

Mr. Cassels.—Q. Clemow, Allan, and yourself ?—A. It must have been half an hour or quarter of an hour before they left the hotel.

Q. But how long had they been discussing it off and on with Codd ?—A. 40
I suppose they had two interviews on Saturday ; that is all.

Q. Then you say you approached them on the Saturday ?—A. Who ?

Q. Clemow ?—A. Who approached ?

Q. You ?—A. I was with them.

Q. But about buying ?—A. I told you on my way to the station—(*Interrupted*).

Q. That was on Saturday ?—*A.* Saturday night.

Q. And then they came to Ottawa ?—*A.* I left them at the dépôt, and they went down to Ottawa.

Q. And you remained in Toronto ?—*A.* Yes.

Q. And on Monday you executed what we call here the Heads of Agreement ?—Yes.

Q. And having got that you came down to Ottawa ?—*A.* I came down to Ottawa Tuesday night or Wednesday night.

Q. It was Tuesday night ; that was, at all events, after you had signed the 10 Heads of Agreement ?—*A.* Certainly.

Q. And you then saw Clemow and Devlin in Ottawa, and Allan ?—*A.* I saw them all in Ottawa.

Q. And you had a discussion with them ?—*A.* I had just a discussion with them.

Q. You had a talk with them ?—*A.* Yes.

Q. That is all I asked you ; about this deal ?—*A.* Yes.

Q. That is Mr. Lewis' signature to that document, J. Travers Lewis ?—*A.* Yes. (Exhibit 9.)

Q. That is his signature ?—*A.* Yes.

20 Q. Do you know whether that was drawn by him ?—*A.* Well, if I could see the contract, I could tell you.

Q. But you do not know from the writing ?—*A.* No.

Q. Had you any solicitor on the 11th in Ottawa other than Mr. Lewis connected with this matter ?—*A.* Mr. Lewis was the solicitor of the Company as long as the Company existed, and I had no special private solicitor there.

Q. No private solicitor other than Mr. Lewis ?

Mr. Moss.—No, that is not what he says.

Witness.—No solicitor for me.

Mr. Cassels.—Q. No solicitor for you individually ?

30 *Mr. McCarthy.*—No.

Mr. Cassels.—Q. You say he was solicitor for the Company ?—*A.* Yes.

Q. And you being a director and shareholder of the Company, you allowed Mr. Lewis to do the work ?—*A.* The work of the Company.

Q. Had you any solicitor between the 11th September and the 16th September, during any of this talk, other than Mr. Lewis ?—*A.* I think it was on Friday I asked Mr. Lewis, as it was very likely that I would become contractor of the new Company, to act for me.

Q. On the Friday, that would be the 13th, you told Mr. Lewis it was very likely that you would become contractor of the new Company, and that when you 40 became contractor of the new Company you would like him to act for you ?—*A.* Yes.

Q. And since you became contractor of the new Company he has acted for you ?—Yes.

Q. You had great confidence in him while he was representing the Company ?—*A.* I still have great confidence.

Q. Now, Mr. Lewis had drawn up, I see from the minutes, all the earlier contracts and documents that had been executed between you and your associates and Mr. Codd, for instance, of 1888 ?

RECORD. *Mr. Chrysler.*—No. You will have to take them separately ; some are and some are not.

No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Mr. Cassels.—Q. On the 13th was the first time that you spoke to Mr. Lewis, and said that when you became contractor you would like him to act for you as solicitor ?—A. Yes.

Q. That was because from the time you became the contractor you would not be the Company ?—A. Yes.

Q. And since that time he has acted as your solicitor ?—A. Yes.

Q. But up to that time he was acting for the Company, and whatever business you and your associates had to do for the Company, he did it for you ? 10
—A. Yes, up to the time I returned to Ottawa ; could not say whether it was Thursday or Friday.

Q. You said Friday ?—A. It might have been Friday, could not say to a day or so.

Q. You said Friday ; do not run round ?—A. I am not running round. On my return from Toronto to Ottawa, whether I asked Mr. Lewis to act immediately for me or later I could not say.

Q. You had, prior to the 16th September 1889, talk and discussion between yourself and your associates, and certain papers were drawn up which you had ; had you any other solicitor dealing between you and your associates other than 20 Mr. Lewis ?—A. No.

Q. Was not he representing you all ; I refer to your former depositions ?
—A. Put your question again.

Q. There were discussions which took place between you and your associates on the one part when you got back from Ottawa, and with Stevens and Codd on the other. Stevens and Codd were represented by McMichael, and you and your associates represented by Mr. Lewis, were they not ?—A. There could not have been any discussion with Stevens and Codd, because they were in Toronto.

Q. I said when you came back ?—A. That was on the Wednesday or 30 Thursday.

Q. When you came back Stevens and Codd and Dr. McMichael remained in Toronto ; you remember Dr. McMichael coming down here ?—A. Yes.

Q. You recollect Stevens and Codd coming down here ?—A. Yes.

Q. You recollect discussion going on between yourself and associates on the one part and Stevens and Codd on the other, Dr. McMichael representing Stevens and Codd, and Mr. Lewis representing you and your associates ?—A. I do not remember that.

Q. You stated to me in your depositions that that was done by the lawyers and you went on and explained how it was.

Mr. Nesbitt.—You are misleading the witness.

Witness.—I remember when Mr. Stevens and Codd came back from Toronto that we had discussion amongst us, but that Mr. Allan and Clemow and Devlin and Murray were not there, because I met Mr. Clemow, Murray and Devlin at Mr. Clemow's office, and we spoke on the subject, and after we had arranged I said, "I will see you on Saturday and tell you what you have to do." So on Saturday I saw them again and I said, "If you come Monday to Mr. McIntyre & Lewis' office I think that we will close the affair."

Q. Now, before you left Toronto had you come to an arrangement or agreement with Codd and Stevens about the getting of a contract ?—*A.* Yes, yes.

RECORD.
—
No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. That was before you left Toronto ?—*A.* Yes.

Q. Had you come to an agreement as to the price that was to be paid ?—*A.* Yes.

Q. That was before you left Toronto ?—*A.* Yes.

Q. What price was agreed upon as the price to be paid ?—*A.* \$878,000.

Q. I thought it was £200,000 sterling ?—*A.* No.

10 Q. You deduct the \$50,000 and \$28,000 of Codd's ?—*A.* Yes.

Q. That had been arranged before you left Toronto between yourself and Stevens and Codd ?—*A.* Yes.

Q. Had you arranged upon how that was to be made up, how those figures were arrived at ?—*A.* Yes.

Q. Had it been settled how the \$78,000 was going on—that was the \$50,000 and the \$28,000 ?—*A.* It was arranged that I was to get \$878,000 from the £200,000 sterling, and that I was to get in excess of that whatever money there would be in the hands of the Government.

20 Q. Then that \$78,000 added to the £200,000 was the \$50,000 and the \$28,000 to come out of Codd's ?—*A.* That was to come out of—(*Interrupted*).

Q. It was to come out of the balance of the—(*Interrupted*).

Mr. McCarthy.—Let him answer that.

Witness.—That was to come out of the £200,000 sterling.

Mr. Cassels.—Q. Had it been discussed and arranged how much was to go to the old stockholders ?—*A.* Which stockholders ?

Q. Clemow, Devlin, Allan and Murray ?—*A.* No. I was to make my own arrangements with them.

Q. You were to make your own arrangement with them ?—*A.* Yes, whatever sum I would agree to.

30 Q. Whatever sum you could ?—*A.* No, whatever I would agree to.

Q. Whatever you would agree to ; how were you to be repaid that ?—*A.* I had the £200,000.

Q. That was made sufficiently wide to cover it ; of course you had got from them, as I understand it, a sort of off-hand answer that they would take \$200,000 ; you asked them and they said they would take \$200,000 ?—*A.* I asked them on the Saturday if \$200,000 will be sufficient for them, and Senator Clemow expressed himself satisfied, and Mr. Allan said he was satisfied as far as he was concerned, but he had to see Mr. Devlin ; he was not in Ottawa.

Mr. Chrysler.—That did not include Murray.

40 *Witness.*—No, no ; that did not include Murray.

Mr. Cassels.—Q. Murray took eventually on the same basis ?—*A.* On the Sunday night I telegraphed Mr. Murray, and Mr. Murray came to Toronto either on Sunday night or Monday morning ; I am not positive of it.

Q. Then the heads of agreement, so to speak, had been carried out in Toronto before you left for Ottawa ?—*A.* Yes.

Q. Had been carried out between Stevens, Codd and yourself ?—*A.* That agreement speaks for itself.

Q. I mean the outlines of the contract and everything else. You came
p. 5240. G G

RECORD. down and had certain documents executed between yourself and your co-associates, Clemow, Allan, Devlin and Murray, you see?—*A.* When I came down there was no document prepared at all; I merely met those gentlemen.

No. 33.
Evidence of
Alphonse
Charlebois
—*continued.*

Q. I am going to read you the document. I will read you and I will read two or three more. These were documents signed by Clemow, Devlin, Murray, Allan and yourself, witnessed by Mr. Lewis and drawn by Mr. Lewis. Here is the recital of this document. (Exhibit 6). "Whereas the parties hereto"—(*Interrupted*).—*A.* What is the date of it?

Q. I will read it to you, if you will let me. "Whereas the parties hereto" were on the 11th day of September instant, all and the only shareholders in 10 "or subscribers to the capital stock of the Great North West Central," etc. (*Reads down to the words "When he is to be no longer himself a shareholder."*) Then it goes on and gives the orders. Now, the effect of that was this—(*Interrupted*).—*A.* Tell me the date of it.

Q. Is it of any consequence?—*A.* Yes.

Q. Why?—*A.* Because I want to hear it.

Q. I am reading an agreement which you know as well as I do?—*A.* I want you to read me the date.

Q. It is the 16th September 1889?—*A.* If you had told it at once—(*Interrupted*). 20

Q. You know it as well as I do?—*A.* I heard you say 11th.

Q. (*Reads document again.*) Is that true, that document as it reads?—*A.* That document is true, yes.

Q. I will read you the other agreement; here is the other one (Exhibit 5). This is another document of the same date; you do not doubt the date?—*A.* No; that is 16th September.

Q. This is also a document executed under seal by you?—*A.* That is my signature.

Q. And all the others, and witnessed by Mr. Lewis, the solicitor?—*A.* Yes. 30

Q. And it is dated 16th September 1889?—*A.* Yes.

Q. I will read you the recitals of that: "And whereas the parties hereto" were, on the 11th September 1889, all and the only subscribers to the capital "stock, and whereas prior to that date instead of and in full substitution," etc. (*Reads down to the words, "And to give to said contractors a certain guarantee."*) Is that true?—*A.* It is true.

Q. Perfectly true; everything recited there that I have read to you is also true?—*A.* Yes.

Mr. Cassels.—I just put in that statement; there was an order of the Court made by which he was ordered to produce the memorandum referred to 40 in his examination, giving details of the amounts claimed expended by the said Defendants, and so on. He put in another affidavit in which he refers to it.

His Lordship.—You can put it in as the document referred to.

Mr. Bristol.—It is under Clause "Memorandum of figures by which the" alleged judgment in Charlebois and the Great North-West Central Railway "was arrived at"; it is Exhibit B. to the original affidavit on production filed.

His Lordship.—You can put it in and mark it in that way as referred to in the affidavit.

Mr. Chrysler.—That cannot be put in without some explanation. It is a **RECORD** copy of a paper of which the witness knows nothing.

His Lordship.—It is put in, made in pursuance of an order of the Court.

Mr. McCarthy.—No.

His Lordship.—That is what Mr. Cassels says.

Mr. McCarthy.—It is simply an affidavit on production—the ordinary affidavit.

His Lordship.—Not as Mr. Cassels stated.

Mr. Chrysler.—It is put in by the Defendant on this affidavit.

10 *His Lordship.*—But it was made in pursuance of the special order of the Court.

Mr. Chrysler.—We do not admit it is evidence, and do not want to have it understood it is evidence against us.

His Lordship.—It is put in to show how he complied with the direction of the Court to make up the figures, showing the aggregate of his claim.

Mr. Chrysler.—No ; your Lordship is under a misapprehension as to the paper. This is the copy of a memorandum which was supposed to be before counsel at Toronto when the consent judgment was made up.

His Lordship.—Showing his claim.

20 *Mr. Chrysler.*—It was not made up by Charlebois ; Charlebois was not there. We do not know whether the figures are correct or not, and Charlebois produces it, and says : “ I do not know anything about it.”

His Lordship.—If Charlebois did not make the figures, you cannot put it in, Mr. Cassels.

Mr. Arnoldi.—The solicitor made it.

Mr. Chrysler.—No.

Mr. Bristol.—Under Clause 6 of his further affidavit on production he produces this as Exhibit B. to his affidavit.

Mr. Chrysler.—It would not be evidence if it was.

30 *Mr. McCarthy.*—You cannot put it in evidence.

His Lordship.—At present it should be filed as part of the affidavit.

Mr. Chrysler.—But it is not evidence in this case.

His Lordship.—No ; it just goes in, but that does not make it evidence.

40 *Mr. Cassels.*—*Q.* I just want to read you a little you said before about Mr. Lewis. I have not got the question ; they are not numbered. Page 43 : “ How did you pay for the balance ; how was it made paid-up stock ?—*A.* It “ was made paid-up stock on the 16th September 1889. *Q.* Out of what “ moneys ?—*A.* By discount they fixed that. *Q.* The discount did not fix it ; “ they had to pay something else ?—*A.* It was a matter which was fixed between “ the attorneys McMichael and Lewis, and I am not in a position to answer for “ them.”

Mr. Chrysler.—What does that mean ?

Mr. Cassels.—The making of the paid-up stock he means to imply. Then further on you were asked : “ *Q.* That made \$120,000 altogether ; that did not “ pay up your stock ?—*A.* They fixed it between themselves, the attorneys, “ and I am not in a position to give details.” Then, further on again : “ *Q.* “ That was about 25 per cent., and you profess to tell us that, although you “ were under a liability of \$70,000, and although you were still left liable to the

RECORD. "tune of some \$30,000 odd after the discount, you do not know how that was paid?—*A.* I repeat that Dr. McMichael and Mr. Lewis fixed that affair, and "that the £50,000 sterling that I received did not go on that; was not paid on that account." That is correct, is not it?—*A.* What account?

No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. Paid-up shares; but that is not the question I am asking; it is about Dr. McMichael and Mr. Lewis I am referring?—*A.* Dr. McMichael and Mr. Lewis were in the room, and so was Mr. Stevens.

Q. There was a discussion before the 16th as to this stock being made paid-up stock?—*A.* Where did that discussion take place.

Q. I am not asking that question; do you or do you not recollect when 10 Dr. McMichael came down from Toronto and prior to the 16th, that the question was put forward that the stock ought to be paid-up stock?—*A.* Well, to the best of my knowledge, there was nothing discussed as to stock, as to those details, before the 16th.

Q. Do you recollect discussion between Dr. McMichael on the one side and Mr. Lewis on the other as to the making of it paid-up stock?—*A.* Previous to the 16th?

Q. No, I won't say previous; I ask you if you recollect discussion?—*A.* They must have discussed on the 16th, because they were in that room, and previous to the 16th I have no recollection of it at all, where they met; I was 20 not there.

Q. What do you mean by saying "I repeat that Dr. McMichael and Mr. Lewis fixed that affair, and that the £50,000 sterling that I received did not go on that account." That is referring to the paid-up stock?—*A.* I was referring to the 16th when I said that.

Q. What hour on the 16th?—*A.* It must have been between ten till near five o'clock in the afternoon.

Q. We put in your depositions on that. Where did that statement come from that you put in, in that affidavit? (*Statement produced*).—*A.* I could not really tell you.

Q. Do you swear without much thought. You put in an affidavit relating 30 to it?

Mr. Chrysler.—No, he said in the affidavit the same thing.

Mr. Cassels.—*Q.* How was the amount arrived at in the judgment?—*A.* I do not know; I was not present; I told you that before.

Q. Were you told afterwards?—*A.* I have no recollection; I know there was a judgment obtained for \$678,000.

Q. And no recollection of being told how that was made up?—*A.* I have no recollection as far as the detail of it.

Q. Do you not know that there was a statement of account made up that 40 was subsequently shown to you?—*A.* They might have shown it to me.

Q. You know it was shown to you?—*A.* I beg your pardon.

Q. What did you say to me on the last occasion—that you had searched for it and did not know whether you had it or not?—*A.* Well, certainly.

Q. You did search for it?—*A.* Yes, and did not find anything.

Q. What were you searching for?—*A.* What you asked me for.

Q. That was the statement how the amount was arrived at making up the judgment?—*A.* I said I would look for it.

Q. And subsequently this was produced by you or your solicitor for you ? RECORD.
—A. I do not know who produced it ; it is not me.

Q. But you did look for it ?—A. I did look for it.

Q. And did you find the paper ?—A. No, sir.

Q. Where was it ?—A. I do not know anything about it ; I never told you that I had it. No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Q. Well, you got it from somebody, because you made an affidavit ; you do not know where it came from. (*No answer.*)

Q. Here is the affidavit ; is that your signature ?—A. That is my signature.

10 Q. Sworn to ?—A. Yes.

Q. 14th March 1893 ; “ Regarding Clause 4 of the said order, I have found the paper ”—(*Interrupted*).

Mr. Chrysler.—It is six.

Mr. Cassels.—Q. “ Regarding Clause 4 of the said order, I have found the “ paper now shown to me, and marked Exhibit B ” ; is that the paper ?—A. I could not say.

Q. Look it up and see ; is that the exhibit or not ?—A. I cannot tell you.

Q. Shall I read it or not ?—A. Whether you read it or not I could not tell.

Q. “ This is Exhibit B referred to in the affidavit of A. Charlebois, sworn
20 “ before me this 14th March 1893 ”—(*Interrupted*).

Mr. McCarthy.—Read the whole.

Mr. Cassels.—Q. “ In the City of Ottawa, in the county of Carleton, this “ 14th March 1893 ” ; that is correct ?—A. Yes.

Q. You searched for a paper ?—A. Yes, I did search.

Q. And I had asked you for that on your former examination ?—A. Yes.

Q. And you promised me you would search for it ?—A. Yes.

Q. And if you got it you would let me have it ?—A. Yes.

Q. “ Regarding Clause 4 of the said Order, I have found the paper now
30 “ shown to me marked Exhibit B, to this my affidavit ; but I know nothing
“ myself of the mode in which the figures in the consent judgment were arrived
“ at in said judgment, and I was not present ; I do not admit the correctness of
“ Exhibit B., nor do not know how nor by whom it was prepared ” ?—A. That
is correct.

Q. But this is the paper given to you, as showing how it is made up ?—
A. I do not know.

Mr. McCarthy.—Oh, no.

Mr. Cassels.—If you say “ Oh, no,” the witness will say it ; and if you say
“ Oh, yes,” the witness will say it.

Witness.—I beg your pardon. I am telling you now I will not swear if
40 that is the paper.

Mr. Cassels.—It was conceded by Mr. McCarthy, on the last examination,
that the copy on the pleadings was a copy.

Mr. Chrysler.—Oh, no, that is not correct.

Mr. Cassels.—Q. That is the paper upon which that consent judgment was
obtained. You were asked to search for that, and you said you would, and you
produced the paper I hold in my hands as the result of that search ?—A. I
cannot say if that is the paper, or how I got it.

Q. Have you any other paper ?—No.

RECORD.

No. 33.
Evidence of
Alphonse
Charlebois
—continued.

Mr. Riddell.—The affidavit on production is in.

Mr. Cassels.—It is filed in the Court.

Mr. Chrysler.—It must be put in in this case.

Mr. Cassels.—I put in the document Exhibit B. (*Exhibit 26*).

Mr. Matheson.—Only part of the affidavit is marked.

Mr. Riddell.—It is all in.

Mr. Chrysler.—Surely the whole affidavit is in ; he had read nearly every schedule.

His Lordship.—He has put in that paper B., and I suppose he has put in what he has read in it in connection with the affidavit ; that much is in. 10

Mr. Chrysler.—I submit the whole affidavit should be put in ; it is one document.

His Lordship.—They are not obliged to put it in ; it can be put in if it throws any light on it.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy.

Cross-examined by *Mr. McCarthy*.

Q. Then your first connection with this road, Mr. Charlebois, was in what year ; 1887, I think you say, was not it ?—*A.* Yes.

Q. And your associates at that time were Mr. Clemow, Mr. Murray, Mr. Bates, and Mr. Allan ?—*A.* Yes.

Q. Making altogether five ?—*A.* Yes, five. 20

Q. You obtained a charter from the Government ; you obtained letters patent ; that is the way you were incorporated ?—*A.* Yes.

His Lordship.—It was a special Act.

Mr. McCarthy.—Yes, and letters of incorporation were granted, and there was a special Act confirming it. One of the provisions of that Act require you should undertake some responsibility with reference to the former creditors —(*Interrupted*).

Mr. Meredith.—Better have that document.

Mr. McCarthy.—It is all set out in the 27th Section in the Statute.

His Lordship.—What is the Statute ?

Mr. McCarthy.—In 1886 there was this provision, 2nd June. (*Reads from first Act.*) 30

His Lordship.—51 Victoria, chap. 27.

Mr. McCarthy.—Then the letters patent were granted, and on the 22nd May, 1888, chap. 85, Section 27, there is this provision, "Provided always that the Company hereby incorporated shall be and remain," &c. (*Reads.*)

Q. Then before you undertook this work you had negotiated, as I understand, with some of those who had claims against the Company ?—*A.* Yes.

Q. And that negotiation went over some considerable time ?—*A.* Yes, I suppose five or six months. 40

Q. And then you got letters of incorporation ?—*A.* Yes.

Q. Well, amongst the claimants was Mr. Codd, I understand from what you say ?—*A.* He claims that he was a creditor for a very large amount.

Q. And did he claim he had the right under this 27th Clause to indemnity to be paid ?—*A.* So he said.

Q. He claimed he was a creditor of a very large amount, and claimed it under this clause ?—*A.* Yes. RECORD.

Q. You would not acknowledge that, I understand ?—*A.* No, sir. No. 34.

Q. The result was Codd was claiming against you or against the new Company a very large sum under the 27th Clause, and you did not admit the claim ?—*A.* No. Charlebois
cross-
examined
by Mr.
McCarthy

Mr. Meredith.—My learned friend should not examine his own client that way. —continued.

Mr. McCarthy.—If you put him in I can cross-examine.

10 *His Lordship.*—Yes, cross-examine, but not suggest the answers.

Mr. McCarthy.—Q. Now, you made a contract with one Sproule for the construction of the road ?—*A.* Yes.

Q. When I say you I mean the company ?—Yes.

Q. And that contract has been put in ?—*A.* Yes.

Q. With Mr. Sproule for the construction of the work ?—Yes.

Q. Just let me get the date of that contract with Mr. Sproule ; I see it is April, 1887. Did Mr. Sproule commence work under the terms of that contract ?—*A.* Yes.

Q. And continued until August or September, 1887 ?—*A.* Yes, about that
20 time.

Q. When was it you obtained the Order-in-Council for the land-grant ?—*A.* It was after the road was completed.

Q. When did you get the agreement with the Government that you were to obtain the land-grant ? When did the Government promise that upon your building the road they would give you the land-grant ?

Mr. Cassels.—The Order-in-Council will show.

Mr. McCarthy.—I just want to get the date.

Q. There was an Order-in-Council, was that to extend to Battleford ?—*A.* I understood it was for 120 miles.

30 *Mr. McCarthy.*—The power to make the grant is in the first Statute, 49 Victoria, Sect. 11, and that authorises the Governor to grant lands to the extent, &c. (*Reads.*) Then the Order-in-Council was made on the 22nd July 1886. We put that in.

Q. When was it Mr. Codd went to England ?—*A.* The first time ?

Q. You know he was in England, we have been told he was in England in the spring of 1887 ?—*A.* Yes.

Q. When did he go to England about this railway ?—*A.* Immediately after that agreement.

Q. Which agreement do you refer to ?—*A.* Immediately after the agree-
40 ment of Sproule.

Q. Immediately after the contract was made to Sproule ?—*A.* Yes.

Q. Did he go as the agent of the Company or on his own account, or how ?—*A.* Well, I understood he went on his own account.

Q. Then it is stated here in one of these documents that he cabled to Mr. Clemow, it is in Exhibit 3 already put in, it says, "Whereas the said John Arthur Codd, the party of the second part, did on the 22nd day of September 1887, make the offer to the party of the first part," &c. (*Reads.*)

RECORD. Now, did you hear of this cable from Mr. Codd to Mr. Clemow and Mr. Clemow's answer?—*A.* I do not remember.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

Q. You do not remember whether you did or not?—*A.* No.

Q. Did you hear of it afterwards, if you did not hear of it at the time?—

A. I might have heard of it.

Q. But you do not remember how that was?—*A.* I do not remember.

Q. Now, there was a document put in here, an agreement with Mr. Codd ; you know the one I refer to, do you, or shall I read it to you?—*A.* Which one is that ?

Q. That is the one that provides that Mr. Codd is to get the difference 10 between £200,000 sterling and \$800,000?—*A.* Yes.

Q. Do you remember about that agreement?—*A.* Yes.

Q. That is Exhibit 1 ; what is your recollection with regard to that ? How was it you were induced to sign it, or who was it asked you to sign it, or what is your recollection with regard to it?—*A.* Well, my recollection with regard to that \$173,000—is that what that referred to ?

Q. Yes?—*A.* It was that Codd claimed at that time that he had a large claim, and we had a doubt—(*Interrupted.*)

Q. Against whom?—*A.* Against the Company under the clause of the charter.

Q. Under Clause 27 of the Charter?—*A.* Yes, and we had doubt ourselves in our minds whether he might not succeed in getting something.

Q. You, while not admitting it, had doubts whether he might not succeed in getting some of it?—*A.* Yes, and it was in consideration of renouncing of his claim that he was to get that.

Q. It was in consideration of his renouncing his claim that he was to get that?—*A.* Yes.

Q. That is what you understood?—*A.* Yes.

Mr. Cassels.—That is subject to objection, of course ; the document shows itself what the bargain was.

His Lordship.—I shall take the evidence.

Mr. McCarthy. *Q.* Do you know who it was made the arrangement?—*A.* I was in the office of Senator Clemow when the thing was discussed.

Q. You were in the office of Senator Clemow when the matter was discussed?—*A.* Yes.

Q. But who was discussing it there on behalf of Mr. Codd, because he must have been in England at that time ? He was in England in December, 1887, and we hear of his being in England in April, 1888, and I suppose he had not returned in the meantime?—*A.* It must have been discussed before he went to England.

Q. Do you remember any discussion at all between you and Clemow on your side, and Mr. Codd on his side, or any person for Mr. Codd ; do you remember anything of that kind?—*A.* All I know we discussed that question, Senator Clemow, whether Mr. Codd was there or not, and it was agreed then that in part of consideration it was the consideration for which we allow him this, that he would renounce to his claim under the charter.

Q. That was the inducement, or one of the inducements, for your executing this document?—*A.* Yes.

Q. Do you know how this document was sent to Mr. Codd, or who this document was sent to, or have you any knowledge of that at all?—A. I think this document was sent by Captain Murray to Ottawa.

Q. You think Captain Murray sent it to you for your signature?—A. Yes.

Q. Where from?—A. From London.

Q. Your impression is, Captain Murray sent this document from London for you to sign here?—A. Yes.

Q. Do you know what became of it afterwards ; do you know whom it was returned to?—A. I suppose it was sent back.

Q. You have no recollection of that one way or the other?—A. I think it was sent back.

Q. Then did Mr. Codd remain in England during the months of January, February, March and April, or did he return to Canada?—A. I think he remained there a good while.

Q. Have you any recollection ; if he was there in December, as he appears to be from this cable, have you any recollection of his coming back again before the month of April?—A. No, I do not think he came back only a few weeks before Mr. Stevens came.

Q. You think he did not return until a few weeks before Mr. Stevens came?—A. A week or two weeks.

Q. Which was not until the following year, 1889?—A. Yes.

Q. Then there was a power of attorney sent to Mr. Murray?—A. Yes.

Q. But he said he did not act under that power of attorney?—A. He told me distinctly it was no use to him ; he did not act under it.

Mr. Arnoldi.—That is no evidence.

Mr. McCarthy.—I know it is not evidence ; I am only repeating what the witness said to Mr. Cassels.

Q. Well, now, what next happened in the order of events ? The document I was speaking to you about a month ago was what is called the excess agreement ; that is the agreement of the \$173,000?—A. Yes.

Q. And you told me your recollection of that was that that document had been sent back to Mr. Codd, returned to London ; is that your recollection of it?—A. As far as I can recollect.

Q. It is suggested here you did not understand my question, that you were speaking of another agreement?—A. Well, I refer to the agreement with Codd.

Q. Look at that ; that is the document ? (Document handed witness.)—A. Oh, I could not say if this document was sent back to him.

Q. That is not the document you were speaking of?—A. No, that is not the document I referred to.

Q. Do you know what became of this document ? That is the document we are talking about ; what is your recollection of what became of this document after you signed it?—A. I have no recollection of it.

Q. When you said you thought it had been returned to England, what document were you speaking of?—A. I was referring to the agreement.

His Lordship.—What agreement ?

Mr. McCarthy.—The agreement for sale, the agreement of April.

RECORD.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy—
continued.

Q. Then the position was this : Codd had gone to England some time in 1887, shortly after the work was let to Mr. Sproule ; then some arrangement was made by which this agreement was signed with regard to the \$173,000 ; then the power of attorney was sent to Captain Murray, under which you say Captain Murray informed you no action was taken ; then the next thing you got the agreement from England ?—*A.* Yes.

Q. Who brought that agreement from England ?—*A.* I think it was sent.

Q. Not brought by Captain Murray ?—*A.* I could not say.

Q. That is Exhibit No. 3. Then you do not know who brought this or how this came out here ; I am speaking of the agreement of the 9th April ?—*A.* I could not tell exactly how it came here, but I know it came from London.

Q. But whether it was brought out by Captain Murray or by mail you cannot say ?—*A.* No.

Q. Now, do you know anything at all as to the arrangement with Codd, except what appears in this agreement ?—*A.* Nothing outside of that.

Q. Then you executed this agreement and it was returned to London, though I suppose you cannot tell by whom it was returned ?—*A.* No.

Q. You do not know anything about that ?—*A.* No ; the Secretary can explain those things ; I know I signed it. 20

Q. When did you hear anything further about the matter ? This was in the spring of 1888 ; when did you hear anything further about the matter ? There was one month given by this agreement for Mr. Codd to carry it out. You agreed to sell to Mr. Codd and he had one month within which to buy ; he did not conclude within one month ?—*A.* I know during the time that Mr. Codd was there we many times referred to that agreement, and we considered it off.

Q. You referred to it many times and you considered it off ?—*A.* Yes, that it lapsed.

His Lordship.—By lapse did you say ?—*A.* We referred to it very often and thought it was off, that the time had lapsed. 30

Mr. McCarthy.—Do you know of this agreement, Mr. Charlebois ? (Showing document.)

His Lordship.—Is this a new one ?

Mr. McCarthy.—This is a new one, 26th February 1887 ; it is between Macdonald and Preston and Codd ; it is with regard to these creditors of the Company and signed by Codd.

Mr. Meredith.—He has not proved that yet.

Mr. McCarthy.—If he does not prove it I am not going to put it in.

Witness.—I do not know.

His Lordship.—He does not prove that. 40

Mr. McCarthy.—No, my Lord.

Q. Well, now we will come on to the fall of 1888, and I think the only thing that happened in the fall of 1888 was that the contract work was suspended ?—*A.* Yes.

Q. Sproule had gone on during the summer of 1888 and made some progress with his work, and then in the fall under the terms of the contract the work was suspended ?—*A.* Yes.

Q. Codd returned, you say, some three or four weeks before Stevens ?— RECORD.

A. Yes.

Q. And you saw Codd here in Ottawa ?—A. Could not say exactly if it was three or four weeks, but it was a short time.

Q. It was a short time before you met Stevens in Toronto ?—A. Yes.

Q. And I understand you to say at Codd's request you went to Toronto ?—A. We went to meet them in Toronto.

Q. Did he tell you Stevens would be there ?—A. Yes.

Q. Did he tell you who Stevens was ?—A. He did not tell me who he was ;
10 he told me it was Mr. Stevens, and that he was coming with Mr. Gregson and his wife.

His Lordship.—Gregson came from Montreal.

Mr McCarthy.—Yes ; he was Stevens' clerk.

A. He wanted you to meet Stevens but did not tell you who Stevens was or give you any explanation ?—A. Not at that time.

Q. You went to Toronto and arrived on the Thursday or Friday before the 9th September ?—A. I think it was the Friday.

Q. And I understand that Mr. Clemow and Mr. Allan followed you ?—

A. Arrived there on the Saturday morning.

20 Q. Murray was not there at that time ?—A. No, sir.

Q. Nor Mr. Devlin—he was not there ?—A. No, sir.

Q. I suppose Mr. Devlin had taken Mr. Bates' place before this ?—A. Mr. Devlin had taken Mr. Bates' place before this.

Q. Well, now, when you got there was there any business transacted between you and Stevens on the Friday, or was that delayed until the arrival of Mr. Clemow and Allan on the Saturday ?—A. There was no business transacted with Mr. Stevens before Mr. Clemow and Allan arrived there.

Q. What was the proposition that was made to you then on the Saturday ; what was it Mr. Codd wanted then ?—A. Well, Mr. Codd tried to see if he could
30 not get the Company to accept his proposition to carry the agreement.

Q. Mr. Codd wanted to see whether he could not get the Company to carry out the agreement of April 1888 ?—A. Yes.

Q. With what result ?—A. The result was that he could not satisfy any one of us, of the Company, that the 150,000 pounds would be paid.

Q. What was the result in the end ?—A. Well, they declined to entertain it.

Q. So that that agreement, so far as that was concerned, was off, was definitely off ?—A. It was off ; I understood it to be so, and it was so.

Q. Then you were all intending to return to Ottawa ?—A. I had sent the clerk of the hotel to retain my berth, and gave him the money to pay for it ;
40 and he brought it to me, and on our way to the station I asked Mr. Clemow what he would be willing to take—what they would be willing to take for his share, and Allan and Devlin.

His Lordship.—What ?

Mr. McCarthy.—Q. That is what Devlin, Allan and Clemow would be willing to take for their interest in the Company ?—A. Yes ; and Clemow answered and said : “ I do not know what Allan will do. What do you say, Allan ? ” Allan says : “ What will you give, Charlie ? ” and I says, “ \$200,000 ; ” and Mr. Clemow said, “ I will accept that offer.”

RECORD.

—
No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy—
continued.

Q. Clemow said he would accept it?—A. Yes; and Mr. Allan said he would do so too, but he would like to consult Mr. Devlin.

His Lordship.—That was for the interests of the four?

Mr. McCarthy.—No, three; Clemow, Allan and Devlin.

Q. Devlin was not there, and Mr. Allan said he would be satisfied with \$200,000, but would like to consult Devlin?—A. Yes.

Q. What put it into your head to make this proposition? You had engaged your berth to return to Ottawa, and you were all returning; what was it made you make the proposition?—A. I thought by remaining in Toronto I could come to some arrangement with them. 10

Q. On your own account?—A. On my own account.

His Lordship.—Q. With whom?—A. Stevens and Codd.

Mr. McCarthy. Q. You changed your plan?—A. Yes; when they said they will keep the matter open for me, I said: "Mr. Allan, I will not go down to-night; I will remain here."

Q. You did remain accordingly?—A. Yes.

Q. You returned to the hotel?—A. I returned to the hotel, saw Mr. Stevens and Mr. Codd and I told them—I said, "We will now go to bed and take a rest; to-morrow morning we will go to church—it was Sunday next day—and maybe in the afternoon we will have a chat. 20

Q. You were going to take a rest Saturday evening and then Sunday morning go to church, and then Sunday afternoon you would be prepared to talk?—A. Yes.

Q. Had you a chat Sunday afternoon?—A. Yes, quite a long talk.

Q. With both Codd and Stevens?—A. Yes.

Q. And the end was that agreement of Monday, I suppose?—A. Yes; well, we spoke in general on the Sunday, and Mr. Stevens thought it was just as well adjourned till Monday.

Q. He had no objection to talk in general about the matter, but he did not want to condescend to particulars until Monday?—A. No. 30

Q. You postponed making any arrangement until the Monday?—A. Yes, and there was another reason; I wanted to see Captain Murray, and I telegraphed up to Captain Murray, and I am not sure if he arrived in Toronto on Sunday night, or Monday morning, but I saw him Monday morning sure.

Q. You saw him at all events either on the Sunday night or the Monday morning?—A. Yes.

Q. Well, did you make any arrangement with him, or talk to him about it, or how is that?—A. I asked Captain Murray if he will join me in the enterprise, and he told me he was not in a position to give me an answer, that he had to consult with his partner, Mr. Cleveland, and by Wednesday or Thursday he would be in Ottawa and give me a definite answer. 40

Q. Then you had to make an arrangement and you did make an arrangement on your own behalf?—A. On my own behalf, independent of the four others.

Q. And so far as I can gather from you those who were living in Ottawa had no knowledge at all of what you were doing in Toronto?—A. None of their business at all.

Q. An arrangement was made on your account. Was Captain Murray

present when you were talking with Stephens and Codd on the Monday ?— **RECORD.**
A. No, I do not think so.

Q. Then your interviews with Murray were not with reference to purchasing his—(Interrupted).—*A.* I may have communicated to Murray the result of it, but he was not certainly present.

Q. Then the result of it was, a document was signed by Codd and yourself, which is Exhibit 7 here ?

His Lordship.—That is the 9th September, is it ?

Mr. McCarthy.—Yes.

10 *His Lordship.*—Heds of Agreement ?

Mr. McCarthy.—Yes, my lord.—*Q.* Do you know whose handwriting this is in the Heds of Agreement ; who drew this paper ?—*A.* That was Mr. Stevens.

His Lordship.—Was he a lawyer ?

Mr. McCarthy.—Yes, English solicitor, I believe.

Q. And this document was signed by Stevens ?—*A.* Yes.

Q. Why did he sign this ? You see Mr. Stevens' name is not mentioned at all in the Heds of Agreement. The only reference to Mr. Stevens is in the 7th clause. (Reads.) Then Mr. Stevens signs this letter. (Letter read.) Then endorsed upon that " With reference to the within Heds of Agreement I hereby
 20 undertake," etc. (Reads.) Tell me how it was Mr. Stevens undertook to sign that ?—*A.* Well, first of all, when I got in the room with Mr. Stevens and Mr. Codd, the first question I put to Mr. Stevens was this : I said " Mr. Stevens, who do you represent ? " He says " Mr. Charlebois I represent myself ; I am the nominee of Mr. Codd, and I am the only man that you have got to deal with " ; and he went further ; he says " Mr. Codd has nothing to do with it."

His Lordship.—*Q.* Was Codd present at that ?—*A.* Yes, it was said before Mr. Codd.

Mr. McCarthy.—*Q.* Now, was there any talk at that time about this document which was in Dr. McMichael's hands ?—*A.* Sir !

30 *Q.* Was there any talk with Mr. Stevens as to the document that was in Dr. McMichael's hands ?—*A.* Mr. Stevens, after he had declared to me that he was the only person I had to deal with, I said : " Now, Mr. Stevens, do you understand about the whole transaction ? " He said : " I am perfectly familiar with it."

Q. You asked him if he understood the whole transaction and he said he was perfectly familiar with it. Anything more ; was there anything said about the document ?—*A.* We went over the whole affair ; I explained to Mr. Stevens that it will cost so much to complete that contract and meet the obligation that there was of the old debt, and so on, and that I could not undertake to do the
 40 thing for £200,000 sterling ; that I must have more.

Q. You explained to Mr. Stevens that you could not undertake to do it for the 200,000 pounds sterling ; that you must have more ; how much more did you want ?—*A.* I demanded \$100,000 more ; and Mr. Stevens begged of Mr. Codd to consent to it ; he was quite agreeable and afterwards they both agreed to \$50,000, and I accepted it.

Q. You were to get \$50,000 more than you would have got under the agreement of April ?—*A.* And further the difference of \$28,000 for the difference in the rails and the money in the hands of the Government was to be in excess of that.

—
 No. 31.
 Charlebois
 cross-
 examined
 by Mr.
 McCarthy—
continued.

RECORD.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy—
continued.

Q. And in addition to that you were to get the money in the hands of the Government?—A. Yes.

Q. How long did it take, this bargain making; how long were you occupied in endeavouring to make a bargain?—A. I suppose it took Monday forenoon.

Q. What was the proposition you made; tell me what was your proposition; what did you propose?—A. The proposition was that I would buy my former partner's interest in the concern, that he was to get the charter, the franchise—(Interrupted).

Q. Who is he? Stevens?—A. Stevens.

Q. Stevens was to get the charter and franchise?—A. And 50 miles of road completed according to the expectation of the Government so as to earn the land grant, and he was to get in excess of that 320,000 acres of land.

Q. He would get the right to the land grant along with that?—A. Yes.

Q. In other words he was to get the Company and all the Company possessed?—A. Yes.

Q. He was to become the owner of the property and all its franchises and privileges?—A. Yes.

Q. And you for that were to complete the building of fifty miles and assign over all the shares to him?—A. Yes, as the whole thing existed at that time and I told Mr. Stevens that he knew that there was about 30 per cent. paid up a that time on the stock.

Q. Did he know about the Sproule contract?—A. He knew about the Sproule contract.

Q. Did he know how much work had been done? Did he make any enquiries as to how much work?—A. I told him; he accepted my statement.

Q. He enquired about it and you told him what progress had been made, and you told him I suppose, that the work had been stopped?—A. Yes.

Q. Did he know how much Sproule was to get per mile?—A. Yes, he knew Mr. Sproule was to get \$4,000 a mile for whatever he had to do.

Q. He knew in other words the terms of the Sproule contract?—A. Yes.

Q. He knew some work had been done and that the work had been stopped?—A. Yes, and they were to authorise me to act for them in case Sproule could not be settled with.

Q. You were to get 200,000 pounds and \$50,000 and \$28,000; is that what you mean—that you were to get 200,000 pounds sterling and \$50,000 and \$28,000?—A. I was to get \$878,000.

Q. What you bargained for as far as you were concerned was for \$878,000?—A. \$878,000 and I was to hand the balance to Codd.

Q. And the balance between that and 200,000 pounds was to go to Codd?—A. Yes.

Q. In other words Codd was willing to reduce the claim he made from the \$173,000 to whatever that balance might be?—A. Yes.

Q. So far as you were concerned you insisted on getting \$878,000?—A. I was to get \$878,000 the \$24,000 in the hands of the Government, and he was to get the difference between the \$878,000 and the 200,000 pounds sterling.

Q. Do you remember that letter which is addressed to yourself; it is marked Exhibit 19, Codd to Charlebois, dated 9th September, on the Queen's Hotel paper?—A. It was dated Toronto.

Q. When was that letter signed and delivered to you ?—A. That was signed then on the 9th September at the Queen's Hotel by Codd. RECORD.

Q. At the time that the Heads of Agreements were signed ?—A. Yes.

Q. Was that annexed to the agreement ?—A. That formed part of the agreement. No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy—
continued.

Q. When you agreed to it, was it annexed to it ?—A. Yes, I had it annexed to it.

Q. "I hereby agree that before you sign the contract mentioned in the first condition of the agreement between yourself, Allan, Murray, Clemow and Devlin" 10 &c. (Reads.) What was said about this Mr. Trahern ; because Mr. Codd was willing to make an affidavit, and Mr. Stevens signed the certificate that no assignment had ever been made to him ; what was there said about Mr. Trahern ?—A. We were afraid he had assigned that contract to Trahern, and he said he never did.

Q. What made you suspicious of that ? Why were you afraid he had assigned the contract to Trahern ?—A. Because he said so ; at least we heard that it was so.

Q. You had some information that he had assigned that contract to Trahern ?—A. Yes.

20 Q. Can you tell me why it is that the \$50,000 is provided for in the agreement—you know the agreement I mean, the agreement between Mr. Codd and yourself, called the Heads of Agreement ?—A. Yes.

Q. And the other \$28,000 was provided for by the letter which accompanied it ; what was the reason of that ?—A. I found out after that was signed that we had omitted that, and he gave me that letter.

Q. You found out after the Heads of Agreement had been executed that this \$28,000 had been omitted and he gave you that ?—A. Yes.

Q. I will ask you another matter which I think requires some explanation. It says here : "Mr. Charlebois is to transfer the whole of the stock as per 30 "agreement of the 9th April 1888, but on completion of the first 50 miles to "have paid him an additional \$50,000 or at Mr. Codd's option to transfer to Mr. "Charlebois its equivalent in the stock of the Company." Will you tell me what was said about that, how that came about ; how was it Mr. Codd was able to transfer \$50,000 of the stock of the Company ?—A. Well, it was with Mr. Stevens that they arranged at that particular time that if they wanted more money from me, if I was obliged to advance money to Codd, that instead of paying me, they would pay me in bonds.

Q. That is not what this says ; this is Codd's option ; if Codd chooses he can compel you to take stock ?—A. Well, I would have to pay him back that 40 \$50,000.

Q. In other words, you would not get it ?—A. Yes.

Q. He had the option, instead of paying you \$50,000 in money, \$50,000 stock ?—A. In stock.

Q. Yes. What it says is this ; you were to paid \$650,000 in addition to the amount provided in the original agreement ; that is the agreement of April ; "Or at Mr. Codd's option to transfer to Mr. Charlebois its equivalent in "stock of the Company." Did you understand that you might be forced to take, instead of getting \$50,000 more, that you might be forced to take the

RECORD. value in stock, whatever that value was? Do you remember?—*A.* They were to give me, if he chose, he had the option to give me \$50,000 for the worth of \$50,000 of stock—yes.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy—
continued.

Q. Who was it suggested that; was it Stevens or Codd or you?—*A.* Well, I think it was Stevens.

His Lordship.—That is, instead of deducting the \$50,000 out of the excess money in his hands, between the currency and the sterling £200,000, he might have had to take it in stock.

Mr. McCarthy.—Your lordship will see that there is not anything pointed out in the agreement that that \$50,000 is to come out of the excess money. 10

His Lordship.—No, but that is what the witness says.

Witness.—Oh, no.

Mr. McCarthy.—The mode of carrying it out was, he was to get \$50,000, or \$50,000 worth of stock; and then he was to get from Dr. McMichael \$28,000.

Mr. Cassels.—No.

His Lordship.—He wanted \$100,000 more than the \$800,000. As I understood, that was to be taken out of the \$173,000 that Codd was getting in excess.

Mr. Cassels.—Yes.

Mr. McCarthy.—The effect would be Codd would get so much less, because 20 the amount of the 200,000 pounds sterling was not altered.

His Lordship.—This is giving the option of giving him stock instead of having the amount deducted.

Mr. McCarthy.—Yes. The old agreement was really treated at an end, and Mr. Stevens refers to the old agreement, because he annexes it.

His Lordship.—It continues the arrangement by which Codd was to have this.

Mr. McCarthy.—Except it is modified.

Mr. Cassels.—It makes the Company pay it instead of the shareholders paying it individually. 30

Mr. McCarthy.—We will see about that.

His Lordship.—I understood Charlebois had already arranged with his fellow shareholders for the acquisition of all this stock.

Mr. McCarthy.—No, not at this time; he had got this far; he had said “Would \$200,000 satisfy you?” and Clemow said yes, and Allan said “I think it would, but I would like to consult Devlin.” Murray came over, and he wanted Murray to join him; nothing had been said whether Murray would join or not, because he had not yet said he would not go in and become a co-contractor.

Q. So that the whole of this was subject to your being able to make an arrangement when you got to Ottawa with your shareholders?—*A.* Yes. 4

Q. If you did not get them you could not carry it out; you returned to Ottawa and got here some time on Wednesday?—*A.* Yes, either Wednesday or Thursday.

Q. And on that day, whatever day it was, you saw Mr. Clemow, Mr. Allan and Mr. Devlin?—*A.* And Mr. Murray; we had a meeting at Senator Clemow’s office.

Q. You had a meeting at Senator Clemow’s office. What was the result of that meeting? Did you communicate what you had done? Did you tell them anything about your bargain?—*A.* Not at all.

Q. You did not communicate what you had done ?—A. I did not tell them anything I had done in Toronto—I would merely discuss the offer that I made. RECORD.
No. 34.

Q. So that they had no knowledge of the arrangements you had entered into in Toronto, that heads of agreement ?—A. No. Charlebois
cross-

Q. Then you, having made this arrangement, came back to Ottawa ; you kept that to yourself ; you did not tell any of the parties here. Did Murray know of it ?—A. In asking Murray to join me I might have told him I expected to make a contract with Mr. Stevens. examined
by Mr.
McCarthy
—continued.

Q. You might have told Mr. Murray, when you asked him to join you, that you expected to make a contract with Stevens ?—A. Yes.

Q. What arrangement did you make with your shareholders ; what was the bargain ?

Mr. Cassels.—I object to that ; it is proved ; it is all contained in writing.

Mr. McCarthy.—The writings are not all consistent, one with the other.

Mr. Cassels.—Oh, yes.

His Lordship.—Go on.

Mr. McCarthy.—Q. What was the arrangement you made with these gentlemen ? We will see how it was reduced to writing afterwards ?—A. I merely told them that day that I would give them \$226,000 ; that included Mr. Murray's part of it ; and I asked them if that would be satisfactory to them, and they said yes.

His Lordship.—Q. That is amongst the four ?—A. Yes.

Mr. McCarthy.—Q. You were to give them for their interest, their stock, \$226,000 ?—A. Thereabouts.

Q. To be divided *pro rata* between them ?—A. Yes.

Q. Well, now, what was that to be ? Did you offer them in cash, or did you want time, or what was the first proposition you made as to that ?—A. Well, at first I thought of being able to pay them cash, that I would pay them cash ?

Q. Your first proposition was to pay them cash ?

Mr. Cassels.—No, he said he first thought.

Mr. McCarthy.—Q. What was it ?—A. My intention was first to pay them cash.

Q. What was your proposition ?—A. My proposition was that I was to give them \$226,000.

Q. In cash or what ?—A. And I wanted to know if they would be willing to accept that and transfer me all the interest they had, and we adjourned then.

Q. Do I understand you that you agreed upon the price without anything being said as to whether it was to be part cash and part credit ?—A. They understood themselves and my intention was they were to get cash.

Q. The first arrangement was you were to pay them cash ?—A. Yes.

Q. \$226,000 for their interest and that was cash, then you adjourned ?—A. Then I adjourned.

Q. Any writings about that or was it word of mouth ?—A. We adjourned, and I think it was the next day I met Captain Murray on the street or in the hotel, I do not know which, and he said, "I am very glad you got that contract. " I think you will be able to complete that contract, but it will require a great deal of money to complete that," and that gave me to reflect that in paying \$226,000, it was a large amount to get out of my pocket at once, if I had to complete that road.

RECORD.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

Q. That caused you to reflect ?—A. Yes.

Q. You say you did telegraph to Mr. Stevens ; when did you telegraph ?

—A. I think it was on the Thursday.

Q. Why did you telegraph to Mr. Stevens ?—A. It was immediately after I got out of Senator Clemow's office, after they agreed to take my \$226,000, that I telegraphed Stevens.

Q. What to do ?

Mr. Meredith objects.

A. That my matter was closed and to come down.

Mr. Meredith.—That is not right ; I object to that ; produce the telegram. 10

Mr. McCarthy.—I cannot produce it. Q. Was that telegram sent in accordance with any understanding, no matter what the telegram was ; was there any understanding when you left Toronto about telegraphing ?—A. I told Mr. Stevens when I left Toronto that so soon as I would see my partner and arrange with him I would let him know.

Q. You told Mr. Stevens when you left Toronto, so soon as you would see your partner you would let him know ?—A. Yes.

Q. And you telegraphed on the 16th for him to come down ?—A. Yes.

His Lordship.—On the 16th ?

Mr. McCarthy.—Well, on Thursday. Q. Then you began to reflect in 20 consequence of what Mr. Murray said to you that \$226,000 was a large sum to pay. Now, then, in consequence of that did you do anything ?—A. Well, on the 16th or on the Saturday, I am not sure which of the dates.

Q. The 16th would be Monday ?—A. Yes.

Q. You are not sure which day it was ?—A. It was on either Saturday or Monday I told them I would pay them their cash disbursements ; that is the amount they had advanced in the Company—the disbursements.

Q. You then told your partners you would merely pay them the amount they had paid in ?—A. Yes.

Q. And about the balance ?—A. Well, I would give them satisfactory 30 security.

Q. Well, then, in point of fact, you were making a new proposition ?—A. Yes.

Q. What did they say to that ?—A. They said it was all right ; they agreed to it.

Q. When was it arranged as to what that security was to be ?—A. It was not arranged until late on the 16th September, the date we passed our contract, I think it was the last thing we did.

Q. It was left open as to what that security was to be until the very last thing ?—A. Yes.

Q. When was it Dr. McMichael came down ? I think you said he came 40 down with Stevens ?—A. He came down on the Friday morning.

Q. Did he come down with Stevens and Codd ?—A. I think so.

Q. And when was it you met them ?—A. I think it was Friday night.

Q. Were you discussing matters with them on Friday and Saturday ; and what was there to discuss ?—A. Very little.

His Lordship.—Q. That was to Ottawa ?—A. They came to Ottawa.

Mr. McCarthy.—Q. And it was in Ottawa the matter was finally closed. All these papers bear the date apparently of Monday, all that you signed ?—A. Yes.

Q. All the papers that you signed were all signed on the Monday?—A. RECORD.
On the Monday, yes.

Q. I want to find out from you if you had anything at all to do with the form in which the contract that you had entered into was put; can you give any explanation at all of why there were so many papers, and why the papers took the form they did take? Can you give any explanation at all about that?—A. No, I cannot very easily remember those details.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

Q. Have you told me the bargain that you made? Was there any change in the bargain, between you and Mr. Codd or between you and Mr. Stevens 10 after they reached Ottawa?—A. No.

Q. There is something I ought to have asked you before, perhaps; these heads of agreement refer to some rails; do you remember about that?—A. Well, I remember about that, that Mr.—(Interrupted.)

Q. “Mr. Charlebois to take up and pay for the 1,160 tons of rails already “lying at Montreal, the balance of the rails to be delivered to Mr. Charlebois “will be delivered in due time for the execution of the contract, chargeable “with the balance due at the rate of 5 pounds 13 shillings and sixpence in “Montreal.” Now, what is there about the rails—because there is nothing in the original contract about rails being sent to Montreal?—A. In reference to 20 that, in Toronto Mr. Stevens and Mr. Codd told me that they had provided, in anticipation, for the rail in Scotland before they left, and if they could not succeed in closing the arrangement with us, that they might speculate with them, to sell them on the market and make enough profit to pay their expense of coming here; and it was agreed that they would supply me those rails at the price that I would fix; that was £5 13. 6.

Q. What about the 1,100 tons of rails that were lying in Montreal?—A. They were not yet laying in Montreal.

Q. That is what it says here?—A. That is what the agreement says, but I found they were not there; they were on the sea.

30 Q. Why was it you were to advance the money for those rails; what is the explanation of that? Why were you to pay for the 1,100 tons of rails? It says, Mr. Charlebois was to pay for the 1,160 tons of rails?—A. That was the wharfage.

Q. It was more than that; it was the rails. Why was it that they asked you and you agreed to pay for the 1,160 tons of rails, which were then on the sea, but which were said to be in Montreal? What is the explanation about that?—A. I do not remember about that, because I know they told me that the rails were paid for before they left.

40 Q. Well, as a matter of fact did not you pay for the rails?—A. I paid for all the rails.

Q. But the 1,160 tons, did not you pay for those?—A. I paid for those as well as the balance.

Q. Speak about these in the meantime; did not you pay for the 1,160 tons?—A. Certainly.

Q. Whom did you pay?—A. The Bank of Montreal.

Q. Do you remember the circumstances under which you had to pay for the 1,600 tons?—A. Well, I simply went to the Bank of Montreal and asked

RECORD. them for the bill of lading of those, and they told me they could not deliver the bill of lading before being paid.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

Q. You went to the Bank of Montreal in Montreal ?—A. Yes.

Q. And asked for the bills of lading for the rails, and they told you they could not deliver them until the rails were paid ?—A. Yes.

Q. And paid for them ?—A. Yes.

Q. And you had forgotten that was part of the agreement that you were to make that advance ?—A. Yes, I forgot all about that.

Q. But you remember you did have to pay for the 1,160 tons of rails ?—
A. Yes. 10

Q. Then the agreement is to be found embodied in this agreement which took place in Toronto ; there was no change made by you and Codd and Stevens after you reached Ottawa here ?—A. Not the slightest.

Q. And the arrangement you made with Clemow and the others you made without disclosing to them what your bargain was with Codd ; did they ever know ?—A. They never knew anything about my contract.

Q. Up to the time they transferred their stock did they know anything at all about your agreement with Codd ?—A. No.

Q. Or with Mr. Stevens ?—A. No.

Q. Was there anything said in Toronto as to how you were to pay them 20 whatever you agreed to give ? Anything said between you and Stevens ?—A. To whom ?

Q. Was there anything said between you and Stevens in Toronto as to how you were to get—or what money you were to have to pay Mr. Clemow and Devlin and Allan ?—A. I was to get 50,000 pounds, and I would pay Allan, Clemow and Devlin whatever sum I might agree to.

Q. Out of that 50,000 pounds ?—A. Yes.

Q. “ Mr. Charlebois to arrange with Allan, Clemow and Devlin that they “ will assign to him,” &c. ; “ and Clemow, Allan, and Devlin shall take thereout “ such amounts as Mr. Charlebois shall have agreed to pay them ” ?—A. That 30 is it.

Mr. Meredith.—What are you reading from ?

Mr. McCarthy.—Heads of the Agreement. Q. Then it was supposed at that time that you would be able to settle with those men out of the 50,000 pounds ?—A. Yes.

Mr. Meredith.—You are putting words in the witness' mouth.

Mr. McCarthy.—Does not it say that ?

Mr. Meredith.—I do not think so.

Mr. McCarthy.—“ Clemow, Allan and Devlin shall take thereout such “ amounts as Mr. Charlebois shall agree to pay them.” 40

Q. Did you get this 50,000 pounds in accordance with the agreement ? Was that money paid to you ?—A. Certainly.

Q. Who was it paid by ?—A. It was paid by Mr. Stevens.

Q. Do you know whose cheque it was, whether it was Mr. Stevens' cheque, or whose cheque was it, can you tell ?—A. Well, until the cheque was shown to me, until I saw the cheque I was under the impression that that cheque was a cheque on the Bank of Montreal signed by Stevens.

Mr. McCarthy.—Have you got the cheque here ?

Mr. Bristol.—No, Anderson has it ; he would not give it up.

Mr. McCarthy.—*Q.* You have seen the cheque comparatively recently ?—

A. The cheque was shown to me since the—(Interrupted).

Q. Since this litigation ?—*A.* Yes.

Q. But until you saw the cheque you were under the impression it was Mr. Stevens' cheque directly on the Bank of Montreal ?—*A.* Yes.

Mr. Bristol.—It is in the hands of the bank.

Mr. McCarthy.—*Q.* Do you recollect, Mr. Charlebois, what was done on the Monday ? You remember, of course, that you got that £50,000 ; that was 10 on the Monday, was it not ?—*A.* Yes.

Q. This is the cheque, I believe ? (Cheque produced.)—*A.* That is the very cheque.

Q. It is a cheque on the Union Bank, of the Great North West Central, signed by Stevens as president, and by Mr. Codd, as secretary, for \$243,333.33, dated 16th September, 1889. (Exhibit 27.) You thought until you saw it recently that it was Stevens' own cheque on the Bank of Montreal ?—*A.* Yes.

Q. What did you do with it ?—*A.* I endorsed it and went to the bank and put it in.

Q. Where did you deposit it ?—*A.* In the Union Bank ; deposited it there.

20 *Q.* What time of the day was it ? After banking hours or before ?—*A.* It was in banking hours.

Q. So that your deposit would not be till the next day ?—*A.* It would be that day or the next day.

Q. It would not be that day ; after banking hours you could not deposit it on the 16th ?—*A.* I think it was.

Q. Did you pay these gentlemen what you agreed to pay them ?—*A.* I did.

Q. Of your own money ?—*A.* Yes.

Q. Then you paid Mr. Clemow the proportion you had agreed to pay him, Mr. Allan, Mr. Devlin, and Mr. Murray too ?—*A.* Yes.

30 *Q.* You paid them all on the same day ?—*A.* Yes.

Q. Before you paid them I suppose they had transferred their shares ?—*A.* As they transferred their shares I handed them their cheques.

Q. The shares were to be transferred to you or to your nominee ; these are your cheques, are they ?—*A.* Yes, those are my cheques.

Mr. Bristol.—Do you prove the endorsement ?

Mr. McCarthy.—They purport to be endorsed ; the bank has paid them. These are four cheques, 16th September, to Mr. Clemow, to Mr. Allan, to Mr. Devlin, and to Mr. Murray, for the various amounts they are entitled to. (Exhibit 28.)

40 *Q.* Were the shares transferred to you, or who were they transferred to ?—*A.* They were transferred directly to Stevens.

Q. At whose—(Interrupted.)—*A.* At his own request.

Q. And annexed to the agreement which is already in (Exhibit 6) is this document from Mr. Charlebois, "I, Alphonse Charlebois, do hereby authorise Clemow, Devlin, Allan," &c. (Reads.) Then these people are all at Mr. Stevens' request ?—*A.* Yes.

Q. And you transferred your own shares by this instrument to Mr. Stevens ?—*A.* Yes.

RECORD.

—
No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

RECORD.

No. 34.
 Charlebois
 cross-
 examined
 by Mr.
 McCarthy
 —continued.

Q. That is your signature ?—*A.* Yes.

Q. That is on the 16th, Exhibit 29. (Reads.)

Mr. Arnoldi.—That is not the way to prove the transfer of stock.

Mr. McCarthy.—I am proving the document.

Mr. Arnoldi.—It does not prove the transfer of stock.

Mr. McCarthy.—Well, I am putting it in.

Mr. Arnoldi.—I object to its going in.

His Lordship.—I think it may be received ; I do not know what the value of it is.

Mr. Arnoldi.—We do not know what the document is ; it is not a delivered 10 transfer ; it is produced from Charlebois' own custody ; it is not from Stevens' custody it is produced. It cannot be evidence ; I do not know what it is produced for. He produces a document from his own custody with reference to a transfer to somebody else.

His Lordship.—Is it from his own custody ?

Mr. Arnoldi.—Yes.

Mr. Chrysler.—It is signed by Stevens and is evidence against him ; you have the duplicate.

His Lordship.—It may go in for what it is worth. I do not know what the effect of it will be. Stevens at that time was acting for Delap. 20

Mr. McCarthy.—We do not know about that ; that is their case.

His Lordship.—Stevens was sent out in the interests of Delap I understood.

Mr. McCarthy.—Yes ; we have no evidence of it one way or the other. There were other papers signed that day, and amongst them these two, I believe, which have not yet been put in, signed by Mr. Codd.

Mr. Arnoldi.—Are those evidence against us ?

Mr. McCarthy.—I should think so ; it is part of the whole thing.

Mr. Bristol.—He does not know Codd's signature.

Mr. McCarthy.—*Q.* Do you know those ?—*A.* Yes.

Q. Did you see these signed ?—*A.* I think I did. 30

Mr. McCarthy.—These are on the same day. (Reads.) This money, \$173,000, was to be paid to Dr. McMichael to be held in trust, and out of that he was to pay \$28,000 to Charlebois ; witnessed by Mr. Lewis and signed by Mr. Codd. Then there is another agreement which I will not bother with now. I put that in. (Exhibit 30.)

Mr. Meredith.—The second one is in also.

Mr. McCarthy.—I do not know whether it is in or not.

Q. You are not able to tell the order, or can you tell the order in which these various papers were executed ; do you know anything at all about that ? —*A.* No. 40

Q. I will tell you the different papers that were executed that day and see if you can tell me which was executed first, or which was executed second, or whether you can throw any light on that, or which was executed last. Do you know anything at all about what took place in the Company after you assigned your shares ? Who was the president of the Company, or who had been the president up to that time ?—*A.* Of the old Company ?

Q. Yes ?—*A.* Mr. Clemow.

Q. You mean of the Company after you got the patent ?—*A.* Yes.

Q. Well, now, after this transfer was made, which was made upon the 16th, do you know who became the president, or had you anything at all to do with it?—*A.* Mr. Stevens became the president.

Q. But were you present at the Board meeting at which he was elected president?—*A.* I was in the room, yes.

Q. And who was appointed secretary?—*A.* Well, when I went to the room I think that Codd was acting as secretary.

Q. Let us see how these papers were executed. The contract (Exhibit 9) was signed by Charlebois on the one part, and by Stevens as president and Codd 10 as secretary, with the Company's seal?—*A.* Yes.

Q. That is one document, and let us see what the other says. Now the document, which is Exhibit, 12 is a collateral agreement with reference to the Sproule contract; that also was signed by Stevens as president and Codd as secretary of the Company?—*A.* Yes.

His Lordship.—I suppose the order of signature does not matter very much; it was all done at that time, and the witness does not know very much about the order.

Mr. McCarthy.—The transfers were made and these relations had ceased to exist before any construction contract was executed; it was the new 20 secretary and officers who signed.

His Lordship.—What was the date of the new contract for construction?

Mr. McCarthy.—On the same day.

His Lordship.—Stevens signed it as the new president?

Mr. McCarthy.—Yes.

Q. Now there was £50,000, the receipt; I want to get some explanation about that contract and that receipt. Here is the receipt of the £50,000. "Received from the Great North West Central Railway Company the sum of £50,000 sterling on account of my contract for construction at this date." 30 From that it would appear that you got £100,000 that day; how is that?—*A.* No, that is the receipt for the cheque you showed me.

Q. All you received was that cheque?—*A.* All I received from Stevens or any other was £50,000.

Q. Let me see what the agreement says: "Whereas the Company did on the 18th day of September 1887 enter into a contract, &c." (Reads.) That is the 50,000 which you have already told me was the one cheque which you got that day?—*A.* Yes.

Q. And that was a part of the sum mentioned in the heads of contract which was paid to you, not merely for doing the work of the road, not merely 40 for this construction, but assigning over the whole. (Interrupted.) *A.* The whole assignment; it was the 50,000 that was to be paid on account of the whole assignment.

Q. The transfer of the Company and all belonging to it?—*A.* Yes.

Q. After you made that bargain, as I understood you to say, Mr. Stevens requested you to give him a letter about the bonds?—*A.* He requested me to give him a letter about the bonds after we returned to the hotel.

Q. Was that after everything had been signed and delivered and closed up?—*A.* After everything had been done for a couple of hours.

RECORD.
—
No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

RECORD.

—
No. 34.
Charlebois
cross
examined
by Mr.
McCarthy
—continued.

Q. Then after everything had been done a couple of hours, at the hotel what was it he said about the bonds?—A. He asked me to sign the letter you have got before you there.

Q. For what purpose?—A. For just to enable him to finance on the other side.

Q. The letter reads as follows. (Reads letter.) Did you ever get any letter, any writing under that?—A. No.

Q. Asking you to take bonds?—A. No.

Mr. McCarthy.—It is provided: "I am willing if the Company shall so require me by writing, to accept bonds," and he never heard from them; and this is the contract with the Government which I put in, dated 12th September 1887. (Exhibit 31.)

His Lordship.—That is as to land-grant?

Mr. McCarthy.—Yes; and also as to the way the road is to be built. When they grant land they require the road to be built in a certain way; they satisfy themselves as to the condition of the road.

Q. What was the principal value in this charter of the Great North West Central?—A. The value of the charter?

Q. Yes?—A. Oh, it was worth a great deal.

Q. Why?—A. Oh, it was worth a great deal.

Q. Why?—A. On account of the land-grant, 6,400 acres per mile.

Q. That made it a very valuable charter?—A. Made it a very valuable property, and it is so to-day yet.

Q. Will you tell me why it was that it was thought advisable to put an end to the Sproule contract, and substitute you as a contractor? (No answer.)

Mr. McCarthy.—I put in a letter dated August 29th 1890, rescinding that offer to take the bonds. (Letter read.) And then there is the reply to that, acknowledging receipt, signed by George Aird, secretary. (Exhibits 32 and 33.)

Q. You sent that letter I read?—A. Yes.

Q. I want to know why it was thought advisable to put an end to the Sproule contract; Sproule had a contract for doing the work?—A. Yes.

Q. And your contract was to supersede that?—A. Yes.

Q. Why was that?—A. Well, at the time Sproule was not attending to his work properly, and was constantly absent from the work; and we thought it was better to change it.

Q. Whom do you mean by "we" thought to change it?—A. I thought.

Q. You say you discussed with Mr. Stevens the fact that Sproule had a contract and had done certain work?—A. Yes; I was free, if I thought proper, to continue that contract with Sproule, and I was authorised by the Company— (Interrupted).

Q. What I want to find out from you is, who was it suggested in Toronto that you should become the sole contractor with liberty to employ Sproule or not if you pleased?—A. That was Mr. Stevens.

Q. Well, now, why?—A. Because he says it will have a better show in the English market.

Q. In what way?—A. Well, considering my standing as a contractor; Sproule was not known as a contractor.

Q. Have you been a contractor of many years' experience?—A. Twenty- two years' experience. RECORD.

Q. Railway contractor?—A. Yes.

Q. And you are known to be a contractor?—A. I think so, yes.

Q. That was the reason, or one of the reasons, that Mr. Stevens desired that you should take the contract?—A. Yes.

Mr. McCarthy.—On the back of that agreement of the 9th April 1888 is the endorsement of Codd, dated 16th September 1889, signed by Codd and his seal. (Reads.)

10 His Lordship.—Is that the one that suggested it had been assigned to Trahern?

Mr. McCarthy.—Yes. Q. Do you know whose handwriting this is in?—A. It looks like Mr. Codd's writing.

Mr. McCarthy.—On the back of Exhibit 3, which is the Codd agreement, the agreement to give Codd this money, there is this endorsement. (Reads.) It is not signed by Mr. Charlebois, so he remains responsible under the other arrangement, if he is responsible at all about that.

Q. Do you know anything at all about why this document was signed; do you know how it was that Mr. Codd released Mr. Allan, Clemow, and 20 Devlin from their responsibility in connection with that \$173,000; of course the document speaks for itself, but do you know anything about it?—A. They wanted to be released.

Q. Well, was there any talk or discussion about their being released?—A. I think they insisted on being released from that.

Q. So that they were released from that, and the only obligation that they continued, if I understand the documents, was their guarantee to the extent of their shares against the debts, under Clause 27?—A. That is all.

Q. That is all they remained liable for?—A. That is all.

Q. They had no other responsibility one way or the other?—A. They did 30 not want to assume the responsibility of the other.

Q. Now, you made an agreement, a conditional agreement you call it, with reference to the other 50 miles?—A. Yes.

Q. Where is that?—A. That has been transferred back to the Company.

Mr. McCarthy.—Will you produce that, please?

Mr. Cassels.—It is in.

Mr. McCarthy.—This is it, dated 16th October. Q. Whom did you make the bargain with, with reference to this contract?—A. With Mr. Codd.

Q. Was that after Mr. Stevens left?—A. After Mr. Stevens left.

Q. Had you any talk with Mr. Stevens before he left about the 50 miles?— 40 A. I had a talk with Mr. Stevens before; he told me he wanted me to build the whole road; that is, the whole 430 miles, and of course he could not tell me just now at the time how much they could give me to build it, but I was certain to get another 50 miles.

Q. Was there anything said about price between you and Stevens as to this 50 miles?—A. I could not say if there was anything mentioned about it.

Q. You cannot say if there was anything mentioned to you and Stevens as to price; the price is how many thousand?—A. \$16,000 a mile,

RECORD.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.
Sic.

Q. You made that bargain with Mr. Codd, did you?—A. Yes.

Q. And it was put into writing. Where is it stated to be conditional; is it on the face of the contract or outside?—A. It is stated that this contract, that I cannot go on with the work before I get—(Interrupted.)

Q. How does that 50 miles compare with the other 50 miles; how does the second 50 miles compare with the first; is it a more difficult job to do?—A. About the same. If you read the contract, there is a very large bridge to build across the river, and it is exempted from the contract.

Q. What river is that?—A. Through the Saskatchewan.

Mr. Chrysler.—South Saskatchewan.

10

Mr. McCarthy.—Q. It does not include the bridge?—A. No.

Q. And the other 50 miles, for which you were to get this \$13,000 per mile, is about the same?—A. Yes.

Q. When you say \$13,000 per mile is a proper figure for this 50 miles, do you consider that on the basis that no work had been done, or some work had been done?—A. I say the road can be built for \$13,000 a mile.

Q. Either one 50 miles or the other?—A. Yes.

Mr. Meredith.—Q. Including profit?—A. Yes; but you will observe in this contract there is a very large amount of rolling-stock to provide that is not provided in the other, which will make the contract worth fully \$16,000 a mile. 20

Mr. McCarthy.—Q. Comparing the one contract with the other, deducting the rolling-stock—(Interrupted.) A. Well, that is in excess of the other contract as far as the rolling-stock is concerned.

Q. Deducting that, what were you getting on this contract per mile?—A. Just about \$13,000 a mile.

Q. You had some rolling-stock to provide, but eliminating that, you were getting about the same?—A. Yes.

Q. That contract was dated 16th September; what did you do under it?—A. Under what contract?

Q. Under the contract for the first 50 miles?—A. We went on with the 30 work; that is, Macdonald and Schiller.

Q. Who are Macdonald and Schiller?—A. They are contractors.

Q. Had they anything to do with Sproule?—A. I think they were a security for Sproule.

Q. What became of Mr. Sproule?—A. I do not know, really; he got off the contract.

Q. As a matter of fact, Sproule released, and you went on with Macdonald and Schiller as representing Sproule?—A. Yes.

Q. And was their contract continued?—A. Yes.

Q. Only they became sub-contractors under you?—A. Yes. 40

His Lordship.—I thought he said they were securities for Sproule.

Mr. McCarthy.—Yes, but they afterwards became sub-contractors under him.

Mr. Chrysler.—They had been securities for Sproule upon the old contract, and now a few days after the 16th September Sproule released his contract, and Macdonald and Schiller took a sub-contract.

Witness.—It was not Macdonald and Schiller; it was Macdonald and Preston.

Mr. Chrysler.—Preston took Schiller's place.

Mr. McCarthy.—*Q.* They continued this work on the terms of the first contract with Sproule ; they became your sub-contractors ?—*A.* Certainly.

Q. You went on until you claim you completed your contract ; when did you claim you completed your contract ?—*A.* I think that the contract was completed, as far as I can remember, in the spring of 1889, 1890, or 1891 ; I do not know.

Q. You commenced in the fall of 1889 ?—*A.* Yes.

Q. You think it was completed in the spring of 1891 or 1890, was it ;
10 it would be some time in the summer of 1890 ?—*A.* It was 1890 or 1891 ; I do not know the date.

Q. Did you get a certificate from the Government officer ? —*A.* I think so ; I think there was a certificate of the Government issued.

Q. How were you to have been paid ; I do not remember at the moment the terms of your contract with these people ; how were you to be paid ?—*A.* I was to be paid as soon as the road would be received by the Government.

Q. You were not to be paid as you went along, but you were to be paid one sum at the end ?—*A.* Yes.

His Lordship.—*Q.* As soon as the road was received by the Government ?
20 —*A.* As soon as the road was approved by the Government.

Mr. McCarthy.—*Q.* So soon as the Company became entitled to the land grant, then you were to be paid ?—*A.* Yes, that was the agreement.

Mr. Meredith.—That is all in the documents, and that is not the agreement in the documents.

Mr. Cassels.—The contract was this : that they were to build the road not below the Government specification, but the contract does not limit it to that.

Mr. McCarthy.—I thought there was no question about that.

Mr. Cassels.—Oh, yes.

Mr. McCarthy.—*Q.* Now, with regard to the rails, you told us you paid
30 for the first lot, the 1,160 tons of rails, and you got back that money, did you ?—*A.* Yes.

Q. The whole of it ?—*A.* The whole of it.

Q. With regard to the other rails, did the Company keep faith with you and supply the rails in accordance with the contract ?—*A.* I paid for the whole of the rails, but the Company paid it back to me.

Q. The Company repaid you ?—*A.* Yes.

Q. All, or how does the rail account stand ; how does the account between you and the Company stand with regard to the rails ?—*A.* I will have to give credit to the Company for what the rails cost.

40 *Q.* Did they pay you for all that was paid out for rails ?—*A.* Except what was short ; there were not enough exported, and I had to buy some in Montreal.

Q. They did not send rails enough, and you had to buy some in Montreal ? —*A.* Yes.

Q. About how much ?—*A.* I think, as far as I remember, I completed the 5,000 tons.

Q. About what would that be ?—*A.* About 30 or 40 tons, I think.

RECORD.

—
No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

RECORD.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

Q. How much were you out of pocket on the rails?—A. Well, the whole thing cost, with fastenings and all, about \$140,000.

Q. How much did you get out of that altogether?—A. \$101,000.

Q. Somewhere about \$100,000?—A. Yes.

Q. So that, in point of fact, they did not keep faith with you in that respect, supplying you with all the rails, and you had to buy some more?—A. I was short and had to buy some more, and was delayed some considerable time.

Mr. McCarthy.—I put these in; these are certified copies of the different memorandums; one is dated 12th March 1890?—(Interrupted.)

His Lordship.—Of what?

10

Mr. McCarthy.—Of the Government engineer, as to the progress of the work and the final completion of the work. 28th August is the final one; it is signed by the late Sir John Macdonald, Minister of Railways. That was approved of. I put these three in; they will go in as one Exhibit; one 12th March and the next 10th August, and the third 28th August. (Exhibit 34.)

Q. Here is the schedule attached to the affidavit on production referred to. Have you got a memorandum of what you claim now to have paid, or does this embrace all?

His Lordship.—Is this the composition of the amount recovered?

Mr. McCarthy.—No. He has been interrogated as to how much it actually 20 cost him. What does the £200,000 come to in money? (\$973,333). Taking the \$973,000 as the total amount the Company were to pay, that Stevens and Codd were to pay, let us see how that has been dealt with; you paid out of that to Mr. Clemow and others, and you agreed to pay \$226,632; that is what you paid and agreed to pay.

His Lordship.—Is that to the co-partners?

Mr. McCarthy.—To the four partners. Then his own share at the same basis would come to \$37,000 in round numbers; that makes \$263,632, and taking that from the other sum we have got?—(Makes calculation.)

Q. You say you think \$13,000 a mile would build the road?—A. Yes. 30

Q. With contractor's profits.—A. Yes.

Q. You say it did not do it here in this case; there was \$28,000 more?—A. Yes; it cost us more if I include the profit the contractor is originally entitled to.

Q. It cost you \$28,000 more?—A. It cost \$678,000, which would be \$28,000 on the whole more than \$13,000 a mile.

Mr. Cassels.—It depends on the profits.

Mr. McCarthy.—The total amount, \$973,333, of which \$263,632 to the shareholders leaves \$709,701 to be applied to the work; well, then, the work cost \$678,000; then there is 37,000?—(Interrupted.) 40

Mr. Cassels.—No, no; that figure includes the cash payment; you cannot add it on again.

His Lordship.—He is taking it on the footing of \$13,000 a mile, and that it cost \$28,000 more.

Mr. Cassels.—Oh, yes.

Mr. McCarthy.—We have got to separate the agreement made between the parties some way or another, because the bargain that Codd and Stevens made was not merely with reference to acquiring the road; it was to acquire the

charter ; the price of that has been fixed, and it is not unfair to say Charlebois should get *pro rata* ; so that \$709,000 is left for the building of the road. RECORD.

Mr. Meredith.—No.

Mr. McCarthy.—You were to pay \$973,000, and you were to get for that all our property ; our property was worth \$263,000 ?—(*Interrupted.*)

Mr. Meredith.—But you are including so much of your money added on into the construction of the work.

Mr. McCarthy.—No ; our stock is worth \$263,000, and that would leave \$709,000 for the construction of the road. You put this at \$13,000 a mile, 10 what it actually cost.

Q. Is that shown in this paper ? Can you tell me how much you have actually paid up to this time for construction ? These figures are \$381,368.65 ; that is the amount paid up to date for construction ; then there is still due for construction \$125,833.62 ?

Mr. Meredith.—We are not admitting these to be the correct figures.

Mr. Cassels.—To whom ?

Mr. McCarthy.—To contractors for work.

Mr. Cassels.—What contractors ?

Mr. McCarthy.—I will give you the names ; there is due to Macdonald 20 and Schiller \$64,429, interest on that \$8,000 ; there is due to Preston \$84,000, and there is due to Crossen \$39,000 ; these bring it up to \$125,832.62.

Q. Then you advanced to Codd \$10,000, and there is still due to Codd or the Company \$130,000 ?—*A.* Yes.

His Lordship.—To Codd or the Company ?

Mr. McCarthy.—Yes, my lord, because the judgment gives it in trust ; some of the money Codd is to get is in trust for the Company. Putting them together we have got \$130,000 ; so that your lordship will see that the profit left—the only basis of profit is between \$646,000 and the \$709,000 ; it leaves a difference of \$63,333.

30 *Q.* The result appears to be this way, that you transferred your stock to Mr. Stevens upon which you had actually paid \$21,000 ?—*A.* Yes.

Q. But you have gone on and spent \$381,000 in building the road ?—*A.* Yes.

Q. You have incurred liabilities to the extent of \$125,000 more ?—*A.* Yes.

Q. And that you have this liability, whatever it may be, to Codd, and that you have got nothing absolutely, unless it is your judgment ; that is your position ?—*A.* That is my position.

40 *Q.* Whereas Stevens, who gave £50,000, has got all the shares in the Company ?—*A.* Has got the whole thing.

Q. All the assets and everything connected with it ?—*A.* Yes.

Q. And 50 miles of the road built ?—*A.* Yes.

Q. And this land ?—*A.* Yes.

Q. And yet is grumbling ?—*A.* Yes.

His Lordship.—He is not a party to the suit ?

Mr. McCarthy.—Not directly.

Q. You never heard of him until you were asked to meet Mr. Stevens and Gregson in Toronto ?—No.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

RECORD.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

Q. When did you first hear of Mr. Delap ?—A. When I saw this action taken in Toronto against me.

Q. That would be December of 1892 ?—A. Yes.

Q. Had you ever heard Delap mentioned prior to that ?—A. I heard of it, but I thought it was Mr. Delapse.

Q. There was a draft here made on Mr. Delap for £25,000 ; do you remember seeing that ?—A. I have endorsed it in the Windsor Hotel, Montreal.

Q. You saw it, no doubt, because you endorsed it ?—Yes.

Q. 4th October 1889 ; what was that given to you for ?—A. It was not 10 given to me at all.

Q. Give me the history about it ?—A. I just endorsed it at the request of Mr. Stevens and Codd.

Q. For what purpose ?—A. Well, that is the very draft that Mr. Stevens took down to go to Quebec to see Mr. Irwin.

Mr. McCarthy.—We have not heard about that.

Mr. Cassels.—Oh yes, you heard all about it ; how he went down to Quebec.

Mr. McCarthy.—Q. Perhaps you will be kind enough to repeat it to me. Here on the 4th you were requested to endorse this draft by Mr. Codd and 20 Stevens ?—A. Yes.

Q. For what purpose ?—A. It was for the purpose of getting the money to repay me what I had paid for the rails.

Q. Why were you to endorse it ?—A. They just simply asked me to do that for banking affairs, because they could not get it without my endorsing it.

Q. They could not get the cash without your endorsement ?—A. I do not think so.

Q. What has Mr. Irwin to do with it ; how was he mixed up with it ?—A. It was Mr. Irwin who was acting as solicitor for the Union Bank 30 of Quebec.

Q. What had he to do with it ?—A. Because Stevens pretended Irwin was a friend of his, and they were both interested in that estate at Quebec, I think the estate that Mr. Mansfield of London is interested in.

Q. And by that means he thought he could get the Union Bank to discount it ?—A. He thought through Mr. Irwin's help he could get that bill of exchange discounted at the Union Bank.

Q. He went to Quebec for that purpose ; he asked you to endorse at Montreal ?—Yes.

Q. And did he return with the money ?—A. No.

40

Q. How did you get the money ?—A. He returned telling me it was all right and the money would be forthcoming next day, and we went next day to the Union Bank, Montreal, and he was informed there, there was some further instruction to receive before he could get the money.

Q. In the end you did get the money ?—A. Yes.

Q. Did you read that before you endorsed it ?—A. No.

Q. It is a draft made on James Bogle Delap, care of Messrs. Bawtree & Smith, London ; did you read it ?—A. No ; I knew the amount and I endorsed

it, and they told me the gentleman who they were drawing it on was an old friend of his. RECORD.

Q. He told you the gentleman he was drawing it on was an old friend of his, but of course you had never heard of Delap at that time?—*A.* Yes, and that there was no question that Mr. Stevens' father will make it all right with that gentleman. No. 34.
Charlebois
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McCarthy

Q. He was drawing upon an old friend of his, and there was no question that Mr. Stevens' father will make it all right with the man he was drawing on?—*A.*—Yes. —continued.

10 *Q.* Did Mr. Stevens represent that he was acting as agent for any person to you?—*A.* Never did; I fully and distinctly understood he was acting for himself.

Q. That he was acting for himself?—*A.* Yes.

Q. That he was the principal in the transaction?—*A.* Yes.

Q. When did you first hear anything about the £50,000 that he paid you; you know he paid you £50,000?—Yes.

Q. And that 50,000 pounds must have been spoken of in Toronto; when did he first say he had that money in his hand that he could draw for it?—*A.* He had not that money at his hand before the 16th I think, before 11 o'clock on the 20 morning of the 16th, 10 or 11 o'clock.

Q. He had not that money with him in Toronto?—*A.* No, no, no.

Q. How was the money to come? How was he to get it?—*A.* On the 16th the manager of the Bank of Montreal came to the room where we were and asked Mr. Stevens to go out, and Mr. Stevens returned a little while after and said "I am a good deal relieved, my money has come at last."

Q. Not observing that this was on Mr. Delap, when did you first hear Mr. Delap's name in connection with the matter?

Mr. Cassels. Did he say he had not observed it?

30 *Mr. McCarthy.*—He heard they were drawing on an old friend, that is all. —*A.* He said they were drawing on an old friend that his father knew well enough.

Q. When did you first hear of it?—*A.* I never heard of it until the suit came on—at least I did not take no notice.

Q. Before you brought action I suppose you endeavoured to get your money?—*A.* Oh, yes.

Q. What means did you take to collect your money, or try and induce them to pay you before you brought this action?—Well, I first demanded it of the Company here, and afterwards I met Mr. Stevens in London.

Q. You went to England, did you?—*A.* Yes.

40 *Q.* About this matter?—*A.* Not precisely for this matter, but at the same time I took occasion to see Mr. Stevens on that matter, and met Mr. Codd there too.

Q. When would that be?—*A.* I think it was in 1890.

Q. What time? You say the road was concluded in the summer, August of 1890?—*A.* It was in 1891.

Q. When was it you were there?—*A.* I left New York on the 23rd March, and I returned on the 23rd August,

RECORD.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy
—continued.

Q. Of 1890 or 1891? It was after the work was done?—A. 1891.

Q. You left in the winter months, March 1891; and you returned in August of 1891?—A. Yes.

Q. And during these months you saw Mr. Stevens more than once?—

A. I went three or four times to his office to try to see him, and he was not there; and accidentally I met him on the street, and I told him I was very much surprised I had not the pleasure to see him calling on me at the hotel; he excused himself and said he was very busy, and would do so the next day; I said "Very well, we would be glad to meet you"; and the next day he called on me, and we had quite a chat upstairs, and he promised me that the money will be coming before I will leave London; that he will be able to give me a good amount if he could not give me the whole; and he asked me what I would be satisfied to receive on account now, if he could not give me the whole, what I will accept on account; and I said to him, I will accept £50,000, and wait for him six months if he was able to pay me; and he promised he would see me again; and then he returned in company with a gentleman by the name of Lawrence; and I went as far as to tell him I would accept £50,000 on account and wait for it; and at last he told me he expected very soon to get money, and he complained that the financial market was not very good, and that before I will return to Canada that I shall hear from him, and probably that he will give me more than £50,000; but he never arrived at any definite thing; he was not in a position to do that.

Q. It was provided by this agreement made in Toronto that he was to satisfy your bankers in thirty days that this £150,000 was to be forthcoming?—A. Yes.

Q. What was said about that when the contract was signed; was it ignored or forgotten?—A. No.

Q. Well, what was said about that?—A. It was understood when the contract was signed that he was to execute that.

Q. That was still to be executed?—A. Certainly.

30

Q. That provision was still to be carried out?—A. Yes, and a few days after he told me Madame Stevens desired to go to Niagara Falls and in the West a little, "and if you insist on that clause being carried immediately I will have to return to London, because I am limited to thirty days"; Oh, I tell him, "You should not refuse Madame Stevens to go to Niagara; if you send me a resolution of the Board where I will be able to give order on the Company"—*(Interrupted.)*

Q. What is that?—A. I asked him if he would pass a resolution authorizing me to give order on the Company that the Company would accept, that might do until he returned to England.

40

Q. Then he did return to England?—A. Yes, but he passed that resolution empowering me to give order on the Company that the Company would accept.

Q. What did you give orders on the Company for?—A. In case that I wanted to raise money myself.

Q. Did you get a resolution of that kind?—A. Yes.

Q. Then you said that if he would give you that resolution that you would postpone—(*Interrupted.*)—A. That I will wait ; that will give him time to go to the West, and that he could do it as soon as he returned to London, and he said so, yes.

Q. I see that resolution was on the 7th October. I will put in copy of it in a moment. (*Reads copy resolution, 7th October, Exhibit 35.*) You said you saw Mr. Codd there. Did you know that Mr. Codd became president of the Company ; were you aware that Mr. Codd became president of the Company ?—A. Yes.

10 Q. Mr. Stevens was the first president after Mr. Clemow ; I see Mr. Codd afterwards became president ?—A. I know only when he got to Ottawa.

Q. After he got to Ottawa ?—A. Yes.

Q. When did you first know that Mr. Codd had become president ?—A. Some time after Mr. Stevens had left.

Q. And you do not know any more than I do why it was he became president ?—A. No, I did not ask him.

Q. Did you communicate at all with Codd while he was president ; had you any communication with him as to the money that was due ; did you demand from him ?—A. I think I demanded the amount once.

20 Q. Have you any letter or document from Mr. Codd ?—A. Well, all I got, it is here.

Q. Let us see what that is ?—A. There is nothing in reference to Mr. Codd.

Q. No letter from Mr. Codd ?—A. No ; yes, there is one here ; here it is.

Mr. Bristol.—That copy of the resolution is now proved.

Mr. McCarthy.—Q. I am putting in the very document given to the man by Mr. Stevens. Who was it gave you this ?—A. Mr. Stevens himself ; it is certified by the president, and it is a copy.

Q. Now, here is the letter you have from Mr. Codd. (*Reads letter, 22nd February 1890, Exhibit 36.*) You were not present, you said, and do not 30 know how the amount that was settled in the judgment was arrived at, as I understand you ?—A. No.

Q. Were you in Toronto at all at the time this suit was in progress there ?—A. I think I was, but I was sick.

Q. And you were not at Osgoode Hall, at the Court ?—A. No ; the only gentleman I have seen was Mr. Osler.

Q. Where did you see him ?—At my hotel ; he came to see me there.

Q. So that you are not able to tell us anything that took place at the hearing of the case ?—A. No, I left it altogether to Mr. Osler.

Q. And the settlement that he made you acquiesced in ?—A. Certainly. 40 Adjourned till 9.30 to-morrow.

Ottawa, November 1st, 1893.

Mr. McTavish.—I appear for the Crossens, with Mr. Riddell, and Mr. Riddell must leave, and perhaps your Lordship would take Mr. Riddell's evidence at the close of Mr. Charlebois' evidence, or perhaps now.

His Lordship.—Perhaps the other side will consent to that.

Mr. McCarthy.—I have nothing more to ask Charlebois, but I think some of the other parties wish to ask something, matters in which I am not interested, but that can be done afterwards.

RECORD.

No. 34.
Charlebois
cross-
examined
by Mr.
McCarthy—
continued.

Mr. Nugent.—In the matter of the defence of Macdonald, Schiller, Preston, and myself, by inadvertence the time was allowed to pass to put in a defence, and Plaintiffs gave notice of motion for judgment, and no motion was made, and I would ask leave to put in our defence now. Our position is sub-contractor, and it brings up no new matter. I think there is no objection to the defence going in.

Mr. Arnoldi.—We have had no notice whatever of any application of the kind; the usual motion for judgment will be made against these Defendants upon the Statement of Claim, and we have not heard of any intention of defending up to this time. 10

His Lordship.—Better serve papers and let Mr. Arnoldi see them, because you have made no application, he says.

Mr. Nugent.—No, but there is nothing in the defence which varies from the other facts which come before the Court, and I thought it should all be before the Court in that way.

His Lordship.—If Mr. Arnoldi objects, you had better put in what you want to defend, and affidavits, and let it come on in the usual way.

Mr. Nugent.—The time passed by, by reason of negotiations, and so on.

His Lordship.—You will have to show how it is on your motion.

Alphonse Charlebois; Examined by Mr. Moss.

20

No. 35.
Charlebois
examined by
Mr. Moss.

His Lordship.—There will be no repetition, I suppose?

Mr. Moss.—No, I do not propose to go over any ground covered by my learned friend. It is just in the same position as if I had called him as a witness on behalf of my client.

Q. You spoke, yesterday, of a resolution having been issued by the Company agreeing to accept orders that you might present to them for moneys that you might wish to use, in raising money, as I understood you?—*A.* Yes.

Mr. Moss.—A copy of that resolution was put in; the original is understood to be in the minutes.

Mr. Meredith.—Yes, the copy is in. 30

Mr. Moss.—*Q.* Did you make application to the Union Bank for a loan of moneys?—*A.* I did, sir.

Q. And for what purpose did you use the moneys?—*A.* I wanted to use it in the construction of the Great North West Central.

Q. Then you gave certain orders, did you not?—*A.* Yes, I gave three orders to the Union Bank, \$75,000; \$50,000, and \$25,000.

Q. Look at these papers?—*A.* Yes, an order for \$75,000.

Q. That is the first one?—*A.* An order for \$50,000, and an order for \$25,000.

Q. All dated 2nd November 1889, signed by you?—*A.* Yes. 40

Q. Then there is appended to them the acceptance under the seal of the Company to each of them.

His Lordship.—I suppose this is one of the claims allowed in the judgment?

Mr. Moss.—Yes, my lord.

His Lordship.—In this regard, is there any doubt that these claims are valid claims in all respects, subject to some attack on Charlebois? If you do

not succeed in that, these are all valid claims. You do not dispute that, I suppose. It is only with a view to shortening the evidence that I mention it. Is there any use of proving these claims over and over again, if there is no dispute?

Mr. Meredith.—No, my Lord, although perhaps on this branch of the case it may be material to show what knowledge the Union Bank had of the contract, and the circumstances under which it was entered into, so as to affect them with notice of the rights of the Company.

His Lordship.—That would be rather your attack upon them, assuming the *status quo* was correct, and letting you show wherein they were in a worse position by reason of notice. Of course Mr. Riddell put in a new element, that his concern had changed its position in consequence of this judgment; but so far as proving these were valid claims to be paid the Union Bank out of this road, I suppose that cannot be disputed.

Mr. Meredith.—No, my Lord, although we do not at all concede the \$150,000 went into the road; that the advances went towards the construction of the road.

His Lordship.—But these claims are allowed against what is coming to Charlebois out of the funds in his hands.

Mr. Meredith.—No, it is no concern of ours what becomes of the moneys that Charlebois may be entitled to, if he is entitled to anything.

His Lordship.—Would it not be a subject of inquiry afterwards, in case you succeed in your position in showing that Charlebois is not entitled to the contract price, £200,000? If you succeed in that position, then it would be a matter of inquiry afterwards as to all these claims, how much they were to get. I think it is not advisable to work that out now, assuming it is going to be upset, and find out how much they were going to get. If Mr. Charlebois retains his position and is entitled to the contract price, £200,000, I assume that you, representing the Company, cannot attack these claims. It is not competent to do it, because it is *res judicata*; the only way they would be affected would be by your undermining Charlebois' position and establishing that he was to get simply a *quantum meruit*.

Mr. Meredith.—Yes, my Lord.

His Lordship.—Then all these people would come in on that, to ascertain how much was to come out of it. I think you might shorten the inquiry.

Mr. Meredith.—There is another branch of the case which your Lordship's observation would not touch. We claim for the bondholders priority to all these claims. That is another branch of the case altogether.

His Lordship.—That is a proposition of law; and then there is another thing that may be said; the Crossen Company have raised in this evidence an equity directly against the Company which might be relieved from the claim under Charlebois; they may have an independent equity, in consequence of changing their position, to get paid. Any evidence of that kind would be relevant; but so far as the claimants depend upon what Charlebois takes under the £200,000 it seems to me to be multiplying evidence. It is assumed your claim is valid against Charlebois for that amount.

Mr. Moss.—It is acknowledged in the judgment, and forms part of the arrangement made in the judgment for the satisfaction of this claim.

RECORD. *His Lordship.*—You stand on that. As long as the contract price goes to Charlebois you are not hurt. You are only interested in supporting the contract price; you have a common interest in that respect. But if that is disturbed, if the judgment of the Court is he cannot regain the contract price, then all these claimants would have to share with him *quantum meruit*, and a long inquiry would result, based on their showing how much went into the road.

No. 35.
Charlebois
examined by
Mr. Moss—
continued.

Mr. Moss.—Your Lordship's view would be that, so far, all these claims are to be taken as established against Charlebois.

His Lordship.—Expression of an opinion on the part of the Plaintiff in that way, if they object to these claims as ill-founded, as bad, I do not know that that would be a matter of inquiry, because it is *res judicata*, but it is already proven that the Union Bank have a good claim against Charlebois. The Plaintiff must show something to disturb that. All they have to show at present is that the claim of Charlebois for £200,000 cannot be sustained.

Mr. Moss.—We have a letter assuring us that we would be paid, and then we have the judgment besides.

His Lordship. Your status at present is taking under Charlebois.

Mr. Moss.—We are brought here because the judgment which they attack provides—(Interrupted.)

20

His Lordship.—You share in the fund to Charlebois.

Mr. Moss.—Yes, we are brought here because the judgment is attacked.

His Lordship.—Do you seek to prove an independent claim against the Company? You are protected so long as this judgment stands; if the judgment is disturbed, then your right to prove against the Company would immediately arise.

Mr. Moss.—Perhaps it would be better to reserve this until after—(Interrupted.)

His Lordship.—Yes.

Mr. McCarthy.—I think so.

30

Mr. Moss.—If that is the understanding, I will not go on with this branch.

Mr. McCarthy.—We can all go into it on the defence, if it is necessary.

His Lordship.—If this judgment is safe you are all safe; but if it is not safe you can all prove.

Mr. McCarthy.—If there is a *prima facie* case made out, then we can go on.

His Lordship.—Is it not shorter to let the Company go on and complete their case, and see what they attack? He has not attacked any point yet, except that you stand or fall on the £200,000 judgment. If they attack your claim you can give evidence on the point where you are attacked; but at present you are only attacked under Charlebois. I do not see the necessity of all this evidence to support your claim as a *bona fide* claim, because it is proved already. I do not suppose it will save time to examine Charlebois now, because he will be here till it is closed.

Mr. Moss.—It is a claim against the Company at the present time.

Mr. Watson.—We do show, apart from the judgment, that the claim of the Commercial Bank was recognised by the Company.

His Lordship.—I think the inquiry now should be on the primary point

whether that is a good judgment or not. If it is a good judgment, you are all covered by the protection of it. If it is a bad judgment, then I will allow you all at a subsequent stage to make proof in the Master's office against the company.

Mr. Chrysler.—As to the position of the Union Bank, if the judgment is set aside, these orders all become material as an adoption by the Company, and a representation to the Union Bank that there was such a contract.

His Lordship.—Quite so. You would stand on an independent footing apart from Charlebois altogether. At present you come in as claimants and sharers in the fund which goes to Charlebois, but you may have a direct claim against the Company that is not being litigated at present, but which would be litigated at a further stage when the present right was taken from you.

Mr. Chrysler.—I mentioned it to show it was not a case of proving in the Master's office ; it might be something more than that.

Mr. Moss.—We are relying upon the judgment to prove our claim against the Company.

His Lordship.—I think the only way to reach a determination is to let the issue go as to valid judgment or not valid judgment ; if it is not a valid judgment then your claim directly against the Company still remains to be prosecuted in this action in the most appropriate way. It is probable a great many claims will not be resisted. The car claim should not be resisted, perhaps, because the cars are there. The Union Bank claim might be resisted, because all the money, they say, did not go into the road.

Mr. Watson.—In our case, we submit that the Company has distinctly assented to our claim and to the validity of the judgment as between them and us, and in that way they are estopped from impeaching the judgment as against us. We should be heard on that point.

His Lordship.—Yes, if you have an independent status against the Company, I suppose you should be heard now—if they have recognised the judgment as against you.

Mr. Watson.—If it is perfectly valid as between them and us, the question arises how far it should be interfered with as respects Charlebois.

His Lordship.—I think the evidence Mr. Riddell has given would go to show that the judgment was propped up by a *bonâ fide* claim.

Mr. Moss.—These papers have been referred to ; perhaps they had better be put in. Those are the orders accepted by the Company.

Mr. Meredith.—I do not think that should go in if we are not going into that branch now. It would only be a piece of the evidence.

His Lordship.—That is your right to recover against the Company independently ; anything which would go to show that you should recover by virtue of their having accepted the judgment comes in now.

Mr. Moss.—Does not the fact that those things were given to us, and that we advanced the money upon those—(Interrupted.)

His Lordship.—But you are acting on the faith of the judgment.

Mr. Moss.—Since these were given, the judgment was pronounced by which provision was made for us ; that should be shown, unless it is admitted.

His Lordship.—The judgment being taken away will not affect your

RECORD.
—
No. 35.
Charlebois
examined by
Mr. Moss—
continued.

RECORD. recovery against the Company on those as independent evidences of debt, but at present those are merged in the judgment.

No. 35.
Charlebois
examined by
Mr. Moss—
continued.

Mr. Moss.—We have the ground of estoppel, because they represented to us that there would be money in hand, sufficient over and above all the other orders which had been accepted by them to meet the amount of those orders, and that it was upon the faith of that, and the footing of that, that this advance was made, and there is a ground of estoppel arising on that.

His Lordship.—Whatever you think relevant, I will go on and take the evidence ; I only want to condense it as much as possible.

Mr. Moss.—He was speaking of the three orders and the acceptance of 10 them. I put those in now, my Lord. (Exhibit 53.) Will your Lordship allow copies of these put in ?

His Lordship.—Yes.

Mr. Moss.—*Q.* Did you take these to the bank ?—*A.* I took those to the bank.

Q. With the acceptance of them ?—*A.* Mr. Codd was along with me when I went to the bank.

Q. Now, you made an application then to the bank to advance you the money upon these ?—*A.* The application was talked of a few days before.

Q. And then when you got them you renewed the application, did you ?— 20
A. I went to the bank with those orders and handed them to Mr. Anderson in presence of Mr. Codd.

Q. That is the manager of the bank ?—*A.* Yes.

Q. Was there anything else ? Did Mr. Anderson require anything further from you ?—*A.* Well, he got a letter—a letter was drawn by the bank there, and I brought it to Mr. Codd to be signed.

Q. Is that the letter ?—*A.* That is the letter.

Q. You brought it to Codd to be signed ?—*A.* He signed it in my presence.

Q. And you brought that to Mr. Anderson along with the orders ?—*A.* 30
Yes.

Q. And then you got the money ; did you ?—*A.* Yes.

Mr. Meredith.—That letter of Codd's is not evidence against the Company at all.

His Lordship.—He was president.

Witness.—Yes, he was president of the Company.

His Lordship.—It is *prima facie* evidence at present that Codd accepted it ; whether he exceeded his power or not is another matter.

Mr. Moss.—I will read your Lordship one of the orders, and the acceptance and the letters. (Reads.) The others are in the same form, except as to 40 different amounts. (Exhibit 54).

Q. You get the money then from the bank ?—*A.* I got the money.

Q. And left those with the bank ?—*A.* Yes.

Q. And the bank have held them ever since ?—*A.* Yes.

Q. Now, in arranging for amounts under this judgment. I see there is a clause here that the second charge on the fund is to be the sum of \$380,000, with interest at 6 per cent., &c. (Reads). Now, in that sum is the sum of \$150,000 included ?—*A.* This sum of \$150,000 is included.

Mr. McCarthy.—What are you reading from ?

Mr. Moss.—I am reading from the judgment. It is Sub-clause D. of paragraph 2 of the judgment.

Q. And of course as you have not been paid, the Union Bank have not been paid that sum ?—*A.* No.

Mr. Watson.—Out of deference to your Lordship's opinion, I shall ask only one or two questions.

By *Mr. Watson* :—

Q. This is an order given by you on the 10th June 1890, for the payment of \$20,000 to Macdonald & Schiller ; that is your signature ?—*A.* That is my signature.

Q. It is an order for \$20,000 ; it is the \$20,000 referred to in the second paragraph of the judgment—(Interrupted).

His Lordship.—Is it to Macdonald & Schiller, or the Commercial Bank ?

Mr. Watson.—To Macdonald & Schiller, but the order was endorsed over to the Commercial Bank of Manitoba, so that at the time of the pronouncing of the judgment my clients were the holders.

Q. And this is the acceptance of this order of \$20,000 by the Company ?—*A.* Yes.

Q. Signed by Mr. Codd as president, and by Mr. Codd as secretary ?—*A.* Yes. (Exhibit 55.)

Q. On the 28th September 1891, the date of the judgment, I understand Macdonald & Schiller were in possession of the railway ; Macdonald & Schiller, sub-contractors, were in possession ? They were in possession ?—*A.* They were not in possession.

Q. Had they not a lien under their contract entitling them to possession till paid ?—*A.* I do not think so.

Q. You do not know the signature of Macdonald & Schiller, or do you ?—*A.* No.

Mr. Watson. That is all I have to ask, out of deference to your Lordship's opinion.

By *Mr. McTavish* :—

I wish to ask a few questions ; I am for the Crossen Manufacturing Company.

Q. You have heard Mr. Riddell's statement in reference to the negotiations between you and the Crossen Company about these cars ?—*A.* Yes, sir.

Q. Is that correct ?—*A.* That is correct.

Q. As a railway man, what would you say now about the depreciation of cars of this kind ; how much would they depreciate in, say, two years ?—*A.* Well, it depends altogether the way they were taken care of.

Q. Do you know how these cars were taken care of ?—Well, I have no particular reason to know.

Q. But supposing there was ordinary good care taken, they would depreciate more or less, would they not ?—*A.* About one-third per cent.

Q. In two years ?—*A.* Yes.

Q. That is passenger cars you refer to ?—*A.* Yes.

RECORD.

No. 35.
Charlebois
examined by
Mr. Moss—
continued.

No. 36.
Mr. Char-
lebois cross-
examined by
Mr. Watson.

No. 37.
Mr. Char-
lebois cross-
examined
by Mr.
McTavish.

RECORD.

Q. Would you say the same in reference to freight cars?—*A.* No, not quite the same.

No. 37.
Mr. Char-
lebois cross-
examined
by Mr.
McTavish—
continued.

Q. About how much?—*A.* About 20 per cent.

Q. One-fifth?—*A.* Yes.

Q. In giving that as the depreciation, are you taking into account their depreciation as belonging to the same company all the time, or if they had to be sold as second-hand cars? If they had to be sold as second-hand cars, would you say the depreciation would be more than that, or less than that?—*A.* Oh, about that.

His Lordship.—About the same?—*A.* It is about a fair deduction. 10

Mr. McTavish.—*Q.* You understand what I mean; if the cars have to be sold as second-hand cars, would they bring that much?—Oh, they may be sold for a great deal less, if they were sold at auction, or for sale, or anything of that kind.

Q. The third and fifth you have given us is the depreciation of the value to the railroad using them?—*A.* Yes.

His Lordship.—*Q.* If Crossen had to take them back, how much would he be able to sell them for if he had to get rid of them? (No answer.)

No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels.

Re-examined by *Mr. Cassels*:—

Q. In reference to what you were saying to Mr. McCarthy yesterday, I 20 want to read you a little that you swore to the other day, and ask you whether it is correct; you were asked this: page 47, "I did not understand that on the 9th September you had seen any of the other directors," &c. (Reads from examination down to the words: "I was to pay them whatever disbursements they had made, and the balance was to be paid by an order from me on the "company accepted by the company.") What do you mean by the disbursements that they had made?—*A.* I mean the money that they had paid in the Company.

Q. That was their equivalent for your \$21,000?—*A.* Yes.

Q. What I have read to you, and what you have sworn to before, is no 30 doubt true?—*A.* Well, I might have explained myself not—(Interrupted.)

Q. Is it true, what you swore to before?—*A.* I am here to explain myself, probably that I expressed myself wrongly, but my intention, if I said that was the only conversation, that when they went on the Saturday night at Toronto—(Interrupted).

Q. I will read you further; I have read the questions and answers down to a certain point, and I just ask you the question, is what you stated there true or not?

Mr. McCarthy.—That is not a fair way to ask, to read the whole of it.

Mr. Cassels.—Then I read further, "Had you arranged the manner of the 40 payment, how were you to pay the £200,000" etc. (Reads down to "Whatever money they had disbursed.")

Mr. McCarthy.—This is not a question; this is reading.

His Lordship.—Better examine.

Mr. McCarthy.—It is going down.

Mr. Cassels.—I want to read something more.

Mr. Nesbitt.—If my learned friend is asking a question that is one matter ; RECORD.
if he is making a speech, which the reporter is taking down, that is another
matter.

His Lordship.—I understand he is going to use it to refresh the witness' memory as to what he said before, and then ask a question.

Mr. Nesbitt.—If that is so, the reporter need not take it down.

His Lordship.—He need not take down any of the documents.

Mr. Cassels.—(Reading.) "Exhibit F. is an agreement between Alphonse Charlebois of the first part," etc. (Reads to the words "And it was part of the
10 one transaction.")

Mr. Chrysler.—Read the next answer.

Mr. Cassels.—Do you want me to put it in or not ?

His Lordship.—You are saying first that Mr. Cassels is reading too much, and then that he does not read enough.

Mr. Chrysler.—The reporter takes down a portion of the evidence.

Mr. Cassels.—Q. I asked you yesterday and you have stated to me that that document was correct, and you swore to it the other day—that the recitals in that document were correct ?—A. Which document do you refer to ?

Q. The document I have read you the recitals of, between Clemow and
20 others, and yourself ?—A. I told you it was right.

Q. Yes ?—A. Yesterday ?

Q. Yes, you swore it point blank.

His Lordship.—He said all the documents were correct.

Mr. Cassels.—I read the recitals to him and asked him specifically three different times whether the recitals were correct, and he said yes.

Mr. McCarthy.—You asked him the general question whether the documents were correct ; it is down at all events.

Mr. Cassels.—Q. I have read you what you swore to before—(Inter-
rupted.)

30 *Mr. Nesbitt.*—That is not a correct statement. The next answer is, "They were special and different bargains."

Mr. Cassels.—I will read the whole thing then.

Mr. McCarthy.—I suppose it is with a view to credibility my learned friend is asking him whether all these documents extending over many pages, with somewhat varying recitals, are all true correct. I do not think that is a fair way to treat the witness.

His Lordship.—I think you can go on and I will let them examine further if they think you have not read any passage in full.

40 *Mr. Cassels.*—Q. "That is to say that all these contracts signed on the 16th September" (Reads down to the words, "And making my arrangements.") Now, I repeat, I have read you the recitals in the document of the 16th September, entered into between Clemow and yourself ; I asked you yesterday if those recitals were true, and you know what you answered ; are you prepared to go back on that ?—A. I am prepared to say anything that I may have said in my former depositions, if it should not be in accord with what I stated yesterday, that I accept what I stated yesterday.

Q. You accept what you stated yesterday ?—A. Yes.
p. 5240.

M M

No. 38.
Mr. Char-
lebois re-
examined
by Mr.
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continued.

RECORD.

No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

Q. Do you accept what you said to me yesterday?—*A.* The documents speak for themselves.

Q. And that is all you can say?—*A.* And then there was some document drawn up and signed on the 16th, and they were not signed all together at the same time; there were some signed later on.

Q. You made certain statements to Mr. McCarthy. I ask you if you adhere to the statements you made in your examination yesterday; did you intend to tell the truth?—*A.* I intended to tell the truth.

Q. Now, I asked you about Mr. Lewis; that is his signature—your solicitor?—*A.* Yes, it looks like it. 10

Mr. McCarthy.—How does this arise out of the cross-examination.

Mr. Cassels.—Yes, it does.

Q. And he came to Toronto with you at that meeting with Stevens?—*A.* Not that I am aware of.

Q. He was in Toronto?—*A.* He was in Toronto on Saturday.

Q. He came up with Clemow and Devlin, or whoever came up?—*A.* Certainly, he came up with Mr. Clemow and Allan; Devlin was not there.

Q. And he was there during the discussion?—*A.* He was there during the two interviews we had with the Company, but he was not there during my personal interview. 20

Q. "I am still acting from time to time under instructions from Charlebois, the contractor for the said former shareholders for the Company in connection with the deal which was acquiesced in on the 16th September last—(*Interrupted.*)

Mr. McCarthy.—What is that?

Mr. Cassels.—This is the letter of the 17th January from Mr. Lewis to Dr. McMichael.

Mr. McCarthy.—How does this arise? I object to this. A letter signed by Mr. Lewis cannot come in against anybody.

His Lordship.—It does not arise out of the cross-examination. It may 30 have arisen on the question of whom he was solicitor for. I will let you re-examine if you like.

Mr. McCarthy.—I object to it. If Mr. Lewis chooses to write and say he was a solicitor for these parties, how can that be evidence.

His Lordship.—I do not know how Mr. Cassels gets it. I suppose it must come to him as part of the documents connected with the litigation produced from somebody.

Mr. McCarthy.—It is not produced in this litigation.

His Lordship.—I will note the objection. I do not know enough about the case to rule at present. 40

Mr. Moss.—That letter could not be used against anybody except Charlebois at all.

Mr. McCarthy.—Not against anybody except Mr. Lewis. (Letter, Exhibit 56.)

Mr. McCarthy.—If it goes in you must read it all.

Mr. Cassels reads the letter.

Q. That was the balance of the \$50,000 left to settle all old claims?—*A.* Yes.

Q. Now do you or do you not know that Mr. Schreiber, acting for the Government, advertised for all old claims against the Company ?

Mr. McCarthy.—How does this arise out of the cross-examination ?

Mr. Cassels.—It arises in this way, if my learned friend insists upon my telling ; it is alleged in the line of examination that there were certain liabilities incurred in respect to the old claims over and above the contract price.

Mr. McCarthy.—I do not know that was proved.

Mr. Cassels.—I do not think it was proved.

Mr. McCarthy.—I do not think it was spoken of in the examination.

10 Mr. Cassels.—You asked Mr. Charlebois in regard to the liabilities.

Mr. McCarthy.—I think you are quite mistaken.

Mr. Cassels.—If my learned friend does not press the old claims—
(*Interrupted.*)

Mr. McCarthy.—I do not press anything at all ; I say it does not arise at all.

His Lordship.—There was a statement about Codd's claim.

Mr. Cassels.—There was a sort of undefined liability.

Mr. Meredith.—In making up what the expenditure was he mentioned several thousand dollars for old claims.

20 Mr. Cassels.—Q. However, you got the \$24,000 from the Government yourself ? The Government instituted an inquiry, and it will be shown that claimants were advertised for, and there was this surplus—(*Interrupted.*)

Mr. McCarthy.—Oh, that all appears in the report ; that is all shown.

Mr. Cassels.—Q. Now, in reference to this payment of \$50,000 out of the \$173,000, are you clear that Stevens was the one that agreed to it or Codd ?—
A. I am clear that both agreed to it.

Q. Codd as well as Stevens ?—A. Well, Stevens endorsed for Codd.

Q. That is the receipt, I think, from the Great North-West Central Railway Company for rails ?—A. That is the receipt.

30 Q. Dated 7th October 1889. (Exhibit 57.) You paid Mr. Codd a sum of \$4,800 ; was that at the time that he went to the Union Bank with you ?—

A. Oh, no.

Q. When ?—A. It was a few days afterwards.

Q. That was the order for \$4,800 ? (*Document shown Witness.*)—A. Yes.

Q. Dated 16th September 1889 ; that is signed by Codd, witnessed by Lewis, and is an order on Dr. McMichael—(*Interrupted.*)

His Lordship.—I thought the witness said he paid to Codd.

Mr. Cassels.—Yes ; and this is Codd's order on Dr. McMichael to allow that amount to go out of the fund.

40 Q. This is your cheque ?—A. Yes.

Q. 16th September 1889, Pay J. A. Codd or order \$4,866.67 in full payment of £1,000 payable as per memorandum of 6th March 1888, in Dr. McMichael's hands. (Exhibit 59.) Then, on the 6th November 1889, you gave him \$5,000 ?—A. Yes. (Exhibit 60.)

Q. Now, you recollect meeting Mr. Gregson in Toronto ?—A. Yes.

Q. You would have us believe that you accepted that large draft for the rails endorsed, without knowing who Mr. Delap was even ?—A. I am certain,

RECORD. and I swear most positively that at the time that the draft was drawn I did not know what Mr. Delap was, no more than the man in the moon.

No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

Q. Had you any discussion with Mr. Gregson about him?—A. Never.

Q. If he swears you had you contradict him?—A. I will contradict him, because I did not know.

Q. And you became an endorser then on a draft of £48,000?—A. I became an endorser for that draft.

Mr. McCarthy.—£25,000, not \$48,000.

Mr. Cassels.—Well, £25,000. Q. You became endorser on a draft for £25,000, relying on the acceptance of Delap without knowing him? 10

Mr. Nesbitt.—He did not say that.

A. I did not rely on that. Stevens asked me as a favour to accept that for him. I did not care whether he drew it on the Honourable Mr. Salisbury or Gladstone, did not care what he would do; that was their business; but, as I said yesterday, he told me it was an old friend living somewhere in Ireland.

Mr. Cassels.—Q. You stated there was something to do with Trahern, in England, or you mentioned Trahern's name in connection with Murray?—A. The only thing I know about Trahern, that Codd has transferred the agreement of the 8th April to Trahern, and the only knowledge I got of it is that letter that Mr. Stevens gave me that no such transfer was ever made to Trahern. 20

Q. But you were aware that Captain Murray had gone to England?—A. I am aware that Captain Murray had gone to London.

Q. And you were aware of a resolution of the board in regard to him?—A. I think there is a resolution of the board.

Q. And you knew that there were negotiations with capitalists somewhere or other?—A. I knew nothing about the transaction.

Q. But you knew there were capitalists in view—English capitalists?—A. I did not know that there were any English capitalists.

Q. I will have to see what you stated before, and to see which is correct. This is on page 16: "Now, I am going to read you the contract," &c. 30 (Reads.)

Mr. Chrysler.—Read all.

Mr. Cassels.—I will put in Charlebois' depositions, if you like.

Q. I read you a portion of what you said. You knew Captain Murray had gone to England?—A. I knew Murray had gone to England.

Q. And you knew that Codd was there?—A. I knew also that Codd was there.

Q. And you knew that Codd had taken that agreement to England, with the hope of getting others in with him?

Mr. McCarthy.—He did not know that; that is not so as a fact, according to the evidence. He did not take that agreement to England. 40

Mr. Cassels.—How do you know?

Mr. Chrysler.—It was sent out from London, and executed in April.

Mr. Cassels.—I am talking of the heads of agreement.

Mr. McCarthy.—There were no heads of agreement.

Witness.—I told you, I think, yesterday, that Codd had gone to England, and that the heads of agreement were sent to us here for us to sign here, but he could not have gone to London with the agreement.

Mr. Cassels.—*Q.* You knew there was a preliminary one which I put in ?— **RECORD.**
A. No, I did not know anything about it.

Mr. McCarthy.—You did not put in any preliminary one ?

Mr. Cassels.—Now, do you say or do you not say that you were ignorant that the foreign capitalists were to come in to the assistance of the road ?—
A. I did not know what Mr. Codd's business in England was, and he never told me who was the people he had to treat with.

Q. And you never knew about Mr. Murray's mission to England ?—*A.* I understood Mr. Murray's mission in England ; he was going for a pleasure
 10 trip.

Q. Partly pleasure, but was he to see Codd or not ?—*A.* It was understood he was to see Codd.

Q. And to see Codd about what ?—*A.* Well, about the business that is referred to.

Q. What Codd was doing you knew nothing about ; did you think he was going to build it himself ?—*A.* I tell you I do not know about Mr. Codd's business, what he was to do in England.

Q. There is a document set out here, the agreement between Stevens and Codd ; were you aware of that partnership agreement ?—*A.* No, sir.

20 *Q.* Do you know, as a matter of fact, of a partnership agreement between Stevens and Codd ?—*A.* I know it now.

Q. But at that time ?—*A.* I did not know anything about it at that time.

Q. There is just one other point ; I want to read the evidence as to that document. On your former examination, page 117, I was referring to how the figures in the judgment were made up, and you were very kind in your offer to me. "After judgment was made did you see the figures by which" (*reads down to "And there is no disapproval on your part to that"*). You recollect being shown a copy of that agreement, showing the basis ?—*A.* I recollect I saw a copy, and I took it down with me, but somehow it must have been
 30 returned.

Q. Those orders on the Union Bank—who drew them for you ?—*A.* Could not say exactly.

Q. You thought Mr. Lewis ?—*A.* Could not say for that.

Q. Cannot remember that ?—*A.* No.

Mr. McCarthy.—*Q.* You said in answer to my learned friend—and I do not know whether you realised the statement—that both Codd and Stevens agreed to the payment of the \$50,000 out of the \$173,000 ; will you tell me whether that is correct or not, and if so, in what way Codd and Stevens agreed to that \$50,000 coming out of the \$173,000 ?—*A.* Codd agreed to pay me
 40 \$50,000, and Stevens endorsed it, so that that made the contract, as I said yesterday, with the \$28,000 difference on the rails that I was to get for that contract, \$870,000.

Q. What I wanted to draw your attention to was this ; in the writing my learned friend produced there is nothing said about that \$50,000 coming out of the \$173,000 ?—*A.* No, there was nothing said, but it was agreed.

Mr. Meredith.—My learned friend is going to read the examination of W. A. Preston, taken *de bene esse*.

His Lordship.—Is that of the firm of McDonald and Preston ?

No. 38.

Mr. Charlebois re-examined by Mr. Cassels—
continued.

RECORD.

—
No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

Mr. Meredith.—Yes.

His Lordship.—Where was it taken ?

Mr. Howland.—Taken in Toronto, under order *de bene esse*, December 1892.

Mr. Nesbitt.—Who is bound by that ?

Mr. Howland.—All parties to the suit ; it is an order in the cause. (Reads.)

Mr. McCarthy.—I object to conversations between the Company, whom my learned friend represents, and Preston. It cannot be admissible to prove the cost of the road. 10

Mr. Howland.—It is merely to prove knowledge to the former directors as to the whole cost of the road.

His Lordship.—Was it objected to before ?

Mr. Howland.—No.

His Lordship.—I will note the objection and take the evidence. Is this evidence with a view to show the road was not completed.

Mr. Howland.—Yes, my Lord, that is another branch of the case.

His Lordship.—This is as against the Government certificate which passed it.

Mr. Howland.—Yes, my Lord, but there is a question whether our contract was identical with the Government. 20

Mr. McCarthy.—It seems to me very inconvenient ; at the former hearing, before Mr. Justice Ferguson, all these things were gone into.

(Evidence read.)

Mr. McCarthy.—Of course it is not necessary for us to object to all this.

His Lordship.—Oh, no. I do not think that is relevant as to how they can get along that road.

Mr. Howland.—It is a minor issue as to the termination of the contract.

His Lordship.—I do not see any issue as to that, but if you cannot sift it, go on. There is hardly any of this at all material at present. 30

Mr. Lewis reads cross-examination.

His Lordship.—What is the re-examination you wish to read, Mr. Howland ?

Mr. Howland.—There is really nothing.

His Lordship.—I do not think it worth while to waste time reading this.

Mr. McCarthy.—Perhaps the whole thing had better be withdrawn.

Mr. Howland.—Oh, no, there is something about the road later on.

Mr. Arnoldi.—I propose now to read the English Commission.

Mr. Nesbitt.—I suppose we need not renew our objections every time ; your Lordship's original observation holds as to all these. 40

His Lordship.—Yes.

Mr. Bristol.—First, I will read the evidence of Baron Gifford, one of the bondholders.

His Lordship.—Can he throw any possible light on these things ?

Mr. Bristol.—Mansfield and Delap hold bonds and claim they are entitled to priority under the Statute.

Mr. McCarthy.—We dispute that proposition.

His Lordship.—Do you dispute they are bondholders ?

Mr. McCarthy.—Yes, my Lord.

His Lordship.—Then prove they are bondholders.

Mr. Nesbitt.—I have read the Commission through, and I think it has nothing to do with it.

His Lordship.—As a matter of fact, do they not hold bonds of the company?

Mr. Chrysler.—No, my Lord, we deny that.

His Lordship.—You will have to go on.

Mr. Chrysler.—And another objection to the reception of this evidence
10 arises out of the fact stated by Mr. Meredith that there are two distinct causes of action by two different sets of people who could not possibly join together to sue in the different interests and upon the different subjects sued upon in this action, and the admissibility of all this evidence as to their being bondholders is objected to on that ground, apart from any other.

His Lordship.—But if the judgment stands, the fact of their being bondholders will then be urged to give them priority.

Mr. Chrysler.—We submit that cannot be done.

His Lordship.—They claim priority—(*Interrupted.*)

Mr. Chrysler.—No, they do not submit their rights in this action to the
20 Court at all.

His Lordship.—I want to get at the real matter of contest here, the bondholders are brought before the Court for what purpose.

Mr. Meredith.—I am representing the bondholders who are bringing this suit; there are two matters affecting the bondholders, one affecting this branch of the case. A part of our case already has been that it was in contemplation that before the contract we are now impeaching, to the knowledge of Charlebois, that bonds were to be issued; and we propose to show, as bearing upon the first branch of the case as to the validity of the contract, the fact that bonds were subsequently issued; then we say, in addition to the claim of the
30 Company, that Mr. Delap and Mrs. Mansfield, who are Plaintiffs in the action, are bondholders, and we seek to enforce our rights as bondholders against the Company.

His Lordship.—That is whether the judgment stands or not.

Mr. Meredith.—Yes. I do not know whether your Lordship has read the judgment; the judgment restrains the Company from issuing bonds at all.

Mr. Cassels.—Codd did it for his own benefit.

His Lordship.—Should not that have been an attack on the judgment by re-hearing.

Mr. Meredith.—We were not parties at all.

40 *His Lordship.*—But you could come in, and get leave to re-hear.

Mr. Meredith.—Any litigation between Charlebois and the Company cannot affect our rights.

His Lordship.—You may have rights, I am not at all contesting that; but would not the way to assert those rights be to come in and get leave to attack the judgment as improperly obtained in your absence?

Mr. Meredith.—No, my Lord. We were not affected by the judgment any more than a mortgagee would be affected by something agreed upon between the mortgagor and some creditors of his—something behind our back

—
No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

RECORD. altogether. Surely we cannot be in any way affected by litigation to which we were not parties.

No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

Mr. McCarthy.—What prayer do you refer to?

Mr. Bristol.—The first prayer of the statements.

Mr. Chrysler.—I suppose it is irregular to discuss the law now.

His Lordship.—Oh, no.

Mr. Chrysler.—We make this objection to the evidence, and say it is not applicable to any issue.

Mr. Bristol.—In the first paragraph of the Statement of Claim—(*Inter-rupted.*)

10

Mr. McCarthy.—I mean the prayer.

Mr. Bristol.—The first paragraph of the prayer is what I should have said. (*Reads.*)

His Lordship.—Those are the bonds.

Mr. Bristol.—Yes.

His Lordship.—I think the better way is not to waste time at present by reading the evidence of Baron Gifford; it is there, and can be referred to, and it is as to their right to establish that they are bondholders. When that question is taken up we can discuss that and read the evidence.

Mr. Bristol.—It is proving his title, and shows he was prepared to carry it 20 out, but was not willing to be added as a Plaintiff, and be liable for costs.

His Lordship.—It will be taken as read at present.

Mr. Bristol.—The next is the examination of W. B. Cansdale, which proves the existence of this document—(*Interrupted.*)

Mr. McCarthy.—That we object to.

His Lordship.—It will be taken in the same way as read.

Mr. Bristol.—He proves a very important document set out in our Statement of Claim—an agreement between Codd and Delap.

His Lordship.—It is proving the Plaintiff's title; I suppose you are entitled to put it in.

30

Mr. Chrysler.—We object to the evidence; he has not proved the document.

His Lordship.—Go on and read.

Mr. Bristol.—Page 30 it commences, question Number 1. (*Reads.*)

His Lordship.—Is this document lost?

Mr. Bristol.—Yes, my Lord. (*Reads.*)

Mr. McCarthy.—This is objected to as not being sufficient. I do not think your Lordship should hear this; there is no proof of any document being signed.

His Lordship.—Oh, I will hear it; they will have to prove the document. 40

Mr. Bristol reads.

Mr. McCarthy objects to the letter of Codd to Stevens, Bawtree & Stevens. How can that be evidence?

His Lordship.—He is a party, is not he?

Mr. Bristol.—Yes, he is a party.

His Lordship.—It is evidence for some purpose.

Mr. Bristol reads letter 31st May, 1890, also another letter referred to in the Commission evidence.

Mr. Chrysler reads cross-examination.

His Lordship.—Is not it better to refer to this evidence on the argument if you want it?—You have this on record. We cannot remember all that. If you refer to it on the argument the profit of it will appear. I am not able to get any advantage from it at present, but when you argue you can refer to this evidence.

RECORD.
No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

Mr. Chrysler.—We object at the outset to the relevancy of the whole evidence, but if part of it is read, all of it should be read.

His Lordship.—So it is, in contemplation of law.

10 *Mr. Bristol*.—On the other branch of the case there is Gregson's evidence, which contradicts Charlebois. There is one point I wish to read his evidence on.

His Lordship.—You wish to contradict him without calling his attention to it.

Mr. Meredith.—It is his history of the transaction; he was in Canada.

Mr. Watson.—It has nothing to do with the first issue, as to the validity of the judgment.

His Lordship.—This has to do with it.

Mr. McCarthy.—No, my Lord.

His Lordship.—This is to show the negotiations which led to the new directorate.

20 *Mr. Nesbitt*.—That has not to do with the judgment, whether it was improperly obtained.

His Lordship.—They wish to show the whole thing was a conspiracy from the beginning, and to show that the judgment was the result. It is preceding the judgment, and shows the way in which the matters were dealt with.

Mr. Bristol.—The name is Harold Strangeway Knight Gregson, solicitor.

(Adjournment, 1.20 p.m., till 2.20 p.m.)

After Adjournment.

Mr. Bristol.—In deference to your Lordship's suggestion, I mention just the evidence of Francis Hugh Stevens corroborates that of Cansdale.

30 *Mr. McCarthy*.—Any evidence you want to put in we must have read, and if you choose to wait till to-morrow morning, and mark it, all right.

His Lordship.—You can mark it.

Mr. Bristol.—As far as Gregson's evidence is concerned, I think it is entirely relevant.

Mr. McCarthy.—I think the whole of Gregson's will have to be read.

Mr. Bristol reads evidence and documents referred to.

Mr. Chrysler reads cross-examination.

40 *Mr. Bristol*.—The other trustee was examined, and nothing turns on that, and then there is the examination of Mr. Bristow, and I will do as your Lordship suggests; mark the parts I want to read, and read them in the morning.

Mr. McCarthy.—But you will read them in the morning?

Mr. Bristol.—Yes. I put in the Gazettes of January 1888; I have not got them here, but I just mention it, showing publication of the notice calling for the claims of creditors against the Souris and Rocky Mountain Railway Company and North West Railway Company under the charter for which the Great North West Central Railway Company was to be liable under their charter; they run through that month, January 1888. Then, I put in the

RECORD. official documents from the Department ; I do not know that it will be necessary to leave them here, just state what they are. I have a report here of Collingwood Schreiber, dated 29th March 1889, to the Department of Railways and Canals, in which he forwards Mr. Travers Lewis' report as to the claims that have come in under that advertisement, the Departmental package 51, 131 ; the schedule claims are attached to that report ; Codd's claim is not there. Another report, dated 28th March 1889, package number 50, 157 in the Department. This is another report of Mr. Lewis', apparently dated 28th March 1889, with the schedule also.

No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

His Lordship.—I suppose Mr. Schreiber's report was based on this report 10 of Mr. Lewis ?

Mr. Bristol.—Yes. Then the other document is dated March 12th 1890 ; a report by Mr. Schreiber, showing the final adjustment of the claims ; number 55, 384, showing the final adjustment of those claims, and the end of that matter.

Mr. McCarthy.—That is all for the purpose of showing Codd's claim is not amongst them.

Mr. Bristol.—Yes, they were advertised for, and Codd's claim is not there.

Mr. McCarthy.—If there is anything else, we want to have them read.

Mr. Bristol.—I will state generally, so that there may be no question about it, the effect of the reports. 20

His Lordship.—Is not that all, that the claims were sent in, and Codd's claim was not among them ?

Mr. Bristol.—No, I think we need not put them in for any other purpose.

Mr. Cassels.—No other claims outstanding, they were all paid.

Mr. Bristol.—Then I put in departmental number 45,726, a letter from Mr. Lewis to the Department, acknowledging the receipt of his appointment as received of these claims under which he subsequently acted and made his report. That letter is dated 30th December 1887. I am not going to put these in ; I am going to hand them back to the officer. There is no necessity for certified copies of these, my Lord. 30

His Lordship.—No. I think not.

Mr. Bristol.—Then I put in the minute-book of the Company.

Mr. McCarthy.—I do not know how that becomes evidence against us.

Mr. Meredith.—Up to a certain time, at all events, it is.

Mr. McCarthy.—I do not know about that ; we are not going to have that book put in in that way. If you are going to call attention to any meetings we will see.

Mr. Bristol.—You do not propose to admit them as they stand.

Mr. McCarthy.—No.

Mr. Nesbitt.—And I do not propose to admit them. 40

Mr. Chrysler.—More particularly as you would not let us see them till the present time, and simply gave us extracts.

Mr. Bristol.—I do not understand that, because Mr. Lewis spent days in our office examining them. He could have had access to them any time.

Mr. Lewis.—That is true. I spent a morning and an afternoon in looking over them.

Mr. Bristol.—I put in, under the Statute, certified copy of meetings of the shareholders and directors, extracted from the books which are specified here.

Mr. Mc Carthy.—What is that ?

Mr. Bristol.—I put in the minutes from the Company's book of meetings of shareholders on the 10th August 1887 ; they are all in a schedule here ; there is no use having them put down in the notes unless you wish. I will read them if you wish. Shareholders' meeting, 10th August 1887 ; directors' meeting, 10th August 1887, 12th September 1887, 17th September 1887, 6th March 1888, 2nd April 1888, 5th June 1888, 15th August 1888, 17th September 1888, 30th March 1889 ; shareholders' meeting, 4th June 1889 ; directors' meeting, 11th June 1889, 16th September, 17th September, 19th September, 21st September, 10 7th October, 16th October ; shareholders' meeting of the 21st October 1889.

Mr. Mc Carthy.—How do they become evidence under the Statute ?

Mr. Bristol.—Section 212. Then directors' meeting of November 2nd 1889 ; November 11th 1889 ; December 17th 1889 .

Mr. Nesbitt.—I object to this ; that must be by the secretary for the time being.

Mr. Bristol.—November 30th 1891 ; special meeting shareholders, April 24th 1893.

Mr. Nesbitt.—I object to the reception of this ; it is an improper way of proving that ; if it is under the seal of the then secretary, he might have know-
20 ledge of it.

His Lordship.—Supposing he is dead.

Mr. Nesbitt.—Well, there are two people claiming to be secretary, and Mr. Allan is here if they want to call him.

His Lordship.—I will take it subject to the objection ; nothing will turn on it.

Mr. Mc Carthy.—We do not know what they are.

His Lordship.—You have had access to this, or the solicitors you represent.

Mr. Mc Carthy.—But we are entitled to hear the evidence put in against us. Any document put in evidence we have a right to have read. How are
30 we to go into our defence without knowing what the papers are, or what they contain, whether they require explanation.

His Lordship.—They are simply extracts from the books.

Mr. Mc Carthy.—I have never seen the books. I am conducting the case for Charlebois, and I have never seen the books or the minutes, and I know nothing about them.

His Lordship.—These extracts are all readable against Allan, Devlin, and the members of this company ; they may not be evidence against Charlebois, but they are admissible for some purpose against the Defendants.

Mr. Mc Carthy.—I understand everything that is put in must be read.

His Lordship.—The strict rule is that when there is a jury, and documents are put in, it is usual to have them read, but that is subject to some reasonable limitation, and I am not going to sit here and have these documents read now, when they can be read at another time just as well.

Mr. Mc Carthy.—When can they be read ?

His Lordship.—There are sufficient gentlemen with you to read these documents.

Mr. Mc Carthy.—But we have not the slightest idea what they are put in for.

RECORD.

No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

RECORD.

No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

Mr. Chrysler.—We have a copy, I think, of those minutes. I do not know whether we have them all down to—if they will mark their copy—(*Interrupted*).

His Lordship.—It is not like new material ; these minutes must be an old story as to all the members of the company—not perhaps to Charlebois.

Mr. Meredith.—He is a member of the Company.

Mr. McCarthy.—I do not know what they are at all, and it would not be evidence against any person unless he is present. I do not understand a director is bound by minutes of a meeting at which he was not present. We want to know first, whether Charlebois was present, and secondly, if he knew what took place, and I suppose that applies to all of them. If they will tell us what they 10 put them in for—but they just shovel in all the minutes. I object to anything going in that way that is not read. I object in the first place they are not proved, and in the second place, if they are proved, they are not read.

His Lordship.—I think I will have them read, and go on and sit to-night, to make up for the time occupied in the reading of them. Read them if you are going to put them in.

(Minutes 10th August 1887, read.)

Mr. McCarthy.—What in the name of fortune has this to do with the case ?

His Lordship.—I do not know.

20

Mr. McCarthy.—The evidence must be relevant.

His Lordship.—If he thinks it is relevant, he can read it. I do not think counsel will waste time.

Mr. McCarthy.—There is no question that those men were directors, I suppose.

Mr. Arnoldi.—If you will admit these are resolutions on the books of the Company.

Mr. McCarthy.—I do not know about that. I will admit these men were directors ; there is no dispute about that.

His Lordship.—Let the minutes be put in, and let the junior counsel go 30 over and see what the point is to be brought out, and then inform counsel.

Mr. McCarthy.—Let it be done before they are put in. I have no objection for one of us to go over them this evening before they are put in, but I object to their going in now.

Mr. Arnoldi.—I have a right to put them in. I prove them, and if they are not relevant, they do no harm.

His Lordship.—They can be put in, but not to be used until the parties have an opportunity of examining them and seeing what they are for.

Mr. Arnoldi.—If I were arguing the case, I should say it was necessary to have all the minutes in to show the history of the Company, and they are there. 40

His Lordship.—I suppose the rule is, every document that is put in should be read, but it seems unnecessary in the case of these documents.

Mr. Meredith.—Where is Mr. Anderson ? He has been subpœnaed. Please call Mr. Montague A. Anderson.

(*Mr. Anderson* called three times, and does not respond.)

His Lordship.—Does he live in the jurisdiction ?

Mr. Arnoldi.—Yes, my Lord, in the City.

His Lordship.—I suppose he can be got.

Mr. Moss.—He was subpoenaed to produce a lot of papers, and they are RECORD.
all here.

Mr. Meredith.—He is wanted too.

Mr. Moss.—I suppose he can be telephoned for.

Mr. Cassels.—You can get him here for us, I suppose.

Mr. Moss.—Certainly ; we will telephone him, if he is wanted, and get
him here.

No. 38.
Mr. Char-
lebois re-
examined
by Mr.
Cassels—
continued.

James Bogle Delap, Sworn ; Examined by Mr. Howland.

No. 39.
Mr. James
Bogle Delap
examined
by Mr.
Howland.

Q. You are the President of the Plaintiff Company, are you not ?—*A.* Yes, sir.

Q. What is your residence ?—*A.* Lillingston, Lovell, near Buckingham,
England.

Q. That is in the country, is it not ?—*A.* Yes.

Q. Your position in life and business ?—*A.* I am simply an English
country gentleman. ✓

Q. Have you any connection with financial business ?—*A.* No.

Q. Previous to 1889, who were your family solicitors ?—*A.* For a few
years Messrs. Stevens, Bawtree & Stevens.

Q. For a few years previous to 1889 ?—*A.* Yes, about two years, I think ;
20 two or three years.

Q. Did you give any instructions to Messrs. Stevens, Bawtree & Stevens,
or any of them, about any business in connection with this railway ?—*A.* They
spoke to me of it first ; I gave them instructions.

Q. What form did the instructions take ?—*A.* Well, the first instructions
that I think I gave them were to the effect that if they could assure me that I was
free from all risk, and that I incurred no danger or loss—(*Interrupted*).

Mr. Nesbitt.—Is this in writing ?

His Lordship.—These instructions ; no, I suppose not ; go on.

Witness.—That I was willing to consider whether I should guarantee
30 £40,000 or £50,000, which was first mentioned at a meeting which fell
through, but at which I was present, and where we were told that that money
was required for the purposes of this Company.

Mr. Howland.—Q. The Great North West Central Railway Company ?—
A. Yes

Q. What position were you to occupy in regard to this money ; what
interest, if any, in regard to this money ; were you purchasing, or lending, or
what were you doing ?—*A.* I was simply to guarantee the money first, and I
was told that it was exceedingly improbable that any of it could ever be
required.

40 Q. Who was making the application for this money ?—*A.* Mr. Codd.

Q. Mr. John Arthur Codd, named as a Defendant in this case ?—*A.* Yes.

Q. Did your solicitors bring that into the shape of any agreement ; I mean
a written agreement ?—*A.* They embodied—at least it was embodied in an
agreement that I signed on the 20th July 1889, and that Mr. Codd also signed.

Q. Look at that, and say whether that is the substance of the agreement ?

Mr. McCarthy.—The substance, or the agreement ?

RECORD.

No. 39.

Mr. James
Bogle Delap
examined
by Mr.
Howland—
continued.

Mr. Howland.—It is a copy.

Mr. Chrysler.—We object that there is no proof of loss of the original.

Mr. McCarthy.—Had not you better prove where the original is?

Witness.—Am I to read this all through?

Mr. Howland.—*Q.* Just that you may understand that that is the document being referred to in the subsequent questions?—*A.* This is a copy of the document, I have every reason to believe, which I signed.

Q. Do you remember who signed the original?—*A.* I signed it, and Mr. John Arthur Codd signed it.

Q. Do you know what became of the original?—*A.* It remained in the 10 possession of Mr. Stevens' firm.

Q. You had no copy of it at home?—*A.* I had no copy.

Q. Or duplicate?—*A.* No duplicate and no copy, and I never had the original at home either.

Q. Have you any knowledge where the original now is?—*A.* No knowledge at all.

Q. Have you caused inquiries to be made for it?—*A.* Yes, and I have hunted for it myself everywhere about my house, on the possibility of its being there, though I felt sure it was not.

Q. What was the result of your search?—*A.* I could find nothing of the 20 kind.

Q. Well, this agreement purports to undertake to make certain advances, if necessary, but to give certain guarantees on certain conditions. It was to take the form of a bill of exchange, but before it was drawn the said John Arthur Codd should prove to your satisfaction that the Company had been legally established in Canada, that a land-grant had been made, and so on, that a contract for the construction of the first 100 miles of railway had been duly executed—(*Interrupted.*)

Mr. McCarthy.—I object; I do not know what he is reading it for. I submit there is no evidence of the loss of the document upon which secondary 30 evidence could be admitted.

His Lordship.—He seems to have had the original, and it was left in Stevens' office, and a clerk searched for it.

Mr. McCarthy.—No, it came out that it was on the ship.

Mr. Howland.—If so, that is still in Stevens' custody.

His Lordship.—I think I will take this evidence at present.

Mr. Howland.—*Q.* You say this is a true copy of that document?—*A.* I have every reason to believe it is; I feel convinced it is in my own mind.

Q. You read the original?—*A.* Yes.

Q. Or had it read to you?—*A.* Yes, and I recollect those clauses that you 40 began to read very well now.

Q. Is there any clause in it that you particularly remember that impressed itself upon your memory?—*A.* I particularly remember those clauses marked A., B., C., and D.

Q. Those are the clauses containing the condition?—*A.* I looked upon those as conveying to me security.

Q. "That £90,000 of the shares of the Company, carrying with them the concession and powers of the company, and the right to the land-grant having

been transferred to the said James Bogle Delap or his nominee." Then there were further conditions here in case the said James Bogle Delap should be called upon to pay the said £50,000, "the said John Arthur Codd will deposit with him £90,000 of the said capital stock of the Company," &c. (Reads) *A.* I recollect that quite distinctly.

RECORD.
—
No. 39.
Mr. James
Bogle Delap
examined
by Mr.
Howland—
continued.

Q. Then what was done pursuant to that contract, so far as your knowledge went?—*A.* Mr. Richard Stevens said to me that he was most anxious that this should be carried out perfectly satisfactorily, and with due regard to my safety in every way, and that on that account he would arrange that his son should come out to Canada and see that it was carried out and put into execution.

Q. In what shape was your money at that time?

Mr. McCarthy.—Have we anything to do with that; that is not important.

Mr. Howland.—*Q.* Well, you had to realize some investments for the purpose of providing this money?

Mr. Nesbitt.—*Q.* What have we to do with that?—*A.* I raised money on investments.

Mr. McCarthy.—I do not think we are interested in how Delap raised his money.

20 *Mr. Howland.*—Some question may be asked by one representative here.

Mr. McCarthy.—It will be time enough when they are asked.

Mr. Howland.—*Q.* What did you do about the money?—*A.* After Mr. Richard Stevens had gone out to Ottawa—(*Interrupted*).

Q. Mr. Charles Stevens?—*A.* Mr. Charles Stevens had gone out to Canada, and had written over urging that the money should be sent, I went with Mr. Richard Stevens to the office of the company that were to advance me the money and carried through the business of getting it, and the money was handed to him, and he sent it out to his son.

30 *His Lordship.*—*Q.* How much was that?—*A.* I gave him £55,000 that day.

Mr. Cassels.—Sterling?—*A.* Yes, I do not know any other pounds.

Mr. Howland.—*Q.* There had to be expenses, I suppose?

Mr. Nesbitt.—Surely not?—*A.* I was not to be at any expense.

Mr. Howland.—*Q.* Did you see the form in which the securities were taken for you? Did you see the form of any securities that were taken for you at the time?—*A.* Taken from this Company?

Q. Yes?—*A.* Not for some time.

40 *Q.* Can you recollect when you first saw this document, the contract between the Great North West Central Railway Company and Alphonse Charlebois?—*A.* It was a copy of this I think I saw first.

Q. Can you recollect when you first saw it?—*A.* That was in August 1892, when you showed it to me in London.

Q. Can you remember the circumstances under which I showed it to you?—*A.* I believe that was when I saw it first.

Q. Do you remember what other documents were shown you then? Do you remember any other documents that were shown you then?—*A.* The agreement, I think, between Mr. Codd and Mr. Charles Stevens I saw then for the first time, I believe.

RECORD.

No. 39.
Mr. James
Rogle Delap
examined
by Mr.
Howland—
continued.

Q. Can you read that ?

Mr. McCarthy.—Here is the statement I referred to ; in answer to Question 283—"Did you bring the original of Exhibit 43 out with you ?" and the witness says "I think so."

His Lordship.—What witness is that ?

Mr. McCarthy.—Gregson.

Mr. Meredith.—That must be a mistake ; that is 43 ?

Mr. McCarthy.—No, 284 ; I was mistaken ; "Did you bring the original of Delap and Codd agreement of 20th July 1889, out with you ?" "I think so."

10

Mr. Meredith.—He must mean a copy.

His Lordship.—Yes, he never saw the original.

Mr. McCarthy.—The question says original, and he thinks so. We know nothing at all about this document, and it is very important that this document should be produced if there is any equity at all to be founded against us upon it.

His Lordship.—You will get the benefit of that when you come to the discussion of the whole case as to whether the absence of the original is accounted for ; I thought Gregson did account for it. He may not, when you take that part of the evidence with his other evidence.

20

Mr. Howland.—Q. Are you able to identify that ? This is the Heads of Agreement between Codd and Stevens ?

Mr. Meredith.—He already said he saw that in August 1892.

Mr. Howland.—Q. Have you read enough to enable you to identify that as the document ? I do not mean the same identical piece of paper, but the substance of the document you saw in August 1892 ?—A. Yes, I believe it to be the same, but I have never seen it, except. I think, that day and to-day. It contains the same matter and substance. I know the signatures.

Q. What did you understand Stevens' relation to you to be ?

Mr. McCarthy.—He has told us solicitor and client.

30

Mr. Howland.—Well, until you saw those documents ; I asked him before up to 1879.

Mr. McCarthy.—What document are you speaking of, now ?

Mr. Howland.—These documents I showed him just now—heads of agreement between Codd and Stevens, in which they became partners.

Witness.—Are you waiting for me to answer ?

Q. Yes ?—A. The relations between Stevens' firm and myself were simply those of solicitor and client.

Q. Up to the time you saw those agreements ?—Yes.

Q. You say you never saw those agreements. Were the contents of 40 them familiar to you before you saw these documents ?—A. They were quite new to me when I saw them in August 1892 ; they were a great surprise to me.

Q. Well, what was the result ?—A. The result was that I asked you to undertake the matter for me, and ceased to trust the Stevens' firm to that day.

Q. You now claim to hold a large number of shares in the company ?—A. Yes.

Q. By that agreement you were entitled to hold 90 per cent. ; how large a proportion do you now hold ?

Mr. McCarthy.—I suppose that can be shown ; the books will show that ?—
A. I believe I hold about 90 per cent. ; I do not recollect the figures.

Mr. Howland.—Q. Does Stevens hold any shares for you now ?—No.

Q. Do you remember when he ceased to hold any shares ?

Mr. McCarthy.—I suppose that will all be shown by transfer ?—A. I do not recollect the date.

His Lordship.—I suppose it is not very important ; he dropped Stevens very
10 quickly.

Mr. Howland.—Yes, but I want to show certain facts before the date at which Stevens ceased to be a shareholder.

Q. Do you remember that transfer ?—Yes, I remember it quite well.

Mr. Meredith.—A short statement can be put in from the books of how the shares have been from time to time.

Mr. McCarthy.—I should think that would be very satisfactory.

His Lordship.—Then you can do that.

Mr. Howland.—Q. Now, the first sum that they raised was £55,000 ?—

A. Yes, I sent out £50,000—(Interrupted).

20 Mr. McCarthy.—Q. I thought you said £55,000 ?—A. Yes, £55,000 is what I raised and handed over to Richard Stevens, to be sent over to Canada.

Mr. Howland.—Q. Who were the solicitors managing your business generally ?—A. The Stevens.

Q. What was the £55,000 the produce of ?

Mr. McCarthy.—What difference does that make ?

Mr. Howland.—I want just merely to account for the odd figure.

Mr. McCarthy.—We do not care for the odd figure, he gave £55,000 to be sent out.

Mr. Howland.—Q. The money was raised ?—A. I raised it from the
30 National Provident Institution by pledging my mortgage deeds that I held from various people.

Q. You were asked to make some subsequent advance to the railway ?—A. Yes, I was asked to accept a bill for £25,000 in October, in the subsequent October.

Q. 1889 ?—A. Yes.

Q. What were the circumstances under which you were induced to make that advance ? Was it an advance of cash, or merely on paper ?—A. It was merely on paper, it was a draft, and I was told the contractor would take it up as soon as it was due ; I looked upon it as a formality.

40 Q. You looked upon it as a formality, but did it prove to be a formality ?—A. No, it was found necessary to obtain the money for that afterwards, and another bill for £27,000 was substituted for the £25,000 bill, and I was told by the Stevens that if I would find half that £27,000—(Interrupted).

Q. Wait a moment ; perhaps you are mixing up events ; would you recollect the first bill (*Bill produced*) ?—A. That is it.

Q. What signatures do you recognise on it ?—A. I recognise my own ; I recognise Mr. Codd's.

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O O

RECORD.

No. 39.
Mr. James
Bogle Delap
examined
by Mr.
Howland—
continued.

RECORD.

—
No. 39.
Mr. James
Bogle Delap
examined
by Mr.
Howland—
continued.

Q. Well, then, this bill was not paid at maturity, and what explanation was given you of that bill becoming due?—*A.* Of the £25,000 bill becoming due?

Q. Yes?—*A.* Well, I was told that the money was wanted and that it had to be found, and that if I was to find half of the £27,000—(*Interrupted*).

Q. You are mixing up things altogether; I am talking of the £25,000 bill; do you remember when that became due?—*A.* No, I do not recollect when it became due.

Q. Go back to the time for signing that? Do you recollect that letter of the 17th October, 1889, Stevens, Bawtree & Stevens?—*A.* Yes, indeed I do.

Q. It is not Stevens, Bawtree & Stevens; it is R. Stevens; he was the 10 senior member of the firm, was he not?—*A.* Yes.

Q. "My Dear Delap; *re* Canadian railway" (*Reads*).

Mr. McCarthy.—I do not see how that is evidence against us at all.

His Lordship.—No, I do not understand he is putting it in as evidence, but to recall his recollection to the fact of under what circumstances he signed the £25,000 draft; it is not evidence, of course.

Mr. Howland.—Will it be marked as that which he has referred to?

His Lordship.—No, he has refreshed his memory.

Mr. Howland.—*Q.* Reading that, does that refresh your recollection as to the inducement to you to sign that £25,000 draft?—*A.* I understood I should 20 not have to provide the money.

His Lordship.—He has told us he understood it was a formality and would be taken up by the contractor; his recollection accords with the letter, as far as that goes.

Mr. Howland.—*Q.* Did you authorise Messrs. Stevens to make any further advances?—*A.* When I was told that this £27,000 bill had to be arranged for, I raised £15,000 more from the National Provident Institution, and the Stevens had that.

His Lordship.—*Q.* You raised £15,000 from this Institution?—*A.* And that was on the understanding that Lord Gifford would find the rest of the 30 money, the remaining £13,500 to meet that £27,000 bill.

Mr. Howland.—*Q.* That £27,000 bill has been already in evidence as the bill that it was necessary to have taken up by all the parties who were liable on that first £25,000 bill?

Mr. Chrysler.—No, it is quite distinct.

Mr. Howland.—*Q.* We will have to ask you, do you recollect the contents of that £27,000 bill? Of course that is not the document; that is merely a copy?—*A.* No, I know that.

Q. Do you remember it by the date and names?

His Lordship.—Has he not stated it correctly, that it was taken up in this 40 way?

Mr. Howland.—*Q.* Yes, but counsel say it is not correct?—*A.* This is what I was looking for, the endorsement. Yes, that is a correct copy of it, I believe.

Q. That is the £27,000 draft on the 18th December 1889, drawn by you on the Great North-west Central Railway Company, accepted by the Great North-west Central Company, by J. A. Codd, president, and Herbert Lett, secretary, payable at Messrs. Stevens, Bawtree & Stevens' office, and endorsed

by yourself and Lord Gifford ; that was what took place on the 18th December, 1889, was it not ?—*A.* Yes.

Mr. Chrysler.—They made an accommodation bill and borrowed the money.

Mr. Howland.—*Q.* Who did you understand at the time that you were made a party to that £27,000 bill, was the person to pay that bill ?—*A.* To pay me back for it.

Q. Yes, or who was to meet that bill at the time it was drawn ? That was in December ?—*A.* I understood I was to find half the money, and Lord Gifford would find the other half.

Q. Then who was to pay you back ?—*A.* The Great North-west Central Company.

Q. Was it positively understood at that time—(*Interrupted*).

Mr. McCarthy.—Do not lead.

Mr. Howland.—*Q.* Was there a definite understanding at the time that bill was taken between Mr. Codd, as representing the Great North-west Central—(*Interrupted*).

Mr. McCarthy.—Do not put it in that way ; you can say what the understanding was.

His Lordship.—*Q.* How did he arrive at the understanding that the Company would pay him ?—*A.* I had the most distinct understanding, my Lord, that that was so.

Q. With whom ?—*A.* With Mr. Codd and the Company ; I counted those two synonymously really at that time ; they were mixed up in my mind, Mr. Codd and the Company, or both or either were to pay me back.

Mr. Howland.—*Q.* Did you look upon the liability to meet that bill at that time as a positive liability or contingent ?

Mr. McCarthy.—That is rather leading, is not it ? You can ask him what that understanding was, but you cannot put the words in his mouth.

Mr. Howland.—*Q.* At what date or at what time did this understanding arise ? Was it an understanding at the time that the bill was taken, or was it afterwards ? This first bill, you have stated, £25,000 bill, was a bill you did not expect to meet at all. What was the expectation when you found you had to assist in renewing that bill by a £25,000 bill ?—*A.* I was to find half of that money, and Lord Gifford was to find the other half, and I raised the money for the half of it by pledging more of my securities with that National Provident Institution.

Q. And the Company, you have stated, was to repay that ?

Mr. McCarthy.—No, he did not.

Mr. Howland.—He did state that.

His Lordship.—He said that was his understanding.

Witness.—I understood the Company were to pay me back, and to pay me back everything I advanced, too.

Mr. Howland.—*Q.* You state that you have been called upon to pay £13,000 ; is that all you have been called upon to pay on account of that £27,000 draft ?—*A.* I have had to pay £31,000 altogether to that National Trust and Debenture Company ; I had to pay them £31,000 ; the half of that

RECORD. was supposed to be Lord Gifford's and my own, and a lot of interest, making £31,000 altogether.

No. 39.
Mr. James
Bogle Delap
examined
by Mr.
Howland—
continued.

His Lordship.—*Q.* That is in addition to the £55,000 ?—*A.* Yes, my Lord, I should think it was.

Mr. Howland.—Can you explain what was the difference between the £25,000 and £27,000 bill ; you see there is £2,000 more ?—*A.* That was to cover expenses that the International swallowed up in some way or another, costs and interest.

Q. Now, then, when did you first understand that you were to be secured by the possession of bonds ?—*A.* From the first I always stipulated I should have a first charge ; I said I would not advance any money at all unless I had a first charge.

Mr. McCarthy.—How is this possibly evidence against us ? This gentleman always stipulated—with whom ?

His Lordship.—I suppose he has the bonds. His stipulation will not come to anything unless he has the securities.

Mr. McCarthy.—Whom did he stipulate with ?

His Lordship.—I suppose we will find that out.

Mr. Howland.—*Q.* When did you first learn that he had any bonds ?—*A.* Oh, I cannot carry that in my head. 20

Mr. Watson.—He did not say he had them yet.

Mr. Howland.—*Q.* Who got them for you ?—*A.* Cansdale came over to Canada and brought them back.

Q. Then it would be when Cansdale came over to Canada that he brought back your bonds ?—*A.* Yes, he brought them back to me.

His Lordship.—*Q.* Was that after you had advanced \$31,000 as well as the £55,000 ?—*A.* Yes, my Lord, I believe so ; I am sure it was.

Mr. Howland.—*Q.* Are you sure you had advanced the whole of these two sums of £13,000 at that time ?—*A.* I had advanced £13,500 on the £27,000 bill first of all in 1889, the end of May 1889. 30

Q. When the bill came due ?—*A.* I got it from the International Company ; I do not carry these things in my head.

Q. The second £13,500—was that all paid in a lump, or when was it paid ?—*A.* The second £13,500 and more besides ; I only succeeded in paying off at the beginning of this year entirely ; I got it wiped out at the beginning of this year.

Q. Then it has been distributed over a considerable period, the payment of that last £13,000 ?—*A.* That second £13,000, and the additional odd expense connected with it, making £31,000 altogether. That second half was got together about the end of last year or the beginning of this year. 40

Q. Do you recollect any suit by the International ?

Mr. Nesbitt.—It is all in the Commission.

A. I recollect proceedings by the International various times ; there was a lot of trouble over it.

Mr. Howland.—*Q.* Do you keep books of account yourself ?—*A.* No.

Q. You have nothing by which to give an accurate statement except what ?—(*Interrupted.*)—*A.* No.

Q. Except what you find in the books of your creditors ?—*A.* No.

Q. Did you give any other instructions to Stevens when he was leaving for Canada in 1889 than those contained in that document, that first Exhibit? RECORD.

—A. That he was not to pay any money on my behalf unless he at the same time got securities that would give him a first charge and see me perfectly safe, because the money I looked upon as my family's money; I had not an idea of speculating in any way; I said it must be outside the region of speculation, anything that I did. No. 39. Mr. James Bogle Delap examined by Mr. Howland—continued.

Q. Did you give him any other instructions than those contained in that document—I mean any other powers than those contained in the document.

10 Mr. Chrysler.—What document?

Mr. Howland.—1st July 1889.

A. I did not authorise him to go beyond that paper in any way.

Q. This judgment perhaps will refresh your memory as to some of the dates; this is Exhibit 31 in the Commission between the International Trustee, Assets—(Interrupted.)

Mr. McCarthy.—That is not evidence.

Mr. Howland.—It is a certified copy.

Mr. McCarthy.—He cannot refresh his memory with that.

Mr. Howland.—He can refresh his memory with anything.

20 Q. Look at the date of that; 1st July 1891; perhaps that will refresh your memory as to the dates some of your payments were made; it is a document in a suit between the International Trustee Assets and the Great North West Central Railway Company, and yourself and Lord Gifford as defendants?—A. I know they got judgment, and pressed me very much.

Q. And there was a large sum which you had to pay on that judgment? (No answer.)

Mr. McCarthy.—We do not want that in.

Mr. Howland.—It is in already on the Commission.

Mr. Chrysler.—It is in subject to objection.

30 Mr. Howland.—I think I will ask one question about this. Q. You were informed that the bonds were brought over for you when Cansdale came over?—A. Cansdale brought them over for me.

Q. In whose custody did you understand they remained for some time?—

A. Mr. Stevens', or rather the Stevens firm held them for me until August last year, August 1892.

Q. And what happened in August, 1892?—A. In August, 1892, I told Stevens that I would like to hold them in my own name.

Q. Was that before or after you had seen these documents that I showed you?—A. After I had seen those documents.

40 Q. You got the bonds into your possession?—A. Yes.

Q. Were you ever made aware of the terms of the judgment that is the subject of this action, so-called consent judgment?—A. No.

Q. When were you first informed of the contents of that judgment, or when did you first see it?—A. I first saw a copy of it that Mr. Chrysler showed me in Toronto, about the beginning of March, I first heard of the existence of it in April, 1892.

Q. But you did not see it then?—No.

Q. Did you know its contents?—A. I only knew there was a judgment—

RECORD. was told that there was a judgment that Mr. Charlebois had obtained against the Company, and that it was necessary to resist it on my behalf.

No. 39.
Mr. James
Bogle Delap
examined
by Mr.
Howland—
continued.

Q. Did you seek any opinion as to your rights in regard to the bonds?—
A. The Stevens's got the opinion of a Mr. Beddall, whose name is mentioned in that Codd-Delap agreement.

Q. What were you advised?

Mr. McCarthy.—How is that evidence? How can Mr. Beddall give that evidence?

His Lordship.—I am afraid that is not evidence.

Mr. Howland.—Q. Have you ever consented to the terms of this judgment?—A. No.

Q. Did you ever authorize Stevens to consent to any such judgment for you?—A. Certainly not.

Q. Did you ever authorize anybody?—A. No.

Q. Was there any person here authorized to act for you in consenting to such a judgment?—A. No.

Mr. McCarthy.—It is not pretended he ever consented to the judgment, but he is not a party to the suit in any way.

Mr. Howland.—Q. What is the total amount of your loss up to this time in connection with these loans that you have made to this railway? 20

Mr. Chrysler.—I do not know how that can be material, his losses.

Mr. Howland.—Q. The amount of your advances?—A. £55,000 and £31,000 and £3,000.

Mr. Chrysler.—These are not advances; that includes the money he paid to the International for costs and interest.

Witness.—£27,000 was the capital money to the International; I paid them £31,000.

Mr. Howland.—Q. And that was part interest, of course?—A. Yes.

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Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy.

Cross-examined by Mr. McCarthy.

Q. Perhaps you will tell me, Mr. Delap, how it was you first were 30 approached, or when it was you were first approached with reference to this railway enterprise?—A. I had a letter from Mr. Richard Stevens, or he spoke to me, I really forget which; I first heard of it in 1889.

Q. And that was either by a letter from Mr. Stevens, who was then your solicitor, or in a personal interview with him?—A. Yes.

Q. And was it the early part of 1889?—A. It was in the summer of 1889.

Q. Well, in consequence of that communication, what did you do, or did you do anything?—A. It was arranged that I should be present at a gathering consisting of a few others, who were to meet Mr. Codd, and hear about 40 the enterprise.

Q. And were you present at that gathering?—A. Yes.

Q. And were others present as well?—A. Yes.

Q. We have had some names mentioned in the evidence that has been read on the Commission; who were the persons who were present?—A. Mr.

Codd and the two Stevens' were there; and Lord Gifford, Hon. Robert Curzon, and Mr. Trahern. RECORD.

Q. Mr. Trahern, Lord Gifford, and the two Stevens; that is the father and son?—A. Yes.

Q. They are both in the same firm?—A. Yes.

Q. Were there others besides these you have named?—A. Lord Gifford, Robert Curzon, Mr. Trahern, and myself, and the two Stevens'.

Q. That was a meeting of persons who were to be asked to finance the railway, or what was it?—A. Lord Gifford, Mr. Curzon, Mr. Trahern, and myself, were invited to advance £10,000 each.

Q. Who invited you to do that?—A. The Stevens' put it before us, with Mr. Codd present.

Q. I understood you to say Mr. Codd was present?—A. Yes, it was understood that it was on his behalf.

Q. Were the Stevens acting for Mr. Codd at the time?—A. Oh, I did not know what they were doing about that; they were my solicitors.

Q. They might have been Mr. Codd's as well; you say Mr. Stevens put it forward and it was understood to be on behalf of Mr. Codd?—A. Yes.

Q. If so that would rather seem to show that they were acting for Mr. Codd at the time?—A. I did not ask them who they were acting for.

Q. Did you see any document there? You knew nothing at all, I suppose, about Canada or Canadian Railways?—A. No, indeed I did not.

Q. I suppose that some explanation was given there—although perhaps you are not able to tell us very clearly what it was—some explanation was given there of what Mr. Codd's interest in the matter was, or was there any explanation given; for instance, did you see this contract which Mr. Codd had?—A. I have no recollection of seeing it.

Q. Did you understand in any way, Mr. Delap, what Mr. Codd represented he had or could do or wanted done, or what his position was with reference to the road, or what was your understanding about it?—A. I was told he was the concessionaire; I remember hearing that.

Q. He was the concessionaire?—A. Yes.

Q. That is the concessionaire of whom? Of the Company?—A. Oh, Mr. McCarthy, if you ask questions all night you will only get me into a deeper bag; I know I put my money down, and I want to get it back as soon as I can. ✓

Q. I am afraid if you want to get it back from us we will have to know the reason why; we have not the slightest objection to your getting your money back, but we object to your getting it from us. You understood Codd was the concessionaire of this company; that you say you did understand?—A. I did not say I understood it.

Q. Well, you heard it?—A. I heard it; I heard him called that name.

Q. Did that not convey anything to your intelligence?—A. I did not know all that a concessionaire meant; I do not suppose I do now.

Q. What did you suppose it meant; tell us as far as you understood?—A. Well, I understood that he would obtain the concession in Canada, if he could show that he had money behind.

Q. If he could show he had money behind him you understood he would

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RECORD. obtain the concession in Canada, and did you understand what he wanted the money for ; surely you knew something about it ?—*A.* There were 50 miles to be built.

—
No. 40.
Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

Q. You understood that he had to build 50 miles of that, or that 50 miles of road were to be built, and did you understand what would happen when the 50 miles of road were built ?—*A.* Well, you are speaking of the day of the meeting, are you not ?

Q. I will not confine you to that if I can get anything further, if you had any further knowledge before you signed this agreement which I will come to in a moment ?—*A.* You are speaking of before I signed the agreement. 10

Q. Yes ?—*A.* Well, before I signed the agreement, what we were all told that day, I and the others that were there, was that a London House of responsibility had undertaken to float the bonds, and that if we four advanced £10,000 each, that the money would be paid back to us directly the bonds were sold.

Q. You were told that a London house of responsibility had agreed to float the bonds, and that if you would advance £40,000 among you, that your money would be paid back as soon as the bonds were sold ?—*A.* Yes, but at that time I did not know the difference between bonds and shares.

Q. I dare say you know the difference now ?—*A.* I do. 20

Q. What was this money wanted for, did you understand—the advance on the sale of the bonds—what was the money required for ; to help to build the 50 miles of road, was it ? Is that what you understood ?—*A.* Oh, really I could not tell you.

Q. You have some vague idea, perhaps, have you, some floating idea in your mind what the £40,000 was required for ; it was to be sent out to Canada, I suppose ?—*A.* It was to be sent out to Canada for the purposes of the company.

Q. And did you hear anything about land-grants ?—*A.* Oh, yes, I heard about that.

Q. That was the chief thing about it, was it not ?—*A.* It was. 30

Q. You heard about the land-grant, no doubt ?—*A.* Yes.

Q. Six thousand four hundred acres a mile ?—*A.* Yes.

Q. And you looked upon that as a very great concession ; that would naturally be so ?—*A.* Yes, of course, I looked on it as a large concession.

Q. And you were asked then to put up £40,000 altogether, your putting up £10,000, and the other three gentlemen, whose names you have mentioned, were to put up the other £10,000 ; and you were to be repaid that money when the bonds were sold ; and how much were you to get for the loan of the £40,000 in this way ? What was the offer that he made ?—*A.* I do not recollect about that at all, because it all fell through ; the other three said they 40 would not do anything about it until the financial house had taken up the bonds.

Q. Until the financial house had taken up the bonds the other gentlemen said they would not have anything to do with it ?—*A.* Yes.

Q. So you would not have anything to do with either ?—*A.* Well, it occurred to me it was possible that if I had a first charge over all the property—
(*Interrupted.*)

Q. But I mean at that meeting ?—A. Exactly ; it was at that meeting this occurred to me, while we were all sitting there. RECORD.

Q. What was it that occurred to you at this meeting ?—A. What occurred to me at the meeting was that if I was to guarantee this money myself, if I could have security over the whole property, and no more was required, that I could guarantee that. Mr. Stevens' people seemed very disappointed, they seemed to think it was a sad thing it should all fall through, and I regarded them as very warm friends, and I thought that if I was to get security, and that I would run no risk, that I could help a valuable undertaking ; I was
10 interested in the idea of a new country being opened up, and a line being made, and I thought if there was all that land that I could get a security on that that would make me safe.

Q. In consequence of these thoughts did you make any proposition, or did you do anything ?—A. In consequence of these thoughts, I mentioned them to the Stevens' and asked them if they could advise me about it, whether I should be quite safe in entertaining such an idea or not.

Q. You took advice of your solicitors as to whether it would be a prudent investment ?—A. Yes.

Q. And in consequence of that advice you did ultimately enter into a
20 contract ?—A. Yes.

Q. Then you did make an arrangement with Mr. Codd ?—A. Yes.

Q. And where did you sign that document ? You signed a written agreement, did you ?—A. I signed an agreement that I have had a copy of just now.

Q. You signed a written agreement ?—A. Yes.

Q. Where did you sign that ?—A. I believe I signed it in Stevens' office.

Q. Who prepared it ?—A. Stevens prepared it.

Q. At your instructions ?—A. I told them that—(Interrupted.)

Q. Did they do it as your solicitors, on your instructions and on your
30 behalf ?—A. Yes, they did it as my solicitors.

Q. Did you meet Mr. Codd there ?—A. Yes.

Q. Meet him by appointment ?—A. No, I do not recollect whether it was by appointment ; it very likely might have been.

Q. Have you any doubt that it was by appointment ?—A. I should think it is likely.

Q. Then did you not see at that time the document which Mr. Codd had ? Was that not shown to you ? It must have been produced, you know ; was this not shown to you ?—(Producing document.)—A. I have no recollection, except what I signed ; I recollect that.

40 Q. You recollect signing the document ?—A. Yes.

Q. Was there more than one copy of that document ?—A. I do not think it was signed in duplicate, if that is what you mean.

Q. That is what I mean exactly ; you do not think it was ?—A. No, I think there was only one original.

Q. And that was left at your solicitor's office ?—A. Yes.

Q. Then no doubt he must have been acting for both parties, for Mr. Codd as well as for you ?—A. I do not know.

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No. 40.

Mr. James Bogle Delap which purports to be a copy of it ; how is that obtained ?—*A.* Mr. Howland got that from the Stevens' in the summer of 1892.

cross-examined by Mr. McCarthy—*Q.* Well, then, the original must have been in Mr. Stevens' possession at that time ?—*A.* Not necessarily.

continued. *Q.* How could he get a copy if the document was lost ?—*A.* He might have had that copy by him a long time for all I know.

Q. You cannot throw any light upon that at all, can you ?—*A.* Upon what ?

Q. Upon how Mr. Howland got this from Stevens or how Stevens happened to have a copy ?—*A.* It would not be a wonderful thing for him to have a copy of a document.

Q. But you know nothing about it, or do you ?—*A.* I only know Mr. Howland showed it to me.

Q. But you know nothing further about the matter more than that ; Mr. Howland showed you this paper which he said he procured at Stevens' office in the summer of 1892, and that is all the assistance you can give us about it ?—*A.* Yes.

Mr. McCarthy.—This is without waiving my objection.

His Lordship.—Stevens has not been examined.

Mr. Cassels.—No, we applied for a commission to examine him, but Charlebois objected strongly and they refused the order.

His Lordship.—There is no examination of Stevens at present before the Court.

Mr. Lewis.—Stevens senior was named in the Commission, but they did not call him.

Mr. Cassels.—The Commission shows why he was not called.

Mr. McCarthy.—Without waiving my objection—

Q. Do you mean to tell me with the kind of memory you exhibit in the 30 witness-box that you pretend to say that that is a copy of the agreement—that it contains all that was in that document ? In the first place will you pledge your oath to that ?—*A.* I recollect this A. B. C. D.

Q. I recollect A. B. C. D. too ; that is not my question ; will you undertake to say that this paper which was from Mr. Stevens contains all that was in the document, that is my first question about that, will you pledge your oath to that ?—*A.* I could not pledge my oath there was no word left out ; I believe that is a copy.

Q. I did not ask your belief, what will you swear to, will you swear there is nothing omitted here, that the original did not contain something more than 40 is in this ?—*A.* I have told you all I can, Mr. McCarthy, I do not want to tell you anything more than is straight, I believe that is a copy.

Q. You read it once, did you ever see it more than once ?—*A.* I do not think I ever saw the original but once.

Q. And that is the time it was read to you when you signed it ?—*A.* Yes, and I read it ; I carried that document pretty strongly in my recollection, you know, because I hung on to that as security.

Q. Did you carry it so strongly that you could sit down and write it out from memory?—A. Oh, dear no; of course I could not; you know that.

Q. You would not say this document contained all that was in the other one, nor would you say that it is correct as far as it goes; you cannot tell anything about that?—A. I believe it is a copy.

Q. I am asking you what you know?—A. That is all I know; I do not want to conceal anything; I do not know what you want me to say.

Q. I just want you to answer my questions, which are very simple and very plain; so that whatever security you got from Mr. Codd you got by the document which was signed in Mr. Stevens' office in the month of July, 1889; that was what you got, whatever it was?—A. That was what I got at the time.

Q. That is all you got; now, there is not a word, as far as I remember, about bonds in that agreement, is there, that you produce here; I do not remember that there is a word about bonds in it?—A. There was always an understanding—(interrupted.)

Q. Is there a word about bonds in that written agreement?—A. I think there is not.

Q. I do not think there is; it says here "50,000 pounds on account thereof on the execution of the transfers and the said stock to the said John Arthur Codd, and upon other terms mentioned in Clause 3, Section 1 of the agreement hereto annexed." Now, to that agreement was annexed the original agreement which Mr. Codd had, which is here. (Agreement.) So that you must have seen that, if you saw the other, because it says on the face of the document which you produce here as a copy, it professes to say that this document here was annexed to it?—A. It speaks of something annexed to it, but I did not know what it was that was annexed to it.

Q. It not only speaks of what was annexed to it, but it speaks of this document being annexed to it; and if you say you read the other over carefully and saw it, you must have seen it, or else this is not a true copy of that original document?—A. I might have seen that.

Q. Have you any doubt now that you did see it?—A. Oh, I do not know whether I saw it.

Q. Have you any doubt, drawing your attention to the fact that it is spoken of as being annexed to the document you signed; this original document is spoken of as being annexed. (Reads.) Now we will see what Clause 3, Section 1 says. (Reads.) You must have understood that if you understood what you were doing at all; is not that so?—A. Oh, you only throw me into difficulties; I cannot make head or tail of it all.

Q. I am very sorry to hear you say that, because you profess here to be asking to enforce rights arising out of the agreement, yet you come in here and tell us you did not understand anything at all about it?—A. I understood that I was to be secured, that I was to have a first charge.

Q. There is not a word about your having a first charge that I remember in this?—A. And that that Codd agreement was to be carried out.

Q. I will tell you what you did undertake to do and see if you remember that: "In order to comply with the said agreement" (reads down to the words "fully paid.") Do you remember that?—A. Yes, I remember that.

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No. 40.
Mr. James
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cross-
examined
by Mr.
McCarthy—
continued.

Q. Then you undertook to guarantee the payment of that first 50,000 pounds?—*A.* Yes, I understood that.

Q. You also agreed, "The said John Arthur Codd upon receiving such bankers' reference undertakes to provide 50,000 pounds in Canada upon a bill of exchange at 60 days, renewable, etc." So that what you were to do was to give a guarantee to secure the 50,000 pounds?—*A.* Yes.

Q. There was a provision made that you were to get the 5,000 pounds for doing that; that is how much of a bonus? What per cent. is that? 5,000 in the first place and 5,000 in shares?—*A.* Yes, I remember that.

Q. You have heard that large interest means risky securities, does it not? 10
—*A.* Well, I said I wanted no risk: I said that I did not stipulate for big profits at all.

Q. What do you call 5,000 in 50,000—a bonus of 5,000 for simply accepting a bill of exchange at 60 days, which you never expected to be called upon to pay; do not you call that pretty big?—*A.* I knew very little about these matters then; I knew very much less than I know now.

Q. Did not you look upon that as large profits for writing your name across a piece of paper—5,000 pounds?—*A.* I was doing a thing which was to produce large results.

Q. And you thought you ought to share in these large results?—*A.* I did 20 not stipulate—(Interrupted.)

Q. It was further stipulated that if you were called upon to pay this bill of exchange 50,000 pounds, you were to get 5,000 more?—*A.* Yes.

Q. And you were to get 5,000 of the shares of the Company?—*A.* Yes.

Q. All of that you were to get for simply putting your name across a piece of paper and paying for it?—*A.* The second 5,000 was if I found the money.

Q. So it was provided you might be called upon to find the money?—*A.* Yes.

Q. Then your solicitors provided that Mr. Codd should satisfy you that 30 the company has been legally established in Canada, and that a land-grant had been made by the Canadian Government, and that the contract for the construction of the first 100 miles of railway has been duly executed with contractors of sufficient ability and strength to construct such a line, thereby entitling the company to so much land, etc. (Reads.) You say you did understand all about that?—*A.* I understood those four provisoes, and that I was to have first charge.

Q. There is not a word about the first charge that I see?—*A.* I spoke of it very often.

Q. But you did not get any arrangement of that kind except in the 40 way that we have heard; well, now, you did not comply with that contract, or did you? You were not called upon to sign a bill of exchange?—*A.* I found the money.

Q. I did not ask you that; what you were to do was to guarantee £50,000 by accepting a bill of exchange, or satisfying the bankers that it would be forthcoming, upon which Codd was to raise £50,000 in Canada?—*A.* Well, I found the money.

Q. I did not ask that; answer my question. That part of the agreement

was not carried out, whatever the reason was ?—*A.* Well, if the money is not as good as reference, I would like to know what is. RECORD.

Q. I want to know the fact in the first instance that that was not carried out ; you understand what I mean ?—*A.* I did not find a banker's reference ; I found the money. No. 40.
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cross-

Q. I want to know why that change was made ; you did not find a banker's reference, which was all you were called upon to do, and upon that Mr. Codd was to get the money ; give me the reason of the change ?—*A.* Because my bankers objected to do that without examining the titles of all the mortgages and causing an immense delay. examined
by Mr.
McCarthy—
continued.

Q. Of all the mortgages—those you were offering for security ?—*A.* Yes.

Q. Then your bankers declined ; you were unable to fulfil that part of the agreement ; you found it inconvenient to comply with that stipulation of the agreement for the banker's reference, and in consequence of that a new proposal of some kind must have been made ; was it you suggested that you would find the money instead of the banker's reference ?—*A.* Mr. Charles Stevens was out in Canada and he wrote pressing for it.

Q. But before Mr. Charles Stevens went to Canada ?—*A.* It was after he went to Canada.

Q. When was it you found that it would be inconvenient for you to comply with the terms of your contract to find the banker's reference. This agreement purports to be dated on the 20th July, 1889 ; when was it you found it was inconvenient for you to do that ?—*A.* I do not recollect what date ; we were trying to arrange about banker's reference.

Q. Would it be in July or August ? Was it shortly after the agreement was signed or was it the same day ?—*A.* Oh, I do not think it was the same day ; I cannot recollect ; it was soon afterwards.

Q. Then you found you could not do that conveniently, that your bankers required so much that you could not do it. In consequence of that did you instruct Mr. Stevens to go to Canada ?—*A.* Mr. Stevens went out to Canada.

Q. Did you instruct him to go ? Please do not waste our time ; that is a very simple question ; did you instruct Mr. Stevens to go to Canada ?—*A.* It was arranged between me and the firm that Mr. Stevens should go out to Canada to carry the matter through with safety for me.

Q. It was arranged between you and Stevens' firm that Stevens should go out to carry out the matter you had arranged with Codd, and of course to do it with safety to you ?—*A.* Yes.

Q. And did you also say you would send the money after him, the 50,000 ? No use his going to Canada without the banker's certificate or without the money ; he could not do anything ?—*A.* My impression is it was on his way out, and while he was doing the preliminary business here his father and I were working away trying to get this reference.

Q. Before Stevens left for Canada you had made up your mind you would send him the money, and while he was on the way his father and you were getting the money ?—*A.* No, I think it was a letter from him.

Q. You must be mistaken about that, because he had not time to get the letter ; he was in Toronto on the 10th September, and closed on the 16th, and there was no time. Then when you sent Stevens out you did not intend to entrust him with the 50,000 pounds ; is that what you mean to swear to ?—*A.* Oh, I would not swear to that at all.

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Mr. James
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by Mr.
McCarthy—
continued.

Q. You sent your solicitor out to close up this transaction ; you must have intended to trust him with the money, or you did not intend to trust him with the money ; which way was it ?—A. We were to arrange for the money at home, his father and I were to arrange for the money at home.

Q. And to remit it to him ?—A. And either to remit him the money or send out the reference.

Q. And that arrangement you had made, no doubt, before he was sent here ?—Well, I do not know that it was made before he started, or whether it became necessary on a cable from him.

Q. Well, it was either one or the other ; it would seem to be that it would be 10 more probable that you would make that arrangement before he left. You would not send a solicitor across the ocean without arranging or promising to arrange about the money. What was the use of his coming ? What could he do here ?—A. Oh, we were to arrange about either the reference or the money.

Q. So that Mr. Stevens left England with Mr. Codd or after Mr. Codd ?—A. After him, I think.

Q. And did you know he was taking his bookkeeper or his conveyancing clerk Gregson with him ?—A. Yes, I think I knew that ; oh, yes, I knew that ; I was told it at least. 20

Q. And it was for the purpose of carrying out this agreement you had made with Codd, the original of which is not forthcoming ?—A. Yes.

Q. That was the purpose and object of that ?—A. Yes.

Q. Then you expected at that time that this agreement would be carried out ?—A. Expected that it would be carried out ?

Q. Yes ?—A. Oh, yes.

Q. You thought that when Mr. Stevens came here he would carry it out ?—A. Oh, yes.

Q. Did you learn from him that owing to the lapse of time it could not be carried out, by cable or otherwise ?—A. What I learned was that he wanted the 30 money.

Q. Just answer my question. Did you learn from him that owing to the delay, that the parties who were in that agreement with Mr. Codd declined to carry it out ? That is the fact ; we know that ?—A. I heard that he wanted the money ; that is what I heard.

Q. There is no use answering things I do not ask you, because it is not getting on at all, and I am asking a question and I am entitled to an answer. Did you learn from your solicitor here by cable or otherwise that these parties who had made the agreement with Mr. Codd declined to carry it out ?—A. I understood that there were difficulties unless the money was forthcoming. 40

Q. But you did not understand what those difficulties were ; is that what you mean to tell me ?—A. That the thing would not be able to be carried through unless the money was forthcoming.

Q. How did you understand that ?—A. Oh, I was told it by old Mr. Stevens.

Q. You did not get any direct communication ; there was no direct communication between young Mr. Stevens and you ; what you heard was through the firm ?—A. What I heard was through the firm.

Q. Then your knowledge, such as you had, was derived from communications from old Mr. Stevens ?—*A.* Yes. RECORD.

Q. You had no direct communication at all with Mr. Charles Stevens ; is that his name ?—*A.* Yes. No. 40.
Mr. James
Bogle Delap

Q. You had no direct communication with him at all ?—*A.* No.

Q. Then did you give Mr. Charles Stevens any authority beyond the authority, the power to carry out this agreement that you had made with Codd ? Did you give him fuller powers than that to act as he might find it prudent and wise to act on the ground when he got here ?—*A.* No. cross-
examined
by Mr.
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continued.

10 Q. His instructions were merely to carry out the agreement ; is that all ?
—*A.* Yes.

Q. And he was cabling for money, and you ultimately sent him 55,000 pounds, you say, or you gave 55,000 pounds to the father Stevens ?—*A.* Yes.

Q. Do you know how much of that he remitted to his son ?—*A.* Well, at the time I was under the impression that he sent it all, but I heard since that he did not.

Q. How much did he send ; how much have you heard since that he did send ?—*A.* I have heard of 50,000 pounds being sent.

Q. You have heard he kept 5,000 of the 55,000 pounds you gave him and 20 sent 50,000 ?—*A.* Yes.

Q. That is what you understand now ?—*A.* Yes.

Q. Let me see now ; he returned to England about when ?—*A.* In October, I think, of that year, was not it ?

Q. And you met him very shortly after he came back ?—*A.* Yes.

Q. Where was it you met him ?—*A.* At the Grosvenor Hotel.

Q. By appointment or by accident ?—*A.* Oh, no, it was arranged I should go down there with him and his father and wife.

Q. For the purpose of hearing what he had done in Canada ?—*A.* Yes.

Q. And did he explain the arrangement he had made here ?—*A.* Oh, he 30 talked a great deal about it.

Q. Did he tell what he had done ; did he tell of what had occurred ? Did he tell he had made a bargain with Mr. Charlebois, for instance ?—*A.* Not that I recollect of.

Q. Will you swear that he did not ?—*A.* I do not believe he did.

Q. Did he tell you ? I do not want to trouble about these letters, if you will tell me candidly ?—*A.* I will tell you perfectly candidly ; if I am slow in answering it is owing to difficulty in knowing how to answer, not because I want to (Interrupted).

Q. Did you know when your solicitor returned from Canada he had made 40 a bargain with Charlebois ; he had the whole company transferred to him ; he had put the whole line under contract, and paid over the 50,000 pounds ; surely he told you something about that ?—*A.* Yes, he talked—(Interrupted.)

Q. Did not he tell you he had got all the stock of the road ?—*A.* Yes.

Q. Transferred to him ?—*A.* Yes, and that he held it for me.

Q. Did not he tell you that he had put the 50 miles under contract—the construction of the 50 miles under contract ?—*A.* I understood that the 50 miles was going to be built.

Q. But you do not remember that he mentioned Mr. Charlebois' name—the

RECORD. man with whom he had to deal ?—*A.* Well, I heard Mr. Charlebois' name very often, of course.

No. 40.
Mr. James Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued. *Q.* You heard his name mentioned ?—*A.* I do not know whether I heard it then or not ; I cannot tell you when I heard it first.

Q. What did you hear of Mr. Charlebois ; that he was a contractor ?—*A.* Yes ; I heard of him as a contractor.

Q. As a man of means and experience ?—*A.* I did not hear whether he had means or not.

Q. Did you hear of him that he was a man of experience as a contractor ; did Stevens report that he had made a very good arrangement with Charlebois ? 10

A. Oh, I cannot tell you that he told me that. I understood that the line was going to be built, and that I was going to have my security, and that it was all going to be very pleasant.

Q. In point of fact you had got your security ; you had got control of the road ; you were in point of fact the Company ; all the stock had been transferred to Stevens, and he held it for you ?—*A.* I did not consider myself the Company.

Q. And he told you the fifty miles was going to be built ; he told you that ?—*A.* Yes, I understood the fifty miles were going to be built.

Q. What did you suppose you were getting for your money. What did 20 you suppose from the report that was made to you that you were getting for your money. You were getting the stock of the road in the first place ; that you knew, did not you ?—*A.* I knew that the stock of the road was held as security for me.

Q. Held by Mr. Stevens your own solicitor as security for you ; you knew it was not in your name, but in his name, and that he held it for you ? *A.* Yes, I knew that.

Q. What more did you expect you were getting for your money ?—*A.* What I was expecting was I would get the money back soon.

Q. You are clever in answering what you are not asked ?—*A.* You want to 30 put things into my mouth that were not there.

Q. You have answered me to some extent very fairly ?—*A.* I am answering everything fairly, as far as I can.

Q. Act up to your opinion of your qualifications as a witness ?—*A.* Oh, I do not think much of my qualifications as a witness.

Q. You knew you had got the stock of the road ; what more did you expect you were getting for your money ? You knew that 50 miles was to be constructed, and you say you heard Charlebois' name mentioned ; you will not say you did not hear it mentioned at that very first dinner party ?—*A.* It is quite likely I may have heard it then as the contractor who was going to build 40 the road.

Q. And did you hear how much he was to get for building the road ?—*A.* I do not recollect that I heard it then ; of course, I have heard it more than 50 times since.

Q. But at that time, did you not know how much Charlebois was to get ; in other words, how much you would become bound to pay for the stock of the road of the Company, and for the building of it ; you say the agreement said £200,000 sterling ?—*A.* £200,000 sterling.

Q. £200,000 ?—A. £200,000.

Q. £200,000 sterling ?—A. If you imagine I ever thought I was going to pay £200,000 you are greatly mistaken.

Q. If you had lent that at the same rate you lent the 50,000 it would be a big sum indeed ; but you understood that was what Codd had to pay ; you see Codd came to you with the agreement in his hand from certain gentlemen who represented themselves to be the shareholders of the Company, and that bound Mr. Codd to pay for the rights that he was to acquire 200,000 pounds sterling. Now, you took over that agreement, acquired it from Mr. Codd ; did you not understand that you stood in his shoes ?—A. No, certainly I never took over an agreement that I was to pay 200,000 pounds.

Q. Your solicitor seems to have guarded you very carefully in that agreement ; beyond that 50,000 pounds you were not personally bound for any sum of money ?—A. No.

Q. The Company that was your Company then became bound for it ; did you suppose that this work could be done without some more money being found ; I mean how did your solicitors represent that to you ? A. That the bonds were going to be sold.

Q. And that with the proceeds of the bonds, when the bonds were sold, the balance of the money that would be required for the construction of the 50 miles would be forthcoming, and that you would get back the money you had already advanced ?—A. I only concerned myself about getting back my money.

Q. But you will answer my questions, please, whether you concerned yourself or not. Did you not understand that more money would be required than the 50,000 pounds sent out—(Interrupted.)—A. Not from me.

Q. Just answer my questions ; you are wasting time ; did not you understand that more money would be required to build that 50 miles of railroad ; did you imagine that 50 miles of railroad could be built and all the stock in the Company obtained for 50,000 pounds ; of course you did not ?—A. Oh, I did not inquire about it.

Q. You did not require to obtain any information about that ; that was too plain ?—A. Oh, that was not the way at all ; I did not know about it.

Q. I suppose, but you need not waste time ; you will not tell me what your solicitor reported to you there ; you are not going to tell me that ; that is what it comes to ?—A. No, it does not come to that, because you imply I am intentionally withholding it, and I am not.

Q. Why will you not tell me ?—A. How can I tell everything told to me three years ago.

Q. I want the substance of it ?—A. I have given it to you as well as I can ; if I knew how to give it to you better I would.

Q. You were very speedily called upon for some more money, were you not ?—A. I was, indeed.

Q. And I think we have got a letter here in which that was brought to your notice ; who was it asked you for that 25,000—to accept that 25,000 draft ?—A. Mr. Stevens—Mr. Richard Stevens.

Q. Is that the father ?—A. Yes.

Q. And was that by letter ; it was by letter, was it ?—A. In that letter that was read.

RECORD.

No. 40.

Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

RECORD. Q. And you answered it by letter, did you? You did answer by letter, because I have Stevens' letter here in which he acknowledges receipt of that?—

No. 40. A. Yes.

Mr. James (Letter read.)

Bogle Delap Q. These letters we have not been able to get; you wrote a number of cross-examined letters to Mr. Stevens?—A. Oh, yes.

by Mr. Q. You have not produced these letters?—A. I have not got them to McCarthy—produce.

continued. Q. Perhaps you will explain what the relation is between you and the Stevens firm now?—A. I am employing a solicitor in London who is looking 10 into my affairs which had been in the Stevens' hands.

Q. What is the relation between you; are they your solicitors still?—A. No, they are not my solicitors; at least I did not consider them so; I did not communicate with them; I have employed another solicitor.

Q. Are the Stevens' doing any business for you?—A. The other solicitor—(Interrupted.)

Q. Never mind the other solicitors; what about Stevens?

Mr. Meredith.—He is answering your question.

A. I am employing a solicitor who is investigating the affairs in the Stevens' hands, and he is watching over what the Stevens are doing in the way of winding 20 up those matters.

Mr. McCarthy.—Q. Then they are winding up your matters—the Stevens? —A. Under the supervision of a solicitor I have employed in their place.

Q. That is an additional solicitor; and under his supervision they are winding up your business? (No answer.)

Q. You had no hesitation about it before?—A. No, I have been to England since that time and have employed a fresh solicitor since that.

Q. At the time you were examined you swore he was acting as your solicitor?—A. I came very suddenly away from England.

Q. On the 3rd March last you were examined here?—A. Yes. 30

Q. "Mr. Stevens was your solicitor then, was he?" "Yes"; 46, "He is still your solicitor?" "He is acting for me as my solicitor in England"?—A. Yes, that is the way I put it; I would not put anything fresh into his hands; he had certain things that I was not able to put into anybody else's hands in England, that he was still perforce going on.

Q. Is he still perforce going on with those things, winding up the things he has charge of?—A. He is in communication with parties.

Q. Answer my question?—A. I am answering it; I cannot answer it any other way.

Q. Is he or is he not winding up the business he was charged with? 40

His Lordship.—Yes, he said he was winding up the business.

Mr. McCarthy.—Q. What is the name of the other solicitor?—A. Mr. Bristow.

Q. When did you employ him as solicitor?—A. Last summer when I got home.

Q. What time last summer?—A. July, I arrived about the last day of June or 1st of July.

Q. Up to July your only solicitor in London was the Stevens firm?—

A. Well, I did not communicate with them ; I communicated with a solicitor who is a cousin of mine ; he has been very kindly helping me in these matters, and I wrote to him and he saw the Stevens' for me.

Q. Up to last July had you any other solicitor in London but Mr. Stevens ?

—*A.* I had not any paid solicitor.

Q. Up to that time the Stevens firm was acting for you altogether, doing whatever local business you had, is that so, up to July the Stevens people were acting for you altogether ?—*A.* I did not communicate with them and I did not trust them.

RECORD.
—
No. 40.
Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

10 *Mr. Meredith.*—You made a statement that time and did not ask a question.

Mr. McCarthy. Q. I said up to that time the Stevens firm were the only firm acting for you in London, is that true or is it not, that up to last July you had no other firm or no other solicitor in England or in London but Mr. Stevens or Mr. Stevens' firm ?—*A.* Well, my impression as an ordinary individual is that it is not true.

Q. Then you had somebody else, although you did not employ Mr. Bristow, until July last, who was it, let us know who it was ?—*A.* It was a cousin of my wife's.

20 *Q.* What is his name ?—*A.* Castle Smith.

Q. Was he acting as your solicitor ?—*A.* He was advising and helping me.

Q. You had Mr. Castle Smith from what time ?—*A.* He has been helping me in matters ever since the summer of 1892, about May 1892.

Q. Then you did not take your business out of Mr. Stevens' hands, is that right ?—*A.* Well, it is a very gradual process that has been going on.

Q. Did you or did you not, you need not fence ?—*A.* I am not fencing at all, I want to tell the truth if the matter extends over a year to do, it is impossible for you to tell the date when it began and when it ceased.

Q. What matter extends over a year ?—*A.* The matter of dropping the
30 Stevens' ; it is a slow affair ; I wish I could drop them like a hot potato at once.

Q. Why could you not drop them at once ?—*A.* They were too mixed up with all my concerns.

Q. You desired to drop them but did not drop them because they were so much concerned in your affairs ?—*A.* Yes.

Q. Then they continued as your solicitors for some time ?—*A.* If you mean a solicitor is a man whom you are to trust—(Interrupted.)

Q. You know what a solicitor is ?—*A.* I should not think it at all complimentary to Messrs. Howland, Arnoldi & Bristol if I looked upon them in the
40 same light as I looked upon Stevens, Bawtree & Stevens.

Q. They might feel complimented. I want to ask you a simple question, if these men are still doing your business ?—*A.* They are being looked after by a man who is doing my business.

Q. You have come in here and made a poor mouth about it, and you will not answer one single question. My question is, are they doing your business ; I do not care for the reason ?—*A.* I suppose the true answer would be that in a partial way they are.

Q. Why cannot you give me the true answer ?—*A.* It is difficult to get at.

RECORD.

Q. Not a bit ?—*A.* I assure you you are contradicting me without reason.

No. 40.
Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

Q. These gentlemen have been acting as your solicitors up to the present moment ?—*A.* You tell me so ; I do not consider them so.Q. I ask you ?—*A.* I do not consider so.Q. On your oath are they acting as your solicitor ?—*A.* I do not consider them so.Q. Are they acting as your solicitors ?—*A.* They are doing the work under the supervision—(Interrupted.)Q. Are they acting as your solicitors?—*A.* If you won't take that as an answer, I cannot give you another answer. I am answering you as truthfully 10 as one man can answer another ; it is the whole particle of truth.Q. Are they acting for you as your solicitors or not, yes or no ?—*A.* Well, I have no reason to make all this difficulty ; you are making a difficulty ; I am telling what is happening ; I am telling you what is going on.Q. Are these gentlemen acting as your solicitors ?—*A.* That is asking me what is going on.

Q. Are they acting as your solicitors ?

His Lordship. I think he has said they are winding up under the supervision of the other men ; but they have lost his confidence, and they are formally winding up things which he cannot very well take out of their hands. 20

Witness. That is exactly the case.

Mr. McCarthy.—Q. Why cannot you say so ?—*A.* I have endeavoured to convey that all along.

Q. Because you will not answer the question ?—*A.* I am answering the best I possibly can.Q. Is this one of the matters they are attending to for you—this particular litigation ?—*A.* No.Q. You swear to that now ? We have some information about it ?—*A.* Well, it is news to me if they are. 30Q. Are they instructing or have they instructed either your Canadian solicitors or your Manitoba solicitors in relation to this transaction ?—*A.* They instructed Messrs. Richards & Bradshaw on my behalf in the spring of 1892.Q. They instructed Messrs. Richards & Bradshaw in the spring of 1892 ; and what were Richards & Bradshaw doing ?—*A.* They were looking into the matter of this judgment, I believe.Q. It must have been the spring of 1893—*A.* Oh, no, it was the spring of 1892.

Q. This judgment was not obtained till the fall of 1892 ?

Mr. Bristol.—The judgment was obtained February 1892, and the witness 40 has stated that he instructed them in the spring of 1892, and the witness is right.

Mr. McCarthy.—Q. Do you say it was the spring of 1892 still ?—*A.* Yes.

Q. And that is the last time and the only time they have interfered in this litigation ?

Mr. Meredith.—That is not this litigation.*Mr. McCarthy.*—I have a right to ask it in that way as it is.*Mr. Meredith.*—That is a misstatement.

Mr. McCarthy.—It is a question, not a misstatement.

Mr. Meredith.—You must not put it that way.

(Adjourned at 6.30 p.m. till 9.30 a.m. to-morrow.)

OTTAWA, November 2nd, 1893.

RECORD.

No. 40.

Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

Cross-Examination of *Mr. James Bogle Delap* by *Mr. McCarthy* continued:—

Q. Now, Mr. Delap, I want to know from you, in as few words as possible, the relationship that existed between you and your solicitor, Mr. Stevens?—*A.* Of what?

Q. The relationship. Be kind enough to be candid with me; I am going to deal fairly with you, and it will save a great deal if you will answer me candidly and not try to evade questions?—*A.* I really have no wish to evade the questions.

Q. Mr. Stevens was your solicitor throughout all these transactions up to a certain date; we will come to that date in a minute; he was the gentleman who did your business and upon whom you had reliance?—*A.* Yes.

Q. And when did you lose confidence in Mr. Stevens?—*A.* When I was shown the document connected with this matter in August, 1892.

Q. By Mr. Howland?—*A.* Yes.

Q. Mr. Howland showed you certain documents? What documents were they that caused you to lose confidence in the Stevens firm?—*A.* The Charlebois contract which had his signature to it.

Q. The Charlebois contract, which had his signature to it?—*A.* Which he signed as president, and I never knew he had been president at all.

Q. Any other thing; was it merely the Charlebois contract that caused you to lose confidence in him?—*A.* And also the contract that showed that he was to receive half the value of the concern himself.

Q. From Codd; that is the agreement between him and Codd you mean?—*A.* Yes.

Q. Which showed he was to have half the concern himself. Well, now, was it the former or the latter of these that made you suspicious? Was it his being president of the road and signing a contract with Charlebois, or was it the fact that you found he had entered into partnership with Codd?—*A.* Both; because the contract showed he had given Mr. Charlebois a first charge, and he knew perfectly well; I told him again and again that he was to get me a first charge, or else I would not have gone into it.

Q. The Charlebois contract showed he had given Mr. Charlebois, the contractor, a first charge; and you understood you were to have a first charge?—Yes.

Q. Well, then, you had not seen the Charlebois contract, had you?—*A.* Not that I know of.

Q. Not a copy of it?—*A.* Not that I know of.

Q. Do you say now that you did not? Do you mean to say you had not; because I have read your letters since last night; not your letters, but the letters to you; and I want you to say now whether these contracts had not

RECORD. been all shown to you on the return of Mr. Stevens from Canada ; that copies of them had not been sent to you ?—A. I do not believe they had.

No. 40.
Mr. James Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

Q. Will you swear now they were not ?—A. My strong impression is they were not.

Q. That is the furthest you will go ; you will not swear they were not sent to you ?—A. I was not made to understand them.

Q. You are beginning to fence ?—A. I assure you I am not fencing.

Q. You say you were not made to understand them, and I did not ask you whether you were made to understand them or not ; I am asking as a fact were copies of these agreements made in Canada on the 16th September 1889, sent 10 to you ; it is a very simple question ?—A. To the best of my recollection and conviction they were not.

Q. None of them ?—A. I think not.

Q. Is your memory good or bad ?—A. It is not what I consider very good about technicalities and things of that kind.

Q. That is not a technicality, you know ; you remember when Mr. Stevens came home returned from Canada ?—A. Yes.

Q. You remember his father communicating with you and you meeting them at the Grosvenor Hotel and dining there ?—A. Yes.

Q. Did he at that time profess to give you an account of what had occurred 10 here in Canada ; whether you understood it or not, did he profess to give you a history of what had occurred there ?—A. Oh, he told me a great deal of what had happened ; he told me a great deal about the land and how valuable it was, that the line would soon be running and the bonds would soon all be sold, and I would soon be paid back, and that it was a very valuable property.

Q. And had you any reason to doubt what he told you ?—A. Oh, what he told me—(Interrupted.)

Q. Have you any reason to doubt that he was perfectly honest and straight-forward in telling you what he did, both father and son ?—A. Oh, I thought he was telling the truth at that time. 30

Q. Had you any reasons to suspect ?—A. I tell you I would not believe a word they told me, neither father nor son.

Q. Have you any reason to believe now, with all the knowledge you have, that the Stevens' were not acting in perfect good faith towards you ?—A. I cannot believe that they were acting in good faith towards me ; I cannot.

Q. You say you do not believe it ; is it not a fact that they put in a large sum of their other clients' moneys into this enterprise, in addition to your money ?—A. So I have heard.

Q. Have you any reason to doubt that ?—A. No.

Q. Is not it a fact that they put a large sum of money of their own in ?— 40 I believe they have.

Q. Any reason to doubt that ?—A. No.

Q. If you have no reason to doubt they put their other client's money in and put yours in, why should you suppose they were acting in bad faith towards you at that date ?—A. Because they understood fully I made a first charge a *sine qua non* ; safety was what I made the *sine qua non* in all my instructions.

Q. What you mean us to understand is that they disobeyed your instructions if they did not get a first charge ?—A. Yes.

Q. But you know there is a very great difference between solicitors disobeying instructions and acting in bad faith ; I suppose you realize that, do not you ; they might have thought what they did was giving you a first charge ; it is quite a different thing to charge these gentlemen with bad faith towards you, and to disapprove afterwards, on the advice of Mr. Howland, of what they had done ; you understand that without any technicalities at all ? Do you realize that ?—A. Well, it seems to me rather difficult.

RECORD.

No. 40.

Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

Q. What did you bargain for with your eyes open ? You bargained for what you got in that Codd contract, did not you ? Let me just see what you
10 bargained for, and see whether you did not get everything you bargained for ?
—A. The only thing that I bargained for was to have my money paid me.

Q. Don't answer so foolishly. You bargained and bargained in writing, and you have produced a copy of the document here ; when a man bargains in writing the written document is evidence of the bargain ; do not you know that much ?—A. Well, of course—(Interrupted.)

Q. If you understand that, please refer to the contract and tell me what you have got ?—A. Well, of course writings—(Interrupted.)

Q. Never mind ; just answer the questions and keep to them, because I am determined to have answers, and I am not going to be put off ?—A. Indeed I do
20 not suppose you are.

Q. Let me see if this is what you were to get and what you did get ; this is the copy of the agreement 20th July 1889, the agreement that he made with Codd, the foundation of his rights altogether. Now, sir, the first thing you were to be satisfied with was that the Company had been legally established in Canada ; have you any doubt of the truth of that ?—A. No.

Q. Second, that a land-grant had been made by the Canadian Government whereby the Company will be entitled to 6,400 acres of land for every mile of railway constructed ; what do you say to that ; is that all right too ?—A. Yes.

Q. Third, that a contract for the construction of the first 100 miles of rail-
30 way has been duly executed by contractors of sufficient ability and financial strength, who will undertake to construct and complete the first 50 miles of the line before the 1st of December, 1889, thereby entitling the Company to 320,000 acres of land ; what have you to say to that ; is that all right ?—A. I suppose so ; 50 miles had been built, I supposed.

Q. No, contract for construction was all you were entitled to have : you agree A was right and B and C which I have read ?—A. I understand there was a contract.

Q. You do not complain there was not a contract made for the construction of the road ?—I am not aware that I complain of it.

Q. You know whether you complain of it ?—I am not able to get the
40 various pleas that are being made on my behalf.

Q. You do not know what wrongs you are complaining of, or what injustice you are trying to have remedied in this Court ?—A. I just want my money.

Q. No matter at whose expense ?—Certainly not ; the first chargees are always that way.

Q. " That £90,000 of the shares of the Company, carrying with them the concessions and powers of the Company and the right to the land-grant has

RECORD. been transferred to the said James Boyle Delap or his nominees ?"—A. James Bogle Delap, please.

No. 40. Q. I am glad you have intelligence enough to know your name ?—A. Oh, Mr. James Bogle Delap I have that much.

cross- Q. Was that not done also ?—Yes.

examined Q. What more is there in that document that you were to get ? If every-
by Mr. thing that you were to get has been got what more were you to get ?—That
McCarthy— was to be my security until the money was paid back by the sale of the bonds.

continued. Q. There is nothing about the sale of the bonds here. You got all you were entitled to get. Why did you blame the Messrs. Stevens ? What did they do 10 that they ought not to have done according to that contract, or young Stevens when he was out here ? I am not dealing with his bargain with Codd, of which I think you had some right to complain, but in making the dealings he did on the 16th of September with Charlebois and others, what did he do that you have any right to complain of ? You knew 200,000 pounds was to be the cost, it is specified in the agreement, you knew you were to get 90 per cent. of the shares and you got more, you got 100 per cent., well now, what do you complain of ?—My money was to be paid back to me.

Q. I am speaking about the contract, I suppose you are a grown up man, I see you call yourself a captain even, and I suppose you are competent to take 20 care of yourself. at all events you are competent to answer questions ?—A. I do not call myself a sham captain, I am a captain in the Hussars.

Q. Then you ought to understand this ?—If I understand this as well as I do my drill I would be all right.

Q. What have you to complain of in what Stevens did here, he got you everything you were entitled to get, is not that so according to your bargain ?—A. I always told you—(Interrupted.)

Q. According to the written document, you have told me you understand a man's bargain is to be found in the document, we have got a document and I am reading it to you, and I want you to tell me what you have not got, or what 30 you complain of in regard to the bargain you made with Codd, for which you were to get the enormous sum of 10,000 pounds and ten per cent. interest ; what do you complain of ? do not cry about it and wince, but tell me what you complain of as a man, if things turned out badly you should not be lamenting over it, you went in for a big bonus you took your risk ?—A. I stipulated that I was not to have risk, that I was to have no risk.

Q. But you signed this document with Mr. Codd ; I have asked you half a dozen times, and you sigh and answer everything else ; is there anything else you were entitled to get which you did not get under the bargain with Codd ? Just kindly answer me ; there is no use in wasting time ?—A. Of course I see 40 what you say, but I am puzzled to death, you know ; I do not know whether I should be answering you truly or not.

Q. Do your best, do your very best. We will make every allowance for captains and royal ducks ; and I believe you are a University man too, are you ?—A. No, I am not ; I regret to say I was prevented from going to the University by illness.

Q. Be kind enough to answer ; do not keep us waiting ; I want to know if

you have not got everything you bargained for under that document ?—*A.* RECORD.
I have not got the right of handling these acres of land.

Q. Why not ?—*A.* Because Mr. Charlebois has a lien on them.

Q. But Mr. Charlebois had not a lien at this time ; have not you got every-
thing you bargained for ? There is nothing said about the land ; what you
bargained for was that this Company would have this land ?—*A.* I have not
got what I wanted and what I was intended to have and what I was promised
to have.

No. 40.

Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

Q. I commenced begging you to answer my questions and not to waste time ;
10 is there anything you have not got that you bargained for in that contract with
Mr. Stevens ?—*A.* It is all tied up.

Q. Is there anything you have not got that you bargained for in that con-
tract ; answer that question, yes or no ?—Well, I do not consider I have got it
when I cannot use it.

Q. You will not answer ; is that it ?—*A.* You say I won't, and you know
perfectly well I am trying to answer.

Q. I know perfectly well you are endeavouring to evade answering me ?—
You are mistaken.

Q. I want you to look at that and tell me what you have not got that you
20 bargained for ?—*A.* I do not know.

Q. Now, sir, when young Mr. Stevens returned to London he gave a history
of what had taken place here in Canada ; did he tell you all the shares had been
transferred to him, that he held them for you ?—*A.* Yes.

Q. Did he tell you the Company was established ?—*A.* Yes, I believe he
did.

Q. Did he tell you he had ascertained and was satisfied that the Govern-
ment had agreed to give the 6,400 acres per mile ?—*A.* Yes.

Q. And he gave you a very glowing description about the land ?—*A.* Yes.

Q. Told you all that ?—*A.* Yes.

30 *Q.* Then he also told you that a contract had been let for the building of
the road, did not he ?—*A.* Yes.

Q. Did he tell you who the contractor was ?—*A.* I do not recollect that I
heard his name at that time.

Q. But he told you, and it would not have conveyed anything to you if
you had heard ; you would not have known anything more about Charlebois if
you had heard his name ; you had never heard of him before ?—*A.* No, I had
never heard of him before.

Q. I suppose you imagined that if that road was to be built by a con-
tractor the contractor would have to be paid, did you ?—*A.* I did not concern
40 myself about that.

Q. I want you to concern yourself about it ; you come here and put my
client to no end of trouble and expense because you think you have not got
what you wanted to get ; I want to see now what you supposed ; did you suppose
that this road could be built without money ?—*A.* Oh, no.

Q. You then believed that the contractor would have to be paid and ought
to be paid ?—*A.* Well, I looked upon that as quite outside of me.

Q. I want to know now what you say ; you see, you became the Company ;
you got all the shares ; you knew the Company had made a contract with a con-

RECORD. tractor for the building of that road ?—*A.* I did not become the Company that I know of.

No. 40.
Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

Q. You did not, eh ?—*A.* No.

Q. You told me you knew a little while ago, you knew all the shares had been assigned to Stevens and he held them in trust for you ; if you own all the shares in a joint stock company who owns it ?—*A.* As security for the time being.

Q. You were the man who owned it ; it was for the time being this contract was let ; you cannot be on both sides at one time ; you cannot own the Company and at the same time refuse to be responsible ?—*A.* Oh, you can 10 puzzle me.

Q. I want to get simple answers to very simple questions ; I want to see the light you present yourself to this court ?—*A.* As a lender of money.

Q. On the security of that document, and you got all the security you bargained for ; do you remember being asked to accept a draft of 25,000 pounds ?—*A.* Yes.

Q. And you were asked to do so by letter, were you not ?—*A.* Yes.

Q. And is that all that took place between you and your solicitor with regard to that 25,000 pounds ?—*A.* How do you mean all that took place ?

Q. I do not know that I can put it in any simpler language than that ; 20 there was a letter and an answer ; I want to know is that all that took place between you and your solicitor with regard to it ?

His Lordship.—That letter was not put in ; you objected to it and it was taken back.

Mr. McCarthy.—*Q.* This is the letter to which I ask you to look ; do you remember receiving that letter ? (Letter 17th October, 1889.)—*A.* Yes. (Letter read.)

Q. It is evident you had something to say to Charley about that ; now I want to know what that was ?—*A.* I do not recollect what it was.

Q. You did recollect at the time, no doubt ; just try and assist us a little 30 bit ; what was it Charley said about that 25,000 pounds ? It is quite evident this matter had been talked over before that 25,000 draft had been sent for your acceptance ; that had been talked over between you and Stevens and Charley too ?—*A.* I think that refers to some letter his father had shown me from Charley.

Q. Perhaps you are right ; where is that letter ?—*A.* Oh, I have never had a letter ; he showed me some letters.

Q. What time did Charley return, do you remember ? What time did he get back ? Perhaps you are right about that. 17th October he was not back in London ?—*A.* He returned very soon after that. 40

Q. He was not back then ?—*A.* No, he was not back that day, I believe ; he had not returned by that time, I think not.

Q. Of course it must have been as you say in regard to that. Then he goes on, " Please return it to me by next post," etc. (Reads.) So it is quite evident Charley was not back ?—*A.* He was just returning.

Q. Then the father had received a letter from Charley, and that letter had been sent to you, or read to you, or how ?—*A.* He did not send to me any letter.

Q. Where did you see the father? Did he come down to you with the letter? It is quite evident this letter from Charley was shown?—A. He showed me several letters from him.

Q. You answer me something I do not ask?—A. I have no recollection of any special letter.

Q. And did he show you these letters?—A. He had been staying in my house in the North of Ireland, while his son was in Canada.

Q. And he received his letters from the son while he was staying at your house?—A. Yes.

10 Q. And then no doubt you saw the correspondence from the son to the father, or some of it?—A. I saw some of them.

Q. Many of them?—A. Well, I really cannot recollect whether it was many or few; I was shown bits of some letters and read bits of some letters.

Q. About this Canadian railway?—A. But by this time I was in England again.

Q. You are wandering away again; during the time that his son was in Canada; during a portion of that time you and the old man were at your place in Ireland?—Yes.

Q. Now I want you to recall your recollection and ask you to give me your
20 recollection, about that 25,000 pounds; what was the understanding upon which you signed that; that was no part of this bargain at all; I want to know what was the understanding on which you sent it. You say you had complied with your agreement and given the 50,000 pounds, and you had every reason at that time to suppose that that 50,000 pounds had not been handed over until the conditions of the agreement of July were complied with, as we know now in fact they were; now, what was the understanding or inducement upon which you were asked to sign the 25,000 pound draft?—A. That I should never be asked to provide the money, that the contractor Charlebois would take it up when it was due, and that I was secured fully; the property I was told was worth
30 three, four, to six hundred thousand pounds.

Q. That is the railway and the land?—A. Yes, and that there was therefore an enormous margin of security for me on which I was to stand, and was led to understand I did stand first, and that the sale of the bonds would take place very soon, and I would be paid back.

Q. That the sale of the bonds would take place very soon, and that you would be paid back; is there anything more you want to add; I want to try and keep this in some order?—A. At that time I did not think that I should be asked for that money.

Q. You need not repeat that. I will read the whole of this letter. (Reads
40 Exhibit 67.) Then, just to help your recollection, I will read the next letter here, 21st October (Exhibit 68). Do you remember receiving that letter also?—
A. Yes.

Q. And it was in accordance with the arrangement made in this letter of the 21st October that you did come up to meet Charley?—A. Yes.

Q. And to have the graphic account?—A. Yes.

Q. And it was graphically told you?—A. He told me a great deal about it.

Q. But you are not able to remember at all now what he did say, are you;

RECORD.
—
No. 40.
Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

RECORD. looking back with your present acquired knowledge, the additional knowledge on the subject, will you tell me whether he misrepresented anything to you at that time. Did you hear my question?—*A.* He always lead me to understand, as I say, that I had a first charge.

No. 40.
Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

Q. I have not the slightest doubt about that ; he thought so too ; he always led you to understand you were safe and had a first charge, and having all the stock of the Company you had a first charge, I suppose ; but now looking back at the whole thing, what you have heard here in the Court, and what you know now of these contracts, will you tell me whether young Mr. Stevens misrepresented anything that occurred here in Canada on the 16th September, or did 10 not tell you fairly and fully all that occurred here in substance on the 16th?—*A.* I do not think he told me fairly and fully ; for if he told me there was a first charge of £200,000 in front of me.—(Interrupted).

Q. There was not a charge of 200,000 pounds in front of you ?

Mr. Arnoldi.—Oh, yes, there was.

Mr. McCarthy.—Allow me to cross-examine ; I do not wish to be interfered with.

His Lordship.—There is a charge of 200,000 pounds.

Mr. McCarthy.—50,000 pounds is paid and there is only 150,000 pounds ; you can object to his Lordship, but I do not want to be interfered with. 20

Mr. Arnoldi.—I object that my learned friend is dealing with matter of law all the time, and advising him in the witness-box, and stating these things are not so, the very things claimed in this action. It is not a matter of cross-examination.

Mr. McCarthy.—Will you tell me, with the full light that you got, and all the advice you have received and all you know, whether there was anything concealed or any misrepresentation made by Mr. Charles Stevens at that interview?—*A.* My impression is that there was certainly concealment from me.

Q. Was there any misrepresentation, so far as you now know, knowing as 30 you do all the history of the case, do you now complain of any misrepresentation on his part?—*A.* There might have been very easily without my detecting it.

Q. I am asking you now, with all your knowledge of this matter, whether there was on the part of your solicitor, Mr. Charles Stevens, at that time any misrepresentation?—*A.* Well, it was three years ago, and there was talk from two or three hours. Can I recollect all that was said there ?

Q. I do not ask what you can or cannot recollect. Can you now tell me that there was any misrepresentation by Mr. Charles Stevens to you at that interview at the Grosvenor Hotel?—*A.* I cannot feel that they have been dealing straight with me at any time through the matter. 40

Q. I did not ask that ; I want fair answers ; I want to deal perfectly fair with you, but I want a perfectly candid, fair answer?—*A.* I endeavour to answer fairly.

Q. You are there as my witness, and have taken the book in your hand and said you would answer, and I want you to tell me whether you complain now of any misrepresentation on the part of Mr. Charles Stevens in the history he gave you of what had occurred here in Canada, and if so what it was?—I complain of his conduct all along.

Q. That is not an answer to my question ; do you complain of any misrepresentation on the part of Mr. Charles Stevens at that interview in the Grosvenor Hotel in the month of October ?—*A.* How can I tell you ? I cannot tell.

Mr. McCarthy.—I submit I am entitled to get a fair straight answer.

His Lordship.—He is telling you his recollection does not serve him as to that particular time, but he has the general impression that he was misled.

Mr. McCarthy.—I want to get details of it.

His Lordship.—You will have to ask him.

10 *Mr. McCarthy.*—*Q.* What I mean is this, that at the time he gave you the history of all that occurred in Canada, and you heard of it in or about that time ; can you say to me now that at that time Mr. Charles Stevens, your solicitor, misrepresented anything that occurred ; you know now everything that did occur ?—*A.* Why, of course he did, because he ought to have told me I incurred grave risk ; he ought to have told me Mr. Charlebois had a first charge, that my money was not safe ; he ought to have told me I should have come out here and fought for my family's money.

Q. You are all right when you wake up. Have you got through all ?—

A. It would take a very long time to get through all.

20 *Q.* You are getting into the sighing stage again ?—*A.* So would you if you got here.

Q. I am here ?—*A.* I hope you never will ; you won't feel very jolly.

Q. You speak about his concealment ; what did he conceal ?—*A.* He concealed that Charlebois had a first charge.

Q. Anything else ?—*A.* Oh, he led me to believe I was safe, and that I would have my money back, and that I ran no risk, and that involves concealing that I ran great risk, and that other people had charges in ahead of me.

Q. What other people ; who else had any charge in front of you ?—*A.* I was referring to Mr. Charlebois.

30 *Q.* You spoke of them as other people ?—*A.* We will say another person.

Q. Then the concealment was that Charlebois had a charge ahead of you ; for what ; what was his charge ahead of you for ?—*A.* He has a contract for 200,000 pounds.

Q. 50,000 pounds of that was paid ; it only left 150,000 pounds ?—*A.* Well, that is what I mean.

Q. This document of Codd's provided for that, that the contractor was to build the road for 200,000 pounds, or the difference between 200,000 pounds sterling—(Interrupted).

Mr. Cassels.—Pardon me, it does not.

40 *Mr. McCarthy.*—Pardon me, it does.

Mr. Cassels.—The shareholders were to build the road.

Mr. McCarthy.—That is not my construction of it.

Mr. Cassels.—That is not the construction of it ?

Mr. McCarthy.—And I will state it.

Mr. Cassels.—No.

Mr. McCarthy.—Pardon me.

Mr. Cassels.—You state as a matter of law your position that the contract means so and so.

RECORD.

No. 40.

Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

RECORD.

Mr. McCarthy.—I say so, certainly.*Mr. Cassels.*—Well, tell him it is doubtful.

No. 40.

Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
*continued.**Mr. McCarthy.*—I am not going to tell him it is doubtful, because I do not think it is.*Mr. McCarthy.*—*Q.* Did you understand the parties who acquired the interest in this road were to pay 200,000 pounds for the road itself and for building it; when you made the bargain with Codd in the month of July, did you understand that the acquiring of the road was to cost not merely 50,000 pounds, but to cost 200,000 pounds, and that that was to include the building of 50 miles of road; did you not understand that?—*A.* What I did understand— 10
(Interrupted).*Q.* That is not answering my question?—*A.* You won't wait to see whether it is an answer.*Q.* Did you or did you not understand when you entered into the bargain with Codd that 200,000 pounds was to be required?—*A.* Not of me.*Q.* Did I ask you of you; I did not ask that; I am not asking so foolish a question?—*A.* You ask me a great deal that puzzles me.*Q.* If you want to tell the truth there is no puzzling about it?—*A.* You want me to tell a whole lot of things that is not the truth, because it is so very easy to make an ignorant man like me say things that are not true about legal 20 technicalities.*Q.* This is too fine; this part of the ignorant man and weak man is a little overdone, if you will excuse me saying so. We will assume you know as much as an ordinary man does know. Did you not understand that this required, not from you at all—of course I understand all you were to do was 50,000 pounds, but you must have understood that the other 150,000 pounds must come from somebody or another; have you thought of it at all?—*A.* It was to come from other sources.*Q.* How was it to come from other sources?—*A.* Sale of bonds.*Q.* Just realise your position; you got the whole road into your hands; the 30 road had to be built; 50 miles of that road had to be built, which altogether was to cost between the purchasing of the road and the building of the line 200,000 pounds; where was this money to come from?—*A.* I did not think where it was to come from.*Q.* You did not realise the position at all; you must have understood that the 150,000 pounds which you were not supplying was to come from some source; how was it to be built without money?—*A.* I thought my advances made it possible to obtain all that.*Q.* But how?—*A.* I did not understand all those things at all.*Q.* When you go into business matters should not you understand all these 40 things and use proper caution?—*A.* Not if one employs experts.*Q.* Who were the experts you employed?—*A.* I employed the Stevens'.*Q.* And the Stevens' reported to you that they thought everything was safe?—*A.* They certainly allowed me to understand that.*Q.* What complaint have you to make because Charlebois' lien for his contract price was made a first charge; you do not want to cheat Charlebois, do you?—*A.* I do not want to cheat anybody.*Q.* The road has been built, the 50 miles?—*A.* Yes.

Q. Your Company got the possession of that road from the contractor, did it not ?—A. Yes. RECORD.

Q. Your Company continued to run that road for some time, did it not ?—A. Yes. No. 40.
Mr. James
Bogle Delap

Q. To use the rolling stock for which Mr. Charlebois had to pay—using that very rolling stock. Now, sir, do you think it is the position of an honest man to try and cheat Charlebois out of his money, because at present you know that is apparently what you are trying to do ?—A. Not a bit of it. cross-
examined
by Mr.
McCarthy—
continued.

Q. How do you propose to pay Charlebois ?—A. I have got nothing to do with paying him.

Q. You have got the road and claim to have all the bonds ?—A. I want to be paid.

Q. I know, but you claim to have all the bonds ; you have got the road and all the bonds, and if you have the road and all the bonds, how is Charlebois going to be paid ?—A. These bonds are no use to me, shut up as papers in a box.

Q. Then deposit them here in Court ; where are the bonds ?—A. There was an undertaking—(Interrupted).

Q. Where are the bonds ?—A. I am not going to tell you until the Court says I am to.

Q. I think the Court will say you are to tell ?—A. I will tell it if the Court insists.

Mr. McCarthy.—I submit I am entitled to an answer.

His Lordship.—I think you are entitled to know where the bonds are.

Mr. McCarthy.—Q. Where are the bonds ?—A. The bonds are left at the People's Bank in Halifax.

Q. All the bonds ?—A. All that I have.

Q. All the bonds ?—A. All that I had.

Q. All the bonds ?—A. No, not all the bonds, simply all that I had.

Q. How much had you ?—A. I had all the bonds less 50,000 pounds.

Q. And all the bonds less 50,000 pounds are in the People's Bank in Halifax ?—A. Yes.

Q. In England ?—A. No.

Q. In Canada ?—A. Yes.

Q. When were they put there ?—A. When I came over in the beginning of this year.

Q. Where were they up to that time ?—A. In the National Provident Institute—no, no, in the National Safe Deposit Company.

Q. In London ?—A. Yes.

Q. In your name ?—A. Yes.

Q. And when you came over the beginning of this year you brought the bonds with you as far as Halifax ?—A. Yes.

Q. Did you bring them as far as Toronto ?—A. No.

Q. Never beyond Halifax ?—A. No.

Q. And you left them in the People's Bank at Halifax ?—A. Yes.

Q. And are they there now ?—A. Yes.

Q. All that you had to do with ?—A. Yes.

Mr. Arnoldi.—There is one here.

RECORD.

No. 40.
Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

Mr. McCarthy.—*Q.* Mr. Arnoldi says they are not all there ; he says there is one here ?—*A.* I had forgotten that.

Q. Now, I will go back again to that 25,000 pounds ; upon the statement of the representations that were made to you by Mr. Stevens that the contractor would take up that 25,000 pounds, you accepted it ?—*A.* Yes.

Q. And when that came due what did Stevens say to you ; did he say he had misunderstood his son's cables or telegrams or letters, and that the contractor was not to take it up ; did he tell you in the first place what the money was required for ?—*A.* For the rails.

Q. Then did he tell you afterwards that according to the contract that the 10 Company were to supply the rails ; in other words that you who were then the Company were to supply the rails ; did he tell you that, and that the contractor was not to pay for them ?—*A.* I do not recollect what passed.

Q. I want to know that ?—*A.* I had to raise 15,000 pounds.

Q. I understand all that, and the sigh has come again ; did Mr. Stevens tell you (Interrupted.)—*A.* You would do the same.

Q. Perhaps I would ; you have done it enough for to-day ; just answer the question ?—*A.* I shall be very glad to leave off when I have got cause.

Q. If you will kindly listen to the question and answer it ; did Mr. Stevens tell you before that the bill came due or about the time the bill came 20 due that he had misinformed you ?—*A.* I do not know what he told me.

Q. That won't do ?—*A.* It will have to do.

Q. Listen to my question, and then if you choose to pledge your oath Mr. Stevens will have an opportunity of seeing what you swear to here, and your letters are in Mr. Stevens' custody. Now, with that intimation, I will repeat my question. Did Mr. Stevens tell you at any time that he had misinformed you in his letter when he asked you to accept the 25,000 pound draft as to the contractor having to take it up, that the contractor was not to take it up ; did he ?—*A.* I cannot tell.

Q. That is the best answer you will give me ; now do you think his 30 Lordship will accept that answer ?—*A.* I have not any other.

Q. You will not swear that he did not tell you that ?—*A.* Oh, I do not recollect what he told me.

Q. You will not swear he did not tell you that ?—*A.* I do not recollect.

Q. You will not swear ; I have asked you and this is the third time ; you will not swear that he did not tell you he misinformed you, and he was mistaken, and that the contractor was not to take it up ?—*A.* I do not know whether he did or not ?

Q. Then if you do not know whether he did or not you will not swear that he did not, and I think we may assume probably that he did ?—*A.* Well, I 40 —(Interrupted).

Q. We have passed that and got on to another step now. Now, then, the bill came due, and you understood then that the contractor was not to take it up and you understood it was for the rails ?

Mr. Meredith.—He has not said that.

Mr. McCarthy.—Yes, he has said he understood it was for the rails.

Mr. Meredith.—But not the other, that he understood the contractor was not to take it up.

Mr. McCarthy.—We have got his answer as to that.

Q. Now, sir, I want you to tell me—you are wasting time—(Interrupted.)
—*A.* No, I am not wasting time.

Q. I must repeat every question three or four times?—*A.* Because you ask me questions I do not know how to answer at all.

Q. You do not know how to answer them without damaging your case?—*A.* No, because I do not know how to answer them.

Q. We understand that?—*A.* Perfectly true.

Q. I ask you, were you not informed by your solicitors that according to
10 the contract the company had to supply Charlebois with the rails?—*A.* What?

Q. Were you not informed by your solicitor that according to the contract the company, of which you were then the owner, had to supply the rails to Charlebois, and that this money had gone to pay for the rails or a portion of them?—*A.* Oh, I did not understand about that, I do not know whether I was asked that.

Q. I did not say you were asked that; did you not understand from your solicitors that the rails were to be supplied to Mr. Charlebois by the company, that this money had gone to pay for the rails, and therefore that this 25,000 pound draft would have to be taken care of in England?—*A.* They told me it
20 was absolutely necessary for me to find half of that 27,000 pounds, and I was very vexed about it and had to do it.

Q. And you asked for some explanation?—*A.* I do not recollect what passed more than that.

Q. You will not say that that was not fully explained to you, will you?—*A.* I do not believe the Stevens'—(Interrupted.)

Q. Answer the question; will you tell me that that was not fully explained to you before the bill came due, or at the time it was maturing?—*A.* I cannot tell how far it was explained to me, or how far it was not.

Q. But at all events some explanation was given about it, I suppose; I am
30 right in assuming that, am I?—*A.* I do not know; I do not recollect now; I recollect having to find the money.

Q. The contract is that the Company shall, as a condition precedent to the fulfilment by the contractor of this contract and to its completion within the time limited in that regard, etc. (Reads.) A very natural provision, because otherwise you would have been able to cheat Charlebois out of the rails and get your road free of that?—*A.* I never wanted the road.

Q. But you have got it; if you do not want it you can let us have it; what you are kicking about is that we have a lien on the road?—*A.* Give me back £90,000 borrowed—(Interrupted.)

40 *Q.* We did not borrow £90,000. Well, then some explanation was made and you won't give it to me?—*A.* There is no "wont" about it.

Q. Now we will get on to the letters and freshen you up a bit. Nineteenth October; that is a letter to you from Stevens; I think you will find you knew most about this; that is a letter you recognize, is it not?—*A.* Yes. (Letter read 19th October, 1889.)

Q. Now, we will get the next letter, dated 1st November, 1889; this is from Charley himself, is it not?—*A.* Yes.

Q. And I will read that to you and that may help your recollection (Reads letter Exhibit 69.) Then you had written to Mr. Stevens thanking him for the

- RECORD.** manner in which he had carried out your business in Canada. "My father showed me your letter thanking me for what I had done"—*A.* Yes, I had written him thanking him for what he had done for me.
- No. 40.** *Q.* Now, the next letter from your solicitors that I find here, 25th November, 1889, you recognize that, do you not; that is apparently from a clerk?—*A.* That is signed by old Mr. Stevens.
- Mr. James Bogle Delap cross-examined by Mr. McCarthy—continued.** *Q.* And the first part of the letter is dealing with other matters. Then Canada Railway. (Reads Exhibit 70.) Who are Bacon and Mackinson?—*A.* They are people they had some dealing with in London; I do not recollect what about.
- Q.* Trying to raise money for the road?—*A.* It was in connection with 10 money or rails or something of that kind.
- Q.* At that time I suppose the bill had not matured; unfortunately the letters that passed about the time the bill matured are not produced. Now, from November to May there are no letters produced by you, and I want you to tell me, if you will kindly, and tell me honestly that no letters passed from Mr. Stevens to you for six months from November to May?—*A.* I gave all my letters—(Interrupted.)
- Q.* Did I ask you that? By any possibility can you conceive that to be an answer to my question?—*A.* I think so.
- Q.* I am asking you whether there was no letter from Mr. Stevens to you 20 from the last one which I read on the 20th November to the one which I now find, the 8th May; you understand that question?—*A.* I think it is probable there was.
- Q.* Have you any doubt about it?—*A.* I have not any doubt there must have been letters.
- Q.* Why are these letters suppressed?—*A.* I have not suppressed one.
- Q.* They are not produced?—*A.* I have not suppressed one.
- Q.* It is your solicitors or you; it is the same thing; why are these letters not produced?—*A.* I gave every letter to my counsel.
- Q.* Where are these letters explaining the 25,000 pounds?—*A.* There are 30 no letters about that that I know of.
- Q.* If you will produce the letters that passed between you and your solicitors or even the one side of the correspondence, we will be able to see what explanation was given about that 25,000 pounds and the rails and the rest of them?—*A.* I have not withheld a single letter.
- Q.* But giving them to your solicitors is not giving them to me. There are other letters; I want you to get them back from your solicitor and let me see them; get me the other letters please?—*A.* I do not know what you want
me to get.
- Q.* I want you to get me the letters from Stevens to you that he wrote to 40 you between the 20th November and the 8th May?—*A.* May I speak to them about them? What can I do about it, my lord?
- His Lordship.*—You can ask your solicitors for them.
- Mr. Howland.*—All were produced that were considered relevant.
- Mr. Bristol.*—Mr. Sinclair has charge of all these documents, but I do not know where he is at the present time, but I will undertake to produce them all.
- Mr. McCarthy.*—I want them now while this witness is in the box.
- Mr. Bristol.*—Everything was put in the affidavit on production that was considered relevant.

Mr. McCarthy.—I want them now.

Mr. Bristol.—I will get them now.

Mr. McCarthy.—I would ask my learned friends to produce at the same time the letters from Mr. Delap to Mr. Stevens.

Mr. Arnoldi.—We have not got them.

Mr. Bristol.—Mr. Sinclair has gone for the Gazettes, and the letters may not be here anyway.

Mr. McCarthy.—I think we should let the witness stand down and read commissions meanwhile till we get the letters.

10 *His Lordship.*—Very well.

Mr. McCarthy.—There should be no communication with the witness in the meantime.

His Lordship.—Oh, no.

Mr. McCarthy.—These letters ought to have been produced, because they belong to the Plaintiff here ; and I have reason to think that they can be produced ; my learned friends tell me they are not here, but I ask your lordship's permission now to examine Mr. Howland on that point, whether they are not in Court, so that if they are here we can get them.

His Lordship.—Very well.

20 *Oliver A. Howland, Sworn—Examined by Mr. McCarthy.*

Q. We have heard that you were in England, looking after the Plaintiff's business ; and I think you were followed afterwards by your partner, Mr. Bristol ?—*A.* I was in England, and I received my instructions in England in last year, about August.

Q. Did you attend to this business in England ?—*A.* Nothing further than getting instructions and finding out what I could in England, and then coming out to Canada to find out as much more as I could.

Q. Can you tell me whether the letters, or any letters from the Plaintiff Delap to his solicitors or to any of them, are now in your custody as his
30 solicitor ?—*A.* I am satisfied they are not.

Q. Will you swear they are not ?—*A.* To the best of my knowledge, yes.

Q. You have no knowledge of their being there ?—*A.* No.

Q. Did you bring these letters out, or were these obtained by Mr. Bristol—letters from Stevens ?—*A.* Well, some letters Mr. Bristol found ; some letters were sent us by Stevens, Bawtree & Stevens as their property, and on an undertaking to return them, as their property ; they never acknowledged that a great part of correspondence was Delap's property in England.

Q. Were they letters from Mr. Delap ?—*A.* Oh, no.

Q. You say the letters Stevens, Bawtree & Stevens sent you as their
40 property were not letters from Delap to them ?—*A.* No.

Q. And the letters from Delap to Stevens have never been in this country ?—So far as I have seen they have not.

Q. Then there is no need of examining Mr. Bristol about them ?—*A.* Oh, no, I think not.

Mr. Bristol.—I would like to be sworn on the subject, because I made every enquiry and tried to get them.

Mr. McCarthy.—*Q.* I see from Cansdale's testimony that these letters were shown to you or some member of your firm ; was it you ?—*A.* What letters ?

RECORD.

No. 40.

Mr. James
Bogle Delap
cross-
examined
by Mr.
McCarthy—
continued.

No. 41.

Oliver A.
Howland
examined
by Mr.
McCarthy.

RECORD.

No. 41.
Oliver A.
Howland
examined
by Mr.
McCarthy—
continued.

Q. The letters from Delap to Stevens ; “ Have these letters of Mr. Delap’s been shown to the Plaintiff’s solicitors in this action ? ” “ I do not know.” “ Do you as a fact know whether they have or not ? ” “ I know we allowed the solicitors to look at some of the letters, as they were acting for Delap.” Was that you or Mr. Bristol ?—*A.* The letters he was speaking of were not letters of Delap’s.

Q. “ Have these letters of Mr. Delap’s been shown to Plaintiff’s solicitors ? ” “ I do not know.” “ Do you as a fact know whether they have or not ? ” “ I know we allowed the Plaintiff’s solicitors to look at some of the letters, as they were acting for Delap ? ”—*A.* I do not think he means letters of Delap’s. I 10 asked Mr. Delap to search and he said he did not keep any copies.

Q. But the original letters of Mr. Stevens would be all there, you know ?—*A.* I cannot recollect seeing them.

Mr. Arnoldi.—I find those letters have been left in Toronto, what we have of them, and we will have them here to-morrow morning.

Mr. Bristol.—I would be very glad to go into the box as to these letters, because I have made every search for them.

Mr. McCarthy.—Oh, no, we would sooner take your word out of the box than in it.

Mr. Arnoldi.—I spent a month this summer trying to procure these letters, 20 because they were asked for out here.

Mr. Lewis.—The evidence of Cansdale was broken off yesterday, and my learned friend Mr. McCarthy desires us to complete it, as the question of these bonds has been brought up. We desire to have it read to the Court.

His Lordship.—Very well, go on and read it.

Mr. Chrysler.—Question 130 of the examination of Cansdale.

Mr. Bristol.—This was read yesterday morning.

His Lordship.—Does your side wish this read, Mr. Bristol ?

Mr. Bristol.—This was read yesterday morning, and I do not care whether 30 it is read or not.

Mr. Chrysler reads.

His Lordship.—I think there is no use reading all this matter unless the other side wish to have it read.

Mr. Chrysler.—Well, this witness refused to produce documents.

His Lordship.—Well, that does not help us any unless you get him before the Court.

Mr. Meredith.—This was all read yesterday.

His Lordship.—Both sides are in possession of this and you can refer to the page in the argument. You will have to refer to it with the same particularity on the argument. I will have to look at it on the argument. 40

Mr. Chrysler.—About the matter Mr. Delap is now being examined about, what happened on Charles Stevens’ return from Canada and Delap’s interviews with him. Question 245. Letter 18th October 1889 from Codd to Stevens. (Reads.)

(Adjournment 12 p.m., till 2 p.m.)

After Adjournment.

No. 42.
Motion by
Mr. Nugent
to file
Defences.

Mr. Nugent.—I wish to make a motion to allow Defendants Macdonald & Schiller, Preston & Schiller and myself to file a defence. (Reads affidavit.) The defence chiefly consists of setting up that they were sub-contractors, and that they were in possession at the time of the completion of the work and the

consent judgment here, and that they refused to give up possession without being paid, and that is acknowledged by the Plaintiff himself in the paragraphs 44 and 45 of his Statement of Claim, in which he says—(Reads.) That is the main point, my Lord, together with the fact that in the claim of Macdonald & Preston, that they have a judgment in the Courts of Manitoba for their claim; that was called the claim under the old Souris & Rocky Mountains Road. They have judgment in Manitoba which has been carried to the Court of Review in Manitoba and sustained by the full Court, and in that attempt to appeal they set up the same grounds, namely the agreement of the 12th September, 1887; but the Courts have recognised that agreement under the 12th September, saying that had gone by, and they refused to disturb the judgment, and that is all the facts that are set up in these defences and we submit our rights to the Court. So far as I am concerned, I am in a position of trustee for the creditors, and the only way to do was to obtain an assignment from the creditors so as to protect all their interests alike, and that is the reason I am made a Defendant to-day. It cannot alter the Defendants position under Charlebois.

RECORD.
No. 42.
Motion by
Mr. Nugent
to file
Defences—
continued.

Mr. Arnoldi.—If it does not alter your position you need not make the application to file a defence. I first point out to the Court here that the application cannot be made, according to the practice, when the action comes on on motion for judgment upon the Statement of Claim as it does here to-day at this trial, that it should have been made at the proper forum and it is not entertainable here at all, but I suppose your Lordship can say you are hearing it as a Judge in Chambers.

His Lordship.—Do you dispute that they were not to be affected by the result of the judgment by some other arrangement with you?

Mr. Arnoldi.—Yes, my Lord. I will read an affidavit of Mr. Howland. (Reads.) The letter having been written without prejudice, I think it is a most unseemly thing of Mr. Nugent to make use of it as he has done, but inasmuch as he has referred your Lordship to it to say that Mr. Howland was writing asking to have a certain arrangement entered into upon the basis that Macdonald & Preston would stand upon a certain footing, and they never agreed to that, and the thing was never consummated and it ended there, the correspondence being without prejudice. He was referring to a judgment up there and declining to allow it to come into the action here; and while he was refusing us leave there we would not allow him to come in here; and now at the trial to come in and make this application when we have had no chance of getting production from him on a defence, and I have had no time to consider, and I think it is so unreasonable that the Court will not entertain it. I do not know any terms on which this application could be made which would be fair to the Plaintiffs. My learned friend appeared on the motion in Chambers to transfer the venue in this case to Ottawa and consented to the order transferring the motion for judgment here; he did not apply to get in and never gave us the slightest notice, and even yesterday had not given notice until he was asked to.

Mr. Nugent.—I was unfortunately confined to my bed all the rest of the week, and did not get up till I came to the Court; but as far as the terms my learned friend speaks of are concerned, Mr. Watson told me they exacted \$250 as expenses for the terms on which I should put in my defence. I simply ignored such a ridiculous request. No later than three weeks ago Mr. Howland met me in Chicago—(Interrupted.)

His Lordship.—That is in conflict with the affidavit, what you are stating

RECORD. now. I cannot regard it unless it is on affidavit. It is not admitted you were in treaty—that you were fighting right up.

No. 42.
Motion by
Mr. Nugent
to file
Defences—
continued.

Mr. Nugent—They have been fighting us in Court, and were constantly approaching us with a view to settlement. There is nothing in our defence which is not open to them. They examined my clients a year ago. They cannot separate us and try us, and it seems our position is a very plain one, as subcontractors we did the work, and it seems a very great hardship that we should not be allowed to put in our defence, especially as they cannot show it will prejudice them in any way.

His Lordship.—I think this application should remain as it is until I hear 10 the whole case.

Mr. Chrysler.—Personally I would prefer not to read any more, and to-night I would mark the passages.

Mr. Bristol.—I did that last night, and I thought we had concluded Mr. Cansdale, but my learned friend read more than that. I would not take more than twenty minutes. There is one short examination of Mr. Bristow on the 25,000 draft which would clear up the matter on this point.

Mr. Chrysler.—There is a long cross-examination.

Mr. Bristol reads from evidence of Bristow.

His Lordship.—You can put in what you wish to-morrow morning, Mr. 20 Chrysler.

Mr. Bristol.—As to the balance of the evidence it is all in, and counsel can refer in argument to what they like.

Mr. Chrysler.—I understand that is so with regard to all the Commission Evidence, but your Lordship permitted us to call your attention to any particular passages at any time we wanted to.

His Lordship.—Yes.

Mr. Arnoldi.—The Secretary of State produces the mortgage to the trustees Curzon and Gifford for bonds. A certified copy was already proved in Court in the Commission, and I do not suppose there is any need of leaving the 30 mortgage.

His Lordship.—No.

Mr. Arnoldi.—It is dated 2nd June, 1890, and it is filed, deposited in the office of the Secretary of State under the Act on the 4th July, 1890. Then I put in, my Lord, yesterday with the other minutes, the minutes of the special meeting of shareholders authorizing the issue of bonds. I have now to-day the four Gazettes with the publication of the notice as required. The dates of the Gazettes are September 21st 1889, September 28th 1889, October 5th 1889, October 12th 1889 (Exhibit 71). Then I put in Gazette of the 25th October 1890, containing the Statutory notice of the deposit of the mortgage 2nd June 40 1890. (Exhibit 72). I was just putting in the transference of the stock. I put in the list as well as the book—I do not propose to leave the book—of all the transfers that have taken place from the beginning of the Company to the present time of the stock. Mr. Chrysler wishes to have it certified; I will have it certified before it goes in. The book will be understood as being in for the purpose of reference. I put in the statement of claim and judgment in the case of the Great North West Central vs. Codd.

Mr. Chrysler objects to that.

Mr. McCarthy.—How is that evidence?

His Lordship.—What is the date of it? Was it recovered in this country? 50

Mr. Arnoldi.—Yes, my Lord, judgment of the Chancery Division.

His Lordship.—That is evidence against Codd.

Mr. Arnoldi.—It is open to my learned friends to argue, it is not evidence against them, but instead of putting the witness in the box to say this judgment has been recovered, I put in the evidence and the judgment to prove it.

Mr. Chrysler.—For what purpose?

Mr. Arnoldi.—Oh, I cannot argue it now.

His Lordship.—I will have to take it; it is evidence against Codd.

Mr. Chrysler.—I do not know what it determines, but if my learned friend
10 would state that—

Mr. Arnoldi.—It is a judgment disqualifying Codd from being a director of the Great North West Central Railway Company on the same state of facts as is being proved here.

Mr. Chrysler.—We do not know whether it is the same state or not.

Mr. Arnoldi.—I find the Statement of Claim in the action has been mislaid, 19th April, 1893; it can be put in afterwards.

Mr. Chrysler.—What about Statement of Defence?

Mr. Arnoldi.—There is not any; there was judgment on the Statement of Claim. The Statement of Claim will be put in from the files of the Court; the
20 copy has got mislaid; I will be able to show it in a few minutes. Then, my Lord, yesterday in putting in the reports as to the claims under the Statute against the Great North West Central I said I would put in the Gazette which I had not then been able to get, containing the advertisements for claims against the Souris & Rocky Mountain Railway and the North West Central. I only obtained them a few minutes ago, December 31st, 1887.

His Lordship.—I thought you put them in yesterday.

Mr. Arnoldi.—I said I had not them; December 31st 1887, January 7th 1888, January 14th 1888, and January 21st 1888. (Exhibit 74.) I put in, my
30 lord, the examination for discovery in this action of the Defendant Charlebois as against himself, I suppose.

Mr. McCarthy.—The whole examination?

Mr. Arnoldi.—Yes, the whole examination.

Mr. McCarthy.—Perhaps my learned friend will mark what he proposes to read against him.

Mr. Arnoldi.—It is to your advantage to have it all in.

Mr. McCarthy.—If my learned friend will not mark them we will have to read it, because I may have to call back Charlebois to contradict it.

His Lordship.—I will allow you to call him back another time.

Mr. McCarthy.—I have not called him yet at all. It is impossible for me
40 to spend the night reading the examinations.

Mr. Arnoldi.—You know it.

Mr. McCarthy.—Who does know it?

His Lordship.—I do not see that it will make it any better now to read from beginning to end.

Mr. McCarthy.—It will make it this much better, I will see whether anything is required.

His Lordship.—You should know it now,

RECORD.

No. 42.

Motion by
Mr. Nugent
to file

Defences—
continued.

RECORD.

No. 42.
Motion by
Mr. Nugent
to file
Defences—
continued.

Mr. McCarthy.—I do not, and I do not think anybody else does, but I do not want it read if my learned friend will mark what he reads.

Mr. Cassels.—I will mark it ; nearly the whole of it is material.

Mr. McCarthy.—Then you had better read it.

Mr. Cassels.—Does your Lordship want me to read it now ?

His Lordship.—No, I do not, most decidedly.

Mr. Howland reads from examination of Charlebois.

Mr. Watson.—Better mark this.

Mr. Cassels.—I can do that.

His Lordship.—I think all this evidence may be marked and exchanged 10 when the Court is not sitting, so that the time of the Court will not be occupied with it. It does not impress one's mind ; it will have to be referred to on the argument and looked up then, and applied on the points of the case, which I cannot do at present.

Mr. Arnoldi.—I put in one more document just now ; that is the writ of summons and affidavit of service in the suit of Charlebois against the Great North West Central Railway Company, 11th September 1891, served on Codd 12th September 1891 ; that is the action in which the judgment in question was pronounced, showing the service of the writ of summons on John Arthur Codd as president of the Company (Exhibit 76). I suppose it will be sufficient, 20 without putting in the documents themselves, to call them as put in as they are set forth in the Statement of Claim—the document and judgment in question.

Mr. McCarthy.—I do not know what your Lordship's ruling on that will be. The matter came on motion for injunction, and it was then by direction of his Lordship and consent of the parties turned into a motion for decree.

His Lordship.—I thought it was the documents referred to in the Statement of Claim.

Mr. McCarthy.—Yes, my lord.

His Lordship.—That did not come on on motion for injunction.

Mr. McCarthy.—Yes, my lord ; the judgment he proposes to put in in brief 30 is set out in full in the Statement of Claim. I want to draw your lordship's attention to what took place ; it was a motion for injunction, and that was turned into a motion for judgment ; and I submit all the papers should go in as part of that judgment—all the papers that were before the Court. There were no former pleadings, because under the circumstances it was a motion for a decree, and the contentions *pro* and *con* appear on the depositions and affidavits.

His Lordship.—I suppose those should be looked at.

Mr. Meredith.—All that we put in is the record of the judgment.

Mr. Arnoldi.—I put in a copy of the Statement of Claim.

Mr. McCarthy.—We can put them in afterwards, if it is understood they 40 are to be put in and used.

His Lordship.—Yes.

Mr. Meredith.—We are still without Mr. Anderson.

Mr. Moss.—He came yesterday afternoon.

Mr. Meredith.—We are informed he is in Hull. I understand, through some mistake Mr. Anderson has gone to some meeting of creditors in Hull.

Mr. McCarthy.—Important meeting in which his bank is interested. If you have any other witness, call him.

Mr. Arnoldi.—Copy of the Statement of Claim in the action is put in as showing the judgment in the action of Charlebois vs. Great North West Central Railway.

RECORD.

No. 42.

Motion by
Mr. Nugent
to file
Defences—
continued.

Dr. Daniel McMichael, Sworn.—Examined by *Mr. Meredith.*

Q. You, I believe, were present in some capacity at the time that the documents of the 16th September 1889, were settled and executed?—*A.* I was when some of them were executed.

No. 43.

*Dr. Daniel
McMichael
examined
by Mr.
Meredith.*

Q. Was that the first you had to do with the matters?—*A.* No.

Q. What was your earliest connection, what date? Not the particulars of it, but what was the earliest?—*A.* That I cannot tell. I may say that the first communications with Mr. Codd and Mr. Young were with my brother, and afterwards—*(Interrupted.)*

Q. When did you first come into the matter?—*A.* I cannot tell.

Q. Was it long before the 16th September?—*A.* Oh, yes, couple of years before.

Q. Did you meet any parties in Toronto?—*A.* No.

Q. In September, previous to the execution of the document?—*A.* Oh, yes.

Q. Did you see anything of Mr. Charlebois?—*A.* No.

Q. Or Mr. Clemow or Mr. Allan?—*A.* Mr. Lewis came to us and told us they were all there, but I do not remember seeing any of them; I may have seen them but I do not remember.

Q. But at all events you came to Ottawa and were here, I believe, on the 15th and 16th September?—*A.* 15th, was it not?

Q. How many days before that were you here?—*A.* I was here on the Friday, 13th, Saturday, 14th, and Monday, 16th.

Q. Had you any documents before you at any meeting that took place between you and Mr. Charlebois and Clemow and his associates with regard to the stock; did any question arise?—*A.* Oh, I was brought down by Mr. Stevens to look to the regularity of the things that he was going into—I mean the state of the title. I looked at the charter, at their subscription list—*(Interrupted.)*

Q. Do you remember whether you had before you an agreement that has been put in here between Mr. Clemow and his associates and Mr. Codd?—*A.* I saw that agreement—you mean of the 9th April?

Q. 9th April, yes?—*A.* I saw that agreement; when I first saw it I cannot tell.

Q. Was that before you when you met the parties here?—*A.* I do not know that it was before me, but I was aware of it.

Q. Whom did you meet here?

Mr. McCarthy.—*Q.* 9th April or 9th September?—*A.* 9th April.

His Lordship.—*Q.* Between whom?—*A.* Between Mr. Codd on the one part and the five shareholders of the Great North West Railway on the other part; it is an agreement that has been read and commented upon here.

Mr. Meredith.—*Q.* Whom did you meet here in Ottawa?—*A.* I met those five men.

RECORD.

—
No. 43.
Dr. Daniel
McMichael
examined
by Mr.
Meredith—
continued.

Q. That is Mr. Clemow, Mr. Allan, Mr. Devlin, and Mr. Charlebois ?—*A.* And Captain Murray ; I met Mr. Devlin, I think, on Monday, 16th ; I do not remember seeing him before that day.

Q. Did you meet Mr. Lewis ?—*A.* I met Mr. Lewis.

Q. You had met him on the previous Saturday ?—*A.* He had come to my office.

Q. On the previous Saturday ?—*A.* Not the previous Saturday, but the Saturday before that.

Q. Was there much negociation or discussion of the matters that you came down about ?—*A.* There was a good deal of discussion here. 10

Q. Did any question arise as to the way in which the stock was to be turned over to Mr. Codd or his nominees ?—*A.* Well, I do not know what you mean by that question, that was to be turned over.

Q. As to whether it was to be paid up or unpaid ?—*A.* We claimed it should be paid-up stock.

Q. And what was finally arranged as to that, or was your claim acquiesced in ?—*A.* It was disputed for a time, but according to my recollection on that Saturday it was consented to, and then when I told Mr. Stevens of that he said he would cable to England for the money.

Mr. McCarthy.—Never mind what you told Stevens. 20

Mr. Meredith.—Q. You communicated that fact, at all events, to Stevens ?—*A.* Yes.

Q. The money came, I believe, doctor ?—*A.* I suppose so, yes.

Q. Was anything done with a view to carrying out the arrangement for the stock being paid up ?—*A.* There was considerable done ; it was proposed that enough should be advanced to pay off—(*Interrupted.*)

Q. Enough advanced out of what ?—*A.* By Mr. Stevens to pay up the stock, 75 per cent. ; to pay off enough to have 75 per cent. paid up, and then that a discount should be declared as to the rest.

Q. That is as to the remaining 25 ?—*A.* Yes. 30

Q. Was that acceded to ?—*A.* I understood it to be.

Q. Was anything done in consequence of that ?—*A.* Mr. Stevens placed in my hands five cheques ; I do not know that I looked at them very carefully, but they were placed in my hands as a sort of stakeholder, and the five shareholders—(*Interrupted.*)

Q. First let me ask you, what did those cheques represent—the money they were payable for ?—*A.* They were said to have paid up the 75 per cent. ; I do not know what the amounts were.

Q. You cannot give the figures or details ?—*A.* No ; know nothing about it.

Q. But that was the purport of the cheques ?—*A.* Yes. Then there was a 40 resolution passed that on payment of that amount it would be accepted and a discount declared of 25 per cent.

Q. On what date was that, doctor ?—*A.* 16th.

Q. What became of the cheques ?—*A.* After the resolution, if my memory is right, I went down to the bank, because those cheques were left in my hands, I went down to the bank and deposited them there.

Q. Just look at those and see whether you can identify them ? (*Showing cheques*)—*A.* I could not identify them at all.

Q. Just look at them and see ?—*A.* My position was not of a payer, but of a third party. I recognise Mr. Stevens' writing.

His Lordship.—Was there a cheque to Charlebois ?

Mr. Meredith.—Yes ; the cheque is payable to bearer. The cheque is to the Union Bank of Canada.

Witness.—That was not placed in my hands.

Q. For \$45,900, credit account of Hon. F. Clemow ; do you know what became of these cheques ?—*A.* I left them at the Union Bank.

Q. For what purpose ; what were they left there for ?—*A.* They were to be deposited to the credit of the Company as payment of those different persons' shares to that amount.

Q. These are marked 36 and 40. Then this cheque is a cheque for \$15,158.33 ?—*A.* I remember after the others were paid Mr. Stevens asked the question what should he do with the balance.

Q. Balance of what ?—*A.* Of the £50,000, and the answer was given by Mr. Lewis, " You will lend that to the Company."

Q. And what was done with it then ?—*A.* I do not know.

Q. Did you see the cheque ?—*A.* I saw the cheque, yes.

Q. What became of the money ?—*A.* I had nothing to do with that any more.

Q. Had you anything to do with the deposit of that ?—*A.* No.

Q. Do you know whose handwriting that is on the back ?

Mr. McCarthy.—It is proved to be Mr. Stevens' ; it is sworn to in the English Commission by Mr. Gregson.

Mr. Meredith.—Just look at it and see if you know ?—*A.* I do not know.

Q. I thought it looked like yours ?—*A.* It does look like mine.

Q. Well, is not it ?—*A.* Oh, no, I am sure it is not mine ; at any rate I have no recollection of doing anything of the kind ; I do not swear to the handwriting.

Q. Did anybody accompany you to the bank ?—*A.* There were two or three persons accompanied me.

Q. Who were they ?—*A.* I cannot tell who they were ; I do not remember.

Q. Were they any of the—(*Interrupted.*)—*A.* They were persons connected with the matter.

Q. Was Mr. Stevens one ?—*A.* I do not think Mr. Stevens was one. I remember Mr. Stevens coming to us, I think while we were in the bank, in the Union Bank.

Q. Who would the person be, which party—the sellers or the—(*Interrupted.*)—*A.* Well, of course, I knew nothing about the bank ; I would require someone to take me to them, but who they were I do not know.

Q. What I wanted to get at is whether it was one of the five gentlemen, Clemow, Allan, Devlin—(*Interrupted.*)—*A.* I believe Mr. Allan was one of them, but that is because he had told me that he was.

Q. He told you that he was ?—*A.* Yes.

Q. Had he anything to say to the disposition of the money or give any directions ?—*A.* I think he gave the direction ; I had nothing to give.

RECORD.

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No. 43.
Dr. Daniel
McMichael
examined
by Mr.
Meredith—
continued.

Q. He gave the direction as to what was to be done with the money ?—*A.* I say I think so.

His Lordship.—Q. You mean, gave directions in the bank ?—*A.* Yes, I think he did ; I had no directions to give.

Mr. Meredith.—Q. You had, I believe, a meeting of the Directors of the Company ?—*A.* There was a meeting.

Q. Were you present at it, Doctor ?—*A.* I was in the room ; I was not any part of the meeting.

Q. I see according to the minutes of that meeting there is a record here of Mr. Stevens having offered to loan the Company the sum of \$15,158.33, and it was resolved to accept the said loan ; that is the money you spoke of ?—*A.* Yes.

Q. Then follows : “ Moved by Mr. Gregson, seconded by Dr. McMichael— (*Interrupted.*)—*A.* That meeting I was present at ; that is the subsequent meeting.

Q. What do you mean by a subsequent meeting ?—*A.* I mean a meeting of the subsequent shareholders.

Did it go right on ?—*A.* There was a meeting the same date of the then shareholders of the Company.

Q. Well, then, was it continued ?—*A.* Yes—oh, no ; I do not know about 20 that.

Q. Did you go right on ?—*A.* Oh, no ; there were different things took place.

His Lordship.—Q. On different days ?—*A.* No, same day.

Mr. Meredith.—Q. Was there any adjournment at all, or did you go right on ?—*A.* Show me the book. (*Book handed Witness.*) Here is the first entry.

Mr. McCarthy.—It shows all the old directors had retired before that.

Witness.—I was present at that meeting and when that resolution was passed.

Mr. Meredith.—Q. There is a resolution here about paying up the stock ?—*A.* “ Whereas at the annual general meeting of the Company held on the 4th³⁰ “ day of June,” etc.

Q. That is about the payment ?—*A.* “ Subscribers to the stock of the “ Company : All the shareholders have offered to pay their stock in full, less “ the discount, and whereas we consider such expedient and reasonable, etc., be “ it resolved that payment be accordingly accepted in full from all stock- holders,” etc.

His Lordship.—Q. That was the old stockholders ?—*A.* Yes.

Mr. Meredith.—Q. That was the old stockholders, when that first resolution was passed ?—*A.* Yes, my belief is, the best I can recollect of it is that they would not pass that till the cheques were put in my hands. 40

Q. Those are the cheques that you took to the bank ?—*A.* Yes, and when those cheques were in my hands, that then that resolution was passed, and that then I took the cheques to the bank, that they would not pass the resolution while the money was in Stevens’ hands, and Stevens would not let it be paid into the bank until that resolution was passed ; and so it was put into my hands as a stakeholder. I was not to run to the bank to pay the money ; there was some object in making me carry the cheques to the bank ; I held them for the

benefit of all, with the purpose that when they were satisfied they should be paid into the bank. RECORD.

Q. I see there was at that meeting a resolution passed, authorizing a cheque to Charlebois for \$243,333 ?—A. That was when the new company was organized. No. 43.
Dr. Daniel
McMichael
examined
by Mr.
Meredith—
continued.

Q. That appears to be the last thing done at the meeting ; that was the last thing done at that meeting ?—A. I suppose so, if it is on the books.

Q. Were you present during the whole time ?—A. I think so ; I was not very strong, and I had sometimes to go out to get fresh air.

10 Q. Was it a continuous meeting from beginning to end, until Mr. Stevens signed these minutes ?—A. I really could not tell you.

Q. There is nothing here to indicate that there was any—(Interrupted.)—A. I think that the subsequent resolution, after they had accepted their shares, that then—I remember the discussion what should be the form of a paid-up share, and that then there was a resolution respecting that.

Q. That is the next resolution, moved by Mr. Allan, seconded by Mr. Devlin, that the form of transfer, etc., be adopted ?—A. It was said that the form of unpaid shares was given by the Statute, but that they had to adopt a form for paid-up shares.

20 Q. Then as I understand, the old directors having passed this resolution, and, as you say, acceded to your view as to their being paid-up shares, then the form of the transfer was discussed and adopted ?—A. Was discussed, and then there was a resolution passed declaring what it should be.

Q. Then doctor, I believe that sometime in 1891 an action was brought by Mr. Charlebois against the Company ?—A. Yes.

Q. The one I am referring to is the one that has just been spoken of, where it was turned into a motion for judgment ?—A. Yes.

Q. And it is shown that a writ was served upon Mr. Codd ?—A. Yes.

Q. From whom did you receive your instructions to defend the action ?—

30 A. From Mr. Codd.

Q. And were you instructed throughout by him ?—A. Yes.

Q. Were you at that time a member of the board ?—A. I was a director.

Q. Holding any substantial interest, or holding it for someone else ?—A. You will see there that the 50 shares were given me, and I supposed at that time I would be rid of them when I left Ottawa ; Mr. Codd came to me afterwards and asked me to take them and become a director, and I did so.

Q. Holding them for—(Interrupted.)—A. Well, I said in order to satisfy the Statute ; it says I must hold them in my own right, whatever that means ; Mr. Codd expected that after I had ceased to be a director I would hand them
40 back to him, but the claims are made on both sides and I hold them still.

Mr. McCarthy.—If you hand them back, it will be by your last will and testament ?

Witness.—I do not know that ; I shall be glad to give them up to anybody who can make any use of them ; I did not count them worth any premium.

Mr. Meredith.—Was any meeting of the Board called at all with a view to that litigation ?—A. No.

Q. There are certain sums, there is a balance apparently struck when the consent judgment was given, and that appears to have been appropriated to

RECORD. certain purposes ; have you any memorandum showing the way in which—
(Interrupted.)—*A.* I have no memorandum of any judgment or settlement made
No. 43. at the time of the action.

Dr. Daniel *Q.* Would you know by looking at the figures ; just look at that statement
McMichael (Exhibit 26.) ?—*A.* If you mean were those figures arrived at by Mr. Codd and
examined those in that form, it was not ; I do not think that memorandum in that form—
by Mr. (Interrupted.)
Meredith—
continued.

Q. I do not mean in that form ; just whether the figures there—(Interrupted.)
A. Well, the figures on the first page are all right ; the figures on the second
page are something as to the manner in which they are appropriated. I know 10
nothing about that.

Q. The figures on the first page are all right ?—*A.* Yes ; I see what it
means ; there was a paper given me by Mr. Lewis, disputing another matter, and
the claim is what I see here. It was submitted to me without prejudice, and not
to be used against Mr. Charlebois.

Mr. McCarthy.—By Mr. Creelman, I understand, not Lewis ?

Witness.—By Mr. Lewis ; he had promised to send it to me, but there was
a dispute we had as to the cars, and I said he would show that.

Mr. Meredith.—*Q.* The first page of this, you say, states correctly the way
in which the amounts were dealt with ; it is marked Exhibit 26, marked D to 20
the affidavit. What do you say as to the second page ?—*A.* Those allowances
were made, but they were not charged against the 173,000 in the arrangement.

Q. You mean the allowances that are put here under the words “ Allowances
for engine and so on ” ; they were made and what ?—*A.* Not charged against
that particular item.

Q. That is the item of \$173,133 ?—*A.* Yes.

His Lordship.—*Q.* Not deducted from it ?—*A.* No.

Mr. Meredith.—*Q.* But they are added to it ; are you speaking of the form
of the account or the substance ?—*A.* The substance of it.

Q. That \$61,000 is added to that item ?—*A.* Yes, but the order I know 30
nothing about ; costs of surveys, I know nothing about those matters.

Q. You do not know whether those are correct ?—*A.* No, and I do not
know whether they were mentioned at the settlement.

Q. But some difficulties arose in working that out ?—*A.* No, not in working
that out.

Q. Well, what ?—*A.* It was a question between him and me whether the
amount paid to Mr. Crossen—whether that sum was admitted to be due, or
whether we actually had paid more than the amount in order to get the cars, and that
was sent to me to show that the amount there was to be paid by us, whether we
got the cars or not ; it was to settle that question that that was given to me ; it 40
was not to establish the manner in which it was made at the trial.

No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy.

Cross-examined by *Mr. McCarthy.*

Q. I did not quite follow what you said about this document ; what did you
say this document was given to you for ? You think it came from Mr. Lewis ;
Mr. Lewis thinks not ; he thinks you got this from Mr. Creelman ?—*A.* No ; I

do not know exactly through whom it came, but Mr. Lewis had promised it to me, and I understood it to be in fulfilment of that.

Q. You do not know whether you got it from him or not ; he promised it to you, and you conclude it came from him ?—A. Yes ; I have the original here and will look at it. Here it is.

Q. “ Submitted to Dr. McMichael without prejudice, and not to be used against Mr Charlebois.” Which is the original ?—A. This is what came to me.

Q. Then what is it you recognize in this ? What is it you recognize and speak of ?—A. The amounts.

10 Q. What amounts ?—A. The \$173,000.

Q. Do you recognize the second item ?—A. The second item I believe existed, but I do not remember it ; that is merely added and taken off.

Q. What do you recognize ?—A. Those two items, and I understand that that is the amount paid for the rails.

Q. You do not recognize them as forming any basis of discussion ?—A. No, I do not recollect.

Q. You cannot speak of anything as forming a basis of discussion ?—A. No, I know nothing about the figures.

20 Q. Mr. S. H. Blake acted, I think, in the settlement ?—A. Yes, Mr. Blake and Mr. Nugent had a good deal to do with it.

Q. Mr. Blake and Mr. Nugent were in the same interest ?—A. Yes ; Mr. Blake became the counsel, took up the matter, and when they went into a compromise I did not deal with the figures at all.

Q. You left that to Mr. Blake and Mr. Nugent ?—A. Yes.

Q. And Mr. Osler was on the other side ?—A. Yes ; they fought it for about a week.

Q. Well, your connection with this matter was, you say, somewhere about two years prior to the—(Interrupted.)—A. I should not say my connection ; my information about it ; they wrote to me asking me different things.

30 Q. For about two years before this 16th September had you been acting at all in the interests of any parties prior to that professionally ?—A. No.

Q. We find here a document, an order was deposited in your hands a very considerable time before this 16th September ; do you remember that ?—A. What date ?

Q. 6th March 1888, the excess agreement ?—A. Oh, yes ; that is only a year before.

40 Q. Was that the first time you had been acting for Mr. Codd when you got that order ?—A. That is the first time, I may say, that I took a step for him ; he came to me with Mr. Macdonald and Mr. Preston, to see about signing some paper of release for the shareholders, and I read it over to him, and he asked me what the meaning of it was, and what the effect of it was, and I told him.

Q. What was Codd's position at that time ; was he making a claim under the 27th clause of the contract ?—A. I do not know what his position was.

Q. Do you know whether he was making a claim ? I have a document showing he was, which your brother witnessed ?—A. Show me it.

Q. This is dated 26th February 1887 ?—A. I daresay that is the one I—(Interrupted.)

RECORD.
No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

RECORD. Q. That is the one probably you explained to him?—A. The one I revised and explained.

No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued. Q. It is a document by which he agreed to postpone his claim under the 27th clause until so many miles were built?—A. Yes, that is the document.

Q. It is signed also by Macdonald and by Preston, and by Archibald Young and by Codd, and witnessed by Charles McMichael?

His Lordship.—Are those the officers of the Company?

Mr. McCarthy.—No, these were people who had claims against the Souris and Rocky Mountain Road, the other road, and who are making it under the new clause of the charter.

Witness.—Yes; I remember him coming to me to have that executed.

Q. And to be advised what it meant?—A. Yes; I know Preston was very unwilling to sign it, and I pointed out and explained to him just what I understood was the effect of it.

Q. This is the important clause, "Whereas it being necessary in order to perfect such financial arrangements," &c. (Reads)?—A. I think at that time he was mainly talking to my brother; I think I had very little to do with it. (Exhibit 79.) He wrote to Young and wrote to my brother.

Q. When did you first see this document? (Excess agreement.)—A. That is 6th March, is it? 20

Q. Yes.—A. That came to me through Mr. Lewis, either directly or indirectly from Mr. Codd.

Q. That came to you from Mr. Lewis, either directly or indirectly, and for or on behalf of Mr. Codd?—A. Yes.

Q. Had you heard anything about it before from Mr. Codd; had he requested—(Interrupted)?—A. Yes, he had written to me.

Q. Asking you to act?—A. To allow the money to be paid to my credit; he wrote first to my brother Charles; I found a letter to my brother Charles, and I said to him that my son had a bank credit in London, and he might pay it into that bank if he liked, and it would be in nobody's name.

Q. Well, then, this document you retained until when?—A. Retained—I have it now I believe. 30

Q. Supposed to be in your custody still?—A. Yes.

Q. Then had you anything at all to do for Mr. Codd in connection with the railway, or any person else, until shortly before the 16th September?—A. That agreement of the 9th April was brought to me by Mr. Lewis, and my difficulty in it was this—(Interrupted).

His Lordship.—Q. Which is that?—A. That is the agreement—(Interrupted).

Mr. McCarthy.—9th April 1888?

Witness.—Yes.

Q. It was brought to you by Mr. Lewis, but when?—A. About the time.

Q. Had you anything at all to do with Mr. Codd or any connection with this railway until shortly before the 16th September?—A. Except that one.

Q. Well, then, Mr. Lewis saw you in Toronto shortly before the 16th September; I forget the exact date in September, and mentioned casually, apparently, that the parties were all there?—A. Yes.

Q. But you were not called upon professionally to advise any person, or to take any part on behalf of any person?—A. I would have been if anybody had been ready. RECORD.

Q. But you were not, as a matter of fact?—A. No.

Q. Did you see Mr. Codd then or Mr. Stevens?—A. Yes, I saw Mr. Codd and Mr. Stevens.

Q. Were they at your office?—A. They were both at my office.

Q. What date would you say they were at your office?—A. I could not tell you the exact date. No. 44.
Dr. Daniel
McMichael
cross-
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McCarthy—
continued.

10 Q. You came on Friday; could you fix it at all?—A. When I was examined I had my diary.

Q. We will look at your depositions and see—

Mr. Nesbitt.—It was on Monday, 9th; the heads of agreement were there.

Witness.—It was before the 9th.

Mr. McCarthy.—Q. And what took place at that interview between you and them? Did they give you any instructions to do anything, or what took place?—A. I understood from Mr. Codd that Mr. Stevens was there to carry out that agreement of purchasing the stock.

20 Q. Here is your examination: "7th September saw Codd and Stevens"?—A. Is that the earliest date? (Refers to examination.) "The next was that Codd came out here on the 30th August 1889." (Refers to memorandum book and reads).

Q. When you speak of that agreement, that would be the agreement, I suppose, of the preceding April, 9th April?—A. The agreement for the purchase of the stock.

Q. There were two agreements that date?—A. He never alluded to that.

Q. Did he not show you the agreement of the purchase of the property?—A. That is the one.

30 Q. That was the 9th April?—A. Yes.

Q. I mean the agreement he made with the English people, with Mr. Delap?—A. Oh, no, I never saw that at all.

Q. Then the only agreement there would be to show you would be that of 9th April?—A. Yes; the next entry is 7th September, "Saw Codd and Stevens with regard to North West Central Railway Company, long interview with Lewis and Creelman on the subject." On the 7th September Mr. Lewis and Mr. Creelman came, and when I supposed they were going to speak about the bargain, they told me it could not be done.

40 Q. You saw Mr. Stevens, and were any arrangements made for your acting for Mr. Stevens in the matter?—A. He simply employed me as a Canadian counsel, to see that the thing was right.

Q. He retained you, in point of fact?—A. I suppose you might call it retaining.

Q. And then was there any further interview in Toronto prior to the 16th?—A. I forget; if I look at my diary I can tell. (Witness looks at examination.) Yes, I saw afterwards, on the 9th, on the afternoon, from three to six, Codd and Stevens.

Q. Codd and Stevens on the 9th; "From three to six with Codd and Stevens;" they spent three hours with you, apparently, that day. Was there
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RECORD. some letter brought to you there which your son took down in shorthand?—
A. Yes.

No. 44.
Dr. Daniel
McMichael—
cross-
examined
by Mr.
McCarthy—
continued.

Q. Where is that ; have you got that?—A. Somebody has it. (Memorandum taken down in shorthand by Dr. McMichael's son, Exhibit C to the deposition).

Q. This is the shorthand and that is the longhand?—A. Yes, the longhand was not made till lately, this transcription.

Q. Was that your dictation, or whose dictation?—A. That dictation was someone who brought that agreement of the 9th September ; I do not know who brought it, and they would not give me a copy, and it was read, and my son 10 took it down in shorthand, and then I filed it away, and never saw it afterwards till the examination.

Q. Was the agreement prepared before they saw you on the 9th, because they were three hours with you on the 9th ; was that agreement prepared before or after that, do you know?—A. That I could not tell you.

Q. You could not tell what date it was your son made this copy?—A. Made it on that day ; that is the entry there ; but I did not get a direct translation of that.

Q. Until later?—A. No ; and I do not suppose I had any agreement in my hands when I came to Ottawa. 20

Q. Then it was arranged, I suppose, that on hearing from them you would go to Ottawa ; were you instructed that you were to go to Ottawa?—A. I told Stevens I could not settle the matter unless I was at Ottawa, because I told Mr. Stevens, " I want to see their charter and title and everything about it ; I cannot pronounce on the article you are going to purchase till I see something about it."

Q. Was anything said about Codd's claim?—A. No, it was not spoken of, not to my recollection.

Q. But Codd and Stevens were acting together?—A. They were ; I never heard of that to my recollection till I got a letter from Mr. Lewis. 30

Q. Heard of what?—A. Of Codd's agreement.

Q. But that was long before ; you knew of Codd's agreement at this time?—A. Yes, but I mean it never was brought up in the discussion at that time.

Q. So far as you know?—A. So far as I know.

Q. Then this agreement had been shown to you ; that is the agreement of the 9th September had been shown to you in Toronto on the 9th?—A. Or rather, read to me.

Q. And no doubt you heard it?—A. Yes.

Q. And what was the object of your son taking a copy of it in shorthand?—A. Because we had no time to write it out. 40

Q. Why were you to have a copy of it at all ? What was the object of a copy being left with you?—I wanted to have something to remember it by.

Q. How do you mean to remember it by?—To remember what they had shown me.

Q. For what purpose?—A. I cannot recall what purpose.

His Lordship.—What agreement is that ?

Mr. McCarthy.—Heads of Agreement between Charlebois and Codd.

Q. Then you came to Ottawa to carry out this arrangement?—A. Yes.

Q. And you reached here ; I think you gave us the date you reached here ; I think it was on a Friday. RECORD.

Q. You remained here Friday, Saturday, and were here on Monday as well ?—A. Yes. No. 44.
Dr. Daniel
McMichael

Q. Then your instructions were that this stock was to be treated as paid-up stock, if I understand you rightly ?—A. Yes. cross-examined
by Mr.

Q. That is what they instructed you ?—A. Yes. McCarthy—

Q. And on the other side it was contended it was not paid-up stock ?—continued.

10 A. Yes.

Q. That that was not the bargain ?—A. Yes.

Q. That they were simply to transfer their interest ?—A. Yes.

Q. And you understood what this arrangement was ; it was plain here to see that Mr. Stevens was purchasing all the stock of the Company, and Mr. Charlebois was agreeing with him, not merely to give him the stock, but also to build 50 miles of the road, for which he was to be paid the lump sum of 200,000 pounds ; that you understood at that time ?—A. What I particularly understood was that Charlebois undertook to carry out the agreement of the 9th.

Q. Except as modified ?—A. Yes.

Q. And that agreement of the 9th April, as well as the agreement of the 20 9th September, was that the purchaser Stevens or Codd, Stevens became Codd's nominee in that respect ?—A. Stevens became the main actor.

Q. But he became the nominee of Codd in effect, too ?—A. I suppose so.

Q. And his interest in the concern was, he was entitled to get all the stock and he was entitled to have 50 miles of the road built, for which he was to pay 50,000 pounds ?—A. Yes.

Q. Stevens wanted to have the stock paid up ?—Yes.

Q. And others said they would not ; whom did you speak to about that ? —A. Mr. Lewis was the main one.

30 Q. You talked to Mr. Lewis ; you discussed the matter with Mr. Lewis ? —A. Yes.

Q. When did that discussion commence ?—A. It commenced after I got down.

Q. Was it that day ?—A. I could not tell you.

Q. Was there any other difficulty ?—A. There were several others ; I do not remember what they were.

Q. You do not know what the other difficulties were ?—A. Oh, no ; all I can tell you about was that 27th clause.

R. What was that difficulty about the 27th clause of the charter ?—A. I 40 was not satisfied that they were sufficiently free from those liabilities.

Q. That who were sufficiently free ?—A. The stockholders.

Q. How did you become satisfied, if you did, with regard to that ?—A. Well, I was told by Mr. Lewis what had been done, and I asked particularly that there should be a guarantee from the five to indemnify them against them.

Q. You insisted that there should be a guarantee from the five shareholders, not merely from Charlebois but from the five, indemnifying to the extent of their shares against them ?—A. Yes.

RECORD.

No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

Q. How did you consider there would be liability on the shareholders if their shares were paid up?—A. I will not say how I considered it; I considered there was a liability; I did not go into the legal question.

Q. If it was not paid up there would be an indirect liability, but if the shares were paid up how would there be any liability?—A. I understood there was an agreement with the Government that those men should be paid.

Q. We will see what that agreement says; it is in the Statute?—A. I will not undertake to interpret that; but that is what I wanted to get rid of.

Q. The only thing I have heard about with regard to that—no doubt you were familiar with it at the time—is the 27th clause in the Act?—A. The 10 contract with the Government.

Q. I will draw your attention to both?—You will understand I was not scrutinising it very carefully; I saw there was a liability.

Q. All it says, "The Company hereby incorporated shall be and remain liable;" not the shareholders but the Company—the 27th clause; that you must have known at the time?—A. Yes.

Q. Then the contract with the Government which is put in, marked Exhibit 18, is to the same effect, that the Company shall be responsible?—A. Yes.

Q. So there was no personal liability on the part of the shareholders; as a consequence their only possible liability would be unpaid shareholders?—20 A. The liability of the Company.

Q. And the liability of the shareholders if their shares were unpaid?—A. Yes.

Q. But there could be no other liability than that. Well then, discussion went on for several days, or for some days, at all events for some time, and it was carried on between you and Mr. Lewis?—A. Yes.

Q. How is it you say now that you ascertained that Mr. Lewis had yielded on that point; how did that come to your knowledge?—A. There was a memorandum came to me in reference to it on Saturday night, pointing out several things. 30

Q. Have you got that memorandum?—A. No, I have not.

Q. Where was it delivered to you, or where did you receive it?—A. Well, I do not know, but I had it at the Russell House, and I took it and handed it to Mr. Stevens.

Q. At what time did you get that at the Russell House?—A. I handed it to Mr. Stevens, who was then at dinner.

Q. And have you seen it since?—A. Never saw it since.

Q. Was that signed by any person—a formal memorandum?—A. No, it was not signed.

Q. Do you know whose writing it was in?—A. No, could not say. 40

Q. But a memorandum was handed to you to the effect that this point had been yielded?—A. Yes.

Q. And some other matters that you had been discussing?—A. Yes.

Q. And you handed that to Stevens and you have not seen it since?—A. No.

Q. On behalf of Stevens you were insisting on everything you thought he was entitled to get under the contract and you were anxious to protect him?—A. I was anxious he should be protected.

Q. And you were insisting on that?—A. As far as I could.

Q. You were insisting on his being protected, and that the contract which had been made on the 9th April and that the contract which had been made on the 9th September should have been carried out?—A. Yes, no doubt about that.

Q. You were insisting on being paid up, the other parties contending they were not liable to be paid up; who suggested the ingenious way of paying it up?—A. I think it was Mr. Duval suggested that.

His Lordship.—Who is he?

10 *Mr. McCarthy.*—He is one of the reporters of the Supreme Court; he is a witness to that agreement in Toronto.

Q. Just let me understand what was the contrivance by which this stock was to be called paid-up stock; Mr. Stevens had £50,000 there?—A. Well, I do not understand that it was a contrivance.

Q. Well, what is the proper word, if contrivance is not the proper word?—A. I can tell you what is usually done in such cases.

Q. I do not want expert evidence on that?—A. That will explain my meaning. If a man were buying a lot, and the government dues had not been paid, he would claim the right to use the purchase money first to clear the
20 charge of the government, and charge that as part paid. They bought shares that had not been paid, and I said "The man can use his money first to pay off the liability of the shares and then take them as paid-up shares."

Q. This £200,000 I suppose you realised, became the property of Mr. Charlebois in equity; he was entitled to the £200,000, and I suppose the men he was dealing with, Mr. Stevens, was entitled to the shares of the Company?—A. Yes.

Q. And also entitled to the 50 miles?—A. Yes.

Q. That is the way you would look at it from an equitable point of view?—A. Yes.

30 Q. This £50,000, out of which the sums were paid into the bank was, in point of fact, a part of that £200,000, which, under this agreement, was to be paid?—A. Yes.

Q. Whatever the forms were, that was the substance of the thing at all events?—A. Yes.

Q. "Mr. Charlebois to arrange with Clemow, Allan and Devlin that they will assign to him all their interest in the undertaking, providing that when the £50,000," &c. That was the only £50,000 there was and was part of that £200,000?—A. Yes.

40 Q. And is it the same £50,000 that is afterwards treated as a part payment on account on the contract?—Yes, I suppose so.

Q. Well, then, these cheques were all made out, and every due form seems to me to have been observed; the cheques were made out, in separate sums, and they were marked on the face of them; these cheques were to be for Mr. Clemow, and Allan and Charlebois, and so on; whose money was that?—A. Do you mean at that time?

Q. Yes?—A. If you are speaking legally, it was Mr. Stevens'.

Q. Well, then, did you understand that Mr. Stevens was lending these gentlemen this money?—A. No.

RECORD.

No. 44.

Dr. Daniel
McMichael

cross-

examined
by Mr.

McCarthy—
continued.

RECORD.

No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

Q. He certainly did not lend that money?—A. I understand he was advancing it as part of his purchase money to clear the shares of that liability.

Q. But you did not understand he was lending that to Mr. Clemow or Mr. Allan?—A. Oh, no.

Q. He was advancing that on account of this contract to clear their liability; that is what you understood?—A. Yes; it was like paying off a mortgage on the purchase of property.

Q. Well, did you understand Mr. Charlebois, for instance, was dealing on that basis?—A. With Mr. Stevens?

Q. No, with his co-shareholders.—A. I know nothing about his dealings 10 with his shareholders.

Q. You did not know that?—A. No.

Q. Did not trouble yourself?—A. No.

Q. It was going on contemporaneously?—A. Perhaps so.

Q. Do you remember any talk about making these shares paid-up under the power that is said to have been given in the charter?—A. Mr. Lewis called our attention to the charter, and pointed out how it could be done by a discount, you know, and there was a discussion between Mr. Lewis and me whether 25 per cent. could be called a reasonable discount; I said that I had no doubt 12½ was, but I was not quite sure about 25. 20

Q. But you ultimately assented to that?—A. He persuaded me to it.

Q. He persuaded you 25 was a fair discount?—A. He has a smooth tongue.

Q. And you are easily persuaded?—A. Well, that is my misfortune all my life.

Q. So that 25 per cent. of the sum that was unpaid was got rid of in that way?—A. Yes, under the Statute; I never was aware of that until he called my attention to it.

Q. Take that last sum of money, because that is more extraordinary than anything else to my mind, take that \$15,000; Charlebois was entitled to £200,000, was not he?—A. Yes, ultimately. 30

Q. And for that he was to give the shares, and he was to make the 50 miles; that is what he was to do?—A. Yes.

Q. And he was to get £200,000?—A. Yes.

Q. I understood you the Company went through the form of borrowing \$15,000 from Mr. Stevens?—A. I do not feel responsible for that.

Q. That won't square in any view; that might be called a contrivance?—A. I thought when I came to consider it that it should have been paid by Mr. Charlebois direct.

Q. Certainly there was no intention to lend that money to the Company?—A. No; I was astonished at the terms used by Mr. Lewis. 40

Q. And in point of fact the Company did not borrow that money?—A. I do not know what they did, I am sure.

Q. It never was understood there as a loan; if there was an action brought —(Interrupted).—A. Oh, no.

Q. Never understood that that \$158,000 was lent to the Company by Mr. Stevens, and that he was a creditor of the Company for that amount?—A. No.

Q. On the contrary, that was part of the money due to Mr. Charlebois ?— RECORD.
A. That should have been paid to Mr. Charlebois ; there is no doubt about that.

Q. That was part of his £200,000 ?—A. At the time it was spoken of I had not it clear in my mind, but I thought of it afterwards, and then I was satisfied that that should have been done.

Q. Will you tell me what consideration Mr. Stevens got, if these contracts read as I think they do, that Mr. Stevens had contracted to buy the shares just as they were ; what did he give to have them turned into paid-up shares ?—
A. I understood Mr. Stevens contracted to buy the shares as paid-up shares.

10 Q. Take them the other way ?—A. I never theorized on that.

Q. If in point of fact their bargain was to take their interest—and I think if you look at the contract you will be of that opinion—to take the shares just as they were, there was no consideration at all passed between them ?—A. My reading of it was they were entitled to paid-up shares.

Q. Did you read the two contracts ?—A. Yes.

Q. Did you read the modified contract that occurred afterwards, the intermediate contract, or did you ever see that ?—A. I do not think I ever saw it, and I had Mr. Lewis to argue that, and he was very subtle in his arguments, and I wonder he did not convince me.

20 By *His Lordship* :—

Q. Did you know anything at that time, doctor, about the arrangement by which Codd was to get the difference between the currency and sterling value of the £200,000 ?—A. Oh, yes, I had that agreement in my hands, but of course I never heard it spoken of, nor did I think of it.

Q. Did you connect that with any claim under clause 27 ?—A. Oh, no.

Q. You had been consulted on the 26th February 1887, by Mr. Codd with reference to claims under clause 27 of the Act, and he was signing paper with reference to some claim of his own ?—A. Yes.

30 Q. Well, then, you had some intimation at that time, 26th February 1887, that Codd was making a claim on the old Souris Company ?—A. Yes.

Q. On its charter, which was passed to this new Company, subject to that ?—A. Yes.

Q. Did you in any way connect, or understand that this matter of the difference between the currency and sterling, between him and Charlebois, was connected with that preferential claim under clause 27 ?—A. Do I understand you to mean was connected with his—(Interrupted.)

40 Q. With Codd's claim under 27 ; did you know why it was Codd was getting that amount as between him and Charlebois ? Charlebois was entitled to the sterling money, but he agreed to forego it and was taking currency instead of sterling ?

Mr. McCarthy.—That was long before Charlebois was personally interested in it.

Witness.—That was an agreement to pay Codd ; Codd had contracted to purchase the shares—the whole thing ; and those who sold it agreed to him, as I understood, to pay him a commission.

Mr. McCarthy.—I do not think Dr. McMichael would know anything about that, except what the documents show.

RECORD.

No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

Witness.—Oh, no.

Mr. Cassels.—The document of 1887 expressly guards against any claim.

Mr. McCarthy.—The doctor knows nothing about it.

His Lordship.—I was asking the doctor to ascertain whether he did know anything about the history.

Witness. They were brought to me at different times, and I paid so little attention, I did not connect one with the other, but I understood it to be a commission paid by the five men to the man who had procured the sale of their property ; I knew nothing about his other claims, and I thought it was a very large commission ; I remember saying so to one of them, and he said they had 10 agreed to pay, and that was an end.

Q. Was anything said by you to Stevens about it ?—*A.* Shortly after the 16th Stevens wrote to me and asked me about it ; and then I wrote him a letter which has been put in.

Q. Had you ever spoken to him about it ?—*A.* No ; I thought that was a matter of the vendors, and that the purchaser had nothing to do with it.

Q. That the purchaser had nothing to do with it ?—*A.* No.

Q. He was paying his £200,000, and it did not matter to him what was done with it ?—*A.* That was my idea of it.

Mr. McCarthy.—*Q.* Did you see at any time the letter of the 5th of May, 20 which was written by Mr. Codd to Mr. Murray ?—*A.* I do not think I ever saw that.

Q. I only just draw attention to it now, because probably it would have made a difference ?—*A.* I must say there has been a great deal that I have learned since I have been at this trial.

Q. You say you did not trouble yourself at all about these other shareholders ; you do not suppose seriously that Mr. Clemow and Mr. Allan and Mr. Murray, and this other gentleman, who are not to be interested with Charlebois, were simply going to get the money that they had paid in ? Did you suppose that Mr. Clemow was going to sell \$45,000 worth of paid-up 30 property for \$52,000 ?—*A.* I do not remember that I supposed anything of the kind.

Q. That Allan was going to sell \$72,000 worth of paid-up property for \$83,000 ; they would not have got interest on their money ?—*A.* I did not look at it at all.

His Lordship.—What is that ?

Mr. McCarthy.—I was asking whether he supposed at the time Clemow was disposing of \$45,000 paid-up property for \$52,000 and Allan \$72,000 worth for \$83,000.

Mr. Nesbitt.—It is worse than that ; they were not getting six cents on the 40 dollar.

Mr. McCarthy.—Those figures are wrong, I see.

Witness.—You need not make any figures, because I did not suppose anything and made no calculations on it.

Q. What you mean is you wanted to have this paid-up stock, and Mr. Lewis consented, and Mr. Lewis suggested it should be paid up in the way it was done ?—*A.* Yes.

Q. Whether that is paid up or not—(Interrupted.)

His Lordship.—They were making a discount ; it was not paid up in full ; they paid up what they supposed would pay it in full. RECORD.

Witness.—I made no calculations upon it ; I did not know what it would amount to ; I did not make any calculations on it, what the effects of it were, and I asked to have the purchase-money applied in that way first, and if it had not been done of course it could not have been carried through. No. 44.
Dr. Daniel
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Mr. McCarthy.—*Q.* Without a suit you mean ? In other words, Mr. Clemow would be in this position ; he would be getting \$52,000 for \$74,000 ?—*continued.*

A. Are you asking me to define Mr. Clemow's position ?

10 *His Lordship.*—That is taking the discount ?

Mr. McCarthy.—No, my lord, not the discount.

His Lordship.—He has not paid that.

Mr. McCarthy.—Yes, my lord ; if this is a payment by him he pays \$74,000 and gets \$52,000.

Mr. Nesbitt.—He would only get \$26,000.

Mr. McCarthy.—He had already paid \$29,100.

His Lordship.—Yes ; he was out of pocket that much.

Mr. McCarthy.—*Q.* Then if this was treated as a payment of Clemow's, then that would be \$45,000 ; he got for that \$52,000 ?—*A.* This £200,000 was
20 such a large amount over and above what the whole thing cost them that they would get a premium.

Q. He had actually paid in \$29,100, and profit on his interest in the concern \$23,415—that makes \$52,000, that is what he got. Then if this was a payment of his he was selling \$74,100 of actually paid-up stock, apart from the 25 per cent. ; 25 per cent. upon his holding would be \$45,000, and he had already paid in \$29,000 ?

His Lordship.—The difference between the amount he paid in and the amount he got would be in the Company's book ?

Witness.—Yes.

30 *His Lordship.*—If he received \$52,000 there was only \$15,000 left.

Mr. McCarthy.—Then the Company take this 50,000 pounds and pay it on their contract, the Company treating this 50,000 pounds as if there was only a contract, then they pay the whole 50,000 to Charlebois, and get a receipt for it on account of the contract, and then to carry out the plan the contract was called 200,000.

Mr. Cassels.—Mr. Clemow gets out of the contract \$52,000.

Mr. McCarthy.—And pays in \$74,000.

Mr. Cassels.—If you treat this cheque as a payment in you are quite correct about that. He gets \$52,515 ; Allan \$83,105.

40 *His Lordship.*—Then the 50,000 was paid up, they had not money to pay - Charlebois ?

Mr. McCarthy.—Yes, Charlebois paid them.

His Lordship.—Then Charlebois disbursed this much to make the title good, it goes to Charlebois and clears it off in that way. It makes a very favourable arrangement with Clemow.

Mr. McCarthy.—*Q.* If this thing was carried out according to the plan that was pursued, it would be that Clemow, taking him as an example, having \$100,000 paid up in the Company, of which there was 25 per cent discount,

RECORD. having in reality \$75,000 paid up in hard cash, was to get \$52,000 for that?—

—A. There were \$500,000 in shares and they received—(*Interrupted*).
 No. 44. *Mr. McCarthy.*—That is the result of this plan that was pursued.
 Dr. Daniel *Mr. Cassels.*—These cheques were deposited to the credit of the Company
 McMichael and made the stock paid-up stock.
 cross-
 examined
 by Mr. *Mr. McCarthy.*—Q. That is what you say?—A. Yes.
 McCarthy—
continued.

Q. That was your contention, and Mr. Lewis suggested it might be done in that way, first by deducting such discount as was safe, and you ultimately agreed that that was 25 per cent., and then by depositing out of this 50,000 pounds which Stevens had to pay, depositing the sum which went to the credit of the 10 Company, and that sum was the exact balance divided into these several cheques of the unpaid amount of their stock?—A. I never calculated the amounts at all; whether it worked injustice or justice was not one of the questions that came to my mind, but it must be remembered that the effect was that the purchaser got the road with this money in the treasury, had so much more to pay the bills with.

Q. So that the effect, looking at it in another point of view, was that this road had 50,000 pounds in the treasury, of which \$15,000 was nominally borrowed from Stevens?—A. Yes.

Q. And out of this money it was able to pay 50,000 pounds on its contract? 20
 —A. Yes.

Q. And this contract was swollen to 200,000 pounds to carry that plan out?
 —A. No, the contract was not swollen to 200,000 pounds.

Q. The contract embraced two things; the contract with Charlebois and Stevens was 200,000 pounds for the shares and for the 50 miles?—A. These 200,000 pounds in reality was the consideration not only for building the road but everything they got.

Q. Then the contract was 200,000 pounds to build the road?—A. The result was just the same equitably; the result was they paid 200,000 pounds and they were to get everything and the road built. It was unfortunate that it 30 was not all included in one contract; that is what I wanted to do, but they wished to have a contract each separate, and then at each contract they would put an amount that really was not the consideration; 200,000 pounds is named as the price for building the road, whereas 200,000 pounds includes all that they bought.

His Lordship.—Q. That is all the stock of the Company?—A. Yes.

Mr. McCarthy.—Q. Did you not settle the contract?—A. No.

Q. That was the part you were interested in on behalf of Mr. Stevens?—
 A. I did not settle that contract.

Q. Did you know of it?—A. I knew of it.

Q. You knew that the 200,000 pounds was in that way?—A. Yes, because that was the way it was settled on the 9th April.

Q. It was the intention on your part to carry the agreement of the 9th April, whatever that meant?—A. Yes, it was nominally put in.

His Lordship.—Q. You say it comes to the same thing, the way it was carried out?—A. No, I would have it one contract.

Q. But that it would have resulted financially in the same way?—A. The result would have been that they bought and got the road built for £200,000.

Mr. Meredith.—That is rather a conclusion of law.

Witness.—No, that is the bargain.

Mr. Meredith.—I object.

Witness.—The difference in contracts brought all the difficulty—the making of one contract to build the road and another to purchase different things.

Mr. Cassels.—It is immaterial; the £200,000 embraces what he paid to his co-shareholders for the stock.

Mr. McCarthy.—No, he bought these shares as well. We will have to argue it bye-and-bye.

10 *Witness.*—He was to pay £200,000, and he was to get the whole road and everything else; and as part of the contract they were to give him the built-up road.

Q. But as a matter of fact, as the whole thing was carried out that day to your knowledge, the Company agreed to give £200,000—(*Interrupted*).

Mr. Meredith objects to that.—*A.* I am not going to answer his legal interpretations.

Mr. McCarthy.—*Q.* You did not hear my question?—*A.* I am not sufficiently acquainted with law to answer all the questions you can put.

20 *Q.* What I say is, to your knowledge that contract was made by the Company, whose interest you were then guarding, the moment Stevens became proprietor you were guarding the Company's interests, and that contract was that the Company should pay £200,000.

Mr. Meredith objects; the documents speak for themselves.

Mr. McCarthy.—I am only saying that is the document, and the doctor knew it; you knew it.

His Lordship.—It is useful to have the evidence to see the way it was regarded at the time by the adviser.

Witness.—I tell you at that time I would not have done that.

30 *Mr. McCarthy.*—*Q.* But you did do it; you were a party to it?—*A.* Messrs. Stevens and Lewis agreed to that document, and I could not get what I wanted; Mr. Stevens overruled me.

Q. You advised him properly but he overruled?—*A.* I told him to make it one contract, and he preferred it in three or four.

Q. And so he deliberately agreed to this contract on behalf of the Company of which he was then president being made for 200,000 pounds?—*A.* He agreed to that being made the nominal consideration.

Q. Contrary to your advice?—*A.* Contrary to my wish.

40 *Q.* We can see how the whole thing was carried out, the intention being to carry out the contract made in April 1888, as modified in September 1889?—*A.* They intended to carry out that contract and they understood that contract to mean paid-up shares.

Q. I will draw your attention to a letter that Mr. Codd himself wrote, which you perhaps have not seen.

Mr. Meredith.—What letter is that?

Mr. McCarthy.—Letter which Mr. Codd wrote to Mr. Murray on the 5th May 1888, showing the meaning of this contract.

Mr. Nesbitt objects to this letter. There is no evidence that Mr. Murray received it, and as a matter of fact he never did.

RECORD.

—
No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

Mr. McCarthy.—I am reading it against Codd.

Mr. Meredith.—It cannot be read.

His Lordship.—I will take it subject to all these objections.

(*Letter read.*)

Mr. McCarthy.—*Q.* You did not see that, doctor?—*A.* Now that you read that, I saw a copy of a letter, but when it came to my knowledge I did not know—the copy that Mr. Codd showed me.

Q. Then these papers having been executed—were they all executed there before you left, doctor, the collateral contract and the Sproule contract?—*A.* I think they were all—(*Interrupted.*) 10

Q. All ready?—*A.* I think some were not executed till afterwards; whatever is marked of that date.

Q. Whatever is marked of that date; well, I will tell you shortly what they were that were marked of that date; there was first the construction contract with Charlebois; would you like to see it?—*A.* I have seen them.

Q. That was executed before you left; then there was a collateral agreement on the same day with Charlebois, with reference to the Sproule contract?—*A.* That was Stevens' own matter; I paid no attention to that.

Q. But you saw it, no doubt?—*A.* I saw it, but Mr. Stevens took the responsibility of that himself. 20

Q. Do you remember anything that took place with reference to that?—*A.* No, I do not.

Q. Then did you see the agreement between Mr. Charlebois and his former shareholders; I think you did, because you insisted on a covenant; did you?—*A.* I insisted on—not on a covenant, but I insisted on having the Company mentioned in it; that was all they would give me, instead of the full guarantee I asked; I asked to have the indemnity.

Q. You asked to have the indemnity, and the only indemnity you got was this?—*A.* And Stevens was content with that and I could not help myself.

Q. That agreement was made with your client, was it not?—*A.* Made 30 with Stevens—no, not with Stevens; it was made between them; made between Codd and Stevens, and that was where I felt our difficulty was.

Q. Why?—*A.* Why, how could we sue on that contract? I remember some discussion that a person who was not a party might sue, and I thought if Mr. Stevens was content to accept it, perhaps it might do.

Q. Well then, you took some trouble in settling this, did you?—*A.* I asked to have some things put in it.

Q. Do you remember what you insisted on putting in and what you were satisfied with and what you were not?—*A.* No, I do not; I will look and see. (*Looks at document.*) Of course I paid no attention to the recitals, and as to 40 that agreement of the 11th September, I knew nothing about that; I do not know yet whether there was an agreement on that day; there is one word I remember asking to have put in, "To indemnify, save harmless."

Q. What paragraph would that be?—*A.* That is the first clause of the agreement "And the said Company;" they had not "The said Company" in at all.

Q. That would be one of the covenants, would it not?—*A.* The first covenant.

Q. The former shareholders, &c. (*Reads.*) Then you wanted "Company" there?—*A.* No, read on and I will tell you. RECORD.

Q. (*Reads.*)—You had these words put in?—*A.* Yes; you see in itself it is merely a covenant to protect one another. No. 44.
Dr. Daniel
McMichael

Q. Was there anything further, doctor?—*A.* There might have been one or two other things, and I think either in this contract or in the construction contract Gregson suggested one or two alterations. cross-
examined
by Mr.
McCarthy—

Q. Then you now recollect, do you, that this contract was one of those, the construction contract was one, and this contract was another; the Sproule 10 contract was another?—*A.* No, I do not remember the Sproule contract. continued.

Q. You said it was, but you did not take much interest in it?—*A.* I said I knew nothing about it.

Q. You left that to Stevens?—*A.* Yes.

Q. You did not examine it?—*A.* Not to my recollection.

Q. Well, do you remember the last clause, "Nothing herein contained shall be construed so as to imply any covenant or warranty on the part of the former shareholders as to the payment up in full of their said shares?"—*A.* I remember that being put in.

Q. At whose instance was that put in?—*A.* I assure you it was not mine.

20 Q. It was not yours?—*A.* No, I was strongly opposed to it.

Q. How did Stevens take that: "Nothing herein contained shall be construed so as to imply any covenant or warranty on the part of the former shareholders as to the payment up in full of their said shares." Did you point out that Stevens must take that at his own risk?—*A.* I left him to do as he liked.

Q. You advised him not to take it this way?—*A.* Oh, I objected to it all through.

Q. How was it contrary to your objection the document was accepted in this shape?—*A.* Stevens did everything himself, this was on Monday and I 30 went away on the Tuesday, I did not stay any longer.

His Lordship.—Q. You understood he was an English solicitor?—*A.* Oh, he was an English solicitor.

Q. He had a knowledge of law to some extent himself?—*A.* What I was to do was to take care of the title and anything that was contrary to Canadian law, everything else he managed himself.

Mr. McCarthy.—Q. And what he knew was that he was to pay £200,000, and what he was to get was these shares in the Company and to get this 50 miles of road built?—*A.* And the whole franchise.

Q. Getting the shares would get all the franchise?—*A.* That was the 40 agreement between me and Mr. Lewis; I said there should be a contract drawn out showing what is done, Lewis says, "No contract is necessary, the transfer of the shares does the whole thing."

Q. And then the forms that we have were the forms which were resorted to in order to carry out that arrangement?—*A.* That dividing it up into different contracts—both Charlebois and Stevens wished it, and I could not object.

Q. Well, now, we have got down as far as the 16th September 1889, when did you become a member of the Company—the same day?—*A.* When Stevens

- RECORD. bought the shares, at first he was taking them all in, and then at last they said, "There must be five ;" then he named Mr. Gregson, then Mr. Codd, that made three, then he turned to me and said "Will you take five shares?" that is the first intimation ; well, I said yes, and then they sent out and brought in Aird ; we were all mere names put in for the purpose of—(Interrupted.)
- No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued.
- Q. You were elected a director on that qualification ?—A. Yes ; there were only the five of us.
- Q. Did you then participate in the meetings of the board, as the minutes seem to show ?—A. What is there I did.
- Q. Then this board meeting—do you remember when that commenced ?— 10
A. No, I could not tell you that.
- Q. Could you tell when it ended ?—A. It was ended when we separated, I suppose.
- Q. It was a continued board meeting all day long ?—A. We argued out matters, and then they made resolutions and carried them out.
- Q. And the result of it was that you were there all day long ?—A. I was there all day long.
- Q. In the early part of the day the old directors were the board, and the latter part of the day the new directors were the board ?—A. Yes.
- Q. Then the new directors were those who were responsible for borrowing 20 the money from Stevens ?—A. Yes.
- Q. Borrowing \$15,000 which they have never paid back ? (No answer.)
- Q. Did you continue as a member of the board ?—A. No, I supposed it was ended when I left. A month or two after Codd came to me and asked me if I would continue to be a director.
- Q. Then you were a director ?—A. If I would be a director.
- Q. You did continue ?—A. Well, I hardly know ; I did not resign.
- Q. Therefore you continued ?—A. Yes.
- Q. You continued to be a member of the board up to what time ?—A. I forgot the date.
- Q. It was after all this litigation, was it not ?—A. Yes. 30
- Q. You continued to be a member of the board, and did you attend the board meetings from time to time ?—A. When they were in Toronto I did.
- Q. And who were the active members of the board ?—A. Mr. Clemow, Mr. J. B. Robinson, and myself and Mr. Codd.
- Q. Mr. Clemow had ceased to be a director at that time and became a director in November following ?—A. I think it was later than that.
- Q. The 50 shares were assigned to him on the 30th November 1889 ?—
A. I think it was later than that.
- Q. And when did Mr. Robinson become a director ?—A. I could not tell 40 you.
- Q. Well, then, the meetings, as the minutes will show, if we want to refer to them, were held from time to time, and those that it was convenient for you to attend, and when they were held in Toronto, did you attend ?—A. Yes.
- Q. And Mr. Codd was the president ?—A. Yes.
- Q. Were you present when he was elected president ?—A. No, I do not think I was.
- Q. You think that was done on account of Stevens, who was the first

president ?—*A.* We acted all together, as we supposed, under directions of the RECORD.
shareholders, meaning Mr. Stevens.

Q. You acted altogether under the direction of Stevens, who really became the shareholders ?—*A.* Yes.

Q. Did you hear anything about Delap then ?—*A.* No.

Q. Never heard his name mentioned ?—*A.* The first I heard his name was when they were showing their want of money ; they said there was a man by the name of Delap, who was out in Italy, and they hoped to get money when he came back ; that is the way I heard of him.

10 *Q.* Would it be months afterwards ?—*A.* Oh, a year afterwards.

Q. After the 16th September ; then Stevens presented himself to you as the person who had this money ?—*A.* When he came to me I understood that he represented a shareholder, a capitalist who could finance the whole concern, do the whole thing ; and where we spoke of the liability of the Company, that £150,000, I took it for granted that that Company, the shareholders, were able to pay the money whenever the contract was finished.

Q. You supposed the £150,000 the Company was assuming an obligation to pay would be forthcoming whenever it was earned ?—*A.* Yes ; did not imagine the Company would have any trouble about it.

20 *Q.* Did you know that Mr. Charlebois was going on under his contract ?—*A.* Yes.

Q. Building the road ?—*A.* Yes.

Q. And you remember, I suppose, afterwards Mr. Charlebois claiming that his work was completed and demanding payment ?—Yes ; and I wrote immediately to the shareholders at home, to Stevens, that Mr. Charlebois, although he had not finished the whole work, yet it would be wisdom on their part to pay him a certain amount, and it would keep up the credit of the Company.

Q. When did you first get into correspondence with Stevens ?—*A.* He 30 wrote to me.

Q. He wrote to you that letter from Montreal, asking for an explanation of Codd's interest ?—*A.* Yes.

Q. That is the first you heard from him ?—*A.* I got letters from time to time.

Q. Up to what date ?—*A.* Let me see ; when was the final judgment ?

Q. February ?—*A.* Well, up to March or April.

Q. Up to March or April of 1892 ?—*A.* Yes.

Q. And were these letters sent to you as counsel for the Company or as a Director of the Company ?—*A.* They were sent to me as manager of the 40 Company, as being engaged in the management of the Company and about the Company.

Q. As being engaged—one of the directorate in point of fact, and being engaged in Ottawa ?—*A.* Yes.

Q. You can perhaps tell as well as anybody else ; I want to come down to the time when Charlebois threatened suit ; you remember he did threaten suit ?—*A.* Yes.

Q. Finding he could not get his money in any other way he commenced the action ?—*A.* Yes.

No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

RECORD.

No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

Q. And that suit ultimately came on on a motion for injunction, and I think it was turned into a motion for decree?—*A.* Yes.

His Lordship.—Q. Was the contest in that suit about his having completed his contract ; was that the issue?—*A.* Yes.

Q. The objection to be met was simply, he had not completed his contract in all respects?—*A.* The objection was what Mr. Stevens wrote out to me, that it was not finished, and they would not pay till it was finished, I recommended paying in part, although it was not finished. If they had had the money and my advice had been taken, this case never would have been started.

Q. If they had had the money there would not have been any trouble about it?—*A.* Yes, and if I had known they were not going to have it I would not have been into it.

Q. You do not want to be associated with people who have not got any money?—*A.* Unfortunately I got nothing ; it has been a loss to me throughout.

Q. There has been a great hub-bub here about the contractor having obtained from the Company a lien for his work ; you understood that at the time?—Yes ; no trouble about it.

Q. It was a perfectly fair thing?—*A.* I thought it was a fair thing ; I was not very well up in railway matters ; the whole thing was done in one day, and I had not considered much the consequences.

Q. At all events, you thought it was a fair thing?—*A.* Oh, yes. You see the lien was this ; he bought the land ; the Company did not buy the land ; and he built on it ; it was not their land ; he bought the whole thing ; I saw no reason why he should not have a lien.

His Lordship.—Q. By doing the work?—*A.* Not only that, but he had to go and buy—now you speak of it, that is one of the questions that came up ; Mr. Charlebois contended, or Mr. Lewis, that we should furnish the land.

Mr. McCarthy.—Q. The right of way?—*A.* Yes ; I contended : “ No ; you have agreed to build the road, to furnish the land and to build it,” and so that was one of the things conceded.

Q. It would follow from that if he was to buy the land he should have a vendor's lien on it and all he put on it?—*A.* Yes.

*Mr. Cassels.—*That is a matter of law.

*Witness.—*You asked me how I viewed it ; if I made a mistake—
(Interrupted.)

*Mr. Cassels.—*You said you had not investigated the law.

*Witness.—*No, but I quite understood it was right where a man had done work that he should have a lien ; I could not object to that.

Mr. McCarthy.—Q. Then, Doctor, in one word you did what you fairly and justly could ; you got everything you could for your client, Mr. Stevens, on that occasion ; there was no conspiracy or fraud?—*A.* I thought I fought hard for him, and I think you are beginning to argue that I got more than I should.

Q. When the dispute arose do you remember an arbitration being suggested?—*A.* Yes.

Q. As to whether Mr. Charlebois had complied with the terms of his contract or not?—*A.* Yes.

Q. Was that your suggestion?—*A.* It was suggested at a meeting.

Q. Of the board?—*A.* Yes.

Q. And who were the arbitrators appointed?—*A.* It was referred—*Mr. RECORD.*
 Charlebois would only consent to a certain kind of arbitration ; it was a matter
 of agreement between us and Charlebois.

Q. Who were the arbitrators?—*A.* I think it was Mr.—(Interrupted.)

Mr. Lewis.—Mr. Walter Shanly and Mr. A. L. Light.

Witness.—Oh, yes, just the two.

Mr. McCarthy.—It was an arbitration more to see whether Charlebois had
 complied with the terms of the contract.

Mr. Lewis.—We will put in the award if necessary. There was a
 10 submission to arbitration by the Company and an award.

Witness.—What we contended was that the award was not according to the
 submission ; they say that the stuff had not been furnished, but that the
 Government have said it is right, and that ends it. I contended before Mr.
 Justice Ferguson that the award was in our favour, that they found the facts in
 our favour and put the law against us.

Mr. McCarthy.—*Q.* On the 9th October 1890, there is the resolution ; as a
 matter of fact they did not act upon that, according to Shanly and Light?—
A. Yes, and they found they were not sufficient.

Q. Not sufficient in fact, but sufficient in law ; it arose in this way ; they
 20 found they were not bound to do more than the Government contract—
 (Interrupted.)

Mr. Meredith.—No ; that the Government had accepted it.

Witness.—We asked whether they were sufficient and they said they were
 not, but the Government accepted them, and we were bound by that.

Mr. McCarthy.—*Q.* You would not stand by the award?—No.

Q. And an action was brought for the purchase money?—*A.* No ; that fell
 through because of this ; we, the board, wrote home we had made this bargain,
 and we expected to have the money paid on the 1st of November, and we asked
 them to pay it, and we said that if they did not we washed our hands of the
 30 contract ; we wrote to the shareholders, as we supposed, and if they did not pay
 the money we washed our hands of it.

Mr. Meredith.—When the doctor says he wrote to the shareholders, whom
 does he mean ?

Mr. McCarthy.—To Stevens. *Q.* Perhaps you have got Stevens' letter
 here?—*A.* I have.

Q. I would like to have those letters from Stevens, Bawtree & Stevens, or
 Stevens alone?—*A.* I will look them up to-night and hand them in in the
 morning ; it will take some time to sort them out ; I have brought them all
 down in a bag.

40 *Q.* I want to get those letters. Then when the question came on you acted
 as counsel, as I understand, as well as Mr. Blake, who was retained to defend
 the suit?—*A.* Mr. Codd retained Mr. Blake.

Q. And was that a sham defence?—*A.* Oh, no ; I mean to say it was not a
 sham defence ; it was a defence for time ; when I say a defence for time I
 mean this : we did not consider he was entitled to the money because he had not
 fulfilled the contract, but we had no doubt that the main body of the contract
 was fulfilled, and that he ought to be paid and the thing settled.

Q. Were you present when the motion for injunction was turned into a
 motion for a decree ?

RECORD.

No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy
—continued.

His Lordship.—Was the settlement for less than the full contract price?

Mr. McCarthy.—Yes, my lord, \$61,000 was deducted. I do not suppose the doctor knows very much about it.

Witness.—All we contended for, “the contract is not finished, and you are entitled to the money at the end of the contract,” but we had no doubt that really and truly they were substantially entitled to money for what he had done. We were not trying to gouge him out of the money, and we wanted the party at home to send to pay the money, although it was not fully finished. It was no violent contention on our part; still we had to do the best we could.

Q. Well, then, the case came on before Mr. Justice Ferguson?—*A.* Yes. 10

Q. On a motion for injunction?—*A.* Yes.

Q. What was the injunction for, shortly?—*A.* I really could not tell you—to restrain us from doing anything; we were not doing anything at all.

Mr. Cassels.—Motion restraining the issue of bonds?—*A.* Yes; we did not care anything about the bonds.

Mr. McCarthy.—*Q.* How many days did the discussion take before Mr. Justice Ferguson?—*A.* Two days.

Q. I understand—perhaps I am wrong about that—it was suggested that the matter was settled?—*A.* Well, yes; I think Mr. Blake mentioned something of the kind. 20

Mr. McCarthy.—We have here, my lord, the notes of one day’s argument, and we put it in now.

Witness.—Is it the last or first?

Mr. McCarthy.—The second. They happen to be taken by a stenographer. You admit this is correct?

Mr. Meredith.—As far as it purports to go.

Mr. McCarthy.—It does not show the beginning, but it does show the ending.

His Lordship.—Were any witnesses examined?

Mr. McCarthy.—No, my lord, I do not think so. 30

Mr. Moss.—Affidavits were put in, on which witnesses were cross-examined.

Witness.—Yes, there were a number of affidavits; it all turned there, until it became a question of settlement, on the point whether they were prepared as a legal right—(Interrupted.)

His Lordship.—*Q.* Whether the Government certificate was enough?—*A.* Yes; if it was finished they were entitled to the money, and if not they were not.

Mr. McCarthy.—I may as well put in the material I mentioned before to your lordship; we will put them all together and I will add to that the notes 40 of the argument.

Q. Very nearly the last thing I find is this: “I may remark the longer the “matter is discussed” &c. (Reads.) The discussion was about the bonds, and what was to be done with them, and so on; then the counsel got together; did you take any part then?—*A.* I took very little part.

Q. Were you present?—*A.* I was present.

Q. How many days did that discussion between counsel take?—*A.* There was a discussion down at the Queen’s Hotel; there was a discussion at

Mr. Blake's office and there was a discussion at Mr. Blake's house ; I remember those three. RECORD.

Q. Lasting over several days ?—A. Yes, at different times ; Mr. Blake and Mr. Osler were the main combatants. No. 44.
Dr. Daniel

Q. And the result was the consent minutes ?—A. Well, the compromise minutes you might call them. cross-examined

Q. Well, they were consented to ?—A. Yes. by Mr.

Q. And there was some difficulty afterwards as to what they meant ?—A. Yes. McCarthy—continued.

10 Mr. McCarthy.—Here are the minutes actually signed by counsel ; they had better go in.

Witness.—There is one point of Mr. Codd's interest ; I accepted that on behalf of him.

Q. And Mr. Nugent was there and he accepted it on behalf of his client ?—A. Yes.

Q. Now, that was not the end of the litigation ?—A. No.

Q. Six months was given by them for the payment of this money ?—A. Yes.

Q. And under it the Company were given possession of the road. Do you 20 know as a matter of fact whether they did get possession of the road ?—A. I was not in Manitoba.

Q. But did you understand as a Director that they got possession of the road ?—A. Yes.

Q. And that directions were given to operate the road ?—A. I understood Macdonald and somebody had the road and they got it from them.

Q. At all events possession was obtained ?—A. Yes.

Mr. Meredith.—He does not know that.

Witness.—I do not know what happened in Manitoba.

Mr. McCarthy.—Q. You do know arrangements were made to operate the 30 road ?—A. I know Codd went up to work the road, and he reported to me from time to time the difficulties he had.

Q. Then the money was not forthcoming at the end of the six months ?—A. No ; they did not wait for that.

Q. Complaints were made that the terms of the decree had been violated ?

—A. Mr. Codd was just about going home to try and get the money when they blocked us off.

Q. What was the ostensible ground of blocking you off ?—A. They said we had not put in the bonds according to the agreement.

His Lordship.—Q. Knocked off what—the Directors ?—A. No ; Mr. 40 Charlebois ; they were to wait six months, but in February they made a movement and said the bonds had not been put in according to the judgment, and then they moved Mr. Ferguson and got him to give an interpretation of the decree which we thought was wrong, and under that interpretation a judgment was given.

Mr. McCarthy.—Q. Then did you defend ?—A. I did of course.

Q. Employ counsel ?—A. Yes.

Q. Mr. Blake again ?—A. Mr. Blake did speak, yes.

His Lordship.—Is he attacked here too ?

RECORD.

No. 44.
Dr. Daniel
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

Mr. McCarthy.—Yes, my lord.

Mr. McCarthy.—Q. Then there was no consent about this?—*A.* No consent, I assure you.

Q. You filed affidavits?—*A.* Yes.

His Lordship.—In that compromise judgment was provision made for paying Codd any part of this sum?

Mr. McCarthy.—Yes, my lord, \$130,000.

Witness.—No; the whole was to be paid to Mr. Charlebois or as he directed.

Q. And that was provided for?—*A.* And one thing he provided for was 10 that he owed Codd so much and they wanted to pay that to him.

Q. (Reads from judgment.) It was because the bonds were obtained by Delap that this second proceeding in February, the application in February, was made to declare that default had been made and was due at once?

His Lordship.—The bonds were out of the country at that time.

Mr. McCarthy.—They were supposed to be in the Safe Deposit Company.

His Lordship.—But they were given to Cansdale, were not they?

Mr. McCarthy.—But they were in possession of Stevens, Bawtree & Stevens, who were the English solicitors.

Mr. Meredith.—He held it for the Plaintiff.

20

Mr. McCarthy.—It was because these bonds were handed over to Mr. Delap, and taken out of their hands that this application was made.

His Lordship.—The bonds were handed over to Delap, were they?

Mr. McCarthy.—Perhaps I am anticipating the evidence. Your lordship will hear Delap had them at Halifax, but your lordship has not heard when Delap got them or how he got them.

Mr. Chrysler.—It is long after both judgments that Delap got possession of the bonds. I will give you the date in the morning from the Commission evidence.

Cross-examined by *Mr. Nesbitt.*

30

No. 45.
Dr. Daniel
McMichael
cross-
examined
by Mr.
Nesbitt.

Q. I just want to ask two or three questions. On the Saturday, when Codd and Stevens were in Toronto, staying at the Queen's, did you see Senator Clemow or Mr. Allan at all?—*A.* I have already said that I do not remember seeing any of them.

Q. You were aware, of course, on the Monday that Charlebois was endeavouring to arrange to buy out the interests of his four partners in the concern?—*A.* I wrote a short note to Stevens advising him to get a better guarantee; and then he communicated with me and told me that they were making other arrangements; but what they were I did not know until this paper came to the office.

40

Q. But when that paper came to the office—that is the arrangement between Charlebois and Codd, by which in the first clause Charlebois undertakes to buy out the interests of his four partners in the concern—then you became aware he was undertaking to do that?—*A.* I suppose that made me aware; but you will remember I just heard it read, and had it taken down in shorthand, and had no memorandum kept of it that would refresh my memory about it.

Q. Then the next, so far as you are concerned, is we find you in Ottawa ; and is it correct to say that during the Thursday, Friday and Saturday— (Interrupted.)—A. No, Friday and Saturday.

Q. Your negotiations were not with Mr. Allan and Captain Murray and the other gentlemen, but with Charlebois ?—A. My negotiations were with Charlebois, but some way or another I understood the others were still interested in it.

Q. Until Mr. Charlebois arranged with them ?—A. I never knew when he arranged.

10 Q. You became aware, of course, on the Monday morning, that he was arranging to pay them for their interest in the undertaking ? — A. My information was conveyed by that paper.

Q. Which ?—A. The one taken in shorthand.

Q. But on the Monday morning when you met in McIntyre & Lewis' office ?—A. I do not know it was much spoken of.

Q. What ?—A. The arrangement.

Q. You knew the sum they were to get for their interest in the concern, \$226,000 ?—A. No, I did not.

20 Q. You would necessarily know that from the documents ?—A. I did not study the documents ; I know there was no amount present to my mind as the consideration between them and Mr. Charlebois.

Q. You knew it was Charlebois who was buying them out ; they were parting with all interest in the concern ?—A. Yes ; that is what I gathered from the paper.

Q. And Charlebois and Stevens were carrying on the thing afterwards, these gentlemen having nothing to do with them ?—A. Yes ; you must remember there was a great deal carried on there that I knew nothing about.

Q. And when it came to your part afterwards, they took no interest in that in the same way ?—A. I suppose so.

30 Q. There is no doubt about this, that it was a *bonâ fide* sale of their interest that day ; they did not continue in the Company ?—A. Oh, yes, they parted with all their interest.

Q. On your part there was no combining to carry out any scheme or anything of that sort ?—A. I did not combine with anybody.

Q. Or with Stevens ?—A. I know of nothing with Stevens, except carrying out his own project ; certainly I never understood that I was to have anything to do with the matter as a director until the whole thing had been completed. There was something charged against me that we had combined together ; I say that I knew nothing about ; I was perfectly innocent of anything except getting 40 the thing transferred to Stevens.

Q. And do you remember that on the Monday when they met there, when the discussion of fully paid-up shares came up, that Senator Clemow—you knew the Senator before, I believe, you have known him for years ?—A. Yes.

Q. That Senator Clemow said his bargain was he was to get so much money and step out, and he did not care how they did it ?—A. I do not remember anything said by him.

Q. You do not say that that did not occur ?—A. No, I do not say that that did not occur.

RECORD.

No. 45.

Dr. Daniel

McMichael

cross-

examined

by Mr.

Nesbitt—

continued.

RECORD.

—
No. 45.
Dr. Daniel
McMichael
cross-
examined
by Mr.
Nesbitt—
continued.

Q. And that then a long discussion ensued between Gregson, Mr. Stevens' clerk, who is himself a solicitor, I believe—Gregson, Stevens and yourself and Lewis, about what form should be adopted by which your view could be carried out and the Senator's view on the other hand could be carried out, namely, to transfer his interest, and Stevens to undertake the responsibility?—*A.* I understood on the Saturday that paid-up shares would be given.

Q. You did not understand that from Allan or Captain Murray?—*A.* And then on Monday the question arose how they could be made.

Q. Certain it is that whatever form they took, Mr. Stevens was not lending Senator Clemow any money or advancing anything to them?—*A.* No; he paid 10 that in advance on his bargain.

Q. There was no doubt about this, that those gentlemen were to get from Charlebois some money for their interest in the concern; they were being bought out?—*A.* I knew nothing about the bargain between them and Charlebois.

Q. But you knew they were being paid something?—*A.* I knew they were being paid, but did not know what their bargain was.

Q. But you knew by the Heads of Agreement £50,000 was to be advanced to Charlebois in order to buy them out?—*A.* That was to be paid to him.

Q. In order to buy them out; so the Heads of Agreement say?—*A.* What- 20
ever the Heads of Agreement say.

Q. And he was to buy them out for whatever sum he could arrange with them for their interest?—*A.* I do not think during the whole day I had that paper in my hands or studied it.

Q. Do you remember that Senator Clemow, Mr. Allan and Captain Murray practically sat down and said—(Interrupted.) *A.* I think the main talkers were Mr. Stevens, Mr. Lewis, Mr. Gregson and myself a word or two.

Q. Do you remember whether it was Stevens or Gregson who wrote out the resolution which we have here of these gentlemen that it should be fully 30
paid-up stock?—*A.* I do not know who prepared that resolution.

Q. You would not deny that it was either Stevens or Gregson?—*A.* I always thought it was Mr. Lewis.

Q. As I am instructed, it was Gregson. Then you find that clause in the agreement which the Senator says he had put in, that they would not guarantee them being fully paid-up?—*A.* That is in the agreement between themselves.

Q. That is in the agreement between themselves, and it is in the agreement with Charlebois?—*A.* Which agreement?

Q. The agreement with Charlebois that they will not guarantee that?—*A.* That is between them and Mr. Charlebois? 40

Q. Yes?—*A.* Yes.

Q. Do you recollect Mr. Stevens saying to Senator Clemow that it was all right to pass that resolution, because Stevens was purchasing the whole scheme, and it was his look-out; as long as he, Stevens, was satisfied with the form in law, it was his look-out whether the thing was legal or not?—*A.* No.

Q. Will you say that did not occur?—*A.* No.

Q. Then Duval you think suggested this form?—*A.* I think that originated with him

Q. And then if that is so, he must have been there ?—A. Oh, no, he never came in the room. RECORD.

Q. Then there was no pretence that these gentlemen were not to be paid something for their stock ; no claim of that kind ?—A. We were not considering anything about the amount, except that we paid the £50,000. No. 45.
Dr. Daniel
McMichael

Q. To Charlebois ?—A. To Charlebois. cross-

Q. Out of which he was to arrange with these gentlemen for their shares ?—A. Arrange as he pleased. by Mr.
Nesbitt—
continued.

Q. And then when a dead-lock ensued, a long discussion occurred, which ended in the form we find here, by which in your opinion they were made fully paid-up shares ?—A. Yes.

Q. Enough to protect Mr. Stevens ?—A. Oh, I did not understand that it was anything that Mr. Stevens was exempted from protection, or anything about it.

Q. You will not deny that Senator Clemow said he must take that for what it was worth ?—A. I will not deny anything any of them say they said, because I do not remember. You must remember I was not very well at the time, and I had a year's illness, and Mr. Lewis will remember every now and then I had to walk out in the fresh air for a little while to refresh myself.

Q. Then when these gentlemen sold out and got their money, I understand they passed out, and had nothing further to do with the proceedings ?—A. I understood they had nothing to do with it.

Q. And there is no doubt about this, that before the contract was let to Charlebois, all these gentlemen had passed out of the Company ?—A. They had nothing to do with the giving of the contract to Charlebois.

Q. No concern of theirs whatever ?—A. All that is in the Statement of Claim, that there had been a previous contract between all the parties is mere flourish.

Q. Utter bosh ?—A. As far as I was concerned, I may have tried to get a hard bargain with Charlebois, but it was plain dealing, plain action there and no attempt to defraud anybody.

Q. Certainly not upon the part of those four gentlemen who were selling out ?

Mr. McCarthy.—Include my client too.

Mr. Nesbitt.—Q. Do you remember this circumstance, Doctor ; that there was considerable demur upon the part of Senator Clemow as to the security he was to get for the balance that Charlebois owed him ?—A. I do not remember that discussion at all.

Q. You would not say that that did not take place ?—A. I say there was a great deal—(Interrupted.)

His Lordship.—He says he will not deny anything anybody says, because he does not remember. Q. You will not deny anything anyone says that they said on that occasion ?—A. Oh, no, I will deny positively I heard it.

Mr. Nesbitt.—Q. Do you remember this, Doctor, that it was finally conceded that if Charlebois would say that the Company were to pay these gentlemen these moneys out of the first moneys that came to their hands, that they would accept the security he offered ?—A. I know nothing of the bargain at all.

RECORD.

No. 45.
Dr. Daniel
McMichael
cross-
examined
by Mr.
Nesbitt—
continued.

Q. You remember, though, the orders being accepted by the Company ; you were a director ?—A. I believe so. Was it done on the 16th ?

Q. Yes, on the same day, on the afternoon of the 16th, after they had gone out ; that was a perfect *bonâ fide* transaction ?—A. Oh, yes ; there was no sham about it.

Q. Do you remember they released Charlebois from his personal liability on the ground of the Company letting them have the first moneys that came to their hands ?—A. No, I do not remember any bargain about it.

Q. That is in writing and put through by yourself as one of the directors ? —A. It may have been. 10

Q. And of course anything that was done in that way Stevens perfectly understood ?—A. Stevens carried the whole of that matter himself ; he was the man who transacted the business.

Q. Took the responsibility as to the forms and so on ?—A. Oh, yes ; that indemnity contract would never have been formed if it had been left to me.

Q. You would have put it into the form of one transaction ?—A. I would have made them agree with us.

Cross-examined by Mr. Watson.

No. 46.
Dr. Daniel
McMichael
cross-
examined
by Mr.
Watson.

Q. You recollect that Mr. Nugent was there at the time that the settlement was made and the consent judgment put in ?—A. He was not on the 16th 20 September.

Q. I am speaking of September 1891 ?—A. Yes, he was there.

Q. There for a week or more ?—A. Yes.

Q. I observe by the copy of the notes of argument that the second day's argument was on the 23rd September, and the consent judgment was not entered until the 28th September ?—A. Yes.

Q. Then do you recollect what was occurring between those dates ?—A. Trying to compromise.

Q. That is between the dates 23rd September and the 28th September ?—A. Yes. 30

Q. During that time having interviews with the several parties ?—A. Yes.

Q. Do you recollect Mr. Nugent being there ?—A. Yes.

Q. Do you recollect that Mr. Nugent represented not only Macdonald and Schiller but the Commercial Bank of Manitoba ?—A. I do not recollect, but I have no doubt that he did.

Q. Do you recollect signing this document ? It is about possession ; I think that is your signature ? (Witness reads document.)—A. I do not remember anything about it, but that is my signature.

Q. And that is Mr. Codd's signature ?—A. Yes.

Q. It is dated 26th September 1891. (Document read.) So that at that 40 time evidently you understood that Macdonald & Schiller were in possession of the railway ?—A. I suppose so.

Q. Have you any recollection of that fact apart from what appears in the document ?—A. I heard from Mr. Codd that they were.

Q. Then Mr. Nugent assented to the terms of that judgment?—*A.* Yes. RECORD.

Q. And upon that assent Macdonald & Schiller were to go out of possession?—*A.* Yes; what I understood from Mr. Codd was that he wanted to get possession of the road so as to finish it, and they were trying to get Macdonald & Schiller to give up their possession so that they might get it. No. 46.
Dr.
McMichael
cross-

Q. Then you knew that Mr. Nugent, acting for these parties, relied upon this judgment in undertaking to pay before going out of possession?—*A.* Yes. examined
by Mr.
Watson—

Q. And that it was so relying that they went out of possession? (Letter produced.)—*A.* This is Mr. Arthur Codd's signature. continued.

10 Q. This is a letter, October 1891, directed to Mr. Nugent from Mr. Codd.—(Interrupted.)

Mr. Cassels objects.

Mr. Watson.—I am reading this as against the Company. (Reads.) This is an assignment to Mr. Nugent by Macdonald & Schiller of this claim, \$64,429, mentioned in the second paragraph of the judgment.

Q. Do you recollect after that attending a meeting of the Board?—*A.* If my name is there I was there.

Q. This at all events is again the signature of Mr. Codd and of the secretary, with the seal of the Company attached?—*A.* That is Codd's 20 signature and the secretary's.

Mr. Watson.—I put in this certified copy of the minutes of the Board, held in Toronto 30th Feb. 1891. (Minute read.)

Q. You recollect the circumstance of being at that meeting?—*A.* I do not.

Q. At all events it is recited as being seconded by you?—*A.* Yes, I have no doubt I was there.

Q. I do not know whether you know the signature of Macdonald and Schiller?—*A.* No, I do not.

Q. In the 37th paragraph of the Statement of Claim a charge is made against you that you were interested adversely to the Company?—*A.* Yes.

30 Q. Is there any foundation for any?—*A.* I do not know of any, and the only thing that I know of is that I had promised Codd that I would accept that money if paid in; Mr. Codd was not bound to pay it to me.

His Lordship.—Q. Charlebois was not bound, you mean?—*A.* No, nor Codd was not; Codd could the next day tell anyone else to pay it; there was no obligation on his part to pay me; and as for any commission, there was nothing of the kind said; I simply said to him, "If you want to put it in my name you may do so." I was not bound to take it, and he was not bound to pay it to me, and how that could be adversely to the Company—and besides that it was a payment due not by the Company but by Charlebois; Charlebois was to pay 40 Codd that \$173,000, and that had nothing to do with the £200,000 that they were to pay; Charlebois could do with that money whatever he liked, and could pay Codd from some other money. At the time the judgment was signed Charlebois himself—nobody else arranged it—Charlebois said, "I want that money paid to me, and I direct that it be paid in these several forms"; we had nothing to do with it, and I had nothing to do with it.

Mr. Watson.—Q. Did you ever hear any statement or suggestion made that you were not acting in good faith or against the interests of the Company until it appeared in these pleadings?—*A.* Oh, pshaw. I understood the Company to p. 5240.

Z Z

RECORD. consist of Mr. Stevens ; I understood the Company to be shareholders at home ;
 — and we, as far as we could, Mr. Clemow, Mr. Robinson and myself, did our
 No. 46. utmost to ascertain the minds of the shareholders in all things that we were
 Dr. doing.

McMichael
 cross-
 examined
 by Mr.
 Watson—
continued.

Mr. Arnoldi.—There is nothing of the kind stated in the pleadings, that you acted improperly.

Witness.—Well, I do not know ; it sounds like an insinuation against me. I am told I acted where I should not have acted, and so on, and at the time the notice was served upon us it was utterly impossible for us to get the mind of the shareholders at that time. We had warned them again and again, and Mr. 10
 Clemow and Mr. Robinson had threatened to resign unless something was done, and at last when this summons was served upon us I had not time—they were notified in England, but we had not time to get anything from them ; we had to do the best we could to defend the case, and if I had just dropped out and said “I will have nothing to do with it, I am not authorized by a meeting of the shareholders,” I would have been charged that, acting as solicitor, I neglected my duties. I got the best instructions I could, and got counsel and entered the best defence I could.

Re-examined by *Mr. Meredith.*

No. 47.
 Dr.
 McMichael
 re-examined
 by Mr.
 Meredith.

Q. And those instructions were from Mr. Codd ?—*A.* Yes, and more than 20 that they were from Stevens.

Q. With regard to that, surely not ; you have just said now—(Interrupted.)
A. But I mean to say Stevens had been the one from whom we had received instructions.

Q. But about that defence, the instructions were entirely from Codd ?—
A. Yes.

Q. And your defence was confined to the one point, that the work had not been completed in accordance with the—(Interrupted.)—*A.* As far as I remember it was all at that point.

Q. Who was it that advised with Mr. Blake and instructed him with regard 30 to the details of the matter after he had come upon the scene—*A.* Well, Mr. Blake—(Interrupted.)

Q. Was it Mr. Codd or you, or did you meet them ?—*A.* I met them ; I think it was a good deal through Mr. Codd ; in fact I knew so little of the figures that I could not do anything.

Q. That was done, of course, by Mr. Codd ?—*A.* Yes.

Q. It has been said in a general way that there was a reduction of the amount by the terms of this consent decree, is that quite accurate ?—*A.* What did I say ?

Q. It was put in your mouth, doctor, more than what you said ?—*A.* Well, 40 they should not take advantage of me.

Q. The statement was that reductions had been made in Mr. Charlebois' claim as the result of that judgment ?—*A.* Well, I do not know whether there were or not.

Q. The figures as I have them would show the other way. Now, is there any foundation at all—(Interrupted.)

Mr. Lewis.—\$61,000 reduction.

Mr. Meredith.—There were reductions, but there was still more than the amount due upon the claim.

Mr. Chrysler.—No.

His Lordship.—You are speaking perhaps about *quantum meruit*, but on the contract price of 200,000 pounds there would be a reduction.

Mr. Meredith.—There were certain things not done, my Lord, and those things were deducted by the terms of that consent judgment.

RECORD.

No. 47.

Dr.
McMichael
re-examined
by Mr.
Meredith—
continued.

Witness.—If you mean the deductions that appeared in the minutes that
10 had been the result of the former meeting, the arbitration, the deductions for the want of fencing and all those—(Interrupted.)

Q. Those had been fixed by the arbitration, had they?—No, but they had been agreed upon by the directors; Mr. Charlebois had consented that there should be \$20,000 for one thing and \$7,000 for another, and so on; it amounted to a considerable amount.

Q. And that had been arranged beforehand?—A. If they speak of that, why that appears on all the papers.

Q. It has been suggested that this payment of the money upon the shares was a mere form, and that there was no real payment of the shares; is that
20 correct?—A. I understood it was reality; that is all I can say; I meant it for reality.

Q. Was there anything to the contrary of that at all?—A. There was nothing suggested to the contrary; I would not have taken down \$200,000 to the bank—(Interrupted.)

Q. When these questions were being discussed as to what the contract meant and as to payment in full, you say Mr. Lewis did the talking?—A. I named the persons who, I said, were most interested, Mr. Lewis, Stevens, Gregson and myself.

Q. Do you remember whether Mr. Clemow and Allan—(Interrupted.)
30 A. No, I do not remember their saying—(Interrupted.)

Q. Were they there when this discussion was going on?—A. Yes, they were there.

Q. And interested in that subject?—A. Yes.

Q. On whose behalf was Mr. Lewis acting in taking the ground they were not bound to pay up the shares?—A. Acting on behalf of the opposite party.

Q. Who was the opposite party?—A. Well, acting for Charlebois directly, as I understood it, and indirectly for the others.

Q. By the others you mean Clemow and the rest?—A. Yes.

Q. Who were present?—A. Yes.

Q. I understand you to say that Mr. Stevens represented that he was
40 there acting for or representing capitalists in England?—A. That is what I understood.

Q. Not acting for himself?—A. Not acting for himself; but I did not understand that he was acting for any lender; I understand he was acting for men who were themselves absolutely making the purchase. When you speak about fraud, up until Mr. Delap came out I understood that I was acting for the shareholders, and if Mr. Delap was a shareholder I was acting for him. Of course when Delap came out he never came near me, nor asked what I

RECORD. had done, nor made the least inquiry about it. The first thing he did was to serve a summons on me and come with the counsel to examine me, and a shorthand writer to take down all I said. It did not look as if there was much friendship between the shareholders and directors.

No. 47.
Dr.
McMichael
re-examined
by Mr.
Meredith—
continued.

Mr. Meredith.—The doctor is to produce some letters in the morning, and we can conclude his examination then.

His Lordship.—Yes, but subject to that this is all.

Mr. Meredith.—Yes.

By *Mr. McCarthy* :—

No. 48.
Dr.
McMichael
re-cross-
examined
by Mr.
McCarthy.

Q. Did you see a gentleman by the name of Cansdale ?—*A.* Yes.

Q. Where did you see him ?—*A.* I think he was twice or three times in my office. 10

Q. I understand he was there at the time the proceedings were being taken which eventuated in the consent judgment ?—*A.* Yes.

Q. Was he aware of the proceedings ?—*A.* He was aware of the proceedings, and I think that the judgment had been granted. I noticed his examination, that he said he wanted minutes and I could not give him ; the fact was it was some time before we could get minutes to state what was really being done. I gave him all the information I could.

Q. It appears in the correspondence that he cabled the information that the Company were to take possession of the road ?—*A.* Yes. 20

Q. Now, the possession was agreed to be given to them under that consent judgment ?—*A.* Yes, I understand so.

His Lordship.—*Q.* The Company were to get possession of the road ?—*A.* Yes, my lord.

Mr. McCarthy.—Yes, my lord, under that consent judgment, and the correspondence which has been read will show he cabled that.

Witness.—It was a great object to get possession of the road, in order to be ready against the 15th December, when the charter might fail because we did not fulfil the contract with the Government. 30

Q. How did he introduce himself to you ; how did you know who this Mr. Cansdale was ?—*A.* I am not sure how, either by Mr. Codd or by a letter ; he came in to see me.

Q.—You understood he came from Stevens ; did you understand he was a clerk in Stevens' office ?—*A.* Yes, he seemed to come in in a friendly way, not that he was doing anything friendly.

Q. Had you seen him before, or is that the first time you saw him ?—*A.* I think that is the first time I saw him ; I saw him once or twice afterwards.

Q. You understood he was in Mr. Stevens' office, and you gave him information of everything that was going on ?—*A.* I gave him all I could. 40

Q. I suppose under the circumstances you were very glad to see him there at the time ?—*A.* Of course I was ; I was anxious to let everyone at home know all about it.

Q. I find here a letter which Mr. Blake wrote to Mr. Codd informing him of the result ; did you ever see that letter ?—*A.* Never ; at least I think not.

Mr. McCarthy.—I am going to prove it to-morrow, and I will read it.

Mr. Meredith.—No, I object.

Mr. McCarthy.—I will read it to refresh the memory of your witness.

Mr. Meredith.—My learned friend said you could only have a witness refresh his memory by a document written by himself. RECORD.

Mr. McCarthy.—That is in chief.

Mr. Meredith.—I object to that.

His Lordship.—This is a document sent to Mr. Codd ?

Mr. Meredith.—Yes.

His Lordship.—He was then the president of the Company.

Mr. Meredith.—Yes ; but supposing it were so, it would be a privileged document between solicitor and client. Dr. No. 48. McMichael re-cross-examined by Mr. McCarthy—continued.

10 *His Lordship.*—I suppose it is a question of fraud or no fraud ; the issue is altogether about this proceeding, whether it is a delusive one or not. I will note the objection and receive it.

(Letter read.)

Mr. McCarthy.—*Q.* Do you know what that alludes to : “ Are you entitled to the transfer of the other contract made with him to build another portion of the road ” ? *A.* Oh, yes ; that was a contract made with Charlebois to build fifty miles more, and it was an understood thing that that contract should be transferred to some person to be named by us. I had a considerable controversy to get it, but at last it was assigned—transferred.

20 *Q.* Do you think this a fair, square deal on the part of the Company, and that we were not beaten out of a good deal, from this letter ?

Mr. Meredith.—Oh.

Mr. McCarthy.—You need not answer that, as it is objected to. I will put in the letter to-morrow.

By Mr. Meredith :—

Q. You are a Defendant ?—*A.* I am sorry to say I am ; that is the first relation I appear towards Mr. Delap, I have done all I could for him. No. 49.

Q. In your 11th paragraph of your Statement of Defence referring to the arrangement “ The Plaintiffs have sworn that the road was finished, and this Defendant believed,” etc. ? (Reads.) *A.* The meaning is this, but I cannot swear to it ; I understood at that time, and I admitted to the learned judge, I admitted that the road-bed was finished, that the contract as far as the track was completed, but all I contended for was that there were not proper furnishings, proper running gear ; I understood that when Codd went up there that he found that instead of a connection with the C. P. R., that they could not transfer a single load on their road, could not connect it with the C. P. R. ; all they had was a contract or an agreement that Macdonald and the other had obtained from the C. P. R. allowing them to use the said road while they were building it, but they could not use the junction, that Mr. Codd had afterwards to buy some three 30 miles more and build a road of three miles to connect it with Chater, the place where the connection was subsequently formed ; and it will cost—well, a very large sum, I should say perhaps near \$50,000 to buy and build the three miles of road and complete the connection so that the traffic could go on ; that is what I meant by that. Dr. McMichael re-examined by Mr. Meredith.

Q. You say in paragraph 12—(Reads paragraph 12.). *A.* Well, I did not know that that three miles was necessary, and I believed at the time that the road was finished.

Q. “ And also that he was to be paid the price of the plans of which he

RECORD. had," etc.? (Reads.) *A.* There had been an action for those plans; that action was settled, but the plans were to be paid for.

No. 49.

Dr.

McMichael
re-examined
by Mr.
Meredith—
continued.

Q. "And did not fulfil the conditions of the judgment, etc., and the road was not finished as we had been led to expect?" *A.* The maps were not coming, and Mr. Codd was for months—(Interrupted.)

Mr. McCarthy.—This is with a view to credibility of the witness.

Witness.—I am quite content to be tried on that issue.

Mr. Meredith.—*Q.* I have here a certified copy of the report of the Committee of Council approved by the Governor-General on the 6th March 1890; I want to ask whether your Company or Board had any notice of that Order in Council?—*A.* I remember that now; I think so; I think that after that was obtained it was sent up to me.

Q. Had you anything to do, your Board or Company, with the obtaining of that or consenting to it?—*A.* Oh, no, I believe it was sent up to me, and I think at the time I did not understand it, and paid no attention to it.

Mr. Chrysler.—This is an interim certificate.

Mr. Meredith.—It is the recommendation that the grades be altered and the contract amended; the original belongs to the department, and we put in a certified copy.

(Adjourned at 6.20 p.m. till 9.30 a.m. to-morrow.)

20

Ottawa, Nov. 3rd, 1893.

Mr. Macdonald.—Before the evidence is gone on with, may I say a word respecting the position of the trustees. I feel that it is quite unnecessary for me to remain here on behalf of the trustees through all this endless taking of evidence. My position is a formal one; the trustees refuse to be made Plaintiffs, and, being Defendants, all they ask is that they shall receive the protection of the Court, and that the terms of the mortgage trust-deed shall be carried out by the conveyance of the land assigned.

Mr. Meredith.—While we are waiting for Mr. Anderson I might make a statement about what was said about the letters Mr. Delap did not produce. There was a little misunderstanding with regard to them. Upon the examination of Mr. Delap the letters were produced, and certain of them as to which Mr. Arnoldi waived the privilege, which he contended applied as to all of them, were used upon the examination and shown to the other side. Upon filing the affidavit on production those as to which the privilege is waived were produced; the others were referred to in the affidavit on production, and for them privilege was claimed, and that was assented to by the other side not making the order for further production, and so the matter remained. As to all these letters, whether the question is right or not, we are quite content to produce them; I wanted to make this explanation, so that the court would understand our position.

His Lordship.—Are they here yet?

Mr. Meredith.—They are not here yet, but should be here shortly.

Montague A. Anderson, sworn—Examined by Mr. Howland :—

RECORD.

Q. You are the manager of the Union Bank, the Defendants, at Ottawa ?
—A. Yes.

Q. It was through you that the transactions took place through which your bank claims in this action ?—A. Yes.

Q. Certain orders given by Mr. Charlebois on the Great North West Central Railway Company ?—A. It did not originate with me.

Q. They did not originate with you ?—A. No.

Q. Where did they originate ?—A. Head office.

10 Q. I examined you before, and did you not state to me that they originated with you ?—A. I may have misunderstood your question, but all these important transactions originated at the head office.

Q. It would have made a difference in the way we would have examined in this case, if you had not stated that ?—A. Well, the transaction went through me, but the authority must come from the head office.

His Lordship.—Where is the head office ?

Mr. Howland.—At Quebec, my lord. Q. We were very particular about that. Now, you say it was not through you that the application came first ?—A. I misunderstood your question at first ; it originated with my head office.

20 Q. The object of these questions was to find whether this was really an original transaction with the moneys advanced *de novo* on the faith of these new securities, or whether it was possibly a collateral security for some former transaction at the head office ; I asked you the question, and you stated that it was an entirely new and original transaction with you ?—A. The transaction commenced in my office, but the application originated in the head office.

Q. How are you able to speak to that if you are not in the head office—that the transaction came to you from the head office ?—A. I know the surroundings of it.

30 Q. Have you here the Company's account of the 16th September, your bank's account with the Great North West Railway Company of the 16th September 1889 ?—A. The book is in the office ; my ledger is here ; will I send for it ?

Q. Yes ?—A. It is the ledger, 1889. (Ledger sent for.)

Q. What was then the original history of your connection with the orders on the company, which are referred to in the pleadings, of your bank ?—A. I do not understand the question.

Q. Your bank is claiming under certain orders on the Company which are alleged in the bank's defence in this action ?—A. Yes.

Q. Amounting to \$150,000 ?—A. Yes.

40 Q. Tell me what you know about the origin of that claim ?—A. Well, we discounted \$150,000 of Charlebois' paper and took as collateral security these orders.

Q. Now you say this transaction originated in the head office ?—A. Well, the application for it was made down there, and they told me to do it.

Q. The head office told you to do it ?—A. Told me to advance Charlebois'—(Interrupted.)

No. 50.
Montague
A. Anderson
examined
by Mr.
Howland.

RECORD.

No. 50.
Montague
A. Anderson
examined
by Mr.
Howland—
continued.

Q. So that you do not know whether there was any previous connection between Charlebois' account and the bank, as to which this new security was collateral; you are not in a position to know that?—*A.* I am confident there was not.

Q. How do you know there was not; you are not the inspector of the head office of the bank?—*A.* No.

Q. And they chose to tell you as much as they like?—*A.* Yes.

Q. How do you know?—*A.* Well, I could not swear, but I feel confident there was not; there are a thousand things which induces one to feel so.

Q. You feel so, but you could not be confident about the dealings with the 10 head office?—*A.* Nothing was credited to the head office on account of advances to Charlebois, nothing of it went to the head office; if he had had a previous account I presume some of the advance would have gone to have paid them; but there is nothing credited to the head office that I remember; I cannot swear to the head office transactions, but I feel confident there was not.

Q. You told me when I examined you before that there was a large portion of the drafts on that credit as to which you could not tell the destination, because Mr. Charlebois drew his cheques here?—*A.* Yes.

Q. Then you cannot tell whether Mr. Charlebois used that credit to carry out some of the undertakings with the bank in Quebec?—*A.* No; I am quite 20 sure if there had been anything of the sort I would have heard, but some of the money he might have taken there.

Q. There was not more than \$75,000 of that amount, according to your former statement, I think, that was sent to any specified destination?—*A.* I cannot speak from memory about that; what I said at the time was the result of searches made at the time; I think that is the case.

Q. Have your books arrived yet?—*A.* Yes; they have been here all the time; this is the ledger of 1889. This is the current account of the Great North West Central Railway Company, November 30th 1889, to 31st December 1890.

30

Mr. Moss.—I suppose the witness is looking at his own account, and I suppose that is under the Bank Act; the bank is prohibited from exposing any of the accounts of their customers.

His Lordship.—It is in Court now, and it is not an absolute protection.

Mr. Moss.—The Company, I suppose, may call for their own account; I only suggest it, because I do not wish the bank people to be charged.

His Lordship.—They are obeying the subpoena of the Court.

Mr. Moss.—So long as it is understood they are doing it in that way, that is all I desire.

Mr. Howland.—*Q.* This is the account of the Great North West Central 40 Railway Company with your bank, commencing November 30th 1889, and ending what date?—*A.* December 31st 1890.

Mr. McCarthy.—Whose account is this?

Mr. Howland.—The account of the Great North West Central with the Union Bank.

Q. Now, will you go back to September, please?—*A.* It is in the Ledger before this. Here it is; here is the account from January, 1889, until November 1889; the other begins November 1889.

Q. Now, I want to see the account September 16th ?—*A.* Here it is.

RECORD.

Q. Now, the items in that are that you credit the Company on that day with \$243,333.33; you debit them on the same day \$243,333.33, and that balances their account at that time; in other words they had no funds in the Company's account with you on the morning of the 16th September 1889, and the sum or sums which made up \$243,333.33 were the only sums which were deposited to their credit that day ?—*A.* Yes.

—
No. 50.
Montague
A. Anderson
examined
by Mr.
Howland—
continued.

Q. Now, here are a number of cheques; do you recognize the stamp on the back of them ?—*A.* Yes.

10 *Mr. McCarthy.*—I do not think anybody is disputing any of that; surely we are not proving all those cheques over again.

Mr. Howland.—Well, this is the proper confirmation of it.

Mr. McCarthy.—Well, there is no dispute about it; I do not know what the confirmation is for.

Mr. Howland.—I am merely satisfying the witness.

Q. These are the stamps of the bank showing that those amounts passed through the bank on that day ?—*A.* Yes.

Q. And they were payable to bearer, credit various accounts, one credit the account of A. Charlebois, another Mr. Murray, another Mr. Devlin, another 20 Mr. Allan, and another Mr. Clemow; is that not so on the face of them ?—*A.* Yes.

Q. And these are cheques by Mr. Charles Richard Stevens to the Union Bank of Canada; then those appear to have been received and deposited in the Union Bank of Canada on that date ?—*A.* On the 16th September 1889, yes.

Q. There were no other sums received on that date ?—*A.* For what—for the Company ?

Q. Yes ?—*A.* No.

Q. Then these are the sums which make up that \$243,333.33 deposited with the bank on that day ?—*A.* I do not know.

30 *Q.* By adding them up you will see that they come to that ?

Mr. Nesbitt.—It is admitted by everybody sitting at the table that that is so, and that Mr. Charlebois' cheque paid out \$243,333.33; what more do you want ?

Mr. Howland.—I suppose everybody is represented to admit this. *Q.* You remember in your disposition you were asked the question and you produced the cheque from the Company to Mr. Charlebois, \$243,333.33, and that was the cheque on the opposite side to balance that account ?—*A.* Yes.

Q. Now, will you turn to the opening of the account with the Great North West Central Railway Company, the earlier book ?—*A.* It is the one previous 40 to January 1889.

Q. Have you with you your book in which you register the signatures of officers ?—*A.* No.

Q. Did you at the time of the negotiation of these notes of Mr. Charlebois' and the taking of the orders—who advised you on the form of those orders ? It was a large transaction ?—*A.* The taking of those orders at the time ?

Q. Yes ?—*A.* Oh, our solicitors advised me.

Q. Who is your solicitor, and who was your solicitor at that time ?—*A.* Mr. Lewis.

RECORD.

No 50.
Montague
A. Anderson
examined
by Mr.
Howland—
continued.

Q. And the documents, you may remember them, but they have been produced here, the documents consisted of an order accepted by the Company and also some representation by Codd signing as President of the Company?—

A. Yes, here is that book.

Q. Did you go personally to Mr. Codd to get that representation signed?—

A. I have tried to remember that, but I cannot; I cannot remember whether I went individually or not.

Q. At all events you sent or went yourself with a form of representation drawn up under the instructions of Mr. Lewis?—*A.* He may have come round; Mr. Codd may have come round; I cannot remember whether I went or whether 10 Codd came round.

Q. You cannot be sure whether Codd came to the Bank, or whether you went to him, or sent to him?—*A.* No.

Q. You cannot be sure whether this form of representation was drawn under Lewis' instructions?—*A.* That Codd signed?

Q. Yes?—*A.* Oh, no, I directed my teller to draw it out.

Q. Who directed you as to the form of it?—*A.* Nobody directed me.

Q. Who advised you as to the form of it?—*A.* I consulted my solicitor as to the form it ought to take.

Q. And the form he directed it ought to be in was the form in which it 20 was taken?—*A.* He gave me an idea of the form it should be, and I went and dictated it to the teller.

Q. You are not sure but Mr. Lewis went with it?—*A.* I did not say that; I might have sent the teller, or went myself, or Codd may have come over, but Mr. Lewis did not go over.

Q. Are you sure Mr. Lewis was not in the bank if Codd came over?—*A.* No; I went over to Mr. Lewis' firm and asked him what form it should take, and he gave me an idea of it, and I went back and gave the teller an indication—dictated it to the teller.

Q. Those orders purport to be against the balance that may be coming to 30 Mr. Charlebois under a certain contract?—*A.* I did not catch that question.

Q. Those orders that you took purported to be against the balance that might be coming to Charlebois out of a certain contract with the Great North West Central Railway Company; that was the effect of the order?—*A.* They speak for themselves.

Q. But that was the general effect of the order; that was what they related to—contract between Mr. Charlebois and the Great North West Central Railway Company?—*A.* Yes.

Q. Was that contract produced to you?—*A.* No.

Q. It was not produced to you?—*A.* No.

Q. On whose representation as to the contents of that contract did you act?—*A.* From my head office.

Q. There again we come back to the head office; then you did not go to the office of the Company and ask to see the contract referred to?—*A.* No.

Q. Have you got the first book?—*A.* It is the book before this—1888. (Book sent for.)

Q. Have you the deposit slips on which these sums were deposited, the \$243,333.33 on the 16th September 1889?—*A.* Have I them here?

Q. Yes?—A. No.

Q. I twice telephoned you to bring those?—A. I did not get any such message as that.

Q. Well, we want to have them, if you will kindly get them?—A. I got the message of yours last night.

Q. Were you not specially instructed as to those?—A. No, not those; I have the message here.

Q. "All deposit receipts connected with the Company's account in 1889"?—A. I have no deposit receipts.

10 Q. Deposit slip, I meant; that is a deposit receipt to a certain extent?—A. Oh, no; I have no deposit receipts.

Q. Were there deposit slips?—Well, a deposit receipt is a document carrying interest.

Mr. Howland.—Well, you can get that if you are called. I suppose your Lordship would allow the witness to be recalled for that purpose?

His Lordship.—Yes.

Mr. Howland.—Perhaps you can send for it and we will go on with some other branch.

His Lordship.—Q. Do you keep deposit slips as far back?—A. Well, we 20 keep vouchers; unless they are lost or mislaid in some way or another we keep them.

Mr. Howland.—Q. Just those connected with that day's transactions?—A. Just the 16th September, 1889.

Q. Yes. I want the deposit slips of the Great North West Central Railway Company of the 16th September, 1889?—A. I will send for them.

Q. This is the opening of the Great North West Central account?—A. Yes.

Q. The account was opened on July 14th, 1889?—Yes.

Q. With some deposit of \$1,746.70?—Yes.

30 Q. Then there are a considerable amount of transactions, and this is transferred then to that ledger which we have just seen?—A. Yes.

Q. There are transactions from July 14th to December 1888, 3rd 1888; and then we skip to September, 1889?—A. Yes.

Q. Will you give me that last book you had—the first book of the lot?—A. Here it is.

Q. I notice as you carry on your account here in 1889, as you open a new sheet it is headed "Great North West Central Railway Company," from Ledger S., Folio 439, J. A. Codd, president, Arthur Codd, secretary-treasurer. When did you receive notice that those gentlemen occupied those offices?—A.

40 Oh, I do not know.

Q. Was it a written notice or a personal notice?—A. I do not remember.

Q. Do you remember being introduced to any person representing the new Board on the 16th September, 1889?—A. Representing the new Board?

Q. Yes, or constituting the new Board or being an official of the new Board?—A. I knew Codd, I do not know when I began to know him, I do not recollect being introduced to him at any special meeting.

Q. In what manner were you satisfied that the persons to handle this

RECORD.

No. 50.

Montague

A. Anderson

examined

by Mr.

Howland—

continued.

RECORD. account and to sign cheques upon it had ceased to be the old officials and were J. A. Codd and Mr. Arthur Codd ?—*A.* I do not remember.

No. 50.
Montague
A. Anderson
examined
by Mr.
Howland—
continued.

Q. You have the signatures, you take signatures of president and secretary of companies ?—*A.* Yes, we make a practice of doing so.

Q. Have you your signature book ?—*A.* Yes.

Q. How do you have it indexed ?—*A.* Here it is.

Q. I want the original one first, of Mr. Codd ?—*A.* There is all I see. (Showing signature in book.)

Q. This is a memorandum "Union Bank of Canada, Ottawa, September 16th, 1889, the Great North West Central Company of Canada, Charles Richard 10 Stevens, president, J. A. Codd, secretary-treasurer, Arthur Codd, secretary-treasurer ;" then in pencil it is "Now J. A. Codd, president and Arthur Codd, secretary-treasurer." In whose writing is that pencil memorandum ?—*A.* My own.

Q. Then this was given you on the 16th September, 1889 ?—*A.* Yes.

Q. Now up to that time the officers of the Company had been Senator Clemow, president, and Mr. W. A. Allan, secretary ?—*A.* I do not remember that length of time I could not remember.

Q. You had a large number of cheques which must have been signed by these gentlemen, previous account ?—*A.* Must have been signed by whoever 20 was authorized there.

Q. Would it be a slip like that inserted in the book ?—*A.* Oh, I do not know ; they might have come and signed the book.

Q. Do not you recollect who came and introduced those gentlemen on the 16th September 1889 ?—*A.* I recollect there were a lot of them—Stevens and Dr. McMichael.

Q. Who else ?—*A.* I cannot recollect who introduced them.

Q. Who would be the person to introduce them ? It would be the former officer, would not it ?—*A.* Oh, not necessarily.

Q. The former secretary was Mr. W. A. Allan ?—*A.* I was under the 30 impression he was president.

His Lordship.—What is the object of the examination ? What do you wish to prove ? The company changed officers, I suppose.

Mr. Howland.—And that Mr. Allen attended at that time—(Interrupted).

Witness.—It might have been Charlebois.

Mr. Moss.—That what ?

Mr. Howland.—I think your lordship will understand the direction of the evidence afterwards.

His Lordship.—The witness does not seem to remember anything about it.

Witness.—It is several years ago, and my memory is at fault in the 40 matter.

Mr. Howland.—*Q.* You spoke of Mr. Charlebois ; what do you know about Mr. Charlebois in connection with the Company ?—*A.* I did not know anything about him ; I did not speak of him, except to say it might have been him who introduced him.

Q. If he was the person it would be because he was one of the directors ? —*A.* I do not know that he was ; you asked me who might have introduced him.

Q. You do not recollect; you do not know?—A. No, I do not recollect.

Q. But you knew at the time who were the directors?—A. I do not know that I did; I would know who were authorised to sign.

Q. You might have known who was secretary and who was president?—A. At the time, certainly; that is, if they were the ones authorised to sign. All I was concerned in was to know who had the right to sign; I did not know the other directors, or the affairs of the Company at all.

Q. Now, about the disposition of the proceeds of these drafts. In your former statement do you recollect now what you stated as to the discounts on the 5th November, 1889; you said, "We discounted the \$50,000 note; 4th December, 1889, discounted \$75,000; 6th January 1890, you discounted \$25,000?—A. Yes.

Q. Those were the whole of the discounts?—A. Yes.

Q. Now, on the other side of the account you were asked for a list of the payments?—A. Those discounts were not for the railway.

Q. They were not for the railway?—A. No.

Q. It was on the 23rd November you said, "This is all I can trace;" on the 23rd November, 1889, \$1,000 was transferred to Winnipeg by telegram?—A. Yes.

20 Q. To your branch in Winnipeg?—A. Yes.

Q. That is what you stated; on the 5th December, 1889, \$33,000 was wired to Winnipeg; 6th January, 1890, \$25,000 wired to Winnipeg; 4th January, 1890, \$4,000 wired to Winnipeg; "That is all I can trace, and all anybody could trace if they examined the books." The reason was, that all the other funds were chequed out, cheques that were cashed?—A. They were cheques paid here.

Q. They were not sent—(Interrupted.)—A. They were sent to us and cashed; whether they came in to us from some other bank or some private individual I do not know.

30 Q. Those are all that you can trace?—A. Yes.

By Mr. Moss:—

Q. What was it you first heard about this matter of Mr. Charlebois' application to the bank?—A. Beg pardon.

Q. What was it you first learned about the matter of Mr. Charlebois' application to the bank for the \$150,000?—A. He applied through my head office, if I recollect right, to get it, and they told me to give it to him.

Q. They told you to give him \$150,000?—A. Yes; not all at once, but as he got it.

Q. That is to say, you placed to his credit \$150,000?—A. Yes.

40 Q. Did you learn what he wanted it for?—A. Yes; to construct 50 miles of this Great North West Central Railway in the North-West.

Q. That is what it was required for?—A. That is what he told me he wanted it for, yes.

Q. Then he presented these orders upon the Company to you before that money was advanced?—A. Yes.

Q. And this letter from Mr. Codd was also procured before that?—A. Oh, yes, before the money was advanced.

RECORD.

No. 50.

Montague
A. Anderson
examined
by Mr.
Howland—
continued.

No. 51.

Montague
A. Anderson
cross-
examined
by Mr.
Moss.

RECORD.

No. 51.
Montague
A. Anderson
cross-
examined
by Mr.
Moss—
continued.

Q. And then you chequed out the money, or rather you paid out the money on Charlebois' cheques?—*A.* Yes.

Q. In what way, whatever he wanted, when he drew a cheque upon it, the money was paid out?—*A.* Yes.

Q. That is the way in which that transaction was carried through?—*A.* Yes.

Q. I suppose you did not inquire anything about the moneys at all?—*A.* Oh, no, I could not look to the disposition of moneys; we never do.

Q. Then you have held these orders ever since?—*A.* Yes.

Q. You heard of this judgment being recovered, did you not?—*A.* I heard 10 of it at the time, oh, yes.

Q. And you have been looking to that judgment as part of your security?—*A.* I regard that as collateral security.

Q. Part of your security?—*A.* Yes.

Q. And you have not taken any step, I believe, against anybody since?—*A.* No, I have been trusting on that judgment a good deal.

Mr. McCarthy.—Is he coming back about the deposit slips?

Mr. Meredith. No, we will hand that in.

Mr. Moss.—Q. I understood you to say you dictated that letter to your teller?—*A.* Yes. 20

Dr. Daniel McMichael, recalled; Examined by Mr. Meredith.

No. 52.
Dr.
McMichael
re-examined
by Mr.
Meredith.

Q. I forgot to ask you yesterday whether anything was said in the way of issuing certificates of shares, after you have got through your discussion about whether it would be paid up or not. Just look at these documents. This is a certificate dated 16th blank, and here are the following ones?—*A.* I have very little recollection about them.

Q. Look and see whether you recognise those signatures?—*A.* Oh, that is Mr. Clemow's and Allan's.

Q. And that?—*A.* The same.

Mr. McCarthy.—Are these the transfers? 30

Mr. Meredith.—Certificates.

(Witness identifies a number of certificates.)

Mr. Meredith.—These are the original certificates, signed by the president and secretary, 1 to 9.

Q. Do you know Mr. Murray's handwriting?—*A.* I have no doubt that is Mr. Murray's handwriting.

Q. Number 8?—*A.* Yes.

Q. Number 7?—*A.* Yes.

Q. Number 6?—*A.* Yes.

Q. Number 5?—*A.* Yes. 40

Q. Number 4, Charlebois?—*A.* Are they dated on the 16th?

Q. Yes; Number 4, Charlebois; Number 3, Devlin; Number 2, Allan; and Number 1, Mr. Clemow?—*A.* Yes.

Q. These are just the transfers to Stevens and the acceptances in Stevens' handwriting?—*A.* What I remember about it mainly is that everything was

transferred to Mr. Stevens, Exhibit 4, of 50 each, to make up Number 5 ; and I think those four were all transferred to Captain Murray. RECORD.

Q. There is one to yourself of 50 shares, and one to J. A. of 50 shares ?— No. 52.

A. I think those four were all transferred by Captain Murray. Dr.

Q. That is what the documents show ?—A. That is what my recollection is. McMichael re-examined by Mr. Meredith—

Q. Look at that paper ; is that Murray's signature ?—A. Yes ; that is Murray's handwriting, I believe. continued.

Q. This is one of the Exhibits of the Commission, letter from Murray to Codd, 9th May 1888. You know Mr. Murray's handwriting ?—A. I believe that to be his handwriting ; I know his signature, yes ; i may be mistaken, but I think it is ; I do not know whether I have ever seen it or not ; I mean that particular paper.

Q. Were you here, doctor, when the agreement between Mr. Codd and Mr. Stevens for the division of the shares was read ?—A. I do not know whether I was here when it was read.

Q. You know that document put in ?—A. Oh, I have seen it.

Q. Did you know anything of that at the time of these transactions of the 16th May ?—A. Nothing at all.

Q. When did you first learn of that ?—A. I think it was a long time after.

Mr. McCarthy.—Q. What was that ?—A. That was the agreement between Stevens and Codd as to the division of shares.

Q. Did you know it at the time of the consent judgment ?—A. Could not tell you whether I did or not ; I do not think I did, but I might have done it ; I would not be certain ; it came to my knowledge, I know, afterwards ; I think Codd showed it to me ; the agreement between Codd and Stevens and the agreement between Codd and Delap were neither of them ever shown to me.

By Mr. McCarthy :—

Q. I think you said your impression was that Stevens was the owner of everything at the time ?—A. Oh, certainly ; if not the owner, at any rate he was the controller, and he was the man who could do everything under the person for whom he was acting. No. 53.
Dr.
McMichael cross-examined by Mr. McCarthy.

Q. That is, some unknown principals ?—A. Yes ; I supposed he was capable of doing everything.

Q. Some unknown principals that you suspected existed ?—A. I may remark here about Stevens that when that construction contract was spoken of I declined to take much responsibility or any about it, because there was no engineer. I said, " It is a contract that requires an engineer's inspection, and I know nothing about railroad matters, and I cannot tell, and Stevens said he was not going to the expense." 40

Q. Of an engineer ?—A. No.

Mr. McCarthy.—Perhaps, my Lord, you will allow me to ask the doctor as to one matter he was interrogated about yesterday afternoon.

His Lordship.—Very well.

Mr. McCarthy.—Q. You said, doctor, that you do not think that that

RECORD. agreement between Mr. Codd and Mr. Clemow and Charlebois and others about the \$137,000 was spoken of on the 16th September, or referred to on the 16th September?—*A.* No, I do not remember.

No. 53.
Dr.
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

Q. Now, I want just to refresh your recollection about that. That excess agreement; you have forgotten, I think, the instrument that is on the back of that?—*A.* That was subsequently brought to my mind by a letter from Stevens' office.

Q. That seems to have been executed on that day?—*A.* I know what it is.

Q. Compared at Ottawa and executed on that day?—*A.* And placed in 10 my hands, and I remember I asked Mr. Codd if it was all right and I signed it.

Q. Looking at that, is there any doubt at all that this excess agreement must have been present to your mind at the time?—*A.* I do not think it was; I do not think that I did more than sign the paper, whatever it was, but it formed no part.

Q. (Reads document.) Now, that was executed on the 16th September at Ottawa?—*A.* Quite so; at that time I thought of that matter, if it came to my mind at all, as a matter entirely apart from what was going on between the others, and it passed from my mind as soon as it was executed; I did not look upon that as part of the transaction. I subsequently got a letter from Mr. 20 Stevens' office reminding me of it, and when he sent it to me it came to my mind as new, for I had entirely forgotten it.

Q. What is it you say you know about these certificates?—*A.* I simply said that that was the signature of Mr. Clemow, that is all, and Allan.

Q. These different ones, from 1 to 8, which have been in, you simply say that is the signature of the parties?—*A.* I simply spoke to the signature.

Q. You do not know anything more about them?—*A.* No.

Q. You said something yesterday that the form of the transfer had been changed?—*A.* Yes.

Q. Point me out to what change you refer to there?

30

Mr. Meredith.—There is a resolution showing it.

A. I will tell you what was done.

Mr. McCarthy.—*Q.* Explain what you mean by saying the form of transfer was changed?—*A.* I want to explain that I was told by Mr. Lewis that there was no form for a transfer of paid-up shares, and there had to be a resolution passed showing what the form would be; he pointed out to me the Act; that that Act said that the paid-up shares should be in the manner provided in the bye-law or something, and that resolution was passed to meet that emergency, and they said they would pass a resolution that it should be in the form already given in the statute with modifications, or something of that sort.

40

Q. Well, the only modification that I see—perhaps you will point me out some other—is that it especially excepts any warranty?—*A.* Well, if you will show me the form in the statute, then I will point out what I understood it was.

Q. I assume that the printed form is the form in the statute, and the only change is, "without any warranty or covenants whatsoever"?—*A.* The resolution speaks for itself.

Q. I know, but that is in pursuance of the resolution?—A. The resolution does not make any reference, I think, to covenant or warranty. RECORD.

Q. Yes, it does?—A. Let me look at the Statute. (Statute produced and shown, witness.) This is said to be for a transfer of unpaid shares, "Transfer except in the case of fully paid-up shares shall be in the form following, in consideration of so and so, transfer to him shares of stock, to hold," etc. I thought it mentioned how much was paid up. No. 53.
Dr.
McMichael
cross-
examined
by Mr.
McCarthy—
continued.

Q. It does not seem to me that this would be inapplicable at all?—A. Then that was in the case of fully paid shares, the transfer may be in such form prescribed by bye-law of the Company, and that resolution was to make the form which they now use, a form provided for paid-up shares, which it was not by the Statute.

Q. That is what you meant?—A. I meant they passed a resolution that should be the form of paid-up shares.

Q. And they also, as you remember, provide that there should be—I think the resolution provides for that—that it should be without any warranty on the part of the transferors or covenant whatsoever?—A. I do not think that is in the resolution.

Q. I think it is in words to that effect. Oh, you are right, doctor, there are some general words of that kind?—A. Yes, and the shares provided by Statute could not be paid-up shares unless made so by the Company.

Q. You said you would bring the letters of Mr. Stevens this morning?—A. I have brought all I could find; you must remember that Stevens principally corresponded with Codd, and I received my instructions from Mr. Codd often telling me what Stevens had said, but, of course, I understood that to be the instruction of the principal. There is the first letter I received, 4th January, 1890, and there is one of the 8th March, and there is one of the 5th April subsequently; I forget what that is; and here is one with regard to Daly's position.

Q. This is 23rd March, 1892; who is Daly?—A. He is the man who was buying for us in 1891; here are some telegrams in regard to the bonds; I do not know whether you want the telegrams.

Q. Yes, I want the telegrams?—A. And there is another, and I think that is all.

Mr. Meredith.—You are not tendering these yet?

Mr. McCarthy.—No, I am going to read them in a moment.

Witness.—There are some telegrams that cannot be translated without—
(Interrupted.)

Q. Without the A B C cypher?—A. Yes.

40 *Mr. McCarthy.*—We will put these all in as one Exhibit. (Exhibit 90.)
(Letters read.)

Witness.—You see, when Codd was in England they wrote to me.

Q. What is the reference there to a letter to Mr. Daly; what is the Daly referred to?—A. I had written to Mr. Daly as to the titles to the different portions of the road, and Daly had written me a long letter explaining it.

Q. That is Daly who was then practising up at Brandon?—A. Yes; he had been employed by the Company to get the contracts and procured deeds for parcels of land.

RECORD.

No. 53.

Dr.

McMichael

cross-

examined

by Mr.

McCarthy—

continued.

Q. Have you copies of your letters ? Do you keep copies of these letters ?

—A. Yes.

Q. You have not them here ?—A. No, they are in the letter-book.

Mr. McCarthy.—Perhaps your Lordship will allow us to put in the copies if it becomes necessary.

His Lordship.—Oh, yes.

Witness.—They are of no importance except to show what I was acting under.

Mr. McCarthy.—Q. They may be important because they show the representations made to you by Charlebois and what you thought about it and the 10 advice you gave. We will put them in at a subsequent date. (Letter 4th February, 1891, read.) What offer was that he refers to ?—A. I do not know what the offer was ; but the circumstances were these : In one of the contracts between them they were to pay Charlebois for all the expense done under the second contract ; that is as to the second 50 miles ; and he says he cannot see how they owed so much on that second 50 miles.

Q. “Not to make any further offer or take any further steps ?”—A. I do not know what that means.

Q. 5th March, 1891. Now, what are these, doctor ?—A. Those are telegrams that we sent ; you understand there was a direction that bonds should 20 be given.

Q. They are cables and answers together, are they ?—A. They are cables we sent to tell them to obey the Court, and the answers they gave.

Q. This is the answer in front ?—A. I think they are all answers but one or two ; there are one or two which are copies of mine.

Q. Are they interpreted ?—A. Yes.

Q. I mean are they here ?—A. No, I do not think they are.

Q. Have you got the cypher here ?—A. No, I do not know where it is, I am sure ; I will hunt it up. “Solvens” is Stevens. I cabled a good deal to try to get the bonds in order. (Cables read.) 30

Mr. McCarthy.—These others are in cypher ; we will put them in.

Q. This is in your writing ?—A. This is one I sent to them.

Q. 22nd February, 1892, “Court says Safe Deposit must hold bonds on deposit under terms judgment, 28th September ; reply ” ?—A. Yes.

Q. 25th February, “Motion for declaration the Company have made default that all bonds are not deposited under 5th clause judgment or to enforce Plaintiff’s rights and remedies ; judge says default made ; stands till Monday,” etc. That evidently was a postponement pending the motion. “Safe Company must have possession of bonds ; cable bonds deposited on terms of judgment.” These are evidently some answers to that. As a matter of fact, 40 doctor, what you contended before the Court upon that application of February was that the bonds were in deposit ?—A. Yes.

Q. The contest was as to whether the bonds were on deposit under the order of the Court ?—A. It was that the construction bonds had been used.

Q. And I think you filed some affidavits of the trustees or offered affidavits of the trustees, or did you do that ?—A. I think I filed those telegrams : I wanted to show what they had done ; I was anxious that they should obey the judgment.

Q. The next letter I read is 5th March, 1892. (Reads letter.)—A. I may mention to you that I had codes, but not the A B C code ; I had to send away up to Codd, who was in Manitoba, to get the explanation of it, and that is why they did not get the answer sooner.

Q. Here is a letter 5th March, 1892. (Reads.)—A. That was a bill of £5,000 Senator Clemow and I had endorsed for them ; it had been renewed and we had to get security.

Q. Letter 23rd March, 1892. (Reads.) That was an appeal from what ; from the order of February ?—A. From the order of February ; I gave notice of appeal, and I also tried to have it brought up at the next Divisional Court, but there had been lately a decision given that from a single judge not acting in Assizes you know, that the appeal was right to the Court of Appeal, and so the Court would not listen to me.

Q. And dismissed the motion ?—A. Yes—no, it was not dismissed ; the notice was struck out of the paper ; it was not brought up before the Court at all.

Q. What became of the appeal to the Court of Appeal ?—They said I should go on without security and I could not ; they seemed to know Canadian law.

20 Q. Then you gave that notice and you were not able to give the security ; you were not furnished with means to give the security, and that could not be prosecuted ?—A. Yes ; I wrote to them why it was, and told them why I could not, and I had written to them and told them I could not do it without security.

Q. Then there was an offer made, was there, that if the bonds were deposited with the Safe Deposit Company under the order of the Court that time should be given ?—A. Yes ; it was a pretty stringent order, and we could not accept it.

Q. Who was the offer from ?—A. I could not give you the particulars ; Mr. Osler made the offer.

30 Q. But what Mr. Charlebois was seeking was that these bonds should be placed in such a position as that they would remain there, unless sold and disposed of, and if sold and disposed of the money should be paid into Court ?—A. The difficulty was that if they bound them in there they could not use them.

Q. He says here he thought there might be an extension of time given and they might sell them. (Reads.) That was they had obtained possession under the judgment of the 20th—the Company had—and the possession was ordered to be restored again by the order of February ?—A. Yes.

Mr. Arnoldi.—No, that is a mistake ; it was proved differently yesterday.

40 Mr. McCarthy.—No, it was not.

Witness.—What I said was, the possession was got from Macdonald ; we got possession.

Q. You got possession from Macdonald in one sense ; that you do not know of your own knowledge ?—A. No.

Q. That was done up there ?—A. All my evidence amounted to was we got possession.

Q. There is no doubt that the order of September provided Charlebois should give you possession ?—A. Yes.

RECORD.

Mr. Arnoldi.—Could not do it.

No. 53.
Dr. Michael
cross-
examined
by Mr.
McCarthy—
continued.

Mr. McCarthy.—*Q.* And he did give possession?—*A.* No, he remained quiescent.
Q. But he did not interfere with you ; you got possession?—*A.* He did not interfere.
Q. He was claiming at the time that he was in possession and had a right to possession?—*A.* I will not swear to all that ; I am merely telling what I heard.

Q. At all events that was the order. (*Reads.*) Now, there is some allusion here to an interview they had with you last autumn, immediately after the 10 judgment being obtained. What does that refer to?—*A.* Cansdale.

Q. That refers to Cansdale, who probably wrote this letter, but you cannot tell?—*A.* No.

Q. Letter 9th April, 1892 ; 25th June, 1892. (*Reads.*)—*A.* Yes.

Mr. McCarthy.—Then about these other letters ; when could we have them, when could you give us copies of these ? You will be satisfied with the doctor's copies ?

Mr. Cassels.—Oh, yes.

Witness.—I will try and get them when I go home.

Q.—You could let us have them in a day or so, I suppose?—*A.* Yes. 20

Q. We want copies of these letters. Now, there is a reference made in this last letter to some proceedings which were to be taken by the firm of Blake, Cassels & Co. with reference to the proposed action to be brought by Messrs. Blake, Cassels & Co. of the part of the shareholders for the setting aside of the judgment of the 28th September, or at all events for the setting aside of the order obtained in February last for the sale of the road, etc. ; “ We are doing our very best here to obtain the necessary cash, and so on.” Now, what did you know about that?—*A.* I simply understood that they wished to have such an action brought.

Q. Whom did you understand it from?—*A.* I think from them. 30

Q. Whom do you mean ; from them?—*A.* From Stevens ; but I did not wish ; in fact they wanted to employ someone else.

Q. “ With reference to the proposed action to be brought by Blake, Cassels & Co.”—did that proposal emanate from England, or was it a proposal here?—*A.* I was not going to bring the action.

Q. Someone else may have been here in Toronto suggesting the proceeding?—*A.* I think what Mr. Codd intended was that they themselves should retain—(*Interrupted.*)

Q. But was there any discussion between you and Mr. Codd with reference to this proceeding ? Did Mr. Codd suggest it or did you suggest it?—*A.* When 40 it was spoken of Mr. Codd did speak of it.

Q. Your impression is that this suggestion about bringing an action emanated from Stevens?—Yes.

Mr. Meredith.—He did not say Stevens.

Mr. McCarthy.—Yes, by correspondence. I want to show whether it emanated from Stevens or Codd.

Witness.—Well, I do not know which one it emanated from ; they wanted to set aside the judgment ; I said I could not bring an action.

Q. If it did emanate from them it will appear in the correspondence ; there is no letter there from them to that effect ?—*A.* No.

Q. This is the first reference we find in Mr. Stevens' letter which I have read to you ?—*A.* Yes.

Q. If it emanated from Stevens the letter is not forthcoming at present ?—*A.* I have not it ; at least I cannot find it.

Q. Will you say it did not emanate from Codd ?—*A.* I cannot say anything very certain about it ; there is one thing very certain, I was not going to do it ; I did not think that I should do it.

10 Q. Could you give me any idea of the date of that, Doctor ; that is a telegram ?—*A.* No ; it is an answer to some question of mine : " Are the bonds deposited ? "

Q. There is no date there ?—*A.* Yes, received in Toronto.

Q. What year would it be ?—*A.* 1891 it would be.

Q. Can you tell me what that is in answer to ?—*A.* I asked " Are the bonds deposited ? "

Mr. Meredith.—Let us have the cables.

Mr. McCarthy.—I have not got them ; they are on the other side of the Atlantic.

20 *Mr. Meredith.*—Well, that is not the way to prove it ; I object to the purport of a cable being stated by the witness.

Mr. McCarthy.—I understood papers on the other side of the water could always be proved by secondary evidence because the Court cannot control them.

His Lordship.—I think that is the law.

Witness.—I think the question simply was, " Are the bonds deposited " ?

Mr. McCarthy.—Q. And to that you got this answer : " Yes, Stevens, Bawtree & Stevens, solicitors for trustees " ?—*A.* Well, Mr. Lewis had been asking me if the bonds had been deposited and I telegraphed home and got the answer.

30 Q. This would not appear to be in answer to that question, because the answer is " Yes, Stevens, Bawtree & Stevens, solicitors for trustees " ?—*A.* Simply " Are the bonds deposited " ? He would write or cable to that. I simply telegraphed them, " Are the bonds deposited " ? they chose to answer in that form, but it was not the form suggested by me.

Q. Here is another telegram ; this is when Mr. Stevens was in Montreal in 1889, is not it ?—*A.* Yes ; I thought that would come in earlier.

Q. Then you remember the letters that passed between you and him ; he wrote to you and you replied, and I did not know before that he had seen you ?

40 —*A.* That is the interview you spoke of.

Q. We did not speak of the interview ; this is after the 16th September ; this is October 7th, 1889 ; I think it is 1889 ?—*A.* It is 1889, yes.

His Lordship.—I thought Stevens was in the old country then ?

Mr. McCarthy.—Oh, no. He went to Montreal and wrote the Doctor from the Windsor Hotel " I leave here for Toronto to-morrow ; can I rely on seeing you some hours in Toronto ; please telegraph reply." Did he see you in consequence of that ?—*A.* Yes.

RECORD.

No. 53.

Dr.

McMichael

cross-

examined

by Mr.

McCarthy—

continued.

RECORD. Q. Could you tell what you discussed?—A. My memory is a blank about it.

No. 53. Q. Was it a long discussion?—A. I do not know.

Dr. Q. You were then a director of the road?—A. Oh, it was all in connection with the road, I have no doubt it was instructions as to what should be done, at that time I had very little to do because the road was being built.

McMichael cross-examined by Mr. McCarthy— Q. I have a copy here which I will read you of a letter from Mr. Codd of June 9th, 1892, to Stevens. (Letter read.) I am reading to you in order to refresh your recollection. This letter says—(Interrupted.)

Mr. Meredith.—You are not proposing to put that in.

10

Mr. McCarthy.—No, I am just reading to the witness.

Mr. Meredith.—It should not go on the notes.

Mr. McCarthy.—It must go into the notes. Q. "We have got Mr. Cassels, whose specialty is railway law, to study up the case," &c. (Reads letter down to the words "ruin to the enterprise." Having heard that and having regard to this letter, does that recall to your recollection this consultation between the railway expert and Mr. Blake and yourself?—A. I think I saw Mr. Cassels, but I do not think I myself formed an opinion as to it.

Q. You do not agree in the certainty of the success of the proceeding?—A. I simply heard what Mr. Cassels had to say, and I had nothing more to do with it. It was not contemplated that I should act with Mr. Cassels.

Q. That is 9th June that letter seems to have been written, and have you any doubt now that this reply of the 25th June of Mr. Stevens has reference to that—"With reference to the proposed action to be brought by Messrs. Blake, Cassels & Co. on the part of the shareholders for the setting aside of the judgment of the 28th February, at all events for the setting aside of the order," &c. (Reads down to the words "in his future operations.") Have you any doubt now that that was a suggestion from this side?—A. I do not know whether it was from this side or the other.

Q. Does that not recall it to your recollection?—A. No, it does not; of course you understand that I recommended that Mr. Cassels should be consulted.

Q. Whom did you recommend to consult Mr. Cassels?—A. I recommended them.

Q. You mean the solicitors in England?—A. Yes.

Q. Did you recommend that Codd should consult Mr. Cassels? Was not Codd acting for all parties, and was not this suit instituted by Codd, whom they afterwards turned on and slew?—A. Mr. Codd wanted an action brought.

Q. In other words, having fought the judgment in September and then consented to it, and having got, from Mr. Blake's letter, the very best possible defence, and having then fought the order in February to the best of your ability, and having appealed against that order unsuccessfully, then Mr. Codd suggested the only thing to strike at the root of the matter, to handicap Mr. Charlebois' future operations by bringing a suit on behalf of the shareholders, and having obtained the best railway expert's opinion in Canada that must surely succeed?—A. You see, Mr. McCarthy, it passed out of my hands; it seems by their view that I did not know what the true defences were; so I handed it

over ; once I got in communication with Messrs. Blake & Cassels on the subject RECORD.
I—(Interrupted.)

Q. You washed your hands of them ?—A. Yes.

Q. I see here he says also to Mr. Stevens, " Another item which must be provided, if we are to hold our own, is money to set aside the consent judgment "—(Interrupted.)

Mr. Meredith objects.

A. Mr. Codd showed very few of his letters to me.

His Lordship.—There is no jury ; the Doctor might read them.

10 Mr. Meredith.—They go upon the notes.

Mr. McCarthy.—Q. " If this is out of the way I could relieve you of the drain which, greatly to my regret, is going on," &c. (Reads.) Do you remember when I read you that, that this suggestion emanated from Mr. Codd as the last resource—the last ditch on which this defence was to be fought ?—

A. I remember the road was in great straits, and they could not get money, and he got a note discounted ; I was fool enough to endorse it, and I had to pay it.

Q. That is the reason you are made a defendant, because you have got a lien on the road, but that is not the point I was directing your attention to. The
20 point is this, " Another item which must be provided, if we are to hold our own, is money needed to set aside the consent judgment." Is not it the fact that the suggestion to set aside this consent judgment, or to try to set it aside, emanated from Codd ?—A. I am not quite sure about that.

Q. You would not say it was not the effect ?—A. I would not say it was not the effect Mr. Stevens and he both thought it should be done.

Q. We have got Stevens' view of it ; he adopts it ; but is there any doubt at all it emanated from this side ?—A. I do not know about that.

Q. Who was there on this side that was interested in that ? Who was there on this side but Mr. Codd ?—A. There was Mr. Cassels ; I know that
30 Mr. Cassels was consulted.

Q. There was nobody here ; Mr. Robinson, of course, occupied the same position that you did ; Hon. J. B. Robinson was one director and you were another, and Mr. Codd, and who were the five directors at the same time ?—

A. Mr. Clemow—(Interrupted.)

Q. We will assume it was not Mr. Clemow ?

Mr. Clemow.—Oh, no.

Mr. McCarthy.—Q. If it was not for Mr. Clemow, who was there here to suggest it but Mr. Codd ?—A. There was no person else.

Q. And if the suggestion came from this side it came from Mr. Codd ?
40 —(No answer.)

Q. Do you remember this cable ; this would probably be from Mr. Codd to you ?—A. 14th March 1890, " Desire to inform you before departure, Government Engineer Schreiber just reported 50 miles completed and equipped, with certain small exceptions ; the land-grant issues at once ; I therefore recommend that £50,000 be placed at Charlebois' credit at Union Bank." Yes, I remember that.

Q. You remember sending that ?—A. Yes.

No. 53.

Dr.

McMichael

cross-

examined

by Mr.

McCarthy—

continued.

RECORD. Q. It would be to Mr. Codd, not to Stevens?—*A.* It was before Codd left.

No. 53. Dr. Q. This was not a cable ; it was a telegraph message ?—*A.* It was sent to
McMichael him in London ; Stevens was there.

cross- Q. It was a cablegram ?—*A.* Yes.

examined Q. 14th March 1890 ?—*A.* I had already written recommending the pay-
by Mr. ment, and when Charlebois came and found I had done so, he wanted me—that
McCarthy— was sent at the instance of Mr. Charlebois ; he asked me to do it, but it was
continued. only what I had formerly written.

Q. I read from the Minutes 12th June 1890 ; “ Present, Robinson, 10
McMichael, Codd. Moved by Mr. Robinson, seconded by Dr. McMichael,” &c.
(Reads minutes.)—*A.* I may explain that ; we understood that if Charlebois
abandoned the road, he gave it up, then it had to be taken care of.

Q. Then I read from the minutes of 3rd July 1890 ; “ Moved by Hon.
J. B. Robinson, seconded by Hon F. Clemow, that the question having been
raised as to whether the proper formalities ” &c. (Reads resolution.) Do you
remember that ?—*A.* I have a slight remembrance of it ; if I were asked what
happened I could not tell you.

Q. But you remember that that was done ?—*A.* There was something of
the kind done. 20

Q. Do you know as a fact that Codd and Murdoch did go, and I believe
Robinson also, for the purpose of inspecting the line in pursuance of that reso-
lution ?—*A.* I do not know about that.

Q. We will take the 5th day of September ; this shows apparently he did
go ?—(Reads.) *A.* That is Codd’s style.

Q. That satisfies you that no doubt Codd and Robinson did go ?—*A.* I have
no doubt they did go ; I remember hearing of them going, but I do not know
whether they went in consequence of that.

Q. The last that was done at that Board meeting was this : “ The Board
then proceeded to consider the letter of Chrysler & Lewis, notifying the Company 30
he had completed his contract,” &c. (Reads.)—*A.* It showed we were doing
the best we could.

Q. Then 19th September ; September 28th, 4th October ? (Reads
minutes.)—*A.* By whom was that moved ?

Q. It must have been moved by all parties unanimous ; “ It was decided to
send,” it does not say by anybody ?—*A.* I think Clemow and Robinson were the
persons who insisted on it.

Q. And with your sense of judgment you did not object to it ?—*A.* No.

Mr. Meredith.—You are proving these by the Doctor, are you ?

Mr McCarthy.—No, I am trying to get further information from him, if 40
he knows anything. I will put this one in, 9th October 1890.

No. 54. By *Mr. Nesbitt* :—

Dr. Q. At the time you went into the bank, do you recollect whether Mr.
McMichael Stevens was with you or not ?—*A.* I think I saw Mr. Stevens in the bank ;
cross- he came in afterwards.

examined Q. Do you know who directed the disposition of the moneys ?—*A.* Well,
by Mr. I do not like to swear to it.
Nesbitt.

Q. Well, what is your recollection ?—A. My recollection is, that it was done by the person who was with me. RECORD.

Q. Well, who was that ?—A. I do not remember who that was, but Mr. Allan says it was he. No. 54.
Dr.

Q. Was Mr. Stevens with you ?—A. Mr. Stevens was not there. McMichael

Q. But Mr. Allan says he had nothing to do with that money ; would you contradict him upon that ?—A. All I know is, that when I took that money down I supposed I was taking it for the benefit of all parties. cross-
examined
by Mr.
Nesbitt—
continued.

Q. Do you know whether you deposited the cheques as you did to the credit of the Company under the direction of Mr. Stevens, or not ?—A. No ; it was not under the direction of Mr. Stevens, it was put down there ; who was the spokesman—I would not swear to it.

By Mr. Meredith :—

Q. Look at that letter, 7th November 1891 ; you recognise the handwriting ; that is produced by Codd ; it is a letter of Stevens, Bawtree, and Stevens ?—A. Yes. No. 55.
Dr.

Mr. McCarthy.—Is this something fresh ? McMichael

Mr. Meredith.—Yes. (Reads letter.) This has reference to a memorandum already in, signed by the parties, showing that the moneys were to be a security for the advances made by the clients. re-examined
by Mr.
Meredith.

Mr. McCarthy.—This will be subject to the objection.

His Lordship.—Oh, yes.

Mr. McCarthy.—They cannot make evidence by putting in Stevens' letter.

Witness.—I think it throws light on your question, where the thing originated.

Mr. McCarthy.—Not as to that proceeding ; that was not until long afterwards.

Mr. Meredith.—There are some other matters I won't take up your Lordship's time reading.

Q. Here is another letter from Stevens, 5th December 1891, to Codd ?—A. Yes. (Letter read.)

Mr. McCarthy.—I read the portion of the letter, 7th November 1891, not read by my learned friend.

Mr. Meredith.—Q. You spoke of negotiations between Mr. Nugent, representing Macdonald and Preston, or Macdonald and Schiller, as to the possession ; just look at that letter ; that is the letter from Nugent to Codd as to giving the consent to possession ; you know Mr. Nugent's handwriting ?—A. I would not say that is his writing, but I have no doubt it is his letter.

Mr. Meredith.—I suppose you will be content that that is Mr. Nugent's letter.

Mr. McCarthy.—I do not know ; we will probably have to examine Mr. Nugent.

Mr. Meredith.—Q. Do you know his writing ?—A. I would not like to swear to it.

RECORD. By *Mr. McCarthy* :—

No. 56.
Dr.
McMichael
re-cross-
examined
by Mr.
McCarthy.

Q. There is an action brought, I believe, Dr. McMichael, against Mr. Charlebois by the Company ?—*A.* Yes.

Q. And in consideration of the settlement that action was discontinued ?—*A.* Yes.

Q. Those are the papers showing it ?—*A.* I do not know the papers.

His Lordship.—When was that ?

Mr. McCarthy.—This is 9th September 1891. *Q.* The action was brought to recover the sum of \$350,000 damages for breach of contract, not building 50 miles of railway and delivering the same to Plaintiffs within the time mentioned in the contract, and for expenses, &c., in perfecting title and finishing the same ; \$500,000 altogether ; very modest claim ?—*A.* Yes.

His Lordship.—Who were the solicitors ?

Mr. McCarthy.—McMichael, Mills, and McMichael ; and then on the 16th September there is a letter from them. (*Reads.*)

His Lordship.—Is that the consent judgment referred to ?

Mr. McCarthy.—Yes.

James Bogle Delap, re-called ; Cross-Examined by *Mr. McCarthy*.

No. 57.
James Bogle
Delap
re-called.
Cross-
examined
by Mr.
McCarthy.

Q. Then you have brought me the letters here, have you, the missing letters, the letters between November 1889, I think it was, and May 1890 ?—*A.* Yes, I brought all the letters my solicitors have given me, my counsel have given me.

Q. Are you so completely in the hands of your solicitors and counsel that you cannot tell me whether these are all the letters you received ?—*A.* I handed them all the letters, and I handed you all the letters I received from them.

Q. That is all you will tell me ; I want you to give me all the letters you received from Stevens, not the letters you gave to your counsel and received back from them, but all the letters you received from your solicitors in London ; are they all here, or only such letters as your solicitors thought right to restore to you ?—*A.* I handed all my letters to them.

Q. You have said that already ; what I want to get is all the letters that you got from Stevens, or Stevens and Company, or Stevens alone, in connection with this matter ; that is what I want to get ; not the letters you gave to Howland and Arnoldi and that they chose to give you back ; I want all the letters ?—*A.* I cannot give any more than they gave back to me.

Q. Why ?—*A.* I can only give what they gave me.

Q. You are their property ?—Yes.

Q. You can tell them to give them all back to you ?—*A.* Yes.

Q. And if they give them all back you can produce them ?—*A.* Yes.

Q. They are merely your agents or servants ?—*A.* Yes.

Q. Why did not you do that ?—*A.* I asked them to give me all the letters, as the Court ordered me.

Q. I want all the letters ; do not waste time over it ?

Mr. Meredith.—There are no more letters.

Mr. McCarthy.—He won't say so.

Mr. Meredith.—You have not asked him.

Mr. McCarthy.—*Q.* Do you swear that I have got all the letters now ; that you produced all the letters that you received from Stevens ?—*A.* There is one letter that I received from Stevens that is not there.

Q. Well, where is that ?—*A.* Mr. Arnoldi may be able to tell you.

Mr. McCarthy.—Perhaps we will get that letter ; there is one letter withheld ; probably that is the letter we want to see.

Mr. Arnoldi.—What letter is that ?

Witness.—There is one letter signed by them you told me I did not want it.

Mr. Arnoldi.—Well, I will explain it.

Mr. McCarthy.—I do not want your explanation.

Mr. Arnoldi.—It is a private letter.

Mr. McCarthy.—I do not care ; I want to see it.

Mr. Arnoldi.—Well, let him see it.

Witness.—The letter you said I did not want ?

Mr. Arnoldi.—I do not know what letter it was. Is it a letter in 1892 ?

Witness.—Yes.

Mr. Arnoldi.—Oh, yes.

Mr. McCarthy.—Where is it ?

Mr. Arnoldi.—It is not produced here. It relates to Mr. Howland.

Mr. Meredith.—Let Mr. McCarthy see it, and if it has nothing to do with it, it will be all right.

Mr. McCarthy.—Or let his Lordship see it.
(Letter produced.)

Q. Would you sooner his Lordship should see it ?—*A.* I do not know ; refer to Mr. Arnoldi, please.

Mr. Arnoldi.—You may read it.

(Mr. McCarthy reads letter.)

Q. Now, is this the only one you have not produced ?

Mr. Arnoldi.—Yes, that is the only one.

Witness.—That is the only one I know of not produced ; I know of no other.

Mr. McCarthy.—This is 6th October 1892 ; this is as late as last October. (Reads.) That is bringing down the relationship of the Stevens firm and this litigation, and the supplying of money, to October 1892.

Mr. Arnoldi.—I must explain that. You have insisted on the production of the letter ; it is not written as solicitor for Delap ; it is as solicitors representing Messrs. Mansfield, for whom we are acting, that letter was written, and that is the reason we did not produce it.

Mr. McCarthy.—*Q.* You were a speculator in all kinds of fancy securities, I observe ; this has not been your first wild-cat adventure ?—*A.* Those were securities I inherited from my father.

Q. Some San Francisco investment ?—*A.* Yes.

Q. Kangaroos or kangarillas ; what are they ?—*A.* I have about £200 of it.

Q. What are they ?—*A.* It is an Australian thing I put a couple of hundred pounds in.

RECORD.

No. 57.

James Bogle

Delap

re-called.

Cross-

examined

by Mr.

McCarthy—

continued.

RECORD.

No. 57.
James Bogle
Delap
re-called.
Cross-
examined
by Mr.
McCarthy—
continued.

Q. Your own investment, or your father's ?—*A.* That is my father's.

Q. Canadian Pacific, Baltimore and Ohio ?—*A.* Those are all inherited.

Q. Souboo ; what is that ?—*A.* That is Souloo.

Q. What is that ?—*A.* That is the thing I have nothing to do with ; I was told about it, and have nothing to do with it at all.

Q. What does it mean ?—*A.* It was some mining thing ; I do not know about it ; I could not tell about it ; that gentleman, Mr. Castle Smith, is a cousin of my wife's, and he mentioned that to me ; I put a few hundred pounds into it.

Q. What is this extract ; what is it from ?—*A.* It is an extract from 10 Charles Stevens' letter, written while he was here in Canada. I was not aware that I had it.

Q. That is one that was supplied to you on his return, was it ?—*A.* No ; that was while he was out, I think.

Q. *Re* Great North West Railway Company of Canada, extract from letter ; that would be an extract from a letter the father received from the son, and which he sent to you ?—*A.* Yes. (Letter read.)

Q. Would that be in September 1889 ?—*A.* You will see it is endorsed on the back October 1889.

Q. Do you know who these blanks were for ; is there any reason why the 20 blanks were left ?—*A.* I think it was meant for me ; I think you will see by the context it means me.

Q. Now, can you tell me what letter that came in to you ?—*A.* I think you will see it alluded to in a letter ; I think the letter shows.

Mr. Arnoldi.—The 6th or 9th.

Mr. Chrysler.—Letter of the 7th, I think. Those are the extracts ; we have not got the letters.

Witness.—That is it, Mr. Chrysler.

Mr. McCarthy.—Q. Where is Charles' letter ?—*A.* That went back ; he asked me to return it.

Mr. McCarthy.—Then it must have been in the letter of the 9th, this extract.

Mr. Chrysler.—Yes.

Mr. McCarthy.—Q. Then the next letter after the one we had yesterday appears to be dated 25th January 1890 ; I think we have one of the 19th October and one of the 25th January ; what is the explanation of that long pause ?—I do not know.

Q. That is the time you negotiated for the taking up of the £25,000 acceptance ; that must have been a troublesome time, was it not ?—*A.* I believe I kept every letter, and I know I have withheld no letter.

Q. Do you mean to tell me you received no letter from the 19th of October till the 25th January ?—*A.* I have no knowledge of receiving any letter which is not there.

Q. Will you say that you did not receive any letter from your solicitor between the 19th of October and the 25th of January 1890 ?—*A.* I cannot say, except that I have no knowledge of any letter ; it is within the bounds of possibility I might have got one.

Q. Do not you remember the trouble there was about this £25,000 draft ;

it was about the 18th December?—*A.* There was so much done by interview all the time. RECORD.

Q. Were you in London a good deal with reference to that £25,000 draft? No. 57.
James Bogle
—*A.* I was going up to London when required. Delap

Q. Were you in London a good deal with reference to that £25,000 acceptance; try and think before you answer, and confine your answer to my question?—*A.* I went up for a day when I was wanted and two or three days. re-called.
Cross-
examined
by Mr.
McCarthy—

Q. When that acceptance matured due, how did you get the money to meet it?—*A.* By that £27,000—(Interrupted.) continued.

Q. Where did you get that?—*A.* There is a letter about that; that was to be arranged by Mr. Lord Gifford. You will see Lord Gifford arranged that.

Q. What was that arrangement for that £25,000?—*A.* The bill for £27,000 was arranged by Lord Gifford with the International.

Q. You still being on it; did you give any security to the International?—*A.* Oh, I raised money on mortgages.

Q. If you raised money on mortgages you would not want to borrow money from the International?—*A.* Oh, yes.

20 *Q.* When you borrowed this £27,000 from the International, did you give any security to the International?—*A.* I gave money to the International.

Q. That is when it came due; but in the first place did you give any security, or simply your name?—*A.* I could not tell you.

Q. You cannot say how that was?—*A.* No.

Q. You cannot say about that?—*A.* No.

Q. How did Lord Gifford come into it at that time; at your instance, or how?—*A.* You will see a letter which tells that exactly.

Q. Who from?—*A.* From Stevens; I was looking at it this morning.

30 *Q.* That was done some time in December, and there is no letter till the 25th January. (Reads.) 19th February is the next?—*A.* That is private affairs, except the latter part. (Reads letter.)

Q. So far there is no history?—*A.* I saw it in a letter this morning.

Q. Perhaps that letter has not been produced?—*A.* Oh, it is there; I put it among them; I put them all according to date; it was one produced this morning.

Q. Do you recollect anything at all about that; you know you accepted that bill of exchange on the understanding the contractor was to take it up; you found out before it came due the contractor was not going to take it up, and you had to take it up yourself; what was the explanation given to you about that?—*A.* Oh, that is a very recent thing, all about a lot of private 40 affairs, but it alludes to that matter; refers to Lord Gifford's money.

Q. What was the explanation given when you were told you would have to shoulder the responsibility yourself; you can tell me that in a word or two?—*A.* The money had to be provided somehow or other.

Q. What was the explanation given to you about the mistake that had been made about the contractor taking it up; that was a misapprehension?—*A.* I wish I had understood that and I would not have signed it.

RECORD.

No. 57.
James Bogle
Delap
recalled.
Cross-
examined
by Mr.
McCarthy—
continued.

Q. How did Stevens explain to you that he had been misled and misled you?—*A.* Well, really if I tried to give an explanation I know I could not tell.

Q. We will have to try to find it in the letters?—*A.* Lord Gifford was to be co-surety with me, according to what Stevens told me, for £27,000, and I to provide the half of £27,000 by pledging mortgages to the International Provident Institution, and then I understood I was not to be asked for any more on that, and that I had paid my half and he would pay his, and then time went on and the International got a judgment; and then again I was told it was all right, and I need not trouble, and they were first prevented from signing judgment, and then judgment was got, and then I got a letter in March 1892, telling me 10 they were threatening—(Interrupted).

Q. I do not see any letter of that date?—*A.* It was in March, 1892, I was told the International were going to press me.

Q. Then I see a letter here of the 27th May, or rather letter 16th May 1890, from Stevens; does that refer to this letter or are these private matters? (Reads.)

Mr. Arnoldi.—Everything you take from the witness you have got to put in.

Mr. McCarthy.—Oh, yes. Then 27th May (Reads.) 30th May 1890, 2nd June 1890, 17th July 1890. (Reads.) 20

A. I have been having those things for two years.

Q. 21st July 1890; 23rd July 1890; 15th August 1890; 19th August 1890; 22nd October 1890; do you remember what this £13,500 was wanted for?—*A.* That was, of course, the sum for the International.

Q. I think not?—*A.* Oh, no doubt about it.

Q. You think it was?—*A.* Yes.

Q. Who was this Mr. Carlisle whom you suggested seeing?—*A.* He was a friend and neighbour of mine, wealthy man, whom I thought might be interested in the matter.

Q. 25th November 1890, 21st November 1890. That refers to something 30 else, I suppose?—*A.* Yes.

Q. 2nd December 1890. (Reads.) Has that to do with this matter?—*A.* It was the £55,000 I raised in this matter.

Q. 4th December 1890. (Reads.) Will you tell me what these strings were; number 3 is the land; it was you who spoke of three strings to your bow; what were the three strings, do you remember?—*A.* I do not recollect.

His Lordship.—They are mentioned there.

Mr. McCarthy.—Yes, perhaps so.

Q. Then 18th December 1890. (Reads.) That £70,000 I suppose was the amount of your advance; the £55,000 and £15,000?—*A.* Yes, that is 40 what I raised from the International Provident Institution.

Q. You repaid the £55,000 loan you got to the International Provident by a further loan from them; you did not borrow from the International Provident in the first place the £55,000?—*A.* Yes, that is just what I did.

Q. And borrowed some time afterwards some further sum?—*A.* The £15,000, yes.

Q. 20th December, 1890. I will glance over these during the adjournment and see what they are. I want you to tell me now, passing for a moment from

these other matters, about the bonds ; you know you told me yesterday that the bonds were deposited in the bank at Halifax ; you do not produce your bonds in this Court at all. *A.* Yes, where I left them. RECORD.

Q. You do not produce them here ? *A.* I do not know what that means.

His Lordship.—There is only one here.

Mr. McCarthy.—*Q.* Why have not you brought them here ? If you are submitting your rights to the Court here why do not you bring the bonds into Court ? You may remember the trouble and the reason the summary judgment was given in February, because the bonds had not been in the judgment of the Court deposited where they ought to have been ; that was the whole trouble ; if you are seeking redress why do not you bring your bonds into Court ; are you afraid they will be impounded ? *A.* The undertaking was given at the time that they would not be interfered with. No. 57.
James Bogle
Delap
re-called.
Cross-
examined
by Mr.
McCarthy—
continued.

Q. Why do not you bring them here ? *A.* I am only waiting for the orders of the Court.

Q. You came here without the order of the Court and you brought certain letters here without the order of the Court ; what is the reason you do not bring the bonds here which you have got possession of ? *A.* I cannot tell that.

Q. Oh, you can tell surely ; were you advised not to ? *A.* No, I was not advised anything about it ; there they were left and the Court knew of their being left, and there they remained.

Mr. Cassels.—He gave an undertaking that they should be left there.

Mr. McCarthy.—No.

Witness.—I was present in Court when that undertaking was given.

Mr. Cassels.—There was an undertaking they should not be interfered with.

Mr. McCarthy.—We were seeking for cross relief with regard to the bonds ; we applied for an injunction with regard to that, and the arrangement was that pending this matter the bonds should not be interfered with. I want you to tell me why you will not bring them here ?—*A.* I never said I would not bring them here.

Q. Have you any objection to have them brought and put under the direction of the Court ?—*A.* I am here to obey the Court.

Q. Supposing the Court will not say anything about them, have you any objection to bring them here ?—*A.* If the Court did not say anything about it, I suppose the Court would be satisfied with the present position.

Q. Unless the Court directs you to bring them here you will not bring them here ?—*A.* I submit to the Court entirely.

Q. I want you to bring these bonds here, so that we can dispose of this matter and not have any more litigation ; if you are entitled to the bonds the Court will give them back ; what do you say about the bonds ; will you send for them ?—*A.* My Lord, it is impossible for me to answer this question.

Mr. Howland.—It is a question of his legal rights.

Mr. Meredith.—It is not in issue here.

Mr. McCarthy.—Yes, I think it is.

Mr. Meredith.—The proceeding in which the injunction was obtained is not in this action.

Mr. Lewis.—It is in this action enlarged to the trial,

RECORD. *Mr. Cassels.*—There was an undertaking they should not be interfered with.

No. 57. *Mr. Mc Carthy.*—And we are asking for cross relief.

James Bogle *Mr. Arnoldi.*—Plaintiff's Counsel advised Mr. Delap not to bring the bonds
Delap re-called. here.

Cross-examined by Mr. McCarthy—*His Lordship.*—I suppose the bonds should be in the jurisdiction of the Court if that is one of the matters to be disposed of. If the Defendants are entitled to cross relief on these bonds I suppose they should be within the jurisdiction of the Court.

Mr. Mc Carthy.—Q. You hear what his Lordship says?—A. I shall certainly obey the orders of the Court.

Q. And you will send for the bonds?

Mr. Cassels.—No; if his Lordship says the bonds should not be kept by Captain Delap they should be brought here.

His Lordship.—They should be within the jurisdiction of the Court when judgment is pronounced. If the Plaintiff comes here and is asking relief, and cross relief is sought, the bonds in question should be within the jurisdiction of the Court, and be within safe custody. We do not want to have them scattered about, but they should be in safe custody in the jurisdiction.

Mr. Cassels.—The undertaking was given that they would not be disposed of. The Court on that motion when that undertaking was given could have enforced that term, that they could be brought within the jurisdiction of the Court.

His Lordship.—That was an undertaking until further order.

Mr. Cassels.—The Plaintiff accepted that undertaking, but there was no undertaking then given, and no order has since been made that those bonds should be brought within the jurisdiction.

Mr. Mc Carthy.—Of course not, but we say there ought to be.

His Lordship.—The Court were endeavouring to preserve things *in statu quo*, and as long as the bonds remained available on an undertaking that was all right, but if the Court is to be put in proper train to give a decision, they should be within the jurisdiction.

Mr. Cassels.—But I am saying they were rightly in Halifax in this Deposit place.

His Lordship.—Oh, yes.

Mr. Cassels.—If his Lordship thinks they should be got.

Mr. Mc Carthy.—He has intimated that clearly.

His Lordship.—That can be spoken to afterwards.

Mr. Mc Carthy.—Then we hope to see these bonds here.

Mr. Cassels.—If his Lordship says these bonds belong to Charlebois, they will be brought here.

Mr. Mc Carthy.—If this gentleman comes here to ask for the interposition of the Court, he must bring the bonds in, so that the bonds can be dealt with by the Court.

His Lordship.—I think so; that is my present impression.

Mr. Mc Carthy.—Q. Now, then, coming to the history of the bonds, will you tell me when it was you got them, as a matter of fact?—A. Well, I really have not got the date.

Q. Well, call for any papers that will give you the date ?—A. I have not got any papers. RECORD.

Q. Did not you get a receipt for them from the Safe Deposit Company ; you did not carry them about in your breeches pocket ?—A. I recollect quite well when I put them in my own name, but when Mr. Stevens got them—(Inter-
rupted). No. 57.
James Bogle
Delap
re-called.
Cross-

Q. That is all I am asking about ; I want to get that date ; when was that ?—A. The date when I got them in my own name was in August 1892. examined
by Mr.
McCarthy—
continued.

His Lordship.—Q. How many ; do you know how many ?

10 *Mr. McCarthy.*—He got all but £50,000.

Witness.—I got all of them.

Q. All but £50,000 ?—A. No, I got all.

His Lordship.—How much is the issue ?

Mr. Nesbitt.—£515,600 sterling.

His Lordship.—That is the entire issue ?

Mr. McCarthy.—Yes.

His Lordship.—All that is capable of being issued.

Mr. McCarthy.—Yes, and probably a little more ; that is an issue on 100 miles, where there is only 50 miles constructed.

20 Q. You got them in your own name, and what did you do with them ? You put them back in the same Company's possession, the same Company they were in ?—A. I did not take them out of their possession ; they were in their possession, and they were transferred from Stevens' name to mine.

Q. I want the receipt you got at that time ; what was the name of the Company ?—A. The International Safe Deposit Company.

Q. 1, Queen Victoria-street ?—Yes.

Q. They were then in that Company's custody on behalf of Stevens, in the name of Stevens ?—A. Yes, in the name of Stevens, held for me.

Mr. Meredith.—Held for him.

30 *Mr. McCarthy.*—Q. I want now the receipt you got for them ?—A. If I had that to give you I should not have the bonds.

Q. I mean the deposit ; I want to see it ?—A. How on earth can you see it, as they would not give me that.

Q. I want to see it ?—A. You will have to go to London ; I gave it all to them.

Q. You gave that up when you put the bonds elsewhere ?—A. Yes.

Q. Have you a copy of it ?—A. Yes.

Q. You surrendered that to the Company when you got the bonds ?—
A. Certainly.

40 Q. How long did they remain there ?—A. They remained there until I left for Canada.

Q. All of them ?—A. Well, they all remained there, I believe.

Q. Well, in your name ? Do not be giving trouble, please ?—A. No trouble at all.

Q. Did they all remain there for you until you took them away to bring them to Canada ?—A. £50,000 were transferred.

Q. Now, I want to get that date, £50,000 handed over to Stevens ?—A. I do not know that I could recollect it.

RECORD. Q. Give it as near as you can ?—*A.* I left on the 9th February, and it was shortly before ; it would not be far from the 1st of February.

No. 57. Q. First February last ?—*A.* Yes ; as far as my recollection carries me.

James Bogle Q. Then these bonds you got from Stevens remained in this Company for Delap you until somewhere about the 1st February last ?—*A.* Yes.

re-called. Q. Then you withdrew £50,000 worth of bonds ?—*A.* I consented to— Cross-examined (Interrupted.)

by Mr. Q. You must have withdrawn it ?—*A.* I did not do it personally.

McCarthy— Q. You consented to £50,000 being held by them ?—*A.* Yes.

continued. *His Lordship.*—Q. By whom ?—*A.* By the Stevens firm. 10

Mr. McCarthy.—Q. There was no actual transfer ; just a receipt given to you for the balance, and a receipt to Stevens for the £50,000 ; they remained in the same Safe Deposit Company ?—*A.* So Mr. Castle Smith, who did it for me, informed me.

Q. Then they remained for about nine days, if I understand you, they remained for about nine days, the balance remained for about nine days in your name ?—*A.* Yes.

Q. Then you took them, when you were leaving for Canada you brought them as far as Halifax, and put them in the bank at Halifax ; now let me see that receipt ; where is that now ?—*A.* Well, really, I could not tell you where 20 it is for certain ; I might have it in my writing case at Toronto.

Q. You know you have that somewhere ; you know you would not tell us anything about that ; you would not tell us anything about where these bonds are ?—*A.* They are there to my order.

Q. I want to see that receipt ; could you send and get that for us if you have not got it here ?—*A.* I cannot be certain that it is there.

Q. Where is it ?—*A.* I think likely it is there ; I am pretty sure it is there.

Q. Where is it if it is not there ?—*A.* It is in all probability there.

Q. You did not give that to your solicitors ?—*A.* That I kept myself ; I 30 put it in my writing-case when I received it, and it went home to England with me, and it came back with me, and I believe it is in it now.

Q. Let me see if I can give you the date when you got the bonds from Stevens.

Mr. Chrysler.—16th August 1892.

Mr. McCarthy.—That we may take as the date, I suppose.

Mr. Cassels.—Yes, no doubt it is right.

Mr. McCarthy.—Q. I suppose without the letters you cannot tell me, or can you tell me in a word whether you heard of the proceedings that were going on here in Canada, the action that the Company had brought against 40 Charlebois, and the action that Charlebois had brought against the Company, and the dispute that was going on with reference to the construction of the road ; did you hear about that ?—I heard about that in the spring of 1892—of the judgment at least.

Q. I was not asking you about that ; did you hear in 1891, or when did you first hear of the claim that Charlebois was making to be paid, and of the difficulty that your solicitors had of raising the money to pay him, and of the threat that he would bring an action, and the fact that he had brought the

action, and of your solicitors having sent out Mr. Cansdale with reference to that ; did you hear about that at the time ; can you tell me that now, without looking at the letters ?—*A.* I never was aware that Cansdale came out in connection with that dispute.

Q. Did you hear about the dispute ; I only want to get your recollection of this at present ; did you hear of the dispute that was going on between the contractor, Cansdale—(Interrupted) ?—*A.* I am not aware that I heard about it before the Spring of 1892, when I came back from Switzerland at the end of March or beginning of April.

10 *Q.* You are not aware at present that you did ?—*A.* That was when I heard about the judgment.

Q. And the contractor having obtained an order for immediate payment and sale—(Interrupted).—*A.* Well, of the necessity of my being protected.

Q. You say now that you do not recollect hearing about the dispute between the contractor and the Company here during the summer of 1891 ?—*A.* No, I do not recollect.

Q. You will not say that you did not hear of it, but you will not say now that you did ; that is your position, I understand ?—*A.* Well, I think I learned that little by little, and it extended over a considerable time.

20 *Q.* I dare say the letters will show ?—*A.* The letters will show what I heard by letter, but they won't show what I heard by word of mouth.

Q. You heard a good deal more than the letters will show ?—*A.* Possibly.

Q. Well then, at that time, Stevens, from their letters here, say they were acting as solicitors for the Company ; I mean in 1891, and prior to 1891 they were the English solicitors for this Company ?—*A.* Well, I did not know whether they were or not, and I asked them one day, "Are you solicitors for the Company" ? and they said "No, we are not solicitors for the Company, except in so far as endeavouring to get the bonds sold, negotiated."

30 *Q.* To that extent ; there would not be very much more than that to do in England ; did they tell you they were solicitors in England for the purpose of disposing of the bonds ?—*A.* They said distinctly they did not consider themselves solicitors for the Company, but they were endeavouring to get the bonds sold. Well, they told me they did not consider themselves solicitors for the Company.

Q. One of the parties who have been examined, says they were solicitors for the Company ; it was read in the Commission day before yesterday ?—*A.* I do not know who it was. I asked him that question, and he gave me that answer.

Q. Who were the trustees of the bonds ?—*A.* Robert Lothian Curzon, and Lord Gifford.

40 *Q.* When did you first ascertain that they were the trustees of the bonds ?—*A.* Oh, I could not tell you.

Q. At the time that they were appointed trustees ?—*A.* I might have heard it and forgotten it, and then heard it again.

Q. Were you consulted with reference to them being appointed trustees, or did you leave that in the hands of your solicitors, or did you take any interest in it ?—*A.* Well, really at that time I did not know bonds wanted trustees.

RECORD.

No. 57.

James Bogle

Delap

re-called,

cross-

examined

by Mr.

McCarthy—

continued.

RECORD.

No. 57.
James Bogle
Delap
re-called,
cross-
examined
by Mr.
McCarthy—
continued.

Q. Were you consulted with reference to either of these gentlemen, or did you suggest their names as being trustees?—*A.* Oh, I did not suggest it.

Q. Were you consulted about it?—*A.* I do not recollect that I was.

Q. Did your solicitors tell you, or did they not tell you that this judgment had been obtained in Canada before you got the bonds; you got the bonds on the 16th August, and the judgment was obtained—(Interrupted)?—*A.* They told me that judgment was obtained—(Interrupted).

Q. It was in the spring of 1892, you heard about the proceedings?—*A.* Yes.

Q. You did not get the bonds until August 1892?—*A.* No; April 1892, I heard about it.

Q. They did not trouble you, I suppose, with the details of the legal proceedings; they would not give you the history or ask you to read the papers?—*A.* No.

Q. And I suppose you would not have cared to do that in any event; you would ask them to explain to you in a few short words the meaning of anything going on?—*A.* Yes.

Q. You say you were in Switzerland in the winter of 1892, the early part of 1892?—*A.* Yes.

Q. How long were you in Switzerland?—*A.* From just a few days before 20 Christmas until the end of March.

Q. It was on your return at the end of March you went to Stevens to find out how things were going on with regard to the railway?—*A.* They sent for me on account of the International.

Q. Did they tell you how matters were going on in Canada with regard to the railway?—*A.* When I got home I learned for the first time about the judgment.

Q. Did you understand what the judgment was for that Charlebois had obtained?—*A.* I really did not know what it meant.

Q. Did you understand this much that he had obtained a judgment directing 30 the payment of a large sum of money: I suppose that would be about £100,000 sterling, more than that, to be paid in six months, and that the Company had got possession of the road, and they were operating the road; did you understand that?—*A.* Well, I understood the Company were operating the road at the beginning of that year.

Q. Probably before you went away to Switzerland you heard that the Company were operating the road?—*A.* Yes, it was just about that time I understood that.

Q. And did you understand how the Company got possession of the road from the contractor?—*A.* The only thing I understood about that was as 40 soon as the line was running they would be in possession of the road, and that money would be forthcoming from the Manitoba Government that I should get.

Q. You were looking to get your capital back?—*A.* I was looking to get some of my own money back.

Q. So you understood they were in possession of the road, and running the road, and did you understand that a large sum of money had to be paid to the contractor?—*A.* I did not know about that then.

Q. You did not know about that till you returned from Switzerland?—**RECORD.**
 A. No, I did not and I did not understand it then.

Q. When you returned from Switzerland were you informed that possession of the road had been directed to be given up to the contractor, Charlebois, and there was a great deal of trouble?—**A.** No, I did not understand that then, not till later in the year.

Q. How much later did you understand that?—**A.** Well, I learned that there—**(Interrupted).**

Q. You see, in October 1891, we find this letter: "With regard to the
 10 " railway matters they seem to be progressing very favourably; we have a
 " cable from Cansdale," &c. **(Reads).** You must have known that as early
 as 8th October 1891, they had taken possession of the road and wanted
 £50,000 more; did you agree to give £50,000 more at that time?—**A.** I was
 tricked and deceived into—**(Interrupted).**

Q. Tell me first whether you agreed or not?—**A.** I was tricked and deceived
 into signing a bill for £50,000, and I did not know what it meant.

Q. Now be very careful. Did you agree to give £50,000?—**A.** I never
 agreed to give £50,000.

Q. Well, to endorse the £50,000?—**A.** I was deceived into endorsing a bill
 20 for £50,000.

His Lordship.—Q. That is a second £50,000?—**A.** Yes.

Mr. McCarthy.—Q. What was the deception practised on you with regard
 to that?—**A.** The deception practised on me with regard to that was that I
 was led to understand that the stock and bonds of the Company being in my
 name that there was difficulty in obtaining any advance to the Company.

Q. You were led to—**(Interrupted).**—**A.** I was led to understand that owing
 to the stock and bonds of the Company being in my name there was a difficulty
 in obtaining any advance for the Company, and I was asked if I would
 allow for the good of the company that the stock and bonds that I should
 30 hold should be made liable for some money being got, £50,000, which I was
 told would set the whole thing on such a footing that then I would be able
 to get my money back directly.

Q. There was not any deception in that?—**A.** Yes.

Q. Why?—**A.** Because I now find out if one endorses a bill you make
 yourself liable for all you have got, and that is the way I was deceived.

Q. What did you think the endorsement of the bill meant?—**A.** I thought
 one gave certain security, or allowed certain security to be held as against an
 advance, and that then the property represented by that security was charge-
 able for that advance but no other.

Q. I will read you another letter, 15th December 1891. **(Reads).** I suppose
 40 you understood this £50,000 was required for what we call rolling-stock:
 —**A.** Yes, we call it so at home.

Q. "Which you know all about, to put the cars, trucks, &c. in operation
 for the running of the trains," &c. ?—**A.** Yes.

Q. "And set it running." What do you say?—**A.** I say it was the most
 iniquitous thing that ever entered into the mind of man to suggest.

Q. When you left you have given a letter in which you said you would

No. 57.
James Bogle
Delap re-
called, cross-
examined
by Mr.
McCarthy—
continued.

RECORD. accept a bill for £50,000 in order to set it running ; what do you say to that ?—*A.* I say it was the most iniquitous thing ever was done.

No. 57.
James Bogle
Delap re-
called, cross-
examined
by Mr.
McCarthy—
continued.

Q. Never mind the strong language, that you gave a letter in which you stated that you would accept a bill for £50,000 to set it running, is that true ?—*A.* I do not think they would say it unless I did it.

Q. Do you doubt the letter ?—*A.* No.

Q. It is true here that you gave Codd a letter in which you stated you would accept for £50,000 in order to obtain possession of the railway, and set it running. Do you contradict that you gave that letter, because the letter will be in Codd's possession, in which you stated you would accept 10 a bill for £50,000 in order to enable him to obtain possession of the line and set it running ?—*A.* No, I do not state I did not give it ; I had no such intention of doing that.

Q. You did give such a letter, who was he to get possession from ; was there any person but Mr. Charlebois ?—*A.* Oh, I see that now.

Q. You might have seen it then if you had opened your eyes, I suppose. " We have, however, managed to dispense with it, and we have, as you are " aware, obtained the possession, subject to our setting the line in operation " with as little delay as possible, and the only bills we have agreed to accept " are in respect to the engines." So that you never had any liability upon 20 the £50,000, about which you are speaking at present ?—*A.* No, it turned out so.

Q. Never hurt in the least ?—*A.* I have been hurt more than the least.

Q. Not by this ; you were willing to accept a bill for £50,000, by which money was to be raised to get possession of the line ; but your solicitors managed to get possession without it. (*Reads.*) Who are the Brussels people ? *A.* I do not know their names ; at least, if I heard it, I do not recollect it.

Q. They were trying to sell to some people in Brussels ?—*A.* Yes, financial people, arranging about bonds.

Q. Then if these had been sold, you expected to get quite a pot of money 30 out of it, did not you, over and above the £55,000 and the £27,000 you had paid, and your 10,000 bonus and 5,000 shares, you expected to make a great deal more ; if they sold for £400,000, what did you expect to get out of it ?—*A.* I really do not know ; what was in the agreement I expected to get.

Q. But you would be entitled to a good deal more, would not you, under the circumstances ? The agreement was a very small sum, only £10,000 for an advance of £50,000 ; but you expected to get a great deal more than that £10,000 in money and 5,000 in stock ? That is £10,000 if he did pay, and he did pay and became entitled to his £10,000. Did Stevens ever say to you how much you would get if it was sold for £400,000 ?—*A.* He told me in the spring 40 of 1892 what surprised me greatly, that he had arranged for me to have half, and I did not understand how in the world that came.

Q. Then that is what you were to get, half of whatever was made out of it ; he told you in the spring of 1892 ?—*A.* Yes.

Q. Up to that time all you were relying upon was the agreement which would give you £50,000 in money and 5,000 in stock ; but in the spring of 1892 he told you he arranged for you to get half ; so that if it was sold for £400,000, what would your share of the profit have been ; you would have more than

doubled your money, would not you?—*A.* I cannot do that in my head; that is a matter of figures; but it surprised me, and I did not understand how I could have half.

Q. What did you say to Mr. Stevens when he said that to you?—*A.* I told him I did not know how that was.

Q. Did he explain to you how it was?—*A.* I do not recollect what explanation he gave.

Q. He gave you some explanation about it; did he satisfy you at the time that you were to have half?—*A.* He told me so.

10 *Q.* And you said you did not know how that was; that would call forth some further explanation from him, and did he in the end explain to you how you were to have half, or I do not care for the detail of it; did he make you satisfied you were to have half, and did you repudiate taking the half profits?—*A.* Well, I did not say anything particular one way or the other; what I was anxious to get was my money.

Q. And you had no objection to taking your money twice over if you got it; you had no objection to taking another £200,000?—*A.* I never thought I was going to get anything of the sort.

20 *Q.* You were to get what the figures show, and that you cannot do in your head?—*A.* If I was to have twice my money over it would not pay me for the bother and trouble.

Q. Well, now, to come back again for a moment to the bonds; you have heard about the judgment; you have heard of the two suits, no doubt; from what you tell me you had heard all about this matter substantially, I do not mean to say in technical terms; you had heard about the judgment Charlebois had, and you had heard about the proceedings he had taken to become possessed of the road again, and sell the road because the bonds had not been deposited, or did you not hear?—*A.* Oh, I never understood that.

30 *Q.* You did not know that because the bonds had not been deposited in accordance with the order of the meeting in September 1891, that in the month of February 1892, the Court ordered that Charlebois should be paid his money, and in default of payment the road should be sold?—*A.* It was quite new to me that it was in consequence of the bonds not having been deposited; what you are telling me now I never heard before.

Q. But you did hear that the road was to be sold?—*A.* That Mr. Charlebois had got power under a judgment to sell the road?

Q. Yes?—*A.* I heard that about the end of May 1892.

Q. Who from?—*A.* I heard that through a Mr. Lawrence.

40 *Q.* Who is Mr. Lawrence?—*A.* He is a man who is acquainted with Peron Castle Smith, whose name you will see in one of the letters; he met me accidentally and spoke of this matter, accidentally, and he told Mr. Peron Castle Smith that this Company was going to be wound up and sold out very shortly.

Q. Lawrence mentioned it to you?—*A.* No, Lawrence mentioned it to my friend Mr. Peron Castle Smith, and he wrote to me and told me he had heard something about the matter and to come up, and I went up to him, and he told me about it, and explained that Charlebois was in a position to sell the road and leave me without any redress.

Q. Is Mr. Smith a lawyer—solicitor?—*A.* Yes; they are brothers; one is a conveyancing solicitor, and another a genuine solicitor.

RECORD.

No. 57.

James Bogle
Delap re-
called, cross-
examined
by Mr.
McCarthy—
continued.

RECORD.

No. 57.
James Bogie
Delap re-
called, cross-
examined
by Mr.
McCarthy—
continued.

Q. In consequence of this did you go to Stevens, or did you ask Smith to go to Stevens?—*A.* Well, they asked me not to go to Mr. Stevens about it.

Q. Why?—*A.* Well, I hardly know why, but they asked me not to, and they said they would try and find out how the matter stood.

Q. Did they?—*A.* Mr. Lawrence wrote out to Canada, and Mr. Charlebois wrote back to him to say he had got a judgment and could sell out the line.

Q. Was that communicated to you?—*A.* I heard that.

Q. From whom? From Mr. Smith?—*A.* I heard that from Mr. Lawrence.

Q. You saw Mr. Lawrence yourself?—*A.* Yes.

10

Q. Did he show you Mr. Charlebois' letter?—*A.* No.

Q. Well, then, did you communicate with Mr. Stevens?—*A.* Yes.

Q. And then did you learn the whole story from them, what you had not already heard; did you learn from them you had heard about the judgment?—*A.* Their answer to that was that they had sent out to Messrs. Richards and Bradshaw, Winnipeg, to look after my interests, and that the judgment was a fraud upon me, and that my position did not admit of that judgment being carried out, and they told me we should hear in a few days it was set aside.

Q. They told you they were taking proceedings in your interests, and had sent out and employed solicitors in Winnipeg to attend to the suit, and you would hear about it in a few days?—*A.* Yes.

Q. Did you acquiesce in that?—*A.* I had acquiesced in £200 being sent out to my solicitors to look after my interests in the matter.

Q. And they had taken upon themselves to do that without consulting you?—*A.* No, they consulted me about that.

Q. They had taken upon themselves to employ solicitors to look after your interests before they consulted you, or did you authorise it from the first?—*A.* I authorised it as well as I recollect; that was earlier, but when I came back from Switzerland they told me about that and having these solicitors to look after it.

30

Q. That would be in March?—*A.* More likely beginning of April.

Q. Then you were taking proceedings as early as April to set aside this judgment, they telling you it was a fraud upon you?—*A.* Yes.

Mr. Arnoldi.—He did not say that.

His Lordship.—That is what he found out later; he did not find it out in April.

Mr. McCarthy.—Q. You did not find out in April it was a fraud upon you?—*A.* I understood in April, my lord, I think; I think it was in April that Stevens told me that it was a fraud upon me, but I could not be quite certain whether it was April or May. I did not see Mr. Lawrence till the 40 3rd of May.

(Adjourned 1.30 p.m. till 2.30 p.m.)

After Adjournment.

Mr. McCarthy.—I think, my lord, it might shorten my cross-examination of Mr. Delap if he was allowed to stand aside till I see the letters; there are

about 100 letters produced which I have never seen before, and I will either have to read them all to him or read them to myself. RECORD.

His Lordship.—Very well.

Mr. McCarthy.—Have you closed your case with the exception of Mr. Delap ?

Mr. Meredith.—Just a little more.

Mr. McCarthy.—Better go on then, and it will save time if I have an opportunity of reading these letters, otherwise I will have to read them all to him, and it may be only one or two here and there it will be necessary to refer to. I will read the letters and go on with Mr. Delap afterwards ; I cannot do it in Court, and it will be to-morrow morning before I read them through ; we can go on with our witnesses.

No. 57.
James Bogle
Delap re-
called, cross-
examined
by Mr.
McCarthy—
continued.

Frank Arnoldi, Sworn.—Examined by *Mr. Meredith.*

Q. Acting as solicitor, one of the firm of solicitors for Mr. Delap, did you make any endeavours from England to get the document of the 20th July, 1889, referred to ?—*A.* Yes, I was in England this summer for that among other purposes, and I went to the firm of Stevens, Bawtree and Stevens to get that document if it could be obtained ; I was not then aware of the evidence Mr. Cansdale has given upon the Commission with regard to it, but was informed in their office that evidence had been given to that effect by Mr. Cansdale. I saw the different members of the firm together and separately, and made all the inquiries that were possible to make about the history of the document from the beginning up to the present time, and they informed me that nobody had seen the document.

Mr. McCarthy.—Do not say what they informed you.

Mr. Meredith.—He can give the result of the search.

Mr. McCarthy.—No.

His Lordship.—He can say he inquired without saying what they said.

Witness.—I inquired without effect ; they informed me as to the history of the document that it had not been seen for some years—the original.

Mr. McCarthy.—That I object to.

Witness.—I asked them then to make a special search at my instance for it in every place that had not been looked into, and they said they were not aware of any place that had not been looked into, but they would set themselves and their clerk to work that day and make a further search ; they, I believe, did so.

Mr. McCarthy.—What ?—*A.* I am sure they did so from what I saw going on in the office, and the next day they told me that their search had proved ineffectual, and they believed it entirely lost, and I asked them individually about it, whether they had ever had it in their possession.

Mr. McCarthy.—That, of course, is not evidence.

Witness.—And the only one who ever had it in his possession was Mr. Stevens.

Mr. McCarthy.—That is not evidence.

Mr. Meredith.—*Q.* Did you succeed in getting it ?—*A.* No, could get no

RECORD. trace of it further than what Mr. Cansdale has said in his evidence ; then I may say on this side of the Atlantic I have inquired of everybody that had anything to do with it here that I could ever learn of, and the result was I could find nobody that ever had it here, and the only person who might have had it was Mr. John Arthur Codd. As to him, we have had orders to produce against him in this action in which he has produced everything in the ordinary way.

No. 58.
Frank
Arnoldi
examined
by Mr.
Meredith—
continued.

Mr. McCarthy.—They will speak for themselves.

Witness.—Yes, I am not meaning to repeat the affidavit, Mr. McCarthy.

Mr. McCarthy.—Then do not, please.

Witness.—And it speaks for itself ; it is not produced. I have cross-¹⁰ examined Mr. Codd more than once in this action and in other actions as to that document and its history.

Mr. McCarthy objects.

Witness.—The fact that he was cross-examined, and he has said he never had it.

Mr. McCarthy.—That is not evidence, what he said.

Witness.—That is what he swore to.

Mr. McCarthy.—You cannot give that evidence.

His Lordship.—He is a Defendant ; you can give that as against him, what²⁰ he stated.

Witness.—He stated that he had never had it ; and we have endeavoured to enforce these orders in every way without being able to get the production of that document ; for my own part, I do not believe it is possible to find it.

Mr. Meredith.—*Q.* Do you know whether Mr. John Arthur Codd is now in the country ?—*A.* Mr. John Arthur Codd is out of the Province of Ontario, I believe ; then I may say that I asked Mr. Charles Stevens to come to Canada to be a witness at the trial of this case on purpose to have him cross-examined as to that document ; he said he would not come because he could not by any possibility leave his business ; his father was too aged to continue to conduct it, and their interests were too vital for him to leave home for a week. Prior³⁰ to my going to England, in this action, as we all know, an application had been made for a Commission to examine witnesses in England ; the result of that Commission is here, but among other witnesses whose examination was sought under that Commission was Charles R. Stevens, for this very purpose, among others, of proving this document. I argued the motion for Commission in Chambers, and all the parties to this action opposed the granting of any Commission for the examination of Charles R. Stevens, and the order which is there attached to the Commission refuses the Commission for the examination of Charles R. Stevens.

His Lordship.—On the ground that he should appear personally ?⁴⁰

A. Yes. So we could do nothing more. We could not examine him in England without a Commission, and we have used every means that we could to get him to come out here ; he was written to before the trial came on in June, asking him to come out. Mr. Bristol, I am informed, tried to get him to come out when he was there in May, and I know I used every inducement that I could think of to get him to come out this summer for the trial, and we have cabled him, and informed him by cable of the fact of the trial being on now.

Mr. McCarthy.—It is not secondary evidence of Mr. Stevens we want.

RECORD.

No. 58.

Witness.—To get him to come out. I think we are entitled to show every-
thing we did. So that it has been impossible to get him here or to get
him examined for the purpose of the trial. Then I asked the firm of Stevens,
Bawtree, and Stevens also to give me the letters, any letters there were from
Mr. Delap to them. The reply which I got was that ever since Mr. Delap had
indicated that there was a want of confidence in them, and taken his business
out of their hands in August 1892, when Mr. Howland was there, that they did
not think that he was entitled to access to any of the papers relating to cor-
10 response between them, but that they were not aware whether there were
any such letters or not of any importance, and they declined to let me see any
there were. I may state that at the time, besides wanting that correspondence
for possible production in this action, it was most essential to get it for certain
other proceedings, transactions that were going on at that time in relation to
Mr. Delap's private investments, to which some of the letters were supposed to
relate, private business, and I was obliged to give up trying to get them because
I found it impossible.

Frank
Arnoldi
examined
by Mr.
Meredith—
continued.

I put in, my Lord, proceedings in the Manitoba action, which Mr. Chrysler
has seen.

20 *His Lordship.*—What is it, judgment or what?

Mr. Arnoldi.—There is an order staying the proceedings pending this
action; Bill of Complaint; answers of the Company; an order allowing the
answer to be filed, dated 15th May, 1893; and an order staying proceedings,
dated 27th May, 1893. (Exhibit 101.) Then I will put in one of the bonds.

Mr. McCarthy.—You can put that in afterwards.

Mr. Meredith.—That is the case, subject to the finishing of Delap's evidence
or anything arising out of that.

DEFENCE.

30 *Mr. McCarthy.*—I suppose we will reserve any objections we have to make
until after Delap is finished.

His Lordship.—Yes, better give any evidence you have.

Mr. Nesbitt.—Does your Lordship desire to hear argument?

His Lordship.—I think not; I think the shortest way is to take the
evidence. There are so many counsel to argue it will be partial work; it does
not go to the root of the case.

Mr. Nesbitt.—Except as to these four.

His Lordship.—Oh, I think we will not take the argument separately.

Mr. Nesbitt.—I would like to get mine in, so I need not wait here.

His Lordship.—Do you mean to take your evidence?

40 *Mr. Nesbitt.*—Unless your Lordship wishes to hear my argument. I will
give my evidence subject to my right.

His Lordship.—I think you had better give the evidence.

Mr. Nesbitt.—Not waiving my right.

His Lordship.—Not waiving your right.

Francis Clemow, Sworn.—Examined by Mr. Nesbitt.

RECORD.

No. 59.
Francis
Clemow
examined by
Mr. Nesbitt.

Q. You are one of the Defendants here ?—*A.* Yes.

Q. And I believe you were one of the original incorporators of the Company ?—*A.* I was.

Q. The Great North West Central ?—*A.* Yes.

Q. And there had been a Souris and Rocky Mountain Company, known as the Souris and Rocky Mountain, followed by the North West Central, and then the charter which you and four others took out of the Great North West Central ?—*A.* Yes.

Q. Then there were certain old debts, I believe, of these two roads, in connection with these two roads, that the new Company had to assume ?—*A.* Yes.

Q. And you issued stock in the new Company to the extent of \$500,000 ?—*A.* Yes.

Q. And I believe up to the 16th September—(Interrupted.)

Mr. Cassels.—Please do not lead him.

Mr. Nesbitt.—This is merely historical, as to the amount of money he paid in.

Mr. Cassels.—Oh, I beg pardon.

Mr. Nesbitt.—Q. Up to the 16th September how much was it you had paid in on your stock, do you remember ?—*A.* About \$29,000 odd. 20

Q. You had \$100,000 worth of stock, had you ?—*A.* Yes.

Q. An agreement has been put in here of the 9th April, 1888, an agreement that you and your partners made with a man called Codd ?—*A.* Yes.

Q. And there was a sum of \$173,000, speaking in the rough, that was to come to him, he was to be allowed, if he bought the undertaking mentioned in there for £200,000 ?—*A.* Yes.

Q. Had Codd been making any claim against the road ?—*A.* Yes.

Q. Do you remember what amount he was claiming ?—*A.* No ; fabulous amounts, large amounts.

Q. When you say fabulous, what do you mean ?—*A.* Oh, well, extending from \$173,000 to half a million, I do not know exactly. 30

Q. What was he claiming them for against you ?—*A.* Oh, for his services in the Souris and Rocky Mountain and various other things, and for parties he had with him.

Q. Moneys he had expended ?

Mr. Cassels.—He did not say that.

Witness.—I do not know that he went into particulars.

Mr. Cassels.—A wild-cat claim ?

Witness.—I do not know whether it was wild-cat or not ; all I can tell you is this, that we came to the conclusion at the time that it was in our interests to settle the claim ; as you know, there was a great deal said about that road ; there were newspaper articles appearing almost every day threatening us with law-suits and all sorts of things, and I considered, as one, it was to our advantage and our interest to settle that claim of Mr. Codd's. 40

Q.—Then he went to England, and I believe he came back here some time in the summer or fall of 1889 ; do you remember when he came back ?—He came back, anyway.

Q. Then, I believe you went up to Toronto ?—A. When was this ? RECORD.
September ?

Q. In September ?—A. Yes.

Q. What day of the week, do you remember, was it you were there ?—A. I think I went up on Friday, I think so.

Q. On a Friday ?—A. Yes.

Q. Whom did you see when you went there ?—A. I think that day Stevens and that party arrived.

Q. When you say Stevens and that party, whom do you mean ?—A. Mr. Stevens and that man Gregson, his Secretary, and Codd, I think, or whether Codd was there before or not, I do not know.

Q. Who of your partners was there with you ?—A. Allan was there and Charlebois was there.

Q. And Captain Murray was not, I believe ?—A. No, he was not.

Q. And Devlin was not ?—A. No.

Q. And what occurred now ?—A. Well, what occurred as far as I am concerned was, we had a meeting in the evening with Stevens, and discussed this matter.

Q. How did you become acquainted with Stevens ? What did he pose as ?—A. He posed there to me, according to my ideas, as a man undertaking to attend to the whole thing.

Q. Did you at that time hear anything of Delap ?—A. No.

Q. When did you first hear of Delap ?—A. The first time I heard of Delap was the time the road was about to be opened, and they required engines, and I was asked to endorse a draft on Stevens, Bawtree and Stevens, in part payment of the engines.

Q. That was long after the 16th September ?—A. Oh, long, long after.

Q. Did you know of any other people being behind Stevens at all ?—A. Oh, I did not know.

Q. You took him as the capitalist himself ?—A. Yes.

Q. Then what was the result of your interview with him and Codd ?—A. The result, as far as I was concerned, that I was so dissatisfied that I left the meeting in perfect disgust.

Q. You left the meeting in perfect disgust ?—A. Yes.

Q. What was said by you about the agreement of the 9th April—the Codd agreement ?—A. At that time ?

Q. Yes ?—A. Oh, I do not know; I think at that time we looked upon that agreement as being cancelled.

Q. As being cancelled ?—A. I think so.

Q. Then you broke off negotiations, I understand, with them ?—A. Yes.

Q. How did you come to take the matter up again ?—A. Well, I was leaving with Allan and Charlebois, and on the way to the train Charlebois said, incidentally, "Would you agree to sell out to me if I should make some "arrangement ?" Well, I said, "I do not know; we will see about that;" and he then returned to the hotel, and I did not see him until he had returned to Ottawa.

Q. Charlebois, yourself and Allan were coming away to Ottawa ?—A. Yes.

No. 59.
Francis
Clemow
examined by
Mr. Nesbitt
—continued.

RECORD.

Q. And on the way to the train you say Charlebois made some suggestion to you?—A. Incidentally, yes.

No. 59.
Francis
Clemow
examined by
Mr. Nesbitt
—continued.

Q. Asked you what you and the others would be willing to sell out to him for?—A. Yes.

Q. Was a sum named?—A. I have heard here it was, but I really had no recollection till I heard it here.

Q. Did Charlebois go down with you that night?—A. No, he did not.

Q. What was the next you heard about it?—A. The next I heard of it was when they returned from Toronto; when Charlebois and they returned from Toronto, on the Wednesday following, I think. 10

Q. Then when he came back from Toronto, what occurred?—A. When he came back from Toronto, after talking generally over the matter, I made an arrangement, as far as I was concerned, to sell out my entire interest to him.

Q. To sell out your entire interest to him?—A. Yes.

Q. Did he know what that was, what that represented?—A. Oh, I suppose so; yes, part of the \$200,000; he was to pay my proportion, according to the stock I had.

Q. Did you know then that the others were selling out?—(No answer.)

Q. There is an agreement that has been put in here that Charlebois and 20 Codd made in Toronto, on the Monday, 9th September?—A. I did not know about it.

Q. Did you know anything at all about it?—A. No; I did not know about that till I saw it the other day here.

Q. What you say is, you arranged with Charlebois to sell out your interest to him?—A. Yes.

Q. Did you take any further interest at that time in the matter?—A. I did not.

Q. It has been stated here that before the Monday, the 16th September, that a discussion took place about your shares being fully paid up; did you know 30 anything of that?—A. No, sir.

Q. Did you authorize anyone to make any arrangement of that kind for you?—A. Not for me.

Q. What were you selling out?—A. I was selling out my interest, whatever it was.

Q. Your interest, whatever it was, in the railway, the charter, and franchises?—A. My interest.

Q. When did you first hear anything about fully paid-up shares?—A. When I was examined here the other day.

Q. When did you first hear about fully paid-up shares?—A. On Monday, 40 I believe, the thing was talked of.

Q. What was said about it?—A. Stevens said that he wanted these shares paid up.

Q. And what did you say?—A. I said, as far as I was concerned, that I had nothing to do with Stevens, and would have nothing to say to him; the fact is, I had a bad impression of Stevens from the time I left Toronto, and I would not have anything to say to him or anything to do with him in any way.

Q. What was finally done about that?—A. I transferred my stock to

Stevens on the requisition of Charlebois, which is in writing, I believe, and I took good care in transferring my stock that it should be without warranty or covenants of any kind. RECORD.
No. 59.

Q. There is a resolution you passed about the shares being fully paid up ; how did you come to pass that ?—A. Mr. Stevens said he was to become the possessor and proprietor of the whole thing, and he desired it done in that way. Francis
Clemow
examined by
Mr. Nesbitt
—continued.

Q. Did he say anything else ?—A. He took all the responsibility.

Q. Is that the reason you did it in that way ?—A. The reason I did it in that way I considered myself divested, and it was a matter of Charlebois' 10 altogether ; I had nothing to do with it.

Q. What arrangement was made about the money you were to get ; how were you to be paid ?—A. My arrangement with Charlebois, I was to be paid cash.

Q. How did it come to be subsequently varied ?—A. I believe at the instance of Captain Murray we were induced to give them an extension of time for a portion ; that is, we were re-imbursed our actual money paid out, without any interest or anything else, some number of years' interest ; as far as I was concerned I was a losing party ; and that the whole thing was to be cash ; but, subsequently, upon the intervention, I think, of Murray, I am not certain, it was 20 agreed there should be an extension of time given by taking the drafts of Charlebois on the Company, which drafts I have here.

Q. Let me see your drafts. (*Drafts produced.*) When was that arranged ?—A. That was arranged on that Monday.

Q. When was it first spoken of what form it was to take ?—A. At that Monday meeting.

Q. Do you remember, though, at what time ?—A. Oh, well, some time in the afternoon, I suppose.

Q. Well, this is a charge upon that contract ; did you know about this contract with the Company ?—A. I knew nothing about his contract ; I knew 30 nothing about the terms or conditions of his contract.

Q. You would know he was getting a contract ?—A. I was told he was getting a contract.

Q. How is it you have put in here it is to be taken out of the first money ; how did that come to be put in ?—A. Well, that is the condition, I believe, that he made with the Company, and to secure our money, we considered it was the best way of getting our money, as soon as he was paid by the Company, out of the first moneys.

Q. Did you release him from personal responsibility on the Company accepting that ?—A. We did ; very stupid thing to have done, I believe.

40 Q. This order was accepted, apparently, after you went out of the Company ?—A. Yes.

Q. It was the new Company ?—A. Yes.

Q. Did you know anything about what the new Company were doing ; did you interest yourself ?—A. No, I did not ; I washed my hands of it, had nothing whatever to do with it.

Mr. Nesbitt.—I will put in a copy.

Witness.—Yes, I want to keep that.

Q. This is your security ?—A. I want to use that.

RECORD. *His Lordship.*—*Q.* You have not been paid yet?—*A.* No, that is my order ; I do not want to part with it.

No. 59. *His Lordship.*—How much is that ?

Francis *Mr. Nesbitt.*—\$23,415.79.—*Q.* Now, did you wait for that until the moneys examined by were coming due to Charlebois ?—*A.* Waited for that until this time.

Mr. Nesbitt *Q.* Did you subsequently know he had got a judgment against the —continued. Company ?—*A.* Yes.

Q. And then did you do anything upon the faith of that ?—*A.* No.

Q. Waited again ?—*A.* Yes.

Mr. Cassels.—Cannot the original go in ?

10

Witness.—No, I want to use it—negotiate it.

Mr. Nesbitt.—*Q.* Whose cheque did you get for your money ?—*A.* I got Charlebois' cheque.

Q. Were you aware of the form that was adopted about the payment of the money from Stevens into the Company, and so on ?—*A.* I was not until I saw the cheques here.

Q. That is that a cheque had been put to your credit ?—*A.* Yes ; I was very much surprised.

Q. Not put to your credit, but put to the credit of the Union Bank, and in the body of it, " On account of Hon. F. Clemow " ?—*A.* I saw it when I was 20 examined.

Q. You knew nothing of it at the time ?—*A.* No, never heard of it.

Q. Did not take part in it ?—*A.* No.

Q. Was there any idea of Stevens loaning you any money at all ?—*A.* Oh, no.

Q. Or advancing any money to you ?—*A.* Oh, no.

Q. Was there any other idea throughout the whole transaction than that you were selling out what interest you had ?—*A.* That is all I had anyway.

Q. And you say that Stevens said to put it there in the form it was done, and he would take the responsibility ?—*A.* Whatever Charlebois desired me to 30 do I did, considering Charlebois was indebted to me ; I had sold out to him, and it was a closed transaction, and I had nothing further to do with it.

Q. Your bargain was with Charlebois ?—*A.* Yes, it is in writing.

Q. He told you to assign to Stevens ?—*A.* Yes.

Q. The bargain was you were to get so much money, and that is all you were caring about ?—*A.* Yes.

Q. Now, Preston, in his evidence, says that you took some part with the cancellation of the Sproule contract ; had you anything to do with that at all in the old Company ?—*A.* I suppose these things were all done, and the cancellation took place.

Q. But, subsequently, that you were interfering in the matter ?—*A.* Oh, 40 no, not subsequently.

Q. You afterwards went into the new Company, I believe ?—*A.* Some time after, yes.

Q. You got some 50 shares assigned to you in November ?—*A.* Yes.

Q. How did that come about ?—*A.* They asked me to become a director.

Q. Who asked you ?—*A.* Codd.

Q. And then from that on how long did you continue in the new concern ? RECORD.
—A. Till April 1891 or 1892, I think.

Q. Were you a director at the time the judgment was got ?—A. I think I was, was not I ?

Mr McCarthy.—Yes, you were.

Mr. Nesbitt.—Q. Did you pay for that stock ?—A. No.

Q. It was to qualify you as a director ?—A. Yes.

Q. Simply ?—A. That is all ; I have got the stock certificate here.

Q. Did you have anything to do with Cansdale when he was out here ?—

10 A. No.

Q. You gave him no authority in any way ?—A. To Cansdale ?

Q. Yes ?—A. No, no.

Q. Had no dealings of that kind ?—A. No ; I had met Cansdale just casually, but he gave me a wide berth.

Q. Afterwards, I believe, you endorsed for this Company ?—A. I endorsed a £5,000 sterling draft.

Q. For rails, or something of that kind ?—A. No, it was to pay part, I believe, of the engines and the building of that three-mile road to Chater ; it was the opening of the road ; only for my advancing the money at that time
20 the road never would have been opened.

Q. Now, at the time that this was sold out to Charlebois, what was the position of matters ; you and your four partners had advanced the amounts of money that we have heard of here ; you had paid 30 per cent. about in on your stock, and what sort of franchise did you think you had at that time ; what did you think of the charter ?—A. I always thought the charter was very valuable, and I think so yet.

Q. Why ?—A. Because it is a good road, and good country, and good land grant, and everything else connected with it.

Q. Is there any other road, as a matter of fact, in the North West that had
30 obtained a land grant of that sort from the Government ?—A. Oh, yes.

Q. What other road ?—A. The Manitoba and North Western, and some other roads.

Q. But none since ?—A. No, I think they rather stopped that.

Q. So that the charter you sold out you considered a very valuable franchise ?—A. If it was well managed, and would be yet.

Q. You apparently had faith in the road long afterwards ?—A. Yes, and I have faith in it yet.

By Mr. McCarthy :—

Q. You joined the Board, you say, at the request of Mr. Codd ?—A. I
40 think so.

Q. And you continued on the Board from that time out until some time after the litigation ?—A. Yes, I think the meeting before the last, 1891 or 1892, I gave up.

Q. Were you acting *bonâ fide* and honestly in the interest of the road then from that time out ?—A. I was, and I consider in the interests of the parties who owned the road, and did everything a man could do,

RECORD. Q. You had no communication yourself with the English—(*Interrupted.*)

—A. No.

No. 60. Francis Clemow examined by Mr. McCarthy—*continued.* Q. You were aware of the communications Codd had from time to time?—A. No.

Q. They were not read always?—A. No.

Q. Were they read at the Board meetings?—A. Well, some of them, just what he wanted; he was a very close man, hard to get anything out of him.

Q. You were acting honestly in the interests of the road?—A. Yes.

Q. You were not on the Board by reason of any claim you had, or any- 10 thing of that kind?—A. No, sir.

No. 61. Francis Clemow cross-examined by Mr. Meredith.

Cross-examined by Mr. Meredith:—

Q. You say that the capital of the Company was \$500,000, the subscribed capital?—A. Yes.

Q. The capital was a million?—A. Yes, more than a million, two millions, I think.

Q. Had any more been issued than \$500,000?—A. At that time I think not.

Q. And you transferred your shares by this transfer; this is the certificate you issued. (Certificate book, Exhibit 89.) I suppose you did 20 nothing as president of the Company after you had ceased to be shareholder?—A. No.

Q. That is your signature?—A. Yes, sir.

Q. And the body of that is in the handwriting of Mr. Allan, I think?—A. I think so, yes.

Q. And that is certificate number 1, and the same as to this?—A. Yes.

Q. All of these you issued while you were still a shareholder and president of the Company?—A. Yes.

Q. And Allan signed also?—A. Yes, I signed a transfer to Charles Richard Stevens, of London, England, for 1,000 shares of stock. 30

Q. Just confine yourself to the questions I am asking you, who were present at the meeting of the 16th September 1889?—A. That will tell you there.

Q. I want it from your recollection?—A. If you will show me that.—(*Interrupted.*)

Q. I want it from your recollection who were present at the meeting of the 16th September 1889, the one you have been talking about?—A. I think that Allan was present; I was present, and Charlebois was present, and I do not know whether Devlin was present or Murray.

Q. Was Dr. McMichael there?—A. Yes, Dr. McMichael was there. 40

Q. Representing whom?—A. That I do not know.

Q. Do you mean to say you do not know for whom Dr. McMichael was there?—A. I mean to say I do not know.

Q. Did you hear what he said?—A. Well, I do not know that I did; he said very little; I took very little interest in it.

Q.—Were you present at the discussion that took place when Dr. McMichael was there?—A. I was present, but I took no interest in it at all.

Q. Was Mr. Stevens there?—A. Mr. Stevens was there.

Q. How long did the meeting last?—A. It lasted from morning till late in the afternoon.

Q. And what was the last thing done at the meeting?—A. I think the last thing done was transferring the stock and seats at the Board, and others taking their place.

Q. And you remained till that was done?—A. Yes.

10 Q. And did your associates remain there?—A. I think some of them did.

Q. Well, all of them that were there?—A. I do not remember.

Q. You told Mr. Nesbitt you had nothing to do with the paying up of these shares; the first resolution which was passed must have been passed while you were in the chair, and present; that would be so, would not it? The first resolution provides, "Whereas at the annual general meeting, held on 4th June, a resolution was passed by the Company's shareholders." (Reads down to "discount of 25 per cent.") Who were the shareholders at that time?—A. They were the original parties, whom I did not consider—(Interrupted.)

20 Q. Who were the shareholders referred to at that meeting?—A. The original shareholders.

Q. You were present and put that resolution to the meeting?—A. Yes.

Q. And it says: "Whereas all the subscribers to the stock being all the shareholders, have offered to pay their stock in full, less a discount of 25 per cent."?—A. Yes.

Q. You would not write that unless it was true?—A. I did not write that.

Q. But that is the record of the meeting?—A. Well, it speaks for itself.

Q. And that was put to the meeting by you?—A. Yes.

Q. And yet you say now the shareholders did not offer to pay—(Interrupted)?—A. I did not say anything of the kind.

30 Q. Did you offer to pay your stock in full?—A. Well, I did not.

Q. How did you come to write that, that the shareholders offered to do that?—A. It was a resolution passed by the meeting.

Q. By you and your four shareholders?—A. At that time I had disposed of my stock.

Q. But at that time you were still shareholder?—A. I was not.

Q. You had the shares standing in your name?—A. Yes; but I had previously agreed to sell to Charlebois.

Q. You had not transferred them?—A. No.

Q. Nothing binding?—A. No.

40 Q. Nothing in writing?—A. No; but Charlebois bought them from me.

Q. "All the subscribers to the stock being all the shareholders, have offered to pay their stock in full, less a discount of 25 per cent." ; that is true?—A. That is on the minutes.

Q. Is it true?—A. I do not know.

Q. As far as you are concerned, it is true?—A. No, it is not.

Q. How did you come to write it?—A. I did not write it.

Q. It was written, and put to the meeting by you?—A. Yes.

Q. "Be it resolved that a payment be accepted in full, from all stock-

RECORD.
No. 61.
Francis
Clemow
cross-
examined
by Mr.
Meredith—
continued.

RECORD. holders, less such discount, &c., and script be issued to stockholders, to the full amount of stock subscribed." That was to authorise you and Allan to issue these script certificates ?—*A.* Yes.

No. 61.
Francis
Clemow
cross-
examined
by Mr.
Meredith—
continued.

Q. And you did issue them ?—*A.* Well, that is all true.

Q. And then next, that this form given in the Act be adopted as the form for the paid-up shares, with any addition that may be necessary or fitting ?—*A.* It is there ; I do not recollect the phraseology of it. It is there plain enough.

Q. You have not told me Mr. Lewis was there ; he was there ?—*A.* Mr. Lewis was there.

Q. Do you remember any discussion between Mr. Lewis and Dr. McMichael ?—*A.* Oh, they were discussing the matter there, but I took no notice.

Q. You left that to the lawyers ?—*A.* I took no notice.

Q. Of course that was a legal matter, and you left it to them ?—I took no part in that meeting.

Q. That being a legal matter, you left it to them ?—*A.* I took no part in it.

Q. Up to that time, at all events, you did ?—*A.* Whatever is there, it is all right.

Q. You do not go back on that ?—*A.* No, I cannot, because it is there.

Q. Were there documents there before that meeting to be signed by the parties, besides these transfers of the shares ?—*A.* Oh, yes.

Q. Who prepared them ?—*A.* Oh, I do not know ; I think Mr. Lewis did.

Q. The documents between you and Mr. Charlebois ?—*A.* Yes.

Q. And the contract between Charlebois and the Company ?—*A.* Yes.

Q. That was prepared that day ?—*A.* That was a subsequent meeting.

Q. But it was prepared there that day ?—*A.* I know nothing about that ; that was when the new Board came in.

Q. I do not know whether it was when the new Board came in or not ?—*A.* I think so.

Q. Will you undertake to say that that contract was not amongst the papers Mr. Lewis prepared, and was before you directors that day ?—*A.* Oh, no, never was before us ; we had nothing to do with it ; I never knew what it was.

Q. You say you never heard of any contract that Charlebois had made with Mr. Codd until when ?—*A.* That Charlebois made with Mr. Codd ?

Q. Yes, the contract of the 9th ?—*A.* In Toronto ?

Q. Yes ?—*A.* No, I never heard that.

Q. Until when ?—*A.* Cannot tell you when I did hear it.

Q. Long after the 16th September ?—*A.* I think so, yes.

Q. Is that so ?—I tell you I do not know when that was made, and I know nothing about it.

Q. Did you ever hear of it before the transfer of your shares to Mr.—(Interrupted) ?—*A.* I did not.

Q. Never heard a word of it ?—*A.* No.

Q. And you never heard of it until long after that, according to your view of the matter ?—*A.* I did not hear of it till a long time after.

Q. Is that your signature ?—*A.* Yes.

Q. I know from your previous examination you must have been very careful about this document ?—A. What document is that ?

Q. This is a document in which you suggested to be added the provision as to there being no warranty or covenant on the part of the former shareholders ?

—A. Yes.

Q. That document was read over carefully in your presence ?—A. Yes.

Q. And you had that provision inserted ?—A. Yes.

Q. Let us see what this says : it is made between you and Allan, Devlin, and Murray, hereinafter called the shareholders of the first part, and Alphonse Charlebois of the second part : “Whereas the parties hereto were on the 11th September, 1889, the only subscribers to the stock of the North-West Central Railway, and whereas prior to that date, instead of and in full substitution for a certain agreement made between the parties hereto and one J. A. Codd, dated 9th April, 1888, and with the full assent of the said J. A. Codd and his associates, in lieu of the carrying out thereof, which was found impracticable, and which thereby lapsed, the said contractor himself entered into an agreement with the said J. A. Codd and for other parties, to acquire and to sell to their assigns all the capital stock of the Company,” &c. You must have known all that, because it is recited in that document which you signed ?—A. Whatever that document says I must have known.

Q. At the time this document was signed you must have known—(Interrupted) ?—A. I qualify my statement that I knew nothing of the contents or the conditions.

Q. That is not what you said ?—A. That is what I meant.

Q. At all events, you did not know on the 16th September, before the contract was closed, that Mr. Charlebois had himself entered into a contract to sell these shares and become a contractor ?—A. I knew nothing about the terms.

Q. But you knew he was going to become contractor ?—A. Yes, but I knew nothing about the terms of the contract itself at that time.

Q. Do not you think it would have been important for you to have known the terms of the contract, apart from curiosity ?—A. No.

Q. To have known it ?—A. No, I did not want to know.

Q. Did you purposely avoid knowing ?—A. No.

Q. What did you mean by saying you did not want to know ?—A. Because it was none of my business.

Q. And this document (Exhibit 5) was executed when you were completing the transfer of the shares in your deal with Mr. Charlebois ?—A. Yes.

Q. I think this is what is called the indemnity agreement. Now, here is another agreement between you ; that is your signature ?—A. Yes. (Document read.)

Q. That document was executed by you ?—A. Yes.

Q. Do you know whose handwriting that is ; that is Mr. Allan's, is it not ?—A. It looks like it.

Q. This is the memorandum by Mr. Allan, not dated ; it has been put in on the Commission ; it is a memorandum “To be deposited in the Union Bank of Canada to credit,” and so on, containing the credits as they were subsequently deposited. There are some other figures on this which are not in Mr. Allan's writing ; do you know whose figures these are ?—A. No.

RECORD.

No. 61.

Francis

Clemow

cross-

examined

by Mr.

Meredith—

continued.

RECORD.

No. 61.

Francis
Clemow
cross-
examined
by Mr.
Meredith—
continued.

Q. It is Mr. Allan's down to the summing up there ?—*A.* Yes.

Q. And the other figures you do not know anything about ?—*A.* No.

Mr. McCarthy.—The witness does not identify it.

Mr. Meredith.—*Q.* He says it is Allan's handwriting.

Witness.—Yes, but I know nothing about it.

Q. Then had you been anxious to dispose of this road or your shares in it for some time prior to—(Interrupted.)—*A.* Not particularly, no.

Q. Had you been negotiating with other persons to sell ?—*A.* We had.

Q. And had failed in selling ?—*A.* We had.

Q. Of course you knew when Mr. Codd came upon the scene and you 10 entered into that contract, that he was not dealing for himself ; he was going to deal with other people upon the other side of the water ?—*A.* Pretty hard to tell.

Q. The document says so ?

Mr. McCarthy.—Oh, no.

Witness.—Whatever the document says, it is more than I could find out.

Mr. Meredith.—He was endeavouring to float the scheme in the English market ?—*A.* That may be, but I tell you it was utterly impossible for me to find out anything from Codd.

Q. When Codd and you made that bargain by which you were to give him 20 the shares of the road for £200,000 sterling, giving him the difference between the currency and the sterling, you knew Codd was not acting for himself, that it was with a view of floating the Company—(Interrupted.)—*A.* Whatever the document says.

Q. What is your memory about it ?—*A.* Well, Mr. Codd represented himself in different capacities.

Q. I am asking you whether at the time that contract was made you did not understand from Mr. Codd that he was to go to the English market and float there ?—*A.* Well, let me see the document and then I will tell you.

Q. Without the document ?—*A.* I cannot tell you.

Q. Your memory will not serve you on that ?—*A.* No, there has been so much said about it.

Q. Do you mean to say you will pledge your oath that Mr. Codd was himself the financial man ?—*A.* I do not say so at all.

Q. And you did not think it ?—*A.* No.

Q. How did you come to go up to Toronto on the 7th, I think it would be, of September ?—*A.* To meet those parties there.

Q. Who asked you to go up ; how did you come to go ?—*A.* I think it was by general information this man was there.

Q. You must have heard it from somebody ?—*A.* Yes.

Q. You do not recollect how that was ?—*A.* No, whether it was Codd or somebody else, I do not know.

Q. Did Mr. Lewis go up too ?—*A.* Mr. Lewis was there.

Q. And went with you ?—*A.* I do not know whether he went with us or not.

Q. But, Senator, you surely know that ?—*A.* I tell you, I do not.

Q. You do not know whether Lewis went or not ?—*A.* No.

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Q. You did not take your solicitor up with you?—A. He was not my solicitor. RECORD.

Q. Whose solicitor was he?—A. I do not know.

Q. What did he go up for?—A. I do not know.

Q. Had he been there when you were discussing the matter?—A. Yes.

Q. Had he been acting as solicitor for the Company?—A. Yes.

Q. And for you and your associates?—A. No.

Q. But for you and your associates as the Company?—A. Yes.

Q. But individually?—A. No.

10 Q. You do not know who asked him to go up?—A. No.

Q. But he appeared there?—A. Yes.

Q. Accompanied you, did not he?—A. I do not know whether he went up on the train with us or not.

Q. I have the agreement you made with Codd: "Whereas John Arthur Codd, of the city of London, England, acting," &c. (Reads down to the words "English undisclosed capitalists.") So you knew what he represented there?—A. It says so there.

Q. Did you go up to Toronto to carry out this agreement and prepared to do so, prepared to carry out the agreement of April 1888?—A. If everything 20 was right.

Q. That is if the moneys and securities were right?—A. Yes.

Q. And by the terms of the document you were to have £50,000 down, and to have satisfactory security that the other £150,000 would be paid upon the completion of the road?—A. Yes.

Q. When you got there you met Stevens and Codd?—A. Yes.

Q. Had you any discussion at all on the way up with Mr. Charlebois or with Mr. Allan with regard to the business upon which you were going?—A. I do not think so.

Q. Did not talk about it at all?—A. I do not think I went up with 30 him; I think I went up alone.

Q. At once did you meet Stevens and Codd?—A. No, did not meet till Saturday afternoon.

Q. Had you discussions amongst yourselves in regard to the matter in the meantime?—A. Most likely we had.

Q. Do you recollect whether you had?—A. I think we did.

Q. Do you recollect whether you had, or the substance of them?—A. I do not recollect, but very likely we had.

Q. When you met Stevens and Codd there they told you they were prepared with the £50,000?—A. No.

40 Q. Did they not tell you they would be prepared to pay the £50,000?—A. No.

Q. You swear to that?—A. I do.

Q. I do not mean to say they had the £50,000 there, but they were prepared to provide the £50,000 then, or within a day or two?—A. Well, my impression is and my feeling was—(Interrupted.)

Q. Never mind what your feeling was?—A. Well, I will tell you—(Interrupted.)

Q. Just answer my question?—A. I am trying to.

No. 61.
Francis
Clemow
cross-
examined
by Mr.
Meredith—
continued.

RECORD.

No. 61.
Francis
Clemow
cross-
examined
by Mr.
Meredith—
continued.

Just answer the question ?—*A.* I was not satisfied they were prepared to do anything.

Q. I am asking you what they told you ?—*A.* I do not think they said that.

Q. Did they say they were prepared to pay the £50,000 ?—*A.* I do not think so.

Q. Will you swear they did not ?—*A.* No, I will not.

Q. You were not satisfied ?—*A.* No, I was very much dissatisfied.

Q. Was your dissatisfaction not because they were not there with the banker's guarantee for the other £150,000 ?—*A.* Both. 10

Q. What do you mean by both ?—*A.* I did not think they were prepared to do anything just then.

Q. That was your notion ?—*A.* Yes.

Q. Of course you would have been glad to have closed it then if they had been prepared ?—*A.* Oh, yes.

Q. Did you discuss with Charlebois the question of what you were going to do in consequence of not being ready to carry out the terms of the agreement ?—*A.* No ; I left Toronto and returned to Ottawa.

Q. One would think from the way you treated this matter that it was a trifling matter ?—*A.* No, sir. 20

Q. Is that the way you treated it ?—*A.* No, sir.

Q. It was a serious and important matter to you ?—*A.* Yes.

Q. Do you mean to say you never discussed, when you found they were not prepared with the banker's guarantee for £150,000, that you did not discuss with Charlebois or Allan how you were going to build the road or provide for security ?—*A.* I do, sir.

Q. There was no discussion whatever about it ?—*A.* We had not time.

Q. Either in the presence of Stevens—(Interrupted.)—*A.* No, we had not time. 30

Q. Not a word said about it ?—*A.* No : this discussion took place in the evening, and we had to go away and go down to the train, and had no time.

Q. No discussion about that at all ?—*A.* No.

Q. When you came back to Ottawa it was two or three days before Mr. Charlebois came down ?—*A.* Yes.

Q. When you came to discuss it were you not curious enough to know what he was going to do ?—*A.* We made a kind of offer to him on our way to the train.

Q. What did you suppose he was going to do ? What was the purpose of his buying the stock ?—*A.* I may have had my own suspicions. 40

Q. What did you think ?—*A.* I thought very naturally he contemplated some arrangement with them, but he never told me ; that was my own idea ; I may have been right and may have been wrong.

Q. And that he wanted to stand in your shoes with regard to the transaction ?—Yes.

Q. That was in your mind ?—*A.* Yes.

Q. When you came to see, and they made the agreement on the 9th September, as you did see—(Interrupted.)—*A.* When did I see it ?

Q. You saw that on the 16th ?

Mr. Nesbitt.—No.

Mr. Meredith.—He told me so and the document says so.

Mr. Nesbitt.—No ; it says he has made an agreement, and does not say anything about the 9th September.

Mr. Meredith.—It says he had made an agreement.

Q. But at all events you knew then he had made an agreement with them, and that was just such an agreement as you tell me you thought he would have made with them—an agreement to build the road ?—*A.* I presume so ; I had no authority for saying so.

Q. That is what was in your mind ?—*A.* Yes, but I never was told the nature or the conditions of the agreement.

Q. But what was present to your mind was that it was an agreement to build the road ?—*A.* If he succeeded in making it.

Q. How did Mr. Charlebois and you come to meet after Charlebois came back from Toronto ?—*A.* How did we happen to meet ?

Q. Yes ; was it by appointment or how ?—*A.* I think not, I think when Charlebois came he came to see me.

Q. How did Mr. Lewis come to get to the meeting ? How did you come to get to the meeting of the 16th September ?—*A.* That must have been understood before.

Q. Do you know how that was, or between whom ?—*A.* I do not know.

Q. Or how the meeting was called ?—*A.* No, I do not know.

Q. And that meeting was called with the idea that everything would be carried out ?—*A.* I presume so.

Q. Including the closing of your matter on the basis of that agreement ?—*A.* I presume so.

Q. When you were examined before you did not say Mr. Charlebois agreed to pay you cash ?—*A.* I did.

Q. No, excuse me ?—*A.* I did say so, positively.

Q. Excuse me ?—*A.* I tell you it may not have been taken, but I said so.

Q. Nothing was said about how the payment was to be made ?—*A.* I said quite the reverse.

Q. You did ?—*A.* I did.

Q. And you undertake to pledge your oath cash was mentioned ?—*A.* Yes, and if it is not down there it should be down. Now, who was there present at the time ? Because I am positive about that, quite positive.

Q. When was it the suggestion was made that you were to take orders on the Company ?—*A.* The suggestion was made at that meeting.

Q. Do you remember at what stage of it ?—*A.* Oh, about the latter part of the meeting, I think.

Q. You are not sure about that ?—*A.* Yes.

Q. It may have been the earlier part ?—*A.* I recollect that so well, because I was asked—I had perfect confidence in Charlebois, and I looked upon him as being perfectly able to pay me, and if my evidence is taken that way I think it is not correct.

Mr. Nesbitt.—I do not think it is taken that way.

Witness.—I was very positive.

Q. You spoke about Mr. Codd making a claim against the Company ?—*A.* Yes.

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3 G

RECORD.

No. 61.

Francis
Clemow

cross-
examined
by Mr.
Meredith—
continued.

RECORD.

No. 61.
Francis
Clemow
cross-
examined
by Mr.
Meredith—
continued.

Q. You treated that as all nonsense as long as you were to be called upon to pay anything of it?—A. That is in the primary meetings, when we first organized?

Q. Yes, when Codd was pressing the claim?—A. No, I did not.

Q. He never fyled it with the Government?—A. No, but I am talking long anterior to that.

Q. Does not the charter provide it was only to be for claims for construction?—A. Yes.

Q. He did not pretend he was employed in the construction of the road?—A. I do not know. 10

Q. You know that as a fact?—A. No, I do not know anything about the Souris and Rocky Mountains.

Q. Do you mean to say you made no enquiries?—A. I tried to get the information of a good many men about the Souris & Rocky Mountain charter, and I could not get any.

Q. Did you not consult as to what his claim was?—A. We did take some means of arriving at it.

Q. You never recognized his claim?—A. Yes, we did, and I thought we made a very good agreement.

Q. But before you gave him this opinion you never recognized his claim?—A. Well, I did not want a law suit. 20

Q. You never in fact recognized the claim?—A. I do not know what you mean by that.

Q. Never admitted a claim in any way; did you tell him it was all nonsense, he had not any claim?—A. That is very possible.

Q. And did not you discuss amongst yourselves that he had no claim?—A. That is very possible, but still afterwards we considered—(Interrupted.)

Q. Oh, we will see about that; I suppose this is the document by which he was to get the \$173,000?—A. What date is that?

Q. 6th March 1888. 30

Mr. Nesbitt.—There is an earlier document in which he is joined, 26th February 1887.

Mr. Meredith.—This provides that there shall be paid over to Daniel McMichael, Q.C., of Toronto, in place of ourselves, to be held to the order and use of the said John Arthur Codd, to cover commissions, &c.—(Reads.)—A. Yes.

Q. That is the way it was to be paid to him?—A. Yes.

Q. And that is what it was for?—A. Yes.

Q. And he was not to have the right to demand any sum for commissions, &c., in case the scheme should fall through?—A. No. 40

Q. In February 1887, you had made this same man your agent to sell the bonds; that is so?—A. Yes.

Q. And in that document you had a provision inserted "Provided that "nothing herein contained shall confer, or be construed to confer, upon the "parties of the first part or any of them any greater or other rights than they "may have against the Great North West Central Company, or be construed as "an admission by the Company of the existence or validity of any such claim, "or so as to prejudice," and so on?—A. Yes, that is all right.

Re-examined by *Mr. Nesbitt.*

Q. The attitude you were assuming was that you were not admitting—he was claiming and you were not admitting—(Interrupted.)

Mr. Cassels.—We want what was said.

Mr. Nesbitt.—Q. And as a matter of fact his partner Young had sued you ?
—A. I do not know whether he had sued ; he had threatened.

Q. Did not he actually issue a writ ?—A. I do not know how that is.

Mr. Cassels.—Do not lead the witness.

Witness.—My story is very plain.

10 *Mr. Nesbitt.*—Q. Then you were asked about this resolution ; who wrote this out, do you remember ?—A. I do not know whose writing this is.

Q. Who wrote out this resolution ; this is in the hands of a bookkeeper ?—
A. That I cannot tell you.

Q. Do you remember Mr. Stevens writing it out ?—A. I cannot tell you that.

Q. In your transfer which you wanted to show Mr. Meredith you put in there “ Without covenant or warranty whatsoever ” ?—A. Yes.

Q. What was said about that, do you remember ?—A. I insisted upon that.

Q. Why ?—A. Because I looked upon myself as not being responsible.

20 *Mr. Cassels.*—That is no evidence.

Mr. Nesbitt.—Did you tell Mr. Stevens so ?—A. Yes.

Q. What did he say ?—A. He said he took all the responsibility.

Q. You are quite clear about that ?—A. Quite clear ; I never would have parted with it on any other ground.

Q. Was that the occasion that Dr. McMichael spoke of yesterday, when he said he was protesting against it, and that Mr. Stevens said he would take the responsibility ?—A. Oh, I presume so.

Q. You say Mr. Lewis was there ; was he acting for you ?—A. He was not.

Q. Has he ever been your private solicitor ?—A. Never, sir.

30 *Q.* Never has ?—A. No.

Q. And I believe you insisted upon that “ without covenant or warranty ” on your own account ?—A. I did, sir.

Q. You are responsible for that ?—A. Yes.

Q. Had you seen your Statement of Defence in this matter at all yourself ?
—A. I saw it when you showed it to me here.

Q. Dr. McMichael, I believe, undertook to put in a defence for you ?—
A. He did.

Q. Did you know anything about it until I showed it to you the other day ?
40 —A. No.

Mr. Nesbitt.—I have given my learned friend notice that I will move to make it the same as Allan’s and Devlin’s. It is a long argumentative defence.

William A. Allan, sworn.—Examined by *Mr. Nesbitt.*

Q. You are one of the incorporators of this Company ?—A. Yes.

Q. And you live in Ottawa ?—A. Yes.

Q. And you acted as secretary, I understand ?—A. Secretary and treasurer.

RECORD.
No. 62.

Francis
Clemow
re-examined
by Mr.
Nesbitt.

No. 63.

William
A. Allan
examined by
Mr. Nesbitt.

RECORD.

—
No. 63.
William
A. Allan
examined by
Mr. Nesbitt
continued.

Q. Then you were present in Toronto on the Saturday Senator Clemow has spoken of?—A. Yes, I was there.

Q. How did you come to go up there?—A. I left here on Friday morning.

Q. Did the senator go with you?—A. No.

Q. You went up by yourself?—A. Yes.

Q. How did you come to go; who told you to go?—A. I really forget.

Q. You forget how that was, but at any rate you found yourself in Toronto?—A. Yes; I think it was an intimation from Mr. Codd.

Q. Did you meet Mr. Stevens?—A. I was introduced to Mr. Stevens.

Q. What as?—A. Mr. Codd introduced him as a capitalist whom he had 10 brought out here from England.

Q. Did you understand that he was an English capitalist?—A. Yes.

Q. Then the result of the interview with Stevens and Codd was what?—

A. The result of the interview in Toronto, do you mean?

Q. Yes?—A. It was that we could not agree in any shape; the discussion ended in our leaving, and nothing was done.

Q. The thing was off?—A. The whole thing was off.

Q. What occurred next?—A. On our way to the station—Mr. Charlebois that evening accompanied us as far as the station, and he asked me if I would be disposed to make him an offer of my interests; he addressed himself to the 20 senator and myself, who were walking together; and also that of Mr. Devlin.

Q. Why would he ask you about Mr. Devlin's?—A. Because Mr. Devlin has always left his interests in this affair to me to look after for him; he came into the scheme at my suggestion and Mr. Devlin has never personally taken very much interest in it; and after some little discussion the Senator and myself said if Mr. Devlin would agree that we would be quite satisfied, provided the offer was sufficient to induce us, and after some little time a sum was fixed; the sum was \$200,000 for the interests of we three; and I said to Mr. Charlebois that I could not, so far as I was concerned, or Mr. Devlin, agree to it until I consulted Mr. Devlin, and he asked me to do so, and to leave the 30 matter open for a few days, when he would most likely be in Ottawa.

Q. That is the way it was left?—A. Yes.

Q. Then he came to Ottawa?—A. No, he then returned to his hotel.

Q. He subsequently came to Ottawa?—A. Yes.

Q. And when he came to Ottawa did you see him?—A. Yes.

Q. And then what occurred?—A. On the Wednesday, I think it was, or Thursday, I think it was Mr. Charlebois who suggested our meeting at Senator Clemow's office, and Captain Murray was there, and in the course of discussion Mr. Charlebois asked Captain Murray if he would dispose or give him an option of his interest in the Company for a *pro rata* amount, according to his holding 40 in the Company, as we three did, and at that time we had an idea that Captain Murray perhaps was going to associate himself with him.

Q. Did you agree to sell out your interests?—A. Yes.

Q. The total sum for the four was \$226,000?—A. Yes.

Q. Did you have anything to do with Codd and Stevens in Ottawa until Monday?—A. No, nothing whatever; I did not see them.

Q. Did you hear anything about paid-up stock until Monday?—A. No, never.

Q. You met in McIntyre & Lewis' office on Monday?—A. Yes.

Q. And what was the meeting there for when you first went?—A. With a view to assign our shares and getting our money.

Q. Then what occurred there?—A. Do you want me to tell you everything that occurred?

Q. How long did the meeting last? Did it prove to be so simple as signing the shares and getting the money?—A. No; the meeting lasted from 10 in the morning till 4 or 5 in the afternoon.

Q. What was the cause of the difficulty?—A. I think the greater portion 10 of the time was taken up in discussing about paid-up shares.

Q. What was the discussion about shares?—A. Mr. Stevens was desirous of having these shares as paid-up shares, and we positively refused to assign them as paid-up shares, but the minute book was then brought up and a resolution was referred to which passed the directors some two or three months previous to that, which enabled the directors, upon a reasonable discount being passed, that they could discount the shares, and I think Mr. Stevens asked what we considered a reasonable discount, and I think Senator Clemow suggested 25 per cent. as being a reasonable discount; we had paid about 30 per cent. on our shares, and Mr. Stevens thought about 70 per cent. was a reasonable 20 discount and more than the stock was worth; however, we objected to it, and positively refused to do it, and then there was a sort of dead-lock.

Q. And then how did it work out?—A. Well, it worked out eventually that either Mr. Stevens or Mr. Gregson, who drew out a resolution—(Interrupted.)

Q. Is that the resolution in the books there?—A. Which we passed.

Q. Either Stevens or Gregson drew out a resolution which you passed; see if that is it? Whose writing? Is that it?—A. That meeting of directors is in my writing.

Q. Whose writing is the resolution in below that?—A. I do not recognise 30 that writing.

Q. At any rate, either Stevens or Gregson drew out a resolution that you passed, and what was said about it?—A. This is the resolution here.

Q. That is the paid-up resolution which Mr. Meredith read?—A. Yes.

Q. What was said about it?—A. Either Mr. Stevens or Mr. Gregson composed it, and said if we passed that—in the first place we supposed we were disposing of our shares to Charlebois, and when we arrived there that morning Charlebois asked if we would sign our shares to Stevens, and of course we did so, and Mr. Stevens led us to believe he was purchasing all the shares of us four shareholders, all the shares in the Company, the stock, and that if we passed 40 this resolution he would assume all the responsibility in the matter, and we passed this resolution especially at Mr. Stevens' request.

Q. Whom did you get your cheque from?—A. For my shares?

Q. Yes?—A. From Mr. Charlebois.

Q. I see here is a memorandum put in; is that in your writing? (104.)—

A. That top portion is my writing.

Q. Whose are the bottom figures?—A. I do not know, I am sure.

Q. You do not know whose those are?—A. No.

Q. How did that come to be written out?—A. Well, you know I had been

RECORD.

No. 63.

William

A. Allan

examined by

Mr. Nesbitt

—continued.

RECORD. acting as secretary on that day, and I was doing a good deal of figuring out for Mr. Stevens ; Stevens asked me if I could make up a list of the names with these amounts here ; in fact he had been figuring this out, and I wrote it out on a clean sheet ; my office is up there next to Mr. McIntyre's, and I had one of my pads there.

No. 63.
William
A. Allan
examined by
Mr. Nesbitt
—continued.

Q. Had you got out the ledger to show him how the account stood ?—
A. I had the ledger showing how much had been paid in on the shares, and how much it was necessary to pay ; it was Mr. Stevens' meeting altogether ; he regulated it.

Q. You are said to have gone down to the bank ; how did that happen ?—
A. I think it was Dr. McMichael, or it may have been Mr. Stevens ; it was Dr. McMichael or Mr. Stevens, he asked me in the course of conversation what bank the Company kept their account in, and I told him the Union Bank of Canada ; and Mr. Stevens, I think it was, asked me if I would take him down and introduce him to the manager of the bank, and I went down there with, I think, Dr. McMichael and Mr. Stevens, and I think Mr. Gregson ; so the other day when I was giving my evidence I was asked if Mr. Gregson was there, I did not think he was, but I think now, in thinking the matter over, that Mr. Gregson was with us.

Q. What was done there, do you know ?—A. I simply introduced them to the bank manager.

Q. Now, there were five cheques shown you the other day which you said you had seen for the first time ?—A. Yes. 20

Q. Was that correct ?—A. Perfectly correct.

Q. Those were the cheques depositing these amounts that are mentioned on that paper and marked here to be deposited in the Union Bank of Canada ?—
A. Yes.

Q. "To credit of" ?—A. Yes.

Q. Did you in fact know of the deposits or did you not ?—A. I did not—
which deposits do you mean ?

Q. Of the deposits made that day ?—A. Oh, no, certainly not ; the only deposit I made was my own cheque. 30

Q. Then after the meeting did you do some more work for Mr. Stevens in entering up the books ?—A. Yes ; either that evening or the next morning ; I think it was the next morning.

Q. You made a lot of entries in the books ?—A. Yes, so as to balance off former shareholders' accounts, to make them both add up the same ; one side they were charged with the amount of stock, and on the other side credited with payments made on the shares, and discount and so on.

Q. That was done that night or the next morning ?—A. Yes, I think it was the next morning, just before I handed over all the papers and books and everything to Mr. Codd ; Mr. Stevens authorised me to hand them over to someone who was then acting secretary ; I forget who it was. 40

Q. The transfer book was put in here and you were asked the other day whether that in red ink on the top, fully paid-up shares, was in your writing or not ; have you made up your mind whether it was ?—A. I have not any recollection of having written it ; if I had no recollection I would say it was my writing, but, failing my recollection, I do not know whether it is or not.

Q. You do not know whether it is or not?—A. No, I do not; if I had remembered writing it I could have identified it, but I have not the slightest recollection.

Q. Did you have anything further to do with the Company after having made the entries in the ledger for Mr. Stevens?—A. No, nothing whatever; I had nothing to do with the Railway Company after I signed my shares and got an order from Mr. Charlebois.

Q. You got an order from Mr. Charlebois?—A. Yes.

Q. The same as Senator Clemow, only differing in amount?—A. Yes.

10 Q. Payable out of the first moneys?—A. Yes.

Q. Do you know who suggested that arrangement?—A. Well, when we assigned our shares I can remember asking Mr. Charlebois—he gave us a cheque for simply the amount of our outlay, and when I suggested to him about the balance, “Oh,” he said, “Have patience, I will satisfy you as to that.” I may state that at the meeting on the Wednesday previous, I think it was at Senator Clemow’s office, Mr. Charlebois, I supposed—and Senator Clemow supposed—that his offer or proposal was for all cash; but on that day he asked if he would give us the amount of our outlay in cash and secure us to our satisfaction for the balance, would we accept that; and we all agreed to it.

20 Q. Did he say then what the security would be?—A. No, I did not know what the security was going to be on the day of the assignment of the shares.

Q. Then is there in your assignment of shares the same term that the Senator insisted on having in his, without covenant or warranty?—A. Yes.

Q. Why was it all struck out, how much was paid in? Was there any discussion about that?—A. I suppose this was a suggestion of Mr. Stevens, signing them in that way, and also to show that 100 cents on the dollar had not been paid on it.

Q. That is struck out both in the stub and in the other?—A. Yes, that was struck out.

30 Q. And the script were just left in the book in that way?—A. Yes.

Q. That is the original script book?—A. Yes; we had never issued any shares; we never sold a share and never offered any shares for sale.

Q. And you understood Stevens was the Company, took your place, in other words?—A. Yes; we understood so.

Q. Somebody has said that you made a suggestion, they thought, that \$15,188 should be loaned to the Company?—A. It is the first I heard of it.

Q. Somebody in England said that?—A. It is the first I ever heard of it.

Q. When did you first see the cheque of that \$15,000?—A. When Mr. Howland examined me the other day.

40 Q. That was the first time, even after the suit started, that you knew about the \$15,000?—A. Yes.

Q. Did you see Preston at all about getting the release of the Sproule contract for Charlebois?—A. No; never did.

Q. Never did?—A. No, never spoke to him on the subject.

Mr. Nesbitt.—Someone said Allan said this; I think it was Gregson said his recollection was that Allan had said that.

Mr. Bristol.—It was Mr. Preston said that; Gregson said about the \$15,000 loan just what Dr. McMichael has said.

Mr. Nesbitt.—That Allan had done it and not Lewis.

RECORD.
No. 63.
William
A. Allan
examined by
Mr. Nesbitt
—continued.

RECORD.

No. 63.

William

A. Allan

examined by

Mr. Nesbitt

—continued.

Mr. Bristol.—Oh, no.*His Lordship.*—At any rate he says he had nothing to do with it.*Witness.*—Nothing to do with it.*Mr. Nesbitt.*—Q. It is charged in the Statement of Claim that you and the Senator and Captain Murray and Devlin and these other gentlemen entered into a scheme and so on ; is there any truth in that ?—*A.* What sort of scheme ?Q. Did you enter into any scheme with Stevens or Charlebois or Gregson to defraud anybody ?—*A.* If what I have told you is a scheme—(Interrupted.)Q. You have told us exactly what happened ?—*A.* Yes.Q. You were selling out your interest for cash ?—*A.* Yes ; we had no idea 10 of scheming ; we were perfectly straightforward.Q. Did you pretend to have any interest in the Company that you assigned ?
A. No.Q. Never have had since ?—*A.* No.*His Lordship.*—Q. What you got in cash was the amount you had paid in cash on the shares, and you were to get something else afterwards, which represented interest on your deal ?—*A.* Yes.Q. That you have not been paid and have a charge on it by the judgment ?
—*A.* Yes ; I do not know whether I have a charge or not.*Mr. Nesbitt.*—Q. Just tell his Lordship exactly the figures ; you had 20 \$160,000 worth of stock ?—*A.* Yes.Q. Twenty-five per cent. discount would make that 120 ; and for that you got ?—*A.* I got \$44,000 or \$45,000 in cash, and an order on the Company for \$37,000.*His Lordship.*—Q. How much had you paid on that ?—*A.* I paid \$45,000 or \$56,000.Q. How did you make up the additional amount coming to you ; on what footing ?—*A.* On the basis of \$200,000 for Mr. Devlin's interest and my interest and Senator Clemow's interest.Q. That was the sum that was offered, the round figure ?—*A.* Yes, *pro rata*, 30 according to the figures in the shares.Q. It was based on the \$200,000 offer, not based on what your amount paid in with interest might come to, but based on the division of the \$200,000 that Charlebois had offered ?—*A.* Yes.*Mr. Nesbitt.*—Q. Then you had to indemnify Charlebois against back debts ?—*A.* Yes ; we indemnified Charlebois against any old debts under the 27th clause of our charter.Q. Have you had to pay some moneys out since ?—*A.* Yes.Q. How much, do you know ?—*A.* I have forgotten ; we paid out various amounts ; I think one was—I would not like to say because I may be wrong. 40*His Lordship.*—Q. Hundreds or thousands ?—*A.* I think one was \$1,000 and another \$800 and another some hundred dollars ; these came in since our assignment ; we paid that and did not call upon the Company.*Mr. Nesbitt.*—Q. You agreed to pay that ?—*A.* Yes.Q. You got for your interest the \$200,000, or ought to have got, and you agreed to indemnify Charlebois, you selling out to him ?—*A.* Yes.Q. And you have had to pay some little money ?—*A.* Yes.Q. I see Mr. Codd released you that day from any claim he might have ?—
A. Yes.

Q. Do you know whether Stevens and Gregson and Dr. McMichael were there when that was being discussed?—A. Oh, yes, certainly. RECORD.

Q. How long had Codd been claiming money from you people before this?—A. Codd claimed to have devoted a great many years of his life to two enterprises, the Souris and Rocky and North West Central. No. 63.
William
A. Allan
examined by

Q. What sum was he claiming against you?—A. He put in some very large claim, I think in one instance he said he had a claim of \$300,000. Mr. Nesbitt
—continued.

Q. You never admitted the claim, you four gentlemen?—A. No, certainly not.

10 Q. Did he claim to have loaned moneys to engineers and others as part of the claim?

Mr. Cassels.—Better not lead him like that.

Mr. Nesbitt.—That is not leading, I just want to get what it was.—Q. How is it made up?—A. I do not know.

Q. I forgot to ask you when Captain Murray was in England you sent him a power of attorney, it is said?—A. Yes.

Q. Do you know what became of that?—A. I have never seen it since, I have no idea where it is.

Cross-Examined by Mr. Cassels.

20 Q. You say that you agreed to indemnify Charlebois against these claims?—A. Yes. No. 64.
William
A. Allan
cross-

Q. You are quite clear on that?—A. Well, there is a document we signed that day to indemnify Mr. Charlebois. examined
by Mr.
Cassels.

Q. Are you sure you signed a document indemnifying him?—A. I understood a document was drawn out that day with that in view; I think I signed it.

Q. You think you signed a document with that in view?—A. Yes.

Q. Who insisted upon that clause?—A. Mr. Charlebois.

Q. When did he insist upon that?—A. That morning.

30 Q. What morning?—A. The morning of the 16th September.

Q. How early in the morning?—A. I think it was one of the first things we discussed.

Q. That would be at what hour? About ten, I suppose?—A. Yes.

Q. You would not meet before ten?—A. No.

Q. I understand the meeting was about ten?—A. I understand we met about ten in the morning, and perhaps a little later.

Q. And one of the first claims you discussed was the claim by Charlebois that he should be indemnified?—A. Yes.

40 Q. Have you a clear recollection of that fact, or are you just jumping at it?—A. Recollection of what fact?

Q. Of the fact of the discussion?—A. Oh, yes.

Q. Quite vivid?—A. Yes.

Q. Quite clear?—A. Perfectly distinct.

Q. It is not a matter that has just come to your mind now that I have asked you the question?—A. No.

RECORD.

No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

Q. You have a clear recollection that the first thing on that morning—
(Interrupted).

Mr. Nesbitt.—He did not say the first thing.

Witness.—One of the first things, the early discussion.

Mr. Cassels.—*Q.* One of the first things discussed on that morning of the 16th was this question of the indemnity?—*A.* Yes.

Q. Who was that put forward by?—*A.* I think it was Mr. Charlebois himself; he said he wished to be indemnified against the old debts.

Q. Who were present when this was put forward?—*A.* I think we were all present. 10

Q. You and the other four?—*A.* Yes.

Q. Mr. Clemow and Mr. Devlin?—*A.* Yes, and Captain Murray and Charlebois.

Q. All present; that would be on the morning of the 16th September?—*A.* On the morning of the 16th September.

Q. And that is the earliest act you recollect transpiring on that morning?—*A.* One of the earliest.

Q. Do you recollect anything earlier?—*A.* No.

Q. So far as your recollection goes, that is the first thing that took place on the 16th September?—*A.* One of the first things. 20

Q. Do you recollect anything earlier?—*A.* One of the first things I remember.

Q. Do you recollect anything earlier?—*A.* No.

Q. It was the first thing you recollect on that morning?—*A.* Except the general conversation and discussion.

Q. I suppose you were talking with the Senator and Captain Murray and Charlebois about carrying out the deal, and the first thing you recollect was the demand put forward by Charlebois for the indemnity?—*A.* Mr. Charlebois said he ought to be indemnified against the old debts of the Company, and after some little discussion we agreed, provided he assumed his shares. 30

Q. And then that part of the bargain was arrived at?—*A.* How I remember that distinctly was that it was in the afternoon that the document was produced for us to sign.

Q. So that you have a vivid recollection about it?—*A.* Yes.

Q. Was that something that Charlebois had sprung upon you at the last?—*A.* No; I think Mr. Charlebois suggested it a day or two previously, I think at that Wednesday meeting.

Q. He had suggested that very same thing at the Wednesday meeting?—*A.* Yes.

Q. I think Wednesday was the 11th September?—*A.* I did not say he 40 suggested it at the Wednesday meeting.

Q. You think he suggested it at the Wednesday meeting?—*A.* I think so.

Q. Would Wednesday be the 11th September? Just work back; Monday is the 16th, Friday would be the 13th, Thursday 12th; Wednesday would be the 11th?—*A.* Yes.

Q. And you think that that was the term suggested on the 11th September?—*A.* I would not say on the 11th September.

Q. You are not positive about it; did you mention it yourself to me?—**RECORD.**
 A. It might have been on the Saturday or Friday; I do not want to fix Wednesday.

Q. But that is your statement; you think it was Wednesday?—A. I would not like to say. No. 64.
William

Q. Then do not go back on it, because it is down?—A. I do not want to go back on it, and I do not want you to fix me down to a day. A. Allan
cross-

Q. I am not going to fix you down to a day?—A. It may have been on the Saturday. examined
by Mr.
Cassels.—
continued.

Q. And it may have been on the 11th?—A. Yes.

10 Q. So that it was not sprung upon you, at all events, on the morning of the 16th?—A. Well, there was a good deal of discussion on the morning of the 16th.

Q. This point was not sprung upon you?—A. I do not think there was anything sprung upon me in that way.

Q. At any rate it had all been discussed prior to the morning of the 16th?
 A. Oh, I think so.

Q. Was this the last thing he insisted upon in the bargain—this indemnity clause?—A. I do not understand.

Q. Had you settled upon all the terms other than this when he intimated
 20 this to you?—A. There was no settlement previous.

Q. You had come to arrangements; you had discussed; you do not want a new defence in?—A. No.

Q. Mr. Lewis is your solicitor?—A. Well Mr. Chrysler and Lewis.

Q. They are your solicitors?—A. Yes.

Q. You do not want to go back on your defence?—A. No, certainly not.

Q. Your defence—(Interrupted.) A. Do you mean my evidence?

Q. No, your defence?—A. I have never seen it.

Q. It has been amended; you instructed them to defend for you?—Well, naturally I would not have a strange solicitor.

30 Q. You would not have a strange solicitor?—A. No.

Q. They have always been your solicitors?—A. Well, McIntyre & Lewis were my solicitors, and then Chrysler & Lewis.

Q. And when you were served with the Statement of Claim you went to them and put in your defence?—A. I do not think I was served with the Statement of Claim; I never saw the Statement of Claim.

Q. They were put in by your instructions?—A. No, I think I never saw the Statement of Claim.

Q. You mean that Mr Lewis knew exactly your defence and knew your case and could draw your defence for you?—A. Yes.

40 Q. Without bothering you?—A. Yes.

Q. "Between the said 9th September and the 16th September 1889, this Defendant agreed with the Defendant Charlebois to give him an option to purchase all the shares of this Defendant for the sum of," and so on. I suppose that is all true?—A. Yes.

Q. That is between the 9th September and the 16th September you agreed to give him the option?—A. Yes, on the night in Toronto.

Q. But this goes on "the total thing was for the sum of so and so," it is 31 in my brief; "For the sum of \$83,805 of which the sum of \$46,340 was agreed to be paid in cash"; is that true?—A. Yes.

RECORD.

No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

Q. So that some time before the 9th September and the 16th September 1889 he agreed to pay you \$46,340 in cash?—A. No, the agreement was \$200,000 for my shares, Mr. Clemow, and—(Interrupted).

Q. I understand that; that is what was said in Toronto?—A. Yes.

Q. That was the night of the 7th?—A. That was not altered in any way.

Q. There was no alteration between what took place in Toronto—(Interrupted.) A. We figured it out between ourselves.

Q. No alteration between what took place in Toronto and what took place in Ottawa as to terms?—A. We figured out as to what our respective shares would be.

Q. You say you had left Toronto?—A. Yes.

Q. Between the 9th September and the 16th you had left Toronto, and it was agreed you should get \$46,340; that is the cash payment you were to get?—A. That is the cash payment I did get.

Q. Was there not an agreement that that sum was to be paid to you in cash?—A. No, sir.

Q. That is not true?—A. That is the amount I did get; I suppose whoever drew out that figured out what my proportion would be, but it was \$200,000 for our shares.

Q. "The balance \$37,465 to be secured to the satisfaction of this Defendant"; is that true?—A. Yes.

Q. And all that took place between the 9th and 16th, or was that agreed to in Toronto?—A. As I said before, there was only \$200,000 stated.

Q. I want to get at whether it is true that between the 9th and 16th September you had an agreement whereby you were to get so much cash and the balance \$37,465.27 to be secured?—A. Well, the \$200,000 figures out that way.

Q. Do not argue; state the facts?—A. As a fact our agreement in Toronto was \$200,000 for all the shares.

Q. You know that Dr. McMichael was telegraphed for?—A. I do not know.

Q. You know he came down?—A. He was here at the meeting.

Q. You have been secretary of this Company for a number of years?—A. From its inception.

Q. And you had paid in on your stock for the benefit of the Company \$46,000 odd?—A. Yes.

Q. Paid in the manner in which the books show?—A. Yes.

Q. You had kept the books of the Company?—A. Yes.

Q. You are cognizant of the affairs of the Company?—A. Yes.

Q. You had endeavoured to sell your stock through the instrumentality of Codd in England, in London, had not you?—A. To sell our shares.

Q. To sell your shares?—A. Well, to put it that way, I suppose we had.

Q. I am putting what the documents show?—A. The power of attorney will show precisely what authority Captain Murray had—not the power of attorney, but I mean the agreement.

Q. And if he sold you were to pay him a commission; is not that so, or must I refer to the document?—A. We were to pay him an amount in lieu of his—(Interrupted).

Mr. Cassels.— I will read you the document.

RECORD.

Mr. McCarthy.—The document speaks for itself.

Mr. Cassels. Q. An offer of £200,000 sterling, upon the terms and conditions, and so on ; this is to testify that in the event of the said offer being accepted through our said attorney, and the sale consummated by payment in full, but not otherwise, we consent that that portion of the said consideration money, namely the sum representing the difference between \$800,000 and the £200,000 sterling, shall be paid over to Daniel McMichael in place of ourselves, to be held to the order and use of the said John Arthur Codd, to cover
10 commission, &c. ; and we further consent and agree in like event, but not otherwise, to pay the said John Arthur Codd out of the sum of £50,000 cash payable to us on transfer of shares the sum of £100,000 sterling ; but nothing herein contained shall be construed as recognising or giving, or shall give, to the said John Arthur Codd the right to claim any sum by way of commission for any expenses against us, or any of us, or against the said prospective Company, in case the sale shall fall through or not be closed." That is your signature ?—*A.* Yes.

No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

Q. And that is witnessed by whom ?—*A.* J. Travers Lewis.

Q. He was your solicitor at this time ?—*A.* I do not know whether he
20 was ; he was solicitor for the Company.

Q. And the Company were you five ?—*A.* Yes.

Q. I call your attention to the fact that as a Company you had never recognised Codd's claim ?—*A.* Certainly not.

Q. And in your defence you point out that you do not know whether a claim existed ?—*A.* Not a legitimate claim.

Q. You know there was \$50,000 placed with the Government ?—*A.* Yes.

Q. You know that there were advertisements for creditors ?—*A.* Yes.

Q. You are aware that Mr. Lewis had been deputed to investigate these claims ?—*A.* Yes.

30 Q. You recollect that they did investigate them ?—*A.* I presume so.

Q. You are aware that a report was made ; you knew of that ?—*A.* Well, I have never seen the report.

Q. Were you not aware that a report was made ?—*A.* Except from hearsay.

Q. And you know that on the books of the Company Codd never was recognised as a creditor of the Company ?—*A.* No one was recognised on the books of the Company as a creditor ; none of the old claims ; it would not do to recognise them.

Q. You did not recognise any of them ?—*A.* No.

40 Q. This is the report signed by J. Travers Lewis ? (Producing report.)
—*A.* This is his signature.

Q. (Reads report.) Mr. Lewis was solicitor for the Company, and he was solicitor for you ; that is the Directors ; did all your work ?—*A.* He was solicitor for the Company.

Q. And he was not only solicitor but he was paid, because he made a claim, according to the minutes, for a considerable sum of money which you thought was too large ?—*A.* Yes ; we did not expect him to serve us for nothing.

RECORD.

No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

Q. And you paid him?—*A.* Yes.

Q. And you knew he was doing all this matter for you?

Mr. Nesbitt.—What matter?

Mr. Cassels. Q. Attending to the settlement of these claims?—*A.* He was not sent by us to settle them.

Q. Who paid him?—*A.* We did not pay him for that.

Q. Mr. Schreiber paid him for that? (No answer.)

Q. So that then we get on; there is never, at all events, any recognition of Codd's claim?—*A.* No.

Q. And in the year 1887 Codd was appointed agent by the document we 10 have heard, to float bonds?—*A.* Beg pardon.

Q. There is a document of 1887, whereby Codd was to be appointed agent to float bonds.

Mr. Nesbitt.—No, that is not right.

Witness.—Mr. Codd signed an agreement in 1887 to postpone his claim.

Mr. Cassels. Q. You heard that in that he was to be appointed agent to float bonds?—*A.* No, I do not think so.

Q. Oh, yes?

Mr. Lewis.—There is nothing about that.

Mr. Nesbitt.—It is a document postponing the claims, signed by 20 Macdonald and Preston and a lot of creditors, in which they do not recognise liabilities—a sort of without prejudice document.

Mr. Cassels. Q. Here is the document, Exhibit 18; this is the recital in that document, "Now, therefore, these presents witnesseth that in consideration of the premises and mutual agreements herein contained," &c. (Reads down to the words "On certain terms through him.") Do you remember that?—*A.* No.

Q. Look at the document; my memory is better than yours?—*A.* That is Macdonald and Preston.

Mr. Cassels.—That is the release by the Company.

30

Mr. McCarthy.—That is not signed by the Company.

Mr. Cassels. Q. "Articles of agreement made in the City of Toronto, this 26th July 1887, between Alexander Macdonald and William Preston, heretofore carrying on business, &c., the foregoing claiming to be creditors, and William Anderson Allan, of the same place, contractor, James Murray, of the same place, contractor, and Alphonse Charlebois, contractor, the present provisional Directors of the Great North West Central Railway of the second part." Now, that is you?—*A.* We had not accepted—(Interrupted).

Q. It recites that fact. I say these parties are you?—*A.* Yes.

Q. It recites that whereas by the Act of Parliament, &c. (Reads.) Do 40 you remember that document?—*A.* I cannot say that I have any distinct recollection of it; it is not signed by the Company.

Q. I did not say it was; is that Mr. Lewis' signature?—*A.* Yes.

Q. And those are the signatures of Macdonald, Preston, Young, Codd, and Macdonald and Preston. You cannot say whether you recollect the existence of that document or not; you cannot say about that?—*A.* No.

Q. Does it refresh your memory when I call your attention to the fact that it was discussed that Codd was to negotiate the bonds?—*A.* I remember the

document, only that I understood from Mr. Lewis these men, Codd and Macdonald and Preston, and these men claiming under the 27th section of the charter agreed to withhold their claims till a portion of the road was built?—*A.* I do not recollect giving authority to Codd.

Q. Do you recollect that document? (8th April 1888.)—*A.* I recollect Mr. Lewis receiving instructions as to that.

Q. That is a release, is it not? (No answer.)

Mr. Nesbitt.—He does not say yes.

Mr. Cassels. *Q.* Well, what do you say?—*A.* On the 8th April my recollection is that when Captain Murray sent the Codd agreement over for our signatures we returned with him the agreement signed, enclosing a release of Mr. Codd's old claims, with instructions from him not to give that agreement to Codd until he released us, and that was partly in consideration of the excess agreement, and partly to release any other claims he might have under this other agreement.

Q. You entered into that agreement of the 9th April with Codd whereby you agreed to sell these shares?—*A.* Which is that?

Q. For £200,000?—*A.* Yes.

C. By which you agreed to sell him for £200,000 the shares and the railway completed, and to give him the difference between the £200,000—*(Interrupted.)*—*A.* Yes.

Q. Between the 9th April 1888, and the 5th September 1889, had you ever been told he was prepared to carry out that agreement?—*A.* There was a great deal of correspondence and delays and so on, and we considered the time had elapsed.

Q. There was not much time given?—*A.* There was only one month given; it was a conditional agreement.

Q. And the condition was that he was to do this within one month?—*A.* There were certain things to be done within one month.

Q. And he did not do that within one month?—*A.* No.

Q. And notwithstanding that there were certain negotiations and correspondence with him?—*A.* He said he had assigned the agreement to Trahern.

Q. Trahern being an English capitalist?—*A.* I did not know what he was.

Q. But at all events, in the beginning of September 1889, that agreement, as far as the terms of it go, had run out?—*A.* Well, you mean the original agreement?

Q. Yes?—*A.* Yes.

Q. That Codd could not have enforced against you the carrying out of that bargain?—*A.* That is a matter for a legal man to decide.

Q. But you were willing to carry it out?—*A.* I cannot say what we would have done if they had been able to fulfil the conditions we might have done so, although we were not bound to do so.

Q. You came to Toronto with a view of meeting him?—*A.* With a view of meeting Stevens.

Q. And Codd?—*A.* Yes.

RECORD.
No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

RECORD.

No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

Q. And to carry out that bargain if they were ready?—A. No.

Q. For what purpose?—A. To hear any proposal they had to make.

Q. In connection with what?—A. Based, I suppose, on the old agreement which we considered had lapsed.

Q. Are you not sure that you came prepared to carry it out, providing everything had been satisfactory?—A. I do not know what we should have done.

Q. Was not your object in coming to Toronto—(Interrupted.)—A. Our object in coming to Toronto was to hear what Stevens or Codd had to propose to us with reference to any new deal in the transaction. 10

Q. It was to be a new deal, was it?—A. Yes, because we considered the old one had lapsed.

Q. That is the way you put it now?—A. I think that is the way I always put it; I never thought any other way.

Q. Then another statement in your defence is apparently left to the accuracy of Mr. Lewis' recollection?

Mr. Nesbitt.—Which one is that?

Mr. Cassels.—I will read it—"In the month of September 1889, the Defendant Codd and one Charles R. Stevens arrived from England and was introduced to this Defendant by the Defendant John Arthur Codd as the 20 person who would carry out the said agreement for purchase. Then Defendant went to Toronto, and with the other shareholders entered into negotiations with the said Stevens, which were broken up by this Defendant because the time had expired, and for other reasons." Now, is that correct? Do you know that of your own knowledge, or is that Mr. Lewis again?—A. Is not that what I have said?

Q. I do not know whether it is or not; that is correct, is it?—A. I presume so.

Q. Then Codd when he came out informed you that Stevens was prepared to carry out his bargain? 30

His Lordship.—That should be "Which had been broken off," should not it? It is grammatically wrong.

Mr. Cassels.—"Which were broken off"; I think it is referable to the 7th September; what is contended there is that they were broken off on the 7th September for other reasons.

Q. At all events you say you went up there; that is Mr. Clemow and yourself?—A. I did not go with Mr. Clemow.

Q. Well, you met there; you did not sleep with him, but you went there by appointment, at all events?—A. I went there.

Q. By appointment?—A. No. 40

Q. Well, by pre-arrangement?—A. Yes.

Q. By pre-arrangement Mr. Lewis also went up?—A. I do not know, I am sure.

Q. By some gratuitous chance Mr. Lewis turned up?—A. Mr. Lewis was on the train with me.

Q. And did you and Mr. Lewis go together to the hotel?—A. I think we did.

Q. And was he with you during that day ?—A. What day ?

Q. The day you got to Toronto ?—A. We got there at night.

Q. Well, the next day ?—A. He was there at the hotel.

Q. Was he present at your meetings ?—A. He was, yes.

Q. And who else was present at the meetings ?—A. Senator Clemow and Mr. Charlebois and Mr. Stevens and Mr. Codd and Mr. Gregson ; we were introduced to Mr. Stevens and Mr. Gregson.

Q. Will you answer me, do you know or do you not know that Mr. Lewis went up there because he was asked to go by you gentlemen ?—A. I did not ask him.

Q. Did Mr. Clemow ?—A. I do not know.

Q. Was not he there as your solicitor ?—A. I have not the slightest doubt but he was.

Q. You have not the slightest doubt but that he was there as your solicitor ?—A. Yes.

Q. And you have not the slightest doubt that as he had been acting as your solicitor in the previous deals and so on, you took him up there to guard your interests ?—A. I did not take him up there.

Q. Well, you four ?—A. I do not know what the instructions were.

Q. But when he got there you recognized him as your solicitor ?—A. I recognized him as a valuable legal friend.

Q. As a valuable legal friend who never charged anything ?—A. I did not say so.

Q. We will call him a solicitor. You had discussions there, off and on, between the lot of you, Stevens and Codd representing one party, and you and Senator Clemow and Mr. Charlebois representing the other side ?—A. Yes.

Q. And the effort was to come to some arrangement by which the basis of the original Codd agreement could be carried out ?—A. Yes.

Q. And I believe you were not satisfied ?—A. No.

Q. They said they had the £50,000 ready ; it was stated it could be got ?—A. Well, it may have been intimated, but Mr. Codd was desirous that the old agreement should be carried out, and we told him plainly that we considered that the old agreement had lapsed, for various reasons ; oh, a good many things that occurred since then that I have not been asked about.

Q. Then you broke off at all events ?—A. Yes, we broke off.

Q. But before you broke off Mr. Charlebois made you some proposition ?—A. Oh, certainly not.

Q. What ?—A. Certainly not ; we had two meetings—(Interrupted.)

Q. Before you left Toronto ?—A. Oh, yes.

Q. Before you left Toronto, Charlebois made a sort of tentative proposition to you ?—A. Yes.

Q. That is to say, the \$200,000 offer ?—A. Yes, and asked if we would dispose of our interests.

Q. Did Mr. Lewis go back with you on the Saturday night ?—A. I think he did ; yes, I am sure he did.

Q. Do you know that on the 11th September Mr. Lewis telegraphed up to Dr. McMichael that the arrangements had been come to, and to come down ?—A. I do not know.

RECORD.

No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

Q. You do not know about that ?—A. No, it is the first I have heard of it.
Q. At all events you left Charlebois in Toronto negotiating ?—A. He did not come with us ; he went right to the hotel.

Q. And then he turned up in Ottawa ?—A. He turned up in Ottawa.

Q. Can you tell me what date ?—A. On the following Wednesday.

Q. What hour on Wednesday ?—A. Cannot tell that.

Q. Where did you first meet him ?—A. Well, my recollection is that I met him at Senator Clemow's office.

Q. Who were present then ?—A. I think we were all present except, perhaps, Mr. Devlin ; that is Mr. Charlebois, Captain Murray, Senator Clemow 10 and myself.

Q. And you representing Devlin ?—A. Yes ; well, I did not go there representing him.

Q. But you did represent him ?—A. No, I would not like to say that.

Q. Was Stevens there then ?—A. Oh, no.

Q. So that it was just Charlebois and you four ?—A. We three.

Q. And Mr. Lewis there, too ?—A. I do not think so.

Q. Are you sure about that ?—A. I do not know about that.

Q. When was it he was in the room ?—A. I do not know if he was in the room at all. 20

Q. Do not you recollect that ?—A. No.

Q. Do not recollect him being in the room ?—A. No.

Q. You have no recollection ?—A. No.

Q. What time of day was it you got to Senator Clemow's office ?—A. I have forgotten.

Q. You cannot remember that ?—A. No.

Q. How long were you there ?—A. That I cannot tell you either.

Q. Was it half an hour ?—A. Oh, fully, more.

Q. Would it be two or three hours ?—A. No, I do not think it would be as long as that. 30

Q. Would it be an hour ?—A. I would not like to say.

Q. At all events it was considerable time, and you were discussing the matter with Charlebois ?—A. I will tell you exactly—(Interrupted.)

Q. You were discussing the matter with Charlebois ?—A. We were discussing the matter between us.

Q. You four on the one side and Charlebois on the other ?—A. Yes ; we three.

Q. But you represented Devlin, as I understand ?—A. No.

Q. Very well ; you were there and Charlebois ; this was a following up of the offer that he had made in Toronto ?—A. I understood it was. 40

Q. I am asking while you were there in Clemow's office, it was a following up of the offer that he had made to you in Toronto ?—A. It is quite possible it was.

Q. That is how you came to meet there. How did you come to meet in Senator Clemow's office with Charlebois on the Wednesday morning ?—A. I was in the habit of going to Senator Clemow's office almost every day, and my recollection is that when I dropped into Senator Clemow's office I found Charlebois there and Captain Murray.

Q. That is to say there was no appointment?—A. No.

Q. It happened you were all there and there for about an hour?—
A. Possibly.

Q. And you were discussing this question of the sale to Charlebois of your stock?—A. Well, I suppose it was.

Q. Now, will you swear that on that occasion there was not a talk about covenant for indemnity that you were to give?—A. No, I would not. What was your question?

Q. I will ask you if you will pledge your oath that there was no discussion
10 at that time in Senator Clemow's office about the covenant of indemnity you were to give about the debts of the old railway?—A. I do not think there was what you call an actual discussion. Will you allow me to say what I do know? It was a suggestion of Mr. Charlebois that if any deal was made with him that we ought to indemnify him against the old debts of the Company.

Q. That was said on that morning in the office?—A. I do not know whether it was in the morning or—(Interrupted).

Q. I am asking you that day?—A. I cannot say it occurred on that day.

Q. Will you pledge your oath that on that day, 11th September, and at that meeting when you were all present, that it was not discussed?—A. I could
20 not say it was, and I could not say it was not.

Q. Did you on that Wednesday definitely agree that you would sell your shares to Charlebois?—A. Well, we kept our offer open.

Q. But you gave him on that day what would be a binding offer?—A. Well, it was verbal you know.

Q. But with a man of honour verbal was all right?—A. Yes, he asked me to keep it open for a few days.

Q. It was a verbal offer which you allowed him to keep open?—A. Yes, it was not binding on us, except our word of honour.

Q. Well, that is binding?—A. Yes, certainly.

Q. So that you had a binding offer on the 11th September, but it was one
30 that was not put into writing?—A. Yes.

Q. But still binding on a man of honour?—A. Yes.

Q. And if Charlebois accepted it, then it would be carried out and completed?—A. Yes, precisely.

Q. Was it necessary for you, after that morning of the 11th or that afternoon of the 11th, and between that and Saturday, to discuss the matter any further with Charlebois?—A. On the Saturday previous to the Monday, I think it was, Mr. Charlebois met me on the street and said if we would come to McIntyre and Lewis' office on Monday he thought it quite possible that a deal could be carried
40 through and asked me to inform Mr. Devlin.

Q. He asked you to inform Devlin, which you did, and Senator Clemow?—A. I do not know that.

Q. However, you went up on the 16th and the matter was carried out?—
A. Yes.

Q. So that the only conversation or discussion in regard to the bargain was the Wednesday, with the exception that on the Saturday you were informed by Charlebois that if you would come up to Lewis' office on Monday he would be prepared to carry it out; that is the position?—A. Yes.

RECORD.

No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

Q. And you had no other solicitor other than Mr. Lewis?—A. When?

Q. Between the Wednesday and the Monday?—A. Oh, no; I do not think I consulted any solicitor at all.

Q. You know that you signed documents?—A. What documents?

Q. Why, do not you remember signing a lot of documents?—A. Certainly I signed some documents.

Q. And you do not sign documents which are not correct?—A. I do not wish to deny I signed documents.

Q. You do not sign documents without a little care, do you; that is your signature (Showing document)?—A. Yes. 10

Q. And that is Mr. Lewis'?—A. Yes.

Q. And you do not sign documents without knowing what is in them?—A. Well, if I have—(*Interrupted.*)

Q. If you had confidence in your solicitor?—A. No, I do not say so at all.

Q. What were you going to say?—A. If I did not know what I was signing I certainly would not sign it.

Q. You are a pretty shrewd business man, as you know. This is the recital I am going to read you—"Whereas the parties hereto were on the 11th September, 1889, all and the only shareholders in, or subscribers to the capital stock of, the Great North West Central Railway Company, and whereas prior 20 to that date instead of and in full substitution for a certain agreement made between the parties hereto and one J. A. Codd, dated 9th April 1888, and with the full assent of the said Codd and his associates in lieu of the carrying out thereof, which was found impracticable, and which thereby lapsed, the said contractor himself"—you see Charlebois is called the contractor in this—"Alphonse Charlebois, of the Province of Quebec, hereinafter called the contractor"—(*Interrupted.*)—A. Yes.

Q. "Entered into an agreement with the said Codd and other parties to acquire and thereafter to sell and assign to them or their assigns all the shares in the capital stock of the Company, and to afterwards himself enter as a 30 contractor into a contract with the said Company then composed of the parties to whom he proposed selling and assigning the said shares, undertaking himself to build, equip," and so on "And whereas the said former shareholders"—that is you and Clemow and the others—"respectively agree on the 11th September 1889 with the contractor"—that is Charlebois—"but with no other person or persons whatever to sell and assign their respective holdings of stock in the said Company to him, the said contractor and his assigns, for and in consideration of certain present payments and the balance of the consideration money payable hereafter as has been agreed, and to give the contractor a certain guarantee that they, the former shareholders, will in the 40 ratio" and so on, "between themselves indemnify and save the party of the second part and his assigns harmless." That is your document, and there is the recital of the agreement of the 11th September?—A. What about it?

Q. Is that document true?—A. Of course it is true; I would not sign a document which was untrue.

Q. "Now, therefore, these presents witnesseth," &c., and it goes on?—A. What is there wrong about that?

Q. I think it is perfectly right. Then this is another document that you signed?—A. That is my signature.

Q. And this is Mr. Lewis' signature again as witness?—A. Yes.

Q. No doubt drawn by him?—A. I cannot tell you unless I look at it.

Q. McIntyre, Codd & Lewis, Ottawa?—A. That is not Mr. Lewis' writing.

Q. It is done by a clerk?—A. That is Mr. Lewis' handwriting.

Q. The body of that agreement is in his writing?—A. Yes.

Q. So that the whole of the articles of agreement of the 16th September 1889, marked Exhibit 6, right down to the "Signed, sealed and delivered," is in his own handwriting?—A. Yes, I think it appears to be.

RECORD.

No. 64.

William

A. Allan

cross-

examined

by Mr.

Cassels—

continued.

Mr. Nesbitt.—There is a little of it Gregson's, I think.

10 Mr. Cassels.—Q. You saw him write it?—A. Yes.

Q. You saw him draw that where?—A. McIntyre & Lewis' office.

Q. At what time?—A. Will you allow me to look at it?

Q. Certainly.—A. Yes, I remember this.

Q. Where was that drawn?—A. That was drawn in McIntyre & Lewis' offices; that was the last thing done.

Q. Were you waiting there while he wrote it?—A. Yes.

Q. Sitting by him?—A. No, I do not say I was sitting by him.

Q. But waiting for it to be put into a formal document?—A. It was at 20 Mr. Charlebois' request, to relieve him of the liability on these orders.

Q. I will read you the recital: "Whereas the parties hereto were on the "11th September inst., all and the only shareholders," &c. (Reads recital.) Now, you met on the 16th?—A. Yes.

Q. And the first thing you do is that first resolution which you took part in, making them paid-up stock?—A. There was nothing signed—(Interrupted.)

Q. I did not say anything about "signed"; I am asking about the first thing you did—the minutes of the 16th September?—A. Here it is.

Q. Here you all met, Clemow, Devlin, Murray, Charlebois, and Allan; "Moved by Mr. Murray, seconded by Mr. Allan, whereas at the annual meeting 30 "of the Company, held on the 4th day of June, a resolution was passed by the "Company's shareholders authorizing the Company's directors, pursuant to the "10th section," and so on, "to accept payment in full, &c., and to allow such "discount as the directors may think reasonable, &c." "Whereas all the sub- "scribers to the stock being all the stockholders of the Company, have offered "to pay their stock in full, less a discount of 25 per cent." Whose writing is that?—A. I do not know whose it is; that is my writing at the head.

Q. The rest of it would be taken down on a piece of paper and afterwards transcribed?—A. I do not know.

Q. You were secretary?—A. I ceased to be secretary then.

40 Q. You were secretary when that resolution was passed?—A. Yes.

Q. "Be it resolved that payment be accepted in full from all the shareholders, less the said discount," &c. That was seconded by you?—A. Whatever it says there.

Q. Now, was it after that you went to the bank?—A. With Mr. Stevens?

Q. With Dr. McMichael?—A. No, sir, it was before that.

Q. Then you had gone to the bank prior to this resolution on the 16th September?—A. Yes; if that is the first resolution, yes.

Q. That is the first that appears in the minutes?—A. Yes.

RECORD.

—
No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

Q. And you had gone to the bank with them then prior to that first resolution being moved?—*A.* Yes.

Q. And you had made the deposits or they had?—*A.* I do not know.

Q. But you knew what they were going to the bank for, surely?—*A.* Mr. Stevens asked me what bank I kept my account in, and asked if I would take him down and introduce him.

Q. Had there not been a discussion the previous week about these shares being paid up?—*A.* Never in my hearing or to my knowledge.

Q. That you swear to?—*A.* Yes.

Q. At all events, before that resolution was moved and seconded you went to the bank with Mr. Stevens and with Dr. McMichael?—*A.* And I think Mr. Gregson.

Q. And certain things were done?—*A.* I do not know.

Q. You cannot speak as to that?—*A.* No.

Q. Did you make the entries in the book?—*A.* Yes.

Q. Showing the credits, before that resolution?—*A.* No, I made the entries in the book the next morning.

Q. That is the morning after the meeting?—*A.* The 17th.

Q. Did you make that memorandum prior to the meeting?—*A.* I made that memorandum up in Chrysler & Lewis' office.

Q. What day?—*A.* On Monday.

Q. Was it before or after that resolution was put?—*A.* I think it was in the morning.

Q. How did you come to meet at Mr. Lewis' office?—*A.* They were all there.

Q. Was that the meeting place?—*A.* Chrysler & Lewis or McIntyre & Lewis.

Q. What had you to do with Mr. Lewis' office?—*A.* Nothing special.

Q. How did you come to be there?—*A.* I presume Stevens and Codd came to the conclusion that was the best place to meet, it is a large office.

Q. And of course Mr. Lewis was present?—*A.* Yes.

Q. As your solicitor?—*A.* No, not as as my solicitor.

Q. Well, the four or five of you?—*A.* Well, I had no solicitor there, because we did not suppose there was any work for a solicitor; we supposed he was going to be the solicitor of the new Company if there was to be any.

Q. And that memorandum was made in his office?—*A.* Yes.

Q. Before that meeting?—*A.* What do you mean before the meeting?

Q. Before the first resolution?—*A.* Oh, yes.

Q. So the whole thing was cut and dried before the resolution was put to the meeting?—*A.* What do you mean by cut and dried?

Q. I mean all prepared; you know what I mean?—*A.* No.

Q. You know what the resolution says?—*A.* Yes.

Q. You know they had to be paid in full?—*A.* Yes.

Q. You know you had gone to the bank?—*A.* Yes.

Q. And they came back?—*A.* Yes.

Q. And you put down on paper how that money should be apportioned?—*A.* I do not know whether it was after they came back from the bank.

Q. You say you went to Mr. Lewis' office after you came from the bank

and before the resolution was put ?—*A.* That resolution was not put till after luncheon. RECORD.

Q. And that is how you know all this was before the resolution was put ? No. 64.
William
A. Allan
A. Yes. cross-

Q. So that no resolution was put until everything had been arranged as to the method of carrying out the arrangement ?—*A.* I told you there was a great deal of time taken up with discussion as to the shares being paid up ; examined
by Mr.
Cassels—
Senator Clemow insisted that 25 per cent. should be the maximum discount. continued.

Q. That was all finally settled and you went to the bank ?—*A.* No, excuse 10
me ; that was not finally settled ; after luncheon the first thing taken up was the discussion and either Mr. Gregson or Mr. Stevens had a resolution prepared, written out, and Mr. Stevens said he was the purchaser of all the shares, that they would all be assigned to him, and that was his way, and he took all responsibility in having them transferred in that way.

Q. And that paper showing the amounts had been drawn up by you in Mr. Lewis' office before lunch ?—*A.* What paper.

Q. The paper showing the apportionment of the amounts ?—*A.* It is quite possible it was.

Q. That is your writing ?—*A.* I said so.

20 *Q.* That was written by you prior to lunch ?—*A.* I expect it was.

Q. Do not you recollect ?—*A.* I cannot recollect the exact amount.

Q. You think it was before lunch, do not you, or do you ?—*A.* I would not like to say to the exact time.

Q. You have written, "To be deposited in the Union Bank to the credit of ?"—*A.* Yes.

Q. And that is the precise amount to make that paid-up with the 25 per cent. ?—*A.* Yes.

Q. After lunch the first resolution was carried ?—*A.* Yes.

Q. Are you quite clear on that ?—*A.* I do not think there was anything 30
done in the morning.

Q. And were all the resolutions that appear in that book as of the 16th all completed and carried out on that day ?—*A.* I cannot tell you ; if you let me look.

Q. Well, what appears there ?—*A.* I do not know.

Q. Did you hand over your stock or transfer it until you got the documents executed and the cheques ?—*A.* When I signed my stock Mr. Charlebois handed me his cheque.

Q. There were certain securities and documents and covenants ; were all those executed the same time ?—*A.* What documents ?

40 *Q.* The cheques of the 16th September ?—*A.* The ones you showed me just now.

Q. Yes ?—*A.* Well, that document in Mr. Lewis' handwriting, there were a number of things to be taken in, what occurred that day, and Mr. Charlebois wanted a writing that he was not responsible on those orders.

Q. Were these all done before you transferred your stock ?—*A.* I know that document Mr. Lewis wrote,—we waited there while he wrote it out, and that was about the last thing.

Q. These entries are all in your handwriting (Ledger.) Look at

RECORD. Charlebois' account, for instance ; is that in your handwriting ; that is number 10, 16th September ; is that in your handwriting "*Re Bates*," as per resolution, \$17,500, as per Charlebois' stock ?—*A.* Yes.

—
No. 64.
William
A. Allan
cross-
examined
by Mr.
Cassels—
continued.

Q. Is that your writing "*By cash \$36,100*," &c. ?—*A.* I think that is all mine.

Q. And so on with Murray's account ?—*A.* Yes.

Q. And so on with the other accounts ; Mr. Clemow's ; that is yours ?—*A.* Yes.

His Lordship.—That was squared up on the 16th.

Mr. Cassels.—He says he entered it the following day. 10

His Lordship.—That was on the changing of the shareholders.

Mr. Cassels.—Yes. *Q.* Those words in the transfers "*fully paid up*" "*shares*" were written by you ?—*A.* Well, I have no recollection.

Q. You know it is your writing ?—*A.* I swear positively I do not recognise it as my writing. If I had the slightest hesitation about recognising it I would say it was mine.

Q. Can you say it is not your writing ?—No.

Q. It is very like it ?—*A.* Yes.

Q. It would mislead people ?—*A.* I said so in my evidence the other day.

Q. That is all you can say about it ?—*A.* Yes. 20

Re-examined by *Mr. Nesbitt.*

No. 65.
William
A. Allan re-
examined by
Mr. Nesbitt.

Q. Would you like to say, comparing it with Stevens, that it is not his ; can you tell it from Stevens' writing ?—*A.* I would not like to give an opinion ; I have not the slightest recollection of writing that.

Q. You will not deny that it is yours and you cannot say ; you have not the slightest recollection ?—*A.* No.

Q. Did Mr. Lewis ever make any charge to you for any services on this day in connection with this ?—*A.* No.

Q. Never did ?—*A.* No.

Q. You said you did not think you wanted a solicitor ; what did you mean 30 by that ?—*A.* What I mean is that I did not think I required a solicitor to represent me, because we went there simply to sign our shares and get our money, that is about all.

Q. That is all you supposed you had to do ?—*A.* Yes.

Q. Now, these documents have been read to you, do you recognise now, having heard it read, a distinction between it and your evidence ? Do you recognise now a difference ? Have you followed it closely enough to see that there is a difference ?—*A.* I am afraid I have not. The distinction between the evidence I have given and what the document says, you mean ?

Q. You have given certain evidence and Mr. Cassels read you the 40 document ?—*A.* Mr. Cassels asked me if I did not consider this a true document, and I said I would not sign it if I did not think it was true.

Q. Do you grasp any inconsistency in it ? If you were asked to sign that document and another document embodying your evidence, would you see any distinction between them ?—*A.* I do not suppose I should.

Q. Well, do you ?—*A.* No.

Q. Now, with his Lordship's permission, I will point out a matter for a moment; this document says that on the 11th September all that you have spoken of was agreed to, that is to say, how your shares were to be divided, and there was a contract entered into by Charlebois, and you were to get deferred payment and that was to be secured by contract; did you notice that?—*A.* No, I did not suppose that was in there.

—
No. 65.
William
A. Allan re-
examined by
Mr. Nesbitt
—continued.

Q. Do you know now?—*A.* No, I do not; I am not familiar with legal documents; I understood the only thing we signed that day was indemnifying Charlebois against the old debts of the Company, and that was prepared and signed after luncheon, and another document which Mr. Lewis prepared there, written out, which occupied some little time, setting out that Mr. Charlebois was not responsible on the orders, and various other things, and the clause also included showing that our shares were not to be considered paid-up shares in any way.

Q. You thought that was in the document, and you thought that covered everything you had to do?—*A.* Yes.

Q. None of these figures in this little memorandum (Exhibit 104) I understand are yours?—*A.* No.

Mr. Meredith.—He said that in chief.

20 *Mr. Nesbitt.*—Q. Do you know whose they are at all?—*A.* No; Mr. Stevens was figuring on that document.

Q. You do not know what these represent—this below?—*A.* No, I do not know anything about them.

R. J. Devlin sworn—Examined by *Mr. Nesbitt.*

Q. You are one of the Defendants here?—*A.* Yes.

Q. Now, you were not present at this meeting in Toronto?—*A.* No.

No. 66.
R. J. Devlin
examined by
Mr. Nesbitt.

Q. And is it correct that you left the matters of this concern largely to Mr. Allan for you?—*A.* Very much.

Q. Now, this meeting of the 16th September, were you at it all the time?
30 —*A.* No; I went out two or three times; I went back to business again.

Q. Do you know anything about this paid-up stock matter?—*A.* Except that I heard it discussed once when I was there.

Q. Are you able to speak of the occurrences of that day definitely?—*A.* No, not consecutively.

Q. How did you come to sign the documents?

His Lordship.—Is it worth while repeating this?

Mr. Nesbitt.—No, except to get him to say—(Interrupted.)

His Lordship.—He has heard Mr. Allan.

Mr. Nesbitt.—How did you come to sign the documents?—*A.* Well, they
40 were put before me by Mr. Allan.

Q. And you followed his lead?—*A.* I generally followed his lead.

Q. Does that cover your interest about this? Had you any interest subsequently in the Company?—*A.* None whatever.

Q. Had you any interest in the Charlebois contract?—*A.* No.

Q. Do you know anything about the contract other than what Allan told you?—*A.* No.

RECORD.

No. 66.
R. J. Devlin
examined by
Mr. Nesbitt
—continued.

- Q. Followed his lead ?—*A.* No.
Q. You got so much money ?—*A.* Yes.
Q. And an order for the balance ?—*A.* Yes.
Q. And that has not been paid ?—*A.* No.
Q. And that is all you know about it ?—*A.* Yes.
Q. You sold your interest ?—*A.* Yes.
Q. And you knew what you were to get for that ?—*A.* Yes.
Q. Did you know anything about this payment of money into the bank or
any of these things ?—*A.* No, Allan deposited my cheque ; that is all I know.
Q. You left your cheque that you got from Charlebois and he went down 10
and put that to your credit ?—*A.* Yes.
Q. And that is all the money you got ?—*A.* Yes.
Q. And all you know about it ?—*A.* Yes.

Cross-examined by *Mr. Cassels.*

No. 67.
R. J. Devlin
cross-
examined
by Mr.
Cassels.

- Q. You know very little about it ?—*A.* Yes.
Q. Just signed the papers when Allan told you they were all right ?—
A. Yes.
Q. And left yourself in his hands entirely ?—*A.* Yes, followed the lead.
Q. You took for granted what he told you was correct ?—*A.* Yes.
Q. Whatever Mr. Allan did you assented to ?—*A.* Yes.

20

James Murray, sworn.—Examined by Mr. Nesbitt.

No. 68.
James
Murray
examined by
Mr. Nesbitt.

- Q. You are one of the Defendants here ?—*A.* Yes.
Q. You live in St. Catherines ?—*A.* Yes.
Q. You were in England, I believe ?—*A.* Yes.
Q. And you had a power of attorney ?—*A.* Yes.
Q. Did you act under it ?—*A.* No.
Q. Why ?—*A.* Well, I was afraid it might give rise to misunderstandings
and complications in the future.
Q. What became of the power of attorney ?—*A.* I was under the impression
I had returned it to the office, but I hear Mr. Allan say he has not received it. 30
I was under the impression I returned it to the office of the Company.
Q. Then there has been a letter put in here ; there is a letter which comes
out of Codd's possession, I understand, signed by Codd ; did you get that on
May 5th, 1888 ; do you remember getting that from Codd ; just read it ?—
A. Oh, it is possible I got it from Codd.
Q. How would you give it back to him if you got it ?—*A.* I could not be
certain ; I could not say that I had ever received it.
Q. And you could not say you did not ?—*A.* No ; if it had been in my
possession it would have been handed over to someone in connection with this
suit.
Q. If it was in your possession it would have been handed over to someone 40
in connection with your suit ?—*A.* Yes.

Q. This was read in one of the English Commissions, and it has not been put in ; it is number 44, Commission number : " Referring to the agreement made between our Company and myself on the 9th April last and now delivered to me, I beg to say that it is understood and agreed as follows : first, that the words in the first clause referring to the line being completed and in operation by the 1st August to the satisfaction of the Dominion Government is intended to read the same as in the third clause, section 1, so as to provide for any extension of time which may be given by the Government, that the words in the second clause of the said agreement are intended to mean that the incoming shareholders shall receive the shares referred to free from all liability, except such as refer to the contract made between the Government and the present Company as to construction of the railway and as to the land-grant. This can easily be arranged by transferring the shares as fully paid up under sections contained in 9 and 10 of the charter," Did you know about that ?—A. No.

RECORD.
No. 68.
James
Murray
examined by
Mr. Nesbitt
—continued.

Q. Did you communicate that to any of your former partners ?—A. No, because I considered the agreement with Codd only conditional ; it was only conditional on his doing certain things, and he finding certain matters when he came here, and seeing it was conditional, I did not think it was of much value.

Q. Did you make any report to your partners of it when you came back ?
20 —A. I have no recollection at the present time of having made any.

Q. You thought the thing was off ?—A. Yes ; a good deal of correspondence had taken place, and I understood he would be unable to get the assistance necessary.

Q. You do not remember the letter at all ?—A. No.

Q. Now, here is a letter signed by you on the 9th of May 1888 ; is that your signature ?—A. Yes.

Q. Look at that and see if that is your signature ; that is agreeing to accept 100,000 in bonds ; do you recollect that ?—A. That is my signature ; I do not recollect it.

30 *His Lordship.*—Q. Who is it addressed to ?—A. J. A. Codd ; it is not my writing.

Mr. Nesbitt.—It is evidently written by Stevens, Bawtree & Stevens ; it is on regular stamped paper.

Q. Did you communicate any such arrangement as that to your partners out here ?—A. It is quite probable I may have written.

Q. But you do not remember that again ?—A. No.

Q. But at any rate the thing ended, as you supposed, in smoke ?—A. I did not set very much value on it.

40 Q. You came out here, and what was the first you heard about this meeting in Toronto ? You did not see Senator Clemow or Mr. Allan there ?—A. No, I did not see the parties in Toronto, I was present when Senator Clemow and—*(Interrupted.)*

Q. You went over there and saw Charlebois ?—A. I came down here and saw him ; I have no recollection of having met Charlebois on that occasion in Toronto.

Q. At any rate you came down here, and I believe you agreed with your other partners to sell out—the whole four of you to sell out for \$226,000 ?—A. That was the arrangement I understood, when I came here, they had made.

RECORD. They had agreed to take that sum for the whole stock, providing those interested in the stock would accept it, and I accepted it

No. 68.

James

Murray

examined by A. Yes.

Mr. Nesbitt

—continued.

Q. You came in with the rest?—A. Yes, came in *pro ratâ*.

Q. You have heard Mr. Allan's and Senator Clemow's evidence here?—

A. Yes.
Q. Have you anything to add to what they have said about the meeting on the Monday?—A. I could not give any information about the meeting on the Monday, except that I trusted entirely to the legal gentlemen to prepare any documents that were necessary; and I insisted upon selling only the interest I had, nothing else.

10

Q. Only the interest you had; nothing else—A. No.

Q. It is put through here in the form of a fully filled-up share?—A. Yes, I recollect someone asking me to go to the office, I think Mr. Chrysler or McIntyre's office, to be present when a resolution was to be passed in connection with it, at the request of Mr. Stevens, who wished to have it put in that form, as I was informed or instructed; he wished to have it put in that form for his purpose.

Q. What did your interest mean?—A. You were getting your money back —(Interrupted.)

His Lordship.—It is all proved.

20

Mr. Nesbitt.—Q. Did you consider the franchise a valuable one?—A. We were getting paid for what we had expended, what we had paid; all the calls had been paid in on our stock, and the franchise.

Q. Had any of you got a cent for all the time you had spent getting the franchise?—A. Oh, no.

Q. And arranging with the government about the land-grant?—A. Nothing whatever.

Q. And squabbling with the old claims?—A. No, nothing at all.

Q. None of you received a cent?—A. No.

Q. You had got a charter and were selling your interest to Stevens *holus* 30 *bolus*?—A. Yes, the whole thing.

Q. And you were getting \$226,000 from Stevens for the charter and the land-grant?—A. Yes, and what had been paid in in cash and expended in constructing the road.

Q. And you were indemnifying him against your proportion of any of the old debts under the 27th section?—A. Yes, I understood Charlebois executed that.

Q. And he took over the Codd matter?—A. Yes, so I understood.

Q. You say you did not bother about legal documents?—A. Yes, I trusted to the gentlemen who were preparing the documents to see they were right.

40

Q. Whom do you mean by that?—A. I supposed Mr. Lewis was acting for the Company, and I supposed Dr. McMichael was acting for Stevens.

Q. And Dr. McMichael was a very old friend of yours, I believe?—A. Yes.

Q. And you would have faith he would do what was right?—A. I had implicit faith in Dr. McMichael trying to do what was right as near as I could.

Q. And you did not expect to be asked to sign anything which would give you any liability?—A. No.

Q. You were expecting to assign your stock and get your money ?— RECORD.
A. Yes.

Q. Had you any interest in that Charlebois' contract ?—A. Not the slightest. No. 68.
James Murray

Q. And did you suppose the bargain you were making was a perfectly fair one ?—A. Well, I considered it perfectly fair, and I was willing to trust Charlebois for a larger amount than what was coming to me ; I did not care how he paid it ; I was willing to take him for the amount if he assumed it personally. examined by
Mr. Nesbitt
—continued.

Q. What did you suppose Stevens' position to be ?—A. I have an impression Stevens was representing capitalists connected with the Colchester Bank, and the firm was represented to be wealthy.

Q. His own firm ?—A. Yes, and Reid's firm.

Q. Do you know whether Mr. Bawtree was the president of the Colchester Bank ?—A. I understood he was an officer of the bank ; I do not recollect distinctly what his position was, but I understood he had a very large interest in the bank.

Cross-examined by *Mr. Meredith.*

Q. You went over to England in 1888, largely on account of the business of this Company, did not you ?—A. Not at all, sir ; not at all. No. 69.
James Murray

20 Q. Sure ?—A. Not at all in connection with the business of the bank.

Q. What time did you go ?—A. I went in January 1888.

Q. And returned in June ?—A. Yes.

Q. And the Company had nothing to do with your visit there ?—A. There is no member of the Company that I am aware of knew of my going to England ; I went on private business. cross-
examined
by Mr.
Meredith.

Q. I see you got \$1,000 from the Company ?—A. Possibly did.

Q. For your expenses that trip ?—A. Yes.

Q. You did not go on a private trip ?—A. There was no arrangement made for the payment of that sum.

30 Q. " Captain Murray, expenses England \$1,000 " ?—A. That is right.

Q. That is the same trip ?—A. Yes.

Q. You would not take that unless you had earned it ?—A. I was delayed in England some considerable time, and the Company were good enough to pay me \$1,000.

Q. In connection with this business ?—A. I suppose so.

Q. You say in this letter of the 9th May 1888, referring to the guarantee given to Trahern, it was given in satisfaction, to comply with Clauses 6 and 7 in the agreement of 9th April 1888, with the Hon. Francis Clemow, and so on ; " And I acknowledge that I have authority from the parties to this agreement to enter into this agreement ?—A. That is very likely correct.

40 Q. What power had you, except the power of attorney ?—A. I may have had some communications ; could not say.

Q. It was the authority of the power of attorney you were referring to here ?—A. Could not say positively it was or was not.

Q. One would think that was it ?—A. Well, I did not act on the power of attorney in making the conditional agreement.

Q. You sent out the agreement to be signed ?—A. Yes.

RECORD.

No. 69.
James
Murray
cross-
examined
by Mr.
Meredith—
continued.

Q. "And I hereby agree on behalf of the parties of the first part, if you so desire," &c. (Reads to the words "payment of cash.") I suppose you had authority to do this?—A. I think very likely that.

Q. And that authority you must have got from the power of attorney?—A. I would not say it was the power of attorney; I may have received a cablegram.

Q. At all events, you had authority to do that?—A. Yes.

Q. You have a partner by the name of Mr. Cleveland?—A. Yes.

Q. Did you discuss with him the propriety of going into a contract with Mr. Charlebois for the Company to build this road?—A. Well, I did not discuss it; I mentioned it.

Q. When was that?—A. I do not recollect the date.

10

Q. In September?—A. I suppose so.

Q. And before this deal was made?—A. I could not say that.

Q. Do you remember discussing with Mr. Cleveland that you and Charlebois should take the stock of the other people; discuss with him whether you should take the stock of the other people, and yourselves enter into a contract with the people to build the road yourselves?—A. No, I never discussed it from that point of view.

Q. From what point of view do you mean?—A. I never discussed it with a point of view of taking the stock financially.

Q. But I mean taking the stock of Clemow and your associates and ultimately building the road?—A. No, no.

Q. Were you here when Charlebois was examined on Tuesday?—A. I heard some of his evidence.

Q. Mr. Charlebois said that he telegraphed to St. Catherines to you while he was in Toronto to come over?—A. Probably he did.

Q. And that he suggested to you that you should go into the deal with him?—A. That is very likely.

Q. And that you said then or when you came to Ottawa, that having talked it over with Mr. Cleveland you did not feel like entering in?—A. That is very probable.

30

Q. That is correct, no doubt?—A. Yes.

Q. Then Charlebois discussed with you what he was proposing to do?—A. No, not what he was proposing to do; he mentioned to me that those parties, referring to Stevens, desired him to take the contract of building the road, and he wished me to take an interest with him.

Q. Take it from the Company?—A. I suppose so.

Q. And you learned from him that these men had £50,000, but they had not the other 150,000?—A. No, I did not.

Q. Did not you learn that when you were discussing it?—A. No, I did not; how should I learn from him?

40

Q. Because Charlebois knew?—A. How did he know?

Q. Because they told him they were prepared to pay the £50,000?—A. I doubt if they told him then.

Q. But they actually did on the 16th; Charlebois found out they had £50,000 that they could control, but they had not the guarantee for the other 150,000?—A. I do not know what he found out.

Q. Do you mean to say that Charlebois did not say to you, "If we can get the £50,000, the first payment, we can take a contract from the railway company for the 150,000 to build this ourselves ?—A. I do not think he ever said so.

Q. Will you say he did not ?—A. Yes, I will say he did not.

Q. Or anything like that ?—A. I do not think he would talk to me about taking an interest in the contract in that way ; that is a sort of baby talk.

Q. That is the kind of contract he did talk ?—A. He might have asked me if I would take an interest.

Q. That is just the way Charlebois talked ?—A. No.

Q. What do you mean by calling it baby talk ?—A. That would not be entering into a contract, the way you are speaking of ; what had he to do with
10 what they had to give him ? If he was going to take a contract he would try to make himself certain about the time of the payments due—whether he was going to get them.

Q. He made a contract with these people to build the road for £200,000, receiving on account £50,000 ; is that a baby contract ?—A. You are putting it a little different.

Q. No, that is the same. What I want know is if he did not discuss making such a contract as that with you ?—A. No.

Q. What contract did he discuss ?—A. He asked me if I would join him
20 in taking the contract to build the whole 450 miles of road.

Q. The whole 450 miles ?—A. Yes, up to, to be delivered.

Q. For the Company ?—A. For the Company.

Q. What Company ?—A. Whatever Company might have control.

Q. It was all the same Company ; the Company was the same ?—A. I was going out of it ; I was selling him my stock.

Q. That is only the shareholders ; the Company is the same all the time ?—A. Yes.

Q. After considering that you came to the conclusion that you would not take any interest in the contract ?—A. Would not have any interest in the
30 contract.

Q. And did you discuss with him at all how he would deal with the payment to you and Clemow and the others, for your shares ?—A. I just told you a minute ago I would take him for the amount.

Q. But did you discuss with him how you and they were to settle with him for the amount he was to pay ?—A. He offered to pay cash, I understood.

Q. Did he say the money was coming from Stevens ?—A. No, he did not.

Q. Did not you understand that the money was coming from Stevens ?—A. I might suppose so ; but he did not tell me so.

Q. And that the balance was to come out of what he was to get on the contract ?—No.

Q. Sure of that ?—A. Certainly.

Q. No discussion about that at all ?—A. None whatever.

Q. And who was it suggested that you should have the balance out of the contract ?—A. I do not know.

Q. When was it suggested ?—A. I cannot tell you.

Q. In Toronto ?—A. I do not think so ; I was not in Toronto ; I was not discussing the matter in Toronto.

RECORD.

No. 69.

James
Murray
cross-
examined
by Mr.
Meredith—
continued.

RECORD.

No. 69.

James
Murray
cross-
examined
by Mr.
Meredith—
continued.

Q. He says you were discussing it?—*A.* He must be mistaken, because I was not in Toronto.

Q. You did not go over from St. Catherines to meet him; he says he telegraphed you and you came over?—*A.* I think he is mistaken; I won't say positively, but my recollection is I met him here.

Q. But he may be right?—*A.* Yes, I am not so very sure about it.

Q. What day did you get to Ottawa?—*A.* I do not recollect; probably Friday.

Q. Was it discussed on Friday?—*A.* Friday or Saturday; very likely I got here on Saturday; I may have come over. 10

Q. I think you were here on Friday?—*A.* Well, probably.

Q. Well, was it discussed as early as Friday that you were to get an order on the company for the payment of the balance?—*A.* I never heard it discussed at all.

Q. Was it offered?—*A.* No, not offered at all.

Q. When was it first arranged?—*A.* It was arranged by these parties, I think probably on the evening of the 16th or the next day, some time about that time.

Q. It could not have been the next day, because they were signed on the 16th; have you any recollection of it at all?—*A.* No, because it was a matter I 20 did not take into consideration at all.

Q. You did not rely upon the security at all?—*A.* No, I would have just as soon taken Charlebois as the cash; just as soon take him as take the cash.

Mr. Nesbitt.—That is my branch of it, my lord.

Mr. McCarthy.—This book has been put in, but only the first part of it, but I want all the certificates put in.

His Lordship.—Very well, read them afterwards.

Mr. McCarthy.—I would like to draw attention to this, that the shares commencing with number 10 are marked fully paid-up. The shares prior to that 30 connection with these parties are not so stated. (*Reads.*) The whole book is considered in.

Mr. Arnoldi.—We do not want the book retained in Court.

Mr. Watson.—I will call Alexander Macdonald.

His Lordship.—Is this a defendant.

Mr. Watson.—Yes, my lord.

No. 70.
Alexander
Macdonald
examined
by Mr.
Watson.

Alexander Macdonald, Sworn. Examined by Mr. Watson.

Q. You reside in Winnipeg?—*A.* Yes.

Q. And you are a member of the firm of Macdonald & Schiller?—*A.* Yes. 40

Q. Who were sub-contractors under Mr. Charlebois?—*A.* Yes.

Q. This is the contract, I understand, signed by Mr. Charlebois and by you and Mr. Schiller and the firm of Macdonald & Schiller?—*A.* Yes.

Q. Dated 3rd day of October, 1889, and under the 10th paragraph of this, it is provided that you shall retain a lien on the works and materials supplied by you until the estimates are paid?—*A.* Yes.

Q. Did you proceed, in pursuance of this contract, to perform the work that is provided for?—*A.* Yes. RECORD.

Q. And have completed the work?—*A.* Yes.

Q. And I understand in September 1891, there was a balance due you in the neighbourhood of \$65,000?—*A.* That was admitted.

Q. Admitted by Mr. Charlebois?—*A.* Yes.

Q. And at that time were you or not in possession of the road—that is the road or material?—*A.* Yes, we had men tented on it, on the road, armed to keep possession. No. 70. Alexander Macdonald examined by Mr. Watson—continued.

10 Q. Armed, did you say?—*A.* Yes.

Q. That is to protect you and to secure you the payment?—*A.* Yes.

Q. Under the provisions of this contract?—*A.* Yes.

Q. You were in Toronto in September of 1891, about the time the judgment was pronounced?—*A.* Not in Toronto; I was here in Ottawa at the time.

Q. You were not there taking part in the settling of the terms of the judgment?—*A.* No, we had our solicitor.

Q. You were represented by Mr. Nugent acting for you?—Yes.

20 Q. And I understand he was also acting for the Commercial Bank of Manitoba?—*A.* Yes.

Q. You had previously, and during the terms of this contract, obtained moneys from the Commercial Bank of Manitoba?—*A.* Yes.

Q. And in September of 1891 you were indebted to the bank in respect of the moneys so obtained to the extent of some \$35,000 or more?—*A.* I would not say \$35,000, but about \$33,000.

Q. You had previously, according to the papers I have, had estimates of the amount of work that had been done by you?—*A.* Yes.

Q. And showing the amount you were entitled to be paid?—*A.* Yes.

Q. These are the estimates signed by Mr. Forrest, the engineer?—*A.* Yes.

30 Q. And those estimates were apparently handed by you to the Commercial Bank of Manitoba?—*A.* Well, we had the men there with us when we went for money, to show what we needed.

Q. Did you, as a fact, show these estimates to the manager of the Commercial Bank?—*A.* Yes.

Q. And for what purpose?—*A.* To show we had plenty of money coming to us to pay the amounts.

Q. So that on the strength of these they paid the advances?—*A.* Yes.

Mr. Cassels.—Do not lead.

His Lordship.—Is this in dispute? Do they attack your debt?

40 *Mr. Watson.*—No, my lord, I do not know that they do; they have admitted it.

Mr. Meredith.—There is really no contest as to the amount.

Mr. Watson.—I desire to show we were advancing on the strength of this throughout.

Q. And apparently these estimates were from time to time, assigned by you to the bank?—*A.* Well, they paid the money; the most of the time I took the estimates in to the bank.

RECORD.

No 70.
Alexander
Macdonald
examined
by Mr.
Watson—
continued.

Q. You gave Mr. Nugent instructions to act for you at the time of the settlement?—*A.* Yes.

Q. How did he happen to go there? Did he know the case was going on?
—*A.* Yes, they were to meet there.

Q. By arrangement?—*A.* Yes; there was a suit going on, and Mr. Nugent wanted to be there to see how it would end.

Q. And at the time he apparently gave an assent to the judgment, and after that you went out of possession?—*A.* I remember getting a letter from Mr. Nugent here, and I remember him stating this in his letter, that the judgment was as good as the Manitoba wheat.

10

Mr. Meredith objects to this.

His Lordship.—Q. After knowing of the judgment did you go out of possession?—*A.* Yes.

Mr. Watson.—Q. Why did you do so?—*A.* Because we were depending on the judgment.

Q. Was that fact communicated to the Commercial Bank of Manitoba?
A. Yes, I told them myself.

Q. That the judgment had been obtained and that you were going out, relying upon that?—*A.* Yes.

Q. Previous to that had you or not been pressed by the bank for payment?
—*A.* They wanted to get paid.

Q. After that did they press you for payment?—*A.* No, not after that.

Q. After that they did not?—*A.* No.

Q. Then I believe you subsequently assigned this judgment to Mr. Nugent?—*A.* Yes.

Q. And this is the assignment, is it, executed by you and by Mr. Schiller, 6th October 1891?—*A.* Yes.

Q. And thereupon you obtained from him a declaration of trust?
A. Yes.

Q. Which is attached to the assignment, executed the same day?
A. Yes.

Q. And in this he undertakes in the third place to pay to the Commercial Bank of Manitoba the sum of \$20,000 in payment and satisfaction of the \$20,000 order given by them?—Yes.

Q. That was the order spoken of a few days ago?—*A.* Yes.

Q. That was the order assigned by you to the bank?—*A.* Yes.

Q. This was the order given by Mr. Charlebois?—*A.* Yes; I handed it in myself.

Q. That is assigned by you on the back of it—pay to the order of the Commercial Bank of Manitoba, June 10th, 1890?—*A.* Yes.

40

Q. And handed to you about that time?—*A.* Just a few days after it was signed.

Q. Then after payment of that he has to pay certain other claims, and finally to distribute the balance rateably amongst your creditors, including the Commercial Bank of Manitoba?—*A.* Yes.

Q. And that would be sufficient to satisfy all?—*A.* Yes.

Q. Have you ever been paid any part of that?—*A.* No.

Q. When, as a matter of fact, did you give up possession afterwards?

How soon after the—(Interrupted.)—*A.* Well, it was some time after ; we were up there ; it was on the 14th December that we handed the road over.

Q. On the 14th December you handed the road over ?—*A.* Yes.

Q. To whom—to the Company ?—*A.* To the Company ; Mr. Codd was there.

Q. Did he or not allege any special reasons for obtaining it ?

Mr. Meredith.—Oh, no.

Mr. Watson.—*Q.* Was Mr. Codd there previous to September 1891 ?—

A. Yes.

10 *Q.* That is on the road and about there ?—*A.* Yes.

Q. Did he know the condition in which it was at that time ?—*A.* Yes, he did.

Q. Previous to the time the judgment was assented to ?—*A.* Yes.

Q. He had gone over it and saw the position of it ?—*A.* Yes.

Adjourned from 6 p.m. until 9.30 a.m. to-morrow.

Ottawa, Nov. 4, 1893.

Mr. Meredith.—Would your Lordship intimate as to what course your Lordship would prefer to pursue as to the argument ; there is some discussion as to whether the argument should be taken now.

20 *His Lordship.*—You cannot argue, I suppose, until Dr. McMichael has those papers in ?

Mr. Meredith.—No.

His Lordship.—I will take the argument in Toronto any time ; any time next week I could take the argument.

Alex. MacDonald.—Cross-examined by *Mr. Howland.*

Q. You were the original contractor for the construction of the Souris & Rocky Mountain Railway, were you not ?—*A.* One of the original contractors.

Q. Who were the others ?—*A.* Preston and Sproule.

30 *Q.* Preston and Sproule and yourself were the original contractors ?—*A.* Yes.

Q. How many miles were constructed ?—*A.* As far as I remember about 47.

Q. That was no part of the line covered by the charter of the present Great North West Central Railway ?—*A.* No, not more than the crossings ; the crossings they adopted.

Q. No part of that work was in any way part of the property or to the advantage of this Company ?—*A.* No.

Q. No part of the work that was done ?—*A.* No.

40 *Q.* And its property under the charter ?—*A.* Yes.

Q. The only partners you had in that were Sproule and Preston ?—*A.* Yes.

Q. Were you paid by the Company any of your expenditure as contractors ?—*A.* I think something like \$3,000—\$2,300 or something like that.

RECORD.

No. 71.
Alexander
Macdonald
cross-
examined
by Mr.
Howland—
continued.

Q. That was paid you by the Company ?—A. Yes.

Q. Had you put your own money into the construction ?—A. Yes.

Q. When the charter of this Company was got, you secured protection for yourselves by Clause 27 in that charter, did you not ?—A. Yes.

Q. By the clause which provided that all moneys expended in construction should be a charge on this Company ?—A. Yes.

Q. That is what you understood was the effect of that charter ?—A. Yes.

Q. And you were active in getting it for that purpose, you and Preston ?—A. Yes.

Q. And it was your claims the Government had in view, was it not ?—10

A. Yes.

Q. And your claims were arranged by the Great North West Central Railway Company, by a contract of the 12th September 1887, were they not ?—A. Yes.

Q. And the amount was defined at \$75,000, of which you were to have \$25,000 in cash out of the Government deposit—the deposit of \$50,000 in the hands of the Government, and \$50,000 in the form of, or the proceeds of \$50,000 bonds ?—A. The agreement is there.

Q. And that was its substantial effect ?

Mr. Nesbitt.—It speaks for itself.

Mr. Howland.—Q. That is Exhibit 18, I understand, to that contract ; perhaps you will recognize your signatures to that ; this is a copy ; you have heard that document read and put in ?—A. I have heard the agreement. 20

Q. That is the agreement that was made, is it not ?—A. I do not know ; if my signature is to it I know it is that, but I will not swear till I see my signature.

Q. That agreement satisfied all the claims for construction on the Souris & Rocky Mountain Railway.

Mr. Nesbitt.—How does he know ?

Mr. Howland.—Q. Satisfying you satisfied the claims for construction 30 under the 27th Clause of this Company's charter ?—A. I do not know if there is any other that had any claims ; it satisfied our claims.

Q. And you were the construction contractors ?—A. Yes.

Q. And you had done all the work of construction that was done ?—A. Yes.

Q. And there could not be any other claims for construction ?—A. Could not tell you whether they made claims, I mean to say that we had the contract.

Q. This is the contract, I think, of the 12th September 1887 ?—A. Yes.

Q. You recognize your signature ?—A. Yes.

Q. And the president's ?—A. Yes. 40

Q. By Mr. Clemow as president ?—A. Yes.

Q. Now, the next step in connection with this matter was after that arrangement was made, it was understood by that means they were going to finance this road ?—A. Yes.

Q. They would dispose of the claims under the 27th Section, and they would be able to go on and finance the road on the strength of representing that those claims were satisfied ?—A. Yes.

Q. Then when they commenced construction, which was about the same

time as this contract of the 12th September, they entered into a contract with Mr. Sproule for the construction of works on the Great North West Central ?
—A. Yes.

Mr. McCarthy.—How does this witness know anything about that, and what is the object of it ? It has never been disputed.

Mr. Howland.—It is only leading up to it.—Q. And this contract is not disputed by anybody ; you were a party to it as surety for the contractor ?—A. Yes, I had an interest in it.

RECORD.
No. 71.
Alexander
Macdonald
cross-
examined
by Mr.
Howland—
continued.

Q. And Mr. Schiller also ?—A. Mr. Schiller, no.

10 Q. Mr. Schiller seems to have been a party ?—A. No, not in the Sproule contract.

Q. Then in addition to being on the surface of the matter guarantors, really you were the parties interested behind the Sproule contract ?—A. Yes.

Q. You went on with your work under that ?—A. Yes.

Q. And was any complaint made by the Company of your work ?—A. No.

Q. Up to 1889, was there any complaint made by the Company ?—A. No.

Q. They were satisfied with your work, and you had been paid something on account ?—A. Yes.

Q. You had been paid all on account except the draw-back 10 per cent. ?—

20 A. We were paid all but the draw-back of the estimates as given.

Q. You have been paid somewhere about \$70,000, have not you ?—A. A little over.

Q. And the draw-back would be about \$7,000 or \$8,000 ?—A. Yes.

Q. Your work was stopped before they were not able to furnish you with the rails to go on ?—A. Well, they told us to stop, that they could not go on just now.

Q. They were not able to provide the capital to go on with ?—A. Well, they did not exactly say that, but there is a clause, if I remember, in our contract, that we were to suspend work when they told us.

30 Q. They had the control of the operations by the clause in the contract, and could stop the contractor when they chose, and they did so ?—A. Yes.

Q. And they kept you suspended in that way between heaven and earth until September 1889 ?—A. Yes.

Q. Now, it appears that you were present in Ottawa at the time this contract was made for the turning over of the property from the old Company to the new ?—A. I was in Ottawa at the time.

Q. You stayed at the Grand Union Hotel, did you not ?—A. Yes.

Q. I have taken the trouble to look up the books of the various hotels, and I find you were there ?—A. Yes.

40 Q. I find you arrived on the 19th August 1889 ?—A. Yes, I looked up myself.

Q. Well, then, I find Mr. Preston seems to have been here from about the same time, or very closely afterwards ?—A. Yes.

Q. He was here on the 22nd August, was he not ?—A. Yes, I think so. I just took a note of it. (Refers to memorandum.) On the 22nd August 1889.

Q. And I find that Mr. Schiller seems to have arrived on the 9th September 1889 ?—A. Yes.

RECORD.

No. 71.
Alexander
Macdonald
cross-
examined
by Mr.
Howland—
continued.

Q. And I find you all three remained here on the 28th September 1889, when you all three seem to have left on the same day?—*A.* Yes.

Q. What were you doing all that time? What was your object in coming? Was it in connection with any contract?—*A.* Well, we wanted to see if they were going on with the work; we had a contract and we wanted to finish it.

Q. That was the object of Preston and yourself coming?—*A.* Yes.

Q. What was the object of Mr. Schiller coming on the 9th September; that was much later, you see?—*A.* We talked about buying out Sproule and Preston.

Q. And Mr. Schiller was to buy them out; was that it?—*A.* He was to furnish so much money.

Q. Who was it suggested your buying out Sproule and Preston?—*A.* Oh, I do not know.

Q. Was not it suggested by the Company?—*A.* No.

Q. Well, you told me in a former examination that you had some conferences with Senator Clemow and the old Company about surrendering your Sproule contract?—*A.* I do not know about the Senator, but I remember Mr. Charlebois and Mr. Lewis, about giving it over, that the Company could not have two contractors.

Q. Then at that time they were contemplating having another contractor?—*A.* There was some talk about Charlebois.

Q. You talked about Charlebois taking it?—*A.* Yes.

Q. Can you fix about the date when this talk about Charlebois taking the contract commenced?—*A.* I could not tell you; it was a day or two before the contract was signed.

Q. A day or two before the 16th September?—*A.* Yes; there may have been talk before that, that they might sell out, but I think when Charlebois came on the scene, that it was about that time.

Q. And you had a talk with Charlebois; you are positive at that time about his taking your place?—*A.* He asked us if we would give up Sproule's contract and take one with him on the same terms.

Q. And he was going to trust you to go on with the work completely, was he not, the same work that you had been doing?—*A.* Yes.

Q. Did not he express great confidence in you?—*A.* Oh, very likely he did.

Q. Do not you remember that he did?—*A.* Well, afterwards he said he had no trouble with it.

Q. But I mean before; did not he say he was going to leave the matter to you entirely, just to go on as you had been going on?—*A.* It is likely he did.

Q. Just tax your memory, because we went over this ground before in the depositions; there were other persons than Mr. Charlebois present at the beginning of these conferences about your making way, so that Mr. Charlebois could become the Company's contractor, and you become his sub-contractor?

Mr. Nesbitt.—Are you stating it as a fact, or asking a question?

Mr. Howland.—I am asking a question.

A. Well, it is so long ago that I cannot remember everything that passed;

all that I remember was, that it was all the same to us taking the contract with Charlebois, or continuing the Sproule contract, as it was the same work and the same price.

Q. Same work and same price?—A. Yes.

Q. You were to go on, and it was all the same to you whether you were the contractors with the Company directly or the contractors with Charlebois?—A. Yes

Q. But what I want now is the other persons who were present when you were discussing this matter?—A. I do not know that any of the other directors were present; I remember Mr. Lewis telling us that he was likely to do it.

Q. That he was likely to do what?—A. To hold Charlebois for the other; it would be just the same as the one we had.

Q. That you would—(Interrupted)?—A. That we would be in the same position as we were before.

You would be just in the same position, with the difference that he would take the place of the Company?—A. Yes.

Q. He would stand in the place of the Company to you?—A. Yes.

Q. Your recollection was a little stronger than this when you were asked about it before; you remembered some others being present; on page 8 you stated this:—"In September of 1889, did you have any further discussion with any person representing the Company in regard to the work on the Great North West Central?"—A. We talked it over. Q. With whom?—A. With Charlebois, Senator Clemow, Allan and Murray; I do not remember that Devlin was "there." You had a pretty clear recollection who were there?—A. Oh, we may have talked it; what I mean to say, they would not be all together; but we may have talked it over when they were alone; I do not remember that they were together; I remember Mr. Charlebois and Mr. Lewis talking once to me about it.

Q. But you remember you did talk with Senator Clemow about it?—A. Oh, it is likely we did.

Q. You said more than that, and you may as well use definite language now; you talked with Senator Clemow about it; you talked with Mr. Allan about it, and you talked with Mr. Murray about it, but you do not remember that you talked with Devlin?—A. No, nor I do not know that I talked with Murray.

Q. You are not sure that you talked with Murray?—A. No.

Q. But you are sure you talked with Senator Clemow and Mr. Allan?—A. Yes, when talking over things that we talked over the contract.

Q. That you talked over the fact that you were going to take a sub-contract under Charlebois?—Likely to take it.

Q. That you were likely to take a sub-contract under Charlebois and surrender your own direct contract with the Company? You were asked, "Where did that take place?" "In Senator Clemow's Office in Ottawa?"—A. Well, very likely we did; the Senator and I talked there together.

Q. The Senator did not continue after the 16th September to be a director of the Company; you know that, of course?—A. Well, I was told.

Q. So that your talks on this business were all before that change in the directorate?—A. Before and after.

RECORD.

No. 71.

Alexander

Macdonald

cross-

examined

by Mr.

Howland—

continued.

RECORD.

No. 71.
Alexander
Macdonald
cross-
examined
by Mr.
Howland—
continued.

Q. But necessarily those that were of a business character were before?—
A. Yes.

Mr. Nesbitt.—He has not said they were of a business character.

Mr. Howland (reading).—“ *Q.* How did you come to be in Ottawa?—
“ *A.* I went down to see if some arrangement could be made to go on. *Q.* Had
“ you received any communications requesting you to go down?—*A.* Mr. Codd
“ telegraphed or cabled that he was coming over?”

Witness.—Yes.

Q. Did he telegraph or cable you what he was coming over about?—*A.* He
telegraphed to Mr. Young.

Q. He showed you that telegram?—*A.* He told me he had a telegram. 10

Q. From Codd?—*A.* Yes.

Q. That he was coming over from England? *A.* Yes.

Q. What was he coming over about?—*A.* I do not know that he said any-
thing in his cable what it was; I did not see the cable.

Q. But you knew what Mr. Codd had gone over to England about?—
A. Well, I heard.

Q. It was about purchasing out the Company?—*A.* I heard.

Q. Mr. Codd was present in Ottawa for some days before the 16th Sep-
tember?—*A.* Yes.

Q. And this matter was talked over with him, all about your taking a
subcontract with Mr. Charlebois in place of direct with the Company?— 20

A. Very likely; as far as I remember; I told him that likely it would be done.

Q. You told him that likely it would be done?—*A.* Yes.

Q. This was before the 16th September?—*A.* Yes.

Q. And it was important for him to know that you would soon be subor-
dinated and take the place of sub-contractors instead of the original contractors?
—*A.* I suppose so.

Q. Because he was interested in this arrangement by which Mr. Charlebois
was to take the contract, and he wanted to know that the sub-contractors would
consent to take the second place?—*A.* I do not know that he asked me to
do it. 30

Q. You do not know that he asked you to do it?—*A.* No.

Q. But you knew that he had that interest to do it, that he was arranging
a deal by which Charlebois was to become the contractor?—*A.* There was some
arrangement going on; I had not seen any arrangement or knew what arrange-
ment it was.

Q. I am not asking you that, but you knew afterwards what arrangement
was made?—*A.* I was told.

Q. You have seen Charlebois' contract?—*A.* Yes.

Q. And that was the arrangement which was being discussed at that time?—
—*A.* I did not see it then. 40

Q. But you know that that is the contract; you have been told by Mr.
Charlebois that that is the contract which was being discussed?—*A.* Yes.

Q. And you were being told by Mr. Codd that that was the same contract
that was then being discussed?—*A.* I do not know that Mr. Codd told me any-
thing about it more than that he would like to have it changed.

Q. You knew that, that he would like to have that change made ?—A. Well, RECORD.
I thought so, by—(Interrupted.)

Q. By what ?—A. What Mr. Lewis had said, that they could not have two No. 71.
contractors. Alexander
Macdonald

Q. This is what Mr. Lewis had said some days before the 16th September ? cross-
—A. Yes. examined
by Mr.

Mr. Nesbitt.—He did not say any such thing.

Mr. Howland.—He has said yes, now.

Mr. Nesbitt.—Ask him the question.

10 Mr. Howland.—No, he has answered it.

Q. Did you know then Mr. Codd's interest in this contract with Charlebois ?
—A. No.

Q. When did you first see Mr. Codd's contract with the Company, by which
he was to get \$173,000 ?—A. I do not know that I knew anything about it till
the consent judgment.

Q. Mr. Codd was a very talkative man ?—A. Oh, sometimes.

Q. Also very secretive when he wanted to be ?—A. Yes.

Q. But he was rather inclined to be boastful about his claims upon Mr.
Charlebois ?—A. Not to me, no.

20 Q. Well, now, we will come down to the time of the consent judgment.
You were represented at the time of the consent judgment by Mr. Nugent ?—
A. Yes.

Q. I think somebody has put in a couple of letters ; Mr. Nugent has
informed you what had taken place at the time of the consent judgment ?—
A. Yes, afterwards.

Q. You met him where ; in Winnipeg or Toronto ?—A. In Ottawa or in
Toronto ; I think it was in Toronto.

Q. Soon after the consent judgment ?—A. Oh, a few days afterwards.

Q. And he told you then that Mr. Codd had an interest in this judgment ?—

30 A. Told me Mr. McMichael.

Q. Did not he mention Codd's name in the matter ?—A. Not that I
remember.

Q. Did not he tell you this ? Did not he tell you the nature of that
claim, and the nature of the claim given to Mr. Codd through Mr. McMichael
by that judgment ?

Mr. Nesbitt.—How can he possibly know that ?

Mr. Howland.—It will be evidence against Mr. Nugent, and Mr. Nugent is
a Defendant in this case and a number of people claiming through him.

Witness.—I do not remember what he said.

40 Q. Now, you were in possession of the road in September 1891, at the time
of the consent judgment ?—A. Yes.

Q. You had obtained an injunction against Charlebois, had you not ?—
A. We had an injunction.

Q. And you were actually in possession, with your workmen, of the road ?
—A. We had men on the road keeping possession of it.

Q. And you were unpaid by Mr. Charlebois a large balance on your
contract ?—A. It shows in the judgment what the admitted claim was ; we had
more of a claim, but it is in the Court and the Court will decide.

RECORD.

No. 71.
Alexander
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cross-
examined
by Mr.
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continued.

Q. That is the application you have in Manitoba?—A. Yes.

Q. But you had a claim based on Mr. Charlebois' engineer's certificates which was established and admitted?—A. Yes.

Q. And that was unpaid, and you were holding possession, whatever rights you had to hold possession?—A. Yes.

Q. You recognise Mr. Nugent's signature to that letter; you recognise his signature, 2nd December 1891?—A. That is his signature.

Q. This expresses the terms on which you did give up the road?—A. I do not know anything about what he told Mr. Codd.

Q. You know that you did not give up possession except upon your solicitor's advice; you got a telegram from your solicitor when to give up possession?—A. Got a letter from Mr. Nugent saying that we were placed first in the judgment, and that it was—(Interrupted.)

Q. Are you answering my question; I am asking you, did you give possession until you had received instructions from your solicitor to do so?—A. No, no.

Q. And the instructions were based upon the fact that he had made these arrangements with Codd on the 2nd December 1891?—A. The arrangement was made that we had the judgment, and we were depending upon the judgment to get paid that amount.

Q. Well, now, the road that they were placed in possession of was an incomplete road, was it not, according to the contract, according to what you knew of the contract yourself?—A. Not according to our contract.

Q. Well, your contract was to complete from Brandon, or such point near Brandon as the Company's engineer would indicate, and to complete with certain grades, and then your contract with Charlebois was to ballast and complete, was it not?—A. We had a Government inspector—(Interrupted.)

Q. Just answer my question; that was your contract?—A. What?

Q. Your contract was to complete that road with grades not exceeding, 60 feet, and to be ballasted complete from the point indicated as the point of connection with the C. P. Railway and for fifty miles from that point?—A. Fifty miles from the point where we started we were to build it according to our contract, and the contract is there, and they have received it, Charlebois' engineer and the Government engineer and Mr. Secretan, as I understood, for the Company, had received the road, or said what was to be done. As far as we were concerned our work was finished they said, and well done.

Q. Was there any change made in the condition of the first three miles of the road between July or August 1890, and the time that you gave up possession?—A. Yes.

Q. What change was made?—A. There was part of it, between two and three miles, that was built in to Chater.

Q. We will come to that afterwards; that was no part of your original contract, and Charlebois had nothing to do with that?—A. No.

Q. That was done by a contract Codd made with you after you took possession?—A. I suppose we had not given possession; we were still there on the ground.

Q. We will come to that presently—

His Lordship.—Is there any dispute about Macdonald being entitled to be paid for the work, because that is all he is put in to prove, I understand ?

Mr. Howland.—Oh, no, my lord ; he has a great knowledge of the facts which constitute the circumstances under which the judgment was obtained.

His Lordship.—But you are speaking of the work done on the road. Do you want to prove the work was incomplete in other parts ?

Mr. Howland.—Yes, we want to prove that there was material misrepresentation which was intended to be a misrepresentation to the real proprietors of that road by all parties to it.

10 Q. There was a portion of that road from near the C. P. R. which had grades exceeding 60 feet to the mile ?—*A*. One point.

Q. Why did you make this road to Chater ?—*A*. Because they could make connection with the C. P. R. easier there.

Q. They could make connection with the C. P. R. easier there ; you mean with the proper grade ?—*A*. Yes.

Q. And they could not make it at the point where they were with the proper grade ?—*A*. Well, it would have to be reduced ; it would never be a good junction.

20 Q. You received this letter from Mr. White, the General Superintendent of C. P. R. on the 27th September 1889 ?

Mr. Moss.—Is that evidence ?

Mr. Howland.—It is part of the *res gesta*, I think.

Witness.—Yes.

Q. And that formed the basis of a contract or understanding that Mr. White indicated that that junction was one which they would not permit to exist, but only a temporary junction for construction purposes ?—*A*. Yes ; he was allowing us to go over it ; we were to stop when he told us.

Q. Those were the terms on which you were going on ?—*A*. Yes.

Q. And that was the state of things in September 1891 ?—*A*. Yes.

30 Q. And it was the state of things until you built this connection with Chater ?—*A*. Yes.

Q. And in fact you abandoned a mile or so of the old connection with the C. P. R. in building this connection at Chater ?—*A*. Yes.

Q. All that was known to you on the 28th September at Toronto ?—*A*. That the Junction was there.

Q. That the road was incomplete in that respect ?—*A*. I do not know about incomplete ; it was not for traffic as Chater is, but it was a road that you could go on, the connection was perfect.

Q. But not according to the terms of the contract ?—*A*. I do not know anything about their contract.

Q. But not according to the terms of your contract ?—*A*. Yes, that was our contract.

Q. The Sproule contract was to be 60 feet to the mile, the same as the other ?—*A*. Well, we did it according to the engineer's instructions.

His Lordship.—That is the beginning and end of his evidence ; he has done his work and wants to be paid for it.

Mr. Howland.—We will come to the material part presently.

RECORD.

No. 71.
Alexander
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cross-
examined
by Mr.
Howland—
continued.

Q. There was no ballasting done on that part connected with the C. P. R. ?
—A. A piece of it.

Q. For about three miles ?—A. Could not tell you how much there was, but it was just to the top of the hill.

Q. And that is correct ; about three miles ?—A. It is very likely about three miles.

Q. You knew how it was, or did you know how it was that the Government engineer was passing—had Mr. Secretan given you instructions that that was the final road ?—A. As far as we were concerned.

Q. As far as your own work was concerned ?—A. Yes.

10

Q. But it was admitted that that was only temporary work as far as the contract was concerned ?—A. Mr. Secretan said that the Company could go to Chater.

His Lordship.—We need not go into what Mr. Secretan said.

Mr. Howland.—A. Mr. Secretan was Mr. Charlebois' engineer, was he not ; and he had ceased to be the Company's engineer after Mr. Charlebois took the contract ?—A. Yes.

Q. That Mr. Secretan had stated to you himself, did he not ; you understood that perfectly ?—A. Well, he said they could go either the one way or the other.

20

Q. Mr. Secretan stated that he was no longer the Company's engineer ?—A. I do not know that Mr. Secretan did, but Mr. Charlebois himself told me ; he said he was engineer for him.

Q. That was when ; when you commenced the work ?—A. About the same time the contract was taken, before we commenced work ; he said Mr. Secretan was going up for him.

Q. That would be about October 1889 ?—A. No, it would be about the day after the contract was signed.

Q. What I wanted to ask you was, do you know how it was that the Government engineer passed that part of the line with more than 60 foot grades into the connection with the C. P. R. ?—A. Oh, I do not know.

30

Q. But do not you know ? You learned in some way that the Government had been induced by some one to alter the Government contract ?—A. To alter the Government contract ?

Q. Yes ?—A. I do not know.

Q. So as to allow that part to be constructed with greater grades ?—A. I cannot say that I have seen any document or anything to that effect.

Q. It must have struck you as peculiar at the time that that part of the road which was only a temporary junction for construction purposes, as you have been told, was converted into a permanent part of the road and accepted as such by the Government engineer ?—A. I do not know ; many a thing is done that way.

40

Q. But you knew it was varying the thing ? (No answer.)

Q. When was the arrangement made that you were to have the contract for building the three miles into Chater ?—A. Oh, I forget ; it was after the consent judgment.

Q. Was not it really understood before that ?—A. No.

Q. It was understood you were going to get that ?—A. No.

Q. It was understood that was going to be built?—A. It was understood they always said they would build into Chater. RECORD.

Q. And you and Codd had talked over that ; you were to get the contract whenever that was built?—A. I do not know that we did ; he said he would see it was done. No. 71. Alexander Macdonald cross-

Q. Well, it was part of the understanding in connection with the consent judgment that you were to get that contract?—A. No, not at all. examined by Mr.

Q. But you did get it, and you were paid some \$15,000, were you not?—A. No, not that much. Howland—continued.

10 Q. You know that it cost about \$20,000?—A. As far as I could judge.

Q. You knew that the Company had no money at the time of the consent judgment ; they had to get more money?—A. I understood they had to get the money.

Q. You understood Mr. Codd was going to get some more money from England?—A. I do not know where he was going to get it from, or anything, but their engineer said he would see us paid.

Q. Now, who is their engineer?—A. Forrest.

Q. That was some time afterwards, though, was not it?—A. Just when we went up to Brandon.

20 Q. In this letter of Mr. Nugent's this is the statement : " In order to place " you in a position to carry out your arrangements with your English syndicate, " by being able to assure them that the first fifty miles of the Great North " West Central is in reality a running concern, on behalf of my clients, " Macdonald and Schiller, I hereby consent for you," &c. (Reads down to the words " would cease.") Those were the terms?—A. I do not know ; it was Mr. Nugent did that.

Q. He arranged all this for you ; so that the arrangement was made in order that Codd was to be in a position to represent to people from whom he was going to obtain money that he had obtained possession of the road and was 30 able to operate it?—A. Could not say.

Q. And you got the proceeds of the money he was paid for that purpose?—A. I do not think it.

Q. He had no money then, but you were paid after that the money expended in building that branch?—A. When was the letter written?

Q. 2nd December 1891?—A. I think we had some money before that.

Q. You think that Mr. Codd, after the time of the consent decree—it was not before that, was it?—A. No.

Q. That after the time of the consent decree he arranged with you to build this branch, and was paying you on account?—A. Yes.

40 Q. And he had got the money from England for the purpose?—A. Could not tell you where he got it.

Q. And on the faith of the representation that he had possession of the road?—A. I do not know about that.

Q. You recognise your signature to this document?—A. Yes.

Q. And Mr. Schiller?—A. Yes.

Q. And Mr. Lewis is the witness to that?—A. Yes.

Q. And this was dated on the 21st September 1889 ; Mr. Schiller and

RECORD. yourself of the first part, and the Great North West Central Railway Company of the second part ; this is Exhibit 16 ?—*A.* Yes.

No. 71.
Alexander
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by Mr.
Howland—
continued.

Q. By this contract you absolutely release all claims that you or any partner of yours had had against the Company up to that time ?—*A.* All claims on the Sproule contract.

Q. No, it is not all claims on the Sproule contract ?—*A.* Oh, that was understood ; it was understood there and then that it was on the Sproule contract.

Q. I think there is a clause that shows that ?—*A.* I know what I signed.

Q. It had reference to something else ; that provided that nothing herein contained shall affect, &c. (reads) ?—*A.* It was not to touch that ; it was the agreement with Sproule ; not that ; I am telling you how it is.

Q. You were saving your rights under the agreement of the 12th September 1887 ?—*A.* Yes.

Q. Because the language was wide enough to have released those rights if you had not saved them ?—*A.* Certainly.

Q. And therefore you saved those rights ?—*A.* Yes.

Q. And that was then and there an existing agreement ?—*A.* Yes.

Q. And you represented to this Company, then consisting of new people, that there was that agreement in existence of the 12th September 1887 ?—*A.* Yes.

Q. And that represented all the rights you had under the 27th section ?—*A.* That agreement in connection with other agreements.

Q. You do not say anything about other agreements ?—*A.* Well, it was understood.

Q. Well, then, you afterwards proceeded to obtain judgment in Manitoba ?—*A.* Yes.

Q. After Mr. Crossen had acted on the judgment and allowed his cars to become the property of the Company ?—*A.* Yes.

Q. You brought an action against the Company ?—*A.* Yes.

Q. For your old Macdonald and Preston judgment ?—*A.* Yes.

Q. Although by that agreement of the 12th September 1887—(Interrupted.)

Mr. McCarthy.—What have we to do with that ?

Mr. Howland.—It is one of the issues here.

Mr. McCarthy.—How does it come to be an issue here ?

Mr. Howland.—It affects our relations with Charlebois also. Charlebois claims under these contracts that we have no right to set off against him the Macdonald and Preston claim, unless Mr. Charlebois has the right to settle that claim with him ; and he is setting up in his defence that a judgment has been allowed to be obtained by the Company which bars the Company, and I wish to show the circumstances of this, and that it is not binding upon the Company.

His Lordship.—As long as the judgment remains I cannot interfere with it.

Mr. Howland.—I suppose your Lordship does not want any evidence taken that will affect the question of the admission of these parties to defend here. I think it is a fact material to our seeking to claim rights against the Company.

His Lordship.—If Charlebois' judgment stands they are protected, and if it is set aside it does not affect your relations to attack this Macdonald judgment

in any way you please ; but I do not think it helps in this case to bring in the RECORD. Manitoba judgment.

Mr. Howland.—At all events, you obtained a judgment without defence.

Mr. McCarthy.—I think his Lordship has ruled against it.

His Lordship.—I do not see that that helps, to go into the Manitoba struggle here. Your rights are not affected here by the Manitoba case ; and while the judgment stands it binds you.

Mr. Howland.—*Q.* This agreement of the 26th September 1891 (Exhibit 84) ;
10 you see Mr. Codd's and Dr. McMichael's signature to that ?—*A.* Yes.

Q. And that was obtained by Mr. Nugent, representing you ?—Yes.

Q. So that Mr. Nugent and Mr. Codd were making arrangements quite private and distinct from the consent judgment ?—*A.* That is before the consent judgment.

Q. Of which no notice was intended to be given to the English parties, as appears by Mr. Nugent's letter ; it was to be concealed from them that there were any private arrangements ?—(No answer.)

By *Mr. Moss* :—

Q. When did you go on with the work after you made your contract with
20 Mr. Charlebois ?—*A.* Before we signed the contract ; we went on before ; the contract was sent up to Brandon, and we signed it on 3rd October.

His Lordship.—Your client is not interested, Mr. Moss.

Mr. Moss.—I am requested by Mr. McCarthy to ask these questions on behalf of Charlebois.

His Lordship.—Go on.

Mr. Moss.—*Q.* Some time between the 16th and 23rd October you would go on with the work ?—*A.* Yes.

Q. When you went there did you go up to this point on the C. P. R. where the lines joined ?—*A.* Yes.

30 *Q.* And what did you find there ; was the line located there ?—*A.* The line was located in 1887.

Q. And located to join the C. P. R. ?—*A.* Yes ; the grading was within a few feet of the dump ; what was the C. P. R.'s portion of the road-bed was not graded before we went up, but the rest was all graded.

Q. That is to say, the two lines were within a few feet of one another ?—*A.* Yes.

Q. Was the grading on the C. P. R. not done at that time ?—*A.* Yes.

Q. Was the grading on your line done ?—*A.* The grading on the C. P. R. was done, but ours was not quite up to it, just a few feet off.

40 *Q.* On whose line was the few feet ?—*A.* That was on the C. P. R. ground, the right-of-way of the C. P. R. ; that piece, the few feet, was on the C. P. R., and Mr. Secretan said we would not build that till we were going to make connection.

Q. The Great North West Central line was brought up to the property of the C. P. R. ?—*A.* Yes.

Q. And that is the point where it was located and partially constructed at the time you went on with the contract ?—*A.* Yes.

No. 71.
Alexander
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cross-
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Howland—
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No. 72.
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examined
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RECORD.

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continued.

- Q. And then you went on and completed it ?—*A.* Yes.
Q. And was Mr. Codd up there before September 1891 ?—*A.* Yes.
Q. Was he over the road ?—*A.* Yes.
Q. Saw the condition it was in ?—*A.* Yes.
Q. And saw that the junction had been made there at this point ?—*A.* Yes.

By *Mr. Nesbitt* :—

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Alexander
Macdonald
cross-
examined
by Mr.
Nesbitt.

- Q. You spoke of being present at Ottawa after the 9th September and up until the 21st September ; are you able to fix any particular day when any conversation took place at all ?—*A.* Oh, I could not.
Q. And anything in the way of business, as I understand it, you had to do 10 with Mr. Charlebois and Mr. Lewis ?—*A.* Yes.
Q. You have a distinct recollection some time during that period before the 21st September having a gossip with Senator Clemow ?—*A.* Oh, it is very likely we had ; we talked over things often together.
Q. Charlebois, you understood, was buying the others out, and something of that kind, and you mentioned it to the Senator ?—*A.* It was merely talk.
Q. You had no business deal with him or Murray, or Allan, or Devlin ?
—*A.* No.
Q. That is perfectly clear ?—*A.* Yes.
Q. Any business you had to do was with Charlebois ?—*A.* Yes. 20

By *Mr. Nugent* :—

No. 74.
Alexander
Macdonald
cross-
examined
by Mr.
Nugent.

- Q. All you had to do at Ottawa in connection with this change of contracts was entirely relating to your own contract ?—*A.* Yes.
Q. You had not anything to do with these other negotiations ?—*A.* No.
Q. That was your business here ?—*A.* Yes.
Q. As to that letter Mr. Howland has produced in connection with the C. P. R., what was that obtained for ?—*A.* So that we could go on with our construction.
Q. You were to build 50 miles to a point at or near Brandon, on the C. P. R. ? 30
—*A.* Yes.
Q. And that is what you built and are claiming payment for.—*A.* Yes.
Q. Under whose directions were you to have the grades fixed and made satisfactory ?—*A.* Mr. Secretan.
Q. You had nothing to do with Mr. Charlebois' contract with the Company ?
—*A.* No ; we were to go by Mr. Secretan's instructions, and we tried to do it to the best of our knowledge.
Q. You have obtained judgment in Manitoba ?—*A.* Yes.
His Lordship.—Do not make it any worse now. I stopped the other side on that. 40
Mr. Howland.—Just a few questions.—(Interrupted.)
His Lordship.—You have cross-examined.
Mr. Howland.—A new point, my Lord ; they asked him whether this line was located in 1887, and he spoke of it being located in 1887. Q. Did you ever see the location plan ; you had the location plan at your work ?—*A.* Yes.

Q. This is the *fac-simile* of the location plan filed with the Government in 1887 ?—A. Yes. RECORD.

Q. This is the one you were working according to ?—A. Yes. No. 74.

Q. You notice that statement there, "Temporary Junction of C.P.R., sub-ject to revision" ?—A. Yes. Alexander Macdonald cross-

Q. That part was the part you understood had not been approved by the Government ?—A. I did not know whether it was approved or not. examined by Mr.

Q. At all events, this is the plan that was then in force ?—A. This is the plan we worked up to. Nugent—*continued.*

10 Q. Then when it was finally completed this was the plan that was put in to the Government ?

Mr. Chrysler.—I object to that. How can this witness prove this was the plan put in by the Government ?

Mr. Howland.—We have the original here.

Mr. Chrysler.—I am objecting to the question, not to the evidence.

His Lordship.—I do not see the benefit of it. The case is bristling with minor details, but how does this help ?

Mr. Howland.—In regard to the fraud of the judgment upon the English people.

20 His Lordship.—How does this help ?

Mr. Howland.—The plans of this road were never approved by the Government in regard to the first 50 miles.

His Lordship.—This man has done certain work which was correctly done in accordance with the certificate of the engineer, and what fraud was he conscious of ?

Mr. Howland.—But he is proving it against Charlebois.

His Lordship.—In what regard ?

Mr. Howland.—In regard to the manner in which the Order in Council was obtained.

30 His Lordship.—He does not know anything about it.

Mr. Howland.—But he can prove a certain fact.

His Lordship.—Well, ask him that fact.

Mr. Howland.—Q. That is the *fac-simile* of Mr. Secretan's signature ?—A. Yes.

Q. You recognise that as a true *fac-simile* of his signature ?—A. Yes.

Q. Purporting to sign there as chief engineer of the railway in 1890 ?—A. Yes.

Q. Did you ever see this plan ?—A. I do not know that I did.

Arthur Andrew Jackson, sworn ; Examined by Mr. Watson.

40 Q. You are the assistant manager of the Commercial Bank of Manitoba ? —A. Yes. No. 75.

Q. And you were in charge during the time of the currency of the account with Macdonald and Schiller —A. Yes. Arthur Andrew Jackson examined by Mr.

Q. The bank is now in course of liquidation ?—A. Yes. Watson.

Mr. Watson.—I put in an order allowing the liquidators to continue this p. 5240. 3 N

RECORD. defence ; the total amount of the indebtedness of Macdonald and Schiller to the bank was some \$37,771.45, represented by these promissory notes.

No. 75.
Arthur
Andrew
Jackson
examined
by Mr.
Watson—
continued.

Witness.—These are the notes.

Q. And those, with interest, amount to the sum named ?—*A.* Yes, about \$37,000 odd.

Q. Mr. Macdonald has stated that the contract by him with the railroad was produced to the bank at the time the account was opened ; do you recollect that ?
—*A.* Yes.

Q. And that the estimates were presented from time to time in procuring the advances ?—*A.* Yes. 10

Q. Did that have anything to do with the advances made by the bank ?—*A.* It had.

Q. You were afterwards informed of the recovery of the consent judgment in September by Mr. Nugent ?—*A.* Yes.

Q. Previous to that had you or had you not been pressing for payment ?—*A.* Yes.

Q. Did you do so afterwards ?—*A.* No, sir, we relied upon the judgment.

Cross-examined by *Mr. Bristol.*

No. 76.
Arthur
Andrew
Jackson
cross-
examined
by Mr.
Bristol.

Q. When did you become aware of the judgment ?—*A.* Soon after Mr. Nugent returned from Toronto. 20

Q. In what way ?—*A.* He acted for the bank.

Q. Were you the manager of the bank at the time ?—*A.* I was assistant manager.

Q. Was it to you the contract was presented ?—*A.* I saw it.

Q. In whose hands ?—*A.* Cannot tell you in whose hands I saw it.

Q. Where did you see it ?—*A.* In the bank.

Q. But you know nothing further than that you saw it there ?—*A.* That is all.

Frank S. Nugent, sworn ; Examined by Mr. Watson.

No. 77.
Frank S.
Nugent
examined
by Mr.
Watson.

Q. You are a practising solicitor in Winnipeg ?—*A.* I am.

Q. And also here ?—*A.* Also a member of this bar. 30

Q. You came to Toronto in September 1891, with respect to the matter of the action of Charlebois against the Great North West Central ?—*A.* Yes.

Q. On behalf of Macdonald and Schiller, and on behalf of the Commercial Bank of Manitoba ?—*A.* And also W. A. Preston.

Q. And having instructions from all these parties ?—*A.* Yes.

Q. Were you present when the judgment was pronounced ?—*A.* Yes.

Q. How long were you there previous to that ?—*A.* I was there throughout all negotiation and discussion connected with the judgment.

Q. Running what time ?—*A.* Lasting over a week.

Q. Was that a contentious matter ?—*A.* It was most obstinately fought for 40 throughout on every point, Mr. Charlebois standing out for his rights and the other parties for theirs, Mr. Blake representing the Company and Dr. McMichael

and Mr. Osler watching the interests of Charlesbois, and myself watching the interests of myself and the bank. RECORD.

Q. I observe the first claim was in favour of your bank, Macdonald and Schiller?—A. Yes; that point was hotly contested by Charlebois and myself, we contending that unless we had first place in the judgment we would not consent to the judgment, as we had possession of the road, and we were given that, after a hot discussion, between Mr. Osler and myself. We were in actual armed possession by men camped on the dump, and Mr. Osler's reply was, "Well, we do not want anybody shot;" well, then, I said, "You will give
10 "us our rights."

Q. That first place is given to Macdonald and Schiller to the extent of \$64,429?—A. Yes.

Q. That included the order accepted in favor of the Commercial Bank?—A. Yes.

Q. For \$20,000?—A. Yes; I had the order with me and it includes that.

Q. It includes the balance of the claim?—A. They are to take the benefit of my declaration of trust for the balance of the claim.

Q. Well, now, but for this provision of the first charge, would this judgment have been consented to?—A. No, and they never would have had possession to this day.
20

Q. What have you relied upon since?—A. Expressly on that judgment; we had negotiations before that 26th September you will see there, but that was afterwards conceded in the judgment, and of course we relied on that expressly from that day to this.

Q. Has your position been changed by reason of that—(Interrupted)?—A. Most materially; we would have been on the dump and they would never have got it without paying us.

Q. And you speak with respect to all the parties you represented, including the Commercial Bank of Manitoba?—A. Yes; because the bank advanced their
30 moneys relying on our lien; every time we got an advance from the bank we went and showed how much money was coming to us, and showed them the contract giving us the lien, and they relied expressly on that lien in giving us the money, and it was because of that we asserted our position, and would not give it up until we were satisfied.

Q. Was this made known to the parties in settling the judgment?—A. Yes, and it was fought for hard; they wanted to place us in common right with the rest of the creditors and Charlebois, and we declined.

Q. And made it known to the bank on your return what the judgment was?—A. Yes; I explained the purport of it and how it was obtained, and it
40 was after that the bank let my clients remain easy after that judgment.

Do you know as a fact what Macdonald has referred to, that Mr. Codd was in Winnipeg—(Interrupted.)

His Lordship.—Oh, that is proved.

Cross-examined by *Mr. McCarthy.*

Q. The lien you refer to which your clients had was a lien under their contract?—A. Yes, the lien under their contract as contended for by them; it

RECORD. was disputed by Mr. Charlebois that they had not a lien to the extent they contended, but that was all fought out between Mr. Osler and myself in settling the judgment.

No. 78.
Frank S.
Nugent
cross-
examined
by Mr.
McCarthy—
continued.

Q. Your client was not a party to that proceeding ; that was a suit by Charlebois against the Company ?—A. Yes.

Q. How did you happen to be present ; how did you come to know about it ?—A. Well, we were interested very much because we had understood that Mr. Charlebois was going to try to get possession, to take it from us and give it to the Company before we were paid, and we were taking an obstinate stand on that.

Q. How did you happen to be present at Osgoode Hall when the discussion was going on ; had you been summoned there ?—A. I had been requested to go by my clients, the bank.

Q. They were not made parties in any way ?—A. No, but we knew the suit was going on.

Q. And knowing, you went to Osgoode Hall for that purpose ?—A. Yes.

Q. In the contest between the Company and Charlebois you were on Charlebois' side up to the time—(Interrupted.) A. No, I cannot say that ; we were each there standing out for what we thought was our respective rights.

Q. You did not appear as one of the parties to the litigation ?—A. We were not parties to that suit, you know.

Q. You did not appear as counsel in the case before the Court ?—A. Nothing more than the Court was cognizant of my presence there.

Q. You could not be present there without the Court taking judicial notice of the fact ?—A. You will see the judgment refers to that.

Q. Well, then, when you took an active part in it I suppose it was at the suggestion of the learned judge, as I understand it was there that the parties tried to arrange ?—A. Yes, after two days' argument.

Q. After two days' argument by the parties representing the litigants, at the judge's suggestion ; you then became active in watching the interests of your clients ?—A. Yes.

Q. I think you have seen the shorthand writer's notes of one day's argument ?—A. I have read them cursorily, but I can tell pretty well the contents.

Q. I thought you had read them and could say they were substantially correct ?—A. Oh, there is no question about that.

Q. Then as to the figures, there is some contest as to how the figures were arrived at ; could you throw any light upon that ?—A. I have only this to fall back upon ; I have the original figures as taken down by myself on that statement, and from which I have endeavoured to formulate the statement showing how that was made up to the best of my judgment.

Q. Just answer my question, please ; there was a good deal of discussion about figures ?—A. Yes, certainly.

Q. Mr. Blake, on behalf of the Company, claiming deductions, Mr. Osler opposing these deductions as to amount and so on ?—A. Yes.

Q. And was there any difficulty, so far as your client was concerned, as to the amount of his claim ?—A. No, none whatever ; we simply figured up the estimate and interest.

Q. The contest, so far as your client was concerned, was how they were to

rank in the judgment in order to give up possession and give up their lien?—RECORD.
A. Yes.

Q. You were present at all those discussions?—A. Yes.

Q. How long did they go over?—A. Four days according to my recollection, up to 12 o'clock at-night at Mr. Blake's house; that is succeeding the argument.

Q. The discussion as to how that amount should be arranged and apportioned occupied four days, and was finally finished at Mr. Blake's house at 12 o'clock at night?—A. Yes, Mr. Blake having conceded about \$100,000, as
10 Mr. Blake states there, for conceding the road; in fact I may say that Mr. Blake and Mr. Osler had the most active contentions in settling all those points as to the amounts.

Q. I believe this is your approximate figures?—A. Is this made up by me?

Q. So Mr. Lewis tells me?—A. I do not know when that was made up.

Q. You cannot identify it?—A. If they say that statement came from me, it must have been made up—(Interrupted.)

Mr. Meredith.—You need not swear to it unless you want to.

Witness.—There are so many statements in connection with this matter I
20 could not hardly say. All I know is there were more cars claimed, fencing claimed that Mr. Charlebois had yet to do, and for all that there was a reduction made from his contract.

By Mr. Mills:—

Q. During those four days was Codd present?—A. Only part of the time.

Q. Do you know what position he assumed as to the granting of the judgment?—A. His main contention was to see that the Company was protected and being enabled to operate the road; that seemed to be the main thing his mind was directed to.

Q. Was there or was there not much resistance offered on his part to the
30 granting of the judgment?—A. He was a very reluctant party; if it had not been for Mr. Blake's statement, that unless he consented the judge would probably make an order for the injunction—

Cross-Examined by Mr. Meredith:—

Q. How can you tell that?—A. I was present, and can tell it as a fact.

Q. Were you present when the advances were got from the bank?—A. I think I was.

Q. You were present, and can speak of your own knowledge?—A. From my own personal knowledge, yes.

Q. You gave that letter 2nd December 1891?—A. I gave that; I was
40 endeavouring to press my clients as much as possible; that was the object.

Q. Now, when this discussion was going on before the Court, the question was merely as to whether the road had been finished?—A. There were a great many questions.

Q. Were the questions not all with regard to that, as to whether the contract had been completed?—A. There was a question of grades discussed.

No. 78.

Frank S. Nugent

cross-examined by Mr.

McCarthy—
continued.

No. 79.

Frank S. Nugent

cross-examined by Mr. Mills.

No. 80.

Frank S. Nugent

cross-examined by Mr. Meredith.

RECORD.

No. 80.
Frank S.
Nugent
cross-
examined
by Mr.
Meredith—
continued.

Q. That was the question, whether it was completed according to the contract?—*A.* Yes.

Q. There was no question at all as to the validity of this contract discussed between you?—*A.* It was never spoken of.

Q. No question as to the right to a lien upon the road—that is your right to the lien upon the road?—*A.* No, the other was discussed, too. One of the questions, Mr. Codd said that in this settlement Mr. Charlebois' lien was to be foregone; and Mr. Blake said, "Of course if we do not carry out the judgment this lien shall be restored."

Q. It was assumed he had the right to it, if his contract was completed 10 and if the condition of the judgment was not carried out he was to be remitted to his position?—*A.* That was Mr. Blake's statement to the judge.

Q. A great deal of the contest was as to how the persons claiming on the fund were to rank as amongst themselves?—*A.* Not after my position was settled.

Q. There was a great deal of discussion with you and about the position of your client?—*A.* That is just as I have told you what took place.

Q. Then there was a great deal of discussion as to Codd's position?—*A.* No, I do not think the matter of his position on that judgment seemed to enter into our discussions at all.

Q. Was there any discussion as to when Codd was to be paid; try and think?—*A.* Well, that was settled there at the time; he was to take the last portion of the judgment. 20

Q. Was not Codd resisting that and claiming he should come in at an earlier stage?—*A.* No.

Q. Are you quite sure of that?—*A.* I am quite safe in saying that—at least I have no recollection of that. I am giving you my best recollection in regard to it; in fact that seemed to be a small difficulty.

Q. You started with \$973,133 as the contract price?—*A.* Let me explain.

Q. Did you start with that?—*A.* Mr. Osler and Mr. Lewis occupied one 30 desk; Mr. Blake and myself sat at Mr. Blake's desk, and we were all figuring out how these amounts would be arrived at. I do not think I ever saw that particular statement.

Q. You started with the contract price?—*A.* That is my recollection; the contract price was what it was based upon.

Q. Then you made certain deductions which Charlebois finally conceded ought to be made from the contract price?—*A.* Yes, that is right.

His Lordship.—*Q.* You mean Charlebois' contract price?—*A.* Yes, of £200,000.

Mr. Meredith.—*Q.* Then you dealt with Codd's commission?—*A.* Yes, 40 that I do not recollect; I have seen this statement since the Court opened for the first time; I do not recollect that it was dealt with exactly in this way.

Q. But it was dealt with?—*A.* The question of his order \$173,000 came up in fixing the amount.

Q. It was dealt with as his commission?—*A.* I do not know that it was spoken of as his commission; it was spoken of as the order in favor of Dr. McMichael for \$173,000; that is the only knowledge I have of it.

Q. Do you remember there being added to that order in order to strike his

balance \$20,000 allowance for engines?—*A.* No; I will tell you; Mr. Charlebois consented to so much for engines, \$20,000; \$13,000 or \$13,750 was my recollection, for fencing and \$3,000 to complete payment for the right of way, and \$25,000 for sundry other expenses in completing the road, and the \$39,000 for the orders; that made up \$100,750 as the amount to deduct from the contract, as the amount required for completion.

Q. Do you recollect those amounts being added to Codd's claim?—*A.* No, I do not recollect that, but Mr. Charlebois said "I have paid \$144 duty on rails."

10 *Q.* Never mind that; \$134,000 was the amount fixed to be paid to Dr. McMichael?—*A.* I cannot tell you.

Q. Look at the figures and see if that is the way it is made up?—*A.* I have looked at these figures since I came into Court, and I have no recollection of their having been grouped in that way.

Q. But are those the figures upon which the balance of \$130,000 was arrived at?—*A.* Not exactly; my recollection of it is that at no time did I hear this item of \$24,000—(Interrupted.)

Q. Never mind—

His Lordship.—Have not you proved that by Charlebois?

20 *Mr. Meredith.*—What appears by this statement is that \$61,000 allowance for engines, right of way and rolling stock were added to the amount Codd was to receive.

Witness.—I may say here—(Interrupted).

Q. Just one minute; \$173,000 was the amount of Mr. Codd's order?—

A. That was so stated.

Q. And \$50,000 he was to allow against that?—*A.* Charlebois claimed \$50,000.

Q. And that was conceded?—*A.* Yes.

Q. And \$25,000 difference on the rails; that was conceded?—*A.* What-
30 ever it was.

Q. That would reduce the \$173,000 to something less than \$100,000?—

A. As a matter of addition and subtraction it would, but I do not know that it was figured out in that way.

Q. How was it brought up to the \$130,000?—*A.* That I cannot tell you.

Q. Was it not brought up by the additions of these items for fencing and right-of way and rolling stock?—*A.* I cannot tell you how that was; I can simply tell you certain items were allowed Charlebois as he claimed them there, and certain deductions were made, and it was all figured out.

Q. You are not touching my point at all; what I wanted to get at was how
40 the balance of Codd's order was arrived at?—*A.* I cannot tell you, because the figuring was not done from that standpoint.

Q. It must have been done from that standpoint?—*A.* No; my recollection is they started with the contract price, \$973,000.

Q. As between Charlebois and the Company, but as between Codd and the Company?—*A.* When they came to strike the figures, I think there was give and take a good deal, and I cannot tell.

Q. You do not really know?—*A.* No; on closing up, those were the amounts agreed upon. I have here a memorandum which was taken at the

RECORD.
No. 80.
Frank S.
Nugent
cross-
examined
by Mr.
Meredith—
continued.

RECORD. time, showing how the \$226,000 was made up and disposed of, but that was made at the time when our judgment was settled.

No. 80.
Frank S.
Nugent
cross-
examined
by Mr.
Meredith—
continued.

His Lordship.—Any other witnesses for the defence ?

Mr. Watson.—No, my lord.

Witness.—Regarding the claim of W. A. Preston, we have his estimate here, \$8,400 ; Mr. Charlebois admitted that when the judgment was given.

Mr. McCarthy.—There is no dispute about the subsidiary matter. This book is the letter-book of the Great North West Central Railway Company ; it is marked on the back, " Private, J. A. Codd." It is produced as the Company's book. They have sealed up some, which we did not like to open without the order of the Court.

His Lordship.—I think you should have leave to open these, subject to what is said on the other side.

Mr. Meredith.—That should have been a matter to have arranged to have produced under order.

Mr. Mills.—I do not insist on behalf of Mr. Codd. I do not know what is in the letter-book. As charges of fraud are made against him, I am quite willing everything should be opened.

Mr. Meredith.—We have no objection.

His Lordship.—Then open it.

Witness.—As trustee I should state my position that that judgment has been assigned to me to hold as trustee for the creditors, and that is why I am made a Defendant in this action.

His Lordship.—I think that is well proved.

James Bogle Delap, Recalled—Examined by Mr. McCarthy, continued.

No. 81.
James
Bogle Delap
(recalled)
cross-
examined
by Mr.
McCarthy.

Q. I will proceed now to read these letters which we think important that you should hear. On the 16th December this letter. (Reads.) 17th December 1891. (Reads.) 30th December 1891 ; 2nd January 1892 ; 11th January 1892. (Reads.) That is Charles Richard Stevens ; I suppose that is the son ?

—A. Yes.

Q. I suppose that " Everyone feels " would mean Lord Gifford and others ?

—A. Could not tell you.

Q. Lord Gifford was interested because his name was on the back of the guarantee.

Mr. Watson.—And Miss Mansfield.

Mr. McCarthy.—I do not know ; we have not heard of her yet.

Witness.—I do not know that I had heard of her at that date.

Q. Here is a letter from Brussels speaking of the negotiation going on for the sale of the bonds in Brussels ; 21st Jan. 1892, 2nd Feb. 1892. You told me yesterday that to your surprise you found you were to be half owner of this property at one time ; I find nearly one-half the stock was assigned to you in July 1891 ; in July 1891 I find Mr. Stevens assigned to you 1,575 shares ?—
A. But those were held as security.

Q. As security for what ?—A. For my advances.

Q. You say Mr. Stevens held all the stock as security for your advances ; you were to get 90 per cent., but when he returned from Canada he had more

than 90 per cent.: he had 4,800, which would be more than 90 per cent.; later on, July 30th 1891, he assigns 1,950 shares and you sign the acceptance of that transfer to you?—*A.* Yes. RECORD.

His Lordship.—The book was in England?

Mr. McCarthy.—The transfers were made on the back of the shares.

His Lordship.—In the book?

Mr. McCarthy.—No, they were taken out and pasted in afterwards.

Q. On the 30th July 1891, that is your signature?—*A.* Yes.

Q. Do you remember that being transferred to you?—*A.* Yes.

10 *Q.* And that is no doubt on that date; that is not antedated?—*A.* No, I have no doubt it was on that date.

Q. On the 30th July 1891, this number of shares were transferred to you?—*A.* Yes.

Q. Were you aware at the time that a transfer had been made to Mr. Bristow of 200 shares?—*A.* Bristow is the solicitor of the International Company, and he is now my solicitor.

Q. Did you know that 1,200 shares had been assigned to Bristow as collateral security to the advance that the International Company made?—*A.* I found that out by an accident one day when I said I would like to see the certificate of the shares that were in my name, and I saw 1,250 pencilled on it, and I asked what that meant and he told me.

Q. Well, then, Mr. Bristow is now holding those 1,250 shares for you; he holds the 1,250 shares for you?—*A.* He is holding those until the International is paid.

Q. I thought they had been paid?—*A.* By me they have been paid.

Q. Then you are entitled to the securities the International holds?—The International hold those until they are paid what is owing to them; there is a sum owing to the International Company.

Q. In addition to what you have paid?—*A.* Yes.

30 *Q.* How much is due to the International now?—*A.* Could not tell you.

Q. Is it large or small?—*A.* I do not know the figures; according to my recollection it is about two or three or four thousand pounds; I could not go much nearer than that.

Q. Then you were not personally liable for all the advance the International made, but only a part of it?—*A.* I am quite clear from the International, they claimed nothing more from me.

Q. But they claimed something, however, from the Company?—*A.* Yes.

Q. Then those 1,250 shares are held by Mr. Bristow for the International?—*A.* Yes.

40 *Q.* What explanation did Mr. Stevens give you when he made that assignment over to you of those shares?—*A.* He said that the stock had been in his name a considerable time and he thought it would be satisfactory that it should be in mine.

Q. He said the stock had been in his name a considerable time, and he thought it satisfactory it should be in yours?—Yes.

Q. As far as I can gather Stevens had transferred all the shares he held; all the shares he disposed of he had transferred before that time, or transferred at that time, including these 1,575 shares to you?—Yes.

RECORD.

No. 81.
James
Bogle Delap
(re-called)
cross-
examined
by Mr.
McCarthy—
continued.

Q. Now, you say, if I understand you rightly, he did not at that time tell you you were to be half owner of the road?—A. I do not believe he did.

Q. Will you swear he did not; I think the correspondence will demonstrate that he did, but I want your recollection of it?—A. If he did I am quite mistaken; I never took it in or knew of it; I should never have told anybody that the half of the shares—that I had anything to do with the half of the shares as regards owning it or any right to it until the spring of 1892, when he told me that.

Q. In the spring of 1892, what was it he told you then?—A. I said I wanted to know from him what is coming to me, is there anything coming to me 10 or what is coming to me, and if so, what is it, because I do not know what it is, and he said half the undertaking, which greatly surprised me, and from that time I have been clear about it so far that he told me that, but I did not know at the time.

Q. In this last letter I have read, which was in February 1892, he speaks of this: "The sum I have now named would, however, be sufficient to pay all the moneys advanced and leave a small surplus for division, and I am now cabling Mr. Codd, pressing him to agree to these terms." Division between whom?—A. Well the one thing I said, I always would leave entirely in his hands, was what arrangement he would make with regard to any profits; I said: 20 "I will be satisfied; I do not press for one sum or another sum or proportion about profit; whatever you say I will be satisfied with, but what I do insist on is that I shall be fully secured and free from danger and anxiety."

Q. That was after the time you found your money was not coming back as fast as you expected?—A. No, from the very first moment.

Q. You are speaking of subsequent profits are you?—A. No, not profits at all.

Q. You said you would leave the profits to him, but what you wanted to see was that your family's money was secured?—A. Yes.

Q. You still adhere to your statement that you did not know at that time 30 that you were a part owner, had not been informed you were a part owner, and did not realise what was meant by leaving a small sum for division?—A. I did not think of the detail of that at all.

Q. Your solicitor writes to say he has an offer of £225,000 for the road, and says it is not enough, but says it will be enough to pay all moneys advanced and small surplus for division; 2nd February, 1892, is the date of that letter; that would rather show there was some persons to divide between; do you still say you did not then understand you were one of the persons to share in the division of profit?—A. If I had been asked when I got that letter to explain what it meant I could not have told you.

40

Q. Did you write to ask for an explanation or were you just satisfied to leave it in that way?—A. Oh, I left it in that way; at that time I was only anxious about getting back the principal.

Q. Well, now on the 5th February we find another letter "I have received three letters which you have sent me, to which I will attend," etc. (Reads.) He is speaking of you and himself there?—A. I do not think he is.

His Lordship.—Does it turn out there was an offer of £225,000?

Mr. McCarthy.—No, only from this. I think your lordship will be perfectly satisfied with the good faith of Stevens in this matter. RECORD.

Mr. Arnoldi.—There never was in fact.

Mr. McCarthy.—My learned friend does not know.

Mr. Arnoldi.—Yes, I know all about that.

Mr. McCarthy.—*Q.* Do you know who the offer was from?—*A.* That was from a man called Wilson, whose name is mentioned in one or two letters, and he said he would not give it. No. 81.
James
Bogle Delap
(re-called)
cross-
examined
by Mr.
McCarthy—
continued.

Q. He afterwards backed out?—*A.* Yes.

10 *Q.* But you have no doubt that Mr. Stevens had, as he thought, a *bona fide* offer of £225,000 at that time?—*A.* Yes. ✓

His Lordship.—*Q.* It was from an English source?—*A.* Yes, sir, Wilson was in London.

Q. Here is another letter dated the 24th February, 1892. (Reads.) Evidently you were remonstrating with not having heard from him?—*A.* Yes.

Q. Now, what was your proposition about Mr. Codd. He says: "I quite agree with what you say about Codd, and it is quite clear. We may state what we consider best, unless he is prepared to offer better terms than we are able to obtain?"—*A.* Well, I cannot recollect exactly.

20 *Q.* Well, the substance of it?—*A.* The substance of it would be of the nature of saying that it would not do to go on being dictated to by Mr. Codd, and that he was always saying that he would realise high prices, and that I was anxious to get my capital paid back which I had lent, and one could not go on like that so long.

Q. In point of fact it would be in substance then that you agreed with your solicitors you had better take the £225,000, and not be postponing the chance of selling to get the higher price Codd was talking about; that would be about it?—*A.* It would be in that direction.

30 *Q.* Then we come to the 8th March, 1892. (Reads.) Who is Moore; we have heard who Wilson is; who is Mr. Moore? *A.* He is a gentleman who lives in London to whom Mr. Codd introduced Mr. Stevens, and he was assisting them in getting the bonds floated; trying to get them floated.

Q. 17th March is the next I have here. (Reads.) Now, there are two matters referred to here that I would like to ask you about. You speak of paying a sum of £15,000 as originally arranged; who was to pay that £15,000?—*A.* The Manitoba Government.

Q. Also to advance sufficient money to buy out Charlebois. That was not the first time you heard Charlebois' name mentioned?—*A.* Oh, no.

40 *Q.* And you knew it was alleged that he had performed his contract, that he was claiming his work was done and the Company had possession of the road?—*A.* I knew the Company had possession of the road.

Q. So that the contractor must have completed his work, so that the road could be operated? *A.* Yes, the road was being operated.

Q. Did you know of the difficulty there was to raise money to pay off Charlebois, that that was one of the most pressing matters?—*A.* I knew they wanted money for him by that time.

Q. I think that £50,000 you agreed to accept a bill for was to pay him in

RECORD. part, was it, to give him something on account and to furnish rolling stock ?—

No. 81.
James
Bogle Delap
(re-called)
cross-
examined
by Mr.
McCarthy—
continued.

A. I am not certain that I was aware that that was so.

Q. You are not certain that you are aware that was so ?—*A.* I think that there is a letter stating it.

Q. But you did know that there was money due to Charlebois, and that that money had to be forthcoming ?—*A.* I knew that he had a lien on the road, and I heard that it was on the land grant too, and that that was our difficulty.

Q. That was your difficulty in floating the bonds ?—*A.* It was not my difficulty ; I was not trying to float the bonds.

Q. But the difficulty of those who were trying to float the bonds, whoever 10 they were ?—*A.* Oh, no, I was not aware that that was a difficulty in the way of floating the bonds. I was told it was a difficulty in the way of disposing of the land. When I say I knew, I mean I was told.

Q. You left all this matter to Stevens ; he was the man who was managing it for you ; you were not looking after it personally ?—*A.* He was not managing it for me ; he was managing it for Codd and the Company.

Q. Codd and the Company, and you too ?—*A.* It was not on my behalf, but when it was done I would be paid back.

Q. What I want to know now is, from the time that young Stevens returned from Canada you knew, of course, as you told me yesterday or the day 20 before, that the contract had been let, and you knew that the Company, of course, would have to pay the men that they employed to do the work ?—*A.* Yes.

Q. You also understood that the means where you intended to get the money for paying was by disposal of the bonds ?—*A.* I did not intend to do that.

Q. I mean Stevens or you, or the Company ?—*A.* I was not the Company.

Q. All the stock was held by you ?—*A.* I was only a creditor of the Company.

Q. But you held the stock as security ?—*A.* I held the stock as security.

Q. Then who was to manage ; you see the stock controls the Company ; 30 if you think for one moment you will see what I mean ; you were, as you say, but a creditor of the Company, and who was it was to control the Company ; all the stock was in your name and the directors were your nominees ?—*A.* I never knew that before.

Mr. Meredith.—It is not quite accurate ; it was in Stevens' name.

Mr. McCarthy.—He told me yesterday Stevens held as trustee for him.

Mr. Arnoldi.—Not at all.

Mr. McCarthy.—I do not mean all, but substantially the controlling part of it. You understand what I mean ; you perfectly well understood that. When Stevens returned from Canada, he told you he had got all the stock of the 40 Company in his name, and he held it as your trustee.

Mr. Meredith.—He said he told him that in 1892.

His Lordship.—He said that Stevens told him the stock was in his name.

Witness.—He said about 90 per cent.

Mr. McCarthy.—*Q.* Well, holding about 90 per cent. of the stock in your name ; don't you know that that would give you the control of the Company ?
—*A.* Yes.

Q. If you held ninety shares out of a hundred you could control the RECORD. Company?—A. Yes.

Q. Did you know that Stevens had been the president of the Company? No. 81.
—A. I did not know that until August 1892.

Q. Did he tell you he had to put Codd there before he left?—A. He did not tell me he put him there. James Bogle Delap (re-called) cross-

Q. But he told you he was there?—A. He told me Codd was president examined

Q. If you gave it a thought, you must have thought that Codd was there by Mr. McCarthy—
at Stevens' nomination, if he held 90 per cent.?—A. Well, I did not give it that continued.
10 thought.

Q. If you ever gave it a thought, where did you suppose the money was coming from to pay the contractor that was employed; was it by the sale of the land or the sale of the bonds, or how did you expect that money to be forthcoming?—A. I did not concern myself very much about that, because I only thought of my own advance as being a first charge.

Q. But as far as you did concern yourself, where did you suppose the money was to come from, and how was it to be got?—A. I thought that the sale of the bonds would pay it.

Q. Would pay not merely you, I suppose, but would pay the contractor?
20 —A. Whatever other things were to be paid.

Q. How did you expect, then, that you would have the land as a profit, or how—if the bonds were to pay off that and there was to be 320,000 acres of land, with the prospect of getting more; at first, of course, you were only a creditor, but at the time that you were half owner what then did you expect?—
A. When I got to London, where I went in response to that letter, then it was I heard this about the half being at my disposal, which astonished me. I did not know what to make of it.

Q. You went, then, to London, in obedience to the request made in that letter?—A. Yes.

30 Q. And you reached London in the latter part of March 1892?—A. Yes.

Q. And then it was you were told you were the half owner, which astonished you but did not displease you very much?—A. Not that I was half owner, but after I was paid back that I was to own half the thing.

Q. You were to get your money back and to own half the railway as well?
—A. Yes, and that surprised me very much.

Q. And it was an agreeable surprise?—A. Nothing was agreeable then.

Q. The east wind was blowing very strong?—A. It was.

Q. Here is the next letter, 25th April. (Reads.) Who is Vanlawn?—

A. He was a man connected with financial operations; they got in communication
40 with him, I think, through Mr. Moore, to try and get the bonds sold.

Q. The result of the consultation in the end of March; that is the time you were told you were half owner of the road; what more were you told at that interview?—Oh, there were interviews every day.

Q. Did you stay there in London about that?—A. Yes.

Q. You were told you were to get your money and be half owner of the road; what more were you told; were you told about the lawsuit that was then going on?—A. Yes; that was the first time I heard of the judgment.

Q. And then you heard of the second judgment, or the second proceeding

RECORD. by which the road was being taken back from you ?—*A.* I do not understand that.

No. 81.
James
Bogle Delap
(re-called)
cross-
examined
by Mr.
McCarthy—
continued.

Q. There were two proceedings in the Court here ; one was in the month of September, when the consent judgment was obtained, and another was in February, a hostile proceeding to Mr. Charlebois, to sell the Company, and that was the proceeding your Winnipeg solicitors were taking ?—*A.* I never knew of that till you told me.

Q. Of what ?—*A.* Of the distinction between the two.

Q. You thought there was only one ?—*A.* I did not know there was more than one. 10

Q. And what did you understand the one proceeding to be ?—*A.* When I got to London in response to that letter Stevens told me that a judgment had been obtained—(Interrupted.)

Q. For what ?—*A.* Obtained by Mr. Charlebois.

Q. For what ?—*A.* Against the Company.

Q. And that he was going to sell the road ?—*A.* I do not think I heard that from the Stevens ; I heard that first from Mr. Lawrence a month or so later. The chief thing that they were always talking about then was about these operations for trying to get the bonds sold that they were so busy over.

Q. What was it they said about the judgment ; simply that he had got a 20 judgment ?—*A.* That he had got a judgment, and I really did not know what that meant entirely.

Q. You had some little experience what a judgment meant by this time ?—*A.* Well, circumstances are so different. He told me—what was I going to say ? Just let me pick up that thread.

Q. You were going to say he told you Charlebois had got a judgment ?—*A.* Yes ; and that that was a fraud upon me, and that steps must be taken in Canada to have it set aside.

Q. Did he tell you at the same time that Charlebois was going to sell the road ; that it was necessary, to protect your interest, to prevent him selling ? 30 —*A.* I did not realise that it was to be sold until I heard it through Mr. Lawrence.

Q. And that, you think, would be a month or so later on ?—*A.* That would be at the end of May.

Q. Then you left the management of the matter wholly in the hands of Mr. Stevens, and it was on his advice that you employed, or rather it was he employed, the Winnipeg solicitors, Messrs. Richards and Bradshaw ?—*A.* He told me that he thought it was advisable.

Q. And you furnished the money for that purpose ?—*A.* I did.

Q. And employed them in order to fight Charlebois ?—*A.* Well, to protect 40 my interests.

Q. That meant fighting him ; I think the correspondence will show that. Here is a letter of the 16th April, which precedes the one I read. This speaks also of Charlebois and of the fight ; that Codd was going on to hold his own against Charlebois, and you were asked to furnish money to do so. Did you consent to any portion of the thousand pounds being used for that purpose ?—*A.* I consented to £200 going out to Mr. Codd at that time.

Q. 26th April. (Reads.) It is quite plain you did know in April that

Charlebois was trying to get possession of the road ; you may not have known he was going to sell it, but you then knew Charlebois was trying to get possession of the road ?—*A.* Yes, I was told he was trying to get possession ; I did not understand he was going to sell it till I heard it in May.

Q. 29th April, 1892. (Reads.) 10th May, 1892. (Reads.) (Give me the explanation of that : “ I have only time to write these few lines and enclose you a copy of the letter I wrote to Mr. Duval as promised in yesterday’s letter ” ?—*A.* Mr. Duval, I understood from Stevens, had written saying it was a great pity to be fighting, and that there was plenty of money in it to pay out everything, and why should not an arrangement be made to close the matter.

Q. Where is the copy of the letter ? It does not seem to be amongst them there ; it is not produced ?—*A.* I do not know where it is ; I have not kept it out knowingly.

Q. Do you remember seeing it recently ?—*A.* I do not recollect when I saw it ; I remember that I did see the copy.

Q. At the time you mean ?—*A.* Yes.

Q. Have you seen it since ?—*A.* I think I have seen it since looking through the letters ; I may have ; I am not quite certain.

Q. Did you hand it to your solicitors, do you think ?—*A.* I am not aware that I eliminated it from the bundle.

Q. Have you any doubt that you did hand them out ?—*A.* I gave them, as I believe, all I had.

Q. And that would be among them ?—*A.* That would be among them.

Mr. McCarthy.—Perhaps you will try and find that, Mr. Arnoldi.

Mr. Arnoldi.—That is everything we have got.

Mr. McCarthy.—*Q.* 16th May, 1892. (Reads.) That was also for the sale of the bonds, was it ? Lord Gifford seems to have sent some person to you ?—*A.* That was about an advance, I think.

Q. Who were they ; the agents in Canada ?—*A.* Richards and Bradshaw.

Q. 17th May, 1892. (Reads.) That was the advice Stevens gave you with reference to Duval’s offer of compromise ?—*A.* It is the letter I received about it.

His Lordship.—Was Duval acting in the interests of Charlebois ?

Mr. McCarthy.—No, he simply wrote over that there was enough for all.

His Lordship.—It was scarcely an offer of compromise.

Mr. Chrysler. He was in Toronto on the 9th September.

His Lordship. He suggested the shares should be paid up.

Mr. McCarthy.—*Q.* 8th June, 1892. (Reads.) You are not such a bad business man after all ; my opinion is rising of you ; I had formed an unfavourable opinion of your business capacity, but I have changed it now ? (Reads.)—*A.* I did not say there was a danger of their clashing.

Q. What did you say that he agrees with ?—*A.* There were two or three people that they had been told to see about these bonds, and the only thing I think that I said about it that I can get at, at all in my mind, that it was difficult to know which of them to deal with.

Q. The position of matters with Mr. Braun—who is that ?—*A.* Another man that Lord Gifford brought along.

RECORD.
—
No. 81.
James Bogle
Delap (re-
called),
cross-
examined
by Mr.
McCarthy—
continued.

- RECORD. Q. You thought that these proceedings should all go on together; that was a very shrewd suggestion on your part; you do not repudiate that now?—A. I do not recollect about it.
- No. 81. James Bogle Delap (recalled), cross-examined by Mr. McCarthy—continued.
- Q. 28th June. (Reads.) You began to be doubtful of Codd's wisdom?—A. I did very much.
- Q. What caused you to doubt that; had none of his promises materialized?—A. It was an impression that gradually gained ground from the general circumstances.
- Q. And what was the impression that gradually gained ground?—A. He was always saying things had happened that never did happen, and Stevens 10 said that what he wrote was so often twaddle.
- Q. You began to think that Codd was not a very judicious manager?—A. Yes.
- Q. That was in June 1892?—A. Yes.
- Q. Did you suggest his being changed as manager, and somebody else being put in his place?—A. No, I do not think I suggested that then.
- Q. (Reads.) That is another suggestion; what was your suggestion about Ross, Holt and Co.?—A. There was a Mr. Campbell, whose name you will see alluded to there, that I was introduced to, who said he thought he could get it managed.
- Q. Get what managed?—A. The carrying on of the line and the difficulties 20 bridged over, and this Campbell knew somebody who belonged to the firm; I do not mean he was a member of the firm, but he had been working under the firm of Ross, Holt and Co.; there was some negotiations, but nothing came of it.
- Q. You understand that, of course; that is the gentleman you saw; "Mr. Campbell suggests, 5 per cent. and whatever sum may be agreed to be given for the land"; that was that Campbell's friends should be given 5 per cent. if they sold the line?—A. I think that was 5 per cent. Campbell wanted for himself; nothing came of it.
- Q. What did you say to that? "I do not think that is at all excessive, 30 but would be glad to have your views on the point." What do you think about it?—A. I said I would not object to 5 per cent. as far as I was concerned.
- Q. You were willing Campbell should have 5 per cent. for the sale of the land?—(No answer.)
- Q. 1st July 1892. (Reads.) That rather seems to show that you were objecting to Campbell's commission being too much, his demand of five per cent. as being too much?—A. I think it does, rather.
- Q. Sixth July 1892. (Reads.) So that you had some correspondence about the Campbell commission, and wanted explanations before you would give your consent? (No answer.)
- Q. The next letter I have here is the 5th September 1892. (Reads.) Have you got these copies of the cables from Mr. Codd, Howland, and McMichael?—A. I have not got them unless they are here.
- Mr. Chrysler.—They are not among the letters.
- Mr. McCarthy.—Q. You do not remember what they were, do you?—A. No.

Q. Now, you told us that you met Mr. Howland some time in July, was it, RECORD.
or August?—A. The end of July.

Q. Under what circumstances did you meet Mr. Howland?—A. Mr. ^{No. 81.} James Bogle
Howland is a friend of Mr. Castle Smith, and he was in London, and he called Delap (re-
on Mr. Castle Smith, and Mr. Castle Smith knew there were great difficulties called),
about the matter, and he suggested my seeing Mr. Howland, and asking if he cross-
would take it up for me in Canada. examined
by Mr.

Q. And that was the first time that Mr. Howland was consulted, or had McCarthy—
anything to do with it?—A. Yes. continued.

10 Q. Where was it you met Mr. Howland?—A. First met Mr. Howland at
the St. George's Club.

Q. With Mr. Stevens?—A. No, with Mr. Castle Smith.

Q. And afterwards I think you met him with Mr. Stevens; you made an
appointment with Mr. Stevens and met him?—A. I think I met him with Mr.
Stevens; I am not quite certain whether the three of us were over together.
Yes, I did see them together; I was in the office with Mr. Howland and Mr.
Stevens.

Q. You told me that you saw Mr. Howland and Mr. Stevens together, and
did you request Mr. Stevens to put Mr. Howland in possession of all the facts
20 of the case, the history of it from beginning to end?—A. Yes.

Q. Did you remain in London while this was being done, or did you leave
that for Mr. Stevens to do?—A. I think I went home; then I came up to
London again afterwards.

Q. Here is a letter which Mr. Codd has produced from your solicitors on
the 4th August 1891. (Letter read.) I put that in as a separate one.

Mr. Howland.—I object to it going in.

His Lordship.—It is Stevens to Codd. Stevens was acting for the
plaintiffs.

30 *Mr. Howland.*—Stevens was acting in several capacities, and was no doubt
betraying his clients, and on account of the mixed capacities in many respects
they are not evidence against us, but they must be before the Court, of course.
I think it is right for us to take this objection now.

His Lordship.—It will be noted.

Mr. McCarthy.—Q. Well, then, Mr. Stevens did see Mr. Howland?—A.
Yes.

Q. And you were present at some interviews, were you, which lasted many
days; is that not so?—A. I am trying to think when I saw—I was in Mr.
Stevens' office with Mr. Howland once, I know, during the time Mr. Howland
was in London, but it was not just when first Mr. Howland and Mr. Stevens
40 met one another so far as I recollect.

Q. But were you present at interviews between them?—A. I do not think
I was present while they were talking the matter over, but I was in Mr. Stevens'
offices I know one day with Mr. Howland.

Q. I see here Mr. Stevens says in a letter of the 20th August 1892, with
reference to that "we regret we have not been able to write to you before," etc.
(Reads.)

Mr. Howland.—It is quite clear after that statement those gentlemen were
not acting with Delap's solicitors, and that letter is not evidence against him.

RECORD.

No. 81.
James Bogle
Delap (re-
called),
cross-
examined
by Mr.
McCarthy—
continued.

Witness.—I can tell exactly the dividing line, my lord.

Mr. McCarthy.—*Q.* “Having regard to these facts,” etc. (Reads.) I would like you to hunt them up for me.

Mr. Arnoldi.—Mr. Stevens got them back.

Mr. McCarthy.—*Q.* You knew what was going on in your interest here, I suppose?—*A.* I had asked Mr. Howland to act for me out there.

Q. And had asked Mr. Stevens to tell him all that had occurred?—*A.* Yes.

Q. And put him in possession of all the papers and documents and everything necessary, so that he could properly advise?—*A.* Yes. 10

Q. And it appears that was done. Now, your advances, Mr. Delap, consist of the £55,000, the first advance?—*A.* Yes.

Q. The £25,000 which afterwards became £27,000, and afterwards became £31,000?—*A.* Yes.

Q. These additional sums being charges in connection with the loans, commissions, and brokerage and charges you had to pay in order to get the £25,000 out of the way?—*A.* And interest.

Q. Growing out of the £25,000?—*A.* Yes.

Q. What further sum have you advanced?—*A.* I have advanced £2,800.

Q. In what sums; can you give me a memorandum of what these sums 20 are?—*A.* That £2,800 was to pay for the engines.

Q. What is the date of that advance?—*A.* It was in December 1891.

Q. In December 1891?—*A.* Yes, there are letters about that.

Q. How did you make that advance? In hard cash or acceptance of a bill or what?—*A.* That was an acceptance of that bill.

Q. How much was the bill you then accepted?—*A.* £2,800.

Q. And have you paid that bill?—*A.* I paid £1,000 of it; that bill was a subject of a lawsuit in England, and judgment was given against me on that.

Q. Well, you paid £1,000 on it, and have you renewed for the balance?—*A.* No, that is being carried out for me at home in England now. 30

Q. What is?—*A.* The payment of the balance of that £2,800.

Q. Was there any person else on that bill but you?—*A.* No.

Q. That was your own?—*A.* Yes.

Sic.

Q. Then is that all you have advanced, these three sums, £55,000, £25,000, and the *£28,000?—*A.* I consented to £200 going out to Codd in the spring.

Q. To Richards and Bradshaw was not it?—*A.* Both.

Q. Is it the same £200?—*A.* No; I consented to £200 going out to the solicitors, and £200 to Codd.

Q. Now is that all your advances?—*A.* I do not know of any other; I hope I have not advanced any more. 40

Q. Then coming back for one moment, I think you gave us all the history of the £55,000; we know all about that?—*A.* Yes.

Q. It was advanced under that agreement made between you and Codd in July?—*A.* Yes.

Q. I suppose that £5,000 was not retained by Mr. Stevens, but was paid on the rails?—*A.* You are quite beyond me there.

Q. You cannot say one way or the other about that?—*A.* No.

Q. I thought at the time it was curious he did not send that, but I find there was 20 per cent. paid on the rails in England, and the balance in Canada ?

—A. I did not know anything about it.

Q. I am pointing out how that was ?—A. Well, I do not know.

Q. You advanced £55,000, and only £50,000 was sent to Canada, and you do not know what became of the rest ?—A. No.

Q. Did you never ask Stevens for an explanation ?—A. He sent in the account.

Q. Where is that account ?—A. I thought that account was in.

10 *Mr. Howland.*—I suppose this is it.

Mr. McCarthy.—Is this it ? (Showing account.)

Witness.—That is the account.

Q. When did you get this from Mr. Stevens ?—A. That was after the dividing line his Lordship has just referred to, when I employed a solicitor ; that matter slipped my memory when you were asking me about employing a solicitor a couple of days ago ; I employed a Mr. Small of Buckingham.

Q. Is this the only account you got from him ?

Mr. Meredith.—Let him finish.

20 *Witness.*—I employed Mr. Small of Buckingham from the moment when I first saw the contract and the Codd-Stevens' agreement, and I brought Mr. Small of Buckingham into communication with Mr. Howland, and Mr. Small wanted to know how matters stood, and asked Stevens for an account, and that account was furnished. ✓

Q. That is the way this account was furnished—for Mr. Small ?—A. Yes.

Q. I think I gather from the correspondence that I have seen that there is a dispute between you and Stevens, that Stevens claims that certain advances that he claims to have made ought to have been charged to you ?—A. Yes.

Q. And you deny that ?—A. Yes.

30 Q. And you say that the only advances you have made are these you have mentioned ?—Yes.

Q. But you now know that large sums are now advanced by Stevens, which he thinks he could charge you with ; he claims to have made considerable advances ?—A. Yes.

Q. And that would appear on this account ?—A. Yes.

Mr. Meredith.—That account must be marked, my Lord.

Mr. McCarthy.—Do not be in such a hurry.

His Lordship.—It was used with the witness.

Mr. McCarthy.—No, I did not ask about it.

40 *Mr. Meredith.*—It was asked if that was the account. (Reporter's notes referred to, and read.)

His Lordship.—This account must go in.

Mr. McCarthy.—Q. This is the account made up from Mr. Small ?—A. Yes.

Mr. McCarthy.—I wanted my learned friend to look at it before I put it in. If I put it in, I want to say in explanation the answer must be given.

His Lordship.—It is not evidence of anything. It is what Stevens claims ; Mr. Delap has pledged his oath to his account of it. That appears by his examination. No one is bound by it. It only shows the dispute there is in litigation between him and Stevens.

RECORD.
—
No. 81.
James Bogle
Delap (re-
called),
cross-
examined
by Mr.
McCarthy—
continued.

RECORD.

No. 81.
James Bogle
Delap (re-
called),
cross-
examined
by Mr.
McCarthy—
continued.

Mr. McCarthy.—If that is understood. *Q.* You have given me the history of the first advance, but I do not think you have given me the complete history of the £25,000 advance.

His Lordship.—He told us the other day all he knew about it.

Mr. McCarthy.—*Q.* This £25,000 bill you executed upon the letter sent by Stevens, and your understanding that the contractor would take it up?—

A. Yes, sir.

Q. Was that all that took place?

His Lordship.—You went over all that.

Mr. McCarthy.—*Q.* That £2,800 was made for the engines, was it not? 10
—*A.* Yes.

Q. And I am told the engines were bought in your name to secure you?

—*A.* I am very vague about that engine question.

Mr. McCarthy.—I want that paper.

Mr. Meredith.—We have not got it.

Mr. McCarthy.—*Q.* What time was it?—*A.* It was in December 1891.

Q. Tell me the circumstances about that; what is your recollection of the circumstances about that advance?—*A.* There are letters that deal with it amongst this bundle.

Q. Without taking the letters, tell me what you recollect about it?—20

A. My recollection of it was, that the Stevens told me that, as soon as the line was running, that the Manitoba Government would immediately advance £15,000, and if I recollect rightly that further advances would follow, that the line was ready to run if only engines were provided.

Mr. Chrysler.—Here is the letter.

Mr. McCarthy.—*Q.* Letter 20th July 1892. (Reads)?—*A.* That all fell through.

Q. Now, is that correct, that the engines were held—as you understood were to be held as security for that loan in your name or in the name of somebody for you?—*A.* I did understand that they were to be my security, and 30 there has been a lot of talk backwards and forwards about it; I was told they were to be my security, and I was told they were to be my own, and there has been a suit about it in England, and I have heard a great deal that made my mind very confused.

Q. Where were the engines purchased from?—*A.* From the Kingston Locomotive Works.

Q. Do you know how much the purchase came to altogether?—*A.* £2,800 was what I accepted the bill for.

Q. How much more were they to cost?—*A.* I understand that Stevens advanced a thousand on it, but I am not certain that the £3,800 was the exact 40 amount of the price.

Q. Stevens advanced £1,000, and you advanced £2,800, and the locomotives were to be held as Mr. Stevens said, as security for these advances. Then you have told me about all your advances and all your arrangements respecting the advances, have you?—*A.* So far as I know.

Q. Then after you employed Mr. Howland, he advised you to get the bonds into your possession?—*A.* Well, I had spoken to Stevens about having the bonds in my possession before, and I always intended to have them, and I

said, of course, if I want these bonds I can have them, and he said yes, the moment you wish, and I thought it was satisfactory I should have them. RECORD.

Q. When did you first speak to Stevens about the bonds in that way?—A. No. 81. James Bogle Oh, early, soon after I came back from Switzerland. Delap (re-

Q. That would be in the spring of 1892?—A. In the spring of 1892. called),

Q. Now, you spoke the other day in your examination-in-chief of Stevens holding these bonds for you; you said Stevens held them for you; what do you know about that?—A. He told me again and again he did hold them for me. cross-examined by Mr. McCarthy—continued.

10 Q. Do you know anything more about it than what he told you?—A. Not that I am aware of.

Q. You spoke either in your examination the other day, or in your examination before that, of Stevens being your trustee, holding them in trust for you, or something of that kind; do you remember?—A. I do not recollect whether I used the words or not.

His Lordship.—He said he did not know whether there was a trustee required for bonds.

Witness.—That was about Lord Gifford and Mr. Curzon.

Mr. McCarthy.—Q. Do you know of any talk by which Mr. Stevens be- 20 came a trustee; is there any such document?—A. I do not know.

Q. So that if you have any right to the bonds at all it must be something you do not know; Stevens told you he held them for you, but if you have any right to the bonds in any way there must be some way of proving it, which you did not know of?—A. The understanding was, I was to have the first charge; Stevens told me the bonds were the first charge, and they had got the bonds for me, and that was when the bonds could not be sold they were to be held for me.

Q. Then your right to the bonds arises from the original agreement made with Codd?—A. I will not say that.

30 Q. We have got the agreement with Codd; that was an agreement to give you a first charge. We went over that agreement, and I do not know whether it gives you a first charge; then Mr. Stevens came out to Canada to carry that paper into effect; I have not seen any paper, and I want you to say if there is any paper to your knowledge by which it was ever agreed you were to have a charge upon the bonds?—A. I am not aware that there is.

Q. Let me read this document to you, Mr. Stevens' account of the matter, to which you have subsequently replied, this letter being dated 22nd September 1892, and it purports to give a history of the whole transaction. (Reads.) Then you did reply, and perhaps that is the best way of getting your view. 40 This is your press copy dated September 26th, 1892; read that yourself? (Witness reads letter.) That is the only reply you made to that?—A. Yes.

Q. So that I think I may understand from that that you all concurred, Stevens agreeing with you, that you should act cordially with Mr. Howland in the transaction of this suit. That was your opinion, and that was Mr. Stevens' opinion, and that was Mr. Howland's recommendation; no matter who was to go down or whose character was to be besmirched, that was the intention?—A. I do not say anything about besmirching anyone's character.

Q. But that is so, that you all agreed to pull together, Stevens, Howland,

RECORD. and Delap, for the purpose of upsetting the Charlebois judgment ; is that so ?

No. 81.
James Bogle
Delap (re-
called),
cross-
examined
by Mr.
McCarthy—
continued.

—*A.* I do not know that it is not.

Q. Well, do you know that it is ; I want something more than a negative reply ; you cannot doubt it after your letter ?—*A.* I do not want to put any other interpretation on my letter than it bears.

Q. Now, I want to read you an extract from a letter which I find here, and see what you will say to it ; it purports to be written by Mr. Stevens ; it appears in the letter-book produced under date December 1st 1892, Codd's letter to Mr. Howland ?

Mr. Howland.—I may make the same general objection to that letter. 10

Mr. McCarthy.—Perhaps you will give me the original of that letter ; it is written by you to Codd. I will read this.

Mr. Howland.—I am not objecting to the letters being read, but I am objecting to any statements in them as being evidence against us.

Mr. McCarthy.—*Q.* Mr. Stevens writes in these words which Mr. Codd quotes in a letter which he sends to Mr. Howland ; this is the extract from Stevens' letter to Codd which is quoted, which he sends to Mr. Howland, " I am glad to find that you frankly recognise the honourable understanding arrived at between us as to protecting Mr. Delap's interests, and I concur that it was a mutual understanding that he would also protect yours, consistent with his own. Clearly understand, Mr. Delap was consulted by me before the above arrangement between us was made, and he replied to the effect : ' Oh, I certainly will, our interests are identical.' " Do you deny that ?—*A.* I did not consider myself bound to Mr. Codd in any one way. 20

Q. Just clearly understand it and say whether you will deny it ?

His Lordship.—What does it relate to ?

Mr. McCarthy.—I will read the first part of the letter—(Reads.)

Mr. Howland.—As to that, as an explanation has been given, and a construction placed upon that—(Interrupted.)

Mr. McCarthy objects. 30

His Lordship.—I think at present it is better to let the witness answer, and I will hear any objections.

Mr. Howland.—I know that that construction is erroneous.

Mr. McCarthy.—We will get you in the box again perhaps, and see what you know about it.

Q. Now, you see what that means, that you were to protect Codd's interests consistently with your own ; do you say that Mr. Stevens misrepresented you, or correctly represented you in that statement ?—*A.* I do not for a moment think he correctly represented me, I never dreamt of such a thing.

Q. Then you desire to make use of Mr. Codd to his own prejudice for your interest without any mutual understanding that so far as you could consistently you would protect his ?—*A.* Oh, no. 40

Q. That is it ?—*A.* Well, I am not able to follow all these things.

Q. Do not play that game any more. After your evidence this morning, it is impossible for us to doubt your capacity to attend to your own affairs, you cannot get into the asylum here, you make very shrewd suggestions to your solicitors as appears here, you can put yourself on whatever horn of the dilemma you like. Mr. Codd was consulted, was assisting Mr. Howland, Mr.

Codd says that was on the understanding that while he was to do all he could RECORD.
to protect your interests, you were to do all you could to protect his interests.

Mr. Howland.—You are stating it incorrectly ; you are putting a construc- No. 81.
tion on it. James Bogle

Mr. McCarthy.—*Q.* The other construction is, you were going to make use of Codd to his prejudice, if necessary, without any understanding that his interests should be protected ; which view do you accept, that of the honourable man, or the other way ?—*A.* I have not acted dishonourably in any way in this transaction to my knowledge. Delap (re-
called),
cross-
examined
by Mr.
McCarthy—
continued.

10 *Q.* “ And I concur it was a mutual understanding he would also protect
“ yours consistently with his own ” ; that is, consistently with your own
interests, that you would protect Codd ?—*A.* It is impossible for me to follow
that out ; it is simply a tangled mass.

Q. No difficulty for an honourable man to follow that out.

His Lordship.—He is answering fairly.

Mr. McCarthy.—*Q.* “ Clearly understand Delap was consulted by me
“ before the above arrangement between us was made, and he replied to the
“ effect : ‘ Oh, certainly I will ; our interests are identical. ’ ” Is that true or
untrue ? Because that is a distinct, positive statement made by Stevens.
20 Did you or did you not reply as Stevens there puts it ?—*A.* I never—
(Interrupted.)

Q. Yes or no ?

Mr. Bristol.—Let him answer.

Witness.—His Lordship said I answered the question fairly.

Mr. McCarthy.—*Q.* But I am coming down to the second part now :
“ Clearly understand Mr. Delap was consulted,” etc. That is what Mr.
Stevens wrote to Mr. Codd ?—*A.* I totally object to being bound by any such
idea at all.

Q. Do you say on your oath that Stevens has told an untruth to Mr. Codd
30 when he said he consulted you before he made that arrangement with Mr.
Codd, and that you replied to the effect that certainly you would, that your
interests were identical ; is that true or untrue ?—*A.* I have no recollection of
saying it.

Q. Will you say it is untrue ?—*A.* I do not believe I said it.

Q. That is the furthest you will go ; it is not long ago ?—*A.* I recollect
Stevens telling me that he had always asked Codd to—

Q. Go on ?—*A.* I do not recollect the exact words, but to try to protect
my interests, or something to that effect. I recollect that myself ; but that I
should myself sacrifice—(Interrupted.)

40 *Q.* Oh, no, not sacrifice anything ; consistently with your own interests it
was ?—*A.* I think I would have sacrificed my interests if I had chained myself
to Codd’s chariot wheels.

Q. Read it for yourself, and tell me whether it is true or untrue, without
any prevarication ?

His Lordship.—I do not think he is endeavouring to prevaricate.

Mr. McCarthy.—*Q.* Just answer that question ; I ask you here now to
tell me whether you say that is true or untrue, whether Mr. Stevens consulted
you as to getting Mr. Codd’s assistance in this matter on the understanding,

RECORD. without sacrificing your own interests so far as you could consistently with them, that you were in the same boat ; that your interests, to use the words, were identical ?—*A.* I have not any recollection of using the words.

No. 81.
James Bogle
Delap (re-
called),
cross-
examined
by Mr.
McCarthy—
continued.

Q. Or the substance ?—*A.* I have not any recollection of using words to that effect.

Q. Will you go one step further and say Stevens misrepresented you ?—

A.—There was desultory conversation about the subject ; but that I should ever believe for a moment that I bound myself by any understanding—it is nonsense for Stevens to write any such way ; it is abject nonsense for Stevens to write to Codd like that.

Q. You do know that Codd was assisting your solicitor, Mr. Howland, and giving him all the information ?—*A.* Why, he has made every sort of difficulty.

Q. Until your solicitors turned on him, having got all out of him they could ?—*A.* It is impossible for you to think a simple man like me could follow the Codd ramifications.

Q. I should think it was much easier than to follow somebody else's ramifications ?—*A.* Well, the ramifications of a man who has lost £90,000 are ramifications not pleasant for anybody else to follow.

Q. I have a letter here of the 17th December 1892, written by your 20 solicitors to Mr. Codd.

Mr. Howland.—Not his solicitors at that time.

Mr. Meredith.—It is Stevens, Bawtree, & Co. (Letter read.)

Mr. Meredith.—These are all subject to the objection that they are not evidence.

His Lordship.—Yes.

Mr. McCarthy.—*Q.*—I find in a letter of the 29th April 1892, which I read before, Stevens to you : “ As you are aware, we have instructed a firm of “ solicitors at Winnipeg to act for you in the matter,” &c. (Reads.) That ownership of the bonds depends upon what you have told me ; there is nothing 30 to add to that ; you know nothing more than what your solicitors said here.

His Lordship.—He said that ; he just had their word.

Witness.—Cansdale brought them over and brought them home.

Mr. McCarthy.—*Q.* You do not know that of your own knowledge ; you were not here when Cansdale was here ?—*A.* No.

Q. You know nothing at all of it ?—*A.* No ; that was what I was informed.

Q. You did not pay Cansdale's expenses ?—*A.* No.

Q. Always refused to pay them ?—*A.* The understanding always was I was not to pay it.

Q. You were to get everything and pay nothing ?—*A.* £55,000 I paid, and a good deal more.

Q. Just identify that letter for me and this letter. You recognise Stevens' handwriting ; those are all Stevens' ?—*A.* No ; those are not signed by Stevens.

Q. Stevens, Bawtree, and Stevens ?—*A.* That is the name of the firm.

Q. Who is that one signed by ?—*A.* It is not signed by either of the partners ; I know that is not.

Q. Who would that be signed by, Bawtree?—*A.* I do not know Bawtree's handwriting. He is not in London; he only comes up to London occasionally. RECORD.

Q. There are two sons and a father in the firm?—*A.* Yes. The younger son's writing I do not know that I have ever seen. No. 81.
James Bogle
Delap (re-

Q. Do you identify this one?—*A.* That is old Mr. Stevens' writing. called),

Q. And this one; whose is that?—*A.* That is not signed by a member of the firm. cross-
examined
by Mr.

Q. You say you do not know the young man's writing?—*A.* I am not aware that it is signed by a member of the firm. McCarthy—
continued.

10 Q. And this one; is that old Mr. Stevens', or whose?—That, I think, is Charles Richard Stevens.

(Witness identifies signatures to other letters, the dates of which are not mentioned by counsel.)

Q. You do not think anybody has concocted these letters; you identify them all except these three signed by Stevens, Bawtree & Stevens?—*A.* Yes.

Mr. McCarthy.—I will have these marked as identified; I do not know whether I will use them or not. (Bundle marked.)

Q. Then you identify this letter?—*A.* Yes, that is signed by Charles Richard Stevens.

20 *Mr. McCarthy.*—I read a letter from Charles Richard Stevens to Codd, 26th October, 1889. (Reads.)

Mr. Meredith.—That is objected to.

Mr. McCarthy.—Q. Is there a man named Tryer?—*A.* I do not know anything about him; I have heard his name.

Re-examined by *Mr. Howland.*

Q. You were asked about interviews with Messrs. Stevens when I was present. You spoke of one interview; do you remember the state of mind in which you left that interview?—*A.* In a state of mind of extreme annoyance. No. 82.
James Bogle
Delap
(re-called),
re-examined
by Mr.
Howland.

30 Q. And do you remember whether you went to any other interviews after that, voluntarily?—*A.* At which you were present?

Q. Yes?—*A.* No, I do not recollect any but that one interview.

Q. Perhaps you remember one day when it was necessary for you to go, at the time of the delivery of the bonds?—*A.* I recollect that day; there might have been more than one interview, but I do not very clearly recollect whether there was more than one; I recollect the next day I got the bonds, and I recollect the day I was annoyed.

Q. You recollect no other interviews except one interview you attended with me, and were very much annoyed, and you did not go until it was necessary for you to go and receive the bonds?—*A.* I recollect receiving the bonds.

40 Q. Do you recollect any other than those two interviews?—*A.* I do not recollect any other interviews but those two.

Q. Do you remember receiving from Mr. Stevens notice of Mrs. Mansfield's interests?—*A.* Yes.

Mr. McCarthy.—How does that arise?

Mr. Howland.—Because it shows the position of Stevens.

His Lordship.—It does not arise; it should have been asked for.

RECORD.

No. 82.
James Bogle
Delap
(re-called),
re-examined
by Mr.
Howland—
continued.

Mr. Howland.—They have been going through a long examination to show some unity of interest between Stevens and Delap. I wish to show that Messrs. Stevens had a separate interest and separate duty subsequent to the delivering of the bonds to Mr. Delap.

His Lordship.—Go on.

Mr. Howland.—*Q.* You remember receiving these two, one a notice of Mansfield's interest in the bonds, and another their own interest in the bonds, a subsequent interest?—*A.* Yes.

Q. And they had those two interests in the bonds?—*A.* Yes.

Q. Subsequent, as they expressed it, to yours?—*A.* Yes.

10

His Lordship.—What date are those?

Mr. Howland.—16th August, 1892, the date of the delivery of the bonds.

Q. The original receipt for the bonds was delivered up; do you recollect whether that is a true copy of it.

Mr. McCarthy.—What is that?

Mr. Howland.—Copy of the original receipt from the National Deposit Company when he delivered up the bonds.

Witness.—Yes, sir, that is a copy of their regular receipt.

Q. That is the copy of the receipt?—*A.* Yes.

(Reads receipt, London, E.C. 15th August, 1892.)

20

Q. Then from the time of the delivery of the bonds you understood Messrs. Stevens, Bawtree & Stevens had those interests in the bonds subordinate to yours?—Yes, clearly.

Q. Part as representative, and part their own interest?—*A.* Yes.

Q. And that there was a unity of interest in that respect, that so far as the question of protecting the bonds there was a unity of interest between Messrs. Stevens and yourself?—*A.* Yes.

Mr. McCarthy.—He is your client; you must not cross-examine him.

Mr. Howland.—But that follows as a deduction.

His Lordship.—Yes, that follows as a deduction, naturally.

30

Mr. Howland.—*Q.* When you were told in May, 1892, that the judgment which had been obtained was a fraud upon you, what interest or right of yours was it that they said it was a fraud upon, or would be a fraud upon?

His Lordship.—Was it explained to him at all.

Mr. Howland.—*Q.* Was it explained to you at all how it was a fraud upon you?—*A.* Those were the words as far as I recollect.

His Lordship.—*Q.* What was the explanation given of it? What did you understand it meant? Any explanation given as to how it was a fraud?—*A.* I do not think there was any explanation given more than that at the time; that is what I recollect clearly; I do not recollect anything special further 40 being said; there is nothing more in my mind about it; I understood I had a first charge, and that the bonds were a first charge upon the concern, and that if it was sold ignoring the bonds that that would depreciate me on my security, and so it was a fraud upon me; and that is the way I looked at it.

Mr. Howland.—*Q.* Then you were asked several times about your having heard that a contract had been given; Mr. McCarthy spoke of it as a contract with the Company; when Stevens first came back to England or whenever you first heard of there being a contract with Charlebois, was it specified with whom

that contract was ? Were any of the particulars of that contract given to you or the parties to it ?—*A.* No ; not that I have any recollection of ; I did not know anything about the contract ; did not know the contract was in England, so far as I know until you showed it to me in August, 1892.

Q. Did you intend to say to Mr. McCarthy that it was a contract with the Company, that you knew at that early period that there was a contract between Charlebois and the Company or that you knew whom Charlebois had made the contract with ?—*A.* I did not know about whom the contract was made with ; I never thought about contract.

10 *Q.* You had no special reference when you were answering Mr. McCarthy —(Interrupted)

Mr. McCarthy.—You cannot give it that way.

Witness.—I knew nothing about contract at all ; I never saw it to my knowledge until you showed it to me ; I heard there was a contract, and if anybody had asked me if there was a contract I would have said I supposed there was.

Mr. Howland.—*Q.* Mr. McCarthy asked you about the fulfilment of the terms of your contract of 20th July 1889, whether the terms and conditions of that had been fulfilled by Stevens, and he asked you there a similar question
20 whether you had any complaint with the fact that a contract had been made, and he stated it again as if you were aware of a contract having been made with the Company. Had you in your mind at all in answering that question whether that was a contract with the Company or with whom the contract was ? —*A.* I do not know what contract you are speaking of.

(Adjourned for an hour.)

After Adjournment.

Q. You have spoken of my introduction to you by Mr. Castle Smith ; what were Mr. Castle Smith's relations with the Stevens firm at that time ; were they confidential ?—*A.* Oh, I do not know that he—oh, he just had seen
30 them ; I think he went with me there one day for a few minutes ; they knew nothing of him, and he knew nothing of them.

Q. Have you any reason to believe that I had any previous instructions from any person before I had my instructions from you ?—*A.* Certainly not ; you could not have.

Q. That is what the course of a good deal of this examination was directed to ?

His Lordship.—Oh, no.

Mr. Howland.—It was hinted that the instructions came from Canada.

Mr. Moss.—Oh, no.

40 *Mr. Howland.*—Now, a letter was read here passing between Messrs. Stevens and Codd, in which Mr. Codd has undertaken to quote some passage which he says comes from a letter from Mr. Stevens.

Mr. Moss.—That is a letter from Mr. Codd to Mr. Howland.

Mr. Howland.—Oh, I think not ; 15th December 1892, I think it is.

Mr. Moss.—That is not the letter ; this is the letter addressed to you.

Mr. Howland.—This was a pretty impudent letter. He purports to quote from a letter from Mr. Stevens.

RECORD.

No. 82.
James Bogle
Delap
(re-called),
re-examined
by Mr.
Howland—
continued.

Q. Now, Mr. McCarthy was asking you whether Mr. Stevens had any authority for stating that some honourable understanding had been arrived at between Mr. Codd and Mr. Stevens as to protecting Mr. Delap's interests, and that you were consulted about it by Mr. Stevens before the arrangement was made. Now, the questions were put to you in connection with the matter of some understanding about the suit. Now was there an understanding of any kind between you and Mr. Stevens about Mr. Codd's interests in connection with this suit?—*A.* None whatsoever.

Q. Then, whatever pretence there was for any understanding or misrepresentation must have been about something entirely different from that?—*A.* Certainly.

Q. Or at some other time?—*A.* Yes.

Q. And to the best of your recollection and belief you do not believe there was any understanding?

Mr. Moss.—Do not lead.

His Lordship.—He said there was no understanding.

Mr. Howland.—Q. Perhaps you will recollect some of the course of things, that when I received my instructions from you to investigate this matter, so you remember that there was a necessity for, or whether there was a necessity for, my seeing Messrs. Stevens about it?—*A.* Yes, there certainly was a necessity.

Q. About the position of the railway, have you any knowledge about that, any knowledge, or official knowledge; do you know the position of the suit? I suppose you know only what you are advised on the subject?—*A.* Yes.

Q. When did you obtain possession of the board of directors in such a way as to have any control of this railway or this Company?—*A.* This spring.

Q. You remember the minutes, probably, of the meetings?—*A.* Yes.

Q. You were present at a series of special meetings starting on the 28th March 1893, and a series of special meetings from that time carried down to July 1893?—*A.* Yes; I was not at the one in July.

Q. The last one you were at was one on the 6th June?—*A.* Yes.

Q. And up to a late date in these meetings there was a difficulty in getting possession of the Company's affairs?—*A.* Yes, there was.

Q. There was litigation going on?—*A.* Yes.

Q. And ultimately resulted in your having your possession and rights confirmed?—*A.* Yes.

Q. But that was only very recently, it was; and you did not get actual possession of the Company's offices until after a great many of these meetings had been held?—*A.* No, several of them had been held.

Q. It was late in the month of May, was not it?—*A.* I think it was in May that we first got into the offices.

Q. And you received information at the same time about what had taken place in Manitoba in regard to the possession of the railway; you know that there has been a receiver appointed.

Mr. Chrysler.—Do not lead.

Witness.—I understood about the receiver.

His Lordship.—There is no dispute about it?

Mr. Chrysler.—I do not suppose there is.

Mr. Moss.—It has been proved the Company is in the hands of a receiver. RECORD.

Mr. Howland.—I put in the minutes to show the date at which he got
po session of the offices. No. 82.

Mr. Chrysler.—If you say so we do not want it in. We can take his
statement ; the reporter will take it down. James Bogle
Delap
(re-called),
re-examined
by Mr.
Howland—
continued.

Mr. Howland.—When you were presented with those two notices by Mr.
Stevens in his offices do you remember being presented with these documents to
sign ?—*A.* Yes.

Q. Acknowledgments of those two claims and undertaking to hold the
10 bonds subject to them ?—*A.* Yes.

Q. Do you remember what you were advised on the subject ?—*A.* I was
advised not to sign them.

Q. Who advised you ?—*A.* You did.

Q. And you did not sign them ?—*A.* No.

Q. It appears by one of these letters that Mr. Codd had been managing the
Company ; is there anything surprising in that to you ?—One of which letters ?

Q. In one of the letters that Mr. McCarthy was reading to you from ; Mr.
Codd had always been managing the Company ?—*A.* He had been ; I under-
stood so.

20 *Q.* In what right did you understand he was managing the Company ; in
what interest ?—*A.* In his own.

Q. If there is anything in those letters which might be construed as
regarding yourself as the proprietor of the Company, what do you say ?—*A.*
No, I never looked upon myself as the owner of the Company.

Q. Now, originally, at the time of the first advance, whom did you under-
stand was borrowing from you ?—*A.* Mr. Codd.

Q. Whom did you understand was your debtor in the later stages ; you
had, of course, other advances after that, which were for purposes directly con-
nected with the Company ; they were bills drawn by the Company ?—*A.* The
30 rail bill and the engine bill I looked upon the Company as my debtor to those.

Q. You may have been mistaken about the engine bill ?

Mr. Moss.—Do not suggest these things, please.

Mr. Howland.—*Q.* But as to your advance, the first £50,000 advance, or
the first advance that was made to Mr. Codd, who was or became the debtor in
connection with that ?—*A.* The first advance.

Q. Yes ?—*A.* I looked upon Codd as my debtor.

Q. And as to the £25,000, the debtor was whom ?—*A.* I looked upon the
Company as my debtor.

Q. And you were interested in the disposal of the assets of the Company in
40 the payment of your debts, I suppose ?

Mr. Chrysler.—Do not lead.

Mr. Howland.—*Q.* When Messrs. Stevens & Company were corresponding
with you and giving you all the particulars about their dealing with the property,
in what interest did you understand they were communicating these particulars
to you ; why were you supposed to be interested ?—*A.* Because if these things
were carried out I should be paid back.

Mr. Chrysler.—I want to ask a question of the witness.

His Lordship.—I do not think you can follow the cross-examination.

RECORD.

No. 82.
James Bogle
Delap
(re-called),
re-examined
by Mr.
Howland—
continued.

Mr. Chrysler.—It has arisen out of the re-examination.

His Lordship.—It should be by the counsel who cross-examined.

Mr. Chrysler.—He is not here.

His Lordship.—What is the question ?

Mr. Chrysler.—If he is now the absolute owner of the shares ?

His Lordship.—That is a question of law. I understand Mr. Delap's position perfectly well, without any further elaboration ; it is perfectly plain.

Mr. Chrysler.—He has had litigation with Codd, about which we do not know anything, and I want to know what the result of it is, as a matter of fact.

His Lordship.—I do not think it arises out of the re-examination ; this examination is closed. Is there any other witness ?

Mr. McCarthy.—I call Mr. Woolcombe. (Witness does not answer.)

Mr. McCarthy.—I put in the submission to arbitration to Shanley & Light and the award made by them. (Exhibit 126.) I want to put in the power of attorney to Codd to sell bonds.

His Lordship.—By the Company ?

Mr. McCarthy.—Yes, my Lord.

His Lordship.—You can supply that ?

Mr. Lewis.—11th November 1889 ; it is on the English Commission.

Mr. Arnoldi.—In putting that in we do not admit anything with regard to 20 it at all as being the power of attorney under which the bonds were sold.

His Lordship.—Oh, no ; it is executed by the Company ; that is the only thing ; the effect of it is another matter.

Mr. McCarthy.—The 8th December 1890, the power of attorney from the Company to Codd to sell bonds.

His Lordship.—To sell all the bonds ?

Mr. McCarthy.—To sell and dispose of the bonds of the Great North West Central Railway Company, &c. Apparently it is a full power.

Mr. Arnoldi.—There were two powers of attorney.

Mr. McCarthy.—I am going to put in the other November 1889. There is 30 a power of substitution executed by Codd in favour of Cansdale on the 4th day of August 1891. You might read the parts of Charlebois' examination you propose to read.

Mr. Cassels.—I have marked it all.

No. 83.
Alphonse
Charlebois
(re-called),
examined
by Mr.
McCarthy.

Alphonse Charlebois, re-called.—Examined by *Mr. McCarthy*.

Q. We have heard here that Mr. Macdonald, or Messrs. Macdonald & Schiller claimed to be in possession of the road at the time of the consent judgment ?—*A.* At about the time of the consent judgment he was not in possession of the road.

Q. Well, they claimed to be, at all events ?—*A.* Yes.

Q. Did you also claim to be in possession at that time ?—*A.* I was really in possession at that time.

Q. In what way were you in possession of it ?—*A.* I was in possession of it from the beginning until the judgment was given.

Q. Who had you in possession ; you were not there yourself ?—*A.* I had my engineer there.

Q. Who was he?—*A.* Mr. Secretan.

Q. Anybody else besides Secretan?—*A.* Mr. Ouimet.

Q. And you were claiming the right to keep possession in that way?—*A.* Certainly; I had my material there.

Q. You gave up possession, did you, under the judgment?—*A.* Under the judgment.

Q. Now, there is a second contract, the contract for the second fifty miles that you had (Exhibit 24); this contract you spoke of as a conditional contract; I want to see what the condition is, and to see whether it was
10 complied with. This is the clause in the contract—(Interrupted).

His Lordship.—Does anything arise on that second contract?

Mr. McCarthy.—Yes, my Lord, as to the issue of the bonds for the 100 miles.—Q. “The work to be commenced within one month after the Company shall give the said contractor notice,” &c. (Reads clause.) Was any notice ever given under this contract?—*A.* No, sir.

Mr. McCarthy.—Perhaps my learned friend will say whether they are claiming anything about non-performance of the work. We have had a little evidence given of it, as to the non-completion of the contract, there being no junction with the C. P. Railway.

20 *Mr. Cassels.*—My view is it is not material.

His Lordship.—They say it is not performed, but do not go into details.

Mr. McCarthy.—If that is relied upon I will have to give evidence. I would like to know what my learned friends say about it.

His Lordship.—I suppose if the matter comes to be a question of it being open to them to consider insufficient work or insufficient performance, that would be probably a matter of reference.

Mr. McCarthy.—It is put forward for another purpose now, impeaching the validity of the judgment, and as to that I want to see whether my learned friends are relying upon it.

30 *His Lordship.*—I thought the matter was before me sufficiently on both sides as to that. They suggest non-compliance and indicate wherein, and the other side say there was \$10,000 allowed for that, and it was passed by the Government.

Mr. McCarthy.—We are prepared to show an actual completion. They gave some loose evidence on the point.

His Lordship.—Well, go on, if you like; I have it all in my mind; I do not know who said it.

Mr. McCarthy.—If your Lordship rules that way—(Interrupted).

His Lordship.—I do not rule at all. I am here to take all the evidence
40 you like to give, according to the rules of evidence.

Mr. McCarthy.—Q. What do you say with reference to the contract; this is your contract; see what it means; you agree “To lay out, construct, equip, &c.” (Reads from contract to the words “therein expressed.”) Was the line at that time projected, located, and partially constructed?—*A.* Certainly the line was projected, and was from a little ahead of Brandon.

Q. Where was the line projected when the contract was entered into?—*A.* About three miles from Brandon station.

RECORD.

No. 83.
Alphonse
Charlebois
(re-called),
examined
by Mr.
McCarthy—
continued.

RECORD. Q. There is a place called Chater ; where is that ?—*A.* That is the upper end of the road.

No. 83.
Alphonse
Charlebois
(re-called),
examined
by Mr.
McCarthy—
continued.

Q. That has nothing at all to do with it ?—*A.* No.

Q. The line that was projected, located and partially constructed was about three miles from Brandon ?—*A.* Yes, there was a little grading on the C.P.R. line and a little distance to connect.

Q. About what distance was the projected line from the C.P.R.?—*A.* About 40 or 50 feet.

Q. Is that the line that you did ?—*A.* Yes ; we had to complete the road ; the road was already laid out and graded.

Q. And your contract was to complete the road ?—Yes.

10

Mr. McCarthy.—If my learned friend will let me see what he is going to read of Charlebois' depositions—

Mr. Cassels.—I may say I marked the depositions the day I was told to do it, and handed them to Mr. Chrysler that same day.

His Lordship.—Then you need not read them.

Mr. McCarthy.—Then I understand my learned friend relies simply upon the portions that are marked here, my Lord.

His Lordship.—I presume so.

Mr. McCarthy.—*Q.* I see, Mr. Charlebois, you stated this, that you met 20 the shareholders, I think, in Toronto ; that you explained is not so ; you did not meet all the shareholders in Toronto at that time ?—*A.* At what time.

Q. On the 9th September, the early part of September, the 7th September ?—*A.* No, there was only Senator Clemow and Mr. Allan.

Q. Well, now, you said this : " I know a great many discussions were going on and everyone had his particular objection, and as far as I can remember, " I think Mr. Codd could not satisfy the majority of the shareholders as to " the name of the party who was to become responsible for the balance of " the purchase money ; he could not satisfy them on that point ; they wanted " to know who the principal was, and he said, for some reason or other, he 30 " could not tell." Do you remember making that statement, and what have you to say to it now ?—*A.* Just this ; that when I got to Toronto, there were two meetings, and the first meeting I do not know if I paid any particular attention to what was going on, but the last meeting on Saturday night I was there, and I know that we came to the conclusion that the guarantee offered, that they were not in a position to give guarantee as to the payment of the £150,000.

Q. They were not able to give any satisfaction as to the payment of the £150,000—*A.* No.

Q. They wanted to know—that would mean, I suppose, Clemow and the 40 others—they wanted to know who the principal was, and he—that is Stevens—for some reason or other said he could not tell ?—*A.* If I said that I made a mistake, because there was no notion as to any party outside of Mr. Stevens.

Q. At page 47 you said also, " I did not understand that on the 9th " September you had seen any of the other directors ; " and you answer, " Which other directors ? " " Q. Of the Company ? " and you say, " I saw them

"all in Toronto;" that is a mistake?—*A.* That is a mistake; there was only Senator Clemow and Mr. Allan in Toronto at that time. RECORD.

His Lordship.—Any other witness?

Mr. Meredith.—We want to put in an Order in Council.

Mr. McCarthy.—We are going to put in some Orders in Council in a moment; perhaps it will go in with that. (re-called), examined by Mr.

Mr. Meredith.—This is a certified copy of the Order in Council proving the location plans, and profiles of the first 50 miles, March 1888. It is probably one that you rely on. McCarthy—*continued.*

10 *His Lordship.*—I think there should not be this delay in putting in documents. State what you wish to put in, and you can put them in afterwards. Let the papers be treated as put in, and the argument is not going to take place now. Call the witness. If he is not here he should be here.

Mr. McCarthy.—I produce the Company's ledger in which Mr. Stevens' account is, in which it appears that Mr. Cansdale's expenses on trip here were charged to the Company, credited to Mr. Stevens and charged to the Company, \$747.03, page 92 of Ledger B.B. 2. I think your Lordship understood I was putting in all the proceedings in the consent judgment.

His Lordship.—Yes, you said so.

20 *Mr. McCarthy.*—And the final judgment, too.

His Lordship.—Yes.

Mr. McCarthy.—Minutes of the meetings, unless your Lordship will allow me to put in such as we think proper.

His Lordship.—Mr. Arnoldi put in a batch of the minutes.

Mr. McCarthy.—He only selected those he desired.

Mr. Meredith.—Perhaps my learned friend will give us copies of those.

Mr. McCarthy.—No, we will put them in now; I will give the dates: 5th June 1888; 9th October 1889; 31st December 1889; 3rd June 1890; 5th September 1890; 19th September 1890; 25th September 1890; 4th 30 October 1890; 9th October 1890; and the 7th June 1892. That witness is not here yet, and I cannot ask your Lordship to wait for him. I drew attention to the fact that no bond has been put in.

Mr. Arnoldi.—Yes, copy was put in.

His Lordship.—What is the witness to prove?

Mr. McCarthy.—I want to prove that the deposit which is entered in the Union Bank entry of \$243,000 odd that day according to the custom of the bank would be a deposit made in one sum. It would not be the aggregate of two or more sums.

Frederick Woolcombe, sworn; Examined by *Mr. McCarthy.*

40 *Q.* Turn up the ledger account there of the Company?

Mr. Meredith.—Are you trying to show the six cheques did not make up the—(Interrupted).

Mr. McCarthy.—Oh, no, I want to show this would be on one deposit.

Q. This is a credit item \$243,333.33?—*A.* Yes.

Q. What is the practice in the bank; do you keep a blotter or day-book, or do you post at once into the ledger?—*A.* We post at once from the slip.

RECORD.

No. 84.
Frederick
Woolcombe,
examined
by Mr.
McCarthy—
continued.

Q. If a customer pays in on the same day several sums, or more than one sum, would that be aggregated or put in one, or would it appear separately?—

A. It would appear separately.

Q. The total of each item?—A. Yes.

Q. So that, therefore, would appear to be one single deposit?—A. Yes.

Q. \$243,000 odd?—A. Yes.

Cross-examined by *Mr. Cassels.*

No. 85.
Frederick
Woolcombe,
cross-
examined by
Mr. Cassels.

Q. If I take you a deposit to the bank with 50 one-dollar bills and 30 ten-dollar bills, and so on, aggregating \$1,000, do you mean it is the practice in your bank to copy each into your ledger?—A. We take the total of the 10 slip.

Q. If I take a deposit with five cheques on a slip, the total deposits being so and so, do not you take the total; if I bring you four cheques on one slip to my credit, you do not copy each cheque?—A. No, certainly; take the total.

Q. Have you that slip Mr. Anderson was looking for?—A. No, I have not got it.

(Memo. produced.)

Mr. Arnoldi.—I wish to make a statement.

Mr. Cassels.—We dispense with Mr. Anderson on getting this letter from 20 him; we will take that in place of his evidence.

Frank Arnoldi, sworn, makes the following statement.

No. 86.
Frank
Arnoldi's
Statement.

With reference to what has been said as to Mr. Codd's relation to our firm in this matter, I may say this, we never acted for Mr. Codd in any way, never were under any obligations to him in any respect, but when this matter came into our hands in the fall of 1892, we were absolutely ignorant of anything except what we could gain in the way of information from Mr. Stevens or Mr. Codd. We were so erroneously informed by both of them that we commenced proceedings which we found out to be upon an entirely wrong basis and state of facts, neither good as to law or facts, and the trouble we 30 found was that Mr. Codd had been guiding our information in such a direction as to prevent us attacking the sum payable to Dr. McMichael under the judgment.

Mr. McCarthy.—I object to this; this is a conclusion.

His Lordship.—I think you will just have to say why you went to Codd.

Witness.—We went to him in ignorance of the true facts to get a knowledge of the affair; then, finding the true facts about the end of November, we were obliged to discontinue the previous course and commence this action on the basis on which it has been carried on. We still endeavoured to keep on as friendly a footing with Codd as possible, because he had control of 40 the Company, and we had to use the name of the Company. We applied to him beforehand for a resolution authorising us to use the name of

the Company, and it was refused ; and after the suit began his opposition began in every conceivable form, and we have had to litigate all over Canada as a consequence. As president of the Company he interfered with us prosecuting the action in Manitoba, and it cost us over \$2,000.

Mr. McCarthy objects.

Witness.—And we had to commence the action of the Great North West Central *v.* Codd.

Mr. McCarthy objects.

His Lordship.—It is going beyond the explanation of those letters. Your explanation is proper to show your relations began in an apparently friendly way with Codd. You need not go on and detail the consequent dealings.

Witness.—Then I desire to put in the judgment in the action of the Great North West Central *v.* Codd.

Mr. McCarthy.—You do not put that in as a witness.

Cross-examined by *Mr. McCarthy*.

Q. You had communication with Mr. Codd, or had you communication with Mr. Codd?—*A.* Mr. Codd used to practically live in our office until we had to get rid of him.

Q. You had communication, I suppose ; that is what you mean by that answer?—*A.* Certainly.

Q. You had communication up to what date with Mr. Codd?—*A.* I think probably about the time of the commencement of this action, when we found out the position. We had communications afterwards of a very different character.

Q. I am only speaking now of the early communications. It appears from the letters here we see that in the early part of these proceedings your firm were, as far down as September 1892, that you were acting in conjunction with Codd ; you were all acting in the same interest?—*A.* We were not acting in conjunction with Codd ; Mr. Osler tried to make that out, but we were not.

Q. Was he hostile to you or friendly at that time?—*A.* No, but the Company was not a party to the action, and Mr. Codd pretended, and we assumed, he was giving us correct information.

Q. At that time you assumed Codd was giving you correct information, and he pretended, at all events, to give you information?—*A.* Yes.

Q. And that information you were obtaining from him as Delap's solicitor?—*A.* Yes.

Q. With a view of setting aside or taking proceedings to nullify the Charlebois judgment?—*A.* No, not exactly that purpose.

Q. For what purpose ; the proceedings you were taking were for the purpose of setting aside the Charlebois judgment?—*A.* That was of our own motion.

Q. That was what you were doing?—*A.* It had not relation to those proceedings.

Q. That was the proceedings you were taking?—*A.* It was an incident.

Q. You were acting for Delap?—*A.* Yes.

Q. What were you trying to do for Delap?—*A.* Trying to recover his money.

RECORD.

No. 86.

Frank

Arnoldi's

Statement

—continued.

No. 87.

Frank

Arnoldi

cross-

examined

by Mr.

McCarthy.

RECORD.

No. 87.
Frank
Arnoldi
cross-
examined
by Mr.
McCarthy
—continued.

Q. What were the means you were taking to recover it?—A. One means was the action.

Q. Against whom?—A. Mr. Charlebois.

Q. For what purpose?—A. An action founded upon certain allegations of fraud in obtaining that judgment, to set it aside.

Q. You got information from Codd with reference to that?—A. We got certain information.

Q. Up to what time were you friendly with Mr. Codd, or was he friendly with you; when did this break between you take place?—A. I never was—
(Interrupted.)

Q. I do not mean to say you, personally?—A. As a matter of confidence, I never had any confidence in him.

Q. Up to what time were you friendly, apparently?—A. Up to the present time, personally, I am friendly with him, as far as I know; I never had any personal quarrel with Mr. Codd.

Q. For instance, is this substantially true, written as late as December 1892: "We understand from Mr. Howland that he has fully discussed," &c. (reads)?—A. What date is that?

Q. Seventeenth December 1892?—A. Is that the letter that acknowledges receipt of the Statement of Claim?

Q. Yes; up to the time of your preparing the Statement of Claim in this action you were on friendly relations with him?—A. Well, we were, and after that, too; that is a matter of personal relations only.

Mr. Meredith.—Q. What Statement of Claim was that?—A. That was the original Statement of Claim in this action, and the interview which is referred to there with Mr. Codd I was present at myself, and what took place was, that I then, for the first time, took hold of the management of the framing of the pleadings, and I told Mr. Codd that he could no longer stand beside us personally as to his claim; he had endeavoured to put us in that position before, and from that time out I said we could not tolerate it, it was not possible.

His Lordship.—Then the evidence is closed. There are some papers Dr. McMichael is to put in.

Mr. Arnoldi.—Yes; they will not be put in until we have an opportunity to look at them.

His Lordship.—Oh, no.

Mr. McCarthy.—As to the bonds, is it understood the bonds are to be in Court on Monday week.

His Lordship.—Yes; I think the bonds should be within the jurisdiction within the order of the Court, and deposited in some safe place, in the bank of the Court.

Mr. Meredith.—There are some persons interested in those bonds not before the Court.

His Lordship.—It will be subject to all rights.

Mr. Meredith.—I would prefer your Lordship would make that direction if it is done, so that it will not commit Delap in any way. Your Lordship will notice he got notice of the claims of Stevens' firm and Mrs. Mansfield.

Mr. McCarthy.—There is no objection to that.

His Lordship.—I direct that the bonds be brought within the jurisdiction

and deposited in the Bank of Commerce, subject to the order of the Court and RECORD. to all persons having claims thereon. They will be all heard before they are dealt with if they are not before the Court on the present record. I thought they were all before the Court.

Mr. Meredith.—Mrs. Mansfield is, but Stevens is not.

His Lordship.—However, this is subject to all the claims.

Mr. McCarthy.—An order of the Court will be made to that effect.

His Lordship.—Oh, certainly.

Mr. McCarthy.—I want your Lordship's direction.

10 *His Lordship.*—Yes, you can put it in the shape of an order.

Argument postponed, to take place in Toronto, November 13th, 1893.

The argument took place in Toronto, on November 13th, 14th, 15th, and 16th, and judgment reserved.

On November 15th Mr. McCarthy asked leave to call Dr. McMichael with reference to some statements made by Cansdale as to conversations at the board meeting.

Mr. Cassels opposed the motion.

His Lordship stated that it was against precedent and refused the motion.

M. F. JOHNSTON,
Reporter.

20

EVIDENCE TAKEN ON ENGLISH COMMISSION.

Depositions of Right Honourable Edric Frederick Baron Gifford, William D. Cansdale, John Griffin Bristow, Francis Hewitt Stevens, Robert Lothian Curzon, and Harold Strangeways Knight Gregson, taken before me, L. B. Young, as commissioner, pursuant to orders dated respectively the 10th and 17th days of May 1893, and commissions dated respectively the 15th and 18th days of May 1893, at the institution of the Incorporated Law Society, Chancery-lane, London, England, commencing on the 6th day of June 1893.

Counsel present :—

30 *Mr. Edmund Bristol*, for the Plaintiffs.

Mr. J. Travers Lewis, for Defendants Charlebois, Devlin, and Union Bank.

Mr. Austin Cartmell, with *Mr. Lewis*, for Defendant Charlebois.

Mr. Beddall, for Defendants Gifford and Curzon.

The orders and commissions were read by counsel for Defendants and taken as read. At the request of counsel for Defendants the three other witnesses present were excluded.

Right Honourable *Edric Frederick Baron Gifford*, having been duly sworn, deposed as follows :—

40 *Mr. Bristol.*—*Q.* You are one of the Defendants in the action?—*A.* I am.

Q. As trustee for the bondholders?—*A.* Yes.

Q. Have you the mortgage trust deed with you?—*A.* That is a copy.

No. 87.
Frank
Arnoldi
cross-
examined
by Mr.
McCarthy
—continued.

No. 88.
Baron
Gifford
examined by
Mr. Bristol.

RECORD. (Mr. Bristol puts in a certified copy, certified by the Government, dated
No. 88. 2nd June 1890, marked Exhibit 1.)

Baron
Gifford
examined by
Mr. Bristol
—continued.

Mr. Lewis.—I object to the contents of any original document without the production of the document.

Mr. Bristol.—This is a copy of the trust deed certified by the Under Secretary of State in Canada, and I submit it in evidence under our laws—our Evidence Act. If it is not evidence I shall undertake to produce the original from the Government records, if they will allow it to come.

Mr. Lewis.—I object to anything unless the original document, and I object further on the ground that the original is not accounted for if there be an original.

Mr. Bristol.—Q. I believe you executed the original mortgage trust deed when you accepted the trust?—A. I did.

Q. Did Mr. Curzon, your co-Defendant?—A. He did.

Q. Exhibit 1 is the deed under which the bonds of the Company have been issued?—A. Yes.

Q. Have the Company ever executed any instrument conveying to the trustees as provided by that mortgage trust deed the land grant of 320,000 acres?—A. None. I asked for it.

Q. What have you been informed as to their ability or inability to make the conveyance?—A. I am not aware that the Government has granted the certificate yet. I have not been informed of that.

Q. Are you aware that a judgment has been given preventing such a conveyance?—A. I am.

Q. Were you requested to join as Plaintiff in bringing this action?

Mr. Lewis.—I object to these leading questions.

Mr. Bristol.—Q. Please answer the question?—A. I don't quite follow you. Do you mean if Charlebois asked me join in the action?

Q. Are you aware who are the holders of the bonds of the Company?—A. Yes, I am.

Q. Will you state?—A. Mr. Delap, for loans advanced.

Q. Are you aware of the £27,000 known as the International matter?

Mr. Cartmell.—That is a most improper form of question.

Witness.—I did know they were for advances.

Mr. Bristol.—I have no objection to the question being struck out.

Mr. Lewis.—No, I object to anything being struck out.

Mr. Cartmell.—You must lay the foundation.

Witness.—I am aware of advances being made.

Mr. Bristol.—Q. What advances are you referring to now?—A. To the one that comes immediately under my notice, which is the one of £27,000 from the International Company which I negotiated.

Q. Will you state what the negotiation was?—A. I was asked on behalf of the Railway Company to get an advance of £27,000 for the purchase of rails.

Q. You say you were asked by the Company. Who asked you on the Company's behalf?—A. Mr. Codd, and Stevens, Bawtree and Stevens acting for Mr. Codd.

Q. Were you aware of the position Mr. Codd occupied then with reference

to the Company ?—*A.* Yes, he told me, and I was aware that he was President of the Company, and had full powers to deal. RECORD.

Mr. Lewis.—We object to this kind of evidence as irrelevant to the issues. No foundation has been laid for this kind of evidence. No. 88.
Baron
Gifford

Mr. Bristol.—*Q.* To whom did you apply for this advance to the Plaintiff Railway Company ?—*A.* The International Company. examined by
Mr. Bristol

Q. That is the Company described as the International Trustee Assets, and Debenture Corporation, Limited ?—Yes. —continued.

Q. What was stated to you by Mr. Codd as to the security that would be given for such an advance to the Railway Company ?—*A.* He gave a bill on behalf of the Company.

Q. What other security ?—*A.* He put up 1,250 shares and Mr. Delap's guarantee, followed by mine.

Q. You mean that you and Mr. Delap were to be sureties, do you ?—*A.* Yes.

Mr. Lewis.—I certainly object to this ; it is leading in the most gross way. I think we must confine ourselves to rules of evidence.

Witness.—Mr. Codd gave on behalf of the Company a bill for 1,250 shares and the bill was backed by Mr. Delap and myself. There was also an agreement entered into.

Mr. Lewis.—Produce it.

Witness.—I have not got it.

Mr. Lewis.—I don't want any evidence of the contents of these documents until they are produced. The witness has spoken of a bill and I object to evidence of it until it is produced.

Mr. Bristol.—*Q.* This is the bill you have been speaking of ?—*A.* Yes. (Marked Exhibit 2).

Q. And this is the agreement you refer to ?—*A.* Yes. (Marked Exhibit 3.)

Mr. Bristol.—Under the order it is provided that copies shall be put in.

Q. This was the outcome of the negotiation, the bill and the agreement ?—*A.* Yes.

Q. What was stated by Mr. Codd to you, if anything, as to the security that the Railway Company would give the International ?

Mr. Lewis.—I object to this question on the ground that such evidence will not be evidence against my clients.

Mr. Cartmell.—This objection may be taken to all that passed between this gentleman and the International and between this gentleman and Mr. Codd, and the examination may proceed subject to that objection.

Witness.—I understood him it was a first charge.

Mr. Bristol.—*Q.* You understood it was to be a first charge ?—*A.* Yes.

Mr. Lewis.—It is not fair to us that words should be put in a willing witness' mouth. I quite apprehend he desires to give the evidence just as he knows it, but I don't want the witness posted during the course of the examination.

Witness.—I was going on further to say in answer to the question that I think as far as I remember the exact conditions are set forth of what Mr. Codd meant in this agreement.

Mr. Lewis.—The agreement speaks for itself.

RECORD. *Mr. Bristol.—Q.* Are you a shareholder of this Company?—Yes.

No. 88. *Q.* Were you aware of anything that would have prevented this agreement being a first charge on the assets and undertaking of the Company at the time this advance was made?—*A.* I was told by Mr. Codd and Messrs. Stevens, Delap had advanced some money previously.

Baron Gifford examined by *Mr. Bristol* *Mr. Lewis.—*I object to this as not evidence against us. What Mr. Stevens or Mr. Codd told Lord Gifford as to Delap is not evidence against our clients.

Mr. Bristol.—Q. Are the trustees willing to accept a conveyance of the land grant?—*A.* Certainly.

Q. Is Mr. Delap taking the action he is to procure this conveyance acting 10 with the approval of the trustees?—*A.* Yes.

*Mr. Lewis.—*Does Mr. Beddall desire to cross-examine the witness?

*Mr. Beddall.—*Yes, but I am last on the record.

*Mr. Lewis.—*I think Mr. Beddall if he desires to examine his own client in chief, because that is what it amounts to, should precede me.

*Mr. Beddall.—*I have a right to cross-examine him.

*Mr. Lewis.—*The witness is really a Plaintiff in this action considering the frame of it, and I desire at all events to have the right of cross-examination after Mr. Beddall has concluded if he refuses to precede me. I think Mr. Beddall had better proceed. 20

*Mr. Beddall.—*I will cross-examine after the cross-examination of Mr. Charlebois.

*Mr. Bristol.—*On behalf of the Plaintiffs I have no objection to Mr. Lewis further cross-examining after Mr. Beddall.

*Mr. Lewis.—*You have no objection, Mr. Beddall?

*Mr. Beddall.—*Not the slightest.

Mr. Bristol.—Q. Was anything said about bonds at the time of this International agreement?

*Mr. Lewis.—*I object to your putting words into his mouth.

*The Commissioner.—*I will take the answer subject to the objection?— 30 *A.* I cannot answer that, I cannot recollect.

Q. Were the bonds of the Company ever in your possession as trustee?

A. No, I tried to get them, I thought I was entitled to them, but I did take the precaution subsequently to see they were lodged as I thought I was justified in doing so.

Q. Lodged where?—*A.* At the National Safe Deposit.

Q. In whose names were they lodged?—*A.* They were not lodged in the name of the trustees.

Q. Did you ever see the box containing the bonds in the Safe Deposit Company?—*A.* Yes, and the certificate. 40

*Mr. Lewis.—*Produce it if you are going to give evidence of it.

Mr. Bristol.—Q. What were you told at any time as to these bonds in relation to the International advance?—*A.* I don't recollect.

Q. Do you recollect whether your solicitor wrote Mr. Codd on that subject, or any solicitor wrote Mr. Codd on your behalf?

*Mr. Cartmell.—*That is cross-examining your own witness.

*Witness.—*I don't recollect; I went abroad.

*Mr. Cartmell.—*We cross-examine on behalf of the Defendants whom we

jointly represent, and we reserve our right if anything arises on Mr. Beddall's cross-examination to re-cross-examine.

—
No. 88.
Baron
Gifford
examined by
Mr. Bristol
—continued.

Cross-examination by *Mr. Lewis*.

Q. What was your first connection with this railway?—*A.* I heard of it first from Mr. Charles Stevens, who introduced Mr. Codd to me.

Q. About what date?—*A.* Some time in 1889.

Q. Early in 1889?—*A.* Yes; it was about 1889; I should not like to swear definitely.

Q. To refresh your memory about that, I may say you were very much
10 connected with it in 1889; you were elected a Director of the Company on the 2nd of November 1889.—*A.* I never accepted; Mr. Codd sent to me and asked me to be a Director and I declined.

Q. You say that you met Mr. Codd in Mr. Stevens' office early in 1889. What part did you propose playing in the matter then?—*A.* The first time I ever met Mr. Codd he stated he had come over to England to raise money and asked me whether I could help him.

Mr. Lewis.—I may say we cross-examine the present witness without prejudice and without waiving our general objection and specific objections to the evidence-in-chief.

Q. To raise money for this undertaking?—*A.* It was so.

Q. And what did you agree with Mr. Codd to in that connection at that junction?—*A.* I agreed with Mr. Codd to endeavour to place the bonds on behalf of the Company, and I introduced him to several financial people for that purpose.

Q. What was your interest in the matter personally at that juncture?—*A.* Personally I had no interest in the matter at that time. Mr. Codd simply proposed on behalf of the Company to pay the usual commission if the bonds were taken up.

Q. You were one of those I understand that signed a syndicate agreement
30 on one occasion with reference to the floating of this enterprise?—*A.* I am not now aware that I ever put my signature to it.

Mr. Bristol.—Better produce it.

Mr. Beddall.—I ask that it be produced.

Mr. Lewis.—I ask the witness if he was one of those that signed a syndicate agreement of that kind.

Witness.—I am not aware that I did.

Q. If Stevens, Bawtree and Stevens write and say you were one of those, would you be prepared now to say you were not?—*A.* I never went so far as a syndicate; it never got so far as a syndicate.

Q. Stevens, Bawtree and Stevens, in writing on the 31st May 1890, to
40 Mr. Codd, say: "We send you the names of the persons who originally signed the syndicate agreement, the Honourable Eustace H. Downay, E. T. Henneage, Robert Curzon, James Bogle Delap, the Right Honourable Lord Gifford, v.c., W. R. Hawkins, A. C. W. Holman, J. D. Treharne, R. W. B. Kerr, M.P., and J. B. Kingscok." Does that refresh your memory?—*A.* Not a bit.

RECORD.

No. 89.
Baron
Gifford
cross-
examined by
Mr. Lewis
—continued.

Q. Were you associated at that time with any or all of those persons whose names I have mentioned?—*A.* Might I look at the names?

Mr. Bristol.—I object to this inquiry; it is not relevant.

Mr. Lewis.—*Q.* Do you remember you associated with them in any syndicate agreement?—*A.* No.

Q. What commission were you to obtain on successfully floating or selling these bonds of the Company?—*A.* The usual commission, $2\frac{1}{2}$ to 3 per cent., depending on the price the bonds issued at.

Q. You were interested therefore in the financial success of the Company?—*A.* So far as the issue of the bonds went. 10

Q. What next took place after this interview and after your introducing Mr. Codd to various parties in the financial world, what was your next knowledge of this matter?—*A.* Mr. Codd went away. Mr. Codd's terms with regard to the issue of the bonds were too great.

Q. Do you mean the price?—*A.* Yes. He then went back to Canada to the best of my knowledge.

Q. This was in the summer of 1889?—*A.* Yes. He then went back to Canada to the best of my knowledge and subsequently returned—I am speaking from memory—and asked to get a loan, I think in the first place for £30,000.

Q. To get you to obtain a loan?—*A.* Yes, for rails. 20

Q. He wanted to pay for the rails?—*A.* That was it. He wanted to get the line opened, he said.

Q. At that time you knew Mr. Delap?—*A.* At that time I did not know him.

Q. When did you first meet him?—*A.* I had met Delap, but not on business in my life before; I never met Delap on business until this time.

Q. Until the occasion when the loan for £27,000 was put through?—

A. Yes. I may say that I had tried to get out of Mr. Codd before, how he had got the money for the construction of the line.

Q. How he was going to get it?—*A.* How he had got it, how he was paying his contractor; that was all a mystery. 30

Q. I believe Mr. Charles R. Stevens went out to Canada, you were aware of his first trip out there?—*A.* I was not aware he was going until he had gone.

Q. You knew he had gone?—*A.* I heard it.

Q. You had not met Mr. Delap in this business previous to that or at that time; I want you to think carefully whether you had or not?—*A.* I had only met Mr. Delap in respect to this agreement and the bill.

Q. That was in December 1889, and I am now speaking of the events which transpired in September 1889. Mr. Stevens went out to Canada at the end of August or early in September 1889?—*A.* That I met Delap then on this matter? 40

Q. Yes.—*A.* To the best of my knowledge, no.

Q. When did Mr. Stevens return to England?—*A.* That I cannot say?

Q. When did Mr. Codd return to England after his departure in September 1889?—*A.* I cannot say.

Q. He was in England when that agreement was executed?—*A.* Yes, to the best of my knowledge. I went away on a holiday, so I cannot say when he returned.

Q. On the 18th December that agreement (Exhibit 3) was made and you

endorsed this draft (Exhibit 2), so he and you were both in London on that occasion ?—*A.* It is fixed by the dates I take it. RECORD.

Q. What arrangement did you then make with Delap as to the payment of this £27,000 draft ? It was a demand draft, as you notice ?—*A.* Yes. No. 89.
Baron
Gifford

Q. What arrangement as to payment of it ? You, the endorser of it, what was your agreement with the drawer Delap ?—*A.* I understood that Delap— cross-
examined by
Mr. Lewis

Q. Tell me your agreement with Delap ?—*A.* It would not be an agreement, but an understanding. —continued.

Q. Arrangement, I suppose ?—*A.* Mr. Codd undertook that the Company 10 would pay it, and covered by Clause 2.

Q. Stop a moment, please. I don't want you to give me any statement of what Mr. Codd undertook on behalf of the Company, because that arrangement is in writing in the agreement already produced. I want to know what your bargain or arrangement or understanding was with Mr. Delap ?—*A.* I had no written understanding whatever with Mr. Delap.

Q. What was your verbal arrangement about paying it ?—*A.* If the Company failed ?

Q. Yes.—*A.* That he would pay it absolutely.

Q. You were not to be responsible ?—*A.* I was not to be responsible, and I 20 have witnesses to that effect.

Q. Mr. Delap was then agreeing to meet the payment for the rails if the Company did not, is that it ?—*A.* I take it that it was to his interest to do so to protect himself, but I am not aware of it.

Q. As a large shareholder in the Company, I suppose ; was that the ground he put it on ?—*A.* I don't think he ever talked about it.

Q. Anything Delap told you is evidence on this inquiry ?—*A.* Mr. Delap met me in reference to the advance and the transaction generally, and I told him that he would have to be very careful, that I thought things were not quite straight and that he would lose his money if he was not, and from that moment 30 he never spoke to me.

Q. He was offended ?—*A.* He was offended at my advice. I said I had been working some time in the City and knew more about business perhaps than he did.

Q. When was that ?—*A.* Somewhere about this time ; after the note (Exhibit 2) and the agreement (Exhibit 3) were made.

Q. In whose presence was this arrangement made ?—*A.* Mr. Cooper of Cooper Brothers, who is dead, and Charles Stevens.

Q. Not Richard ?—*A.* No. I may say Mr. Stevens has also worked for Delap over that matter, not for me. I want to go further now, as you put it it 40 becomes rather personal ; I have always contended through Mr. Hawksley, of Hollam's Sons, Coward and Hawksley, I was in no way liable, with the result that we have never been called upon to pay any contribution.

Mr. Cartmell.—*Q.* With regard to this understanding that was come to in the presence of Cooper and Charles Stevens, was that come to at the time that the bill was actually signed ?—*A.* Yes.

Q. It was one transaction ?—*A.* One transaction.

Q. Part of the same transaction ?—*A.* Yes.

Q. Did it take place at Mr. Stevens' office ?—*A.* Yes.

RECORD. *Mr. Lewis.*—*Q.* You proceeded then when Mr. Codd and Stevens returned from Canada to endeavour to raise money from this International trust?—

No. 89. *A.* Yes.

Baron *Q.* And you negotiated this loan yourself?—*A.* I did.

Gifford *Q.* What were you to receive for doing so?—*A.* I may say I did not do it cross- examined by all entirely myself.

Mr. Lewis *Q.* What was your commission in the matter, what were you to receive?—

—*continued.* *A.* I left it entirely to Mr. Codd on behalf of the Company.

Q. Ten per cent.?—*A.* I should have expected that at least.

Q. What have you received?—*A.* Nothing. It was the last time I trusted 10 to the honour of anybody in the City.

Q. Now, when this was negotiated thus through you, how did it come that the 1,250 shares held by Mr. Stevens were transferred, who asked for that?—

A. I knew nothing of that.

Q. All that you know about it was that you had to back the bill?—*A.* All that I knew about it was they were prepared to advance the money.

Q. On the terms of that document (Exhibit 3)?—*A.* Yes, entirely; which gave a charge over the line.

Q. Which gives whatever is stated therein?—*A.* Yes.

Q. Mr. Charles Richard Stevens and Mr. Bristow witnessed this document. 20 Were you present when it was signed?—*A.* No, I was away in Spain.

Q. When the transaction was negotiated was the contract for construction of the railway produced to these gentlemen?—*A.* I was not present when that was done.

Q. When the negotiation took place, I suppose Mr. Stevens would bring down the papers or Mr. Codd would bring them down to the International Trustee Company?—*A.* I was not present when they went there.

Q. Were all your negotiations with the International in private?—*A.* Yes; I did it alone largely through Mr. Cooper, who is dead.

Q. You and Cooper went to see whom, Beachcroft?—*A.* And the 30 directors.

Q. Was Mr. Codd or Mr. Stevens with you on any occasion?—*A.* Yes, I cannot remember it all.

Q. You have a general recollection of their being present with you?—*A.* Yes; and they always visited them subsequently to my visiting them.

Q. They had then returned from Canada on these occasions and produced the contract for construction of this railway amongst other things, I assume?—*A.* I should not like to say I ever saw the contract.

Q. Your impression is they would have done so or else the advance——

Mr. Bristol.—He has not said so.

Witness.—I should not like to say I ever saw it; I don't remember it 40 turning up.

Mr. Lewis.—*Q.* When did you first see it yourself, about that time I suppose?

Mr. Bristol.—I object to that form of cross-examination.

Mr. Lewis.—*Q.* Have you ever seen the construction contract or a copy of it set out in the pleadings?—*A.* I will tell you directly if I could see it.

Q. It is the contract between Charlebois and the Company dated 16th

September 1889 ?—*A.* It comes to my recollection I did at some time see a manuscript, a typewritten one. RECORD.

Q. That was down at the International Trust, Assets and Debenture Corporation I suppose ?—*A.* No, I never saw it there. No. 89.
Baron
Gifford

Q. Where did you see it ?—*A.* I think I saw it at Stevens'.

Q. I suppose shortly after he returned ?—*A.* I fancy I saw it before his return. I saw the contract after he returned from Canada, and when I went down to see Sir Charles Tupper and asked him whether the business was good. cross-
examined by
Mr. Lewis
—continued.

Q. I believe after Charles Richard Stevens returned from Canada, bringing 10 with him a copy of the contract which you then saw at the office ?

Mr. Bristol.—The witness has not so stated.

Mr. Lewis.—*Q.* Is that not the case, that it would be shortly after Charles Richard Stevens' return ?—*A.* I would not like to say when. I saw it about the time of the making of agreement (Exhibit 3). I saw it at Stevens' office I am convinced.

Q. Probably in October or November ?—*A.* I cannot say the date ; just about this time.

Q. Sometime previous to the 18th of December 1889 ?—*A.* I would not say subsequently or previous ; I know it was about the time as far as I can fix 20 it. I believe I had a copy of it.

Q. Who furnished you with it, Codd or Stevens ?—*A.* It was more likely to be Codd.

Q. You took the copy with you in negotiating with the International ?—*A.* No, I had it for my private information.

Q. Did you tell the International people and the directors the general purport of the contract ?—*A.* No, I was not in a position to ; I don't think I had it then. I cannot say whether I had it at that time or not ; I am certain I never discussed it with them.

Q. That was not your part of the business ?—*A.* Not my part of the 30 business.

Q. You are a shareholder at this moment, I believe ?—*A.* Yes.

Q. How many shares do you hold ?—*A.* I think it is fifty shares.

Q. When did you receive these shares, and what did you pay for them ?—*A.* Mr. Codd sent them to me for what I had done, as he put it that there was no money.

Q. About when ?—*A.* Previous to Exhibits 2 and 3.

Q. Previous to the 18th of December 1889 ?—*A.* Yes ; it was just after the first time I ever met Mr. Codd.

Q. Who made the transfer ?—*A.* There was no transfer passed ; I simply 40 received a certificate.

Q. Have you that certificate ?—*A.* No, I sent it out to Canada.

Q. To whom did you send it ?—*A.* I gave it to Mr. Stevens the last time Mr. Bristol was over here.

Q. About January last you gave it to Mr. Richard Stevens ?—*A.* Mr. Charles Richard Stevens.

Q. To be sent to Canada for what purpose ?—*A.* I am not aware for what purpose it was sent ; I did not put much value to it, and said they might have it.

RECORD. Q. You have not assigned those shares?—A. No, it is a difficult job that.

No. 89.

Baron
Gifford

cross-
examined by
Mr. Lewis
—continued.

Q. You have not sold them yet?—A. No.

Q. You were appointed a director on the 2nd of November 1889, I observe; you got notice of the appointment you told us?—A. I got notice of the appointment, and the same mail I wrote back and said I declined it; I was very much obliged to Codd, but I declined it.

Q. No director was elected in your place?—A. I never continued on the board. I wrote a formal renunciation, and said I would not mind remaining a trustee. 10

Q. However, subsequently in the following June 1890, you were re-elected a director?—A. Not to my knowledge.

Q. You are a director to-day, are you not?—A. Not to my knowledge.

Q. You were away in November 1889, and when was it that you did resign?—A. I resigned almost directly I got Mr. Codd's letter.

Q. Would that be about the spring of 1890?—A. I think it was earlier than that.

Q. Have you got a copy of your resignation?—A. I think I have one somewhere at home.

Q. Have you anything to refresh your memory at all as to the date?—A. No; I did it directly I received the letter. I might have been away for a month; it might have been in the beginning of 1890, but I know I did not wait long. 20

Q. I notice by a copy of the Company's minutes of the 3rd June 1890, you were then elected a director along with Senator Clemow, Ex-Governor Robinson, Dr. McMichael, Codd and his son on ballot?—A. That is news to me.

Q. You were informed of that?—A. It is perfectly new to me now.

Q. Have you conducted your own affairs personally or through your solicitors in such matters?—A. Through my solicitors always; I ask them to look into anything. 30

Q. Then your solicitors would be better aware than you that you were a director?—A. I should get a letter.

Q. If a letter were written?—A. Yes.

Q. To go back a moment. You say you went away and were away in Spain in the Autumn of 1889. When did you go and when did you return, roughly?—A. I went away when that Agreement (Exhibit 3) was going through.

Q. You went away in December, 1889?—A. Yes.

Q. You went away after you had endorsed that bill (Exhibit 2)?—A. Yes, two days after.

Q. And returned?—A. I returned in about two or three months. 40

Q. And you resigned from the directorate on your return?—A. I think it was.

Q. That would be March or April 1890?—A. Yes; then I was ill for about seven weeks.

Mr. Beddall.—Not that he resigned; when he got notice that he was elected he refused to accept the office.

Witness.—I renounced it.

Mr. Cartmell.—*Q.* You stated that you were away in Spain in November 1889 ; as a matter of fact that is inaccurate ?—*A.* I was away the twice in Spain.

Q. Were you away in November as well ?—*A.* Yes, I went away for about a fortnight.

Q. In November ?—*A.* Yes.

Q. And then your long stay was after that ?—*A.* Yes.

Q. You say you were in Spain for a fortnight in November 1889 ?—

A. Travelling about.

10 *Q.* Subsequently you went to Spain somewhere about the 20th of December ?—*A.* That is correct.

Mr. Lewis.—*Q.* I understand you to say you were ill after your return from Spain, in say April 1890 ?—*A.* Yes, April and May.

Q. And there might have been perhaps a delay in your renouncing or resigning, whichever is the proper expression, off the board ?—*A.* That is quite correct.

Q. That is why I was instructed that you had met Delap in the matter late in 1890 ?—*A.* It might be that ; I only wanted to make that explanation to make it clear.

20 *Q.* As late as the 31st May 1890, in a letter written by Stevens, Bawtree & Stevens, it is stated that there is no objection to Lord Gifford acting as trustee for the bondholders, although he is a director. Now, I assume if that be correct, you were probably a director at that date ?—*A.* I should not like to say ; that may be quite right.

Q. Probably is, I imagine ?—*A.* Yes.

Q. You were a director when you became the trustee of the bonds under that trust deed of the 2nd of June ?—*A.* I should not like to say ; I don't recollect.

Q. Will you swear you were not ?—*A.* I should not like to say.

30 *Q.* I fancy the fact is you were, and I would be glad if you would refresh your memory in the matter ?—*A.* I fancy Stevens and Codd proposed that I should be a director, or Mr. Codd did.

Q. You have been elected ?—*A.* What was the date of the election you read out there ?

Q. 2nd November 1889 was the first election ?—*A.* I was never subsequently elected, I mean not to my knowledge.

Q. On the 3rd of June 1890 you were re-elected ?—*A.* I will swear I received no intimation to that effect.

40 *Q.* When you executed that mortgage deed you had not then resigned from the board as originally elected, because I read from this letter that Mr. Beddall had given that opinion ?—*A.* If that is so it must be correct. I should like to look at the certificate when it is dated.

Q. What certificate ?—*A.* The share certificate.

Q. That has nothing to do with the directorship ?—*A.* It would be just about that time. I was not asked to purchase shares. It would fix it nearer in my mind.

Q. I can give you the date of your first election, 2nd November 1889 ?—*A.* Then that would be right I daresay.

RECORD.

No. 89.

Baron
Gifford
cross-
examined by
Mr. Lewis
—continued.

RECORD.

No. 89.
Baron
Gifford
cross-
examined by
Mr. Lewis
—continued.

Q. As it is within your knowledge I want to get the evidence?—A. I say what I know.

Q. Did you seek the advice of your solicitor, whether as a director you should be a trustee, do you remember?—A. I am sure if that advice was given I followed it.

Q. Do you remember seeking advice on that subject?—A. I always do invariably.

Q. So at the time that you executed this mortgage trust deed as trustee you were responsible on this draft (Exhibit 2)?—A. Yes, I should say so.

Q. And were in hopes of obtaining a commission on the sale of the bonds 10 if you were successful in disposing of them?—A. Yes, I had no objection to that. I disclosed it all to the International.

Q. You were sued on that draft?—A. Attempted to.

Q. I mean a writ was issued?—A. Yes.

Q. Was judgment got against you?—A. Not that I am aware of.

Q. You did not pay under the judgment if one was got?—A. No.

Q. You did not pay any of the bill?—A. No.

Q. Who held the first proxy on your shares for you?—A. I don't remember.

Q. Do you remember giving a proxy?—A. I remember giving one a short 20 time ago.

Q. That is to Mr. Delap?—A. Yes.

Q. Previous to that you don't remember?—A. I don't remember. I don't recollect being asked to give a proxy at all.

Q. Did you receive notices of directors' meetings?—A. Never.

Q. In October 1891, I believe you were served with the original judgment in the action of Charlebois v. The Great North West Central Railway, the judgment under which Codd took possession of the railway?—A. Yes, my solicitors received it.

Q. And communicated it to you?—A. Yes.

Q. Then again subsequently, on or about the 10th of May 1892, you were personally served with the final judgment in the action, served by Mr. Ellis at Mr. Stevens' office?—A. Yes.

Q. What did you do with the first judgment of the 16th October 1891?—A. I gave it to my solicitors, to Mr. Hawkesly.

Mr. Cartmell.—Q. What solicitors are acting for you in this inquiry, is Mr. Beddall?—A. Mr. Hawkesly agreed that Mr. Beddall should appear for me as trustee to-day.

Mr. Beddall.—I am instructed on behalf of both trustees, Lord Gifford and Mr. Curzon.

Mr. Cartmell.—Q. Messrs. Hollams are not acting as solicitors here for the trustees?—A. No; Mr. Hollams is my private solicitor. When I came down I asked Mr. Beddall to act, with Mr. Hawkesly's consent, for me.

Mr. Lewis.—Q. When the bonds of the Company were sent by Mr. Codd from Canada to England did you receive them?—A. No.

Q. As trustee you should have received them, should you not?—A. No.

Q. Who then?—A. They belong to the Company.

30

40

Q. Had you countersigned them then ?—*A.* No.

Q. Have you ever countersigned them ?—*A.* No.

Q. Stevens, Bawtree, and Stevens acted as the solicitors at that time for the trustees of the bondholders, did they not ?—*A.* They did.

Q. Did they communicate with you when they received these bonds from Canada ?—*A.* Yes, I heard they had arrived.

Q. You heard of that from the Stevens ?—*A.* Yes.

Q. And when the second instalment of bonds arrived in this country from Canada, and after you were served with the first judgment in the action of
10 *Charlebois v. Railway Company*, what steps did you take to comply with it ?—*A.* I acted under the advice of my solicitor.

Q. What steps did you take on his advice ?—*A.* Gave notice to the parties that held the bonds that they could not part with them.

Q. You gave Stevens, Bawtree, and Stevens notice ?—*A.* Yes ; Mr. Hawkesly saw them.

Q. Not to part with them ?—*A.* Yes.

Q. And what was done with them ?—*A.* They were held in the National Safe Deposit.

Q. You don't know that personally ?—*A.* Yes, I do know it personally,
20 for I satisfied myself.

Q. You satisfied yourself of what ?—*A.* That they were held, and they could not be touched, in the National Safe Deposit.

Q. And held in the name of whom, Stevens, Bawtree, and Stevens ?—*A.* No ; I think in Delap's name.

Q. Do you know ?—*A.* If I had known of this I would have brought down the letters and everything.

Q. Perhaps, Lord Gifford, as it is just one o'clock we might adjourn the inquiry for luncheon, and you might be able to get these papers in the interval ?—*A.* I cannot get them to-day.

30 Q. They are at your home ?—*A.* Yes. The advice was given and everything was verbal, and what action was taken it would not be disclosed very much, except the letters that passed between myself and Mr. Hawkesly. Mr. Hawkesly went himself and took all precautions.

Q. You understood, then, that the Plaintiff Delap then held in some sort of way the custody of those bonds, either he had the key of the box in which they were deposited— ?—*A.* I was advised that the bonds were not in the possession of the trustees, that I ought to take ordinary precautions to protect them in case of—

Q. Before you give that evidence, who told you this ?—*A.* Mr. Hawkesly.

40 Q. What your solicitor told you, I suppose, is not evidence against us. I am merely asking you now—

Mr. Bristol.—Q. Do you understand, Lord Gifford, you are not bound to disclose all this ?

Mr. Lewis.—Q. I am merely asking you if you knew and how did you know that Mr. Delap had in any way the custody or the control of these bonds at the time ?—*A.* I did know it.

Q. From whom ?—*A.* When this very question arose of this Company being served with this notice I found out he had advanced money.

RECORD. Q. At all events you were apprised at this time that those bonds were deposited in the National Safe Deposit Company in the name of Delap?—

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cross-
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Mr. Lewis
—continued.

A. Yes.

Q. And you believed it and believe it now?—A. Yes. I can assure you we took every precaution and it gave me very anxious work.

Q. These bonds could not be issued without your knowledge or sanction, I suppose?—A. No; I take it we should have been told. I don't know whether they would want my sanction.

Q. Knowledge at all events?—A. I should have known of it, certainly.

Q. You spoke of seeing a certificate from the National Safe Deposit Com- 10
pany at that time; do you remember in whose name it was?—A. No; I am not quite sure. I sent it on to Mr. Hawkesly.

Q. You got it?—A. I had it for a certain time in my possession. Mr. Stevens gave it to me, and Mr. Hawkesly then went and satisfied himself.

Q. And it was returned to Mr. Stevens?—A. Yes.

Q. When you stated to my learned friend the trustees were willing to accept a conveyance of the land grant I suppose you spoke for yourself; you don't know anything about the Defendant Curzon?—A. No.

Q. You are not swearing for him?—A. No, I will not take any responsibility 20
for that.

Mr. Lewis.—I have nothing more to ask, subject to anything fresh that Mr. Beddall may elicit.

Cross-examined by Mr. Beddall :—

No. 90.
Baron
Gifford
cross-
examined by
Mr. Beddall.

Q. You were asked about having been served with the original judgment in Charlebois v. the Great North West Central Railway Company, in October 1891. Was that the first time you heard of any claim by Mr. Charlebois?—A. The first.

Q. When did you first hear of any claim by Delap?—A. About the time of Exhibit 2; within a few months one way or the other.

Q. Was his claim the only claim you had heard of at that time?—A. Yes. 30

Q. Or until you were served with the judgment in October?—A. To the best of my knowledge that is correct.

Q. I think you have already said these bonds never were in your possession?

Mr. Lewis.—You mean manual possession.

Mr. Beddall.—Q. Neither manual or legal possession, so far as you know?—A. Never were, so far as I know.

Mr. Cartmell.—I don't think anything arises out of Mr. Beddall's cross-examination. We have no further questions.

Re-examined by Mr. Bristol :—

40

No. 91.
Baron
Gifford re-
examined by
Mr. Bristol.

Q. Were the trustees in any way represented on the obtaining of this consent judgment of Charlebois, that is attacked in this action, so far as you are aware?—A. I gave no instructions.

Q. Do I understand you to say when you became aware of the judgment, in October 1891, whatever you did was done under the advice of Mr. Hawkesly?—

A. Yes.

Q. Was your object to see as a trustee you did not get into trouble?—

A. Naturally, I had to look after myself.

Q. Do you ever recollect as trustee making any admission that the judgment was in any way binding upon you?

Mr. Lewis.—I object to that, it does not arise out of anything that we have elicited on cross-examination.

10 Mr. Bristol.—I think it arises very particularly out of something you put into the witness' mouth.

Mr. Lewis.—It is not the right way to ask it, assuming it does arise.

Mr. Bristol.—Q. Do the trustees admit the consent judgment as being binding upon them?—A. Not that I am aware of.

Q. And have they ever admitted it?—A. Never.

Q. Some of your language would lead to a possible conception that the trustees had some powers that were possibly outside the trust deed. Do you wish to convey any such impression to the Court?—A. I don't see how I possibly could.

20 By Mr. Lewis:—

Q. You say that the trustees' rights are limited to the terms of the mortgage trust deed?—A. Yes.

Q. You are familiar with its terms, and were at the time you signed it?—A. Yes.

Q. Clause 9 of it refers to moneys received or to be received under the trust deed in case of the appointment of a receiver thereunder should be utilised; secondly, in the payment as it becomes due of the interest upon any incumbrances (if any) upon the mortgaged property having priority to the said bonds. You observe that?—A. Yes.

30 Q. What did you then understand?

Mr. Bristol.—I object.

Mr. Beddall.—I object.

Mr. Lewis.—Q. To what incumbrances does that clause refer?

Mr. Beddall.—I object to that question; it speaks for itself. "Any incumbrance, if any," is quite a general term.

Witness.—I think it quite the usual clause that is put in one of these trusts.

Mr. Lewis.—It says, in case there should be an incumbrance having priority to the bonds, the interest was to be paid in a certain way.

Mr. Bristol.—The document speaks for itself.

40 Mr. Lewis.—Q. Was this clause discussed previous to the preparation of the mortgage with you?—A. I had all the clauses before me after consultation with counsel. Counsel had been through them with Stevens, and they accepted the clauses.

Q. They advised an insertion of a clause of this kind?—A. They passed it.

Mr. Bristol.—Q. I suppose if that document (Exhibit 1) gives the trustees no powers to issue bonds or countersign them, you do not claim to have those powers?—A. No, I cannot go outside that trust.

.RECORD. *Mr. Lewis.*—At the request of Mr. Bristol it is agreed that Lord Gifford's evidence need not be read over or subscribed by him, but this is to be without waiver or prejudice in the case of the other witnesses, if we decide to take the objection afterwards.

No. 91.
Baron
Gifford re-
examined by
Mr. Bristol
—continued.

William Daniel Cansdale, having been duly sworn, deposed as follows :—

To *Mr. Bristol* :—

No. 92.
William
Daniel
Cansdale
examined by
Mr. Bristol.

Q. What was your occupation in the year 1890 ?—*A.* Managing clerk to Stevens, Bawtree, and Stevens, solicitors, London, England.

Q. Do you still occupy that position ?—*A.* Yes.

Q. Under the order for production of documents which was served upon 10 you, will you let me see what documents you produce ?

Mr. Lewis.—The order referred to, Mr. Commissioner, is dated 3rd June 1893, made by Master Johnston in the matter of the Act 22 Vict. Cap. 20, and in the matter of this action I object that this order has been made *ex parte* without notice.

Mr. Bristol.—I object to that going on the Notes. I am willing that the order should be annexed to the commission.

Q. Have you got the original agreement between James Bogle Delap and John Arthur Codd of the 20th July 1889 ?—*A.* No.

Q. Did you ever see the original agreement of the 20th July 1889 ?—*A.* Yes. 20

Q. Was there more than one original ?—*A.* I don't think there was ; I never recollect seeing more than one original.

Q. Where did you see that ?—*A.* In Mr. Stevens' office.

Q. Where did you last see it ?—*A.* I am sure I could not tell you.

Q. Have you personally searched for the original agreement in all the vaults, files, and places of deposit in the office of Stevens, Bawtree, and Stevens ?
—*A.* I made a partial search for them myself, and a clerk under my direction in our office has made an exhaustive search for it without being able to find it. I assisted him.

Q. Have you assisted him as much as you could ?—*A.* Yes ; I searched 30 through every place where I thought it was likely to be.

Q. Have you searched every place it was likely to be ?—*A.* Yes ; and I searched in other places.

Q. I suppose you are familiar with all the vaults, files, and places of deposit in the office where such a document would likely be ?—*A.* Yes.

Q. Have you any reason to suppose it should be anywhere else than in the office where you have searched ?—*A.* No.

Q. Have you perused the original agreement, and are you familiar with its contents ?—*A.* I have read it through on several occasions.

Q. Could you recognise that (handing witness a paper) ?

Mr. Lewis.—I object to the copy of this agreement going in until the original is accounted for, and that the original has not been properly accounted for as yet. I do not think counsel for the Plaintiff will insist under the circumstances, and after having heard what the witness has already stated about it, in proving this copy in this way.

The Commissioner.—I will receive it subject to the objection.

Mr. Bristol.—*Q.* Look at the document, Mr. Cansdale ; do you recognise

that as a copy of the document?—*A.* I have no doubt about its being a true copy. I directed that copy to be made myself, and there is the examination mark of the clerk who made it. It is a compared copy. (Put in and marked Exhibit 4).

Q. Are you familiar with its contents?—*A.* Yes. In reading that through I can bring back the original. I recognise it. There is no doubt in my mind about it.

Mr. Lewis.—I take the further objection, that there has been no proof of the execution of the agreement in question of which secondary evidence by
10 the production of the copy is sought to be proved.

Mr. Bristol.—*Q.* Are you acquainted with the signatures of James Bogle Delap and J. A. Codd?—*A.* Yes.

Q. Do you say that you saw the original agreement?—*A.* Yes.

Q. On several occasions?—*A.* Yes.

Q. Did you see the signatures at the same time?—*A.* Certainly.

Q. And how was it executed?—*A.* In the ordinary way that they generally signed their names.

Q. It was duly executed by James Bogle Delap and J. A. Codd?—*A.* Oh! yes.

Q. Do you say that you have searched in all the usual places where the
20 document would likely be?—*A.* I have searched myself in every place where I thought it ought to be.

Q. What reason would you have for thinking it ought to be in the places where you searched?—*A.* It was the place for it.

Q. Then I understand that you had a further search directed to all the unlikely places?—*A.* I asked one of our clerks to make a thorough search, and he was engaged upwards of a day going through every paper where there was any possibility of it being.

Mr. Cartmell.—We take the same objection; that is not a satisfactory explanation of the non-production.

30 *Mr. Bristol.*—*Q.* Can you account in any way for the loss of the original?—*A.* I cannot.

Q. You say that you recollect recognizing the signatures to the original instrument as being those of James Bogle Delap and John Arthur Codd?—*A.* Yes.

Q. Carefully read that and make sure if the document produced is a true copy of the original?

Mr. Lewis.—It is not evidence, and if you proceed on it you do so at your own risk.

Witness.—I have not the slightest doubt of that being a copy of the
40 original which I recollect seeing on many occasions.

Mr. Bristol.—*Q.* Do you say you know Mr. Codd's signature?—*A.* Yes.

Q. Do you recognise that as his signature to letter addressed to Stevens, Bawtree and Stevens, dated 23rd May 1890?—*A.* That is Mr. Codd's writing. (Marked Exhibit 5.)

Mr. Cartmell.—That is put in subject to any objection of ours; it is not evidence against Charlebois or the other Defendants we represent.

Mr. Bristol.—*Q.* Do you recollect the firm of Stevens, Bawtree and Stevens writing a letter to John Arthur Codd as president of the Plaintiff Company,

RECORD.

—
No. 92.

William

Daniel

Cansdale

examined by

Mr. Bristol

—continued.

RECORD. dated 31st May 1890, in reference to the "Bond" matter ?—*A.* I know they did write one.

No. 92.

William
Daniel

Cansdale

examined by

Mr. Bristol

—continued.

Q. Do you recognize this letter dated 31st May 1890 ?—*A.* Certainly. (Marked Exhibit 6.)

Q. Did you go to Canada in 1890 ?—*A.* I did.

Q. For what purpose ?—*A.* For the purpose of taking over certain bonds of the Company to get them signed, sealed and handed to me on behalf of the parties who advanced moneys for the purposes of the Company.

Q. Do you recognize this paper as a copy of the mortgage trust deed that you took over then (Exhibit 1 in Baron Gifford's evidence) ? 10

Mr. Lewis.—I object to that.

Witness.—This is a copy which I remember having with me, it bears the copy of the certificate of the Secretary of State in the fold written by myself.

Mr. Bristol.—*Q.* Where is the original ?—*A.* The original is in the possession of the Secretary of State. This other one here is a duplicate that the Secretary of State certified, I had to leave it in duplicate and original, and the original is left with the Secretary of State, and the copy bears the certificate of the Secretary of State that it has been lodged.

Mr. Lewis.—We consent to this copy being substituted for the one referred to in Baron Gifford's evidence, but take the same objection to using this copy 20 as already taken in Lord Gifford's testimony.

Mr. Bristol.—*Q.* This Exhibit 1 is the one given by the Secretary of State on deposit of the original at Ottawa ?—*A.* Yes.

Q. You took the original trust deed and this copy, which is now certified, and the bonds ?—*A.* Yes.

Q. In what shape were the bonds when you took them ?—*A.* Ready for signature.

Q. Will you tell me what you did on reaching Canada in respect of getting this deed executed and the bonds signed and sealed, and what date in 1890 you arrived in Canada ?—*A.* I left England on the 14th of June, that was on a 30 Saturday, and I arrived in New York on the 21st of June.

Q. When did you first meet Mr. Codd in respect to this matter that you had come to America about ?—*A.* On the day of my arrival.

Q. Where ?—*A.* I saw him on the dock when I was on the vessel, and I met him as soon as I landed, and he went with me to the Fifth Avenue Hotel.

Q. What did you tell him about the matter ?

Mr. Lewis.—That is no evidence against us.

Mr. Bristol.—*Q.* What did you tell him was your object in coming ?

Mr. Cartmell.—I object. 40

Witness.—I told him the object of my coming over to Canada was to have the bonds signed and sealed which I had with me, and also to have the mortgage trust deed registered with the Secretary of State. I asked him to arrange by telegraph at Ottawa for everything to be in readiness for me when I arrived there for that purpose.

Q. Was there anything said about the trust deed itself ?—*A.* Yes ; we had a long talk over the trust deed, he wanted to know what alterations had been made in the trust deed, because you must understand this is the second

trust deed that was executed. There had been a former trust deed where a trust company were the trustees, but the circumstances of the whole thing having altered by the public issue not going through, we were advised by counsel it was necessary to have a fresh trust deed. I took with me a copy of the old trust deed which had been altered by counsel to the new deed, in order that Mr. Codd might see at a glance what the alterations were that had been made, and he and I carefully whilst we were in New York went through the old trust deed and the new one, in order that he might thoroughly see and understand what counsel had done in the way of alterations.

RECORD.
No. 92.
William
Daniel
Cansdale
examined by
Mr. Bristol
—continued.

10 Q. What did he say?—A. He was perfectly satisfied; he thought it was the best thing that could have been done.

Mr. Lewis.—If he is going to refer to the contents of the former trust deed we ought to have it produced.

Mr. Bristol.—Q. Have you the copy altered as you say?—A. Yes, a copy of the old mortgage trust deed made in the same way Exhibit 1 is.

Q. That is the one you had with you?—A. Yes; and shown Mr. Codd. It shows all the alterations (marked Exhibit 7), to the Imperial and Foreign investments.

Q. You say Mr. Codd was thoroughly satisfied with the trust deed?

20 Mr. Lewis.—He did not say that, and I object to that as most leading.

Mr. Bristol.—Did you do anything while in Ottawa in the way of searching through the resolutions of the Company as to the legality of the bond issue?—A. I looked through the minute book to find the resolution authorizing the issue and signing of the bonds; you can hardly call it the issuing.

Q. Do you recollect any resolution authorizing the issue of bonds?—A. I have no doubt I found one at the time.

Q. Look at this certified copy.

Mr. Lewis.—Before the witness looks at it I certainly object to the production of copies of the minutes of the Plaintiffs' own books. The Plaintiffs, 30 if they intended to examine this witness as to the contents of their own minute books, should have the minute books here, and no evidence can be given under these circumstances.

Mr. Bristol.—I tender a certified copy of the minutes of the Company so far as applicable under Sec. 212, 51 Vic., Chap. 29, known as the Railway Act.

Mr. Lewis.—It is open to objection even so, that such an Act is not proper.

Mr. Bristol.—Q. Look at that resolution dated 17th September 1889, (Exhibit 8)?—A. These are the minutes of a meeting authorizing the calling of a special meeting.

Q. You recollect seeing that resolution?—A. Yes.

40 Q. Look at the certified copy of the minutes of the 21st October 1889, (Exhibit 8)?—A. I remember reading these minutes of the 21st October.

Q. The declaration as to the certified copies is dated 9th November 1889?—A. Yes.

Q. When do you first recollect seeing these certified copies of these resolutions?—A. That particular certified copy?

Q. Yes.—A. I could not tell you.

Q. Do you know anything about the international agreement?—A. I don't know when I first saw these, I cannot recollect.

RECORD.

—
No. 92.
William
Daniel
Cansdale
examined by
Mr. Bristol
—continued.

Q. You told us you are familiar with the signature of J. A. Codd. Look at that document dated 11th November 1889, and say if you recognize the signatures?—*A.* Yes. (Marked Exhibit 9.)

Q. Do you know the other signatures there?—*A.* Yes.

Q. What are they?—*A.* George Aird, Secretary, and Arthur Codd.

Q. What is the document?—*A.* It is endorsed power of attorney to J. A. Codd from the Great North West Central Railway Company.

Q. When was Mr. Codd in England after September 1889, or was he in England after September 1889?—*A.* He returned to Canada I think the latter part of May 1890, and I rather think he came over about Christmas time or 10 shortly after Christmas of the winter of 1889-90 as near as I can say from memory.

Q. Did you ever see this agreement between Mr. Codd and the International, (Exhibit 3)?—*A.* I must have seen it, because it is engrossed by one of our clerks. I have no doubt I have seen it.

Q. Look at the date of it?—*A.* 18th December 1889.

Q. Do you recognize the signature of Mr. Codd to it?—*A.* Yes.

Q. Was he in England at that time?—*A.* From memory I could not tell you. I should suppose he was by signing this agreement.

Q. Do you recollect seeing these resolutions prior to the 18th December 20 1889?—*A.* I really could not fix the date when I saw those resolutions.

Q. Could you say whether you saw this power of attorney put in before the International agreement?—*A.* I could not.

Q. Did you examine the copy of the resolution of the 2nd of November? Look at the certified copy?

Mr. Cartmell.—In this power of attorney there is a witness to it, Mr. Arthur Codd, and we take the objection that this has not been strictly proved. You cannot prove it by another gentleman swearing to the handwriting. The execution is not admitted as being proved.

Witness.—I recollect these minutes of 2nd November 1889, Exhibit 8. 30

Mr. Bristol.—*Q.* Did you ever hear anything about Mr. Delap being secured by bonds in any way at any time?

Mr. Lewis.—I object to that, and I think the question ought to be struck out and Mr. Bristol ought to proceed more strictly.

Witness.—I answered that question a little while ago.

Mr. Bristol.—*Q.* Answer it again?—*A.* You asked me the object of my going over. It was to get the bonds signed, sealed and handed over to me as security for those persons advancing money, including Mr. Delap.

Q. Who was to have the first charge?—*A.* The mere handling of the bonds made it a first charge. I had the bonds signed, sealed and delivered to me by 40 the president on those terms, that is, I was to have them for Mr. Delap as security for moneys advanced by him. It was always the arrangement from the inception of the matter that Mr. Delap was to have those bonds as soon as ever they were issued, consequently I was simply carrying out the original arrangement in their being handed to me.

Q. When was that original arrangement entered into?—*A.* I believe the arrangement was entered into—

Mr. Lewis.—*Q.* Was the original arrangement in writing?—*A.* I could not tell you, I believe it was. I am not sure. RECORD.

Mr. Lewis.—Produce it.

Mr. Bristol.—It is not in writing.

Q. When was the inception of the matter as you state?—*A.* When Mr. Delap first came in connection with the matter, that was sometime in 1889, I could not tell you the exact date. examined by Mr. Bristol

Q. Was that consummated by this document, heads of agreement between James Bogle Delap and John Arthur Codd?—*A.* Yes. —continued.

10 *Q.* If that agreement does not comprise a clause stating that Delap was to have these bonds as soon as issued, do I understand you to say that was the agreement at the same time?—*A.* What I say is this, it was always understood, and I told Delap over and over again long before I went to Canada, he was to have those bonds.

Mr. Lewis.—I object to this testimony.

Mr. Bristol.—*Q.* Why did you tell Mr. Delap that?—*A.* It was the understood thing between the Company and ourselves, always understood between all the parties that Mr. Delap was to have the bonds. I could not tell you exactly how that understanding arose.

20 *Mr. Lewis.*—Let the witness speak of his own knowledge.

Mr. Bristol.—Go on.—*A.* I saw Mr. Codd frequently in the early stages of the matter and I saw Mr. Delap frequently. I can distinctly recollect that it was part of the arrangement whether in writing or otherwise, whenever bonds were issued, if Mr. Delap had not had his money before then he was to be secured by the deposit of those bonds.

Mr. Cartmell.—This is all subject to our objection, that it is not evidence against Charlebois.

Mr. Lewis.—I also object to it as evidence seeking to vary or add to the written agreement between Codd and Delap of 20th July 1889.

30 *Mr. Bristol.*—*Q.* Were any resolutions passed by the Board of Directors while you were in Canada in relation to this matter?—*A.* Yes, I attended two board meetings.

Q. Where are those resolutions that were passed?—*A.* They were both held at my request. The first board meeting I attended was held on the 27th June 1890. The object of that board meeting was two-fold.

Mr. Lewis.—Let the minutes speak for themselves.

Mr. Bristol.—*Q.* Did you get certified copies of these resolutions?—*A.* No.

Mr. Cartmell.—The minutes speak for themselves, and you must put in the proper evidence.

40 *Mr. Bristol.*—I put in certified copies of the minutes of meeting of directors on 27th June 1890 (Exhibit 10) and 3rd July 1890 (Exhibit 11.)

Mr. Lewis.—We say the minutes of the directors, which have been certified *en bloc* and not separately, should be put in, and not any specific minutes of specific meetings separately.

Mr. Bristol.—*Q.* Read those minutes over, of the 27th June and 3rd July 1890, and tell me if they correctly state the facts?

Mr. Lewis.—Before the witness answers the question I object to any evidence being given to vary the contents or to confirm the contents of the minutes.

RECORD.

No. 92.
William
Daniel
Cansdale
examined by
Mr. Bristol
—continued.

A. These minutes are all right. I was present at both the board meetings.

Mr. Bristol.—I put in the minutes of the 27th June 1890, and the minutes of 3rd July 1890, down to the words ending, "That the Honourable J. B. Robinson be hereby appointed Vice-President."

Q. Are you aware whether Mr. Codd had, when you were in Canada, that letter (Exhibit 6) ?—*A.* I should say he had the letter. I cannot bring to my memory now whether he mentioned the contents of this letter to me in discussing the question of the new trust deed.

Q. Were any limitations or conditions imposed by Mr. Codd on the directors of the Company on the handing over of the bonds ?—*A.* Certainly not. 10

Q. Do you recollect the date ?—*A.* The directors knew thoroughly well what I was about ; I explained it in the first instance to the Honourable Mr. Clemow at the first meeting, and I thoroughly explained the object of my meeting at the board meeting on the 3rd July, and the directors coincided and agreed to it in every way.

Q. Do you recollect what particular date the bonds were handed over ?—*A.* The bonds were handed over to me I think on the morning of the 28th of June. They were handed immediately to me when they were signed and sealed, and I think we finished them on the morning of the 28th of June. Those are the bonds which Mr. Delap now holds. Immediately they were signed and sealed I requested Mr. Codd to hand them over, and he handed them over, and I put them all into my own trunk which I had with me at the time ; I locked up the trunk and I asked him to allow me to put them into the safe in the Company's office until such time as I was going to return to England, and they remained in the safe there until the 7th of July, and on the 7th of July I had them out owing to a discussion I had with Mr. Codd for the purpose of handing him bonds to the amount of I think 120,000*l.* or 125,000*l.* for the purpose of handing them over to Mr. Charlebois in case he should be able to settle with Mr. Charlebois upon the terms that had been originally arranged. The remainder of the bonds I then packed up again in the trunk filling up the crevices with paper 30 for them to go steady, locked the trunk, put a strap around it and sealed it myself, and they were put back again into the Company's safe in the office till the next morning when I purposed sending them over to England by the Express Company Service.

Q. Had the trunk a lock ?—*A.* Yes, locked up, and I had the key in my pocket.

Q. Did you take the precaution of sealing the trunk with your own seal ?—*A.* I sealed the end of the strap down on to the trunk ; the trunk in my house bears the seal mark now. I also affixed a ticket on to the trunk addressing it to my firm in London. 40

Q. To whom do you refer ?—*A.* Stevens, Bawtree & Stevens ; it was fully addressed to them. The next morning I took them down, or had them taken down on a truck to the Express Company's office, for the purpose of despatching them home that way rather than bringing them home myself, as a great question arose when I went out with the Americans as to their being liable for duty, and I had great difficulty with them, and I got over it by having them sent through in bond. To avoid any question of duties I decided to send them home by the Express Company's Service. I gave instructions for that purpose, and I also had

them insured, I think, to the extent of \$10,000, rather a nominal sum, which I thought was sufficient for the purpose. RECORD.

Q. Were the Railway Company applying to you at that time for money?—
A. Yes, constantly. No. 92.
William Daniel Cansdale

Q. This letter of 31st May 1890, (Exhibit 6), do you recollect reading it before it was sent?—A. I have not the slightest doubt in my mind I did read it. examined by Mr. Bristol

Q. Could you state what obligations as far as you are aware to Mr. Delap were intended to be covered by the security? —continued.

10 Mr. Lewis.—By what, and is it hearsay evidence?

A. Such moneys as he had already advanced.

Mr. Lewis.—I object. This witness is not the Company or Delap, therefore it must be hearsay knowledge.

Witness.—My position with Stevens, Bawtree & Stevens who were acting with Delap at the time gave me perfect knowledge what moneys Delap had advanced, and I had a perfect knowledge what arrangements were being made in connection therewith. Up to the time the bonds were handed over to me, Mr. Delap had advanced something over £50,000, and had become liable for other moneys for the purpose of the Company. The bonds were handed to me
20 for the purpose of securing all those sums that Delap had advanced or might advance, or that my principals had advanced, or might advance, or any of the other clients.

Mr. Lewis.—I say what was said at the time is evidence and nothing else.

Mr. Bristol.—Q. From what source did you derive the information that you are giving us?—A. In course of various conversations I had with Mr. Codd. Mr. Codd thoroughly understood that those bonds were to be handed over for that special purpose.

Q. Was any advance made while you were in Canada after the bonds were handed to you as security?—A. Yes, I advanced the Company some moneys.

30 Q. Whose moneys?—A. Mrs. Mansfield's.

Q. State the circumstances?—A. The Company were wanting further moneys for the purpose of opening the line, if possible, and general purposes of the Company. Mr. Codd told me they wanted £3,000. I made certain arrangements on behalf of Mrs. Mansfield and obtained £1,500, in fact I obtained £3,000 and handed £1,500 of it over to Mr. Codd on the morning of the 8th. I really paid it into the Bank of British North America to the credit of J. A. Codd, President of the Great North West Central Railway.

Q. Who was this Mrs. Mansfield?—A. She was a client of my principals.

Q. Is she one of the Plaintiffs here?—A. Yes.

40 Q. Did you at any time advance further sums on her behalf on the security of the bonds?—A. Since then certainly; she has advanced altogether about £10,000 in round figures.

Q. Has Mr. Delap paid further sums that you are aware of for the Company?—A. Since I had the bonds handed to me, yes. I know he has paid in round figures another £50,000.

Mr. Lewis.—This is in writing somewhere.

Witness.—I know from my own personal knowledge Mr. Delap had advanced since that £50,000.

RECORD. *Mr. Lewis.*—Are the amounts of these advances not in writing? If the accounts are in writing they should be produced here.

No. 92.
William
Daniel
Cansdale
examined by
Mr. Bristol
—continued.

Mr. Bristol.—Q. Did the directors of the Plaintiff Company have the mortgage trust deed before them on the 27th of June and 3rd July at these meetings that you have spoken of?—A. Yes, and the alterations were explained to the directors at that meeting. I believe it was produced at the directors' meeting of the 3rd July; if the 3rd of July was on a Friday it was, for I carried it in to the Secretary of State on Saturday morning the 4th of July.

Q. You have said the minutes have been correctly stated. Do you recollect whether the minutes of the 27th of June were expressly read and approved at the meeting of 3rd July?—A. Certainly, because I had the meeting of the 3rd of July called for the purpose of confirming those very minutes of the 27th of June. After the board meeting of the 27th June, I ascertained, by what means I forget exactly, just now, that the three directors were not a quorum, therefore it was necessary to get those minutes of the 27th June confirmed; and you will see from the minutes I had four directors present on the 3rd of July.

Q. The 3rd of July was a Friday?—A. Then it was produced at that board meeting. I went back to Ottawa on the mail train on Friday night.

Q. Was there any promise made by you to furnish £35,000 on Mr. Codd handing those bonds over?—A. Certainly not.

Mr. Lewis.—That is a leading question.

Mr. Bristol.—Q. Do you recognize Mr. Codd's signature to that letter, and the handwriting, letter to C. R. Stevens from Codd, dated 7th August 1890?—A. Yes. (Exhibit 12.)

Q. When the bonds returned, did you see Mr. Delap in reference to the matter?—A. Yes, I saw him and explained to him all that had taken place during my visit in Canada, and I think I produced the bonds to him.

Q. Did he demand the bonds from you at any time?—A. Not until some time in the year 1892.

Q. What was done in consequence of his request to have the bonds in his own custody?

Mr. Lewis objects.

A. In consequence of Mr. Delap's request to have the bonds handed over to him, I attended with him at the National Safe Deposit Company, went through the bonds with him, had them taken out of the name of Stevens, Bawtree & Stevens, and placed in the name J. B. Delap.

Q. Do you recollect those two notices?—A. I see my writing at the bottom. They are notices given by my principals to Mr. Delap, dated 16th August 1892. (Exhibits 13 and 14).

Mr. Lewis.—I object, the documents speak for themselves.

Mr. Bristol.—Q. What was done with those notices?—A. I served them upon Mr. Delap personally.

Q. When?—A. On the day of the date of them.

Q. Had the bonds been handed over then or not?—A. I believe so, it was in consequence of the delivery of the bonds those notices were given.

Q. Is that your signature to the notices?—A. That is my writing.

Q. Is the signature your writing?—A. Yes.

Q. Were Stevens, Bawtree & Stevens aware of those documents?— **RECORD.**
A. Yes, they saw them.

Q. And what was done was done with their concurrence?—*A.* Entirely in every way.

Q. Under their instructions?—*A.* Yes.

Q. You have told us that you saw Mr. Codd when in England in the summer of 1889?—*A.* Yes.

Q. When that agreement of 20th July 1889 was entered into and prior to that date?—*A.* Yes.

10 *Q.* Did Mr. Codd make any representations as to his interest in this particular venture in your presence?—*A.* I cannot recollect that he did at so early a date as 1889, to me personally or in my presence. He had told me before I went over in 1890 that he had a very great interest in it.

Q. In what?—*A.* In the way that he had lent certain moneys, advanced certain moneys to the concern which gave him an interest.

Q. In the railway?—*A.* In the railway. He told me he and his friends advanced somewhere to the extent of £30,000, and he frequently repeated that to me afterwards.

(Adjourned at 4.30 p.m. to 10.30 a.m., June 7th.)

20

June 7th, 1893.

William D. Cansdale's examination continued.

By *Mr. Bristol* :—

(*Mr. Bristol* puts in two notices to produce and admit.)

Q. Will you examine that document, a power of attorney dated 8th December 1890, and see if you recognize the signatures to it?—*A.* It is J. A. Codd's signature, and I should say it was Arthur Codd's signature to the certificate. (Exhibit 15.)

Mr. Cartmell.—We don't accept that as in any way proved. It is put in subject to the objection.

30 *Mr. Bristol.*—*Q.* Look at that other document?—*A.* That is power of attorney whereby Charles Stevens and myself were appointed. That is signed by Codd, and witnessed by one of our clerks in our office. (Exhibit 16, dated 4th August 1891.)

Mr. Cartmell.—We must have these documents strictly proved, and this is not as yet proved.

Mr. Bristol.—*Q.* What do you say about the execution of this document (Exhibit 16)?—*A.* It is Codd's signature, and duly witnessed by a clerk in our office.

Mr. Cartmell.—That is not proved.

40 *Witness.*—I have not the slightest doubt in my own mind that I saw that signed.

—
 No. 92.
 William
 Daniel
 Cansdale
 examined by
 Mr. Bristol
 —continued.

Cross-examination by *Mr. Lewis*.

RECORD.

No. 93.

William

Daniel

Cansdale

cross-

examined by

Mr. Lewis.

Q. In 1888 you were the managing clerk of Stevens, Bawtree & Stevens ?

—A. Yes.

Q. When did you first meet Mr. Codd in connection with this railway ?—

A. I could not tell you the date I first met him.

Q. About when ?—A. I could not tell you. I believe I had the first interview with him in the matter, and after that interview I had nothing more to do with him.

Q. When was that interview ?—A. I could not tell you.

Q. What year ?—A. I could not tell you whether it was 1887 or 1888. 10
I had nothing more to do with the railway personally until 1890.

Q. Had you seen him previous to the preparation of the agreement of sale of the shares of stock to Codd on the 9th April, 1888 ?—A. I could not tell you when I saw him originally ; I have no recollection.

Q. Do you recollect the execution of that document ?—A. Without the document I could not tell you.

Mr. Bristol.—Produce the document.

Mr. Lewis.—This agreement of the 9th April, 1888, it is referred to in the document you purported to prove yesterday, the agreement between Delap and Codd, of the 20th July, 1889 ?—A. I have no recollection of this document. 20
I don't know anything of it ; I may have seen it.

Q. Was it prepared by you or in your office ?—A. I cannot tell without seeing it.

Q. That is the document now shown you ?—A. I don't recollect it.

Q. Don't you recollect its preparation in your office ?—A. I don't recollect it.

Q. You stated yesterday to my learned friend that you recollected the original of this document of the 20th July, 1889, the agreement between Delap and Codd ?—A. I have seen it lots of times.

Q. I don't see any copy annexed to this ?—A. I don't recollect the copy 30
being annexed when I saw the original.

Q. When you last saw the original the copy was detached ?—A. Yes.

Q. This agreement throughout refers to the agreement of the 9th April, 1888, in terms ; do you say that this copy which you have sworn to is a copy of the original as you last saw it ?—A. I have not the slightest doubt in my own mind about it.

Q. Did you compare it with the original ?—A. I did not, but I gave the original out myself to a clerk named Hyslop to make the copy and bring it to me when he copied it, and there is his examination mark on the back of it, and that says it was examined. 40

Q. When ?—A. I could not tell you.

Q. How many years ago ?—A. Not a great many years ago.

Q. How many days ago ?—A. I could not tell you how many days, but a long time ago.

Q. Who is the original witnessed by ?—A. I could not tell you off hand.

Q. One or two witnesses ?—A. I could not tell you off hand.

Q. You purport to have a recollection of the original document?—A. I RECORDED. I recollect that as being a copy of the original for the very reason that I gave it out to be copied.

Q. Was it witnessed by more than one witness?—A. I could not tell you.

Q. Had the original any stamps on it?—A. I could not tell you from memory; I have no doubt it had; I should think probably it was stamped with a six-penny stamp.

Q. By whom was the original signed?—A. By Delap and Codd in their usual signatures.

10 Q. In presence of whom?—A. I could not tell you now off hand, it might have been in the presence of Charles Stevens. I did not see it signed.

Q. You told us yesterday that you had a good many interviews with Mr. Codd at an early stage, and that he referred the fact very frequently that he and his friends had put large sums of money into the railway, as he expressed it, some £30,000 or more.

Q. In what year was this?—A. I had nothing whatever to do with the railway matter until 1890.

Q. That was before you went to Canada in 1890?—A. Yes.

20 Q. For whom at that time was your firm acting?—A. They were acting as solicitors to the railway company.

Q. In 1890?—A. Yes.

Q. Solicitors to the railway company?—A. Yes.

Q. And solicitors for the trustees of the bondholders?—A. Yes.

Q. They are solicitors to the trustees now?—A. Yes.

Q. They are instructing Mr. Beddall in this matter?—A. Yes.

Q. Were they solicitors for any one else interested in the matter at that period?—A. They were solicitors for Mr. Delap.

Q. Were you present when the negotiations which led up to the execution of this agreement between Delap and Codd of the 20th July 1889, were had?—
30 A. No, I should say not; I had nothing to do with the matter until 1890.

Q. Were you present during the negotiations which led up to it?—A. Not that I am aware of; I am pretty clear I was not.

Q. Had you at that time had any interviews with Delap in that connection?—A. I should say not.

Q. Who conducted the affair?—A. Mr. Charles Stevens.

Q. Therefore you really know very little about the condition of the matter until after Mr. Charles Stevens returned from Canada?—A. Very little. He came back in October 1889.

Q. You did not up to that time come in contact with any of those connected with this litigation in respect of the matter?—A. Not in any business way at all.

Q. In what other way if not in a business way?—A. I frequently met them.

Q. You saw them passing through the office, perhaps?—A. Yes; and sometimes I had a word. I came in contact with the parties, but not in a business way.

Q. When were you first aware personally of the terms of this agreement between Delap and Codd of the 20th July 1889; that would be after Mr.

No. 93.

William
Daniel

Cansdale

cross-

examined by

Mr. Lewis—

continued.

·RECORD. Stevens' return from Canada?—*A.* I could not tell you when I was first acquainted with the terms of it.

No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis—
continued. *Q.* I meant, to know anything about it?—*A.* Mr. Stevens very likely showed me that before he went to Canada; I should not be surprised if he did.

Q. Was there any other agreement prepared at that time between the same parties?—*A.* I could not tell.

Q. You mean you don't know?—*A.* I could not tell; there might have been; I might have heard of it off-hand and forgot it.

Q. Do you know?—*A.* I don't know.

Q. After Mr. Charles Richard Stevens' departure for Canada, which was 10 in August 1889, was it not?—*A.* At the end of August, I should think.

Q. It seems that Mr. Richard Stevens obtained the £55,000 belonging to Mr. Delap for transmission to his son in Canada; had you anything to do with the obtaining of that?—*A.* No; that was done by our conveyancing clerk.

Q. What was his name?—*A.* Mr. Cope.

Q. You don't know anything about it?—*A.* I only know it. Being managing clerk in the office all those things pass through me. I did not do the detail of it.

Q. Personally, you were not acting in the matter?—*A.* No, I did not act 20 in the matter.

Q. Have you the correspondence with you from Mr. Delap to your firm at that time?—*A.* No.

Q. What documents have you with you here under the order to produce?—*A.* Nothing; only those that have been put in.

Q. You brought a bundle of documents with you?—*A.* Mr. Bristol asked me for them yesterday, and I handed them over.

Q. What documents have you there?—*A.* They are simply letters that I have in case I want to refer to them. They are not produced here, unless I am called on for any facts which I want to support.

Q. What letters; give me the dates and parties?—*A.* Ask me any particular point. 30

Q. Have you any letters there from Mr. Delap to the firm?—*A.* No.

Q. Any letters from Mr. Codd to the firm?—*A.* I daresay there are one or two, but I don't produce them.

Q. Do you refuse to produce them?—*A.* I do.

Q. Why?—*A.* I had no notice to produce. They are not relevant to the matter that I am giving evidence upon.

Q. You were served with an order to produce, taken out by the Plaintiffs?—*A.* If the Plaintiffs ask me for the production of any particular document I 40 will produce it to them.

Q. I ask you for them?—*A.* You have given me no order to produce.

Q. You are not my witness; you were served with a subpoena *duces tecum* by an order of the English Court, and you have produced and brought into Court a number of documents and letters, and I want you to tell me what they are, and I want you further to produce those letters from Mr. Codd to your firm?—*A.* I decline to tell you what they are or to produce them.

Q. You refuse to produce Mr. Codd's letters that you have in Court with RECORD.
you ?—A. Yes.

Q. Tell me again, why do you refuse ?—A. I refuse to produce them.

Q. Why ?—A. For reasons that I have.

Q. What reasons ?—A. They are not relevant to the matters on which I have been examined.

Q. Although you bring them into court ?—A. I had them in case I should be examined upon it.

Q. They are therefore relevant to matters you thought you might be examined upon ?—A. No. I refuse to produce them.

Q. These letters in question have nothing to do with the bonds of the Company ?—A. No.

Q. Have nothing to do with Mr. Delap's advances ?—A. Not that I am aware of.

Q. Now you are on oath ?—A. I know that.

Q. You are very likely accustomed to being on oath ?—A. I know that.

Q. These documents have nothing whatever to do with the issues as defined in the pleadings ?—A. So far as I am able to judge, they are not.

Q. You have read the pleadings ?—A. I don't think I have seen them.

20 Q. Have you read the Plaintiff's Statement of Claim ?—A. I don't know.

Q. Yes or no ; you know whether you have or not ?—A. I don't know that I have in this action ; I could not swear whether I have or not.

Q. What have you read in this action ?—A. There have been three or four actions, and I have read certain things, and I don't know what I have read.

Q. Here is the Statement of Claim which I put before you ; and tell me, after you have read it, whether these papers are relevant ?

Mr. Bristol.—I have not the slightest objection to Mr. Cansdale producing them.

30 Mr. Lewis.—Q. Read the Statement of Claim ; or do you prefer I should do it for you ?—A. I am not going to read it.

Q. You don't know what the issues are, then ?—A. I don't know that I am in a position to define in your phraseology the issues ; I know pretty well what the action is for.

Q. What is the action about ?—A. I understand it is an action by Mr. Delap claiming priority in reference to the security he holds.

Q. What else ?—A. I don't know whether there is anything further.

Q. Anything else that you are aware of ?—A. I am not sure whether it is in this action, but I think it has something to do with the contract with 40 Charlebois. I am not quite sure what your action is about.

Q. It is not my action ?—A. Or this action ; I have no doubt it is all in connection with the railway. I understood I was only subpoenaed here in reference to giving evidence about the bonds that I went over for.

Q. Don't you know this action is for the purpose of setting aside the judgments obtained in Canada by him against the railway company ?—A. I believe so.

Q. Are you aware, therefore, that all matters of fact connected with the railway company, and the building of the railway and of the contract of p. 5240.

RECORD. Charlebois, and of the judgments obtained by him, and of the dealing with the bonds and of the shares arise in this action?—*A.* Very likely.

No. 93.

William

Daniel

Cansdale

cross-

examined by

Mr. Lewis

—continued.

Q. Now will you pledge your oath that none of those letters or papers that you have there have any bearing on any of those issues?—*A.* I don't see what they have.

Q. Have they, tell the truth?—*A.* I am telling the truth. Don't insinuate to me that I am not.

Q. Have they anything to do with them?—*A.* Not as far as I am able to judge. If it is any satisfaction to you, take the letters and read them. I don't produce them, but you can take and read them. (Witness hands Mr. Lewis a 10 bundle of papers, which Mr. Lewis peruses.)

Mr. Bristol.—My learned friend has to put those documents in if he examines them.

Mr. Lewis.—I submit I have not.

Q. You told me a moment ago, Mr. Cansdale, as far as you could judge, and you have been managing clerk in a solicitors office for many years, none of these papers have to do with the issues or matters on which you have been examined. I see here the Express Company's receipt of the 8th July 1890?—*A.* I don't know that it has anything to do with the issues.

Q. It is a receipt to Mr. Codd from the Express Company for the legal 20 documents you told us yesterday you had expressed from Ottawa to your firm?—*A.* Yes.

Q. And you don't now correct your evidence?—*A.* No; I don't know that that has anything to do with the issue.

Mr. Bristol.—I object to that going in.

Mr. Lewis.—I put it in. (Exhibit 17.)

Mr. Beddall.—I object to the documents being produced on behalf of the trustees. You can call for any specific document you like.

Witness.—I ask that those documents be returned to me.

The Commissioner.—I rule that if Mr. Lewis wishes any specific document 30 produced from the witness he should ask for it.

Mr. Beddall.—I ask that the witness' request be complied with, if not I ask for an adjournment to apply to a judge.

Mr. Cartmell.—If these documents are withdrawn, and the witness refuses to let us see them, I ask the examination be adjourned for us to take what steps we may be advised in order to get these documents produced to us. What I do suggest is, it would save time if we are allowed to continue investigating these documents for the purpose of putting what we consider are material in cross-examination to him. If you have any objection to any specific document you are entitled to put it.

Mr. Lewis. The witness gave me these documents to look at, and he said peruse them for yourself and see whether they are material or not. I am willing to go on with the examination now, provided these documents are left with me to judge, as I go, whether they are material or not. I would prefer looking through them further, and handing them back to the witness before proceeding.

Mr. Bristol.—Mr. Lewis having had the opportunity of examining these

documents for an hour, they should be returned to the witness, and if he wants any specific document, and thinks the witness has it, it is his duty to call for it. RECORD.

Mr. Lewis.—I have served notices on my learned friend to produce and admit, which I now put in. (Mr. Lewis now returns the documents to the witness.) No. 93.
William
Daniel
Cansdale

Q. I see, Mr. Cansdale, that you have a great number of letters from Mr. Codd to your firm of Stevens, Bawtree and Stevens, and to C. R. Stevens, in your hand in Court, how does it happen that you have not also got with you the letters from Mr. Delap to your firm?—*A.* I cannot tell you, I have not asked cross-
examined by
Mr. Lewis—
continued.

10 for them. They were not in my possession.

Q. You did ask for these?—*A.* I asked to be allowed to have these.

Q. You asked Mr. Stevens?—*A.* Yes.

Q. There are, I suppose, many letters from Mr. Delap in connection with this matter in the hands of your firm?—*A.* Very likely.

Q. Will you ask your firm to allow you to produce those letters on the occasion of this inquiry?—*A.* I won't undertake to do that.

Q. Will you produce the letters themselves?—*A.* No.

Q. Will you seek the authority of your employers for that purpose?—

A. No.

20 *Q.* Have you been asked by the Plaintiffs to produce these letters?—*A.* Not beyond the order they served upon me.

Q. How does it read?—*A.* All documents in my possession, and I have nothing in my possession.

Q. Have these letters of Mr. Delap's been shown to the Plaintiff's solicitors in this connection?—*A.* I don't know.

Q. Do you as a fact know whether they have or not?—*A.* I know we allowed the Plaintiff's solicitors to look at some letters, as they are now acting for Delap.

30 *Mr. Lewis.*—In our notice to produce, dated 18th May, and served on the Plaintiff's solicitors, 19th May, we called for all their original productions to be brought before the Commissioner on the occasion of the taking of this evidence including amongst other things the correspondence set out in the Plaintiff Delap's affidavit on production sworn on the 2nd of February and 6th March last, which included the letters from Richard Stevens and Charles Richard Stevens, to the Plaintiff Delap.

Mr. Bristol.—I have not the letters from Messrs. Stevens, Bawtree & Stevens, and Richard Stevens to J. B. Delap, referred to in the affidavit on production, and I have no objection to my learned friend using copies subject to comparison with the originals that we have produced in our affidavits on production referred
40 to. As I did not receive the notice to produce, and admit until I arrived in England I did not bring the originals with me. I have no objection to the use of copies subject to their being admissible as evidence at all.

Mr. Lewis.—*Q.* You recollect Mr. Stevens' return from Canada in October, 1889?—*A.* Yes.

Q. On his arrival in London you were in England, I suppose?—*A.* I should think so.

Q. I notice that Mr. Richard Stevens writes on the 21st October, 1889, to Mr. Delap, referring to the fact of Mr. Charles R. Stevens' return, and asking

RECORD. the Plaintiff Delap to come up and see him in London. Do you remember Mr. Delap on that occasion coming up to London?—*A.* I could not tell you from memory.

No. 93.

William
Daniel

Cansdale

cross-

examined by

Mr. Lewis—

continued.

Q. Do you remember Mr. Delap coming up to London at any time immediately after Mr. Charles Richard Stevens' return to England?—*A.* I have no doubt he did, I could not recollect the fact.

Q. Were you present at any conversation or interview between the Messrs. Stevens and Delap?—*A.* I could not tell you now.

Q. Were you present at any?—*A.* I could not remember that I was at that time.

10

Q. Do you remember at this time that you were?—*A.* In 1889, I could not recollect now. I told you before that I had very little to do in the matter in 1889; I might have been there and might not.

Q. You might reasonably be supposed to be present or not, it is for you to say?—*A.* The probability is I was not, I should think, but I could not tell.

Q. Does your memory go so far as to remember any interview between Charles Richard Stevens and Delap on his return from Canada?—*A.* No.

Q. You don't recollect the subject of his mission being discussed in your presence with Delap?—*A.* I don't know that I was present at any interview at that time.

20

Q. What papers did Mr. Charles Richard Stevens bring back with him in that connection?—*A.* I could not tell you.

Q. You were not informed as managing clerk in the office?—*A.* It was a matter he was attending to entirely himself.

Q. You have a letter there from Mr. Codd in Canada, written shortly after that in October or November, 1889, sending over some originals or copies of the contracts prepared in September 1889. Will you produce that? This is a letter, Mr. Cansdale, dated 18th October 1889, to C. R. Stevens, which you produce?—*A.* Yes. (Exhibit 18.)

Q. Do you identify Codd's signature to it?—*A.* Yes.

30

Mr. Bristol.—I object to that letter as being any evidence against the Plaintiff or Mr. Delap.

Mr. Lewis.—My cross-examination throughout of this witness is reserving my objection to his evidence in chief, and it is without waiver of it that I proceed with the cross-examination.

Q. Mr. Codd says in this letter: "By the last two mails I have sent you "copy of Charlebois' first contract agreement . . . between Clemow and "others as to the sale of stock."

Mr. Bristol.—I object to any statement from the letters going down, the letters speak for themselves.

40

Mr. Lewis.—*Q.* He adds: "Herewith I enclose copy Charlebois' second "contract, marked 'B,' and other papers." Do you remember the receipt of those papers?—*A.* I never received them.

Q. You don't remember the receipt of them by your firm or in your office?—*A.* I cannot tell you that.

Q. You don't remember?—*A.* I don't know whether they had them. I have no doubt they had them if the letter states so.

Q. When do you remember yourself of having first seen Charlebois' construction contract?—A. I could not tell you now. RECORD.

Q. About this time?—A. I don't know that.

Q. Not earlier?—A. The contract was dated when Stevens was in Canada, I could not have seen it before. No. 93.
William
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Cansdale

Q. This letter is the 18th of October?—A. I could not tell you when I saw it, I don't know whether I saw it when he came back or how otherwise. cross-examined by

Q. Or how long after?—A. No. I knew very little of the railway matter until 1890. Mr. Lewis—
continued.

10 Q. Until the occasion you went to Canada, you mean?—A. Yes.

Q. However, you knew upon Mr. Stevens' return from Canada Mr. Delap came up and saw Richard Stevens and Charles Richard Stevens at your office?—A. I only assume that.

Q. Don't you remember his being in your office on his return?—A. I don't remember.

Q. Do you remember the fact of his being there?—A. No.

Q. Will you swear he was not?—A. No.

Q. The fact is he was very often there immediately after Mr. Stevens' return, judging from the correspondence that we have here that the Plaintiff produces, and I ask you whether you corroborate that?—A. If you had Charles Stevens you could have had the whole of this evidence. He had the whole dealings with the Company at the time.

Q. Have you any other letters from Mr. Codd in Canada, written about the time of the making of the contract in question during the autumn or early winter of 1889, in connection with these matters?—A. I have no other letter from Mr. Codd other than one bearing date the 18th October 1889, there are two letters of that date one of which has been put in and the other not.

Q. You have other letters of Mr. Codd here between the time Stevens left for Canada and the end of the year, December?—A. There are none here 30 of 1889.

Mr. Bristol.—I do not admit either of those letters against Delap or the Company, but my learned friend having called for the production, he would be bound to put them in. You only put one in.

Mr. Lewis.—I don't put in the other.

Mr. Bristol.—I should say you are bound to put in the other.

Mr. Beddall.—The second letter of 18th October should be marked for the purpose of identification, because if it turns out at the trial you are bound to put that letter in, it would be impossible to know which the letter is.

Mr. Cartmell.—That is the ordinary practice. (Marked "A" for 40 identification.)

Mr. Lewis.—Q. Had you anything to do with the advance obtained on the bill of exchange endorsed by Lord Gifford from the International Trusts?—A. No, Charles Stevens did all that.

Q. You were not the actor in that matter?—A. No, I had nothing to do with it.

Q. Nor in the obtaining of £55,000 from the National Provident?—A. No.

Q. You told us yesterday that you sailed for Canada on the 14th June 1890?—A. Yes.

RECORD.

No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis—
continued.

- Q. Upon whose instructions ?—*A.* Instructions of my principals.
- Q. Who ?—*A.* Stevens, Bawtree and Stevens.
- Q. Which particular one member of the firm ?—*A.* I should not think it was one member more than the other.
- Q. All three talked about it ?—*A.* Yes.
- Q. What written instructions had you ?—*A.* None.
- Q. With what papers did they furnish you at the time ?—*A.* I am not aware that I had any papers except the bonds that I took with me, and the trust deed.
- Q. The unsigned bonds ?—*A.* Yes, and I had the original trust deeds, and the copy and the draft which I put in yesterday. 10
- Q. That is all ?—*A.* I don't recollect whether I had any other papers, whether I made any notes myself I could not tell you.
- Q. You don't remember whether you had copies of any other documents or any other original documents with you at that time ?—*A.* I don't think I had. I was going over for one special purpose only. My impression is, I had no other original documents or copies.
- Q. Who paid your expenses ?—*A.* Stevens, Bawtree, and Stevens.
- Q. Were these expenses charged to any one ?—*A.* They were charged, I don't know to whom now.
- Q. Or were these expenses incurred and met by the firm ?—*A.* My firm, no. 20
- Q. To whom were they charged ?—*A.* I could not tell you now ; I don't keep their books.
- Q. You were the managing clerk, and you went to Canada ?—*A.* Yes.
- Q. And you were supplied with money for the purpose ?—*A.* Yes.
- Q. You don't know who paid the expenses therein ?—*A.* Whether they were debited to the Company or not I could not tell you ; they were debited to some one in the ledger. It was not my province to go and inquire to whom they were debited.
- Q. There was an account opened in your ledger for the Company at that time ?—*A.* Probably. 30
- Q. And the expenses were charged to the Company ?—*A.* I don't say that.
- Q. What is your impression ?—*A.* I don't think I troubled myself about it. They sent me to Canada and paid my expenses. I did the work they sent me to do, and I came back and did not trouble myself who paid my expenses.
- Q. You got a cheque from your firm ?—*A.* No, they gave me the cash.
- Q. Who gave you the cash ?—*A.* Probably the firm directed the cashier to give me the cash.
- Q. I asked the individual ?—*A.* The cashier could not sign the cheque at all events.
- Q. Who keeps your books in your office ?—*A.* The cashier. 40
- Q. What is his name ?—*A.* Dennett.
- Q. As managing clerk you would be familiar with those accounts ?—*A.* I don't know
- Q. Would you ?—*A.* I am familiar with some accounts ; I have a right to go and look in the ledger when I please.
- Q. Are you familiar with the account opened with the Great North West Central Railway ?—*A.* I have seen it.

Q. There is nobody more familiar with it except the actual bookkeeper ? RECORD.
—A. And the principals.

Q. Are they all three more familiar than you ?—A. I should say so.

Q. Do they do any of the bookkeeping themselves ?—A. No, but they go to the books much more often than I do, and the cashier has to report to them everything and not to me.

Q. Are you familiar with Mr. Delap's account, or is there such an account on your books ?—A. Certainly there is.

Q. Is there a special account in connection with this railway matter with
10 Delap ?—A. I believe so.

Q. You know, as a fact, there is ?—A. I believe so.

Q. You have seen the account ?—A. I believe I have.

Q. Have you, or have you not ?—A. I believe I have seen it.

Q. Have you a copy of the account with you ?—A. No.

Q. Have you a copy of the railway's account with you ?—A. No.

Q. You stated yesterday that, at the time you went to Canada, you knew what moneys had been advanced, and that you knew Mr. Delap had advanced some moneys. What was your knowledge then on that point ?—A. I knew, as
20 as a matter of fact, he had borrowed the money from the Provident for the purpose of the railway.

Q. You say that you knew Mr. Delap had advanced some moneys at that time ?—A. Yes.

Q. Do you mean that you knew that the £50,000 mentioned in this agreement between Codd and Delap had been paid ?—A. I knew it had been sent out to Canada.

Q. By your principal, Mr. Richard Stevens ?—A. By the firm.

Q. Mr. Charles Stevens was in Canada ?—A. Mr. Bawtree was home.

Q. That is the £50,000 mentioned in this agreement of 20th July 1889 ?
—A. Yes.

Q. What other advances were you then aware of by Mr. Delap ?—A. I
30 think that is all I stated yesterday.

Q. I am asking you whether there was anything else ?—A. Not up to that point.

Q. Up to the point of your arrival in Canada on that occasion, the details of which you gave yesterday, what you had in your mind was the £50,000 originally got under this agreement ?—A. Yes.

Q. Before you sailed for Canada had you yourself any interview with Mr. Delap ?—A. I believe I had several.

Q. What documents did you show him on the occasions of these interviews
40 you had with him ?—A. I don't know that I showed him any.

Q. What were your instructions from your firm before sailing for Canada ?
—A. To get the bonds signed, sealed, and handed over to me as security for moneys advanced.

Q. You say that you saw Mr. Delap previous to your going ?—A. Yes.

Q. Did you receive any cables from Codd previous to your departure for Canada on that occasion ?—A. The firm might have ; I had none.

Q. Have you any there just prior to your departure early in June or the end of May 1890 ?—A. Not.

No. 93.

William

Daniel

Cansdale

cross-

examined by

Mr. Lewis—

continued.

RECORD.

No. 93.

William

Daniel

Cansdale

cross-

examined by

Mr. Lewis—

continued.

Q. Did you apprise him of your coming ?—There is this letter of 31st May that was put in yesterday, beyond that did you apprise him ?—A. I might have in writing to him privately. I could not tell.

Q. Have you a copy of your letter ?—A. No, I did not keep copies. Codd and I have written private letters apart from this matter.

Q. And in this matter also ; you say you had private correspondence with Codd in other matters, and in this matter also ?—A. I don't recollect that I had any private letters in this matter.

Q. You said you might have written to him saying you were coming ?—A. Supposing I was writing a private letter and I put in it, I expect I am 10 coming over to Canada, that would not be in this matter.

Q. Had any advance been made to the Company or Mr. Codd by Mrs. Mansfield at this time previous to your departure for Canada ?—A. No.

Q. So the main sum that you had in your mind on your departure was the original £50,000 ?—A. What do you mean ?

Q. The chief and only sum you had in your mind ?—A. Many other sums of money in my mind besides the £50,000.

Q. You told us yesterday that you knew on your departure for Canada that advances had been made ?—A. By whom ?

Q. You said an advance had been made, and I was asking you whether this 20 sum of £50,000 was not at that time the chief sum that you had in your mind ?—A. As an advance by Mr. Delap ?

Q. Yes ?—A. Yes.

Q. Mrs. Mansfield had not up to that time advanced anything ?—A. No.

Q. Had any one else ?—A. My firm had paid moneys to and for the Company.

Q. What moneys ?—A. I think I told you yesterday.

Q. We have not had any account of it ?—A. I knew they had up to that time paid £4,000 or £5,000.

Q. When you say to and for the Company, to whom ?—A. They paid 30 the expenses connected with the attempted issue of bonds.

Q. That was in May 1890 ?—A. Yes.

Q. What did that amount to ?—A. I could not tell you from memory.

Q. Who did they pay that to ?—A. I could not tell you from memory.

Q. Had you not better refresh your memory ; since you have deposed to the fact of these advances, we would like to know more precisely the nature of them. You don't remember even approximately the amount ?—A. I think £4,000 or £5,000.

Q. Any other sums advanced by Stevens, Bawtree and Stevens up to that time ?—A. There might have been ; I could not pledge my memory to that. 40

Q. Did you take an account with you to Canada on that occasion of the moneys purported to be advanced ?—A. Not that I recollect.

Q. Did you furnish such an account to Mr. Codd when you went over there ?—A. Not to my recollection.

Q. Or to the Company ?—A. Not to my recollection.

Q. When you say your firm had paid £4,000 or £5,000 out for expenses of the abortive issue of bonds, why do you call that an advance to the Company ?—A. Money paid for and on behalf of the Company.

Q. At whose request ?—*A.* Request of the president.

Q. Is that request in writing ?—*A.* I could not tell you.

Q. Was it to you verbally ?—*A.* It would not be to me personally.

Q. How do you know it was made ?—I understood from Charles Stevens.

Q. It is hearsay ?—*A.* If you had him here he could have told you straight.

Q. You heard so from him ; that is your only source of knowledge ?—*A.* That these moneys have been paid.

Q. No, that Codd had requested them to be paid ?—*A.* I have no other knowledge about it.

Q. How do you know they were paid ?—*A.* I know as a matter of fact.

Q. Did you pay the money ?—*A.* I probably saw the cheques come out of the office.

Q. Did you pay the money ?—*A.* No ; I don't pay the firm's accounts.

Q. Who were they paid to ?—*A.* To the persons to whom the cheques were drawn.

Q. Who were they ?—*A.* I don't know.

Q. Is that your only source of knowledge about the payment ?—*A.* That is sufficient.

Q. Is that your only source of knowledge ?—*A.* That is sufficient for my knowledge.

Q. Is that all you know ?—*A.* I don't know what else I could know ; I saw cheques come out of the office.

Q. Saw cheques to whom ?—*A.* I could not tell you ; I don't remember.

Q. You have seen cheques come out of the office to whom ?—*A.* Thousands of people, different times ; I generally see most cheques that come out of the office.

Q. You say £4,000 or £5,000 were paid out by your firm for the cost of the abortive issue of bonds, I ask you to whom the cheques were made, or to whom the payments were made ?

Mr. Beddall.—The witness did not say £4,000 or £5,000 were paid for the issue of these bonds. He was asked how much had been paid, and he said he thought £4,000 or £5,000 ; then he was asked what it was paid for, and he said moneys had been paid for the issue of bonds.

Mr. Lewis.—Q. You yourself did not hand cheques to anybody ?—*A.* No.

Q. You did not draw cheques yourself ?—*A.* No.

Q. You did not cash cheques in that connection ?—*A.* No.

Q. You did not attend with the cheques to pay anybody ?—*A.* Certainly not.

Q. Then how do you know the money was paid ?—*A.* I saw the cheques when they were signed.

Q. What cheques ?—*A.* Such cheques as went out in connection with the matter.

Q. Tell me what cheques they were ?—*A.* I could not carry things three years over ; I could not tell you the specific cheques that were drawn and the actual amounts they were drawn for.

Q. You don't know that ?—*A.* I knew at the time, but I don't know now.

Q. The order to pay was verbal or written ?—*A.* I don't know.

Q. Do you know who it was given by ?—*A.* I don't.

RECORD.

No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis—
continued.

Q. Do you know who it was given to?—A. I don't.

Q. You were not present when anybody directed those moneys should be paid?—A. I cannot say whether I was or not.

Q. Do you remember being present?—A. I cannot say that.

Q. Do you remember any order being given for the payment of them?—

A. I cannot tell whether there was any order given or not.

(Adjourned at 1, resumed at 2 p.m.)

Q. Any other moneys besides the £4,000 or £5,000 for the expenses of the abortive issue of bonds?—A. I don't think I said the expenses of the abortive issue were £4,000 or £5,000; I said that was the amount due to 10 Stevens, Bawtree and Stevens which included that.

Q. That sum represented amongst other things the expenses of the abortive issue of bonds, and what else?—A. I could not tell you from memory.

Q. Were they advances made, and to whom?—A. I could not tell you; I did know at the time, but I could not remember.

Q. You are not therefore personally aware of the fact of any advance made?—A. I was at the time.

Q. You don't know now?—A. It has gone from my memory.

Q. Before you left for Canada the abortive attempt to put forward the 20 bonds had taken place, that was some time during the latter end of May 1890?—A. I think a little earlier, April or May.

Q. The prospectus is dated 17th May 1890. You have seen the prospectus?—A. Yes, it is dated 10th June.

Q. That one is, that would be just before?—A. That is not the prospectus that was issued to the public; I don't recognise it. I believe it had endorsed at the top "Applications to be made."

Q. That is a prospectus now shown you?—A. Yes.

Q. Which you have seen before?—A. I might have seen it before or I might have seen a copy of it. I don't think that was the prospectus issued to 30 the public.

Q. Do you recollect the preparation of a prospectus with respect to the bonds?—A. I had nothing to do with the preparation.

Q. Was it prepared in your office?—A. I don't think it was.

Q. I see by this a copy of the trust deed and the necessary documents and prospectuses may be obtained at the office of Stevens, Bawtree and Stevens, so I assume the prospectuses were there?—A. They were there.

Q. They were in your custody, I suppose, at the time?—A. In the custody of the firm.

Q. If anyone came to ask for it, and they asked you, you would be able 40 to furnish them with one?—A. Yes.

Q. There is another prospectus, an abridged prospectus—

Mr. Bristol.—I object to these documents.

Witness.—That is something in the "Canadian Gazette."

Mr. Lewis.—Q. This is the advertisement of the abridged prospectus

in the "Canadian Gazette;" do you recognise that?—*A.* No, I never saw it before. RECORD.

Q. Is this the prospectus that was issued to the public in the "Canadian Gazette"?—*A.* I don't know. No. 93.
William

Q. Are you not aware that these prospectuses were published in various papers?—*A.* In England. Daniel
Cansdale

Q. This is an English paper, the "Canadian Gazette," published in London?—*A.* That is a condensed prospectus. cross-
examined by
Mr. Lewis—
continued.

Q. This prospectus is dated 17th May 1890, that I have mentioned to you?—*A.* I don't think I ever saw this "Canadian Gazette."

Q. But the abridged prospectus that was published in the various papers in London at the time?—*A.* I daresay I saw them at the time, but I could not identify this as being the abridged prospectus.

Q. The prospectus that was issued at the time was under the former mortgage trust deed that you referred to in your examination in chief?—*A.* Yes.

Q. And not under the present one?—*A.* No.

Q. And I believe that bonds never went to allotment thereunder?—*A.* No.

Q. Who prepared the prospectuses in that connection?—*A.* I cannot tell; 20 I don't know.

Q. They were prepared in your office?—*A.* They were not prepared in our office.

Q. At the time of your departure for Canada, your firm were solicitors for the trustees of the bondholders, I believe?—*A.* Yes.

Q. That would be Lord Gifford and Mr. Curzon?—*A.* Yes.

Q. Under the proposed mortgage deed?—*A.* Yes.

Q. It was executed then in England, previous to your departure for Canada, by Lord Gifford and Mr. Curzon?—*A.* Yes.

Q. Just before your departure, was it?—*A.* I could not tell you.

Q. You were not present when it was executed?—*A.* I could not say. 30

Q. Who accompanied you to Canada?—*A.* Hewett Stevens, simply as a companion.

Q. Was he then a member of the firm?—*A.* I think he was.

Q. I am instructed he was then only a clerk?—*A.* I don't remember; I rather think he was.

Q. Whatever the instructions were, they were given to you and not to him?—*A.* Yes.

Q. He was merely a *compagnon de voyage*?—*A.* Yes. Of course he knew the object of my going out, and heard the instructions given to me.

Q. By the members of your firm?—*A.* Yes. 40

Q. Codd, you say, met you in New York on your arrival?—*A.* Yes.

Q. Were you furnished with a copy of this letter 31st May 1890, Exhibit 6, before your departure?—*A.* I really could not tell you. I know the letter you refer to, but I really could not tell you.

Q. At all events, your instructions were in conformity with this letter?—*A.* I think that letter is rather different as to what my instructions were. I think that letter goes to the point that bonds would be sent over to Codd, and he was to return them.

RECORD.

No. 93.
William
Daniel
Causdale
cross-
examined by
Mr. Lewis—
continued.

Q. You were to be the means of carrying out this in place of his returning them?—*A.* Yes.

Q. I see in it your firm states that the terms of the new deed were almost identical with that of the former deed. On your arrival in New York you told us that you saw Mr. Codd and discussed with him the terms of the new deed that you took out. Did you draw his attention to the changes?—*A.* Yes. Yesterday I put in a draft which was originally a copy of the first deed in order that he might see on the face of it instantly the different changes. I thought that was the better way of his seeing the alterations than by having a fair copy.

Q. Were clauses one and two of this Exhibit 7 struck out, as they are here, on that occasion?—*A.* That is now in the exact state in which it was when I produced it; that is the draft from which the originals were engrossed.

Q. Did Mr. Codd peruse this, had he it in his possession a sufficient length of time for the purpose of perusing it?—*A.* Certainly.

Q. Where?—*A.* At the Fifth Avenue Hotel.

Q. You arrived in New York in the morning, did you?—*A.* No, I think in the afternoon. That was produced to him after dinner at the Fifth Avenue.

Q. When did you leave for Ottawa, the following morning?—*A.* I think it was the following morning, but I could not tell you from memory. I got to New York on Monday morning, and left New York Tuesday morning with Mr. Codd.

Q. What did you tell Mr. Codd was the difference between the deeds?—I allowed him to see for himself. We talked it over clause by clause, went through it. I had the original and he had that, and we compared them together, a general discussion, whatever it might be; I could not tell from memory now. He thoroughly understood what the alterations were.

Q. On the occasion of your visit to Canada at this date was it that you had this conversation with Codd with respect to his claim for moneys advanced for the former building of the road; was it then or earlier?—I knew at the time I was in Canada; then the matter was brought up.

Q. I think you told us at an earlier date during his previous visit to England he had some talk with you about it?—*A.* I have no doubt.

Q. What did he inform you of?—*A.* As far as I recollect, I asked him what was the nature of his claim.

Q. And he told you what?—*A.* It was money due to him for advances made.

Q. Amounting to, as he then claimed, in the aggregate, some £30,000?—*A.* I think that was it.

Q. When was it that you were first made aware of Codd's interest in the moneys of the Charlebois contract?—*A.* You are taking that separate and distinct from what you were referring to just now?

Q. Yes. You were aware that Mr. Codd was to receive certain moneys out of the moneys payable to Charlebois, under his construction contract, in liquidation of this former claim of Codd's for £30,000, were you not?—*A.* I knew nothing of any payment to Codd out of the Charlebois contract until I saw it in typewriting.

Q. When was that; when you were in Canada on this occasion?—*A.* No, not long since; within a period of months. I don't know how long now.

Q. He did not make you aware of it on the occasion of your visit in 1890 ? RECORD.
—A. Certainly not.

Q. How did he tell you that this £30,000 was going to be returned or made good to him when you had these conversations with him ?—A. I don't think he told me how it was to be paid ; he simply told me there was that amount due to him and his friends.

Q. Out of this large sum ?—A. He did not say that, so far as I recollect.

Q. You were aware that he had an interest ?—A. Yes.

10 Q. And expected to get it paid to him whenever the moneys on this £200,000 deal had been paid ?—A. I do not know how he expected to get his money.

Q. You know he expected to get it then ?—A. I did not know that.

Q. When did he tell you ?—A. Told me it was money due to him and his friends.

Q. What did he tell you further than that ?—A. I don't know that he told me how he expected to get paid.

Q. You were aware there had been various orders given on the moneys under the construction contract and accepted by the Company at this
20 time ; orders, for instance, to some of the Defendants in this action and to the Union Bank, &c. ?—A. I only heard so.

Q. Amongst others, an order in favour of Dr. McMichael ?—A. I am not sure I ever did hear of an order to Dr. McMichael or see one.

Q. In favour of Dr. McMichael ?—A. I am not sure that I did ; I don't think I did.

Q. Did you see Dr. McMichael when you were in Canada on this occasion ?
—A. Yes.

Q. Was not the ultimate destination of the moneys discussed with you by him and by Mr. Codd when you were in Canada ?—A. What moneys ?

30 Q. The balance of the £150,000 payable under the construction contract ?
—A. Not that I am aware of ; I don't think that was discussed at all by us, it was no part of my errand.

Q. Had it been discussed in your office at home at any previous period ?—
A. I am not aware that it had.

Q. Had you been apprised of the intended distribution of these moneys ?
—A. No.

Q. Simply all you were made aware of was that there had been certain orders in a general way in favour of some of these Defendants, and also that Codd claimed an interest with respect to his claim ?—A. I heard certain orders
40 had been given and Codd told me he had a claim.

Q. And you heard that he was working out his claim under this deal ?—
A. No, I did not.

Q. When did you first speak to Codd about the object of your mission on the occasion of your coming over after showing him this mortgage, going over it, as you say you did, in New York ; when had you any conversation with him about your errand over there ?—I daresay as soon as an opportunity offered itself after I met him.

Q. In New York or at Ottawa ?—A. In New York.

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William
Daniel
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Mr. Lewis—
continued.

RECORD.

No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis—
continued.

Q. What did you tell him?—*A.* I simply told him I had the bonds to be signed and sealed.

Q. And you went on to Ottawa and waited there, did you, while they were being signed and sealed?—*A.* I saw them signed and sealed.

Q. How long did that take?—*A.* I forget now.

Q. On the 23rd of June you arrived in New York?—*A.* Yes.

Q. On the 24th you left for Montreal?—*A.* Yes.

Q. And you remained in Montreal?—*A.* We did not get to Montreal until half-past eleven the night of the 24th; we slept at Montreal that night and went on to Ottawa the next day, the 25th.

Q. You did not leave Ottawa to go home again until the 8th of July?—*A.* I left on the evening of the 8th.

Q. You had about 13 days in Canada on your hands before you started home?—*A.* I was there 13 days.

Q. When were the bonds signed?—*A.* The bonds were signed as quickly as possible; they were all signed by the morning of the 28th.

Q. After they were signed what next took place? The mortgage trust deed was executed, I suppose, by the Company?—*A.* The trust deed was not executed by the Company until after the board meeting of the 27th; I believe it was executed on the 28th.

Q. Then you went to Toronto, did you not?—*A.* Yes, whilst I was over in Canada I attended a board meeting there on the 3rd of July, 1890.

Q. Where did you stay when in Ottawa?—At the Russell House.

Q. Registered there?—*A.* Yes.

Q. In your own name?—*A.* Yes.

Q. You were informed, I suppose, by Codd or Dr. McMichael on these occasions the condition of the railway so far as the contract was concerned, you had a talk with them?—*A.* I daresay I had general talks.

Q. You were told the land grant had issued, I suppose?—*A.* I presume I knew that by it being included in the bonds.

Q. You would know that before you started from England?—*A.* I presume so.

Q. You knew the first certificate of partial completion of the road had been granted at the time on which the land grant had issued?—*A.* I did not know it as a matter of fact, I only took it if the land had been granted there would have been some evidence of the title.

Q. When you asked Codd for the bonds after they had been signed what did you say to him?—*A.* I don't think I asked him for the bonds in the ordinary acceptation of the word; I said to him, they are all signed and sealed, you are to deliver them to me, which he did; he said, all right.

Q. He had previously had a letter asking him to despatch them to England to your firm?—*A.* Yes.

Q. Did you say to him you were there to get them instead of his sending them?—*A.* I have no doubt he became acquainted with that fact immediately I arrived.

Q. You told him so?—*A.* Certainly.

Q. Did you take out any further letter to Mr. Codd from your firm?—*A.* I am not aware that I did.

Q. Did you?—A. I don't recollect it. I give you the best of my RECORD.
recollecion.

Q. You mean Codd simply knew you before?—A. Certainly.

Q. And recognised you as Mr. Cansdale, the chief clerk of the office?—
A. Yes.

Q. Did you not take any written authority out from your firm authorising
you to get these bonds?—A. No.

Q. Nor did Mr. Hewitt Stevens?—A. No.

Q. Had they cabled Codd that you were coming out, or that there would
10 be any change in the programme since they wrote the letter of the 31st May?
—A. There was some communication, but what it was I could not tell you.

Q. Have you no letters?—A. I believe I wrote him personally to say I
was coming to Canada, and asked him to meet me in New York.

Q. Look there among your letters?—A. I know there is none there. I
looked before the holding of this commission to see whether I had any letter or
cable written to Codd.

Q. Had you any discussion as to his handing the bonds over to you?—

A. He stated to me at the time, "What are you going to do about Charlebois?"
I said, "I will arrange that before I go away."

20 Q. What did he mean by that, and what did you mean by your answer?—

A. There was £100,000 that was to be paid to Charlebois to be taken in bonds
according to the arrangement, and according to that letter those bonds were to
be retained by Codd for Charlebois. That is all that did take place between us.

Q. When was that?—A. On the 28th of June.

Q. In this letter of the 31st May there is a clause, "As regards the balance
"which you state in your letter is due to him, you have repeatedly informed us
"that there was a certain amount of the £200,000 which belonged to you and
"your friends, and was not payable to Charlebois, and therefore the £100,000 in
"bonds would enable you to pay everything that is due to him on the first fifty
30 "miles. There is, of course, no reason why the balance should not be paid to
"you and your friends in bonds in a similar way, and you must arrange this,
"having regard to the great difficulties in getting cash at the present time." Was
"that subject discussed on this occasion?—A. I don't recollect it being so.

Q. You say it was discussed who should retain a certain amount of the
bonds for Charlebois?—A. They were my instructions to leave them.

Q. Following this letter up, did you ask Codd then to arrange that the
amounts coming to him and his friends should come out of bonds instead of
cash?—A. No.

Q. Did he refer to the subject at all?—A. I don't think he did.

40 Q. Will you swear he did not?—A. I would not say that; to the best of
my recollection he did not.

Q. If he says he did will you contradict him?—A. I shall go no further.
I say to the best of my recollection he did not refer to it.

Q. What were your instructions before leaving England in that regard,
with respect to meeting the claim of Codd and his friends in bonds?—A. No
instructions.

Q. Nothing beyond what this letter contains?—A. No.

Q. Did you not think it worth while in discussing the whole matter with

No. 93.
William
Daniel
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Mr. Lewis
--continued.

RECORD. him to discuss this subject with him ?—*A.* As I said just now, I don't recollect that that subject was discussed at all.

No. 93.

William

Daniel

Cansdale

cross-

examined by

Mr. Lewis

—continued.

Q. Did you take it for granted that his retaining £120,000 of the bonds would be sufficient to meet not only Charlebois, but the other claim of Codd and his friends ?—*A.* No.

Q. Out of those bonds at 80, with which Charlebois was to be partially settled with, according to your instructions, Codd and his friends were allowed to settle that ?—*A.* Not that I know of. It was no part of the arrangement between Codd and myself.

Q. You say, however, he may have referred to the matter ?—*A.* He simply 10 referred to it ; he says, " What are you going to do about Charlebois' bonds ? "

Q. He did not then agree to take bonds himself ?—*A.* Certainly not.

Q. Did he insist upon having cash himself ?—*A.* No.

Q. And you did not ask him to take bonds ?—*A.* No.

Q. When you went to Toronto, did you disclose your mission to Dr. McMichael ?—*A.* At the board meeting.

Q. That was on the 3rd of July, in Toronto ?—*A.* Yes.

Q. Was there a discussion ?—*A.* I informed them at the board meeting the object of my visit there.

Q. The minutes speak for themselves as to what was done there ?—*A.* Yes. 20

Q. On your return to Ottawa you say you recorded the mortgage yourself ? —*A.* Yes, personally.

Q. On the 4th of July 1890 ?—*A.* Yes.

Q. And when was it that you and Codd packed the bonds into the trunk ? —*A.* They were packed into the trunk on the 28th, the moment they were signed ; packed into the trunk by myself.

Q. After he had given them to you ?—*A.* Yes, and I locked them up in the trunk and put the key in my pocket.

Q. Whose trunk ?—*A.* The trunk I had with me.

Q. That you brought them out in ?—*A.* Yes.

Q. The trunk was sealed ?—*A.* On the 7th it was sealed.

Q. Meanwhile the bonds were left in the Company's vault in the trunk ?—*A.* At my request ; I did not know where to put them for safety.

Q. And on the 7th you opened the box again ?—*A.* Yes.

Q. To take out this £120,000 ?—*A.* Yes. I told Codd I will give you now those bonds for Charlebois. We had the trunk out and I gave him out the £120,000 bonds.

Q. That is for the purposes mentioned in this letter ?—*A.* To settle Charlebois £100,000 bonds at 80, for no other purpose.

Q. As referred to in the letter of 31st May ?—*A.* The letter was not 40 referred to at all. I handed them out according to my instructions from my firm.

Q. What were your instructions in that regard ?—*A.* To leave the £120,000, or whatever it might be ; I was to leave those with Codd for Charlebois. After I had taken those out of the trunk then I filled up the trunk with old paper to make them fit.

Q. Was the box sealed with the Company's seal ? I am instructed as a fact it was ?—*A.* I don't know that they were.

Q. Will you swear it was not?—A. No, I swear I sealed them with something. RECORD.

Q. What receipt did you give Codd for them?—A. None.

Q. The receipt which was taken would be the Express Company's receipt?
—A. That is the receipt I took.

Q. You and Codd went down together?—A. I simply took Codd down with me.

Q. You and Codd went down together to the Express office?—A. He went with me at my request.

10 Q. And the Express Company gave a receipt for the box?—A. Gave me a receipt.

Q. This receipt (Exhibit 17) was then handed to you or to Codd?—A. To me, it was never in Codd's possession.

Q. It purports to have received from Mr. Codd one box said to contain legal documents valued at \$10,000. That is the receipt you refer to?—A. Yes. I gave the box in and I insured them.

Q. Have you got the insurance receipt here?—A. I insured them for \$10,000, as stated on the receipt.

Q. This Exhibit 17 is a receipt for the insurance as well?—A. Yes.

20 Q. How was the Express Company paid?—A. They were paid at my request by Mr. Codd; I asked him to pay for them.

Q. He gave his cheque for it?—A. No, in cash, he paid at my request. I asked Mr. Codd to pay the expenses of the carriage and the insurance, for one reason I was short of money then, I had only sufficient to get home with, and another reason, I had that very morning paid Codd £1,500 sterling for the purposes of the Company, and I asked him inasmuch as I had given him that money for the purpose of the Company, he might as well pay this, as I had not sufficient money in my pocket to pay it. I had not sufficient money to pay it myself and he did it to oblige me.

30 Q. This is the notification from Liverpool to your firm of the arrival of the box, Exhibit 19?—A. Yes.

Mr. Bristol.—I object to the admission of that document.

Mr. Lewis.—Q. Had Codd stipulated with you before he handed you over these bonds for this large advance of money that was referred to in examination in chief, £35,000?—A. Certainly not.

Q. Nor any sum?—A. Nor any sum.

Q. When you paid the £1,500 that you refer to, how did you make the payment?—A. I paid it with my own cheque.

Q. You had money in what bank in Ottawa?—A. Bank of British North
40 America.

Q. You gave your cheque on that bank and deposited it to Codd's credit?—
A. Paid it to the credit of Codd, president.

Q. You paid it into the Bank of British North America, to Codd's credit as president of the Company?—A. Yes.

Q. Where did the Company keep its bank account?—A. I don't know.

Q. How did you know that Codd had an account at the Bank of British North America?—A. I did not know it; I asked him how I should pay it.

RECORD.

No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis
—continued.

Q. Did he open an account for this occasion ?—I cannot tell you.

Q. You and he went to the bank together ?—A. I don't think so. I asked him how I should pay that money over to him, in what way and where, and he told me to pay it to him as president of the Great North West Central Railway into the Bank of British North America.

Q. Have you any evidence of that payment, any receipt from him ?—A. No.

Q. Nor from the bank ?—A. No.

Q. The account you had at the Bank of British North America for this was opened on that occasion just for the purpose ?—A. No ; I had moneys there before that.

Q. How did it come you had moneys there ?—A. I had paid some in there myself.

Q. On the occasion of this visit ?—A. Yes.

Mr. Bristol.—Q. Do they relate to the railway matter ?—A. Some of them.

Mr. Lewis.—Q. I mean on the occasion of this visit to Canada, that was the first time you had an account with the Bank of British North America ?—A. Certainly.

Q. And you had moneys deposited there to your credit before that ?—A. Yes.

Q. And you had drawn cheques on your account previous to that ?—A. Yes.

Q. Have you the cheques here for this amount of £1,500 ?—A. No.

Q. I want you to produce it ?—A. I have not had it since I parted with it.

Q. When did you get it back from the bank ?—A. I never had it back.

Q. Did you ever ask for your cheques to be returned ?—A. No.

Q. Are they in the Bank of British North America now ?—A. I don't know.

Q. Have they ever been returned you ?—A. No.

Q. Have you given any order to anybody else to get them ?—A. No.

Q. Then your idea is they are in the bank yet ?—A. They may be.

Q. What reason have you to suppose they are not ?—A. None.

Q. You gave no receipt to Codd for these bonds, and you got no receipt from Codd for the £1,500 ?—A. No.

Q. You are aware in Canada we don't draw cheques in pounds so there must be a slight mistake in your evidence in saying you drew a cheque for £1,500 and deposited it to Codd's credit ?—A. I thoroughly understand that.

Q. How much was it ?—A. It was so many dollars.

Q. And you have no trace or track of it ?—A. Not here.

Q. Where have you ?—A. I don't know that I have at all anywhere.

Q. Who has ?—A. I don't know that anybody has.

Q. How were these moneys deposited originally to your credit in the Bank of British North America ?—A. The moneys I had sent to me there.

Q. When you were in Canada ?—A. Yes.

Q. They were sent to you after you left England ?—A. Some of the moneys were no doubt.

Q. What amount was ?—A. I could not tell you.

30

40

Q. Was the account of your own opened in the Bank of British North America before you left England?—A. If I recollect right I sent some money over to be there when I got there.

Q. How much?—A. I don't remember.

Q. Have you your bank book?—A. No.

Q. Did you have a bank book?—A. No.

Q. Have you still that account in the Bank of British North America?—A. I don't know whether there is anything standing to my credit; I am not sure at all.

10 Q. Have you never closed the account?—A. I could not tell you whether I have drawn it all.

Q. They never gave you a pass-book?—A. No: never asked for one.

Q. Had you much money left there when you left Canada on that occasion, or did the £1,500 practically exhaust it?—A. I asked them to advise me home, and I think they advised me home the amount of the balance standing to my credit.

Q. To return it to you?—A. To send it home to me.

Q. Did they do so?—A. I think so; I know they advised a sum of money home to me which I should take it was the balance of my account.

20 Q. They did not then send you your cheques?—A. No.

Q. Or bank book?—A. No; I simply asked them to do it through their bank.

Q. To whom did they send the money?—A. I think it went to my credit at the Bank of British North America here; I cannot remember now distinctly.

Q. The £1,500 that you paid in you don't remember the number of dollars it represented?—A. I could not tell you; it might be a little under the £1,500 in sterling.

Q. It was the sole amount you deposited to Codd's credit?—A. No.

30 Q. What else did you deposit to Codd's credit?—A. Oh, I paid nothing else to Codd's credit but that one sum.

Q. When was it that your firm transmitted that £1,500 to you in Canada?—A. It did not come from them.

Q. How was it sent?—A. I don't know that I am bound to tell you where I got it from.

Q. It was forwarded direct to the bank?—A. It was sent to the bank to my credit.

Q. Were you advised at the time who the senders were?—A. I knew.

Q. Who was it sent it out?—A. I don't know that I am justified in telling you that. I had moneys sent to me belonging to Mrs. Mansfield.

40 Q. I ask you now who it was remitted the money to Canada?—A. I decline to tell you that.

Q. By whom were you advised it had been remitted to you?—A. The bank, I think.

Q. At Ottawa?—A. Yes.

Q. Have you the letter of advice there?—A. No.

Mr. Bristol.—I have no objection to your telling Mr. Cansdale; but Mr. Lewis I don't think has a right to ask it.

Witness.—The question I decline to answer.

RECORD.

—
No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis
—continued.

Mr. Lewis.—*Q.* You have not told us anything that was said between you and Codd on the occasion of these bonds being thus packed up and dispatched to England?—*A.* I told you all that transpired between us in reference to the delivery of the bonds to myself.

Q. There was no more talk between you on the subject?—*A.* No, the thing was done.

Q. No further explanations were asked or required?—*A.* No.

Q. No other documents produced at the time or considered in respect of the matter?—*A.* I don't understand you.

Q. There were no papers either referred to or passed between you and Codd¹⁰ on that occasion?—*A.* In reference to the handing over of these bonds?

Q. Yes?—*A.* Certainly not.

Q. The transaction therefore was of the very simplest character, you had come to get the bonds and told him so; he said, there they are, and they were packed between you?—*A.* He handed them over to me virtually.

Q. You have told us what took place?—*A.* Yes.

Q. How did that box of bonds get down to the Express office?—*A.* I think we put it on a trolley.

* *sic.*

*Q.** And you and he did not on the box?—*A.* I think it was drawn by hand in a barrow.²⁰

Q. You accompanied the box and did not let it out of your sight?—*A.* Certainly.

Q. Mr. Codd accompanied you?—*A.* Yes.

Q. You said to my learned friend in examination in chief that Mrs. Mansfield has since advanced large sums amounting to £10,000, or so, altogether to your knowledge?—*A.* Yes.

Q. Will you give me a statement of the amount of these advances and the occasion of them?—*A.* I have not got it with me.

Mr. Bristol.—I object. The extent of our advances is not a question here, that is a matter of reference.³⁰

Mr. Lewis.—*Q.* This payment into Codd's account as president of the Company was the first money that Mrs. Mansfield had paid out?—*A.* Yes.

Q. Mrs. Mansfield was at that time a client of your firm?—*A.* Yes.

Q. Who was the actor for her in the matter?—*A.* Mr. Charles Richard Stevens.

Q. Any advances that it may be alleged she made would be made through Mr. Charles Richard Stevens, I suppose?—*A.* All advances were made through or with his concurrence.

Q. I want to know what these advances were and when made? You have given us what you said was the first advance, I want to know what the second was?—*A.* I could not tell you.⁴⁰

Q. You have pledged your oath that she has advanced £10,000?—*A.* In round figures.

Q. How do you know that; what is your means of knowledge?—*A.* Knowing the money was actually paid away.

Q. How do you know it, and to whom?—*A.* I don't know how to answer your question; I know it as a matter of fact.

Q. Know what as a matter of fact?—*A.* I know those payments were made; I could not tell you now the actual dates they were made nor the amounts, but I swear she has paid moneys.

Q. How?—*A.* Through us as her solicitors.

Q. You say Stevens, Bawtree and Stevens have made payments ?—A. For her. RECORD.

Q. How do you know for her ?—A. By virtue of my position in the office. No 93.

Q. Which is ?—A. Managing clerk. William

Q. Tell me the second advance what was the amount of it ? How do you know it was made by her, and to whom paid ?—A. Sitting on this chair I cannot tell you. Daniel Cansdale

Q. Have you an account with you of the advances ?—A. No. cross-

Q. Where is it contained ?—A. I have no doubt in my firm's Ledger. examined by

10 Q. Will you produce it ?—A. No. Mr. Lewis

Q. Will you ask your firm for liberty to make a copy of it ?—A. No. —continued.

Q. Will you ask your firm for liberty for me to inspect it ?—A. No.

Q. Will you ask your firm for liberty to fetch the Ledger here to Court ? —A. Certainly not.

Q. To whom were these moneys paid ?—A. I cannot recollect.

Q. In what form were they paid ?—A. That I could not tell you from memory.

Q. Over what period did the advances extend ?—A. From the time when the first was made up to the present.

Q. When did you get back to England ?—A. I said yesterday in my 20 examination in chief, 22nd July 1890.

Q. You left Ottawa on the 8th ?—A. Yes.

Q. Did you go straight to New York ?—A. No.

Q. Where did you go ?—A. We went to Buffalo to see my brother.

Q. Remaining there, you sailed when ?—A. I think I sailed on the 14th.

Q. The bonds were sent by the Canadian line and reached there before you ? —A. No, I got into the office on the morning of the 23rd at ten, and my principals asked me, "Where are the bonds ?" and they arrived about ten minutes after I had been in the office.

Q. On the 22nd of July ?—A. I think that would be on the morning of the 30 23rd of July.

Q. Who received them ?—A. I did.

Q. What did you do with them ?—A. Produced them to my principals.

Q. To whom ?—A. So far as I recollect I think Richard Stevens and Charles Richard Stevens.

Q. You had the key with you ?—A. Yes.

Q. And what was done with them ?—A. I locked them up again.

Q. They opened them and counted them ?—A. No, they did not take the trouble to count them ; they took my word they were there.

Q. Then what was done with them ?—A. I locked them up in the trunk.

40 Q. What was done with the trunk then ?—A. Left standing where it was.

Q. In the offices ?—A. Yes.

Q. For how long ?—A. I could not tell you.

Q. How long did it remain in the office ?—A. I could not tell you.

Q. Was it put in your vault in your office ?—A. It was taken care of in the office and subsequently went to the Safe Deposit Company.

Q. When ?—A. I could not remember.

Q. You took it to the Safe Deposit Company ?—A. I went in a cab.

Q. When ?—A. I cannot tell you.

RECORD.

—
No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis
—continued.

Q. Get somewhere near it ?—A. I have no recollection of the date.

Q. You took it to the Safe Deposit Company ; you previously rented a box or vault there ?—A. No, went up in the trunk.

Q. They would be deposited somewhere ?—A. They would put them down in one of their vaults.

Q. On the first occasion they were put into whose vault ?—A. The Company's vault.

Q. They gave you a receipt in that case ?—A. Yes.

Q. Have you that receipt ?—A. No.

Q. What has become of it ?—A. I don't know ; I have not wanted it for a long time : I have no conception of where it is. I am not quite sure whether it was not handed back to the Company when the bonds were transferred to Mr. Delap.

Q. You mean in August last ?—A. Yes.

Q. In whose name was the receipt taken by you when you put the bonds in ?—A. In the name of my firm, Stevens, Bawtree and Stevens.

Q. Who were at that time solicitors for the trustees as they are now ?—A. Yes.

Q. You recognise the signature to that letter now shown you ?—A. That is a copy. 20

Q. That is a letter-press copy of an original letter ?—A. It looks like it.

Q. That is a copy of a letter written apparently by Stevens, Bawtree and Stevens to Codd, dated 28th July 1891. How did it come into your possession ?—A. I asked Mr. Stevens for it.

Q. Was it in a letter book and torn out ?—A. Not when it came into my possession.

Q. Originally I mean ?—A. I don't know that.

Q. How do you keep your letters in the office ?—A. In a letter book.

Q. That would be a letter torn from a letter book in which such letters are copied, would it not ?—A. I don't know. It is an unusual practice to tear a letter out of a letter book. I was looking for the page. 30

Q. You recognise the impression of their signatures ?—A. Yes.

Q. And that is in Charles Richard Stevens' handwriting ?—A. Yes.

Q. Is the body in your own handwriting ?—A. No.

Q. One of the clerks ?—A. Yes.

Mr. Bristol.—I object to that going in.

The Commissioner.—It will be taken subject to the objection.—(Marked Exhibit 20.)

Mr. Lewis.—Q. The original was dispatched to Codd ; you have not got it ?—A. I have not got it. 40

Q. That would be a letter-press copy of the letter ?—A. It speaks for itself.

Q. The habit of your firm is to copy letters by means of a letter press ?—A. Yes.

Q. And you got that from Richard Stevens ?—A. Or Charles Richard Stevens.

Q. In its present form ?—A. Yes.

Q. He got it out from a letter book or whatever it was ?—A. Yes. It does not look to me as if it was in a letter book. RECORD.

Q. At all events when he gave it to you he gave it to you as a copy of an original ?—A. Yes. No. 93.
William Daniel Cansdale

Q. At the date that letter was written, 28th July 1891, the bonds had not been transferred to the Plaintiff Delap that you refer to ?—A. No. cross-

Q. That was in August 1892 ?—A. Yes. examined by

Q. But were in the National Safe Deposit Company in the name of Stevens, Bawtree and Stevens ?—A. Yes. Mr. Lewis —continued.

10 Q. Did not Stevens, Bawtree and Stevens hire a vault or safe in that Company ?—A. No, you pay so much a month for taking care of the trunk. Any large trunks like that are carried down to their second floor below and put into vaults indiscriminately.

Q. You did not get any key ?—A. No key other than the key belonging to the trunk.

Q. And a receipt given for the box ?—A. The box was numbered.

Q. No key to a separate deposit vault ?—A. No.

Q. You did not get a separate deposit vault ?—A. No, it would be put into a vault where there would be twenty others.

20 Q. Who did you give the receipt to when you got it ?—A. The firm held it.

Q. What is the date you put those bonds in ?—A. I really could not tell you.

Q. Have you no means of refreshing your memory ?—A. Not here.

Q. Was it a week after they arrived ?—A. More than that, but I really could not tell you ; I can find the date for you.

Q. These bonds you would regard as valuable ; they were all signed and sealed ?—A. Yes.

Q. You would remember how long they lay in your office in a general way ; 30 you would have been careful not to have let them lie there any longer than was necessary ?—A. I have no doubt that is so. I believe they were in the office some little bit.

Q. A month ?—A. Perhaps more. We considered our office fireproof.

Q. You will ascertain the date of their deposit and let me know ?—A. Yes.

Q. You have some letters there written by Mr. Codd about the date of your departure from Canada or about the time you arrived in England ; let us see them ? (*Witness hands Mr. Lewis some papers.*)

Q. While you were in Canada, and either before or after the transmission 40 of the bonds did you cable or write to your firm ?—A. I have no doubt I wrote them several times when I was there.

Q. That is the firm itself or the individual members ?—A. I should think to the firm.

Q. Have you any of those letters here ?—A. No.

Q. Who would have them ?—A. I don't suppose they are in existence.

Q. Why not ?—A. Letters like that ; I don't suppose they would keep them.

Q. Do you know as a fact they have been destroyed ?—A. I don't.

RECORD.

No. 93.

William

Daniel

Cansdale

cross-

examined by

Mr. Lewis

—continued.

Q. When you returned to England did you see any of these letters that you had written, or cables to your people ?—*A.* I have no doubt I did, but I cannot say so.

Q. Were not the contents of these letters discussed by you with Mr. Stevens on your return ?—*A.* I should think the probability is all I did there was discussed.

Q. And the contents of these letters discussed ?—*A.* I don't know that the letters were discussed, but what I did would undoubtedly be discussed between us.

Q. Did you get any letters or cables from your firm while in Canada ?— 10
A. Yes.

Q. Have you those with you ?—*A.* No.

Q. I ask you to produce them ?

Mr. Bristol.—I object to the reception of any documents of that kind as evidence.

Mr. Lewis.—*Q.* I ask you to produce those Mr. Cansdale ?—*A.* I have not got them.

A. You will be afforded an opportunity between this and to-morrow morning of getting them ; will you produce them then ?—*A.* I don't know where to look for them even if they are in existence. The probability is they are 20 not in existence.

Q. On what do you found such a belief ?—*A.* There would be no necessity for me to have kept them.

Q. I want you to search for those ?—*A.* The contents would simply be instructions to me, and after I did my work I should not keep the letters.

Q. Those letters would be copied in your firm's letter book ?—*A.* Yes.

Q. I ask you either to produce the originals which would be in your own personal custody or ought to be, or failing that to produce copies which you have access to ?—*A.* They belong to my firm.

Q. The originals belong to you ?—*A.* If they are in existence they would, 30 but the probabilities are they are destroyed.

Q. Will you search for them ?—*A.* I won't undertake to search for them.

Q. Although I am going to afford you an opportunity to do so ?—*A.* I am not going to undertake to search for them.

Q. Nor will you seek the permission of your firm, if it is necessary to do so, to produce the copies of the letters and cables in question from their letter book ?—*A.* I cannot answer you on that point ; I should say my firm would decline to let me have them.

A. Will you ask your firm ?—*A.* I won't undertake to do so.

Mr. Bristol.—If there are any documents of that kind I should like you to 40 look them up, Mr. Cansdale, and produce them.

Mr. Lewis.—*Q.* Who gave you instructions as to what to bring here to-day ?—*A.* I have had no instructions.

Q. How did you proceed on being served with this order to produce in gathering together the material you bring here ?—*A.* I asked Mr. Bristol on what points I was likely to be examined, and he told me in reference to my journey to Canada about the bonds, and, therefore, I got such documents as related to it.

Q. These letters and cables written by Stevens, Bawtree & Stevens to you in Canada contained the instructions that you mentioned?—A. Those cables did not contain the instructions.

Q. You had instructions before, and you stated a moment or two ago that these letters would contain instructions?—A. On various matters. I could not have had many letters from them, and they might have been on other matters of business; I was not over on this business alone.

Q. What else were you over on?—A. Another matter of business.

Q. In connection with this railway?—A. No.

10 Q. Were you over for another client?—A. On another matter of business; nothing whatever to do with the railway.

Q. Whoever instructed you in that other matter; did they share the expense of your going?—A. I did not have the division of the cheques.

Mr. Bristol.—I object; it is entirely irrelevant to the issue.

Mr. Lewis.—Q. Were there any other papers or letters that you found that you have not produced here which bear upon the matter?—A. I found no other letters relating to the question of my going over and getting these bonds signed other than those I brought here, or relating to the bonds.

Q. No letters from Mr. Delap to your firm or any member of it?—A. Not
20 that I am aware of.

Q. You pledge your oath to it?—A. I am on oath.

Q. You pledge your oath to that?—A. I am on my oath, and I tell you I looked through them and I have not kept back a letter that I thought useful for this inquiry.

Q. You found no letters from Delap to your firm or any member of it?—A. I have not made a thorough search myself, but I picked out such as I asked my firm for.

Q. Mr. Codd writes on the 7th July, Exhibit "B," that Cansdale telegraphed Stevens, Bawtree & Stevens. Have you that cable?—A. No.

30 Q. Did you find that cable when you were looking about?—A. I don't remember finding it.

Q. Did you find any of these letters that you wrote to Stevens, Bawtree & Stevens or any member of the firm while you were in Canada or any of their letters to you?—A. I did not find any of my letters to them.

Q. Or their letters to you?—A. They would not be with their papers. I don't suppose they are in existence.

Q. Did you find any letters or cables from Stevens, Bawtree & Stevens to you written during your stay in Canada?—A. I did not.

Q. Where would they be?—A. I don't know; the probabilities are they
40 are destroyed.

Q. And you decline to look for them between this and to-morrow morning?—A. Yes, I do.

Q. You have a number of cable messages there passing while you were in Canada?—A. There are none here of June or July, the first is October 1890.

Q. Did you carry over with you any letter or memorandum from Mr. Codd or Dr. McMichael or any of the others connected over there to your firm?—A. Not that I recollect of.

RECORD.

—
No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis
—continued.

Q. You brought nothing back with you from Canada then?—*A.* I think I brought back that duplicate trust deed and the old draft.

Q. And no letters or memoranda from Codd to your people?—*A.* I don't recollect doing so.

Q. Did you prepare any memorandum or anything of that kind when over in Canada in your discussions with Mr. Codd and others as to the position of affairs for the purposes of your firm?—*A.* I might have done so.

Q. Do you remember having done so?—*A.* I could not say off hand, I think very likely in conversations we had together I might have made certain notes and memoranda for the purpose of reporting to my principals. 10

Q. Have you those memoranda with you?—*A.* No.

Q. To whom did you give them?—*A.* If I made any such memoranda I should have given them of course to Charles Stevens when I came back.

Q. Mr. Codd writes to Mr. Stevens on the 1st August, 1890, Exhibit "C," and says the thing to do is to send me £35,000 and carry out Cansdale's—

Mr. Bristol.—It is not evidence against us, but you cannot read that way from a letter and say Mr. Codd writes. That is not the proper way of asking the question.

Mr. Lewis.—*Q.* I am instructed that Mr. Codd wrote on the 1st of August 1890, to your firm referring to Cansdale's memo, to carry out Cansdale's memo; 20 does that refresh your memory to the fact of there being such?—*A.* No, I might have made some memoranda to talk over with my firm when I came back; they would simply be notes, and after my talk with them the probability is they would have been torn up.

Q. Mr. Codd seems to have seen them?—*A.* Very likely if we had any discussion about any matter it was more particularly, probably, to the general welfare of the Company, and sitting together he would see what notes I made, if I made any, but they would not in any way relate to the question of the bonds.

Q. Have you any cables there from Mr. Codd between the 1st of July and 30 30th August 1890?—*A.* No.

Q. I want the letter of the 27th October 1891, from Codd.

Mr. Bristol.—Any communications written by Codd are in no way evidence against the Plaintiffs.

Mr. Lewis.—*Q.* You recognize that as the signature of Charles Richard Stevens to letter dated 17th October 1891?—*A.* Yes. (Exhibit 21.)

Mr. Bristol.—I object to that document.

Mr. Lewis.—*Q.* This purports to be a letter-press copy of a letter written by your firm on the 17th October 1891, to J. A. Codd?—*A.* Yes.

Q. It is copied in the usual way that letters of your firm are copied I 40 suppose, and you obtained it from Mr. Charles Richard Stevens?—*A.* Yes.

Q. Before you came here?—*A.* Yes. It looks like a duplicate copy to me.

Q. The original you have not got; that would be in Mr. Codd's possession?—*A.* I suppose so.

Q. It would be dispatched to Mr. Codd in the ordinary course?—*A.* I don't suppose I ever saw the original of that.

Q. Why?—*A.* Because I was away from the office in the month of October 1891.

Q. Whose writing is the body of the letter in ?—A. One of our clerks, RECORD.
Herbert Lett.

Q. Have you Codd's reply to this letter among your papers ?—A. It does No. 93.
not appear to be here. William

Q. There is no letter written within a month after the 17th October ?—Cansdale
A. No. cross-
Q. Any cable between the 17th October and the end of November 1891 ?—examined by
A. There is one on the 29th October, but it does not relate to that. I have a Mr. Lewis
copy of a cable we sent Codd 2nd November 1891. —continued.

10 Q. You told my learned friend in examination in chief that you thought the
original arrangement as to advances to be made was made in writing with Mr.
Delap. Is that a fact ?—A. I am merely giving you my impression.

Q. Did you refer to any document other than this agreement of the 20th
July 1889 ?—A. In making the reply I did not refer to any document, it was
simply an impression on my mind that any arrangement that was made between
Delap and Codd probably would be in writing.

Q. You knew of this arrangement of the 20th July ?—A. I don't know of
any other.

Q. Did you mean to imply you thought there was another ?—A. I don't
20 know that I did that ; I don't know of any other document in existence in
writing between Codd and Delap than that agreement, the copy of which has
been produced.

Q. This copy of agreement of 20th July 1889, did you compare it yourself
with the original ?—A. No.

(Adjourned at 4.30 p.m.)

Continued 8th June, 1893, 10.45 a.m.

Same counsel present, except *Mr. Cartmell*.

William D. Cansdale's cross-examination continued by *Mr Lewis* :—

Q. Have you looked for the letters from Mr. Delap to your firm since I
30 spoke to you yesterday of them ?—A. No.

Q. Did you ask your firm's permission to fetch them here ?—No.

Q. You decline to ?—A. Yes.

Q. To whom have you spoken in your firm, Richard or Charles Richard
Stevens ?—A. I have not asked them.

Q. To whom did you formerly speak when you were getting these papers
that you brought down here—these letters to the firm ?—A. Mr. Charles
Stevens.

Q. I believe your firm rendered an account to Mr. Delap, not very long
since, showing the account for advances made ; will you produce that ?—
40 A. No.

Q. Nor a copy of it ?—A. No.

Q. On what ground do you refuse to produce Mr. Delap's letter to your
firm ?—A. They are not in my possession.

RECORD.

Q. Same ground as stated yesterday ?—They are not in my possession.

No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis
—continued.

Q. On what grounds do you refuse to ask your firm ?—A. I decline to answer that question.

Mr. Beddall.—I am instructed on behalf of Stevens, Bawtree & Stevens as well as for the trustees. Mr. Cansdale comes here as their clerk and under circumstances of considerable difficulty, and I have to point out that the order that has been made for production is a general order for the production of all books, papers and documents relating to the matters in question without specifying a single one. The Defendants have obtained no order, and this is an order by the Plaintiffs. If Mr. Lewis wishes any other documents to be produced he should have obtained an order just the same as if one party subpoenas a witness to produce the documents he requires ; if the other party requires any he should do the same. Mr. Cansdale is not bound to ask his firm, not bound to explain why he would not ask his firm, not bound to produce any document which he has not in his possession, and not bound to go through a whole mass of books, papers and documents for the purpose of judging whether or not they relate to the matters in question.

Mr. Lewis.—I asked him for specific papers and he was given ample opportunity to get these letters from Delap to his firm, and he produced numberless other letters and papers, belonging to the firm, yesterday, showing he had the custody and control of those or the means of getting them. That is why I gave him the opportunity between this and then of getting what was more relevant to the matter in question.

Mr. Beddall.—I think he was very well advised in not going through what would have taken many days, a whole mass of papers for the purpose of discovering other documents when all that might have been easily disposed of by an order to examine Mr. Charles Stevens.

Mr. Lewis.—I was very specific ; I asked for Mr. Delap's letters to his firm or to Charles Richard Stevens, or to Richard Stevens.

Mr. Beddall.—They are not in his possession and he is not bound to ask any one to give them to him.

Mr. Lewis.—Q. I ask for the Plaintiff Delap's letters received by Richard Stevens on or about the 7th September 1889, 19th October 1889, 1st November 1889, 17th July 1890, 22nd October 1890, 25th November 1890, letter dated 27th November 1890, letter received about the 18th December 1890, 17th April 1891, 17th August 1891, 29th August 1891, 8th October 1891, 4th December 1891, 15th December 1891, telegram 4th April 1892, letter dated 13th April 1892, Delap to Charles Richard Stevens, letter dated 21st April 1892 to Charles Richard Stevens, letter to Charles Richard Stevens received about 29th April 1892, letter to Charles Richard Stevens dated 17th May 1892, and one received about 8th June 1892. Now, what do you say, Mr. Cansdale ?—A. I decline, they are not in my possession.

Q. You decline to seek liberty to obtain them ?—Yes.

The Commissioner.—I do not think he is bound to produce them.

Mr. Lewis.—Q. You promised to furnish me with the date of when you took the bonds from your office after their arrival from Canada ?—A. I said if I could find it I would let you know, but I have not had sufficient time to look for it.

Q. Did you take out to Canada in 1890 any instructions or papers to Dr. McMichael or Mr. Codd with regard to the road or payment of the contractor on your visit in 1890?—A. No.

Q. After these bonds were received at your office in July 1890 what next did you do in connection with this matter?—A. I don't think I did anything more then for a time.

Q. You were not connected with the affair in any way until these bonds were taken to the National Safe Deposit Company?—A. Not that I am aware of; I had finished my commission, came back and had done with it.

Q. You are going to supply me presently with the date of the taking of these bonds to the National Safe Deposit?—A. Yes, if I can get it.

Q. Why were they taken there by you?—A. I think it was because I suggested they should be in some safe place. We considered our office fireproof, but there happened to be a little fire within twenty yards of us one morning and I thought of the bonds, and I thought I had better have them in the safe.

Q. Who did you suggest this to?—A. I don't know; I might have suggested it to Charles Richard Stevens, or Richard Stevens, or Mr. Bawtree.

Mr. Lewis.—I call for the letter, Mr. Bristol, written by Richard Stevens to the Plaintiff Delap, of 29th August 1891, of which I gave you notice to produce.

Mr. Bristol.—I have already stated I did not receive the notice to produce, and the original has not been forwarded to me. I have no objection to your using the copy you have, as I have already stated, on its comparison with the original hereafter, that is subject to the objection of the document being evidence. I don't admit that any letters written by Stevens, Bawtree and Stevens are evidence.

Mr. Lewis.—Q. Mr. Richard Stevens wrote to Delap on the 29th of August 1891, which would be about the time that you think these bonds were deposited?—A. I don't know when they were deposited apart from the date.

Q. At all events, in this letter we have it, "As regards the railway, I have had one or two cables from Codd in which he tells me he has arranged for possession of the line and for running it, and also for the settlement of the claims of the contractor upon the deposit of certain bonds." Was that the occasion of the deposit of these bonds?—A. I don't know now what it referred to.

Q. Was the first deposit of these bonds made after this news from Codd had been received by your firm or by yourself?—A. I cannot tell you at the present moment when those bonds were deposited.

Q. Were you in England on the 29th August 1891?—A. Yes.

Q. When did you leave England after that?—A. I was away part of September and all of October.

Q. When did you leave?—A. I could not tell you here.

Q. Give me approximately?—A. I don't know whether it was the first, second or third week in September; I could not tell you from memory.

Q. Where did you go?—A. I don't know that that is part of this evidence.

Q. Where did you go?—A. I decline to say where I went.

Q. You went to Canada about that time?—A. I believe I did.

Q. Who sent you there?—A. My principals.

RECORD.

No. 93.

William

Daniel

Cansdale

cross-

examined by

Mr. Lewis

—continued.

RECORD.

No. 93.
William
Daniel
Cansdale
cross-
examined by
Mr. Lewis
—continued.

Q. Your firm ?—A. Yes.

Q. When did you start ?—A. I told you just now I could not tell you here.

Q. When did you reach Canada ?—A. I could not tell you.

Q. Did you go direct to Canada ?—A. No, I did not, I went to New York.

Q. What date did you arrive at New York ?—A. I could not tell you.

Q. You had better think hard, Mr. Cansdale. A trip across the Atlantic ocean is not made every day. You have been over there how many times altogether ?—A. Twice.

Q. Therefore by a little hard thinking you can give me approximately the date of your arrival in New York ?—A. I could not tell you the exact date I arrived in New York.

Q. Give it to me within a week ?—A. It might be the second or third week of September.

Q. What ship did you sail in ?—A. "City of New York."

Q. Were you in London when this letter of 29th August 1891 was written by Stevens to the Plaintiff Delap ?—A. I should say so.

Q. Will you swear you were ?—A. No, not without reference to my office diary.

Q. Were you in London when these bonds were deposited ?—A. I took them myself.

Q. Will you get your office diaries ?—A. Yes.

Q. I ask you now during your absence to be kind enough to search for and bring back with you the letters that you wrote and cables you wrote to your firm from Canada and America on the occasion of both your trips and also their letters and cables to you, and letters and cables to you from any member of the firm while you were there ?—A. I decline to do that; they are not in my possession.

Q. In whose possession are they ?—A. They may be in the firm's possession. I don't know.

Q. As a matter of fact in whose are they if not in yours ?—A. They may be in possession of the firm.

Q. Do you know that they are ?—A. No.

Q. What was done with the letters and cables received by you ?—A. I could not tell you what I did with them. If they cabled me at all I did what they asked me to do and that was an end to it. I did not give the cables back to them and I don't suppose I brought them home with me.

Q. The letters, instructions or otherwise ?—A. I could not tell you.

Q. And you decline to look for them ?—A. Certainly.

[Continued on page 578.]

No. 94. John Griffin Bristow, having been duly sworn, deposed as follows: To
John Griffin Bristow
examined by Mr. Bristol.

Q. What is your profession ?—A. Solicitor.

Q. What firm ?—A. Wilson, Bristow & Carpmael.

Q. Residing in London, England ?—A. Yes.

Q. Are your firm the solicitors for the International Trustee, Assets and

Debenture Corporation, Limited?—*A.* Yes. I personally attended to their business. RECORD.

Q. Did you ever meet Mr. John Arthur Codd, one of the Defendants in the action in question?—*A.* Yes, the late president of the Great North West Central Railway. No. 94.
John Griffin
Bristow
examined by
Mr. Bristol
—continued.

Q. It has been stated here that an application was made to the International Trustee, Assets and Debenture Corporation, Limited, for a loan?—*A.* Yes, about December 1889.

Q. Who made that application?—*A.* I should say Mr. Codd; he was here at the time; Mr. Stevens and Mr. Codd were here together, they made the application.

Q. On whose behalf did they make the application?

Mr. Lewis.—Don't lead him.

Witness.—I supposed it was on behalf of the railway company, I understand they applied on behalf of the railway company. I drew up the documents on the lines that the railway company made the application, and so I understood it.

Mr. Bristol.—*Q.* You say an application was made to the Company which was referred to you, you saw the parties, and then what did you do?—*A.* I first inquired as to the power of the railway company to borrow, and investigated that part of the case; I had the Act of Parliament given to me, then I required evidence that Mr. Codd was authorised to negotiate the loan and to give the security and give the bill for the loan, and I required that a telegram should be sent to Canada to ask for that authority.

Q. Authority from whom?—*A.* From the railway company there.

Q. And what were you advised as to that?—*A.* A telegram came back addressed to Codd.

Mr. Lewis.—Produce it, I object to evidence of its contents without its production; I object to all this evidence as not being evidence against my clients.

Mr. Bristol.—On whose behalf are you taking that objection to-day?

Mr. Lewis.—As before, on behalf of my clients.

Mr. Bristol.—Are you objecting on behalf of Mr. Cartmell?

Mr. Lewis.—All the Defendants we represent.

Mr. Bristol.—I have given notice to Codd to produce the original of that, and I ask for the copy of the telegram.

Mr. Lewis.—You cannot prove a telegram that way. The original, I suppose, is in the telegraph office.

Witness.—A telegram came confirming his powers.

Mr. Lewis.—I object to that, that is giving the evidence of the contents of a written document.

Witness.—The telegram is in existence, the one that came forward.

Mr. Lewis.—Produce it.

Witness.—It is in Canada. I have a copy here.

Mr. Lewis.—*Q.* In whose hands is the original?—*A.* In our agent's at Winnipeg. Mr. Ewart has it.

Mr. Bristol.—I will undertake to produce the original, and I ask that the copy be put in.

RECORD. *The Commissioner.*—It goes in subject to the objection. (Exhibit 22, dated 17th December 1889).

No. 94.
John Griffin
Bristow
examined by
Mr. Bristol
—continued.

By *Mr. Bristol* :—

- Q.* Did you have a certified copy at any time of that resolution that is referred to in the cablegram, Exhibit 22?—*A.* I have no recollection of that.
- Q.* Is this the bill that was drawn, Exhibit 2?—*A.* Yes.
- Q.* Do you recognise Exhibit 3 as the agreement that was drawn up?—*A.* Yes, that is the agreement.
- Q.* And signed by J. A. Codd?—*A.* Yes, as president.
- Q.* Were you the witness to Mr. Codd's signature to agreement, Exhibit 3? 10
—*A.* Yes, jointly with Mr. Stevens.
- Q.* Were the moneys advanced?—*A.* Yes.
- Mr. Lewis.*—Ask what was done.
- Mr. Bristol.*—*Q.* What was done?—*A.* When the documents were signed the money was advanced, £27,000.
- Q.* What security did the International require before they would make the advance?—*A.* The method in which the advance should be secured was discussed, and we wanted two sureties; we wanted the Company to give a bill and two sureties to be liable to guarantee the repayment, and it was decided to do it by means of a bill, and Delap and Lord Gifford were put forward as the 20 two sureties and were accepted. Mr. Stevens and I decided it would be a convenient way to carry it out for Delap to draw a bill accepted by the Company, and endorsed by himself and Lord Gifford, which was done.
- Q.* Did you make any inquiries as to the sureties that were offered?—*A.* Personally, no; I knew Lord Gifford; I do not know Delap.
- Q.* Would that be a matter for the Company to do?—*A.* If they thought it was necessary.
- Q.* How much money has been repaid to you on account of this loan, as near as you can say?—*A.* The whole of the principal and a portion of the interest.
- Q.* Against whom do you now make a claim for the balance?—*A.* The 30 Company.
- Q.* Against any one else?—*A.* No; we sued all three parties and obtained judgment, and that judgment said the sureties were only liable for 4 per cent. interest, but the Company, under their agreement, the principal borrowers, were liable for 10 per cent. interest, and therefore we had judgment against Captain Delap and Lord Gifford for £27,000 and 4 per cent. interest; we have recovered that.
- Q.* Are you personally aware who has paid that money?—*A.* To a great extent I know it was Delap, but I could not say personally; I know some of the 40 money was Delap's, because he gave us security which I parted with against the money.
- Mr. Lewis.*—I want the judgment produced that you refer to.
- Witness.*—I can give you a copy, but I have not got it here now.
- Mr. Bristol.*—I will put in a certified copy of the judgment.
- Q.* Did you draw this memorandum of agreement, Exhibit 3?—*A.* Yes.
- Q.* From whom did you get this information in it: "And whereas the

" Company is entitled by its charter or concession to exclusive grants of land bordering upon the line of railway, as the railway which is now in course of construction progresses, none of which lands have been charged, encumbered, or otherwise dealt with " ?—*A.* Charles Richard Stevens, I should say.

RECORD.
—
No. 94.
John Griffin
Bristow
examined by
Mr. Bristol
—continued.

Q. Do you know whether Codd read this agreement before he signed it ?—*A.* Certainly he did; this was certainly read over to Codd, and I should certainly ask him if it was correct.

Q. On the faith of those documents the advance was made to the Company ?—*A.* Yes, upon the documents being signed.

10 *Mr. Lewis.*—I object to that.

Q. Were the International Company in any way represented in Canada, in respect of the obtaining of the Charlebois judgment attacked in this action ?—

A. No.

Q. Do you still hold the 1,250 shares mentioned in the agreement ?—

A. Yes.

Q. Have you ever made any claim to receive the mortgage called for by this agreement (Exhibit 3,) from Railway Company ?—*A.* I pressed Mr. Codd for it.

20 *Q.* Are you aware that the Charlebois judgment will at present prevent the Company giving such a mortgage ?—*A.* That is a legal proposition that I don't admit; I think we are prior to everybody.

Mr. Lewis.—I proceed with my cross-examination of this witness, subject to my objection to the evidence in chief being evidence against us.

Cross-examination by *Mr. Lewis.*

Q. The application in the first instance was made to whom ?—*A.* The first application was made to Francis Cooper who is now dead; Cooper was the auditor of the Corporation.

Q. Were you present when the application was made ?—*A.* No. I have spoken about it to Mr. Cooper.

30 *Q.* That is the way you knew ?—*A.* Yes, through a conversation with Cooper in the office.

Q. Did the application take a written form by whoever it was made ?—

A. Yes.

Q. Have you the application there ?—*A.* Yes.

Q. A Company such as yours do a loaning business ?—*A.* Yes.

Q. Part of their business ?—*A.* Yes; occasionally.

Q. How are you incorporated ?—*A.* Under the Company's Acts.

Q. Have you a copy of your Articles of Association ?—*A.* Not here, but I can produce a copy.

40 *Q.* You can tell me as a legal adviser of the Company what powers they have to lend money under your Articles of Association ?—*A.* They have wide lending powers.

Q. It is part of their business to lend money in this way ?—*A.* Yes.

Q. I would like you to let me see the Articles of the Association subsequently if you will do so ?—*A.* Certainly.

RECORD. Q. You have usually your own printed forms for loans ?—A. I think not.
 — You must not take it it is anything like a loan society, now and then they lend
 No. 95. on shares and securities ; there is a form, a cover letter, an ordinary loan on
 John Griffin stock exchange
 Bristow

cross- Q. It is not a loan society ?—A. No.

examined by Q. In whose writing is this application you produce ?—A. It comes from
 Mr. Lewis Stevens' office and I recognise the writing.

—continued. Q. This came to you from whom ?—A. It was accompanied by a letter.

Mr. Bristol.—I object to all these questions because it led up to a written
 agreement which has been put in and speaks for itself. 10

Q. When did you first personally come into the matter ?—A. About the
 14th December 1889.

Q. Who did you first see in the matter ?—A. About that same time I saw
 the secretary of the Company and had instructions in writing from him.

Q. What is his name ?—A. Walker.

Q. And you had instructions from him ?—A. Yes. That letter of
 instructions was the 16th, but no doubt I had been at discussions previously
 before it took the form of being formally decided upon.

Q. Who did you see outside of the officers of the Company ?—A. Mr.
 Codd and Mr. C. R. Stevens. 20

Q. Did Lord Gifford come there to see you ?—A. Not at that time.

Q. Before the loan was consummated did he see you ?—A. I don't know
 whether I was present when he signed the bill, I don't think I saw him at the
 time.

Q. You mean you never saw him in this connection ?—A. I don't think I
 ever spoke with Lord Gifford personally.

Q. I understood from him yesterday that he negotiated the loan ?—A. I
 believe he did ; I believe he first saw Mr. Cooper.

Q. He did not come in contact with you ?—A. Not personally.

Q. When the matter was referred to you had the loan been accepted ?— 30
 A. Yes.

Q. Then you were merely the person who sought to carry it out ?—
 A. Yes.

Q. Will Mr. Beachcroft be able to give us any evidence as to what led up
 to the loan being accepted ?—A. I think not.

Q. Mr. Francis Cooper referred to is dead ?—A. Yes.

Q. Who was the chief actor in the matter before it was referred to you
 to have the papers prepared ?—A. Mr. Codd and the Company.

Q. I mean with respect to your own Company ?—A. All Mr. Cooper
 would do I suppose was to say I will take you over and introduce you. 40

Q. Mr. Cooper did not belong to the International Company ?—A. No ;
 he was the auditor, an accountant of the firm of Cooper Brothers, large
 accountants, and Cooper was well acquainted with Lord Gifford. Lord Gifford
 likely said, "Cooper, can you introduce me to somebody who will give me this
 "loan," and Cooper would say, "I will take you over and introduce you."
 That is likely what would take place, that would be the practice.

Q. What officer of the International Company did the parties deal with ?

—*A.* The particulars of the loan came first before the Committee and then before the Board. RECORD.

Q. There would be an officer they would come before?—*A.* At that time I think there was only a secretary, Mr. Walker.

Q. The secretary would be the first one to whom the parties would be introduced and who referred it to you personally?—*A.* A letter from the secretary saying the Board had agreed and giving me a copy of the mortgage (letter dated 16th December 1889, and marked Exhibit 23) with the verbal particulars (referred to in Exhibit 23) marked Exhibit 24, and letter dated 10 13th December 1889, from Stevens, Bawtree & Stevens to the secretary of the International (referred to in Exhibit 23) marked Exhibit 24, in Walker's hand-writing, and formal particulars furnished by Stevens (referred to in Exhibit 23) marked Exhibit 26.

Mr. Bristol.—I object to the reception of those documents.

Mr. Lewis.—I also object to them as not being evidence against us.

Q. To whom was this three per cent. referred to in the minute annexed to Exhibit 23 payable?—*A.* As far as I know to the International Corporation, no doubt it was.

Q. When you got these papers who did you see in the matter first?—*A.* Perhaps Stevens first and then Stevens and Codd together.

Q. They came in to see you?—*A.* I wrote to Stevens and Stevens called.

Q. It seems they had informed you that this advance was required amongst other things for the purpose of taking up a £25,000 bill given to the contractor, Charlebois, drawn in Canada on London, and that the bill matured at the end of the then next week; that is so, is it not?—*A.* I don't know it personally except what appears in the document, Exhibit 24.

Q. Was the loan worked out through you; you were the one that handed over the money?—*A.* Yes, I was.

Q. To whom did you hand the money ultimately?—*A.* It was payable by 30 a cheque in favor of the Great North West Central Railway Company, as a matter of fact Stevens and Codd were both in the room.

Q. When?—*A.* On the day he signed the agreement I think. I produce the cheque dated 18th December 1889, Exhibit 27.

Q. Did you have anything to do with the taking of this bill referred to as having been formally given to contractor Charlebois?—*A.* No.

Q. Have you got that bill?—*A.* No, never saw it.

Q. What other papers were furnished you by these parties than those you have deposed to?—*A.* None.

Q. They gave you whatever you asked for?—*A.* Yes. All I had was a 40 copy of the Act of Parliament.

Q. This memo. of particulars, Exhibit 24, refers to the fact that the line was being constructed under agreements and contracts with the Government. Did you ask for those agreements under which the road was being constructed?—*A.* No.

Q. Did you not consider it necessary?—*A.* Did not consider that concerned us.

Q. The particulars furnished refer to a contract for construction for

No. 95.
John Griffin
Bristol
cross-
examined by
Mr. Lewis
—continued.

RECORD. £100,000 cash, £100,000 in bonds, on which £75,000 in cash had been paid ; was that contract produced to you ?—*A.* No.

No. 95.
John Griffin
Bristow
cross-
examined by
Mr. Lewis
—continued.

Q. Did not ask for it ?—*A.* No ; we decided to take a bill and that is what we looked to, the names.

Q. You were willing to take the security that the names afforded you ?—*A.* No, we insisted there should be good securities ; we said Canada is too far and we will have two good sureties in London.

Q. You regarded Lord Gifford as a man of some substance ?—*A.* Yes.

Q. Is he ?—*A.* I don't think Lord Gifford would enter into an obligation that he did not think at the time he could fulfil. 10

Q. How did Lord Gifford come into it ; why was he willing to endorse that bill ?—*A.* I have no knowledge on the subject.

Q. What did he tell you ?

Mr. Bristol.—I object.

Mr. Beddall.—I also object.

Witness.—I had not seen Lord Gifford before the loan was made about it, so he did not tell me anything.

Mr. Lewis.—*Q.* I notice that Lord Gifford's name does not come into these original proposals or instructions to you, and that is why I asked you when he first came into the matter so far as you are personally aware ?—*A.* Those were 20 my instructions in the minute.

Q. Your answer is in the copy of the minutes of your Company Lord Gifford's name appeared and those were your instructions ?—*A.* Yes.

Q. Then the agreement (Exhibit 3), of 18th December 1889, is the only agreement that was executed ?—*A.* Yes, that and the bill.

Q. The bill was signed the same day ?—*A.* It has the same date.

Q. Mr. Delap came down to your office for the purpose did he ?—*A.* I think not.

Q. I was referring to Mr. Delap's signing it ; you did not see him sign the bill ?—*A.* I have no recollection of having done so. 30

Q. Who brought it to you so signed ?—*A.* I should say Stevens and Codd ; those are the only two I remember being present the day this matter was completed ; Codd came down to sign the agreement.

Q. Was Lord Gifford present in your office to endorse it ?—*A.* No ; I did not see Lord Gifford at the time. I am not at all sure whether the bill may not have been arranged with the secretary.

Q. I see clearly you did not know very much about the bill ?—*A.* No, the bill looks like Stevens' drawing. I think it is the same writing as the acceptance, which I recognize as Stevens'.

Q. You suggested the bill as a convenient form of carrying out the 40 instructions ?—*A.* It may have been verbally suggested ; the minutes say it is to be.

Q. You mean probably you suggested it to the secretary of your Company ?—*A.* I thought the suggestion came from me, but I dare say it was somebody else's ; it was thought desirable to have a bill.

Q. In Exhibit 26 supplied by Stevens I see the writer says that the terms of this loan have already been submitted. Had they been submitted in any other way than by those papers just put in ?—*A.* I think not.

Q. Then those papers just put in would be the papers referred to in Exhibit 26 ?—A. No doubt submitted verbally and our secretary took it down. RECORD.

Q. Is the secretary you refer to still alive ?—A. Yes. No. 95.

Q. Is he employed in the Company now ?—A. No. John Griffin Bristow

Q. Is he in London to your knowledge ?—A. Yes to the best of my belief. cross-

Q. I see in the last clause of the Agreement 3, Codd appears to undertake as follows : " And for the construction aforesaid the said John Arthur Codd for " himself hereby undertakes and agrees with the lenders he will if required examined by Mr. Lewis—
continued.

10 " forthwith at any time produce this agreement or a duplicate thereof to be " sealed by the Company and delivered to the lenders." Did he ever do so ?—

A. No, it has never been done, I believe, so far as I know.

Q. I see that 1,250 shares of stock were transferred to you by a recital in this agreement. Have you got the transfer ?—A. Mr. Bristol has it, I have not seen it since the day I signed it until now (produced and marked Exhibit 28). I produce the stock certificate from the custody of the International, and I have signed the blank transfer for them (marked Exhibit 29).

Q. These 1,250 shares are the shares referred to in Exhibit 26 ?—A. Yes.

Q. You hold them for the International Company ?—A. Yes.

20 Q. You stated to my learned friend you inquired as to the powers of the Company to borrow when Codd and Stevens called on you in the matter and as a consequence you read their charter ?—A. Yes.

Q. Did you get any other evidence beyond this charter and this cable that you referred to and to which I objected ?—A. I don't think so ; I think that was satisfactory.

Q. You referred to Mr. Charlebois' judgment in examination in chief and said you did not admit Charlebois' judgment took priority of you ?—A. We don't.

Q. I ask you whether or not you or your Company are aware of the terms of the judgment and order ?—A. We have a copy.

30 Q. You have copies of the consent judgment and final judgment ?—A. I have a copy of some document ; I could not tell you what the terms were.

Q. You have copies at all events ?—A. We have had a copy of a judgment.

Q. The judgment set out in the Statement of Claim ?—A. I have not seen the Statement of Claim—I knew nothing of the Charlebois judgment.

Q. You have not found among your papers a copy of the consent judgment of the 28th September, between Charlebois and the Great North West Central, where did you get it ?—A. I believe I received it from our agents in Ottawa, and I have no doubt I read it at the time, but I have no recollection of the contents.

40 Q. Who are your Ottawa agents ?—A. O'Connor & Hogg.

Q. When did you get it ?—A. I cannot tell you now ; it is more than a year ago.

(Adjourned at 1, resumed at 2 p.m.)

Witness.—I produce a copy of the articles of association and refer particularly to clauses I and U of paragraph 3 (Exhibit 30). It was a little more than a year ago that I had the Charlebois judgment. I only saw one.

Mr. Lewis.—Q. You produce an office copy of the judgment in the Inter-

RECORD. national Company v. The Great North West Central Railway, entered in England on the 1st July 1891 ?—*A.* Yes. (Exhibit 31.)

No. 95. *Mr. Lewis.*—*Q.* I take objection to this ; it is not certified in any way to
John Griffin make it evidence.

Bristow *Q.* I see by the last clause of this judgment the Defendant Delap was
cross- ordered to make and furnish your Company with a full and complete disclosure
examined by of his affairs, and give security on his property as disclosed by him ; did he do
Mr. Lewis— so ?—*A.* No ; he never made disclosure in that form. He told us of certain
continued. property, and gave us security over it which was sufficient.

Q. He subsequently gave you security for the judgment debt ?—*A.* Yes ; 10
not for the whole of it.

Q. One half of it ?—*A.* I don't know how much the security was worth.
We had a lot of security at one time and another ; the Company kept paying it
off, at least somebody kept paying it off.

Q. Was the money paid to you ?—*A.* That is what I referred to in my
previous evidence, I knew the amount for which we had security was 4,000 or
5,000 pounds, that Delap paid ; the rest came through Stevens ; I don't know
who provided the money, at least the security was redeemed from us.

Q. What other papers were furnished you or did you see when in Canada
in connection with this matter ?—*A.* Nothing, I think ; I have no recollection 20
of any.

Q. Were you not furnished with a copy of Charlebois' construction
contract ?—*A.* No.

Q. Never saw it when in Canada ?—*A.* No.

Q. Have you never seen it ?—*A.* No. I saw no one about it in Canada.
I had a long talk with Codd at his hotel once in Toronto and once in Ottawa.

Q. When was that ?—*A.* About July of last year.

Q. He told you then, I suppose ?

Mr. Bristol.—I object to anything Codd told him as being evidence
against us.

Mr. Lewis.—*Q.* You are personally unaware of what papers were submitted 30
to Mr. Walker at the time of the application for this loan ?—*A.* I have given
you the papers.

Q. You have given me the papers that were referred to you ?—*A.* Yes.

Q. Are you aware of what papers were submitted to Mr. Walker or read
to Mr. Walker or shown to him at the time of the application for the loan ?—
A. You mean other than those ?

Q. Are you aware of what they are ?—*A.* Not other than those here ; I
knew those were.

Q. Mr. Walker himself would be the only person, I suppose, who could 40
tell us ?—*A.* I should think so ; I should think there were none others ; he
would be sure to send them all to me as a matter of practice.

Q. You don't know that as a fact ?—*A.* No ; that is my opinion there
were no others.

Q. These notes were made by Mr. Walker in his hand writing, Exhibit 24,
is all the written evidence that you are furnished of what he was told or knew
in the matter ?—*A.* Yes.

Q. Is Mr. Walker still the secretary of your Company ?—*A.* No ; he is no
longer in their employ.

Q. When did he leave?—*A.* I should say about six months ago.

Q. He is still employed in London?—*A.* Yes.

Mr. Beddall.—I have no questions.

RECORD.

No. 95.
John Griffin
Bristow
cross-
examined by
Mr. Lewis—
continued.

Re-Examined by *Mr. Bristol* :—

Q. With reference to this copy, Exhibit 31, is that which is usually received here in evidence?—*A.* Yes, I believe so, that is an office copy and would be received anywhere.

Q. Do you believe it to be a true copy of the judgment?—*A.* Certainly.

Q. Would the exemplification in your opinion be any better than this?—

10 *A.* We would take that copy and ask the Chief Justice to certify it, and he would get it examined by the Record Clerk, and then do so.

Q. Would the exemplification add anything to it?—*A.* No, except the signature of the Chief Justice and a seal they put on, they put some certificate at the foot, I don't know what it is.

Mr. Lewis.—I am willing to take Mr. Bristow's word for it that that is the same as an exemplification would be, and although I object to the reception of the judgment itself, as any evidence against my clients, I am prepared to regard it the same as if it were an exemplification, in order to save expense.

20 *Mr. Bristol.*—*Q.* From your practice as solicitor acting for the International Company have you any reason to doubt if any papers other than those already referred to had been submitted that they would have been forwarded to you for inspection and consideration?—*A.* If they were relevant to the matter probably they would have been; I have no reason to doubt but what they would have been.

Q. When did Mr. Beachcroft become connected with the Company?—*A.* To the best of my belief some time in the early part of 1890, about April or May.

Q. After the original transaction?—*A.* Yes.

30 *Q.* Had the Company up to that time any manager, so called?—*A.* No. The documents I have produced are not mine and are required for other purposes, I will put in copies.

Mr. Lewis.—Before Mr. Hewitt Stevens is sworn, I say, inasmuch as he was the companion of Mr. Cansdale in his trip across the Atlantic, it would be very much more convenient and proper that Mr. Cansdale's testimony should be completed before swearing him.

40 *Mr. Bristol.*—I regret to say I am compelled to examine Mr. Stevens because he has come down specially to London, as I understand it, from his wedding tour, and he says he is going back immediately, and I want to get his testimony and I cannot have Mr. Cansdale here now because he is away on a prior subpoena, and the only other witness I have here to-day will take but a very few minutes, and I don't think Mr. Stevens will take many minutes.

Mr. Lewis.—I quite apprehend that it is the fault of no one here on either side, or of the Commissioner, that Mr. Cansdale's testimony was interrupted and he had to go on a prior subpoena to another Court in the middle of the evidence, and for that reason I think it is reasonable that his testimony should be completed before any other witness deposing to similar matters is examined.

The Commissioner.—The witness will be sworn, and your objection noted.

No. 96.
John Griffin
Bristow
re-examined
by Mr.
Bristol.

Francis Hewitt Stevens, having been duly sworn, deposed as follows—
To *Mr. Bristol* :—

RECORD.

No. 97.
*Francis
Hewitt
Stevens*
examined by
Mr. Bristol.

Q. Are you at present a member of the firm of Stevens, Bawtree & Stevens ?—*A.* Yes.

Q. Were not such in the months of June and July 1890 ?—*A.* No.

Q. Where were you in a portion of the months of June and July, 1890 ?—
I went to Canada.

Q. Under what circumstances ?—*A.* I went with Mr. Cansdale, the managing clerk, for my firm to get bonds of the Great North West Central Railway executed by the proper officers of the Company, and to bring them back 10 as security for Mr. Delap for moneys he had advanced.

Mr. Lewis.—I object to that evidence. I think he ought to state his instructions.

Mr. Bristol.—*Q.*—Under what instructions did you go ? —*A.* Instructions from my brother who was then a member of the firm.

Q. Mr. C. R. Stevens ? —*A.* Yes ; he simply told me that was our mission.

Q. And you did go ?—*A.* I went and I was present when the bonds were executed and sealed.

Q. When did you first see Mr. Codd ?—*A.* He met me at the dock directly we arrived. 20

Q. Where ?—*A.* At New York.

Q. Was anything said to him as to what you had come out for ?—*A.* More in the shape of a holiday.

Q. You are referring to what you came out for ?—Yes.

Q. I mean Mr. Cansdale ?—*A.* Mr. Cansdale told Mr. Codd he had come out—

Mr. Lewis.—I object to what Mr. Cansdale told Mr. Codd.

Mr. Bristol.—*Q.* Go on subject to the objection ?—*A.* That he had come out to get the bonds signed and sealed for Mr. Delap.

Q. Were you present at the meetings of the directors on the 27th June and 30 3rd July 1890 ?—*A.* I cannot remember if I was present on the first occasion, that was at Ottawa, I believe.

Q. You say you were present at the meeting of the 3rd July in Toronto ? —*A.* Yes.

Q. Read the certified copy of the minutes of that date, Exhibit 11 ?

Mr. Lewis.—I object to any evidence being given respecting the minutes inasmuch as they speak for themselves, and also generally that this is not the proper way of proving or confirming them.

Mr. Bristol.—*Q.* Have you read them ? —Yes.

Q. Can you say from recollection as to whether they are correct ?—*A.* 40 They are perfectly correct so far as my recollection goes.

Q. Do you recollect when the bonds were actually handed over and put in Mr. Cansdale's trunk ?—*A.* I recollect that being done, I cannot say the exact date.

Q. Are you aware of any limitation being imposed by Mr. Codd or the RECORD.
Company on the handing over of the bonds for the purposes you have mentioned ?
—A. Certainly not.

No. 97.

Mr. Lewis.—I object to all this testimony generally for reasons already
given in the case of Mr. Cansdale.

Francis
Hewitt
Stevens
examined by
Mr. Bristol
—continued.

Cross-examination by Mr. Lewis :—

No. 98.

Q. You were a clerk in the office at the time ?—A. Yes.

Francis
Hewitt
Stevens

Q. You went out more for a holiday than for any other reason I believe ?
—A. Yes.

10 Q. Whatever instructions were given with respect to Mr. Cansdale's mission
were not given to you but to him ?—A. I was simply told what we were going
out for.

cross-
examined by
Mr. Lewis.

Q. What Mr. Cansdale was going out for ?—A. Yes, if you like.

Q. Was Mr. Cansdale given any written instructions at the time ?—A. I
don't know.

Q. He might have for all you know ?—A. Yes.

Q. The responsibility in connection with the mission was not yours but his ?
—A. His.

Q. You took the opportunity of taking a trip with him, was that it ?—A. Yes.

20 Q. Who paid your expenses ?—A. I don't know who did.

Q. You did it yourself ?—A. No.

Q. Did Cansdale pay your expenses as you went out ?—A. Yes.

Q. You were not anxious when you reached Canada that your identity
should be too fully disclosed, were you ?—A. Personally I was not anxious or
otherwise.

Q. You registered at various hotels, did you not, when there ?—A. I
suppose so.

Q. Yourself ?—A. Yes, I believe I did.

Q. You did not register your own name ?—A. No, I think not.

30 Q. How did you register ?—A. As Mr. Hewitt, I believe.

Q. Why ?—A. I really don't know why myself.

Q. You thought it wiser ?—A. I did not think so.

Q. You had been previously cautioned to do so ?—A. I think I was told it
would be as well if I did.

Q. By whom ?—A. I forget.

Q. Your brother ?—A. I cannot say.

Q. Will you swear he did not ?—A. No, I should not like to swear he did
not.

40 Q. When did you become a member of the firm ?—A. I think in January
1891.

Q. Were you present on all occasions when your brother instructed Mr.
Cansdale as to the purport of his mission ?—A. No.

Mr. Lewis.—I wish the Commissioner would insert here what I ought to
have stated before, that I am cross-examining this witness subject to my
objection.

RECORD.

No. 98.

Francis
Hewitt

Stevens

cross-

examined by

Mr. Lewis—

continued.

Q. It was Mr. Cansdale, I suppose, who told you what he was going for ?

—A. No, I don't think so ; I don't think it was Mr. Cansdale.

Q. Who did tell you ?—A. I should not like to say for certain at this time, but I presume it would be my brother, C. R. Stevens.

Q. Yet you would not like to pledge your oath that he told you the object of the mission, or mentioned it to Mr. Cansdale in your presence ?—A. Yes, I would ; I think on consideration I have no doubt he told me.

Q. You were aware of the writing of the letter of 31st May 1890 (Exhibit 6), to Codd before you left England ?—A. I cannot say.

Q. Look at it and see ?—A. I believe I have seen this letter before. 10

Q. Whether before you left England or since, are you aware ?—A. I cannot say for certain whether I saw this before I left.

Q. What was it your brother, C. R. Stevens, did say to Cansdale in your presence before your departure ?—A. I cannot remember at this distance of time.

Q. While you were out there did Mr. Cansdale receive any cables from your brother or your firm ?—A. Yes, several.

Q. On the subject of his mission with respect to the bonds ?

Mr. Beddall.—I object upon the ground that this is giving evidence of the contents of a written document. 20

Witness.—A. I cannot say.

Mr. Lewis.—Q. You saw the letters ?—A. I expect I did.

Q. And read them in Canada ?—A. I expect I did.

Q. Those letters would supplement his instructions in that regard ?—A. I cannot remember the contents.

Q. You must have a general recollection of what the letters contained ?—A. I don't think I have in the least.

Q. Did you write or cable from Canada yourself to your firm in connection with the affair ?—A. No.

Q. Did you receive any letters or cables in connection with the affair ?— 30
A. No.

Q. Those letters and cables received by Cansdale when in Canada could not very well refer to any other business than the subject of his mission ?—A. It did not follow that they referred to the bonds only.

Q. Will you swear they did not ?—A. No, I won't.

Q. What became of them ?—A. I don't know.

Q. You saw the bonds signed and sealed yourself or some of them ?—
A. Yes.

Q. You helped in the transaction ?—A. I did the blotting.

Q. They were put into this trunk, we were told, by Cansdale, and a block of 40
them stated at 120,000 pounds were taken from the trunk and handed to Codd ?

—A. Yes.

Q. Were you present then ?—A. Yes.

Q. Then the trunk was sealed up ?—A. It was.

Q. With the Company's seal ?—A. Certainly not.

Q. Whose seal ?—It was not a seal ; it was simply a " C " on the end of Mr. Cansdale's watch chain.

Q. Sealing wax ?—A. I believe so.

Q. Will you undertake to swear the Company's seal was not attached to the trunk or on the strap or lock of the trunk ?—A. It was not to my knowledge. RECORD.

Q. Will you undertake to swear it was not ?—A. Yes.

Q. Mr. Cansdale would not undertake to swear it yesterday ?—A. I can only swear to what I know.

Q. You did not see it attached to it ?—A. No.

Q. Did you accompany the box to the Express office ?—A. No.

Q. You did not see the condition of the box at the time of its despatch in the Express Company's office ?—A. No, but I saw it a very few minutes
10 before.

Q. You were asked by Mr. Bristol as to what transpired at the Director's meeting of the 3rd July at which you were present ; I assume the minutes will speak for themselves ; there must have been a great deal transpired at that meeting in the way of conversation and that did not appear on the minutes themselves ?—A. There was some of course.

Q. You say you don't know of any limitations imposed by Codd on handing over the bonds ; were you present at all times with Mr. Cansdale when he was dealing with those bonds in Ottawa at the bank for example, and at the Express office and at his own office ?—A. I was not at the Express office.

20 Q. Nor at the Bank of British North America ?—A. I don't think I was there.

Q. Nor were you with Mr. Codd and Mr. Cansdale on the way from the Company's office to the Express office ?—A. No.

Q. Were you there at the moment of their departure from the Company's office ?—A. Yes.

Q. Do you remember any discussion between Cansdale and Codd in New York or elsewhere, with respect to the contents of the new mortgage deed ?—A. Yes, at the 5th Avenue Hotel in New York.

Q. Were you present during the whole of it ?—A. Yes.

30 Q. What were Mr. Codd's objections to the new deed ?—A. I don't know that he raised any serious objections at all.

Q. What were his objections which you did not consider serious ?—A. So little serious that I don't remember them.

Q. You returned with Mr. Cansdale to England ?—A. Yes.

Q. The bonds, I understood, arrived at your office just after you got back ?—A. I think they did.

Q. What was then done with them ?—A. They were placed in No. 1, Queen Victoria Street, National Safe Deposit Company.

Q. The next day after or the same day ?—A. No ; I don't think it was quite
40 so soon as that.

Q. You would not leave valuable papers very long lying about the office, I suppose ?—A. Presumably not ; it might have been a day or two.

Q. Did you see them leave the office ?—A. No.

Q. Who took them down ?—A. I don't know.

Q. You did not attend yourself ?—A. No.

Q. Do you remember the trunk containing the bonds remaining any considerable length of time in your office ?—A. I should not like to say at this length of time how long it was.

No. 98.
Francis
Hewitt
Stevens
cross-
examined by
Mr. Lewis—
continued.

RECORD. *Q.* Did they remain there for the rest of the summer?—*I* should say certainly not.

No. 98.
Francis
Hewitt
Stevens
cross-
examined by
Mr. Lewis—
continued.

Q. I am afraid you don't know definitely?—*A.* No, I don't profess to.
Q. You are a member and have been of your firm since January 1891, and I would ask you to let me see the letters received by your firm in connection with this matter from Mr. Delap, the Plaintiff?—*A.* Nothing to do with me.
Q. You are a member of the firm?—*A.* Yes. I am in an entirely different branch.

Q. What is your branch?—*A.* Common Law and Chancery.

Q. Who has these letters?—*A.* I don't know.

Q. You don't know which member of the firm which would have them, 10 your father, your brother, or both?—*A.* I think Mr. C. R. Stevens.

Q. You can, if you wish, have access to the correspondence with the firm from Mr. Delap?—*A.* No doubt.

Q. Will you ask your brother to let you have these letters for the purpose of producing them here on this cross-examination?—*A.* I have no objection to ask him.

Mr. Beddall.—He is not bound to give any undertaking to produce anything.

Mr. Lewis.—I would ask that the witness' cross-examination be deferred to enable him to do as he states. 20

Mr. Beddall.—I object to the cross-examination being adjourned on behalf of the trustees' Defendants in this action.

Q. You say you have no objection to ask your brother for liberty to bring these letters here, and I ask you now to do so?—*A.* I shall not do so.

Q. You were served with an order to produce herein issued in England?

Mr. Beddall.—I object to his stating the contents of an order.

Mr. Lewis.—*Q.* Were you served with a copy of that order dated 3rd June 1893?

Mr. Beddall.—I object.

A. I was not served with that. 30

Mr. Lewis.—*Q.* Your firm keep books of account?—*A.* I believe so.

Q. In which books the accounts of the Plaintiff Delap and of Mrs. Mansfield, in connection with the alleged advances, would appear.

Mr. Beddall.—I object on behalf of the trustees. It is giving evidence of the contents of the documents.

Mr. Lewis.—*Q.* Are there such accounts in your books of account?—*A.* I daresay there are.

Q. I ask you to produce those books here containing these accounts?—*A.* I shall not produce them.

Q. Had you ever any interview with the Plaintiff Delap in connection with 40 this matter personally?—*A.* I think none at all.

Q. Do you know anything more about the subject-matter of this litigation than the facts that you have been able to give us with respect to the bonds in Canada?—*A.* No.

Q. After the bonds were received in England had you anything further to do with them?—*A.* No.

Q. Or with the handling of them?—*A.* No.

Q. Your connection with the affair ended on your return from Canada ?— RECORD.
—A. Yes.

Q. Completely ?—A. Completely.

Q. Were you present at any interview between Mr. Delap and your father or brother ?—A. I think not.

Q. Upon your brother's return from Canada in October 1889, were you present at his interviews or your father's interviews with Delap ?—A. No.

Q. At none of them ?—A. None that I can remember. If I had walked in and saw them together I would have shaken hands with Delap and gone out again, for it would have been no business of mine.

Cross-examination by Mr. *Beddall*.

Q. The bonds that you took out to be executed were to a very large amount ?—Yes.

Q. And it was desirable that more than one person should go out on that account ?—A. Yes, I think that was stated.

Q. I think you said, in answer to Mr. Lewis, that you were present at the interview between Mr. Codd and Cansdale at New York when Cansdale first arrived ?—A. Yes.

Q. Do you recollect whether this draft deed, Exhibit 7, was discussed ?—
20 A. Yes ; the draft was altered by you, and also the engrossment, Exhibit 1. It was gone through, with Mr. Codd, by Mr. Cansdale very fully.

Q. How long were Mr. Cansdale and Mr. Codd occupied upon these two documents, the draft and the engrossment ?—A. I should think for two or three hours.

Q. As far as you could see, did they go most thoroughly into that ?—
A. Certainly.

Q. You have been asked how long the bonds remained at your office before they went to the Safe Deposit. Do you know of your own knowledge at all how long they did remain ?—A. No, I don't ; I simply know through missing seeing
30 the box where it was ; but how long it was I have not the remotest recollection.

Mr. *Lewis*.—Q. You speak of having missed the box from its place. Was the place in your room or Cansdale's room ?—A. In Cansdale's room.

Q. And you missed seeing it there at some period ?—A. Yes.

Q. You state you thought that the bonds would have been removed during the summer ; that they did not remain there all the summer of 1890. Can you remember whether it was winter before they were removed ?—A. No, I cannot.

Q. Nor whether they were there six months or three months ?—A. No, I cannot.

40 Robert Lothian Curzon, having been duly sworn, deposed as follows :—

To Mr. *Bristol*.

Q. You are one of the trustees with Lord Gifford under the mortgage trust deed ?—A. Yes.

Q. Do you recognise that document, Exhibit 1 ?—A. Yes, I have seen that.

No. 98.

Francis

Hewitt

Stevens

cross-

examined by

Mr. Lewis—

continued.

No. 99.

Francis

Hewitt

Stevens

cross-

examined by

Mr. Beddall.

No. 100.

Robert

Lothian

Curzon

examined by

Mr. Bristol.

RECORD. Q. Was the original of that duly executed by yourself?—A. Certainly.
 — Mr. Lewis.—I object to this for the same reasons already given as in the
 No. 100. case of the other trustee.
 Robert Mr. Bristol.—Q. Have you duly accepted the position of trustee under the
 Lothian deed?—A. I have.
 Curzon Q. Did you have possession of the bonds referred to in the trust deed?—
 examined by Mr. Bristol A. No.
 —continued.

Q. Were they ever held by any one of you?—A. Not so far as I know. I never had any control over them.

Q. Do you approve of the action of the Plaintiff bondholders in endeavour- 10
 ing to obtain a conveyance of the land-grant to the trustees?—A. Certainly.

Cross-examination by Mr. Lewis

No. 101. Mr. Lewis.—I proceed with my cross-examination as before, without
 Robert waiving the objection I have to the evidence.
 Lothian Q. Who asked you to become trustee?—A. Mr. C. R. Stevens, or his father
 Curzon Richard; it was one of them; it may have been Charles Stevens, I think it
 cross- was.
 examined by Mr. Lewis.

Q. About when?—A. 1890 is the date the deed was signed; I should imagine about that time.

Q. Some time previous to that date?—A. Yes. 20

Q. What was your business then?—A. I was a banker at that time.

Q. Now?—A. Now I am not.

Q. What was the name?—A. Mills, Bawtree & Co.

Q. Did business at Colchester?—A. Yes.

Q. And became insolvent, I think?—A. Yes.

Q. About when?—A. In December, 1891.

Q. Your acquaintance with this railway dated from an earlier period than your trusteeship?—A. Certainly; I had heard about it.

Q. When was your first acquaintance with it?—A. I have no recollection when it first began. 30

Q. As early as 1888, I presume?—A. I should not like to say. I could not fix a date now when I first heard of it at all. I heard a good deal about it from time to time, but I don't fix a date.

Q. I may mention to you that it was in April, 1888, that Codd obtained an option to buy the shares of stock.

Mr. Bristol.—That is not in evidence.

(Mr. Cartmell now appears, at 3.50 p.m.)

Mr. Lewis —Q. When did Mr. Codd first approach you in the matter?—
 A. I cannot say.

Q. Did Mr. Codd approach you at any time with a view of getting your 40
 bank to become interested in this affair?—A. Mr. Codd never did.

Q. Mr. Stevens?—A. We were bankers for Stevens, Bawtree & Stevens. It was more a question of remitting certain moneys out to Canada, but what the purposes were for I have no knowledge of any kind.

Q. Had your bank a branch in London?—A. Through our agents in

London. Mr. Stevens consulted us about forwarding some money out to Canada, and the best means of doing so. RECORD

Q. You remember in September or October, 1889, your firm cabling and writing to the Union Bank, Canada?—*A.* We did not do it; it was done by Messrs. Glynn, our London agents. No. 101
Robert
Lothian
Curzon

Q.—The letter was signed by your firm?

Mr. Beddall.—I ask that letter be produced, if there is such a letter.

Witness.—I was under the impression it was done through Messrs. Glynn.

I remember there was some pressure of time at that time, and it was done direct through Messrs. Glynn, so far as my recollection serves me. cross-
examined by
Mr. Lewis—
continued.

Q. Who asked your banking firm to do so?—*A.* Personally, nobody asked me.

Q. Had you personally to do with the transaction?—*A.* No, not a personal matter.

Q. What member of your firm did?—*A.* That will be impossible to say now.

Q. Mills, Bawtree & Co., that was your firm, I would draw your attention, wrote to the Defendants, the Union Bank, on the 26th October, 1889—

Mr. Bristol.—I object to my learned friend stating that.

20 *Mr. Lewis.*—I have a perfect right to draw the witness' attention to what was written by his firm on a previous occasion before examining him on it.

Mr. Beddall.—So long as it is produced to the witness.

Mr. Lewis.—Q. Let me finish my question. They wrote a statement somewhat inconsistent with your present recollection, and I would ask you, Mr. Curzon, whether your firm did not about that date write to the Union Bank to the effect that the arrangements with Charlebois and the railway company on the 16th of September last will be carried out in due course, this letter being a confirmation of a cable dispatch of the same date.

30 *Mr. Beddall.*—I object to this question first of all on the ground that the witness can only be asked as to what he himself did, unless the letter itself is produced, in which case he could be asked whether it was written by his firm.

Mr. Bristol.—I object further on the ground that he is endeavouring to prove two written documents by a verbal statement from the witness without producing either of the documents.

Mr. Lewis.—Q. I ask you for your answer?—*A.* I have no personal knowledge of the letter.

Q. You don't remember signing such a letter?—*A.* No.

Q. Who would have dealt with the matter in Colchester? (*Mr. Bristol* and *Mr. Beddall* both object.)—*A.* I cannot say.

Q. Were you aware of the fact of any such guarantee having been given by your bank?—No, I have no knowledge of any guarantee.

(*Mr. Bristol* objects.)

Q. Who was the manager of the business at Colchester?—*A.* In 1889, I cannot remember. There was an interregnum in which we had no manager at all; I don't know whether 1889 was the time.

Q. Any such letter, if it were ever written, would be written by one of

RECORD. the firm ? (Mr. *Bristol* objects.)—*A.* It would be signed, no doubt, by one of the firm.

No. 101. *Q.* No one but the members of the firm had power to sign any such letters ?—*A.* The manager might.

Robert *Q.* If he did so it would be the firm's act ?—*A.* I won't go so far as that.

Lothian *Q.* Had your manager general authority to sign ?—*A.* I would not go so far as that.

Curzon *Q.* Your own impression is that there was no manager there at that time ?
cross-*A.* I cannot be certain of that, I cannot carry the years now in my mind ; I
examined by should not like to say for certain. 10

Mr. Lewis—*Q.* Apart from the actual signing of any such letter, any engagement that
continued. the banking firm would make would be made by one of the members of the firm itself ?—*A.* Probably ; I should hope so.

Q. What engagements did the firm make in that regard in connection with guaranteeing the payment of the construction contract moneys to the Defendant Charlebois ?—*A.* I never heard of any guarantee of any kind or description, it is utterly new to me.

Mr. Bristol.—My objection continues to all these questions relating to these written documents.

Mr. Lewis.—*Q.* Or bank references in that regard ?—*A.* I have no know- 20
ledge of what you are referring to with regard to bank references or guarantee. So far as I was concerned I had no knowledge whatever of Charlebois or anything to do with him.

Q. Would your partner, Mr. Bawtree, have ?—*A.* I should say not.

Q. Will you undertake to say that no cable message or letter or bank reference was sent to the Defendants, the Union Bank ?

Mr. Bristol.—I object, because it is irrelevant to this issue. We are not deciding a case between these gentlemen and the Colchester Bank, and the witness has already stated that he knows nothing about the matter.

Mr. Beddall.—I object on the same ground. 30

Mr. Lewis.—*Q.* I see, Mr. Curzon, in this letter, Exhibit 6, your solicitors, Stevens, Bawtree & Stevens, mention Robert Curzon as one of those who signed a syndicate agreement in connection with this railway ; was that you ?—*A.* I have no knowledge of any syndicate arrangement.

Q. You name is Robert Curzon ?—*A.* Yes.

Q. Read that Exhibit 6 ?—*A.* I think I know now to what you refer. This was some issue of bonds some time ago now ; they were to be issued on certain terms and then nothing ever came of it.

Q. You signed some syndicate agreement as to taking up bonds ?—*A.* Yes. 40

Q. Have you that agreement ?—*A.* No.

Q. Was it not returned to you ?—*A.* I cannot recollect now what happened to that.

Q. Had you subscribed to bonds ?—*A.* Yes. I forget the exact wording of the thing. Nothing ever came of the matter. On certain things being carried out certain bonds were to be issued, but it did not come to anything, and the whole thing was knocked in the head, and I never paid any more attention to the matter.

Q. Did you subscribe to the bonds which purport to have been issued under the deed for which you are trustee?—*A.* No; that was a long time before that.

Q. You never subscribed to the second lot?—*A.* No.

Q. Prospectuses were issued?—*A.* I don't know that any prospectuses were issued under the second lot, not that I am aware of. I have no recollection of having seen them.

Q. You were served with the consent judgment, I believe, in the case of *Charlebois v. The Great North West Central Railway in Canada* in the middle 10 of October, 1891?—*A.* I daresay I was if you say so.

Q. Have you no recollection of it?—*A.* I cannot recollect at this moment.

Q. You remember receiving a printed copy of that judgment?—*A.* I cannot recollect.

Q. I show you now a printed copy of it?—*A.* I daresay I did get a copy of it. Yes, I recollect it well now; I recollect some gentleman coming in and serving it.

Q. By the terms of it the bonds of the Company for which you were trustee were to be deposited in the Safe Deposit Company mentioned in the judgment. Did you take any steps to comply with it?—*A.* No; I never had 20 the bonds in my possession.

Q. Did you take any steps to comply with it?—*A.* I never gathered that I had to take any steps.

Q. Did you confer with your solicitor on that subject?—*A.* Not that I am aware of. I never had any bonds to deposit anywhere, they were never in my possession, never had any control over them. I should not have gone to look for them.

Q. What did you conceive your duties were under the trust deed under which you were trustee?—*A.* So far as I am able to gather I had nothing to do with any bonds under the trust deed.

Q. Did you take any advice at the time that you were served with this judgment?—*A.* I don't know. I read the deed very carefully, and I never could find any reference made of any bonds to be in our possession.

Q. Have you ever countersigned the bonds?—*A.* No, never saw them.

Q. You were also served with the final judgment which included an injunction restraining you and the other trustees from taking a conveyance of the land-grant of the Company; that, I am instructed, was on the 17th of May, 1892. Do you remember it (showing witness a copy)?—*A.* The one in May 1892, I have more recollection of. I don't remember much what the other one is that you speak about.

Q. Are you a shareholder in the Railway Company?—*A.* No.

Q. When did you see a copy of *Charlebois'* construction contract?—*A.* Never saw one to my knowledge.

Mr. Bristol.—I object to anything but the original being shown to this witness; the original is in the possession of the examining counsel.

Mr. Lewis.—Q. Did you ever see any papers in connection with this matter besides the two judgments with which you were served and the mortgage trust deed that you executed?—*A.* No, I never saw any other papers.

RECORD.
—
No. 101.
Robert
Lothian
Curzon
cross-
examined by
Mr. Lewis—
continued.

William D. Cansdale's cross-examination continued :—By Mr. Lewis.

RECORD.

—
No. 102.
William D.
Cansdale,
cross-
examined by
Mr. Lewis.

Q. You have your diaries now with you ?—*A.* Yes.

Q. Will you look and see when it was you first removed the bonds from your office after their arrival in England ?—*A.* 19th August 1891.

Q. Did they remain in your office from July 1890 until August 1891 ?—*A.* They did.

Q. Why did you take them to the National Safe Deposit Company on the 19th August 1891 ?—*A.* I don't know that I can give you a better answer than I gave you this morning.

Q. What was that ?—*A.* A small fire close to our office suggested to me 10 the advisability of housing them in the National Safe Deposit Company.

Q. Were you instructed to do so by your principals ?—*A.* No, I suggested it to them and they acquiesced in it so far as my memory goes.

Q. I asked you this morning with reference to this letter from Richard Stevens to the Plaintiff Delap of the 29th August 1891, in which Mr. Stevens stated that he had one or two cables from Codd in which he tells him he has arranged for possession of the line and for running of it, and also for the settlement of the claims of the contractor upon the deposit of certain bonds ?

Mr. Bristol.—I object to that letter as being any evidence against us.

Mr. Lewis.—You don't object to the use I make of the copy ?

20

Mr. Bristol.—No, that appears already.

Mr. Lewis.—*Q.* Did you see those cables ?—*A.* I cannot recollect now. I may say as a rule I saw all cables.

Q. Have you those cables with you ?—*A.* No.

Q. Do you produce them ?—*A.* No.

Q. You refuse to ?—*A.* Yes.

Q. Have you asked either of the Stevens since you were in here on this examination before for any of these letters ?—*A.* No.

Q. You still decline to ?—*A.* Yes.

Q. Will you undertake to swear it was not because of these cables and the 30 proposed settlement of the affair with the contractor Charlebois that these bonds were deposited in the National Safe Deposit Company ?—*A.* Certainly.

Q. It was not so ?—*A.* It was not.

Q. The bonds that you took with you to the National Safe Deposit Company were the bonds you got in Canada ?—*A.* They were.

Q. All you got in Canada ?—*A.* All I brought away from Canada.

Q. That is all of the so-called issue, with the exception of £120,000 ?—*A.* All those that I brought home from Canada.

Q. You have told us before less £120,000 or £125,000 ?—*A.* Yes.

Q. Did you go down alone with them to the Safe Deposit Company ?— 40
A. The usual procedure to go through.

Q. Tell me what you did ?—*A.* I went first of all to know if I could have them deposited there.

Q. You went to see Mr. Wilkes ?—*A.* I don't know his name ; one of the officials of the National Safe Deposit Company.

Q. It is close by your office ?—A. On the same street, it is No. 1, and we are No. 73. I arranged with them for the deposit of them, according to my diary.

Q. What does your diary say ?—A. Attending at National Safe Deposit arranging terms for deposit of bonds.

Q. That was on the 19th of August ?—A. Yes.

Q. What were the terms you arranged ?—A. Well, the next entry says : “ Attending at Safe Deposit with bonds, making deposit, paid 7 shillings and 6 pence.” I would say off-hand that is one month’s rent in advance.

10 Q. One month’s rent of what ?—A. Of the trunk, or of the use of the vault for the deposit of the trunk.

Q. That was on the same day ?—A. Yes.

Q. Then you took the bonds down the same day yourself ?—A. Exactly.

Q. Did anyone accompany you ?—A. No.

Q. You handed them over to the Safe Deposit Company ?—A. Yes.

Q. You took a receipt ?—A. Yes.

Q. In whose name ?—A. Stevens, Bawtree & Stevens.

Q. They remained there longer than one month I assume ?—A. Yes, they remained there until Mr. Delap had them.

20 Q. Until August 1892 ?—A. Yes.

Q. And you tell me you left for Canada on the 16th September 1891 ?—A. Yes.

Q. And that you were sent to Canada by your principals ?—A. Yes.

Q. How did that come about ?—A. An important matter of business we had in hand there, nothing whatever to do with the Railway Company, called me over there on that occasion.

Q. Your firm had other business in Canada at that time ?—A. Yes.

Q. What was the business ?—A. I decline to tell you that. It was private business of other clients.

30 Q. Who paid your expenses of going over on that occasion ?—A. The firm.

Q. To whom was it debited ?—A. I could not tell you from memory ; probably to the various clients that I went over for.

Q. What were your instructions when going on this occasion ?

Mr. Beddall.—I object to this. The instructions which were given to this witness must necessarily be a privileged communication of the clients on whose behalf he went out.

Mr. Lewis.—Q. What individual member of the firm instructed you ?—A. I should think I was instructed by the firm generally.

40 Q. Which member of the firm ?—A. All I should think.

Q. All of them at different times ?—A. The probability is all at one meeting.

Q. When you left for Canada where did you arrive ?—A. New York.

Q. What date, you have your diary ?—A. My diary is a perfect blank from the time I went to the time I came back. I started Wednesday the 16th September 1891, and if I recollect right I landed on the 24th September ; I would not be quite sure whether I landed on the evening of the 23rd or the morning of the 24th.

RECORD.
—
No. 102.
William D.
Cansdale,
cross
examined by
Mr. Lewis.

RECORD.

No. 102.
William D.
Cansdale,
cross-
examined by
Mr. Lewis.

Q. Where did you then go?—*A.* Fifth Avenue Hotel.

Q. How long did you stay there?—*A.* I am speaking entirely from memory. I think I left on the morning of the 25th, that was Friday.

Q. For?—*A.* Buffalo.

Q. How long did you remain in Buffalo?—*A.* As far as I recollect I left Buffalo on the Monday morning; I would not be sure whether I left on the Monday or Tuesday; I rather think it was the morning of Tuesday the 29th.

Q. Before you left England were you aware of the fact of the interim injunction granted in *Charlebois v. The Great North West Central* in Canada, on the 12th September?—*A.* No, never heard of it. I left on the 16th. 10

Q. It was granted on the 12th. Did not Mr. Codd cable your firm to that effect?—*A.* I never saw a cable to that effect.

Q. Did you hear of it?—*A.* I don't recollect hearing of it.

Q. Will you swear you did not?—*A.* Well, I think I may swear, because my impression is I never heard of that interim injunction until I got into Toronto.

Q. Which was on what date?—*A.* I got there on the 29th, very late at night, for we stayed at Niagara that day.

Q. Where did you stay in Toronto?—*A.* Queen's Hotel.

Q. Where did Mr. Codd see you in Buffalo?—*A.* I could not tell you 20 whether he came to Buffalo on the Saturday or Sunday.

Q. What is the date of the Saturday?—*A.* 26th of September.

Q. On what business did he come to see you?—*A.* As far as I recollect a general chat on railway matters.

Q. Had you had any previous communications with him between your arrival in New York and that interview?—*A.* I telegraphed to him from New York.

Q. What did you telegraph to him?—*A.* That I was going to Buffalo and asked him if he would meet me there on Sunday, I think. This is entirely 30 from memory.

Q. He told you at that time the terms—

Mr. Bristol.—I object to what Codd told him as being any evidence against us.

Mr. Lewis.—Q. He told you at that time the terms of the proposed consent minutes of judgment?—*A.* Certainly not; I never heard of that until I got to Toronto.

Q. When you got to Toronto on the 29th he showed them to you?—*A.* I did not see him until the morning of the 30th, Wednesday.

Q. He showed you the minutes of the proposed consent judgment on the 30th?—*A.* No, I never saw the minutes of that consent judgment in my life. 40

Q. You said you did not see them until you arrived in Toronto?—*A.* Did not see him.

Q. Did he not discuss the object of the consent judgment with you?—*A.* He told me there had been a consent judgment given and I wanted to know the purport of it, and I could not get it out of him. I said I will go and see the Doctor, meaning Dr. McMichael, but I never got hold of the minutes.

Q. Dr. McMichael told you the terms of the judgment?—*A.* He promised

to let me see the draft minutes, but he did not ; he said they were gone somewhere else. I went from pillar to post, but never did get them.

Q. The Doctor informed you of the purport of it ? (*Mr. Bristol* objects.)
—*A.* I don't think he did.

Q. Will you swear he did not ?—*A.* I am on my oath now.

Q. Will you swear that Dr. McMichael did not inform you of the terms of the consent judgment ?—*A.* He told me something about it, but I could not recollect what. I said, very well, I think I ought to see the minutes. I think he told me by the consent judgment Charlebois had got priority in reference to 10 bonds, and I told him we shall object to it ; we were no parties to the action.

Q. He told you the consent judgment gave the Company possession, did he not ?—*A.* He told me the Company had got possession under that judgment. I asked him there and then, I said, "No use you and I discussing it, why don't you let me see the minutes ?" I did not get them.

Q. He or Codd also discussed with you the necessity of depositing the bonds under the terms of this consent judgment ?

Mr. Bristol.—I object.

A. He said that was part of the order.

Mr. Lewis.—Q. And that Company had been given six months to pay the 20 amount ?—*A.* It is difficult for me now at this distance of time to remember what Dr. McMichael told me ; my opinion is I knew very little about that consent judgment until I saw Mr. Codd served with a copy of it by your clerk or some one representing you.

Q. In Toronto ?—*A.* Yes.

Q. That would be when ?—*A.* I could not tell you now.

Q. Early in October, 1891 ?—*A.* I daresay it would be. I asked your clerk about it whether he had sent any to London and he told me he had. I got Mr. Codd's copy and read it, and that was the first conception I had of the terms of that judgment.

30 Q. Did you discuss the terms with Mr. Codd ?—*A.* I have no doubt I did then, but I could not recollect in what form or manner. I know I repeated to Codd there and then the order of the Court authorizing the deposit of those bonds under the terms of that judgment ; I told him we should absolutely refuse to do that.

Q. Who was "we" ?—*A.* Speaking for my firm.

Q. Were you authorized by your firm to object to the deposit ?—*A.* I had no written authority.

Q. Had you any conversation with them before you left ?—*A.* I had so much of their authority that I felt perfectly justified in my making such a 40 statement as that they would justify that statement if necessary.

Q. You knew of the proceedings being taken by Charlebois in the action in which the consent judgment was obtained before you left England ?—*A.* Certainly not.

Q. Had you any cables or letters from your firm while in America or Canada in regard to it ?—*A.* I might have had.

Q. Where are they ?—*A.* I haven't them here.

Q. Will you get them ?—*A.* No, I decline to produce them.

Q. Why will you not produce them ?—*A.* They are not in my possession.

RECORD.

No. 102.

William D.

Causdale,

cross-

examined by

Mr. Lewis.

RECORD.

No. 102.
William D.
Cansdale,
cross-
examined by
Mr. Lewis.

Q. In whose possession are they ?—*A.* I have no doubt they are in the possession of Stevens, Bawtree & Stevens.

Q. They are letters and cables to you ?—*A.* Yes.

Q. What was the purport of them ?—*A.* I could not tell you now if I taxed my memory.

Q. Did they contain instructions to you in that regard ?—*A.* I could not remember what it was.

Q. You have a very short memory when it suits you ?—*A.* I am not aware of it.

Q. I rather think you have a very good memory ?—*A.* I had very little communication with my firm on the railway matter at that time.

Q. You wrote to your firm from Toronto ?—*A.* I don't know that I did.

Q. Will you swear you did not ?—*A.* Certainly not.

Q. You know as a fact you both cabled and wrote to them ?—*A.* I may have done.

Q. What did you communicate to them ?—*A.* I decline to answer that.

Q. Did you write to Mr. Delap ?—*A.* Certainly not.

Q. Or cable to him ?—*A.* Certainly not.

Q. Except as to the deposit of the bonds you were satisfied with the terms of the consent judgment ?—*A.* No, I did not say that. 20

Q. I am asking you ?—*A.* It is not for me to be satisfied with the terms of the judgment.

Q. Were you dissatisfied with them ?—*A.* I could not tell ; I have no doubt I was dissatisfied.

Q. In your discussion with Mr. Codd in respect of it, is it not the fact that you stated you thought the compromise a wise one ?—*A.* Certainly not ; I never expressed such an opinion as that.

Q. Yet you decline to produce to me your letters or cables to your firm at that time ?—*A.* Certainly.

Q. Will you ask the members of your firm having these letters or cables to allow you to produce them here ?—*A.* I will ask them if you wish it. 30

Q. You are becoming a little more reasonable than you were. I would ask you to do so then now ?—*A.* When ?

Q. Now ?—*A.* No, they are not here ; they are scattered to the four quarters of England.

Q. What different parts of England ?—*A.* You had Hewitt Stevens here and you know he has gone away from London to-day.

Q. Are there any members of your firm in London to-day ?—*A.* Not get-at-able now. I am not going to run after the members of my firm now after office hours. 40

Mr. Lewis.—I ask the Commissioner to adjourn now. We are not bound to sit after 5 o'clock in the evening, in fact after 4 o'clock according to the practice. I would ask that this inquiry be adjourned until the morning for the purpose of enabling Mr. Cansdale to do as he expresses his willingness to do.

Witness.—I shall decline to ask my firm.

Q. Or any member of it ?—*A.* Yes.

Q. Why ?—*A.* I decline to answer that question ; I have no particular reason.

Q. Did not Mr. Codd consult with you in Buffalo as to the terms of this RECORD. consent judgment before it was finally entered up ?—A. No.

Q. What did you telegraph him to come and see you in Buffalo for ?—A. No. 102. To spend the Sunday with me, to have a general chat. William D. Cansdale,

Q. In connection with what was your discussion ?—A. I could not tell you now. cross-examined by Mr. Lewis.

Q. Codd then, of course, informed you of the fact of the interim injunction ?—A. He did not ; I knew nothing of it until I got to Toronto.

Q. The interim injunction was granted on the 12th of September ?—A. 10 Just so.

Q. Did he not tell you that Charlebois had commenced an action against the Company ?—A. I did not know that Charlebois had commenced an action against the Company until after I had a copy of that judgment in my hands.

Q. That is inconsistent with what you have already told us. You told us a moment ago that you saw Dr. McMichael some days previously to Codd's being served with this judgment, and that Dr. McMichael told you he would show you the consent minutes in this very action ?—A. Not of the interim injunction.

Q. The fact of an action having been commenced ?—A. I understood you 20 asked me when I ascertained about the interim injunction. I did not know of the action of Charlebois for interim injunction until after I got that judgment.

Q. I asked you when you first knew that Charlebois had started an action against the Great North West Central Railway Company ?—A. That was the interim injunction.

Q. Never mind about the interim injunction. You are a solicitor's clerk and know what beginning a suit is ?—A. I ought to.

Q. Upon which this judgment was obtained ?—A. I did not know until I got to Toronto.

Q. What made you go to Dr. McMichael to see the consent minutes or a 30 copy of them if you did not know ?—A. That was after I heard from Codd about the consent judgment, and he was unable to give me the minutes. I wanted to see them.

Q. Your first intimation that there was any action started by Charlebois against the Company was when Codd had told you there had been a consent judgment in Toronto ?—A. Certainly.

Q. He did not open his mouth about it to you in Buffalo ?—A. No.

Q. Not a word ?—A. No.

Q. Tell me what he did tell you in Buffalo ?—A. I have no recollection of what he did tell me ; I heard nothing of that.

40 Q. You did talk of railway matters with Codd. On what subjects did you talk ?—A. I decline to tell you, even if I could recollect ; but I don't recollect what subjects we were talking about.

Q. How long did the interview last ?—A. We had no special interview.

Q. How long was he with you in Buffalo ?—A. Spent the Sunday with me.

Q. And a part of Saturday ?—A. I don't think he came until Saturday night ; I believe it was late.

Q. Stayed at the same hotel with you ?—A. Yes.

RECORD.

No. 102.
William D.
Cansdale,
cross-

examined by
Mr. Lewis.

Q. And you came over with him from Buffalo to Toronto on the following Monday?—A. No.

Q. He left before you did?—A. He left early in the morning of the Monday; I did not leave until the Tuesday, I think.

Q. And you decline to inform me your instructions from your firm, in connection with this railway, on the occasion of this visit?—A. Yes.

Q. How long did you stay in Toronto?—A. I could not tell you from memory.

Q. Will your diary help you?—A. No.

Q. A week?—A. I could not tell you from memory; I might have been a 10 week.

Q. Two weeks?—A. I could not tell you.

Q. Upwards of a week?—A. It might be upwards or less.

Q. Where did you next go from Toronto?—A. I went off on other matters of business.

Q. Where did you go to?—A. I don't know whether I am entitled to tell you.

Q. Do you decline to answer that?—A. I do.

Q. Did you attend any board meetings of the Company when you were in Canada on this occasion?—A. I have no recollection of doing so.

Q. None?—A. I don't think so.

Q. There is a letter here which my learned friend admits as being a copy of the letter which he did not produce, written by Richard Stevens of your firm on the 18th of October, 1891, to the Plaintiff Delap?

Mr. Bristol.—I object to that letter as evidence.

Mr. Lewis—Q. He says, "We have a cable from Cansdale to say they have taken possession, which means I hope we can now, by finding the requisite sum, set the line running." What was the purport of that cable?—A. I could not tell you.

Q. You know?—A. I don't.

Q. Where was that cable sent from?—A. I could not tell you.

Q. Where were you on the 8th of October, 1891?—A. I could not tell you.

Q. You were in Toronto, I think?—A. I could not tell you from memory.

Q. From what place did you despatch cables in this connection to your firm?—A. That I could not tell you.

Q. Did you send any from Toronto?—A. I may have.

Q. Did you keep copies of the cables you sent?—A. I don't recollect.

Q. Do you recollect the fact of your keeping copies?—A. I may have kept copies.

Q. I would like to have those copies?—A. I decline to produce them, even 40 if I have them.

Q. Why?—A. They are matters between my principals and myself, and without their authority I should not produce them.

Q. Will you seek their authority?—A. No.

Q. Who else did you see when you were in Canada on this occasion, in connection with this railway or the judgment, the terms of obtaining possession?—A. I don't know that I saw anybody else but McMichael and Codd; I could not recollect at this distance of time.

Q. Did you see Nugent ?—A. I don't know that I ever heard of any such name. RECORD.

Q. Did you see him ?—A. I don't know the man.

Q. Were you in Cobourg when you were in Canada ?—A. Where is that ?

Q. In Ontario ?—A. I don't know the place ; never heard of it.

Q. You decline to tell me where else you were ?—A. Certainly.

Q. Why ?—A. I was there transacting other client's business for my principals, and I don't think it would be right for me to divulge it.

Q. The business in connection with the railway that you did, did it take 10 place anywhere except in Ontario ?—A. I should say not.

Q. You were in no other province ?—A. In connection with the business, no.

Q. Except in Buffalo, which was not in Canada ?—A. You were asking about Canada.

Q. Did Codd go with you to New York when you sailed ?—A. No.

Q. Did you sail from New York ?—A. Yes.

Q. When ?—A. On the 28th of October, 1891, on a Wednesday.

Q. Had you any talk with Codd when in Canada about the balance of these bonds that he still had in his possession, this £120,000 or £125,000 face value ? 20 —A. I think I asked him whether he had handed them over, to the best of my recollection, and he said no, nor likely to.

Q. You had some conversation ?—A. Yes.

Q. Did you fetch those bonds back with you to England ?—A. No, I asked him to send them back by express.

Q. You were not present when he expressed them from Ottawa ?—A. No.

Q. Were they expressed to your firm ?—A. I asked him to do so.

Q. Do you happen to know as a fact ?—A. I do not ; I take it they were.

Q. Were they received by your firm to your knowledge ?—A. I was away when they received them.

30 Q. When you got back were they in your office ?—A. I did not see them.

Q. Codd informed you why he was sending the bonds back ?—A. He sent them back at my request.

Q. To conform with the terms of the judgment ?—A. No.

Q. How do you know it was not for that reason ?—A. Because I asked him to send them from the fact he told me he should not want them for Charlebois.

Q. Did not Codd as a fact consult with you as to the name of the company in whose custody these bonds were to be lodged before this judgment was issued ?—A. The bonds were already deposited in the Safe Company.

40 Q. The balance of them in Canada at that time ?—A. There was the balance of them there I admit, but there was no discussion about them.

Q. With you ?—A. No.

Q. On your return to England you reported all you knew about the matter to your firm, I suppose ?—A. I have no doubt I did.

Q. Did you see any letter written by your firm or any member of it to Mr. Delap on that occasion ?—A. I could not recollect now.

Q. Try to brush up your memory a bit ?—A. I cannot recollect now whether any was written or not, or whether I saw them or not.

RECORD.

No. 102.
William D.
Cansdale,
cross-
examined by
Mr. Lewis.

Q. Did you see Delap yourself on your return?—A. I have no recollection of doing so on my return.

Q. Did you inform him of the terms of the consent judgment or show it to him yourself?—A. No.

Q. You would leave that with the firm to do?—A. Certainly.

Q. Do you know as a fact whether they did so or not?—A. I have no knowledge of the fact.

Q. Were you not present on one occasion when the judgment was shown to Mr. Delap and discussed with him?—A. I don't know.

Q. Were you or were you not?—A. I tell you I don't know.

Q. Will you swear you were not?—A. I won't swear I was not or I won't swear I was. It is just possible I might and just possible I might not.

Q. Do you say you were at any meetings of directors when you were in Canada?—A. On the second occasion?

Q. Yes?—A. I am not aware that I was.

Q. You would not forget being at a Board meeting?—A. I don't think I was at a Board meeting.

Q. Did you make any arrangements while in Canada as to the building of the extension into Chater?—A. Not that I am aware of; I made no arrangements.

Q. Did you make any financial arrangements with Mr. Codd with respect to money?—A. He may have asked me for money for that purpose, I could not tell you now.

Q. Did you give him any money for that purpose?—A. I believe I did give him money while I was there.

Q. What did you give him?—A. I have no recollection.

Q. Were you entrusted with money for that purpose?—A. Probably.

Q. Were you or were you not?—A. I had money given to me for the purpose of the railway.

Q. Before you left England?—A. I should not carry it with me, sent to me after I got there.

Q. How much?—A. I cannot recollect.

Q. Tell me within a thousand pounds?—A. It did not reach a thousand altogether.

Q. Then you know where it did reach?—A. I don't.

Q. How many hundred pounds?—A. I could not tell you whether it was four, five or six.

Q. Did you take a receipt from Codd for the amount you gave him?—A. I don't recollect doing so.

Q. How did you pay him?—A. Probably in dollars.

Q. Took no receipt?—A. I should say not.

Q. You swear you did not?—A. No, I won't.

Q. I would like to see the receipt?—A. I did not say I had a receipt.

Q. If there is one I would like to see it?—A. I don't recollect a receipt; if I had one I decline to produce it.

Q. What instructions came with the funds to you in Canada?—A. I am not aware that I had any instructions.

Q. How did you know that the money had arrived there to your credit?—A. Probably by notification from the bank.

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Q. What bank ?—*A.* The bank I asked it to be sent to. I don't know that RECORD.
you are entitled to know what bank it was.

Q. What bank was it ?—*A.* I decline to tell you.

Q. For what purpose did you ask for these moneys to be sent to you ?—*A.* I decline to tell you that ; they are not relevant to this matter.

Q. How much more money than you gave Codd was there sent to you ?—*A.* I could not tell you that.

Q. You don't know the amount of the credit that was sent to you at that time ?—*A.* I have no recollection ; I had no object in carrying it in my
10 mind.

Q. You don't remember what became of the balance ?—*A.* I have no doubt I accounted for the balance to my firm.

Q. Did you fetch it back with you ?—*A.* I have no doubt if I had anything left after paying expenses and other matters I had to attend to, I brought the balance back.

Mr. Bristol.—I object to this line of examination, to the irrelevancy of it.

Mr. Lewis.—Q. When you got back to England you say that you were informed the balance of the bonds had previously reached your firm ?—*A.* I
20 heard so from my firm.

Q. Were they in your office when you got there ?—*A.* No.

Q. Do you know as a fact what had become of them ?—*A.* No.

Q. You never saw afterwards that balance of bonds ?—*A.* Yes, I did.

Q. When ?—*A.* When I handed the bonds over to Delap they were there.

Q. That was in August, 1892 ?—*A.* Yes.

Q. They were in the National Safe Deposit Company like the others, in the name of Stevens, Bawtree & Stevens ?—*A.* Yes.

Q. Did Mr. Codd to your knowledge request that these bonds should be
30 deposited in conformity with the consent judgment ?

Mr. Bristol.—I object.

Witness.—I forget whether he did or not.

Mr. Lewis.—Q. Did you see any letter from him to that effect ?—*A.* I don't recollect it.

Q. Did he verbally do so to you in Canada ?—*A.* Certainly not.

Q. Not before you left ?—*A.* No.

Q. Have you the letters he wrote at that period to your firm in that connection ?—*A.* Not in my possession.

Q. Who has them ?—*A.* I suppose my firm have them.

40 Q. That is Mr. Stevens, junior, or senior, or both ?—*A.* They are in the office belonging to the firm.

Q. Will you ask your firm for them ?—*A.* No.

Q. Had you anything to do with the purchase or arrangement for payment for the locomotives when you were in Canada ?—*A.* Yes.

Q. What did you do ?—*A.* I discussed the question of purchase of locomotives with Mr. Codd.

Q. Anything else ?—*A.* I discussed with him the terms, that is all.

RECORD.

No. 102.
William D.
Cansdale,
cross-
examined by
Mr. Lewis.

Q. Those were part of your instructions from your people?—A. No, that thing arose when I was there ; I had no instructions.

Q. You obtained instructions after it arose, either by cable or letter from your people?—A. No.

Q. Not with respect to the buying?—A. No.

Q. Did you go to Kingston to see about it?—A. No.

Q. Where is the receipt that you took from the National Safe Deposit for the bonds at the time?—A. I don't know ; I told you yesterday I believed it went back to the National Safe Deposit.

Q. When you reported to your firm as to the consent judgment and obtain- 10
ing possession on returning from Canada, did you express any opinion to them on the point?—A. I am not sure that I made any report to them.

Q. You told us, when you got back you told them what had taken place in Canada?—A. I told them what I had done ; I don't know that I explained to them about that ; your firm had already sent my firm that.

Q. Did you express any opinion about it?—A. I am not aware that I did.

Q. Did you tell them of your interviews with Codd in that connection?—
A. I should probably tell them what I did do, naturally.

Q. Did you discuss the compromise that had been made with them?—
A. I could not tell you whether I did or did not. 20

Q. You don't know?—A. I could not tell you whether I discussed that particular question with my firm.

Q. The length of time is so great you have forgotten?—A. If I remembered it I would tell you.

Q. Yet you refuse to produce your letters written from Canada to them before you departure?—Yes.

Q. I ask you to look for those letters and refresh your memory as to what you did report to them in those letters, so as to enable you to give evidence here?—I decline to look for them.

Q. Do you know anything of the syndicate agreement referred to in this 30
letter of the 31st May?—A. I don't think I do.

Q. Do you?—A. I don't think I do.

Q. Know nothing about it?—A. I heard of it, I could not give you any particulars about it.

Q. In whose custody is it?—A. I don't know.

Q. Which member of your firm?—A. I don't know who has it ; I know nothing of its whereabouts.

Q. Did you see it signed by anybody?—A. I don't know that.

Q. You don't remember that?—A. I don't remember anything about it beyond the bare fact, I understood there was a syndicate.

Q. When did you see it?—A. I could not tell you ; I don't know that I 40
ever saw it.

Q. Did you ever see it?—A. I don't know that I ever did see it ; that is the best answer I can give you.

Q. Have you any letters here with you from Codd written in or near the time of the consent judgment or with regard to it?—A. I have no letters of Codd's here in 1891 amongst those here.

Q. You stated in examination in chief that Plaintiff Delap had made further advances since you received those original bonds in Canada. I ask you to produce an account of those advances, since you knew of their being made?—

A. I have no account in my possession.

Q. You say that you know of the further advances; then I want you to tell me what they were, the amounts, the dates?—A. I am not in a position to do it.

Q. Do you decline to ask your firm for an account?—A. I do.

Q. Had you anything to do with the payment of the £25,000 draft of the 10 4th October 1889, on the occasion of the obtaining of this money from the International people?—A. I think not.

Q. Had you?—A. I think not; if my memory serves me I had not.

Q. It was payable at your firm's office?—A. That might be.

Q. On the 16th August 1892, you served these notices, Exhibits 13 and 14, on Delap?—A. Yes.

Q. At the same time I think you asked him to sign some acknowledgements of these notices?—A. I think I asked him to sign an acknowledgement on the duplicate in the ordinary way.

Q. Those were what you asked him to sign, Exhibits 32 and 33?—
20 A. Yes.

Q. What did he say?—A. I think he appealed to Mr. Howland at the time, and Mr. Howland said, no, don't sign them.

Q. He refused to sign them?—A. Yes.

Q. What reason did he assign?—A. None to me.

Mr. Lewis.—I have nothing more to ask him.

Cross-Examination by Mr. Beddall.

Q. Which member of the firm of Stevens, Bawtree & Stevens principally attended to matters connected with this railway?—A. Charles Richard Stevens.

Q. So far as you know, he was willing to give evidence here if he had been
30 called as a witness?—A. Undoubtedly.

Mr. Lewis.—I object to that.

Mr. Beddall.—Q. Apart from any documents which may be in the possession of your firm, do you produce everything in your personal possession?—A. I have nothing in my personal possession relating to the matter at all.

Q. Prior to being called as a witness, were you served with any notice of any kind on behalf of Mr. Charlebois as to what documents they wished you to produce here?—A. None whatever.

Q. You did select, I think, such as you thought to be relevant, you told us before?—A. Yes.

Q. Such as you thought might be called for?—A. Yes.

Q. You recollect the attempted public issue of the bonds?—A. Yes.

Q. And we know that failed?—A. Yes.

Q. Do you know what the intention was on the part of the Railway Company as to—

Mr. Lewis.—I object.

RECORD.

—
No. 102.

William D.
Cansdale,

cross-
examined by
Mr. Lewis.

No 103.

William
Daniel
Cansdale,
cross-exa-
mined by
Mr. Beddall.

RECORD.

No. 103.

William

Daniel

Cansdale,

cross-exa-

mined by

Mr. Beddall

—continued.

Mr. Beddall.—*Q.* Was it intended to pay all the claims against the Railway Company out of the issue of bonds if the issue had been successful ?

Mr. Lewis.—The intention of anybody else is no evidence in the mouth of this witness.

Mr. Cartmell.—I object to the question on the further ground that it is leading.

Mr. Beddall.—*Q.* I am cross-examining on behalf of the trustees, and this question is specially directed to the point of the trustees under the deed. Answer the question ?—*A.* I always understood that it was so.

Q. You knew as a fact at that time that moneys had been advanced ?—*A.* I 10 did.

Mr. Lewis.—I object to that.

Mr. Beddall.—The issue having failed, did your firm consult Counsel as to the form of the trust deed ?—*A.* They did.

Q. And was the draft trust deed prepared which has already been put in ?
A.—It was.

Mr. Lewis.—I object to all this.

Mr. Beddall.—*Q.* That draft, I think you have told us already, you took over to New York ?—*A.* I did.

Q. And showed it to Codd ?—*A.* I did.

Q. Did you explain to him why you wanted the bonds executed and the new trust deed signed ?—*A.* I did at the time.

Q. Why did you tell him that you wanted the new trust deed and the bonds ?

Mr. Lewis.—I object to that as being no evidence against us, and as not being evidence at all.

Mr. Beddall.—*Q.* What did you say to him with reference to the trust deed and the bonds being executed ?

Mr. Cartmell.—The same objection applies to that.

Witness.—I don't know that I can recollect what I said to him in particular, 30 I explained to him the object of the signing of the bonds and of the signing of the trust deed ; I also explained to him what difference there was between the old trust deed and the new trust deed.

No. 104.

William

Daniel

Cansdale,

re-examined

by Mr.

Bristol.

Re-Examined by *Mr. Bristol.*

Q. At the time of this Express receipt (Exhibit 17) was anything said to the agent as to whose name the receipt was to be put in ?

Mr. Lewis.—I object to that.

Mr. Bristol.—*Q.* Answer the question ?—*A.* I don't know that any instructions were given as to the filling up of the receipt ; I gave my name as the sender.

Q. Gave who your name ?—*A.* The clerk in the office.

Q. Was Mr. Codd with you ?—*A.* He was.

Q. Are you aware whether the agent appeared to know him ; did he speak to him at the time as knowing him ?—*A.* Yes, the agent did know him ; I recollect that.

40

Q. Did you examine the receipt at the time you received it?—*A.* I don't think I did. RECORD.

Q. And the receipt was given to you as sender?—*A.* Certainly.

Mr. Lewis.—The receipt speaks for itself.

Mr. Bristol.—And you produce it?—*A.* Yes.

Q. At what time did you have the key of the trunk referred to?—*A.* It was in my pocket at that time. No. 104.
William
Daniel
Cansdale,
re-examined
by Mr.
Bristol—
continued.

Q. Where did it remain until your arrival in England?—*A.* Carried it in my pocket on a bunch.

10 *Q.* Since you were here last have you examined the trunk in question as to whether it was sealed with the Company's seal?—*A.* Yes. It was not sealed with the Company's seal.

Q. With whose seal was it sealed?—*A.* With my own seal.

Q. Is all the seal on it still?—*A.* There was sufficient of the wax left on the trunk itself to enable me this morning to identify the portions of my seal.

Mr. Lewis.—I ask the seal to be produced if any questions are to be asked about it.

Mr. Bristol.—*Q.* Do I understand you to swear that any letters written by Delap to your firm were at any time shown to me while I was in England?—

20 *A.* I was under the impression they were either to you or your partner; my impression may be wrong.

Q. From what do you derive that impression?—*A.* It was an impression on my mind.

Q. Does it go beyond an impression?—*A.* No.

Q. In respect of the £50,000 or £51,000 sent to Canada, I don't understand you to swear that you are personally aware of more than the fact that it was sent to Canada?—*A.* That is all.

Q. You don't know anything about its being paid over under any agreement or in any form?—*A.* Certainly not.

30 *Q.* Do I understand you to say you in any way looked into the validity of the land-grant at any time while you were in Canada?—*A.* No.

Q. Are you aware whether it was Mr. Delap's money that was paid the International so far as they had been paid?

Mr. Lewis.—I object to that as leading.

Mr. Bristol.—*Q.* Are you aware or not?—*A.* That it was Delap's money, certainly I am.

Mr. Lewis.—It is no evidence against us.

Mr. Bristol.—*Q.* When you were in Canada with Hewitt Stevens did you register in your own name?—I did.

40 *Q.* Have you any knowledge as to why Mr. Hewitt Stevens registered as Mr. Hewitt?—I know he did register as Mr. Hewitt.

Q. Had it anything to do with the fact of your business in Canada?—*A.* No.

Q. Were the bonds distinguishable by number?—*A.* Yes, every bond was numbered separately and distinctly.

Q. Can you tell from recollection the numbers of the bonds that you got for Delap when you were in Canada?—*A.* No, not from memory.

RECORD. By *Mr. Lewis* :—

No. 105.
William
Daniel
Cansdale,
re-cross-
examined by
Mr. Lewis.

Q. Where are the bonds now ?—*A.* I don't know.
Q. You don't know where any of them are ?—*A.* No.
Q. Not even £50,000 of them ?—*A.* £50,000 of them are in my firm's possession.

Q. In the office ?—*A.* No, in the Safe Deposit.
Q. In the name of your firm ?—*A.* Yes.
Q. What was done with the rest ?—*A.* Mr. Delap had them.
Q. Who did you hand them to ?—*A.* Mr. Delap.
Q. To Mr. Delap personally ?—*A.* Yes.
Q. He was there ?—*A.* Yes, with Mr. Howland.
Q. In the office of the National Safe Deposit Company ?—*A.* Yes.
Q. Did Delap give you any receipt for them at the time ?—*A.* I think not ; I think I went through the bonds ; I thought it was Mr. Howland ; it was either Mr. Howland or Mr. Castle Smith.

Q. Mr. Delap was simply standing by ?—*A.* Mr. Delap was there ; he went with us.

Q. And you handed them over manually to Mr. Howland, you think ?—*A.* Either Mr. Howland or Mr. Castle Smith ; we counted them over.

Q. What did they do with them then ?—*A.* I am sure I cannot recollect now whether they *pro tem.* deposited them with the National Safe Deposit Company in the name of Delap or whether they took them away there and then.

Q. Do you know what they did ?—*A.* I don't quite recollect.

Q. Do you know what was done ?—*A.* The best of my recollection off-hand is that Mr. Delap took them away.

Q. And where did he put them after that ?—*A.* I don't know.

Q. You don't know where they are now ?—*A.* Certainly not.

Q. Never been told ?—*A.* No.

Q. You say you know that Mr. Delap paid the International ; how do you know ?—*A.* By virtue of my position in the office of Stevens, Bawtre & Stevens.

Q. Did you see the International paid ?—*A.* No.

Q. On none of the occasions when payments were made did you see them paid ?—*A.* No.

Q. Nor did you pay them yourself ?—*A.* No.

By *Mr. Bristol* :—

Q. Were you in Quebec in 1891 ?—Yes.

Q. I understood you to tell Mr. Lewis that you were not out of the Province of Ontario in 1891 ?—*A.* No, what Mr. Lewis asked was whether I transacted any business relative to the Railway Company outside of the Province of Ontario.

(Adjourned at 6.45 p.m.)

Continued 9th June 1893.—11 a.m.

All counsel present.

Mr. Lewis.—With reference, Mr. Bristol, to our understanding about those letters the originals of which you did not bring over with you, letters written

by Richard Stevens and Charles Richard Stevens to the Plaintiff Delap, I want to have no misunderstanding as to it. I understand you are willing inasmuch as the originals were not brought over by you, that we should be at liberty to use the copies at the trial as if they had been proved by these witnesses that have been already produced who could have testified as to the signatures of Richard and Charles Richard Stevens of the originals thereof.

10 *Mr. Bristol.*—I don't recollect consenting to that. I consented, without admitting these letters are evidence against us, to allow you to use the copy that you have as if you had the original in your hands. You did not put in the copies, you read statements from them to which I objected, and you did not ask the witness if such a letter was written, and the letters were in no sense proved even though you had the original in your hand.

Mr. Lewis.—It was impossible for me to prove the copies as copies of the originals out of the mouths of any of the witnesses yesterday, but if you had produced the originals here under my notice it would have been possible for me to have proved them, and I could prove them now through Mr. Gregson. He being a clerk in their office, would be able to depose as to the signatures of Charles Richard Stevens and Richard Stevens respectively, and I again ask you to produce those originals.

20 *Mr. Bristol.*—I have not got them with me here. Do I understand you to say you are willing the original letters written by Richard Stevens or the firm of Stevens, Bawtry & Stevens already used by you in the examination of the witnesses shall be put in by you, the originals not being here, in lieu of your taking the copies out of your bound brief?

Mr. Lewis.—Yes, as you have no copies or the originals here to put in I am willing to do so. The letters referred to are letters included in Delap's affidavit of 6th March last.

Harold Strangeways Knight Gregson, having been duly sworn, deposed as follows:—

30 To *Mr. Bristol*:—

Q. What is your profession?—*A.* Solicitor; residing at London, England, practising at 14, Piccadilly.

Q. In the month of August, 1889, what was your profession?—*A.* I was then assistant conveyancing clerk with Stevens, Bawtree & Stevens.

Q. Were you a solicitor at that time?—*A.* I was qualified but not admitted.

40 *Q.* What was your first connection with the Great North West Central Railway matter?—*A.* About a fortnight prior to our going out, Mr. Stevens told me that he had a heavy railway matter on in which he would like my assistance to go to Canada with him, and asked me if I would do so.

Q. Had you seen John Arthur Codd referred to in the pleadings previously?—*A.* Yes, for many months I had seen him in and out of Stevens' office.

Q. Are you aware in respect of what business?—*A.* I knew generally that he had a Canadian railway enterprise in which the Stevens' were interested
p. 5240.

RECORD.

—
No. 96.

William

Daniel

Cansdale,

re-cross-

examined by

Mr. Lewis

—continued.

No. 106.

Harold S.

Knight

Gregson,

examined by

Mr. Bristol.

RECORD. themselves, but I had not any direct knowledge of the nature of the business ; it was not in my department at all.

No. 106. Q. You say Mr. Charles Stevens spoke to you about going to Canada with
Harold S. him to assist him. What did you next do ?—A. I went down with him to
Knight Witham and stayed with him from Saturday to Monday and he showed me a
Gregson, great many documents.
examined by

Mr. Bristol Q. What year ?—A. I believe August, 1889 ; I understand it is four years
—continued. next August.

Q. As a fact you did go out to America with Charles Richard Stevens ?
—A. Yes. 10

Q. And where did you go first ?—A. We went to New York.

Q. And from there ?—A. From there we went down to Toronto. We were met at New York by Codd.

Q. Did he accompany you to Toronto ?—A. He did.

Q. Who did you meet there ?—A. Mr. Charlebois, and I think Mr. Murray and Mr. Allan came down.

Q. Did you have any discussion with him in reference to the railway matter ?—A. I think we talked matters generally over with Mr. Charlebois ; but at that time I had no communication that I can recollect with Mr. Murray or the other existing shareholders. 20

Q. Did you ever read this agreement between the Great North West Central Railway Company and the Crown, dated the 12th September 1887 (Exhibit 34) ?—A. I am unable to say whether I saw an original or a copy ; I saw one or the other, and I think it was during the voyage to New York.

Q. Were you in Ottawa on the 16th September 1889 ?—A. If that was the day the railway transaction was completed, I was ; but I could not swear I was, unless it was that day. I can only connect the date by facts.

Q. Who was acting for Mr. Charlebois in connection with the railway transaction and the other shareholders, so far as you are aware ?—A. Mr. Lewis, 30 who is here.

Q. And the former company ?—A. Yes.

Q. Were you present at a meeting of the old directors of the Great North West Central Railway Company, held on the 16th September, 1889 ?—A. I was.

Q. Were you present when this first resolution was passed, dated 16th September, 1889 ?—A. I was. (Exhibit 35.)

Q. Look and see whether you were present throughout the minutes that are recorded ?—A. Yes.

Q. Could you on reading the minutes tell me whether there was an 40 adjournment, or all one sitting ?—A. There was an adjournment, but I am unable to say at what period among these resolutions ; there was an adjournment for luncheon.

Q. Was it for any other purpose ?—A. For the purpose of going to the bank and paying over the cash.

Q. Do you recognise those six cheques, and are you aware of all the facts of the payment over ?—A. I am. (Exhibits 36 to 41.)

Q. In respect of that first resolution (Exhibit 35), as regards stock, was there any discussion of any kind before the payment of these cheques?—*A.* There was very great discussion which was chiefly between Dr. McMichael and Mr. Lewis. Dr. McMichael was acting on behalf of Stevens' client, and Stevens and Delap required that the stock should be transferred fully paid up, which, as far as I am aware, I learned for the first time when I got to Canada was not fully paid up.

RECORD.
—
No. 106.
Harold S.
Knight
Gregson,
examined by
Mr. Bristol
—continued.

Q. Was that position conceded, so far as you know?—*A.* It was conceded as I understand by Mr. Lewis, and it was agreed that the stock should be fully paid up.

Q. What were these cheques for (Exhibits 36 to 41)?—*A.* The arrangement come to was that a discount should be declared by the company, which they were entitled to do, and the respective amounts of these cheques to the order of Clemow, Allan, Murray, Charlebois and Devlin was to pay the respective amounts each required to make up with the discount—the uncalled liability.

Q. Including what had already been paid?—*A.* Yes.

Q. Who introduced Mr. Stevens and yourself to Dr. McMichael?—*A.* Mr. Codd.

Q. What did Mr. Codd say in reference to it?

Mr. Lewis.—I object to that as not being evidence against us.

Mr. Bristol.—Q. Answer the question subject to the objection?—*A.* He stated that Dr. McMichael had already acted for him in the matter, and was conversant with the facts, and the best man we could go to, and the leading man in Toronto.

Q. Who represented Mr. Codd, so far as you know, in connection with the matter?—*A.* In England?

Q. In Canada?—*A.* I certainly understood that Dr. McMichael was acting for Codd and us.

Q. That is Stevens you refer to?—*A.* Yes.

Q. What did you mean with reference to England; anyone acting for Codd in England?—*A.* It is difficult to draw the line, but we were acting for Codd, I understood, when he came out.

Q. The signatures to the five cheques, Exhibits 36 to 40 inclusive, are whose?—*A.* Charles Richard Stevens.

Q. Are you aware whose money was paid out by these cheques?—*A.* Yes.

Q. Whose?—*A.* James Bogle Delap, the Plaintiff.

Q. The signature to Exhibit 41 is also Charles Richard Stevens?—*A.* Yes.

Q. Payable to the Union Bank. Do you know to whose credit that was paid?—*A.* That was to the credit of the Company alone.

Q. The Great North West Central Railway Company?—*A.* Yes.

Q. Is that \$15,158.33 referred to in the minutes?

Mr. Lewis.—The minutes will speak for themselves.

RECORD. *Mr. Bristol.*—*Q.* Answer the question ?—*A.* That is the amount referred to.

No. 106.
Harold S.
Knight
Gregson,
examined by
Mr. Bristol
—continued.

Q. Are you aware whether this money was immediately paid into the credit of the Company by Clemow, Allan, Devlin, Murray, and Charlebois ?—

A. The procedure was this in Mr. Lewis' office, these amounts were all defined and put down on a piece of paper.

Q. Is that the document, Exhibit 42 ?—*A.* Yes. Then, for the first time, it was pointed out that if we paid these sums mentioned in the first five cheques to each of these parties, it left the balance which was afterwards loaned to the Company, and some one at the meeting, I am unable to remember whom it was, 10 stated, why not loan it to the Company ? That was agreed to, and the different transfers having all been taken and executed, we went down to the bank, drew the various cheques which are now produced, each of the payees had their cheques, but I am unable to pledge my memory as to whether they endorsed the same cheques and put them direct to the credit of the Company, or whether they there and then drew their own cheques. However, whichever it was, they placed the amount we had just paid them back again at once to the credit of the Company.

Q. Are you aware what bank the Company had its account in ?—*A.* To the best of my belief it was the Union Bank, but I am unable to pledge my 20 memory. As far as I am aware the £50,000 which was advised out to our credit was not to the same bank as the Company banked in ; that is where the confusion arises in my mind.

Q. They were just the two banks concerned ?—*A.* That is all.

Q. The Bank of Montreal, that the money was advised out to, and the Union Bank of Canada ?—*A.* Yes.

Q. Out of what moneys was it then that the Company gave Mr. Charlebois the cheque for \$243,333 ?

Mr. Lewis.—Produce it.

Mr. Bristol.—I have not got it.

Mr. Lewis.—I object ; the cheque will speak for itself. Produce it. 30

Witness.—Out of the Company's moneys, which moneys are found by the addition of these six cheques which Mr. Stevens had previously and on the same day drawn.

Q. Was anything stated by you, or in your presence, to Mr. Charlebois, as to who you were acting for in connection with this railway matter, or as to how you were acting ?—*A.* Acting for English capitalists.

Q. Are you aware whether any such information as that was given to any of the former directors of the Company, Clemow, Allan, Devlin, or Murray ?—

A. I cannot say that I personally or any one in my presence directly told them 40 that fact, but I say it was a matter of common knowledge.

Mr. Lewis.—I object.

Mr. Bristol.—*Q.* Why do you say common knowledge ?—*A.* Everynews-paper in Canada was echoing it.

Q. Have you any doubt they were aware that such was the fact ?

Mr. Lewis.—I object.

Mr. Bristol.—*Q.* Answer the question ?—*A.* I have no reasonable doubt in my mind they all knew it. RECORD.

Q. Did you ever see the agreement of 9th April 1888, Exhibit 43 ?—*A.* Yes. No. 106.
Harold S.

Q. You have seen that identical document ?—*A.* To the best of my belief ; the memorandum on the back is in my handwriting. Knight
Gregson,
examined by

Q. You say the memorandum endorsed on the back, which is releasing and discharging the agreement, and dated 16th September 1889, is in your handwriting ?—*A.* Yes. Mr. Bristol
—continued.

10 *Q.* Do you know J. A. Codd's signature ?—*A.* Yes ; that is Codd's signature to letter dated 5th May 1888, Codd to Murray, Exhibit 44.

Mr. Lewis.—I object to this ; it is no evidence against us.

Mr. Bristol.—I ask Mr. Lewis to produce the power of attorney given by his clients on the 6th March 1888, to Captain James Murray, one of their directors, and referred to in the minutes of the directors of the Company 6th March 1888.

Mr. Lewis.—We have not got it.

Mr. Bristol.—Have you a copy of it ?

Mr. Lewis.—Not here. You furnished me with a copy in Canada.

20 *Q.* Do you recollect ever having seen that letter dated 9th May 1888 from J. Murray to Codd, Exhibit 45 ?—*A.* Yes, I have seen that letter.

Q. Had you and Stevens that letter with you in Canada when you were there ?—*A.* To the best of my belief he had I think it was in Canada.

Q. And had you the letter, Exhibit 44, also with you ?—*A.* I cannot swear I ever saw that letter before.

Q. Did you ever see this document, Exhibit 4, Heads of Agreement between James Bogle Delap and John Arthur Codd ?—*A.* I have frequently seen this copy.

Mr. Lewis.—I object to that as not being an original.

30 *Mr. Bristol.*—*Q.* Have you ever seen the original document ?—*A.* I could not swear I ever saw the original, but my impression is I have.

Q. What was your mission to Canada, so far as Mr. Delap was concerned ?

Mr. Lewis.—That is leading.

Witness.—To carry out an agreement.

Mr. Bristol.—*Q.* The agreement of 20th July 1889 (Exhibit 4) ?—*A.* To carry out Mr. Codd's option to purchase the railway, and consequently to carry out the agreement between Codd and Delap.

Q. What written instructions had you from Mr. Delap ?—*A.* I don't know.

40 *Q.* What agreement ?—*A.* The agreement appears to be signed here by Delap, and dated 20th July 1889.

Mr. Lewis.—I object to Exhibit 4 as not being the original.

Mr. Bristol.—*Q.* Is that the agreement you refer to, Exhibit 4 ?—*A.* Yes.

Q. Did Mr. Codd at any time assert anything to you as to his interest in this railway matter ?

Mr. Lewis.—I object to that as no evidence against us, and not a proper question.

RECORD.

No. 106.
Harold S.
Knight
Gregson,
examined by
Mr. Bristol
—continued.

Witness.—I knew no interest Codd had in the Company except by virtue of the agreement already put in of the 9th April 1888.

Mr. Bristol.—Did Codd make any statement as to the contract price of building the road, £200,000.?

Mr. Lewis.—Objected to.

Witness.—I can say there were repeated conversations between Codd, C. R. Stevens, and myself, as to contract price, and Stevens and I frequently pointed out we were not in the slightest degree able to judge what was a fair price, and Codd assured us £200,000 was reasonable.

Q. Did any one else suggest that it was reasonable?—*A.* Mr. Charlebois 10 did.

Q. Did you, in fact, believe it to be so?—*A.* Undoubtedly. As fixing Mr. Charlebois with having said it, I recollect myself personally chaffing him, and saying he was making a good thing out of this contract, and he said it was, all nonsense, that it was a very touch-and-go thing if he was going to make anything at all.

Mr. Bristol.—I ask Mr. Lewis for the original agreement of 6th March 1888. (Produced.)

Q. I ask you to look at the agreement of the 6th March 1888, Exhibit 46, and tell me when you first saw it?—*A.* I don't know that I ever saw it; my 20 distinct recollection is that I never have.

Q. Did you when you were in Canada, in 1889, see a copy of it?—*A.* I don't think so.

Q. Read it through carefully and make sure?—*A.* I am certain I never saw the original or a copy of it before.

Q. Was this agreement, Exhibit 46, or any copy of it produced by you or C. R. Stevens on 16th September 1889, or any time prior to that date that you are aware of?—*A.* I have already said I never saw it myself, and so far as I know, Mr. Stevens had not.

Q. He never mentioned it to you?—*A.* No. 30

Q. Did Mr. Codd ever state to you that he had an interest in this railway matter, ever state that in your presence before you came to Canada?—*A.* Not otherwise than having worked hard at it for several years; I never knew at the time what it meant.

Q. Do you know the signatures of Clemow, Allan, Devlin and Charlebois sufficiently to identify them as being their signatures to that agreement, Exhibit 46?—*A.* Of course it is some five years ago, but to the best of my belief they are in the handwriting of the parties they purport to be.

Q. Was anything done while you were in Canada in respect of issuing bonds or anything of that kind, or trust deed?—*A.* Yes, a special resolution 40 was passed approving of the authorizing of an advertisement.

Mr. Lewis.—The resolution speaks for itself.

Mr. Bristol.—*Q.* Look at the minutes of 17th September 1889, Exhibit 8? —*A.* This is the meeting I refer to.

Q. Read the minutes; as far as you are aware are they correctly stated?

—*A.* Yes.

Mr. Lewis.—I object to that.

Mr. Bristol.—*Q.* You were a Director of the Company at that date ?—*A.* I RECORD.
apparently was.

Q. Can you state what was the object of the Company issuing bonds at that time ?—*A.* Bonds were to be issued—

Mr. Lewis.—I object to the object of the Company being disclosed.

Witness.—The bonds were to be issued and floated in London as soon as we got back or hoped to be, for the purpose of paying back Delap his advances.

Q. What advance are you referring to ?—*A.* £50,000.

Q. Is this the document, Exhibit 47, in your handwriting ?—*A.* Yes.

10 *Q.* What is it ?—*A.* A copy of a document dated 24th September 1889 ; it is in my handwriting. It is a letter from Charles Richard Stevens to Dr. McMichael.

Mr. Lewis.—I object to the copy being used ; and I object also on the ground that it would be no evidence against us in any event.

Mr. Bristol.—I have given notice to Dr. McMichael to produce the original, and he has not chosen to be represented before you ; and I therefore purpose proving the copy in the usual way.

Mr. Cartmell.—That does not go to the second objection, of course.

20 *Mr. Bristol.*—*Q.* Exhibit 47 is a true copy of the letter referred to ?—*A.* I made that copy myself.

Mr. Lewis.—That is leading.

Mr. Bristol.—*Q.* I notice this statement, and I call your attention to it : “ Mr. Codd tells me out of the sum of £200,000, payable to Mr. Charlebois under his contract, that Mr. Codd is entitled to receive between £30,000 and £40,000. Will you tell me exactly how this matter stands, whether you hold any documents relating to the arrangement, and if so, what the effect of them ? ” —*A.* I recollect that being written. I copied it from the original, and examined it with Mr. Charles Stevens.

30 *Q.* When was the copy made ?—*A.* I made it immediately Mr. Stevens wrote the letter.

Q. You were at the Windsor Hotel, Montreal, at the time ?—*A.* Yes.

Q. And you had no letter book to copy it in ?—*A.* No.

Q. Do you recognise that letter of 30th September 1889, written by Dr. McMichael to C. R. Stevens, Exhibit 48 ?—*A.* I recognise it, and recollect its receipt and in response to that letter. (Exhibit 47.)

Mr. Lewis.—That is objected to generally.

Mr. Bristol.—*Q.* Did you hear Mr. Codd at any time mention this £30,000 or £40,000 referred to in that letter ?—*A.* He never mentioned it to me, and I never had any conversation with him on that subject.

40 *Q.* Have you any recollection what date that was received at the Windsor Hotel, Montreal, this letter of 30th September 1889, which is dated at Toronto ? (Exhibit 48.)—*A.* I don't remember.

Q. Were you in Toronto again after that letter was received ?—*A.* We ended our visit to Canada at Toronto, therefore we must have been.

Q. When did you leave for England from Canada ?—*A.* I think about the 1st of October.

Q. This letter is the 30th of September 1889 ?—*A.* I cannot pledge myself to a week or two.

No. 106.
Harold
S. Knight
Gregson,
examined by
Mr. Bristol
—continued.

RECORD. Q. Do you recognise these documents, the construction contract,
 ——— 16th September 1889 ?—*A.* Yes, I have seen all these documents before.
 No. 106. (Exhibit 49.)

Harold Q. Are you aware who drew that document ?—*A.* To the best of my belief
 S. Knight Mr. Lewis drew it.
 Gregson,
 examined by

Mr. Bristol Q. Do you recollect this letter of Charlebois on the 16th September 1889,
 —continued. attached ?—*A.* Yes. (Exhibit 50.)

Q. Is that his signature to it ?—*A.* Yes.

Q. I will read the letter to you. (Reads.) In whose handwriting is it ?—

A. In the handwriting of Charles Richard Stevens.

Q. Were you present when the letter was signed by Mr. Charlebois ?—

A. Yes.

Q. Are there any facts that took place on or prior to the signing of that letter within your knowledge that would lead you to suppose that that letter does not mean exactly what it says so far as Charlebois is concerned ?

Mr. Cartmell.—That question is objected to.

Witness.—I am prepared to give the reasons why that letter was asked for and given.

Mr. Bristol.—Q. Answer the question ?—*A.* I know nothing.

Q. Was anything said to Mr. Charlebois by any one in your presence that would lead you to suppose that letter does not mean what it says ?—

A. Certainly not.

Q. Did Charlebois verbally express his willingness to take bonds as the letter states ?

Mr. Lewis.—That is leading. What he said verbally cannot vary the letter itself.

Witness.—I heard no statement from Charlebois varying the agreement.

Mr. Bristol.—Q. Did you have anything to do with this contract known as the collateral agreement of the 16th September 1889 ?—*A.* I did not have anything to do with the document in question other than seeing it ; I believe it was prepared by Mr. Lewis.

Q. Is it a contract of indemnity ?

Mr. Lewis.—It speaks for itself.

Witness.—It was generally referred to at that time as the Sproule indemnity contract.

Mr. Bristol.—Q. This collateral contract speaks of an indenture bearing date the 12th of September 1887, entered into by the Company with one John Carlton Sproule ; did you see that contract at that time ?—*A.* I never saw this document before. (Exhibit 52.)

Q. Or the original of the Sproule contract ?—*A.* No. The terms of it are quite foreign to me.

Q. Look at this original of the Sproule contract, that Mr. Lewis produces, with the Great North West Central Railway ; have you ever seen it before ?—

A. No, I never saw such a document before. (Exhibit 53.)

Q. You say you were present when the construction contract between Charlebois and the Company was signed, dated 16th September 1889 ?—

A. I was.

Q. When did you first hear of Charlebois' agreement to take bonds, as

shown in that letter of 16th September 1889 ?—*A.* To the best of my belief the evening of the same day ; I am referring to the letter. RECORD.

Q. When did you first hear about the agreement to take bonds ?—*A.* I could not pledge myself to say when Charlebois first said to me he was going to take it in bonds, but in repeated conversations between Codd, Stevens and myself it was part of the whole thing that he was to take £100,000 in bonds. No. 106.
Harold
S. Knight
Gregson,
examined by
Mr. Bristol

Mr. Lewis objects.

Q. You mean before the construction contract was signed ?—*A.* Certainly ; I say it was part of the arrangement. —continued.

10 *Q.* You stated that you met Mr. Charlebois, Mr. Murray and Mr. Allan in Toronto in the beginning of September 1889, on your arrival there ?—*A.* I said I believed those were the three ; I know Charlebois was one.

Q. Were you aware of their refusal to carry out the agreement of 9th April 1888 ?—*A.* I was aware indirectly, that is to say through Mr. Codd ; we were strangers to these people, and almost the moment we arrived Codd went to them and purported to tell us what they said to him.

Q. Did you ever read this document before, Heads of proposed Agreement of 9th September 1889, between Charlebois and Codd, Exhibit 54 ?—*A.* I have seen it before ; there is a word in it in my writing. The body of it is in the
20 handwriting of Charles Stevens.

Q. And you recognise the signatures of Codd and Charlebois to it ?—*A.* Yes ; I remember the document perfectly well.

Q. When the former shareholders refused to carry out the agreement of 9th April 1888, what happened so far as you know ?—*A.* To the best of my recollection we were at Toronto, and Codd represented to us that there was a hitch and that the only way out of it was to work it through the medium of Charlebois, and represented if it was made worth Charlebois' while he would settle with his co-shareholders and we should then deal with him alone. I don't recollect from memory the amount of additional consideration to Charlebois,
30 but he did make arrangements with his colleagues.

Q. Those arrangements are in writing ; were you aware of them ?—*A.* I have never seen the written document between Charlebois and his other four co-shareholders.

Mr. Lewis.—I object to this evidence as to Codd's representations ; it is no evidence against us.

Q. Did you ever see this document, Articles of Agreement, 16th September 1889, between the Hon. Francis Clemow and others and Charlebois, Exhibit 55 ?—*A.* Yes, I have seen it ; the witnessing clause is in my hand writing ; that proves I have seen it, but I have no recollection of it.

Q. Look at this document between Charlebois and Hon. Francis Clemow,
40 Exhibit 56 ?—*A.* I don't remember having seen that document.

Q. Have you seen this document of 21st September 1889, Exhibit 57 ?—*A.* Yes.

Q. Who was it prepared by ?—*A.* Prepared by Mr. Lewis, I believe.

Q. What recollection have you about the matter ?—*A.* It was represented by Mr. Lewis that this contract was outstanding and desirable to get it in,

Mr. Lewis.—I object to this.

RECORD.

No. 106.
Harold
S. Knight
Gregson,
examined by
Mr. Bristol
—continued.

Witness.—This document was prepared by Mr. Lewis so far as I recollect for the purpose and my name appears on it as secretary treasurer.

Q. Do you recollect on whose suggestion the \$15,000 was made a loan to the Company?—*A.* To the best of my belief either Mr. Allan or Mr. Lewis made the suggestion.

Q. Did you ever see this original contract between John Carlton Sproule and Macdonald, Schiller, and Preston dated 21st September 1889, Exhibit 58?—*A.* I cannot swear that I have ever seen the document, but I know that such a document was being prepared by Mr. Lewis.

Q. How did you know it?—*A.* It was arranged at the time the contract was given to Charlebois that he should get rid of this Sproule contract.

Q. Had you anything to do with the preparation of that contract, Exhibit 58?—*A.* No.

Q. Did you ever see it after it was prepared?—*A.* I have no recollection of having seen it.

Q. Look at this contract between J. E. Schiller, Alexander Macdonald and Alphonse Charlebois of the 3rd October 1889, and tell me whether you have ever seen that contract before or a copy of it, Exhibit 59?—*A.* No, I certainly have no recollection of ever having seen this document.

Q. Or any copy of it?—*A.* No.

Q. Were you present when there were any statements made by Charlebois prior to entering into the agreement of 9th September 1889, the Heads of Agreement between Codd and Charlebois?—*A.* Do you mean the agreement by which he agreed to get rid of his co-shareholders?

Q. Yes?—*A.* Yes, I have no doubt I was.

Q. Who suggested the terms of that agreement of 9th September 1889?

Mr. Lewis.—I object.

Witness.—I have already stated that Codd came and represented to us that the shareholders would not carry out the contract and we could only do it through Charlebois.

Q. Then did you go and see Charlebois?—*A.* That was followed up by Charlebois coming to us and stating he would bear out Codd's statement to that extent.

Q. State as near as you can what Charlebois said?—*A.* To the best of my belief Charlebois stated—I am only speaking generally owing to the lapse of time—they were not prepared to go on.

Q. You are referring to the agreement of 9th April 1888?—*A.* Yes. Time had gone out and they were not prepared to carry it out; he stated through his influence with them and that sort of thing he would make the necessary arrangements if Codd would make it worth his while. As far as I recollect there was a little bargaining then as to amount.

Q. And that resulted in the document, Heads of Agreement between Codd and Charlebois already put in?—*A.* Yes.

Mr. Lewis.—I object to this evidence.

(Adjourned at 1.30, resumed at 2.15.)

Mr. Cansdale hands in the following certificate:—"I beg to certify that my patient, Mr. R. Stevens, is liable to attacks of syncope, which, together with his deafness, renders him medically unfit to attend the Commission as desired.—George Turner Phillips, M.R.C., &c., June 8th 1893."

Mr. Bristol. Q. Was Codd aware so far as you know whose £50,000 this was that was being advanced?—*A.* Codd knew it was Delap's.

Mr. Lewis.—I object.

Mr. Bristol. Q. How do you know?—*A.* Because Mr. Stevens told him so the moment he landed in New York in my presence in something like the following words—

Mr. Lewis.—The words should be given and not the substance.

Mr. Bristol. Q. When did you first meet Mr. Lewis in connection with this transaction in Canada, referring to the period of September 1889?—*A.* I am not quite sure whether it was at Toronto a few days after we arrived there, or at Ottawa when we got up there; it was about a week prior to the settlement of the 16th of September.

Q. Had he anything to do as far as you recollect with the agreement of 9th September 1889, Exhibit 54?—*A.* No, I don't recollect it. I don't know that he had to my knowledge.

Q. Do you know who represented Mr. Charlebois when that was being drawn?—*A.* No; I can only say that Mr. Lewis was Charlebois' solicitor; whether Mr. Lewis perused that draft, or not, I don't know.

Q. You say you saw it signed, or did you?—*A.* I don't think I ever said I saw that signed.

Q. Did you meet Mr. Duval, the name appears on that agreement?—*A.* I am not very clear about him.

Q. Was Mr. Codd present throughout the meeting of the 16th September 1889?—*A.* Yes.

Q. What part did he take in the matter at all; I mean was it active or otherwise?—*A.* It was active to this extent, everything was submitted to him, and every resolution and every document that I saw he saw.

Q. Who drew the resolutions of the 16th September 1889, so far as you know, can you say from recollection?—*A.* I should not like absolutely to swear, but my belief is they might have been in my handwriting; anyhow the legal phraseology emanated from Mr. Lewis' mind.

Q. Did Mr. Charles Richard Stevens at any time say anything to you as to any agreement between himself and Mr. Codd as to an interest in this railway matter?

Mr. Lewis.—I object to the form of question, and I also object to the evidence.

Witness.—Mr. Stevens told me shortly after getting to Canada that Codd had verbally agreed, in consideration of his finding the money to carry through this enterprise, that he was to have a half share.

Mr. Bristol. Q. Did you ever see this document before?—*A.* I was going on to say, in furtherance of that, he preferred to have it reduced in writing in Canada, and the result of that was this document which he drew and showed to me in Canada.

Q. What is the document?—*A.* Heads of Agreement between John Arthur Codd and Charles Richard Stevens, dated 16th September 1889, Exhibit 60; it was at Windsor Hotel, I think.

Q. I call your attention to paragraph 3 of the construction contract,

RECORD. Exhibit 49 (Reads). Who was to provide the money for the rails referred to there that the Company was to supply under that contract to the contractor ?

No. 106.

Harold

S. Knight

Gregson,

examined by self

Mr. Bristol

—continued.

Mr. Lewis.—I object to that ; the agreement speaks for itself.

Witness.—Codd had arranged to find the rails at Montreal.

Mr. Bristol. Q. Had anything been stated by Codd to C. R. Stevens or your- in reference to these rails before the actual paying over of the £50,000 ?

Mr. Lewis.—I object to that.

Witness.—Prior and up to the actual passing of the cash Codd told us the rails were lying at Montreal, which was a fact.

Q. Did he say anything more than they were lying there ?—*A.* He said he 10 had arranged about the rails and they were at Montreal.

Q. Ready for delivery ?—Yes, in the ordinary way ; and almost immediately afterwards, I cannot say the day, a day or two after we parted with our cash, he came and represented to us they were payable by the purchaser, on bills of lading, or they were nominally lying there, and we had to pay for them, and we said at once it was your bargain to pay for the rails. He continued to represent he would do so and stated he thought he could make arrangements with the Union Bank, and it went on for a day or two ; finally he practically intimated to us we must find the money ourselves, we were mortgagees and our security was no good, in fact turned around very much indeed and kicked 20 over the traces. Charlebois came up with the same story to the effect that he found what I said was true, that the rails were there, but he could not get them and what were we going to do.

Q. What was done ?—*A.* Codd, Charlebois, Stevens and I all met at Montreal and Stevens and Codd arranged that Delap should advance the money. It was not at the Windsor Hotel, but at the St. Lawrence.

Mr. Lewis.—I object to this.

Mr. Bristol. Q. Do you recognise this draft ? (Exhibit 61.)—*A.* Yes, in my handwriting, dated 4th October 1889, for £25,000.

Q. Are those the signatures of J. A. Codd and J. B. Delap to it ?—*A.* Yes, 30 I know Captain Delap's signature well.

Q. Do you recognise this receipt dated 7th October 1889 ? (Exhibit 62.)—Yes, it is also in my handwriting.

Q. What were the proceeds of that draft, 61, used for ?—*A.* For the payment of these rails.

Mr. Lewis.—I object.

Witness.—For these very rails lying at Montreal.

Mr. Bristol. Q. For the rails that you have been speaking of as lying at Montreal ?—*A.* Yes.

Q. Have they any connection with the contract in question ?—*A.* They 40 were the identical rails on which the Company contracted under the contract to furnish to the contractor Charlebois.

Q. Were you present at the meeting of the directors at the Windsor Hotel, Montreal, on the 7th of October 1889 ?—*A.* I was.

(Minutes of 7th October 1889, marked Exhibit 63.)

Q. Was Charlebois present there ?—*A.* I don't think so.

Q. At whose instance was that resolution passed ?—*A.* Codd's.

Q. You were a director of the Company at that time ?—*A.* Yes.

Q. As a director had you any intention of doing away with the contract that Charlebois had entered into to take £100,000 in bonds ?

Mr. Lewis—I object ; it is not evidence.

Witness.—I say most certainly I had no intention nor had my then co-directors, or colleagues, of doing so.

Mr. Bristol.—Q. This draft, Exhibit 61, is all in your handwriting ?—
A. Yes.

—
No. 106.
Harold
S. Knight
Gregson
examined by
Mr. Bristol
—continued.

Q. Did Charlebois make any remark to you as to J. B. Delap mentioned there ?—A. Certainly he did ; he asked Stevens who Delap was, and Stevens said he was a very responsible client of his, and he would vouch for his acceptance being good for the money, and he referred to me to bear him out in that statement as to our knowledge of his property, and generally his financial position.

Q. Had you any interview with Mr. Delap on your return to England as to the matters that took place in Canada ?—A. No.

Q. Mr. Charlebois alleges in the 26th paragraph of his Statement of Defence. (Reads.) I ask you particularly as to the last part, if that is correct ?—A. I say that is absolutely untrue so far as communicating it to me was concerned, or to anybody else with my knowledge.

20 Q. Mr. Charlebois alleges in his 29th paragraph of his Statement of Defence. (Reads.) Is that paragraph true so far as you are concerned ?—
A. It is true to this extent, as I have already said, when the cash was paid over Charlebois undertook with us to get rid of the Sproule, Schiller and Macdonald contracts.

Q. Did you aid and assist them in doing it ?—A. No, had nothing to do with them. I will correct that answer to this extent, I said I never saw them, but I believe Schiller was pointed out to me by Codd in the hotel as being Schiller.

30 Q. Mr. Charlebois alleges in paragraph 32 (Reads.) I ask you if Mr. Charlebois, as he stated, had any conversations or interviews with you, or to your knowledge with Mr. C. R. Stevens, your co-director, on the subject of the grade of the first mile of railway ?—A. Had no conversation with me or Stevens to my knowledge on that subject.

Q. Did you, or so far as you know, Mr. C. R. Stevens, request the Defendant Charlebois not to do more work on that portion of the line, and state ultimately the Company would decide as to whether to build to Brandon or Chater ?—A. No.

40 Q. Was the building to Brandon discussed ?—A. Not in my presence ; I never heard anything but the contract. I never saw a section of the line. I never discussed anything with Charlebois as to how he was to build the line, or where it was to go to.

Mr. Bristol.—Mr. Cansdale has handed in a doctor's certificate regarding Richard Stevens, and I do not propose to hold open the Commission for the purpose of forcing Mr. Richard Stevens to attend.

Mr. Lewis.—I ask the Commissioner to hold open the Commission for that purpose, and state my willingness to remain here until Mr. Stevens is in a position to attend and give evidence. This case cannot in the ordinary course be reached before our vacation on the 1st of July. I also object that he is not

RECORD. here to produce the letters and papers which were referred to yesterday during the cross-examination of other witnesses, and I ask if he cannot attend for the purpose of giving evidence himself, that he attend here with those letters and papers.

No. 106.
Harold
S. Knight
Gregson
examined by
Mr. Bristol
—continued.

Mr. Beddall.—I object on behalf of the trustees ; Mr. Lewis has obtained no order for the examination of Stevens.

Mr. Lewis.—It is true we have no Commission to examine Mr. Stevens, but my learned friend has, and we have obtained an order for him to produce the letters and papers in question.

Mr. Bristol.—I served this witness and he has not attended ; he puts in a 10 doctor's certificate and I don't propose to hold open this Commission to call him. If my learned friend wants to examine Richard Stevens he must get a Commission from Canada to do so.

Cross-examination by *Mr. Lewis.*

No. 107.
Harold
S. Knight
Gregson
cross-
examined by
Mr. Lewis.

Q. You were present at the meeting, you say, of the old directors on the 16th September 1889 ?—*A.* Yes.

Q. You were also present at the whole of the meeting of the new directors as well on that date ?—*A.* Yes.

Q. Previous to the actual meeting of directors there had been a good deal of discussion backwards and forwards about the bargain, I understand ?—*A.* There was.

Q. Dr. McMichael was there with Mr. Stevens and yourself representing Mr. Stevens, and who became purchaser of the stock ?—*A.* Dr. McMichael was there representing Mr. Stevens and the purchasers of the stock.

Q. As a fact to whom was the stock afterwards assigned ?—*A.* At the meeting of the directors it was transferred to various persons.

Q. Chiefly to ?—*A.* Chiefly to Stevens.

Q. And the other shares were transferred to four other persons ?

Mr. Bristol.—The transfers are in writing, and I ask for the production of them. 30

Mr. Lewis.—I have not got them.

Q. To whom were the other shares transferred as a fact ?—*A.* Simply for the purpose of keeping five people in the Company ; as each man went out he transferred them to another person qualified the directors.

Q. And who were those, do you remember ?—*A.* Stevens, Codd and myself, and I believe a son of Codd's, and Aird.

Q. And McMichael ?—*A.* Yes.

Q. The various draft agreements had been prepared and discussed on the Saturday previous, and this was on a Monday, the 16th of September ?—*A.* Yes. 40

Q. When were they submitted and discussed to Dr. McMichael Stevens and yourself ?—*A.* They never were submitted to me formally ; they were submitted to Dr. McMichael ; to the best of my recollection about three days prior to the completion Dr. McMichael practically lived in your office.

Q. Do you remember the first thing that was done when we got down to business on the 16th September 1889 ?—A. I cannot pledge my mind to what was the first thing we did, it was a long time ago ; I remember the construction contract being all prepared and ready for signature.

Q. You remember Exhibit 43, and you recognise the release on the back, Exhibit 64 ?—A. Yes.

Q. In your own handwriting ?—A. Yes.

Q. You remember its being brought out and some discussion as to how it should be dealt with ?—A. Yes.

10 Q. And the result was that Mr. Codd released it in that form ?—A. Yes, no doubt that is so.

Q. That was the first thing done on that occasion was it not ?—A. I cannot say, I say that was done on that day.

Q. Mr. Stevens, Dr. McMichael and yourself were all present when that was done ?—A. I have no doubt we were.

Q. That is Mr. Codd's signature to Exhibit 64 ?—A. Yes.

Q. Do you remember the discussion that took place with Mr. Codd and the others present before he would sign that release, any terms that he imposed at all in the matter ?—A. No, I really cannot pledge my memory to any.

20 Q. You told my learned friend that all along up to the time that the matter was to be consummated, as it was on the 16th September 1889, that Mr. Lewis had throughout refused to transfer the stock as paid up on behalf of his clients, but that he finally conceded the point ?—A. That is so.

Q. You remember the discussion that took place with respect to that at our meeting at our office previous to the director's meeting, the minutes of which are here ?—A. I am not absolutely positive whether I was present, my chief recollection is of McMichael coming to me and advising us as a matter of law we must have paid-up stock, but I don't know which interview you are referring to.

30 Q. McMichael told you it had been conceded by Charlebois and his friends ?—A. Undoubtedly he did, he said they had given away, he told us not to complete it unless they did.

Q. You did not hear them give way ?—A. No, except by their acts.

Q. Nor did you hear me give way in the matter ?—A. No, I don't know that I did, except as aforesaid.

Q. You don't remember the discussion that took place in the room previous to the passage of this first resolution on the 16th ?—A. No, my memory is not good enough as to that.

40 Q. Do you remember it being stated to Mr. Stevens that there existed an old resolution of the shareholders of the Company on the books of the Company which would enable a reasonable discount to be made on the shares ?—A. Yes, I quite remember that.

Q. What did Mr. Stevens say to that ?—A. As soon as that resolution was pointed out to us, a conference took place between Dr. McMichael and Stevens, and I think yourself and myself as to the legal effect of that resolution and what was a reasonable discount to apply under it, and I think we all came to the conclusion 25 per cent. would be the discount.

Q. You have already given evidence with respect to this agreement between

RECORD.

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Gregson

cross-

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Mr. Lewis

—continued.

RECORD. Clemow *et al.* and Charlebois respecting the conditions upon which the stock should be transferred?—*A.* Yes.

No. 107. *Q.* And the attesting clause is in your writing?—*A.* Yes.

Harold *Q.* The third clause is (Reads.) You remember that being discussed?—

S. Knight *A.* I can only say I remember its being mentioned, but I am afraid I cannot bind myself to say what was discussed beyond that I remember the point was mentioned.

Gregson *Q.* And you remember seeing the transfers of shares subsequently made out?—*A.* Yes.

cross- *Q.* This transfer of 16th September 1889, Exhibit 65, is Mr. Stevens' 10
examined by and Mr. Charlebois' handwriting?—*A.* Yes.

Mr. Lewis *Q.* And you will observe here in the body of it that stock is transferred to hold to said Charles Richard Stevens, his heirs, executors, administrators and assigns, subject to the same rules and orders, and on the same conditions that I held the same immediately before the execution hereof, without covenant or warranty whatsoever. Having that read to you, does that refresh your memory as to the terms on which the stock was transferred?—*A.* It does not refresh my memory at all. I am absolutely clear that the discount was granted prior to the execution for the purpose of making these fully paid-up shares, and it was understood by all parties they were conveying fully paid-up shares. 20

Q. This document and the other will speak for themselves?—*A.* That is a matter of law I suppose.

Q. I am merely referring you to these expressions in these two documents which you saw executed, in the hope that it might refresh your memory?—*A.* Those words do not refresh my memory; I don't remember how they came to be put in.

Q. Do you not remember Charles Richard Stevens stating that if the old directors would pass the necessary resolution as to the 25 per cent. discount that he would take the shares himself and take the responsibility of any payment up of the same?—*A.* I am afraid I don't recollect such a statement. 30

Q. Will you swear he did not say so?—*A.* No.

Mr. Bristol.—I object to the transfer, Exhibit 65.

Mr. Lewis.—*Q.* Did you go down to the bank with Mr. Stevens?—*A.* Yes.

Q. On the adjournment which took place about luncheon time?—*A.* Yes.

Q. And he drew these cheques, Exhibits 36 to 40, inclusive, in the Bank of Montreal?—*A.* I would not swear whether he drew them there or in your office.

Q. I want your memory on the point?—*A.* My memory inclines me to the belief that he did them at the bank. 40

Q. Who accompanied you to the bank?—*A.* Mr. Allan.

Q. One of the former shareholders?—*A.* Yes.

Q. Did Dr. McMichael?—*A.* No, the doctor did not, I think Mr. Allan, Devlin and Codd did; I will swear that Allan and Codd did, and I think Devlin.

Q. These five cheques, Exhibits 36 to 40, you notice are all drawn to bearer?—*A.* Yes.

Q. What did Mr. Stevens do with them when he had drawn and signed them down in the bank? You told my learned friend that they were deposited in another bank?—A. Yes.

Q. I want you to tell me from your recollection what he did do with them; the two banks are close together on the same street?—A. I am not able to speak with great positiveness about it, but it is running in my mind that Mr. Allan placed them to the credit of these different people.

Q. Where?—A. That I think I am unable to say. We went with Mr. Allan and got them marked good, and they were treated as cash and we handed them over to somebody.

Q. Did you go down with Mr. Allan to the bank?—A. I think I went to the Union Bank with Allan and Stevens.

Q. Can you depose as a fact to what was done in that bank on that occasion?—A. I am afraid I cannot depose accurately to what was done.

Q. The cheques are payable to bearer and no endorsement on them except that of the Union Bank, so they evidently reached the Union Bank, and now I ask you whether that refreshes your memory in any way?—A. I think they went to the credit of the Company at the Union Bank.

Q. By Mr. Stevens?—A. No, I won't say that.

Q. You told us you and he and Allan went down to the Union Bank?—A. Yes, that is so.

Q. What did you do then; did you go back to the office?—A. No, we adjourned to luncheon then.

Q. Charlebois was not present?—A. No, Charlebois was not present after we left your office.

Q. Were these cheques drawn and deposited as you mention previous to the passage of this resolution or after as a fact?—A. Which resolution?

Q. This resolution *quæ* the stock?—A. After.

Q. You are quite sure of that?—A. I am certain of it.

Q. Read the authority of Charlebois to the other shareholders to transfer their shares, Exhibit 66?—A. I read it.

Mr. Bristol.—I object to that document as evidence against us.

Mr. Lewis.—Q. You remember these shareholders were selling, as per this agreement you have read, to Charlebois himself, and not to Mr. Stevens?

Mr. Bristol.—I object to any questions founded on that, because it is using the statement of Charlebois, as evidence on his own behalf.

Witness.—I knew Charlebois had made the necessary arrangement with the other shareholders to transfer the stock.

Mr. Lewis.—Q. Do you remember those shareholders at the time previous to the transferring of their shares all objecting to doing anything that would seem to imply payment up in full of their shares personally?—A. I remember some discussion; I remember Mr. Murray was the person who discussed it, and as I said before, a legal discussion took place between yourself and Dr. McMichael principally, as to the legal effect of it, and it was agreed it was legal, and it was done.

Q. That is the passage of the resolution you refer to?—A. Yes, the resolution calling up the discount of 25 per cent.

Q. You remember, also, all these former shareholders objected to do any-

RECORD. thing in the way of transferring their shares warranting the payment up in full of their stock ?—*A.* I cannot say I recollect the question of warranty one way or the other being mentioned.

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—*continued.* *Q.* Don't you remember they stated that they were willing to pass this resolution for what it might be worth, and to transfer their shares in the form shown in the transfer I exhibited to you ?—*A.* Those words of warranty in ink I have no recollection of. I have seen hundreds of these under their Act, and they never had those words in ; and I don't remember how those words came to be there.

Q. Do you remember Mr. Stevens stating that he would assume the responsibility of taking the stock as it stood, if this resolution discounting the shares was first of all passed by the earlier directors ?

Mr. Bristol.—I object to Mr. Stevens' statement, as evidence against us.

Witness.—I have already answered that question in the negative ; I don't recollect Mr. Stevens ever accepting such terms.

Mr. Lewis.—*Q.* What then was the meaning of the insertion of the last clause in Exhibit 55 ?—*A.* I can only say I don't recollect the circumstances under which it was put in ; I think it is in your writing, and the lower part is in my writing ; it speaks for itself.

Q. Do you remember before or after the adjournment for luncheon Mr. Charlebois drawing his cheques and paying them to the different shareholders before they transferred their shares —*A.* I cannot say I do.

Q. After the execution of this construction and other contracts do you remember a discussion taking place which had been raised by Codd about his interest in the £200,000 ?—*A.* No discussion as to Codd's interest in £200,000 took place in my presence.

Q. Do you recollect the release signed by Codd and McMichael being executed on that occasion ?—*A.* I should like to see it.

Q. This is the release on the back of Exhibit 46 signed by McMichael and Codd ?—*A.* I am quite certain I never saw it or the release (Marked Exhibit 67).

Mr. Bristol.—I object to the document.

Mr. Lewis.—*Q.* Or do you remember the discussion ?—*A.* No ; I should not have prompted the writing of that letter, Exhibit 47, by Stevens if I had been present and known all the facts ; it is inviting inquiry.

Q. You prompted the letter Exhibit 47 ?—*A.* Yes.

Q. Prompted him in asking about this £30,000 or so which Codd stated he was entitled to receive ?—*A.* I had not the slightest idea of the amount, and as I was instructed by Stevens he had not either, but he did tell me he knew there were certain moneys coming to Codd which he said he had not the slightest idea what it was for.

Q. I merely asked you whether you prompted the letter ?—*A.* I did.

Q. What was the source of your information ?—The source of my information was from Mr. Stevens.

Q. Were you present when Exhibit 60, dated 16th September 1889, was executed ?—I don't think so.

Q. Were you present when it was discussed ?—*A.* Yes. Mr. Stevens submitted it to me and asked me what I thought of it, and I read it over before it was executed.

Q. I notice that clause 7 of it is struck out in pencil and there is no clause 7 in it. The clause struck out reads as follows: "The sum of £40,000 more or less payable to Codd out of the £200,000 is also to be held as security for the advance mentioned in clause 6." That is in Mr. Stevens' handwriting, is it not?—*A.* Yes.

Mr. Bristol.—I object to that document.

Mr. Lewis.—Q. Do you remember that clause being struck out?—*A.* I don't remember it actually being struck out, but I remember circumstances which justified them in having it struck out.

10 Q. I was merely asking you if you remember the fact?—*A.* I did not see it struck out.

Q. This document was executed on its date, the 16th September 1889?—*A.* I dare say it was; I did not see it executed.

Q. On the 16th September you, Stevens, and Codd were all in Ottawa when all these papers were signed?—*A.* Yes.

Q. And Dr. McMichael was there on the 16th?—*A.* Yes.

Q. On the 17th, the day following, you were present as a director at a meeting of directors with respect to calling a meeting about bonds?—*A.* Yes.

Q. Which took place at the Russell House, Ottawa?—*A.* I think it did.

20 Q. On the whole of the 16th inst., you, Mr. Codd, Mr. Stevens and the Doctor must have been in Ottawa?—*A.* Yes.

Q. Then it is quite clear to your mind this agreement must have been executed and prepared in Ottawa as made and dated on the 16th September?—*A.* I say I did not see it executed, but I still think it was executed a considerable time after the 16th.

Q. If it is sworn by others that it was executed and drawn at Ottawa on the 16th, would you be prepared to contradict it?—*A.* I cannot swear it was not; I am saying to the best of my belief.

30 Q. You were not present when it was signed?—*A.* No, but I have my reasons for saying I don't think it was.

Q. Do you recognize that handwriting, the endorsement on Cheque Exhibit 41?—*A.* Yes, that is the handwriting of Charles Richard Stevens.

Q. You stated you believed that these five cheques were drawn out of Mr. Delap's moneys; what reason have you for thinking so?—*A.* I knew they were Mr. Delap's moneys.

Q. How?—*A.* I knew it from my personal knowledge before leaving England; I knew Delap was mortgaging his assets in England.

40 Q. How did you know that the moneys in the Bank of Montreal which answered these cheques were Mr. Delap's moneys as a matter of knowledge; was it because Stevens told you so?—*A.* I would know in the same way that Stevens would know.

Q. How did he know and how did you know? There is moneys at the bank at Stevens' credit, and how did you know those moneys were Delap's?—*A.* Because three or four days prior to our coming we had been on pins and needles because we had not got the £50,000, and there was not, so far as we knew, a penny piece in the bank, and only half an hour prior to the completion

RECORD. on Monday we got a cable from England from some bankers in London, authorizing the Bank of Montreal to credit Charles Richard Stevens with £50,000.

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—continued.

Q. All you did know as a fact was that a credit of £50,000 was placed to Mr. Stevens' credit in the Bank of Montreal at Ottawa, and you knew that by being advised through a bank in London to that effect; that was the amount of your knowledge as to the fact?—A. That may be a legal way of putting it, but I certainly knew it was Delap's money; I knew where the money was coming from.

Q. You mean that you had reasons to believe before you left England that Delap proposed sending money?—A. Yes, and following that up I knew the 50,000 would not come without somebody's instructions. 10

Q. And you presume it was Mr. Delap's instructions that did it?—A. Yes.

Q. Did you bring the original of Exhibit 43 out with you?—A. I think so.

Q. Did you bring the original of Delap and Codd's agreement of 20th July 1889, out with you?—A. I think so.

Q. There was a copy of this Exhibit 43 annexed to the agreement of 20th July, or was the original annexed to it?—A. I don't remember what was annexed to it.

Q. I ask you this, subject to my objection; do you remember whether a copy of the agreement was annexed?—A. I cannot say whether one was annexed or not.

Q. You told my learned friend that you had frequently seen the original?—A. I told him I had frequently seen the copy. 20

Q. What written instructions had Mr. Stevens on his departure from England on this mission in 1889?—A. I saw no instructions in writing except the agreement of Codd and Delap, which has been put in.

Q. So far as you know there were no written instructions further?—So far as I know, but I had nothing to do with it.

Q. You would not swear there were none?—A. Certainly not.

Q. I see you were present at the meeting of directors in Ottawa on the 19th September, 1889. Read the resolution Exhibit 68, that was the meeting at which you were appointed secretary of the Company?—A. It appears so.

Q. On the 21st September you signed as secretary the document that you 30 proved a moment ago?—A. Yes.

Q. I notice that you seconded two resolutions on that occasion with respect to the Sproule contract?—A. Yes.

Q. And getting rid of Sproule and his associates?—A. Yes.

Q. And also a resolution confirming the Schiller arrangement, you seconded that resolution?—A. Yes.

Q. You told my learned friend a few moments ago that the new directors, of which you were one, did nothing to your recollection to facilitate the getting rid of Sproule and making the new arrangements. Looking at these resolutions now would you wish to correct your evidence to the extent of these?—A. No 40 doubt that is so in furtherance of the arrangement with Charlebois, that has been brought back to my mind since I gave my examination in chief.

Q. In furtherance of the original arrangement with Charlebois the new directors did all they could to facilitate the getting rid of Sproule and perfecting the further arrangements which those three documents executed on the 21st carried out?—A. Yes, it appears to be so.

Q. One of them was the Company's release of Sproule, which was executed under the Company's seal, which you proved a little while ago with your own

signature attached to it, dated the 21st. Here is another, Schiller and Macdonald's release and surrender to the Company, which the Company would stipulate for before they would release Sproule?—*A.* Yes.

Q. Do you remember the execution of that and Mr. Stevens being given an original duplicate of that along with the original duplicate, Exhibit 57?—*A.* I have no doubt this document, Exhibit 69, was executed, I cannot say I absolutely remember it being executed, but I have no doubt it was.

Q. Do you remember now having seen the contract concerning which all these resolutions were passed and concerning which all these papers themselves were prepared?—*A.* I have sworn to the best of my belief I have never seen the Sproule contract. I knew there was a Sproule contract, I did not know the terms of it, I knew it was necessary to get rid of it, and I knew of this being got rid of, I am perfectly certain I never saw it and did not know the terms of it.

Q. The first resolution passed on the 19th September 1889, refers to a memorandum of agreement between J. C. Sproule and Schiller, on 18th September 1889, respecting the transfer of the former's interest in the Sproule construction contract; that resolution was seconded by you, and do you remember what that memorandum was?—*A.* I could not identify it if I saw it.

Q. You have already deposed to Exhibit 51, the collateral contract *re* Sproule, you notice in the second recital that a copy of Sproule's construction contract was annexed thereto?—*A.* Yes.

Q. Have you any recollections as to whether on its execution it was or not?—*A.* No, I cannot say whether it was or was not; all I say is, I have never seen it; I suppose I should have seen it if it had been annexed.

Q. You mean you saw this collateral contract executed, but you cannot say whether the copy was attached to that or not at the time?—*A.* I cannot say whether it was attached or not; I was one of the directors, I suppose, who authorised the seal, and I expect I would have read it.

Q. You authorised the sealing of this agreement with Charlebois, with respect to the Sproule contract?—It embodied it.

Q. It is to be read with it?—*A.* Yes.

Q. Have you reason to suppose that you would have authorized the signing of any document respecting the Sproule contract, and referring to it as annexed, unless you and the directors had an opportunity of reading it?—*A.* I think it is an omission of duty more than anything else; I certainly never saw it.

Q. In Exhibit 58, Heads of Agreement between Charlebois and Codd, the words "Agreement of the" in paragraph 3 are in your writing, I believe?—*A.* They appear to be; also the words "an additional," in paragraph 5.

Q. The rest of the document is in Charles R. Stevens' writing?—*A.* No doubt.

Q. That endorsement on Exhibit 54 is also in Charles Richard Stevens' writing?—*A.* Yes. (Exhibit 70.)

Q. And is witnessed by you?—*A.* Yes.

Q. You remember seeing it signed by Charles Richard Stevens?—*A.* Yes.

Q. Do you recognize that letter of the 9th September 1889, from Charles Richard Stevens, to Charlebois, Exhibit 71?—*A.* Yes.

RECORD.

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Harold

S. Knight

Gregson

cross-

examined by

Mr. Lewis

—continued.

RECORD. *Mr. Bristol.*—I object to all these documents as evidence against the Plaintiff.

No. 107. *Mr. Lewis.*—*Q.* You recognize his signature and his handwriting to it ?—
 Harold *A.* Yes.
 S. Knight *Q.* Do you remember seeing it written ?—*A.* My own impression is I was
 Gregson present when he wrote it.
 cross- *Q.* Do you recognize that letter of the 9th September 1889, from Codd to
 examined by Mr. Lewis Charlebois, Exhibit 72 ?—*A.* I never saw the letter before.
 —continued.

(*Mr. Bristol* objects.)

Q. Did you not receive a duplicate original or Mr. Stevens receive a 10
 duplicate original of Exhibit 58 previous to the Company's releasing Sproule
 from the construction contract as per Exhibit 57 ?—*A.* I really cannot say ; I
 don't deny we received it, but I don't remember receiving it.

Q. Do you recognize that document as Mr. Stevens' handwriting, Exhibit 73 ?
 —*A.* Yes.

Q. Do you remember the occasion of it being written and signed ?—*A.* No.

Q. After the 24th of September the writing of this letter, Exhibit 47, you
 were with Stevens in Toronto, you finished that Canadian trip in Toronto ?—
A. Yes.

Q. You saw Dr. McMichael on that occasion ?—*A.* Yes, we did see him 20
 just prior to returning.

Q. I believe Dr. McMichael in his depositions stated he had a long
 interview with Mr. Stevens on the last day before his departure ?—*A.* Yes.

Q. Was this question of the £30,000 or £40,000 discussed then with the
 doctor ?—*A.* I don't think so, not in my presence.

Q. Had you no more curiosity about it ?—*A.* Speaking personally, do you
 mean ?

Q. Yes ?—*A.* I think I had done all that laid in my province, I wanted
 the information got and I was not satisfied, but it did not rest with me to push
 that matter any further.

Q. Did you as a matter of fact advert to it again ?—*A.* With Dr. McMichael, 30
 certainly not.

Q. This construction contract (Exhibit 49) initialled by Stevens as
 chairman, Clause 7, is in your handwriting, I think ?—*A.* Yes.

Q. You and he took it back with you to England ?—*A.* I don't remember
 whether we did or whether it was left in the custody of the Company, I am
 inclined to think it was ; a great many documents were left at the new registry
 office of the Company at Ottawa.

Q. Do you remember anything about it ?—*A.* I am inclined to think we
 did not take it back. 40

Q. Who did you leave it with ?—*A.* Codd.

Q. This letter of the same date, Exhibit 50, as to Charlebois taking bonds,
 it is written on Russell House paper at Ottawa ?—*A.* Yes.

Q. When you spoke of this having been written out by Stevens in the
 evening, I suppose that would be at the Russell House ?—*A.* It must have
 been.

Q. When you stated the arrangement from the outset was that

Charlebois was to take bonds, do you mean that was your understanding of it ?—*A.* Certainly.

Q. Who told you that ?—*A.* To the best of my belief, Stevens.

Q. You told Mr. Bristol that you had not seen Exhibit 56 before to your knowledge ; look at it and reflect again ?—*A.* No, I still say I never saw it.

Q. You stated Mr. Stevens told you that Codd had stated to him verbally that he, Stevens, should have half the shares ?—*A.* Yes.

Q. When was that Stevens first told you ?—*A.* I think coming out on the vessel ; it had not then been reduced to writing.

10 *Q.* The meeting of 7th October 1889, the minutes of which have been proved there, a resolution was moved by yourself that the contractor, Mr. Charlebois, having informed the Company he was desirous of giving orders, &c. how had he informed them ?—*A.* The information came through Codd.

Q. Had Charlebois written you any letter ?—*A.* I don't recollect having seen any letter ; Codd represented to us that Charlebois was desirous of the Company accepting orders.

Q. Were you present on any occasion when Charlebois had any conversation with Stevens about it previous to your meeting or after ?—*A.* No, I never heard of such a meeting.

20 *Q.* Were you present ?—*A.* No.

Q. On the 7th of October was the receipt for the rails, and Mr. Charlebois had been with you constantly for the previous three or four days ?—*A.* Previous to his actually getting the rails he had been to see us daily.

Q. And this meeting of the 7th of October 1889, was held at his request, was it not ?—*A.* To the best of my belief it was held expressly for the purpose for the passage of those resolutions which Codd had represented to us that Charlebois was to do.

Q. You personally had no conversation with Charlebois with respect to orders being given or authority being given ?—*A.* Yes.

30 *Q.* Your first personal knowledge came through Codd ?—*A.* Yes.

Q. Before you left for England, which I am instructed was on the 9th of October 1889, had you any conversation, previous to your resignation as director, with Charlebois about the contract for the second fifty miles ?—

A. I don't remember whether I was still a director or had gone out, it might have been the day previous to my leaving, but I do recollect Mr. Charlebois speaking, I expect it was to Mr. Stevens, in my presence about the contract for the second fifty miles ; I am afraid I cannot pledge my memory to what he said, but I do remember its being mentioned.

40 *Q.* Do you remember Mr. Stevens perusing any draft of that contract, settling the terms of it in any way, previous to his departure ?—*A.* I cannot say that I do.

Q. What was done with this £25,000 draft after it was signed by Codd ?—*A.* Sent him by Delap to accept ; Charles Stevens sent it straight home to his father.

Q. Wrote to his father and sent this with it ?—*A.* Yes, and I think cabled to his father.

Q. When you got back to England have you any recollection of what took

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—continued.

place with respect to the draft, did you see it accepted?—*A.* I think it has been accepted and returned.

Q. It was not there when you got back, to your knowledge?—*A.* Charlebois had got it by that time.

Q. When did you leave the service of Stevens, Bawtree and Stevens?—*A.* About a month after I returned from this Canadian business.

Q. Do you remember the occasion of a discussion in Toronto with respect to the price of steel rails having gone up between Codd, Charlebois and Stevens?—*A.* I remember it being mentioned.

Q. Do you remember how that was finally arranged or settled between 10 them, how matters should be equalised owing to the cost of rails having gone up?—*A.* Charlebois stipulated for some time a cash consideration but I don't recollect the amount.

Q. There was some \$28,000 of difference between them which Charlebois claimed was the difference in cost of rails at the date in 1889, and at the date of the original agreement in April 1888; do you remember how that difference was settled?—*A.* No, I don't recollect the amount.

Q. You don't remember how the discussion was ultimately settled?—*A.* No.

Q. Do you remember an arrangement being effected whereby Codd would 20 give an order on his interest under the contract?—*A.* It never came under my personal knowledge.

Q. Would you recognise the order if you saw it?—*A.* Probably.

Q. Do you mean that you have a recollection of any order?—*A.* What I mean is, if the document were shown me and if I saw it before I would probably recognise it, but I don't recollect having seen such a document.

Q. Were you present on the occasion of any interview when Mr. Stevens returned to England between him and Delap?—*A.* No.

Q. Were you in the office when Mr. Delap came in to see him after your return?—*A.* No. 30

Q. The result of the trip was not communicated to Mr. Delap in the office?—*A.* It was out of the office.

Q. Where?—*A.* In Mr. Stevens' rooms, at a family dinner party.

Q. Were you at that function?—*A.* No.

Q. Do you mean Mr. Stevens, senior, had rooms in London?—*A.* Yes, in town.

Q. He asked him to come and meet him there at dinner?—*A.* I don't know that I can say that of my own knowledge.

Mr. Bristol.—I am willing to admit that the documents being letters from C. R. Stevens and R. Stevens to James Bogle Delap or any of them mentioned 40 and set out in Mr. Delap's affidavit on production of the 6th March 1893, subject to the terms of that affidavit, were in fact signed by R. Stevens or C. R. Stevens, the parties by whom they purport to have been signed, to save Mr. Lewis asking Mr. Gregson to prove the signatures to those letters as if the originals were here present and produced under the notice to produce served by the Defendants' solicitors on the Plaintiffs' solicitors in this action, subject of course to all objections as to their admissibility in evidence against the Plaintiff which is not conceded, and subject also to any question of privilege that Mr.

Delap or the Plaintiffs may have not to produce the letters at all, or to the Defendants' right at all to have the original document produced by the Plaintiffs' solicitors if called on by him so to do.

Mr. Lewis.—Then I will not ask Mr. Gregson any questions with respect to these letters, the originals of which are not here.

Q. When the events transpired, leading up to the Heads of Agreement between Codd and Stevens of 16th September 1889, were you present at the talk or discussion that ensued between them?—*A.* No.

Q. What was your first knowledge of it, when it was handed to you for consideration, as you were telling us?—*A.* My first knowledge of the arrangement—

Q. I mean of the document?—*A.* When it was handed to me?

Q. Was that the first knowledge you had, when it was first handed to you?—*A.* I knew he was going to prepare such a document.

Q. You knew that on the steamer going out, as to some of the provisions?—*A.* I knew the broad terms of it, and afterwards he had a little difficulty in getting the document signed, I believe.

Q. Were you present at any altercation?—*A.* Only what Stevens told me.

Q. You did not hear any discussion on the subject?—*A.* No.

Q. Did you hear what took place on the occasion of its being signed; was there a talk, then, previous to ink being used?—*A.* I don't think I was present when it was signed; Stevens gave it to me to look at before it was signed.

Q. Was Codd there then?—*A.* No; how it comes to be in pencil and not ink, I don't know.

Q. Were any reasons assigned for the necessity of the making of this agreement at the time of its preparation, when it was submitted to you by Codd and Stevens?—*A.* No necessity was shown to me by Codd, but by Stevens; Codd was the grantor, it was Stevens' benefit to have it.

Q. Respecting the Montreal resolution to accept orders on the Company, will you say that Codd was present when the arrangement was made which culminated in the resolution?—*A.* Undoubtedly.

Q. I was informed that Codd was not in Montreal at that time, but arrived there at a later period; what do you say as to that?—*A.* I am perfectly clear in my mind that Codd instigated it, expounded to the Directors, that is to Stevens and me, the desirability of doing it for the benefit of Charlebois, and I certainly think that he drew the resolutions.

Mr. Lewis.—I have nothing more to ask him.

Mr. Beddall.—I have no questions to ask the witness.

Re-examination by *Mr. Bristol.*

Q. You recollect transfer (Exhibit 65) that was produced before you, had written in handwriting that you could not recognise, "without covenant or warranty whatsoever." Are you aware whether those words were in at the time the document was signed or not?—*A.* I cannot swear whether they were in or not.

RECORD.

No. 107.

Harold
S. Knight
Gregson
cross-examined by
Mr. Lewis
—continued

No. 108.

Harold
S. Knight
Gregson re-
examined by
Mr. Bristol.

RECORD.

—
No. 108.
Harold
S. Knight
Gregson re-
examined by
Mr. Bristol
—continued.

Q. Where were the meetings of Directors on the 16th September 1889, in fact, held?—A. The one where all the business was transacted was at Mr. Lewis' office, and the one I think in the evening at the Russell House.

Q. Was Charlebois at the meeting in the Russell House on the 16th September 1889?—A. No.

Q. Have you any recollection under what circumstances you wrote the witness clause in Exhibit 55?—A. No, I have no recollection otherwise, I have no doubt it was for the purpose of completing it at Mr. Lewis' office; I don't recollect at this length of time absolutely filling it in.

Q. Do you recollect the document apart from your recognising that you wrote the witness clause in it?—A. I was not familiar with it before I saw my handwriting.

Q. You were examined as to Clause 7, which is struck out in Exhibit 60; did you see it struck out?—A. I have no recollection of having seen it struck out.

Q. Have you any recollection of a discussion between Codd and yourself as to that clause?—A. I had no discussion with Codd on the subject of the agreement at all.

Q. Did Stevens discuss that clause with you?—A. Stevens discussed the whole agreement with me.

Q. You said that you thought that agreement was signed at the Windsor Hotel, Montreal; is that still your recollection?—A. That is my impression.

Q. What is your recollection as to the date of when it was signed?—A. I was not present, and I don't know when it was signed.

Q. When did you first see it at the Windsor Hotel?—A. My impression is it was submitted to me for signature, otherwise as it stands, at Windsor Hotel.

Q. When were you at the Windsor Hotel, before or after the 16th September 1889?—A. After.

Q. Do you know on what date you went to Montreal first?—A. I imagine four or five days after the 16th.

Q. When, in fact, did you get back to business in London?—A. On Monday the 20th or 21st of October.

Q. As regards these resolutions of 19th September 1889, to which Mr. Lewis called your attention, can you state who drew those resolutions, so far as you know?—A. No, I cannot bind myself to say who drew them.

Q. Were they drawn, so far as you know, by either Mr. Stevens or yourself?—A. No, they were not.

Q. Was Mr. Lewis present at that meeting, or anyone on Mr. Charlebois' behalf?—A. I fancy Mr. Lewis was present at it.

Q. Do I understand you to say you have never seen this contract, Exhibit 69, between Macdonald & Schiller, of the 21st September 1889, that you had never seen it before?—A. That is what I say.

Q. Do you recollect any discussion prior to the construction contract as to bonds being taken?—A. No discussion with Charlebois, as I recollect, prior to the contract being executed, but several conversations with Codd on that subject.

By *Mr. Lewis* :—

Q. The meeting you refer to at the Russell House in the evening consisted of yourself, Dr. McMichael and Stevens, I believe, and anyone else present that you recollect of ?—*A.* Charlebois was present.

Q. There was no Directors' meeting on that occasion, was there ?—*A.* My impression was there was no adjourned Directors' meeting.

By *Mr. Bristol* :—

Q. Look at the minutes of 16th September 1889 ?—*A.* I think I am wrong, it was the next morning, 17th September ; but the 17th was held at the Russell
10 House.

Q. There was no Directors' meeting at the Russell House on the evening of the 16th ?—*A.* No.

By *Mr. Lewis* :—

Q. When you say you think Mr. Lewis was present at the meeting of 19th September 1889, when those resolutions were passed, have you any recollection on the point where the meeting was held even ?—*A.* I cannot swear you were there or where the meeting was held.

By *Mr. Bristol* :—

Q. Did Charlebois in your presence at any time express any unwillingness
20 to take the bonds, as mentioned in that letter ?—*A.* Never.

Mr. Bristol.—I have no further witnesses to call.

Mr. Cartmell.—We have not had an opportunity of having Mr. Richard Stevens here, and we have adopted the course that seems to us to be the right course ; we have an order which is equivalent to a subpœna *duces tecum* of the country where the cause is to be heard, and we have the order under 22 Vic., Chap. 20, which enacts where a judge of this Court is satisfied that a commission has issued for the examination of witnesses that he may make an order that any witnesses named shall produce such documents as may be named in the order in the same way, with the same privileges as if it was at the trial of the action.
30 We have obtained the order as to Richard Stevens and Hewitt Stevens and now tender it, dated this date.

Mr. Bristol.—Has the order been served ?

Mr. Cartmell.—No, but we ask the Commissioner to adjourn to enable us to do it, which will be done forthwith.

Mr. Lewis.—I ask to recall Mr. Hewitt Stevens for that purpose.

The Commissioner.—Mr. Bristol states he has no further witnesses, and I therefore declare the Commission closed.

RECORD.

No. 109.
Harold
S. Knight
Gregson
re-cross-
examined by
Mr. Lewis.

No. 109a.
Harold
S. Knight
Gregson re-
examined by
Mr. Bristol.

RECORD. I certify that the foregoing are the depositions of the Right Honourable
 — Edric Frederick Baron Gifford, William D. Cansdale, John Griffin Bristow,
 Francis Hewitt Stevens, Robert Lothian Curzon, and Harold Strangeways
 Knight Gregson, given by them before me under the above-mentioned Com-
 missions, and taken by me in shorthand.

L. B. YOUNG,
Commissioner.

DEPOSITIONS of the Defendant, Alphonse Charlebois, taken on his Examination for Discovery in the Action on the 9th day of February 1893, and other days, before the Master at Ottawa. RECORD.

NOTE.—Those parts of the Depositions under heavy side lines were specifically marked and put in by the Plaintiffs at the Trial.

Mr. Cassels, Q.C., and Mr. Howland, Counsel for Plaintiffs.

Mr. McCarthy, Q.C., and Mr. Chrysler, Counsel for Defendant Charlebois.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
taken on his
Examina-
tion for
Discovery
in the
Action on
the 9th day
of February
1893, and
other days,
before the
Master at
Ottawa.

Alphonse Charlebois, called ; sworn and examined by *Mr. Cassels* :—

Q. What was your first connection with this railway ?—*A.* It was with
10 Senator Clemow and others.

Q. Had you any connection with the old Souris and Rocky Mountain
Railway Company ?—*A.* No.

Q. You came in later ?—*A.* Yes.

Q. At what time was it that you first had any connection with it ?—*A.* It
was about 1886.

Q. That would be, of course, prior to the granting of the charter ?—*A.* Well,
we made application in 1886.

Q. That is the first connection you had with the Company ?—*A.* Yes.

Q. At the time you were making application for the charter to take up the
20 old Souris and Rocky Mountain Railway ?—*A.* Yes.

Q. And you were associated then with Senator Clemow ?—*A.* Yes, and
Mr. Bate, Mr. Murray, and Mr. Allan.

Q. Then Mr. Devlin came in ?—*A.* Yes, later on Mr. Bate withdrew and
Mr. Devlin took his place.

Q. And you five composed the whole of the Company ?—*A.* Yes.

Q. And applied to the Government for the charter referred to in the statute ?
—*A.* Yes.

Q. The first Act was in 1886, I see ; that was confirmed in 1888 by the
Dominion statute ?—*A.* Yes.

Q. That was a road apparently from Brandon running north-westerly ?—
30 *A.* Yes ; it was from Brandon to Battleford.

Q. I see the terminus in the statute of 1886 is Brandon station ?—*A.* I do not
know if it was Brandon station at that time. It was a few miles from Brandon
station.

Q. In 1886 I notice Brandon was the terminal ?—*A.* It was the intention
to bring it later on to Brandon.

Q. That is by an independent entrance into Brandon ?—*A.* Yes.

Q. By the west, if I remember rightly ? That was to cross the river by

RECORD. bridge and go in on the west, into Brandon station, of the C. P. R. Company ?—

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

A. Yes.

Q. There was only one station in Brandon at the time ?—A. Only one.

Q. That is the original C. P. R. station ?—A. Yes.

Q. Somewhere about Tenth-street ?—A. Yes.

Q. You gentlemen were the only stock-holders of the Company. You have given me all the members of the Company ?—A. That is all.

Q. And Mr. Bate, you say, dropped out and Mr. Devlin took his place ?—

A. Yes.

Q. Do you remember when that occurred ?—A. Not long after ; I cannot 10 say exactly.

Q. Somewhere about 1887, was it not ?—A. Yes.

Q. I think the stock was five hundred thousand dollars (\$500,000) ; that is five thousand shares of one hundred dollar shares ; one hundred dollars was the par value, was it not ?—A. The stock was five hundred thousand dollars (\$500,000).

Q. Do you recollect what proportion of the stock was held by the different gentlemen you have named ; was there any change in the holding up to the time you assumed the contract, in September 1889 ?—A. There was no change, so far as I can remember. 20

Q. The holding was the same from 1886, with the exception of Mr. Devlin taking Mr. Bate's place, right down to September 1889 ?—A. Yes.

Q. And how many shares did you hold ?—A. Seven hundred shares.

Q. Who composed the directorate of the road ?—A. The five.

Q. That is to say, they were not merely stock-holders, but you were all directors of the road as well ?—A. Yes.

Q. Who was the president ?—A. Senator Clemow.

Q. Was there any vice-president ?—A. There might have been ; I do not remember.

Q. Was there a secretary of the road ?—A. Yes. 30

Q. Who was the secretary ?—A. Mr. Allan.

Q. He also being a director ?—A. Yes.

Q. In September 1887, I see from your defence, you five directors, acting for the railway, made a contract with Mr. Sproule ?—A. Yes.

Q. That is a contract that is dated the 12th of September 1887 ?—A. Yes.

Q. That contract is a contract which provided this way—in the third paragraph—there had been a Government specification, as I understand ?—A. Yes.

Q. What was the Government specification ?—A. There was a specifica- 40 tion attached to Mr. Sproule's contract.

Q. But before Mr. Sproule came on the scene at all there seems to have been some Government requirement in order to earn the land grant ?—A. Mr. Sproule had nothing to do with that.

Q. I am perfectly aware of that.—A. I would prefer you to put each question separately.

Q. We will put Mr. Sproule out of the question. I refer simply to the

date of Mr. Sproule's contract?—*A.* Anything about Mr. Sproule's contract I will give you, and then we will come to the land grant afterwards. RECORD.

Q. Now we will leave Mr. Sproule and start with the date of Mr. Sproule's contract—the 12th September 1887. The Government's and Mr. Sproule's contract are the same date?—*A.* The Government's and Mr. Sproule's contract are the same date. No. 110. Depositions of the Defendant, Alphonse Charlebois, &c.—

Q. There was a contract with the Government, was there?—*A.* Yes. continued.

Q. Bearing date the 12th September 1887?—*A.* Yes.

Q. That was this contract which I have in my hand, and those are the specifications attached to it? (*Filed as Exhibit "A."*) That is the original of the Great North-Western Central Railway Company's contract with the Government?—*A.* I cannot identify Mr. Allan's signature.

Q. It looks a little like it, does it not? You know John Henry Pope's signature?—*A.* I am not familiar with Mr. Pope's signature, either.

Q. You would not like to swear to that?—*A.* I have no doubt it is all right, but still I will not swear positively to Mr. Allan's or Mr. Clemow's signature.

Q. All I wanted to get at was that at that date there was a contract with the Government?—*A.* Certainly.

Q. Between the Government and the Company, and I put in what I tell you is the original, but you say you do not know that it is—we may have to prove that another way. That contract speaks for itself. It says—at that time there apparently was an alternative route given to the railway—that is to say, they might tap the Manitoba and North-west?—*A.* I do not know about those particulars.

Q. But the route that was adopted was the one, at all events, from Brandon. Now that was the Government contract upon which the land grant was to be earned—that is to say, upon completion?—*A.* I presume so.

Q. You are one of the directors of the Company?—*A.* I never meddled much with these things. I had confidence in my partners.

Q. You would not be a director of the Company and not meddle?—*A.* I am a director in a good many companies and I do not meddle much with them.

Q. However, the next step after getting this contract with the Government was to enter into a contract for the building of the road?—*A.* Yes.

Q. And thereupon a contract was executed between the Company and Mr. Sproule?—*A.* Yes.

Q. And that contract bears date the same day as the Government contract?—*A.* Yes, the 12th September 1887.

Q. That was for performance of part of it; that is partially constructing the first 50 miles?—*A.* Yes.

Q. Certain things were omitted from Mr. Sproule's contract?—*A.* He had nothing to do with the ballasting the rails, the fencing, and the buying of right of way.

Q. But in this contract you provided this way by the third clause: "The contractor will at his own expense provide all and every kind of labour, machinery and other plant, materials and things whatsoever necessary to fully execute, construct and complete according to the Government specifica-

RECORD.

No. 110.
Depositions
of the
Defendant,
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Charlebois,
&c.—
continued.

tion attached to the Government subsidy contract with the Government, and according to the requirements of the said subsidy contract, and according, further, to the specification, profile, plan, schedule and tender hereto or hereafter to be hereto annexed and which are now hereafter prepared and hereto attached, subject to modification, alteration or addition by the chief engineer from time to time, and shall form part and parcel of this contract, &c., &c.” That contract apparently did not limit Mr. Sproule to the standard of the Government specification?—*A.* Well, I will tell you, as far as Mr. Sproule is concerned, whatever he had undertaken to do, the part that he had undertaken to do, he had to do it according to the specification and to the satisfaction of the engineer 10 of the railway.

Q. What I call your attention to is this, you were one of the directors of the Company at the time, and you were a party to the letting of this contract to Mr. Sproule?—*A.* Yes.

Q. I call your attention to this fact, that under Mr. Sproule’s contract the Government specification was not the standard as between Mr. Sproule and the Company—the standard was a higher standard—he had certainly to do it in accordance with the Government specification, but he had to do something more?—*A.* Who, Mr. Sproule?

Q. Yes?—*A.* In what way?

Q. I have read the clause, I will read it again. (*Clause repeated*)?—*A.* All that Mr. Sproule was obliged to do under this contract, and that is all that could be taken from it; that is, that he was obliged, for a portion of the work that he had undertaken, to do it according to the specification attached to our contract with the Government.

Q. The contract does not say so?—*A.* That is my understanding, and that is the way it was done.

Q. That is the way it was done, but that is not what the contract was. At all events, what you say is your understanding of Mr. Sproule’s contract is, that he was simply to do it up to the standard of the Government specification?—*A.* We had to do it to the specification and to the satisfaction of the engineer of the Company as well. Mr. Sproule had nothing to do with the Government contract.

Q. When this contract with Mr. Sproule was let did you see the plans and profiles that were submitted and made part of the contract?—*A.* I might, but it has passed out of my mind.

Q. Mr. Sproule was getting 4,000 dollars a mile?—*A.* He was to get 4,000 dollars a mile for what he undertook to do.

Q. And from his contract was excluded the purchase and delivery at Brandon of rails?—*A.* That was excepted.

Q. Perhaps you can tell me what the rails amounted to?—*A.* About 86,000 dollars at Montreal.

Q. What would it be at Brandon?—*A.* I think all the freight paid was about 78,000 dollars for rails, fish-plates and everything. All the freight from Montreal to the works.

Q. What did the rolling stock cost?—*A.* The rolling stock cost about 35,000 dollars.

20

40

Q. And the fencing ?—*A.* The fencing cost about 13,000 dollars.

Q. And the train ballasting—that never was done, I believe ?—*A.* I cannot tell you exactly about the ballasting.

Q. Do you know, roughly speaking, how much it was ?—About 26,000 dollars.

Q. Was Sproule to furnish the right of way ?—*A.* No.

Q. That was not included ; that was to be furnished by the company ?—*A.* Yes.

Q. How much did the right of way cost ?—*A.* In the neighbourhood of 10,000 dollars or 11,000 dollars.

Q. Then Sproule's contract embraced everything except the purchase of properties, and delivery at Brandon of the rails, fish-plates, and spikes necessary, which we have got down, according to your figures, at 86,000 dollars, plus the 78,000 dollars ; what about the fish-plates and spikes ? Was that included in the 86,000 dollars ?—*A.* No, that was about 20,000 dollars more.

Q. Are you quite sure of these figures ?—*A.* I am quite sure what it cost ; well, I will not swear to the dollar. There were about 20,000 dollars of fish-plates and spikes sent there to Brandon.

Q. At all events, his contract comprises everything with the exception of the rails, fish-plates spikes, rolling stock, fencing, train ballasting—and what about right of way ?—*A.* The contract specifies what was accepted.

Q. I have a memorandum here which seems to show the exceptions ?—*A.* There is the engineering ; he had nothing to do with that.

Q. What would that come to ?—*A.* It must have cost very close on 15,000 dollars.

Q. Then Sproule went on with the contract, I believe, for some time ?—*A.* Yes.

Q. And if I read the papers aright, the stoppage of his work was by the Company ?—*A.* Yes.

Q. That is, the Company seems to have reserved the contract for themselves, to stop this work ?—*A.* Yes.

Q. And the work was stopped under that authority by the company ?—*A.* Yes.

Q. Did he commence the work ?—*A.* Certainly he commenced the work.

Q. How long did he proceed ?—*A.* For a year, I suppose, or eighteen months. I cannot exactly say, but I know he began after September 1887. What the date was when he started I cannot exactly say.

Q. He was to get, I see, 4,000 dollars per mile for the work ?—*A.* Yes.

Q. That went on as you say, and the company themselves suspended the work ; that was not through any default, as far as I can see, on Sproule's part ?—*A.* I think the Company suspended the work for a while.

Q. But it was not the fault or default of the contractor that occasioned that stoppage ?—*A.* No, it was not through the contractor.

Q. Do you know how long the work was suspended ?—*A.* I do not think it was suspended until 1889.

Q. When did he cease work under direction of the Company ? When was

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No. 110.

Depositions
of the
Defendant,
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Charlebois,
&c.—

continued.

RECORD. the work on the ground stopped ?—*A.* I cannot exactly tell you the date when
It was stopped, but I know it was not until September 1889.

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Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. It was not resumed until what date ?—*A.* After September 1889.

Q. At all events Sproule's contract, as we see, was for \$4,000 a mile for the 50 miles ?—*A.* For whatever he had to do.

Q. In April 1888, the directors were the same as before that ?—*A.* Yes, with the exception of Mr. Bate.

Q. Mr. Bate going out and Mr. Devlin coming in ?—*A.* The same directors.

Q. Then Mr. Codd apparently comes on the scene, as far as one can gather 10
from these papers, that is on the 9th April 1888. Do you remember the agreement made on that date ? That was the next contract that was entered into ; you were a party to that ?—*A.* Do you call that a contract to build the road ?

Q. I do not call that a contract to build the road ; I call it a contract ?—
A. agreement.

Q. Well, call it an agreement ; that was the next agreement ?—*A.* As far as I can remember about this affair, Mr. Codd came several times to see us and complained that he had a large claim against the old Souris Railway, that he had spent lots of money there, and that he was in company with an old gentle- 20
man named Young in Toronto. He claimed that he had a large claim against the Company and threatened to sue us.

Q. There was an agreement made with Murray in London ; what I want to get at is, there was that agreement. That is, was the agreement of the 9th April 1889 ?—*A.* Yes.

Q. That agreement was, that the shareholders agreed to complete and build the road as required by the Government specification, and to hand over to Codd their shares with the road completed for £200,000 sterling ?—*A.* They were to complete the first fifty miles.

Q. When I am talking of the road I am not dealing with anything more 30
than the first 50 miles ?—*A.* According to this agreement we were to transfer the whole franchise to Codd or his nominee with the first 50 miles completed.

Q. In consideration of £200,000 sterling ?—*A.* Yes, £200,000 sterling.

Q. That was the effect of this bargain ?—*A.* In consideration of \$800,000.

Q. The consideration was to be £200,000 sterling, out of which Codd was to receive an honorarium ; you are cognizant of that agreement ?—*A.* Yes.

Q. And a party to it ?—*A.* Yes.

Q. Both as a director and as a shareholder of the Company ?—*A.* Yes.

Q. The fact was this : the amount that was to be paid was £200,000 sterling, but the shareholders, as between themselves and Codd, agreed 40
to receive \$800,000, and give him the difference. According to that contract, at all events, the road would have been completed up to the Government specification, the first 50 miles of the road, or would be handed over to Codd together with the stock, and the shareholders receiving £200,000 ; that was the contract ?—*A.* Yes.

Q. And that was the contract that the directors of the road, including yourself, deliberately entered into?—A. Yes. RECORD.

Q. Of course you knew what that meant at the time?—A. Yes. No. 110.

Q. The result of that contract, if it had been carried out, would have been that, so far as the Company is concerned, the first 50 miles of the road would have been fully equipped, and there would have been no charge against the Company at all, other than the paid-up stock?—A. What do you mean by that? Depositions of the Defendant, Alphonse Charlebois, &c.—

continued.

Q. I mean this—if you had built and equipped that road——?—A. If the Company had. continued.

Q. If the shareholders had?—A. The shareholders could not have built it when that was signed, because they were under contract with Sproule. I know what you are fishing for, and I know the answer.

Q. I am not fishing?—A. Yes, you are; you are trying to show that the rolling stock which the contractor put there was probably not sufficient.

Q. I never thought of rolling stock. The season for fishing has not come yet, and the fish that rises through the ice is sometimes caught the wrong way. I want to get at the history of the matter as you know it?—A. The idea is this: the contractor is obliged to do what he agrees to do, and no more; and the Company sometimes is obliged to do more than the contractor, to meet the requirements of operating the road. When the C. P. R. or any other company give a contract they do not expect the contractors to do more than they are obliged to do by the contract.

Q. Now I am going to read you this contract. [*Contract read.*] Now, that is the contract?—A. Yes.

Q. The contract, then, was that you would build and equip up to Government requirements the first 50 miles of the road?—A. Yes.

Q. And having done that, you would assign all the stock in the Company to Codd on receiving £200,000; that was the position, was it not?—A. Yes.

Q. If that had been carried out, the first 50 miles would have been built and equipped up to the Government standard?—A. Up to the Government specification.

Q. That would have been the position?—A. Yes.

Q. And you were to hand it over free of all charges to Mr. Codd?—Yes.

Q. Then the result of that contract being carried out would have been that the first 50 miles of the road would have been built up to the requirement of the Government specification, and there would have been no charge against the road except the 500,000 dollars of stock?—A. That is all.

Q. And that is the position that the shareholders of the Company by the agreement desired to place the road in?—A. At that time.

Q. At that time I am talking of, that was the position?—A. Yes.

Q. That was an agreement made with Mr. Codd or his nominee; he had been in England at the time apparently?—A. Yes.

Q. And Murray also had been in England?—A. Yes.

Q. In fact, Murray had taken over a power of attorney from the different shareholders in order to represent you in England?—A. Yes.

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of the
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Alphonse
Charlebois,
&c.—
continued.

Q. And their mission to England was apparently to procure English capital?—*A.* Whose mission?

Q. Codd and Murray's?—*A.* Murray did not go with Codd at all; Murray went over some time afterwards.

Q. But, when he followed him, their joint mission was to procure English capital?—*A.* I could not say that. Murray went on a pleasure excursion, and at the same time to meet Codd in reference to it.

Q. And you knew that what he was endeavoring to do was to get English capital, did you not?—*A.* Who, Codd?

Q. Yes?—*A.* Yes.

Q. He had not £200,000 sterling himself, or has not now?—*A.* I do not know anything about that.

Q. Of course this document refers to the cablegram as it came from Codd in a previous year?—*A.* That telegram was from Codd when he was on the other side. It was then that the agreement took place, and then he went back.

Q. And Murray was given power of attorney?—*A.* Murray expressing his intention of going to London to spend a few months there, we gave him power of attorney to deal as he thought proper with Codd.

Q. The power of attorney had been given after receipt of this cablegram and before the agreement was entered into. The power was dated the 6th of March 1888. (Power of attorney read). That is the power of attorney you signed. Now you knew that Codd and Murray were dealing with English capitalists, as the power of attorney recites?—*A.* I knew nothing about what took place on the other side.

Q. I am not saying about details; all I say is that you did know, because you signed a document which recites it—that Codd and Murray were dealing with English capitalists for the purchase of the shares?—*A.* All I knew was that Murray was on the other side.

Q. You knew that they were on the other side and that they were endeavouring to raise money on the other side?—*A.* I do not know that.

Q. I have read you your own document. Was Murray only over there accidentally?—*A.* We did not send him there. That is what we heard from Murray.

Q. And on that you sent him a power of attorney?—*A.* Yes.

Q. And a power of attorney you understood before you executed it?—*A.* Yes.

Q. Then it is a fact at all events that you must have known at that time that they were dealing with English capitalists for the purpose of raising money, and you knew that James Murray was dealing with English capitalists?—

A. All that I know was this—I knew that Mr. Codd was in London, pretending at the time he left, that he had some financial man in view, and Mr. Murray was there and wrote us that he had met Codd—I have not got the letter—wrote us something that induced us to send him that power of attorney, but I really do not know that Murray had anything to do with the financing of Mr. Codd.

Q. But the power of attorney was sent to Murray for the purpose of enabling him to carry out what is stated in it—to get the money if it

could be got, and to get what security could be got. Who is Mr. Treharne ?— **RECORD.**

A. I do not know. I never heard that name before.

Q. Do you know Murray's signature ?—A. Yes, I know his signature.

Q. Is not that his letter to Codd now shown to you ?—A. I believe it is.

Q. And that is a letter written on the 9th of May, 1888 ? (Letter read and marked exhibit " B.")

Objected to as Mr. Murray was not the agent of Mr. Charlebois at that time.

Objection reserved.

10 A. I did not know anything about that.

Q. I read you that letter of Murray's which referred to the bond. You executed another document on the 6th of March 1888. (Filed as Exhibit " C.") Mr. Clemow, Allan, Charlebois and Devlin all signed it ?—A. Yes, I remember that.

Q. That was an agreement by which out of the £200,000 sterling, the difference between 800,000 dollars and £200,000 sterling was to be paid to McMichael as trustee for Codd ?—A. Yes.

Q. That was a deduction that would be going to the other shareholders under the other agreement, as I understand ?—A. I understood it was in con-
20 sideration.

Q. Never mind the consideration. I have read you the other agreement of the same date under which the shareholders were to build the road and assign their stocks upon getting £200,000 sterling ?—A. Yes.

Q. That is the agreement I dealt with and passed by ?—A. Yes.

Q. This that I have read is an agreement that out of the £200,000 sterling that you were to get under the former agreement the shareholders agreed to hand over to McMichael, for Codd, the difference between 800,000 dollars and the £200,000 sterling ?—A. Yes.

Q. So that would reduce what would be coming to you under the other
30 agreement to 800,000 dollars ?—A. Yes.

The defendants' counsel agree to admit the copies of the documents referred to in the evidence.

Q. That simply meant that instead of the shareholders of the Company getting the £200,000 sterling for their stock after building the road that they would get 800,000 dollars ?—A. Yes.

Q. And that they would allow Codd 173,000 dollars (\$173,000) ?—A. Yes.

Q. There is another thing in this agreement I call your attention to—that letter of Murray's in regard to the bond. Now this goes on, " We further consent and agree to pay the said John Arthur Codd the sum of £50,000
40 in cash, &c."—now that was a contemplated payment of £50,000 cash ?—

A. I suppose so.

Q. While the shareholders here agreed to pay Codd a commission of 173,000 dollars in the event of the sale going through you were careful to guard against admitting any liability on the part of the Company or anybody else through Codd in the event of it not falling through ?—A. In which way ?

Q. You did not recognise any claim on the part of Codd ?—A. Of course, if he did not succeed.

Q. I understood that there had been a deposit in the hands of the Govern-

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RECORD. ment to meet the claims ?—*A.* Yes, there was 50,000 dollars put in the hands of the Government.

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&c.—
continued.

Q. I know I had a large claim against it in connection with the Souris Railway ?—*A.* Yes. That was not my part.

Q. You knew there was 50,000 dollars deposited with the Government for the settlement of claims ?—*A.* Certainly, I did not. That 50,000 dollars put in the hands of the Government was as much for the security of the building of the road as for guaranteeing old debts

Q. If I am rightly informed, Mr. Lewis was the solicitor named by you to settle those claims ?—*A.* I think so. 10

Q. And he was your appointee ?—*A.* Yes, but we had our attorney there.

Q. I am aware of that ; I only asked about Mr. Lewis ?—*A.* Sometimes I was not present.

Q. I think I am right in stating that Mr. Codd's claim has never been recognised by the Government ?—*A.* I cannot say anything about that.

Q. I suppose you never knew what Mr. Codd's claim was even ; did you ever know the details ?—*A.* I knew that I met Mr. Codd very often at Mr. Clemow's office, and he was very anxious that we should recognise his claim and a gentleman named Young from Toronto.

Q. But he had never done anything towards the construction of the road ? 20
—*A.* He said he advanced money to sub-contractors ; that he was in with some sub-contractors.

Q. He had advanced to them ?—*A.* I do not say ; but he was mixed up with them.

Q. As a sub-contractor ?—*A.* No.

Q. He had advanced to them ?—*A.* I understood him to say he had made large advances in connection with the Souris and Rocky Mountain Railway ; I did not go into details.

Q. But you were aware that he had never been a party to any contract for the construction of the railway ?—*A.* I am not aware of it. 30

Q. You never bothered your head about it one way or the other.—*A.* I never bothered my head about it further than the other. I knew that Mr. Codd pretended he was a creditor, and he knew there were a good many others pretended to be.

Q. You knew, of course, because I fancy you were at the head and front of it ; that when you got the charter and the Act, you had limited the claims to claims connected with the construction of the road ?—*A.* I do not know exactly how it was arranged.

Q. At all events as a director you never admitted Mr. Codd's claim ?—*A.* I do not think I did. 40

Q. And the Company never did ?—*A.* I cannot say.

Q. To your own knowledge ?—*A.* Not to my own knowledge.

Q. To your knowledge, and you were one of the directors, the Company never admitted Mr. Codd's claim ?—*A.* I do not think so.

Q. In this document that I refer you to, you take occasion to guard against there being any admission of the validity of his claim in the event of that sale not going through. At all events, as far as you knew—we can leave it there—Mr. Codd's claim had never formally been put forward in figures, &c., and

recognised by the Company as far as you knew ?—*A.* All those claims had to go to the Government. I do not know what they did with them.

Q. But the Company had never admitted, as far as you know, any claim by Codd ?—*A.* Not that I remember.

Q. The next thing after this was what he had referred to, that was the agreement of the 9th of April, 1888. Up to this time Sproule had never been got rid of ?—*A.* Up to the present time ?

Q. Up to the time we are talking of, April, 1888 ?—*A.* No.

Q. His contract was still in force with the Company, for the completion of 10 the work that he had undertaken to do for 4,000 dollars a mile ?—*A.* Yes.

Q. Then things went dawdling on apparently ?—*A.* Yes.

Q. You still remaining a director ?—*A.* Certainly.

Q. Until you came on the scene in a different character ?—*A.* Yes.

Q. When did you retire from the directorate ?—*A.* I retired from the directorate on the 16th of September, 1889.

Q. Up to that date you were still a director ?—*A.* Certainly.

Q. And still a shareholder ?—*A.* Yes.

Q. And taking part in the management of the affairs of the Company ?—*A.* Yes.

20 *Q.* And, before you retired, you made yourself pretty secure, apparently ?—*A.* Which way ?

Q. By a document of the 9th of September, 1889. You had heads of agreement prepared between yourself and Mr. Codd (filed as Exhibit "D.") before you retired from the directorship ; and while you were a director you had secured yourself in this way by having heads of agreement with Mr. Codd ?—*A.* Yes.

Q. Under that, Mr. Charlebois agreed to arrange with Mr. Clemow, Mr. Allan, and Mr. Devlin, that they would assign to him all their interests in the undertaking, &c. These rails referred to here had been got, I suppose, supplementary to Sproule's contract. Sproule's contract was limited ; he was not to 30 finish the rails ?—*A.* No.

Q. In the meantime, apparently, the Company had gone on and got the rails ?—*A.* They got the rails afterwards.

Q. I mean to say, between the date of Sproule's contract and the 9th of September, the Company had evidently purchased the rails ?—*A.* No.

Q. How did the rails get to Montreal ?—*A.* I do not know if I am allowed to explain, but I may say that, previous to the 9th of September, we went to Toronto at the request of Mr. Charles R. Stevens and Mr. Codd, to meet them there in reference to a former arrangement. Mr. Clemow, Mr. Allan, and, I 40 believe, Mr. Lewis, came up to Toronto to see what Mr. Codd had to say or offer. When we got there, after a good deal of talking, they declined to have anything to do with it ; and they said that the time had expired, and they were not satisfied. They got away ; went away to Ottawa. This was on a Saturday night. On the same evening I met Mr. Stevens, and Mr. Stevens asked me if I would not undertake to do the thing. I said it would depend altogether. There was only Mr. Devlin, Mr. Allan, and Mr. Clemow that had

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RECORD. refused. I wanted to see Mr. Murray, and see if he would not undertake to join me and build the road, and buy the interest of the other three.

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Charlebois,
&c.—
continued.

Q. I see you set that out in your answer, and I do not understand the purport of it. This agreement with Mr. Codd, of 1888, was apparently subsisting, but Mr. Codd had been late in his payments apparently?—A. Mr. Codd did not come to terms.

Q. He had not come up to the time prescribed in his contract for the payment of the money?—A. Yes.

Q. He was to pay £ 50,000 within a certain time?—A. One month.

Q. And Mr. Codd did not furnish the £ 50,000 within the month?— 10
A. No.

Q. But he eventually came forward and offered to give the £ 50,000 ?
—A. I think he was put on demurrer—that he was too late when he came forward, but still we thought there was no harm in going to see what his proposition was.

Q. If I have read your statement of defence right he was willing then to carry it out, but that the shareholders were not willing to carry out their part of the bargain, the time having gone by?—A. And they had some other reasons. (Statement of defence read.)

Q. That statement, I suppose, is true?—A. Yes.

Q. Is it the fact then that during the summer of 1889, Mr. Codd, with the English representative of the English capitalists, informed the five shareholders that he was willing to carry out the terms of agreement and pay down the £ 50,000 ?—A. Yes.

Q. That is true, is it?—A. Yes.

Q. And the shareholders then declined to carry out the bargain?—A. They declined to accept it.

Q. Who was Mr. Gregson?—A. He was a young gentleman that he brought from England.

Q. And Mr. Stevens was an English solicitor apparently?—A. Yes. I 30 think that that young Mr. Gregson was in their office, too.

Q. And Mr. Stevens came with Mr. Codd with a view, I suppose, of vouching for Mr. Codd's sincerity?—A. I could not exactly say if Mr. Codd and Mr. Stevens came in the same steamer.

Q. I do not mean the steamer—I mean your meeting. When they met you at Toronto, Mr. Stevens was there in order to assure the shareholders of the probability or the likelihood of the contract being carried out—that is what he was there for?—A. He was there for that purpose.

Q. At that time it was told to you, and the other shareholders, that the £ 50,000 was ready to be paid over?—A. I suppose so.

Q. That is the way you have put it in your defence, and you have sworn that it is true—that they were there and told you that the £ 50,000 had been procured?—A. Certainly.

Q. And you were aware that that £ 50,000 had been procured in England ?
—A. It might have been from France for all I know.

Q. You think it might have been from France—you knew it was English money of course?—A. I knew they paid £ 50,000 afterwards.

20

40

Q. And you know that that money came from England ?—A. I was told so. I did not go to the bank to ascertain, or inquire where it came from. RECORD.

Q. However, the point we are at now is this, that in the summer of 1889, at all events, you were told by Mr. Codd, and these others, that they were ready to carry out the agreeemnt ?—A. Certainly. No. 110.
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Q. I have already called your attention to the fact that if that agreement had been carried out the 50 miles of road would have been completed as required by the Government, the land grant earned, and there would have been no charge against the railway at all ; that you have already stated ?—A. I suppose so. continued.

Q. You and the others rejected Mr. Codd's proposition then ?—A. Yes.

Q. And stated that the time had gone by ?—A. Yes.

Q. What other reason had you ?—A. Well, they were not satisfied.

Q. Who were not satisfied ?—A. Our attorney was not.

Q. The shareholders thought they ought to get more ?—A. I do not think so.

Q. I want to know what your other reasons were that you alleged in your answer ?—A. I do not think they wanted more than the amount.

Q. What are the other reasons of the shareholders that you set forth in your defence ?—A. That the time had elapsed, and I suppose we were not quite satisfied with Mr. Codd's security ; something like that.

Q. Can you state anything explicitly ?—A. I cannot remember everything exactly.

Q. You have sworn here to a specific reason, namely, that the time had elapsed, and you add in your defence other reasons. You have not given details of those reasons, and I want to get what they are, if you have any ?—A. I could not tell you exactly.

Q. Can you give me now, at all, what you mean by the other reasons in your defence : " Arrived from England and informed the five shareholders " ; that includes yourself ?—A. Yes.

Q. " But the said five shareholders " : that includes yourself ; " refused to do so, inasmuch as the time had expired thereunder, and for other reasons." Now I want to know can you define in any shape or form what the other reasons were ?—A. I know a great many discussions were going on, and everyone had his particular objection, and, as far as I can remember, I think Mr. Codd could not satisfy the majority of the shareholders as to the name of the party that was to become responsible for the balance of the purchase-money. He could not satisfy them on that point. They wanted to know who the principal was, and he said, for some reason or other, he could not tell.

Q. And you rejected the offer then and there ?—A. Yes.

Q. Had you been approached prior to that with regard to constructing the road ?—A. No.

Q. This meeting in Toronto was on what date ?—A. I think we went to Toronto, to the best of my recollection, on the 5th of September 1889 ; the 5th or 6th.

Q. You say that there was a doubt about the security. You knew that the £50,000 had been advanced ?—A. That is for the balance remaining due.

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 —
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Q. You knew the £50,000 had been advanced ?—*A.* They said they were ready to pay it.

Q. And you know that it was subsequently procured ?—*A.* Yes ; afterwards.

Q. How long afterwards ?—*A.* On the 16th of September.

Q. So that on the 5th of September you were told by Mr. Stevens and Mr. Codd and Mr. Gregson that they were ready to pay the £50,000 ?—*A.* I could not say on the 5th, but about that time. It was on a Saturday night that they went away ; broke up.

Q. Had you a meeting on more than one day ?—*A.* It was during the exhibition time. I let them go on with their affairs, and I went to the exhibition, and they were discussing matters. At night I asked them what progress had been made, and they said they would see next day. I went to the exhibition the next day, and on Saturday I said you must come to a conclusion. 10

Q. So you were there two or three days ?—*A.* Yes.

Q. And it would be in the neighbourhood of the 5th that you were told by Mr. Codd and Mr. Stevens and Mr. Gregson that they were prepared with the £50,000 ?—*A.* I could not say whether it was the 5th or 6th.

Q. It must have been the 5th, because you went to the exhibition two days, and it was on Saturday the others went home ?—*A.* It was understood that they had the money. 20

Q. And that sum of money was paid on the 16th ?—*A.* Yes.

Q. Where did that money come from ?—*A.* Mr. Stevens said it came from England.

Q. And how raised ?—*A.* Through the Bank of Montreal.

Q. On what security ?—*A.* I do not know about that.

Q. All you knew it had been raised ?—*A.* All I knew was I was handed a cheque from Mr. Stevens and I got it cashed.

Q. You knew you could not raise money on nothing in England ?—*A.* I do not know about that. If I lived in England and had the money I could raise it on my own cheque. Mr. Stevens could have got it on his own cheque. At that time I knew very little about him ; I know better now. 30

Q. At the opening of your negotiations you knew the £50,000 were forthcoming, and you rejected Mr. Codd's arrangement ?—*A.* Yes.

Q. Did you talk to Mr. Codd about yourself entering upon this work while you were in Toronto ?—*A.* The first time I spoke to Mr. Codd about trying to make an arrangement to take up the interest of the other shareholders was on that Saturday night.

Q. That would be the 7th ?—*A.* Yes.

Q. And the heads of agreement which we have here are dated the 9th, that is, the following Monday ?—*A.* Yes. 40

Q. That was in Ottawa, no doubt ?—Did you leave Toronto Saturday night ?—*A.* No ; I remained. All the others came to Ottawa.

Q. You remained over in Toronto ?—*A.* Yes.

Q. Had the arrangement with Mr. Codd (that is, the carrying out of the agreement that had been originally made with Mr. Codd of 1888) been ter-

minated before the 9th; was it definitely terminated on the Saturday; RECORD.
Mr. Codd's arrangement with the Company?—*A.* Terminated which way?

Q. Done away with. The way you put it in your defence is this, that in September Stevens, Gregson, and Codd came up to Toronto to see the shareholders?—*A.* Yes.

Q. That they represented to the shareholders that they were prepared to carry out that agreement; that they had the £50,000 ready to pay over. There was a discussion, apparently, and it ended in the five shareholders refusing to carry out that bargain of 1888?—*A.* It was all off on the Saturday, and they 10 went home.

Q. Who went home?—*A.* Allan, Clemow, and Devlin.

Q. And they left you alone with Mr. Codd?—*A.* I remained in Toronto.

Q. And Mr. Codd remained there, too?—*A.* Yes, and Mr. Stevens.

Q. What Duval is that; is he the reporter of the Supreme Court?—

A. Yes.

Q. How did he happen to be in Toronto did you telegraph to him?—

A. I telegraphed for him.

Q. You brought him up?—*A.* Yes.

Q. You let your other shareholders and directors depart from Toronto, 20 and then you telegraphed to Duval to come up to your assistance?—*A.* I did not tell him to come to my assistance; I asked him to come up.

Q. You wanted him to advise?—*A.* Not exactly to advise, but if I wanted any writing he could do it.

Q. That is how he comes to be a witness?—*A.* Yes.

Q. You and Mr. Codd had talked about coming to some arrangement on Saturday?—*A.* The talk after Mr. Clemow and the others had left took place between Mr. Stevens, Mr. Codd and Mr. Gregson.

Q. And yourself?—*A.* And myself.

Q. That was on the Saturday?—*A.* Saturday night. That was only for 30 a few minutes. Mr. Stevens said, "to-morrow will be Sunday, and you can go to your church and I will go to mine."

Q. Mr. Stevens would not do any work on Sunday?—*A.* He did, but it was after church.

Q. You made this bargain on Sunday?—*A.* We did not conclude it on Sunday.

Q. But you had arranged upon a plan?—*A.* Pretty much.

Q. It was a Sunday concoction?—*A.* Yes.

Q. And on the Monday you drew up the heads of the agreement?—*A.* It was closed on Monday.

40 *Q.* Those were heads of agreement which we have contained in this paper?—*A.* Yes.

Q. At this time you were a director still?—*A.* Certainly.

Q. And you were "to arrange with Mr. Clemow, Mr. Allan, and Mr. Devlin that they will assign to him all their interest in the undertaking, provided that when the £50,000 sterling is paid, Clemow, Allan, and Devlin shall take thereout such amounts as Mr. Charlebois shall have agreed to pay them." What does that mean? Now what £50,000 sterling was

RECORD. that?—A. That is the £50,000 that they were to pay on account of the contract.

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continued.

Q. That is the £50,000 referred to in Mr. Codd's agreement of 1888?—

A. I do not know about that. It was cancelled. I did not accept it.

Q. I was examining you this morning in regard to that Captain Murray power of attorney that you sent to England with a view to enabling him to enter into arrangements with English capitalists. I see that you had a meeting of directors on the 6th of March 1888 (that is about the same time), in which Mr. Clemow was in the chair, and Mr. Devlin, Mr. Allan, and yourself were present, and Mr. Lewis was there. Then, it says: "Cables to and from 10 Captain Murray were read before the directors. It was resolved that the solicitor having been instructed by the secretary to prepare papers and power of attorney authorising Captain Murray to conclude pending negotiations in England, and the same having been executed by all the shareholders but Mr. Murray, that the same be read and considered." It was then moved by Mr. Devlin, and seconded by Mr. Charlebois, that "having heard read the power of attorney, dated to-day, giving to Captain James Murray, one of our directors, by all the shareholders of the company, and also the declaration given by the same shareholders to Dr. McMichael, of Toronto, the board hereby directs that a copy of each of the aforementioned be filed by the secretary as of record, and form a 20 portion of the minutes of this meeting; and, further, be it resolved that, so far as this board of the company is concerned, the directors of the company ratify, confirm, and consent to the said power of attorney and declaration." It was resolved, "That Mr. Lewis should proceed to Toronto and confer with Dr. McMichael with regard to English proposals, and do whatever is necessary there."

Then, on the 2nd of April 1888, another minute shows that you were present. It is as follows: "The communication from Captain Murray was received, as was also an agreement between the shareholders and J. A. Codd, requesting same to be signed and returned to him by first mail. The execution 30 of the agreement was deferred until a cable was sent as directed." Then you made a very large call, I see, of a half per cent. on the shareholders. Then at the directors' meeting of the 5th June you were also present. It was moved by the Hon. F. Clemow, seconded by A. Charlebois, "That the secretary communicate with the various steel rail men with the object of getting prices and terms, and also with forwarders in Montreal, and elsewhere, with a view of getting freight on rails." On the 15th August 1888, at a meeting at which you were present, I find the following: "Having heard read the order on, and proposed communication to, T. D. Treharne, of this date, by the respective shareholders of the company, the board approves of same, and authorises the 40 president and secretary to sign the said communication for the company." On the 17th September 1888, after confirming the minutes, the secretary read the recent correspondence, &c., with Reynolds, Carter & Reynolds, of London, England, *re* Treharne and Codd contract; also other correspondence from the chief engineer at Brandon, and parties elsewhere." Then at the same meeting, regarding the Sproule contract, the secretary was authorised to notify the contractor that "work thereunder would be temporarily suspended until the rails

can be delivered to him, which may not probably be until next spring " ?—*A.* I was not present at that meeting. RECORD.

Q. Yes, *A.* Charlebois appears here—that is, on the 17th of September 1888 ?—*A.* Yes, I was there. No. 110.
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Mr. Charlebois' counsel objects to the reading of the minutes as the minutes produced have not been approved, and these are only copies. *continued.*

Q. *Mr.* Secretan was at the time engineer of the Company ?—*A.* Yes.

Q. Look at Exhibit " E," now filed and shown you, and state if that is his signature ?—*A.* Yes.

10 *Q.* At the meeting of April 18th, 1889, at which you were not present, it was " Resolved that the secretary communicate with J. C. Sproule, and inform him that the temporary suspension of the work on his contract, referred to in the Company's letter of the 19th September 1888, be continued until further notice from the secretary." Now, you were present at the meeting on the 8th of May 1889, at the meeting in which those minutes were confirmed. Now, as I said, having regard to the power of attorney which I read to you this morning, and the minutes which I have read to you, it is apparent that you were aware that *Mr.* Codd and *Mr.* Murray were negotiating with English capitalists with a view to raising money in order to carry out the Codd contract of 1888 ?—*A.* I
20 was aware that *Mr.* Codd was, not *Murray*.

Q. You were aware that *Mr.* Codd at all events was arranging with English capitalists for the purpose of raising the necessary funds to enable him to carry out his contracts ?—*A.* According to his own statement.

Q. You were also aware—because the documents and the minutes show it—that *Mr.* Murray was given the power of attorney to enable him to facilitate that ?—*A.* I was aware that *Mr.* Murray was empowered from us, as he had to go to England on his private affairs, to see *Mr.* Codd and communicate with him.

30 *Q.* And the object of the power of attorney was in order that when *Mr.* Codd made his arrangements with the English capitalists, *Mr.* Murray should be in a position empowered by the shareholders to give the security required ; that is, on getting the first payment of fifty thousand pounds (£50,000) and security for the balance ?—*A.* Yes.

Q. That drifts on, as I have shown you by the minutes, until we get down to the middle of 1889 ?—*A.* Yes.

40 *Q.* And when you met these gentlemen, *Mr.* Codd and *Mr.* Stevens and *Mr.* Gregson, in Toronto, you were told by them that they had the fifty thousand pounds (£50,000) required by the contract ; that you have already stated ?—*A.* That they could get the fifty thousand pounds (£50,000). Of course it had not arrived yet..

Q. They had it at hand and were in a position to pay it ?—*A.* Yes.

Q. Of course you must have known, and did know, that that had been procured from English capitalists ?—*A.* Really I am not in a position to say.

Q. You surely do not want me to press the point ?—*A.* They told me they had raised it in England.

Q. You were aware that they had raised that money in England ?—

RECORD. *A.* I was not aware of it. They might have raised it in Ireland or Scotland.

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Q. They told you so?—*A.* They did not make any particular mention of it. I was satisfied with Mr. Stevens' statement.

Q. You knew Mr. Stevens was an Englishman?—*A.* Yes.

Q. You knew that he was an English solicitor?—*A.* Yes.

Q. You knew that he was representing a principal?—*A.* I did not know that.

Q. What?—*A.* Mr. Stevens gave me to understand that he was acting for himself.

Q. And that the money was his own?—*A.* He did not tell me that the money was his own.

Q. Did you believe the money was his own?—*A.* I did believe it at the time.

Q. At all events, when you saw him with Mr. Codd, and when Mr. Codd told you that he was prepared to carry out his contract of April 1888, you would believe that Mr. Stevens—whoever he was representing—was the financial aid which they had got through the English mission?—*A.* Mr. Codd represented to me that Mr. Stevens was a very wealthy man—that he had any amount of money.

Q. The rails had been sent out at that time?—*A.* The rails had not arrived at that time.

Q. They were in Montreal?—*A.* No.

Q. The heads of your agreement said so?—*A.* It did, but they were not there. They were at Portland. They had not arrived at that time.

Q. They had been purchased?—*A.* So they say.

Q. You were a director of the company?—*A.* Yes.

Q. I have read to you the minutes which show that Mr. Sproule's contract was suspended pending delivery of the rails?—*A.* Yes, but not those rails.

Q. Not those rails—rails? You knew that rails were in Portland?—*A.* I did not know at the time. I just accepted their declaration that the rails were on the way.

Q. On the 9th September?—*A.* Yes.

Q. You are a director of the road?—*A.* Yes.

Q. It appears that you were present at almost every meeting?—*A.* Yes.

Q. It appears that you were taking an active interest in the affairs of the road?—*A.* Generally, that was so.

Q. You were aware that rails were required?—*A.* Certainly, I am aware of that.

Q. You were aware that it was an object to get through with Mr. Sproule's contract, and for the company to finish up the balance of the work in order that the land grant might be earned?—*A.* Aware of what?

Q. That expedition was a matter of moment, in order to earn the land grant?—*A.* At that time, as the time of the agreement had expired, we thought it might be just as well to try to provide for the rails ourselves; and that is the reason why a resolution was passed, authorising the secretary to see where he could get the best rails.

Q. Where did the money come from to buy the rails?—A. We had not discussed that matter yet. RECORD.

Q. Had you paid for your stock?—A. Which stock. No. 110.

Q. The stock in the company—you held seventy thousand dollars in shares? Depositions

—Q. We deposited fifty thousand dollars with the Government. of the

Q. How did you pay the balance?—A. We paid the money we advanced to Sproule on the progress estimates. Defendant,

Q. How did you pay for the balance, how was it made paid-up stock?— Alphonse

A. It was made paid-up stock on the 16th September, 1889. Charlebois,

10 Q. Out of what moneys?—A. By discount, they fixed that. &c.—

Q. The discount did not fix it. You had to pay something else?—A. I beg your pardon, not that I recollect. continued.

Q. Do you mean to tell me that on the 16th September?—A. It was a matter which was fixed between the attorneys, McMichael and Lewis, which I am not in a position to answer for them.

Q. I should like to know how you paid for that stock?—A. All the money we had paid up to the 16th September 1889 was the fifty thousand dollars (\$50,000) deposited with the Government, and whatever money has been paid to Sproule?

20 Q. And how much had been paid to Sproule?—A. I think it was seventy-three or seventy-four thousand dollars.

Q. That is one hundred and twenty thousand dollars (\$120,000)?—A. I have not got all the books of the company.

Q. You had paid fifty thousand dollars (\$50,000) to the Government?—A. Yes.

Q. And you had paid Sproule about seventy thousand dollars?—A. It may be more than that; eighty-three or ninety-three thousand dollars.

Q. It was in the neighbourhood of eighty thousand dollars, anyway?—A. Yes.

30 Q. That made one hundred and twenty thousand dollars (\$120,000) altogether. That did not pay your stock?—A. They fixed it between themselves, the attorneys; and I am not in a position to give the details.

Q. You had seventy thousand dollars (\$70,000) liability on your stock. You had seven thousand seven hundred (7,700) shares, that is seventy thousand dollars liability. What you paid Sproule and the fifty thousand dollars amounted altogether to about one hundred and thirty thousand dollars (\$130,000). That was about one-fourth, you may say. You had three-fourths more to pay on your seventy thousand dollars?—A. That is a question that I could answer better with the books before me.

40 Q. Now, did you not utilize the fifty thousand pounds (£50,000) sterling, or part of it, to pay up the balance of the stock?—A. No; not that I know of.

Q. Will you swear that you did not? Will you swear that you do not know?—A. I will swear that I did.

Q. Will you swear that you did not know that, that part of that fifty thousand pounds (£50,000) sterling, was not utilized to pay up the balance of the stock?—A. No.

RECORD.

—
No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. Then will you tell me how it was arranged?—*A.* It was arranged among themselves, but the money received did not go that way at all. The discount under the charter—

Q. That was about twenty-five per cent., and you profess to tell us that although you were under liability of seventy thousand dollars (\$70,000), and although you were still left liable to the tune of some thirty odd thousand, after the discount, you do not know how that was paid?—*A.* I repeat that Doctor McMichael and Mr. Lewis fixed that affair and that the fifty thousand pounds sterling, that I received, did not go on that account; was not paid on that account. 10

Q. But was not this the way; was not the £50,000 first of all borrowed by the shareholders through stock paid up and that the moneys went into the coffers of the Company, and that the Company paid it to you?—*A.* I received a cheque from Mr. Stevens, and that is all I know.

Q. How much did you get from Mr. Stevens?—*A.* Fifty thousand pounds (£50,000); two hundred and forty-three thousand dollars (\$243,000).

Q. When did you get that?—*A.* On the 16th of September 1889.

Q. And that was the same money that Mr. Stevens and Mr. Codd informed you that they had when you first met them on the 5th of September. I see it in the heads of the agreement, is not that so?—*A.* I cannot swear that it is the 20 same money, because I did not see it.

Q. I will read the heads of the agreement: "Mr. Charlebois to arrange with Clemow, Allan, and Devlin, that they will assign to him all their interest in the undertaking, provided that, when the fifty thousand pounds is paid, Clemow, Allan and Devlin shall take thereout such amounts as Mr. Charlebois shall have agreed to pay them." Now, what fifty thousand pounds is referred to there?—*A.* That is the fifty thousand pounds that I was to receive from Stevens.

Q. And on what account were you to receive it?—*A.* On account of the disposal of the stock and the franchise and the completing of the fifty miles of 30 railway.

Q. In your document of the 16th of September, in which you are the party of the second part, and Clemow and others of the first part, it is put in this way: "Whereas, the parties hereto were, on the 11th September, 1889, all, and the only shareholders in, or subscribers to, the capital stock of the Great North West Central Railway Company, and whereas, prior to that date, &c."—now that is prior to the 11th September 1889 "and instead of, and in full substitution for a certain agreement made between the parties hereto and one John A. Codd, dated the 9th April 1888, and the full assent of the said John A. Codd, and his assigns, &c."; that is the recital of your contract. It 40 would appear that you were substituted in Codd's place. That recites that prior to the 11th September you had entered into an arrangement with these people whereby you were going to be contractor in the place of Codd?—*A.* That was the memo. of the 9th April that was to be in force on the 9th September.

Q. I did not understand that on the 9th September you had seen any of the other directors?—A. Which other directors? RECORD.

Q. Of the Company?—A. I saw them all on the 7th in Toronto.

Q. But you did not discuss this with them?—A. I told them, then and there, before they left, "The thing is off now. I will undertake to carry the thing for Stevens. Will you have any objection to selling your interest to me?" They said no, they had no objection. I said "I will be in Ottawa on Wednesday and we will close it."

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued

10 Q. Before they left on Saturday you had discussed it with the other directors of the Company?—A. I discussed it, as I told you just now.

Q. Before you discussed it with Codd and Stevens?—A. No.

Q. You discussed it with the others first?—A. Yes, it was no use discussing it with Stevens and Codd unless I knew that they were willing to do it.

Q. Had you come to any terms with your other directors?—A. Yes.

Q. What other terms?—A. That I would pay them two hundred thousand dollars (\$200,000) for the three, Devlin, Clemow, and Allan. Murray was not there.

20 Q. Had you arranged the manner of payment, how you were to pay the two hundred thousand dollars (\$200,000)?—A. I was to pay them whatever disbursements they had made, and the balance was to be paid by an order from me on the Company accepted by the Company.

Q. All that was discussed and arranged before they left Toronto?—A. It only took about ten minutes. They were just about leaving. I had my Pullman ticket ready to go down, and I said "Here, I have come to the conclusion I had better try and buy you out and remain and fix it with Stevens."

Q. Then you had made an agreement with them prior to their leaving Toronto on the 7th?—A. A verbal agreement, and I relied on their word the same as writing.

30 Q. And having arranged with them you had to arrange with Codd?—A. Yes.

Q. And to get rid of Codd's agreement of April 1888?—A. The formal agreement with Codd was that he had to fully satisfy us as to the balance remaining due on the purchase price, and not being able to do that in Toronto that was the reason that the thing fell through, and you will see by my agreement of September that we were to provide for that, and I gave an extension of thirty days to Stevens to comply with that.

40 Q. Then the heads of the agreement refer to the fifty thousand pounds (£50,000): "assign to him all the interest in the undertaking; to arrange with Clemow, Allan, and Devlin that they will assign to him all their interest in the undertaking, provided that when the £50,000 is paid Clemow, Allan, and Devlin shall take thereout such amounts as Mr. Charlebois shall agree to pay them"?—A. The amount that I agreed to pay them was the amount they had disbursed previously.

Q. And amounting to how much?—A. Amounting to as much as they received.

RECORD. Q. How much was that ?—A. About one hundred and twenty-five thousand dollars (\$125,000).

No. 110. Q. And that £50,000 was part of your contract price, part of your
Depositions of the £200,000 ?—A. Certainly.

Defendant, Q. So that the effect of this is, that on the 7th of September you had an
Alphonse agreement with three of your co-directors that you would get a contract under
Charlebois, which you were to receive fifty thousand pounds (£50,000) cash, and that out
&c.— of that contract these three co-directors were to receive certain sums them-
continued. selves ?—A. There was no mention about that before they left. You mean
the time they left Toronto.

Q. You told me that ?—A. I told you this, that when they left I asked them if they would accept 200,000 dollars for the three. I had to see Murray and see if Murray would consent and agree to take in proportion for his share what the others had accepted, and whether he would not remain with me and carry on the contract with me. So Murray came the next day, and, after consulting with his partner, he decided to accept what the others had accepted.

Q. But you told me the basis of your contract had been discussed and settled with them ?—A. I could not have told you that. I made a mistake if I told you that, because there was no contract at all; it was only verbal.

Q. I am talking of your verbal contract. You had come to terms with them ?—A. I was to make my own arrangements with Stevens and Codd, and if I could succeed I was to meet them the following Wednesday in Ottawa and close with them.

Q. Had you made any agreement with them before they left Toronto as to the amount that they were to receive from you ?—A. I am not in a position to answer that.

Q. You cannot say yes or no about that ?—A. No.

Q. Then you remained in Toronto, you say, and your co-directors left for Ottawa ?—A. Yes.

Q. And while you were in Toronto on Monday, the 9th, these heads of proposed agreement were signed ?—A. Yes.

Q. That sets forth that Charlebois is to arrange with Clemow, Allan, and Devlin that they will assign to him all their interest in the undertaking, provided that when the fifty thousand pounds (£50,000) is paid—what £50,000 is that ?—A. £50,000 that Stevens and Codd agreed to pay me on account of the contract.

Q. On account of what contract ?—A. On account of the contract to surrender all the stocks and so on.

Q. There had been no contract signed at that time ?—A. That was a proposal they were making to me.

Q. There must have been before you signed this paper some agreement by which £50,000 was to be paid to you under your contract ?—A. No, there was not.

Q. However, it was arranged that you were to get £50,000 ?—A. It was arranged that if this agreement was ratified on the 16th—that is to say, if I could close with all my partners—that, out of the £50,000 they were to pay

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me, I was to give Clemow, Allan, Devlin, and so on, whatever money they had disbursed. RECORD.

Q. And the £50,000 was coming from whom?—A. Coming from Stevens. No. 110.

Q. Representing whom?—A. Representing himself, Gregson, and Codd; all who were there. Depositions of the Defendant, Alphonse Charlebois, &c.—

Q. You do not know for whom they acted besides?—A. I was under the belief until lately that he was acting for himself. continued.

Q. Then “Mr. Charlebois and Murray, or Mr. Charlebois, as the case may be, to carry out the terms of the agreement of the 9th of April 1888, subject to the present modification, and Clemow, Allan, and Devlin to join in guaranteeing that the stock is free of debt?”—A. That shows that I had not closed.

Q. The 9th of April 1888 was Codd’s contract?—Yes, to a certain extent.

Q. That was Codd’s contract, the reference there?—A. That was Codd’s agreement.

Q. “Mr. Charlebois to take up and pay for the 1,100 tons of rails lying at Montreal?”—A. Yes, but they were not there.

Q. “But the balance of the rails to be delivered to Charlebois shall be delivered in due time for the execution of the contract, chargeable at the rate of £5 13s. free in Montreal.” What does that mean? There is no reference to rails here. There was no contract made then. You believed, at the time that you signed that, that those rails were lying in Montreal?—A. Yes.

Q. And when you signed this you believed that you were to take up and pay for those rails lying at Montreal, 1,160 tons?—A. Yes, but they were to pay me back afterwards.

Q. And the balance was to be delivered in due time for the execution of the contract?—A. Yes, free of charge.

Q. Who was to deliver them?—A. Themselves.

Q. Who do you mean by themselves?—A. Stevens and Codd.

Q. That was the Company?—A. Yes.

Q. There must have been some bargain with the Company?—A. Not at the time.

Q. Not signed, but it must have been agreed to?—A. There is the agreement.

Q. But the Company at that time was represented by Clemow, Allan, Devlin, yourself, and Murray?—A. Yes.

Q. The Company had to make a bargain, and you are treating here on the basis of a contract with the Company?—A. Yes.

Q. Now, you tell me you had no agreement with the Company?—A. That was the future Company.

Q. “The purchaser to give, within thirty days, satisfactory evidence to Charlebois’ banker that all payments will be made according to terms of the present agreement. The above terms to be embodied in an agreement to be supplemented to the present agreement of the 9th of April 1888, and subject to Dr. McMichael’s approval.” What does that mean?—A. That was for the balance remaining after the payment of the £50,000.

RECORD.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. And who was the purchaser?—A. Mr. Stevens.

Q. Now, that was signed on the 9th September?—A. It was signed on the 9th September as a proposition, and it came into force on the 16th.

Q. It was carried out on the 16th by an agreement?—A. Not by an agreement.

Q. Well, by an executed contract?—A. An executed contract and by the approval.

Q. Now, between the 9th and the 16th, did you see any one else in connection with this except Stevens, Gregson, Codd and your fellow directors?—A. No, I did not see anybody else. 10

Q. You think not?—A. Not that I remember of.

Q. And you went on and executed the contract?—A. Yes.

Q. What I want to call your attention to is this, that your contract was 200,000/. sterling?—A. Yes.

Q. Codd's contract was 200,000/. sterling? You saw these gentlemen, Stevens, Gregson and Codd, on the 5th September?—A. Yes, on the 5th September.

Q. They told you they were prepared to pay the 50,000/.?—A. Who, Stevens and Gregson?

Q. Stevens, Gregson and Codd?—A. They said so in general. 20

Q. In general to you as director?—A. Yes.

Q. And they said they were prepared to carry out Codd's contract?—A. They were not prepared to a certain extent, because they could not give the security asked for.

Q. You say the only stumbling block was that they were not prepared to give the security?—A. They were not prepared to give the security.

Q. I call your attention to the fact, as a director of the Company, that on the 9th September these very gentlemen, because you saw nobody else, and yourself entered into an agreement for 200,000/. sterling, and the only provision, you state, is that these very same gentlemen, within thirty days, had to satisfy you that they are prepared to give the proper security: "The purchaser is to give within thirty days satisfactory evidence to Charlebois' bankers that all payments will be made according to the terms of the present agreement?"—A. I was prepared to accept that, but the others were not. 30

Q. The directors were not?—A. No.

Q. You were prepared to accept this and give the thirty days in order that they might satisfy you?—A. Not me, my banker.

Q. Well, your banker. But you say the other directors present with you were not?—A. They were not. I do not know if Stevens had made the same offer to the former Company. I am not in a position to say that, but the former shareholders did not want to accept, because the time had expired, and that Mr. Stevens and Mr. Codd were not in a position to comply with the provisions of that agreement. 40

Q. You told me some time ago this morning that had the Codd contract been carried out the road would have been completed up to the Government specification, and would have been handed over free of all charge, and there would have been 500,000 dollars stock paid up with 50 miles of completed road free from burden; that you told me this morning?—A. Yes.

Q. Under your contract the same state of affairs would have happened, and the road would have been charged to the tune of 200,000/. sterling?—A. I beg your pardon.

Q. I beg your's ; I am going to show you. Were you not to get 200,000/. sterling from the Company?—A. Less so much.

Q. Less certain payments ; but was not the Company contracting with you to pay 200,000/. sterling?—A. And the Company contracted with me to pay 173,000 dollars.

Q. Under your contract the price was 200,000/. sterling?—A. Under my 10 contract it was 200,000/. sterling, less the 173,000 dollars I had to pay.

Q. Do not say that, because it is not so. I will read the contract. Was not the Company?—A. Mr. Stevens knew——

Q. I am not concerned with Mr. Stevens. I want to get the facts as they are. I have got down three or four times that if the contract with Codd of 1888 had been carried out, the Company would have had that 50 miles of road completed up to the Government specification and handed over without charge, the stockholders having their stock paid up in full ; that would have been the position, in full, and the stockholders would have paid Codd 173,000 dollars?—A. The stockholders?

20 Q. Yes, out of their 200,000/. sterling that they were getting. I called your attention to that this morning and you agreed to it. The Codd agreement of April 1888 ; the shareholders of the Company were to build that road up to the Government specification, and when built and completed they were to sell their stock to Codd for 200,000/. sterling ; was not that the bargain?—A. That was the bargain.

Q. And out of that 200,000/. sterling, Codd was to get the difference between 800,000 dollars and 200,000/. sterling?—Yes.

Q. Which was 173,000 dollars?—A. Yes.

30 Q. Now, was not that the stockholders paying Codd 173,000 dollars out of their 200,000/. sterling and it never became a charge on the Company?—A. It was ourselves. Under Murray's agreement the Company undertook to pay 200,000/.

Q. I am referring to the April agreement ; that was the position ? The Company would have started with 50 miles completely built free from all charges, and the shareholders would have paid Codd out of their 200,000/. sterling 173,000 dollars—that is the agreement of 1888?—A. Certainly.

Q. That left the Company—I am not talking of the shareholders—free of all burdens with a completed road of 50 miles?—A. Certainly.

40 Q. Now I will take you to your own contract. Your contract is this—16th September 1889, "Whereas the Company have agreed with the contractor to enter into a contract with him whereby the latter agrees to cause the first 50 miles of the Company's line from Brandon in the Province of Manitoba, as at present projected, located, &c." "Now therefore this indenture witnesseth, that the said contractor, in consideration of the premises and the sum of 50,000/. sterling to him in hand paid on account thereof by the Company, and receipt whereof is acknowledged and of the covenants, &c., and of the further payment to him, the said contractor, of the sum of 150,000/. sterling to be paid." That is the Company paying you 200,000/. sterling, is it not?—A. Yes.

RECORD.

No. 110.

Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

RECORD. Q. And the Company became bound to pay that 200,000*l.* sterling?—*A.*
 — Yes.

No. 110. Q. Therefore the Company became charged to the extent of 973,000 dollars?
 Depositions —*A.* Yes.
 of the

Defendant, Q. And if that had been carried out as it reads you would have built your
 Alphonse 50 miles of road and the Company would have had to pay 973,000 dollars?
 Charlebois, —*A.* The same in one case as the other.
 &c.—

continued. Q. No, it is not the same at all. In the one case the Company is saddled
 with 973,000 dollars; in the other case the shareholders get their stock paid
 in full and the Company is free of any debt. Do you think it was intended 10
 to be the same?—*A.* At the time that I concluded my bargain I considered—

Q. Answer my question. You are a director of the Company?—*A.* I was
 no more a director than the others.

Q. Was it intended when you were making this bargain, and these private
 arrangements with the Company, that the Company should not be charged with
 any greater sums than it would have been charged with the Codd agreement?—
A. No, it was not.

Q. You had several other agreements of the 16th September 1889, and
 amongst others you were to pay your fellow directors out of your contract.
 You agreed to pay them altogether 226,632 dollars and 89 cents?—*A.* Yes. 20

Q. And you agreed to pay Codd 173,000 dollars?—*A.* Yes; I did not
 agree to pay that, 80,000 dollars.

Q. Eighty thousand dollars was for advances you made him? *A.* No,
 80,000 dollars, and 50,000 dollars for bonus.

Q. Codd bonused you for 50,000 dollars?—*A.* Not only Codd but Stevens.
 I explained to Stevens the whole transaction. I made a square bargain with
 them.

Q. Under your contract you were to pay Clemow 23,415 dollars and
 79 cents out of your 200,000*l.* sterling?—*A.* Under what contract?

Q. The contract of the 16th September 1889?—*A.* The construction 30
 contract?

Q. No, the collateral contract. The construction contract was fair
 and square on its face?—*A.* They were all fair and square so far as I am
 concerned.

Q. Exhibit "F" is an agreement between Alphonse Charlebois, of the
 first part, Clemow, Allan, Devlin and Murray, and it says, "Whereas the parties
 hereto were, on the 11th September, all and the only shareholders in or
 subscribers to the capital stock of the Great North-west Central Railway
 Company, and whereas by offer and acceptance of the said last-mentioned
 date,"—that is the 11th September, before you retired from directorship, and 40
 before they retired—"the former shareholders agree to sell, and Charlebois
 agrees to buy from them all their said shares in the said Company for certain
 present and deferred payments, and on certain terms"—that is a true recital, I
 suppose?—*A.* Yes.

Q. "And whereas, contemporaneously with the execution and delivery
 hereof, the former shareholders do assign and sell to said Charlebois their said
 respective shares, and whereas by instrument bearing even date herewith, and
 delivered contemporaneously herewith, the former shareholders, in conformity

with their bargain with the said Charlebois, enter into a covenant of indemnity touching the debts, &c., and whereas all parties hereto desire that the terms and condition of the said sale of shares should be herein stated, and the last-mentioned agreement supplemented and modified hereby before delivery." Now, this document was executed on the 16th September?—*A.* Yes.

Q. And it recites that a bargain had been made on the 11th September?—*A.* Yes.

Q. And it was part of the one transaction?—*A.* Yes.

Q. That is to say, all these contracts, signed on the 16th September, form part of the one bargain?—*A.* No, that is another bargain.

Q. They were entered into at the same time—that is what I mean?—*A.* Yes, but they were special and different bargains.

Q. They were part of one transaction, because your bargain was based upon your purchase of their shares?—*A.* My bargain was that I was to pay them 226,000 dollars.

Q. Your bargain was based upon your being able to buy their shares—is not that so?—*A.* How?

Q. That is the heads of your agreement—it is conditional on your being able to buy their shares?—*A.* Certainly.

Q. I say that although there are several documents of 16th September, they were all in order to carry out the one transaction?—*A.* They were in order to carry on buying them out and making my arrangements.

Q. Here, this document I am reading from declares the ownership of the shares of Clemow 1,000, Allan 1,600, Devlin 1,200, and Murray 500, and Charlebois 700; and you agreed to pay in this way—you agreed to pay Clemow in cash, 29,100 dollars. You agreed to pay Allan forty-six thousand three hundred and forty dollars (46,340 dollars). You agreed to pay Devlin thirty-five thousand five hundred and eighty dollars (35,580 dollars), and you agreed to pay Murray fourteen thousand nine hundred and twenty-five dollars (14,925 dollars). Those are the correct figures?—*A.* Yes.

Q. Now those sums were to be paid out of the first sum of 50,000l.?—*A.*—Yes.

Q. That 50,000l. being the cash payment under your contract with the Company?—*A.* Those payments were paid on my cheque.

Q. Those payments were agreed to be paid out of the 50,000l.?—*A.* According to the agreement.

Q. Is not that so?—*A.* Yes.

Q. It was the cash payment under your contract that the Company was to pay you?—*A.* Certainly.

Q. Then the further consideration referred to in the last clause, "That Charlebois is to deliver to each of the former shareholders an equitable assignment or order made by him to the said the Great North West Central Railway Company, to pay out of the first money payable to him, the said Charlebois, upon or in respect of a certain construction contract into which he is about to enter with the said Company, when he shall be no longer himself a shareholder, the following sums:—Clemow, twenty-three thousand, four hundred and fifteen dollars and seventy-nine cents (23,415 dollars and 79 cents); Allan 37,465 dollars and 27 cents; Devlin, twenty-eight thousand and ninety-eight

RECORD.
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No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

RECORD.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

dollars and ninety-four cents (28,098 dollars and 94 cents); Murray, eleven thousand, seven hundred and seven dollars and eighty nine cents (11,707 dollars and 89 cents), which said four equitable assignments or orders the said Charlebois hereby covenants with the former shareholders to execute and deliver to them when and so soon as he obtains said construction contract, and before delivery thereof to cause same to be duly accepted by the said Company with whom he will contract." That is the position?—*A.* Yes.

Q. The total amount, either in cash or in order, comes to two hundred and twenty-six thousand, six hundred and thirty-two dollars and eighty-nine cents (226,632 dollars and 89 cents)?—*A.* Yes. 10

Q. Now, that total amount of two hundred and twenty-six thousand, six hundred and thirty-two dollars and eighty-nine cents (226,632 dollars and 89 cents) was to be paid by you out of moneys which the Company were agreeing to pay you for the doing of this work?—*A.* Certainly, in this way—the orders given by the Company were accepted by the Company.

Q. It is money you were entitled to under your contract?—*A.* Yes.

Q. So that, practically, out of the 200,000/. sterling that you were getting for the performance of this contract, you were to pay out to these directors 226,632 dollars and 89 cents?—*A.* Yes, all told.

Q. So that, so far as you were personally concerned, from the 200,000/. sterling that the Company was agreeing to pay you, you were going to get no profit to the extent of 226,632 dollars?—*A.* Yes. 20

Q. And your fellow directors got that?—*A.* Yes.

Q. That was their sop?—*A.* Yes.

Q. Then, in addition to that, Codd, by another agreement which I will refer you to, was to be paid his 173,000 dollars, less 50,000 dollars that he agreed to pay to you as a sort of honorarium for securing him?—*A.* Which contract; on the last contract?

Q. I mean to say, out of your 200,000/. sterling?—*A.* Do you mean the 200,000/. I was to get under the last contract? 30

Q. Yes.—*A.* No, there was not.

Q. We will start with this: Your contract was 200,000/. sterling?—*A.* Yes.

Q. That came to 973,000 dollars in round numbers?—*A.* Yes.

Q. You had agreed to pay your fellow directors 226,632 dollars?—*A.* Yes.

Q. Leaving altogether about 746,368 dollars coming to you?—*A.* Yes.

Q. How much of that was Codd to get?—*A.* He was to get whatever would be left out of the 173,000 dollars, taking out all that he and Stevens were allowed under the agreement of the 9th September, and all further advances I made to him. 40

Q. He was to get 173,000 dollars, less advances you had made to him; when had you made those advances?—*A.* I made them on the day of the passing of the agreement. I paid him 4,000 dollars odd, and I advanced him afterwards.

Q. That was 4,000 odd dollars to get his consent to carrying out this bargain?—*A.* No.

Q. Then he agreed to pay you 50,000 dollars out of his money ?—*A.* Stevens and himself. RECORD.

Q. So that practically 120,000 dollars was going to Codd ?—*A.* Not so much as that. No. 110.
Depositions
of the

Q. Less what you had actually paid him ?—*A.* Yes ; they had my word for that. Defendant,
Alphonse
Charlebois,
&c.—

Q. All you would be getting out of this contract yourself would be in the neighbourhood of 620,000 dollars ?—*A.* There are deductions to be made from that ; 93,000 dollars in round figures. continued.

10 Q. Then the difference between 93,000 dollars and 173,000 dollars was made up by the 50,000 dollars that Codd was to pay you ; and 28,000 dollars for the difference in cost of rails and 10,000 dollars to be advanced to Codd ?—*A.* Yes, and four thousand eight hundred and sixty-seven dollars (4,867 dollars).

Q. What deduction was that about rails ?—*A.* At the time that Codd bought his rails in London they were a good deal higher than I could have bought them. If he had watched his chance he could have got them for that difference.

Q. That is the difference between 1888 and 1889 ?—*A.* Yes, the price had advanced. If the rails had been purchased at the right time they would 20 have cost less.

Q. At all events, whatever your contract for 200,000*l.* sterling was, you were to pay out of that 226,632 dollars and 93,000 dollars to Codd ?—*A.* Not 93,000 dollars—about 83,000 dollars, if he received no further advances. I wanted to keep that amount in my hand to secure myself.

Q. About 80,000 dollars he was to get himself, which was the balance of the 173,000 dollars less the 50,000 dollars that Codd had agreed to pay you—less the difference in the price of rails and some advances ?—*A.* Yes.

Q. So that practically, so far as you personally are concerned, although the Company was agreeing to pay you 200,000*l.* sterling, you were getting practically 30 under 600,000 dollars ?—*A.* For what ?

Q. In the neighbourhood of 600,000 dollars out of the contract ?—*A.* I was getting exactly the 200,000*l.*, except a deduction.

Q. A deduction of some 300,000 dollars which left you getting for the doing of the work somewhere in the neighbourhood of 600,000 dollars ?—*A.* About.

Q. And the extra three hundred odd thousand dollars that the Company was paying for the doing of this work really went to your co-directors, and to Codd ?—that is the position ?—*A.* It did not go yet.

Q. But it would have under your contract ?—*A.* Yes, when I get it.

40 Q. That is the bargain, however. The difference between the Codd contract of April 1888 and your contract was practically that the Company was being saddled to the tune of over 300,000 dollars to pay these trustees, we will call them, and Codd these amounts of 300,000 dollars ?—*A.* I do not quite understand you.

Q. I say, the difference between Codd's contract of April 1888, and your contract, is that the Company is being saddled under your contract to the tune of over 300,000 dollars, which 300,000 dollars does not go to you but goes to

RECORD. these trustees and Codd?—*A.* I am of a contrary opinion. I say the Company has not been saddled at all, and is not paying a cent. more.

No. 110. Depositions of the Defendant, Alphonse Charlebois, &c.—*continued.* *Q.* That is your idea of it?—*A.* That is my view of it, and it is a correct notion.

Q. You had a private bargain with Codd outside of the construction contract that you made with the Company in regard to the payment of his 173,000 dollars?—*A.* Not that I am aware of.

Q. This agreement, Exhibit "F," that I am still reading from Clause "6," says: "The said Charlebois agrees himself alone to perform and fulfil the terms of a certain agreement, dated the 6th of March 1888, made by all 10 parties hereto, agreeing that if they should enter into a certain contract with the Company as contractors their portions of the consideration moneys of said contract should be paid as therein stated, said agreement being now in the hands of Dr. McMichael, q.c., and to indemnify and save the former shareholders who have no interest in any such contract harmless in respect to such agreement or order; and, further, to obtain from one John Arthur Codd and from said Dr. McMichael their respective releases of the said former shareholders in that regard." So that by the agreement of the 8th of March 1888, the shareholders were to pay Codd 173,000 dollars upon his paying them 200,000/. sterling for their stock and the completed road?—*A.* Yes. 20

Q. By this agreement of the 16th of September, in addition to agreeing to pay your fellow directors you agreed to assume that debt to Codd?—*A.* No, I did not; but I assumed the responsibility with them.

Q. And you agreed to get a release from Codd so far as they were concerned?—*A.* They got it. (*Release produced and marked Exhibit "G."*) That is signed by Dr. McMichael and Mr. Codd and not by me. (*Exhibit "H" agreement between Clemow, Allan, Devlin, and Murray, of the first part, and Charlebois, of the second part. Filed.*)

Q. Exhibit "H" contains this clause: "And whereas with respect to the claim of Macdonald and Preston, being one of the claims or alleged 30 debts due under Section 22 of the Company's charter before-mentioned, the Company formerly entered into a contract with the said claimant, under the conditions therein named, to pay or deliver to the said claimant certain bonds, or their equivalent, in settlement thereof at the time and in the way therein appearing." That is the one which recites the Macdonald and Preston agreement and their right to bond. There was a further contract of the same date in regard to the Sproule contract (marked Exhibit "I"), of the 16th of September 1889, between Charlebois and the Great North-West Central Railway relating to the Sproule contract. Boiled down, that was a provision by which when you took your contract you were going to have full power to compel Macdonald and 40 Preston or Sproule to carry out their contract with the Company?—*A.* Not exactly. I think Macdonald and Preston were security for Sproule, and we wanted to get rid of Sproule because he was never on the work. It was contended that I should make a contract with anyone I pleased.

Q. The intention was that Macdonald should take up and finish that contract. (21st September 1889, a contract between Sproule of the first part, and Macdonald and Schiller of the second part, and Preston of the third part, marked Exhibit "K.") That recites the Sproule contract of the

12th of September 1887, and it states that whereas the said contract, although taken in the name of the said John Charlton Sproule, was so taken by him for the benefit of Alexander Macdonald and William Alfred Preston, with himself as partners, &c." Then it assigns the contract. Now, that is followed by another of the 21st of September 1889, between the Company of the first part, Sproule of the second part, and John H. Schiller of the third. That recites the contract of the 12th of September 1887, and is a release of Sproule by the Company (*marked Exhibit "L"*). Then comes the Schiller and Macdonald and the Company of the same date. That recites these previous contracts (*Exhibit* 10 "*M*" *filed*). It also recites the assignment to Schiller of that contract, and recites that a large amount of work has been done and a large sum already paid. "And whereas the parties of the first part are now the only persons interested as contractors with the Company under said contract, &c." Now, at this time, as part of the bargain of the 16th of September, you had arranged to arrange with Sproule, or Macdonald and Preston, and, if it were necessary, to take them on as sub-contractors to finish their work?—*A.* On the 16th I made that arrangement that you have in your hand.

Q. But part of the bargain was that you were to arrange with Sproule and Macdonald and Preston, so as to either get rid of them, or if they insisted upon 20 going on, to let them finish as sub-contractors under you?—*A.* I think, if I remember right, it was Schiller and Macdonald that fixed it with Sproule.

Q. And then subsequently, on the 21st, you made an arrangement by which Schiller assumed the original Sproule contract?—*A.* I made a contract with them. (*Contract produced, marked Exhibit "N."*)

Q. That, practically, carries out the original Sproule contract?—*A.* As far as I remember now, Schiller and Macdonald had undertaken to settle with Sproule—to get rid of Sproule.

Q. The terms of their contract was really a continuation of the Sproule contract?—*A.* The contract speaks for itself.

30 *Q.* I see, as I read you in one of the documents that the Company had with Macdonald and Preston, that they were to take part of their pay in bonds of the Company?—*A.* That had nothing to do with that contract.

Q. That was still existing?—*A.* Certainly, until the bonds were issued.

Q. That they were to take part of their pay in the bonds of the Company?—*A.* They were to receive 50,000 dollars worth of the bonds at 80 per cent. when they were sold.

Q. What bonds were alluded to?—*A.* The Great North-West Central bonds.

40 *Q.* That was the bargain; that they were to get a portion of the bonds of the Company?—*A.* As soon as they would be issued and sold.

Q. It would not be sold because they would get the bonds?—*A.* That was the agreement.

Q. Practically, Schiller went on and performed the work that Sproule had undertaken with the Company to do by his contract?—*A.* Macdonald and Schiller.

Q. I pointed out to you that out of the contract price of 200,000*l.* sterling, or 973,000 dollars, your co-directors were receiving in hard cash from the money, which the Company had agreed to pay you, 226,000 dollars, and Codd

RECORD. was receiving in the neighbourhood of 120,000 dollars, less the deduction we have spoken of. Can you tell me the total amount that Schiller and Macdonald became entitled to when they completed their contract, taking into account, of course, what Sproule had already done?—*A.* Well, I will be able to do that by referring to their estimate.

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of the
Defendant,
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continued.

Q. Speaking roughly, what is the amount? Their contract was 4,000 dollars per mile?—*A.* I do not carry it in my mind.

Q. Have you got any settlement with them or any figures that will show it?—*A.* I can produce them, if necessary.

Q. Have you got the figures?—*A.* Not with me. They would be in Mr. 10 Secretan's possession.

Q. At all events, that is somewhere in the neighbourhood of 200,000 dollars?—*A.* I would not like to say that.

Q. I called your attention a moment or two ago to the fact that when you met Stevens and Codd on the 5th of September 1889, in Toronto, they informed you that they were prepared to carry out the Codd contract, and that the 50,000/. would be forthcoming; but that you were not satisfied with the security, and then you took your contract yourself, which we have referred to, the 16th of September, in which your bankers were to be satisfied within 30 days of the security. Were your bankers satisfied?—*A.* They did not inform me, 20 personally.

Q. Was any security ever offered or given? Under your contract of the 16th there is a provision, that within 30 days your bankers were to be satisfied?—*A.* Yes.

Q. Were they satisfied?—*A.* It would be a long story if I repeated everything that took place.

Q. It might be shorter to do it?—*A.* When I took hold of Mr. Stevens and Mr. Codd in Toronto, we went fully into the affair, explaining to Mr. Stevens that the 200,000/.—it was true the contract appeared to be 200,000/., but he understood there was to be a certain consideration taken off it. He said, yes. 30 Of the 800,000 dollars remaining so as to secure the stock and whatever charges for the 430 miles—because you must bear in mind, they bought not only the 50 miles of road, but the branches, the stock, and everything connected with it. We went down to Montreal after closing the affair in Ottawa, expecting that the rails were there. It was part of their agreement to give me the rails, but we found the rails had not arrived, and Stevens and Codd told me the rails were paid for. The rails were to come through the Bank of British North America. We went to the bank and there was no notice at all. I said to Stevens, perhaps we had better go to the Bank of Montreal; perhaps they would know something about it. We went there, and Mr. Meredith said 40 they were in Portland; that is to say, he had received a bill of lading of some goods in Portland. The money was to be paid C.O.D. The fact is, all the rails came in a few days afterwards and I was obliged to pay myself for them.

Q. How much did you pay?—*A.* I paid 86,000 dollars. Then Mr. Stevens refunded me by a bill of exchange that went through the Union Bank. Of course I had to endorse that. It was made at 60 days.

Q. It was paid, was it not?—*A.* I do not know.

Q. It was taken up at maturity ; so far as you were concerned, you never were called on to pay it ?—A. I did not have to pay it.

Q. You were repaid ?—A. I was repaid a few days afterwards through the bill of exchange.

Q. By Stevens drawing on his English friend ?—A. No ; it was by Codd. They had a long conversation. Stevens was not well pleased. He understood before he left England that Codd had paid for those rails, and Codd had not. Codd said he had an old friend that he could draw for the money through.

10 Q. Codd drew on England then ?—A. Yes ; with the assistance of Stevens.

Q. That repaid you for the rails ?—A. Yes.

Q. Did you know where the money came from for the rails ?—A. No ; it came from the Union Bank, that is all I know.

Q. Through the instrumentality of Codd and Stevens ?—A. Yes. I did not know anything further about it.

Q. Under your contract you were to be satisfied within 30 days that security would be given as to the completion and performance of the contract—your bankers were to be satisfied—was that ever done ?—A. Yes ; it was done in this way. Stevens told me that he wanted to go and visit Upper Canada—
20 he wanted to go to Niagara Falls, and so on. Mrs. Stevens was with him. He said, “ Can I arrange that any other way for you ? ” I said, “ Probably if you pass a resolution authorising me to give orders on the Company to a third party that you would accept, that might do as well for me.” He said, “ I am quite willing to do that.” So they passed a resolution at the Windsor Hotel, Montreal.

Q. That is the only security you have got ?—A. Yes.

Q. As far as I can understand it, on the 5th of September, when you met Stevens, Codd and Gregson and your co-directors, to meet in Toronto, you were all told that the Codd agreement would be carried out—that they
30 wished to carry it out. They told you that they had the 50,000 $\frac{1}{2}$ ready, which you know they had because you got it yourself afterwards—the rails were ready although they were not paid for. They were subsequently paid for by those gentlemen, and the only objection was a feeling of want of security. You started on your contract and saddled the Company with 330,000 dollars more ?—A. I told you this morning as much as I knew.

Q. All of which goes to the directors of the Company, except what Codd got, and you got no security at all, except orders of the Company. That is the story about the security, at all events. The rails were to be paid for by the Company apparently, and deducted from the money coming to you ?—
40 A. Certainly.

Q. And the rails had not been embraced in the Sproule contract ?—

A. No.

Q. Did you pay any moneys for right of way ?—A. Yes.

Q. How much ?—A. About 7,000 dollars, as far as I can recollect. I paid that much.

Q. Did you pay any money for ballast ?—A. Yes.

Page 78.] Q. How much ?—A. I think it was 25,000 or 26,000 dollars.

Q. You said this morning you paid 11,000 dollars for the right of way ?—

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continued.

RECORD. A. The difference is in the resolution passed by the Company at Toronto. I left them 3,500 dollars that they were to retain out of the money coming to me.

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Depositions
of the
Defendant,
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Charlebois,
&c.—
continued.

The further examination of said Witness is postponed until to-morrow at Ten o'clock a.m.

OTTAWA, 10th February 1893.

Q. What was Mr. Codd paying you 50,000 dollars for, under that agreement—the object of it?—A. His object in paying 50,000 dollars?

Q. Yes, September 1889?—A. Well, after a long chat with Mr. Stevens and Mr. Codd, I said to Mr. Stevens that I would not undertake to do it for the 10 200,000 dollars, because the risk was too great, and there was no money in it, considering I would have to pay the other shareholders for their shares, and I wanted to get 100,000 dollars more, and Mr. Stevens said, “We will give you 50,000 dollars; that is the most we can do.” Well that was to come out of the 173,000 dollars to be paid to Mr. Codd.

Q. You say that was in a talk with Mr. Stevens and Mr. Codd?—A. Yes.

Q. That was in Toronto?—A. Yes.

Q. Between the 5th and 9th September?—A. It was on the 8th we had that conversation.

Q. That is the Sunday talk?—A. Yes, there is nothing took place on 20 Sunday, it was an earlier conversation.

Q. The 8th was Sunday, that was the Sunday talk after you had gone to church?—A. It was in the afternoon.

Q. Stevens had gone to his own church; you do not know what that church was?—A. No, I did not go with him.

Q. And you had gone to your church, and in the afternoon you had this talk?—A. Yes.

Q. You thought you were not getting enough out of it?—A. Well, as I explained to Mr. Stevens, as I told you, that taking out everything that I had to pay out of the 200,000/. there was hardly anything left for me. 30

Q. How much was there left; did you tell him?—A. Oh, I considered at the time—I could not exactly say now.

Q. But in round numbers?—A. I wanted 100,000 dollars more.

Q. How much did you consider was left?—A. I could not tell you exactly now.

Q. One hundred thousand dollars?—A. Probably that, probably less.

Q. In the neighbourhood of 100,000 dollars?—A. Could not say exactly.

Q. And you were not satisfied with what was left?—A. I was not satisfied unless he gave me the 50,000 dollars to go on with.

Q. So that you explained to these gentlemen that, deducting the payments 40 which amounted to something like 400,000 dollars, there would not be more than in the neighbourhood of about 100,000 dollars left for your own profit, and you were not satisfied; that is the position?—A. Well, I did not go that way, but I told him, “Here are my terms,” and the documents speak for themselves.

Q. That is the plain English of it?—A. The document speaks for itself.

Q. You pointed out to him that the profit you were making was not sufficient?—A. I do not recollect exactly the conversation that took place that day.

Q. That is the effect; you wanted more?—A. At any rate you have the document before you.

Q. And therefore Codd agreed to pay you 50,000 dollars out of his slice?—A. No, Stevens did.

Q. Stevens does not agree to pay 50,000 dollars; it is Codd?—A. Stevens endorsed it.

Q. He approved, you mean?—A. Yes.

10 Q. It was Codd that agreed to pay it?—A. Yes.

Q. Were these things known to the other directors of the Company?—A. Every one of them.

Q. The old directors—I mean. Mr. Clemow and the rest of them?—A. I could not say at the time that Mr. Clemow knew.

Q. Most of them knew all about it?—A. I could not tell you.

Q. Before you resigned?—A. After they left Toronto they had nothing more to do with it.

Q. You resigned on the 16th September?—A. Yes.

20 Q. You had three days in Toronto, in which you met your co-directors Codd, Gregson and Stevens?—A. Yes.

Q. Now you had arranged your bargain during those days. I want to know whether the other directors at the time that they rejected the Codd bargain were aware of these arrangements you were making with Stevens and Codd?—A. They were not aware, because they had nothing more to do with it.

Q. It comes to this, that although you and Stevens and Codd between you were putting up this affair, that the other directors were kept in ignorance of the details?—A. They had nothing to do with my part of it.

Q. They were kept in ignorance of it at all events?—A. Yes.

30 Q. And they were led by you, I presume, you taking part in the discussion, to reject the offer that Codd, Stevens and Gregson had made to go on with the earlier contract?—A. You cannot come to that. The rejection of the affair was done before I had——

Q. You took part as a director with them?—A. Yes.

40 Q. You did not wish to carry on the earlier contract?—A. The rejection of the Murray agreement, which was on the 16th September, which was released or discharged by Codd. At the time in Ottawa, when my former shareholders were with me at the hotel, I had not then, either directly or indirectly, said a word to either Codd or Stevens about the arrangement I arrived at after my shareholders had departed from Toronto.

Q. Now your agreement with Codd—was it to pay him the 173,000 dollars less the 50,000 dollars in any event, or only after you recovered it from the Company?—A. Codd had only my word of honour I would do so; but I kept that for my security for any advances and for the payment of that 50,000 dollars, the bonus, as well as some other order, and the remainder he had my word I would do so.

Q. Under the document as it reads this money is to be paid to Codd upon

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continued.

RECORD. completion of the contract and out of the moneys under the contract ?—*A.* Yes.
 ——— Well, Codd had my word for that, but he had no contract.

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 Depositions
 of the
 Defendant,
 Alphonse
 Charlebois,
 &c.—
continued.

Q. Under your written agreement, as it reads, Codd would only receive ?—
A. What agreement ?

Q. The agreement of the 9th September. You adopt the former agreement ?

Mr. McCarthy.—Produce it.

Mr. Cassels.—We produced it yesterday.

Q. Here is the agreement dated 16th September, 1889, between Charlebois of the first part, and Clemow, Allan, Devlin and Murray of the second 10 part. I think it is Exhibit "T." Now you had made this agreement—"The said Charlebois agrees himself alone to perform and fulfil the terms of a certain agreement dated 6th March, 1888, made by all the parties hereto, agreeing that if they should enter into a certain contract with the Company as directors, then a portion of the consideration moneys of said contract should be paid as therein stated, such agreement being now in the hands of Dr. McMichael, q.c., and to indemnify and to save the former shareholders who have no interest in any such contract, harmless, in respect of such agreement or order, and further to obtain from one John Arthur Codd and the said Dr. McMichael the respective releases of the said former shareholders." That was 20 the agreement, the former one of the 20,000*l.* sterling ?—*A.* That is in 1888, is it not ?

Q. This is in 1889, 16th September, 1889, at the time you made your contract here, you adopt that agreement made by the shareholders with Codd, which was, he was to get the difference——

Mr. McCarthy.—Oh, no.

A. You spoke first of 1888.

Mr. Cassels.—*Q.* You remember the consent judgment that we are attacking, the judgment you got in the Charlebois and the Great North-West Central case ?—*A.* Yes. 30

Q. Now, by the terms of that judgment, a certain sum of money goes to Mr. Codd.

Mr. Lewis.—No, Dr. McMichael.

Mr. Cassels.—Well, to Dr. McMichael as trustee for Codd.

Mr. Lewis.—Read it, and you will find it is different from that. It is in the statement of claim at page 26.

Mr. Cassels.—It reads this way : "The third and last charge on the said fund is to be the residue, viz., the sum of 130,000 dollars, with interest thereon to date, payable to Daniel McMichael, Esq., q.c., as trustee, in full satisfaction of all claims under a certain order or agreement, for the payment of a sum stated 40 therein, at 173,333·33 dollars in full adjustment of all matters in dispute between the said parties hereto, J. A. Codd and the said Dr. McMichael, trustee, the defendants, and all other persons, waiving and declaring all personal claims against the defendant in the said order and agreement as satisfied and discharged."

Q. Now, that comes out of the 200,000*l.* sterling named in your contract. You had a contract with the Company for 200,000*l.* sterling ?—*A.* Yes.

Q. The judgment I am reading from was the judgment in an action

brought by you to enforce payment of your claim under that contract ; is that not so ?—*A.* Well, I will tell you that is correct, because my intention was to pay Dr. McMichael whatever balance remained in my hands out of the 173,000 dollars ; but there was no contract about it at all ; he had to trust to my word of honour.

Q. They had to trust to your word of honour ?—*A.* Yes.

Q. You are quite clear on that ?—*A.* I am quite clear, and in that judgment I have no objection that it should be put at that amount.

Q. This 173,000 dollars referred to as payable to Codd under the agreement, and so recited in the judgment, as you say, between you and Codd ; there was nothing but your word of honour ?—*A.* There was a contract given at the time of Murray's agreement, but Murray's agreement being released by Codd on the 16th September 1889, there was no agreement at all except my word of honour.

Q. This judgment in the clause I have read to you refers to it as an agreement. It says, "The third and last charge on the fund to be the residue, viz., the sum of 130,000 dollars, with interest thereon to date, payable to Daniel McMichael, Esq., q.c., as trustee, in full satisfaction of all claims under a certain order or agreement for the payment of a certain sum stated therein at \$173,333.33, in full adjustment of all matters in dispute between the parties hereto." What I understand you to say is this, that although the former shareholders under the earlier agreement of 1888, Codd was to get this 173,000 dollars, upon his paying the 200,000/. sterling for the stock and the completed road, that when you came on the scene he released that agreement ?—*A.* Before we did anything at all on the 16th September.

Q. And that as between you and Codd it rested in honour ?—*A.* It was a verbal agreement.

Q. Rested in honour ?—*A.* Verbal agreement.

Q. There is a difference between an agreement and trusting to honour ?—*A.* He had to take my word for it.

Q. Was there an agreement, whether by word of mouth or in writing, I do not care ?—*A.* There was nothing but my word of honour.

Q. Did you agree verbally or was it simply left as a matter of honour ?—*A.* I said I would pay it.

Q. You said you would pay it ?—*A.* Yes.

Q. Did you say you would pay it in any event, or only when you got paid by the Company the contract price ?—*A.* I said I would pay it so soon as I got the money from the Company.

Q. Then it was only to be paid out of the moneys you got from the Company ; you were not to be personally responsible if the Company did not pay you ?—*A.* I was not.

Q. What I say is correct, that agreement between you and Codd was that that money was to be simply paid by you when you got the moneys out of the Company ?—*A.* I was to pay the balance when I got the balance on my contract.

Q. And if you never got the balance you never were to pay Codd anything ; that is the case ?—*A.* Certainly.

Q. I want to know what the position between you and Codd is ?—*A.* That is the position.

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—
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continued.

Q. So that Codd's chance of getting this balance depends upon your realising it out of the Company?—*A.* It depends upon me getting the balance of my contract; as soon as the Company paid me I was to pay Dr. McMichael.

Q. So that Codd's chance——?—*A.* No, no; I will insist, Mr. Cassels, on your putting a question straight, and I will answer it. I never said "Codd's chance."

Q. Listen to what you have said?

(The last half-dozen questions and answers were read to the witness.)

Q. That is correct, is it?—*A.* Yes; but I want you to put the question straight.

Q. This was all known to Codd, then, before the 16th September 1889?—*A.* Yes.

Q. You had been a director of the Company right down to 16th September 1889. I see in the minutes you had attended all the meetings of the Company with one or two exceptions. What assets had the Company at that time, 16th September 1889?

Mr. Lewis.—You have the books there.

Mr. Cassels.—I want to see what Mr. Charlebois says.

Q. What were the assets of the Company?—*A.* Well, if you refer to the book of the Company that you have got now in your possession, everything there is correct; you have the books.

Q. That is Mr. Lewis' answer?—*A.* That is my answer because the Company took hold of all the books.

Q. Had they any moneys at all on the 16th September 1889?—*A.* What do you mean?

Q. Were they in funds at all from the Company?—*A.* They were always in funds.

Q. To what amount?—*A.* Any amount.

Q. You had the greatest trouble in paying Mr. Lewis something on account; there were resolutions to raise it, and you called up a $\frac{1}{4}$ cent share on your stock to raise that? You had spent at that time on the Sproule contract something like 73,000 dollars; is not that so?—*A.* About that.

Q. You had also had other expenses?—*A.* I presume so.

Q. You had paid 50,000 dollars to the Government?—*A.* Yes, sir.

Q. That made over 123,000 dollars?—*A.* Yes.

Q. That 50,000 dollars, I understand, was left with the Government as security for the outstanding claims?—*A.* And a completion of the road.

Q. On the 16th September, when you entered into that contract for the construction with this Company, had the Company on hand any funds or assets out of which they were to pay you 200,000*l.* sterling?—*A.* Which Company do you mean?

Q. The Great North West Central?—*A.* On the 16th.

Q. You made a contract on the 16th September 1889.

Mr. McCarthy.—Where is that contract?

Mr. Lewis.—It is the construction contract.

(Construction contract put in, exhibit "O.")

Mr. Cassels.—*Q.* Now under that they were to pay you on completion of the road 200,000*l.* sterling; that we see from the face of the contract?—

A. They were to pay me 150,000*l.* sterling.

Q. They were to pay you 50,000*l.* cash and 150,000*l.* on completion ?— **RECORD.**

A. Yes.

Q. So the company had to provide 200,000*l.* sterling ?—A. I do not know about that ; I was not in the secret of the company.

Q. We will just get to it in a moment or two. Under your contract 200,000*l.* sterling was to be provided by the company some way or other ?—

A. Under my contract I got 50,000*l.*, and there was 150,000*l.* to be paid when the road was completed.

Q. And you know the contract you have taken purport to give you a first
10 charge on all the assets of the company, including the land grant when earned ?
—A. I had a lien on the road as well as on the land grant.

Q. Had the company, when you resigned your directorship on the 16th September, any assets at all with the exception of the work that was done upon the line, and the right to get the land grant when earned ?—A. I do not know anything about it.

Q. You were a director up to that date ?—A. I knew nothing about the new directors.

Q. I said up to the time you resigned ; you resigned on the 16th September, 1889 ?—A. Yes.

20 Q. You were a director up to that date ?—A. Yes.

Q. And had managed the affairs of the company up to that date ?—A. Yes.

Q. Up to the time you resigned had the company any assets whatever, except what was represented by the road partially constructed and the prospective right to the land grant ?—A. Which company do you mean ?

Q. The Great North West Central ?—A. Before I resigned.

Q. Before you resigned ?—A. Well, their asset whatever the construction of the road was.

Q. And what else ?—A. And their stock and charter, and so on.

30 Q. Now, sir, you entered into a contract, under which you were to get 200,000*l.* sterling, and everything that the company had was charged to you for the payment of that. Was there any discussion between you, Stevens, Codd, or any of the other directors as to how the company were to raise the monies to pay you ?—A. No.

Q. Do you understand that ?—A. Yes.

Q. What is your answer ?—A. I said there was no discussion.

Q. How did you hope to be paid ; out of what ?—A. Because I expected Mr. Stevens was a man of means.

40 Q. You expected Mr. Stevens was a man of means ?—A. Yes, I took him to be.

Q. And what difference would that make ?—A. It would make no difference to me as long as I had the guarantee.

Q. What was he going to do ; advance for the company ?—A. No, I considered that Mr. Stevens was the company.

Q. That Mr. Stevens was the company ?—A. Yes.

Q. That is what you considered ?—A. Yes.

RECORD. Q. Did you consider he was going to float bonds or raise 200,000*l.*?—*A.* He did not tell me anything about his business, what his intentions were.

— No. 110. Q. You held 700 shares in the stock yourself?—*A.* Yes, before I resigned, Depositions of the yes.

Defendant, Q. What did you do with those shares?—*A.* I transferred them.

Alphonse Q. To whom?—*A.* To Mr. Stevens.

Charlebois, Q. What did he pay you for it?—*A.* He paid me the consideration I told &c.— you; he gave me the contract.

continued. Q. He paid you the consideration to give you that contract?—*A.* Yes.

Q. You got no money for the transfer of those shares?—*A.* I got the 11 50,000*l.*

Q. You got the contract?—*A.* I got the 50,000*l.* cash.

Q. Do you say that was the consideration for the transfer of your shares? —Certainly, that and other considerations; I had the contract to perform.

Q. Do you say or not that that 50,000*l.* sterling that was paid you, was paid as your stock or part of your contract price?—*A.* It was paid on account of the whole transaction.

Q. And the stock was assigned to Stevens without any further money being paid to you?—*A.* The stock was assigned to Stevens in consideration of the payment of that 50,000*l.* as well as on the —(Interrupted). 20

Q. Then for your stock, the 700 shares of stock and for the work you were to perform under your contract, you were to get the 200,000*l.* sterling, less the payments which you had agreed to make?

Mr. McCarthy. No, it is not that at all. It was for all the stock; he was to acquire the stock from his co-shareholders; it was for all the shares.

Mr. Cassels. He bought the other shares out of the company's funds.

Mr. McCarthy. You have not impeached the agreement made between him and his shareholders in any way.

Mr. Howland. Oh, yes, we gave you notice of amendment.

Mr. Cassels. Q. Now, who was this Mr. Gifford, the mortgagee I see 30 referred to?—*A.* I do not know him at all.

Mr. Lewis. It is Lord Gifford.

Mr. Cassels. Q. Lord Gifford; he is the mortgagee?—*A.* I do not know.

Q. Now, to your contract of the 16th September 1889, there is a letter appended in which you agreed to take bonds for 100,000*l.* consideration money?

Mr. Lewis. Produce it; do not put words in his mouth, because it is not so.

Mr. Cassels. Have you the original?

Mr. Lewis. No. We wrote the letter to the company.

Mr. Cassels. Q. At the time of the entering into the contract of the 16th 40 September, was anything discussed between you and Stevens and anybody else in regard to your taking part payment of your shares in bonds?—*A.* No.

Q. No discussion at all?—*A.* No.

Q. Was there any discussion at or about the time of the execution of the contract as to bonds?—*A.* No

Q. Did you sign any paper in which you said that you were willing, if the company desired it, to accept part payment in bonds ?—A. If you produce that letter—

Q. I ask you whether you signed the paper ?—A. Well, after the transaction of the 16th where it was all closed, after my return to the Russell House, Mr. Stevens asked me if I would have any objection in signing the letter that he showed me. If you produce the letter I will give you the explanation.

Q. Then you signed the letter ?—A. I think I did.

Q. There is a letter of yours ; that is your signature ?—A. That is my signature, I think ; that is in 1890.

Q. I am aware of that ; my question was : “That is your signature.” Is that your signature or is it not ?—A. That is my signature on the letter of the 29th August. (Letter marked Exhibit “P.”)

Q. That letter reads in this way : “In order that no formality may be lacking with regard to my demand of payment of your company’s indebtedness to me, I hereby notify you that in my letter of the 16th September 1889, in which I then offered, upon certain terms, to take payment of a certain defined portion of the money to be earned under my contract in bonds, is not binding upon me, if it ever had any validity, which was not the intention.”
20 What do you mean by that ?—A. Because, as I said before, after the whole transaction was closed, and I returned to the Russell House, and Mr. Stevens came to me with a letter which he wrote, and asked me if I would be good enough to sign that for him, that he wanted to show the capitalists on the other side that a party here had confidence in the undertaking, and that it would help them a great deal, but I would never be called to take a cent of it.

Q. That is what you meant by stating it never was the intention it should be acted on ?—A. Yes.

Q. Then by this letter you disclaim any liability to take the bonds, referring
30 to what had been said by Stevens at that time ?

Q. And that is what you mean, that it was not to control the bargain that you were to get money ?—A. Oh, no ; because you see very well that was given on the 16th, and a few days after they passed me a resolution at the Windsor, authorising me to give an order for them to accept for the full extent of the balance due.

Q. And that is how you claim that you are entitled only to money and not to bonds ?—A. Certainly.

Q. And that is the reference that you made in this letter : “Is not now binding upon me, if it ever had any validity, which was not the intention.”
40 What you say is that in this conversation between you and Stevens that you were willing to sign the letter to enable Mr. Stevens to show it to capitalists in England ?—A. Well, he told me it was.

Mr. McCarthy. It is plain enough, surely.

Mr. Cassells. Q. What capitalists did he refer to ?—A. He referred to none in particular.

Q. But just capitalists in England ?—A. Yes ; he did not mention. I suppose it was in England.

RECORD.

No. 110.

Depositions
of the

Defendant,

Alphonse

Charlebois,

&c.—

continued.

RECORD.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. You said in England?—A. Yes.

Q. He mentioned capitalists in England, and his object was to show them that the parties here had confidence in the undertaking. Your letter would show you had confidence in the undertaking?—A. Yes, we had confidence on this side.

Q. And confidence might be given to the capitalists if they saw you had an agreement or signed a paper by which you would take bonds of the company?—A. I do not know anything about that.

Q. That is what Stevens told you?—A. He told me just as I told you. I had unlimited confidence in Stevens at the time, and I said, "Certainly, Mr. Stevens," and I signed the document because he gave me his word I would never be called to take a cent.

Q. You would not, surely, Mr. Charlebois, as an honest man, sign a paper in which you would agree to take bonds?

Mr. Lewis. Now, produce a paper agreeing to take bonds.

(Document handed to witness, Ex. "Q.")

Witness. It was if the company required me to do so.

Mr. Cassels. Q. It reads in this way, to Stevens, "With reference to the contract I this day entered into with the above company, and the balance 150,000*l.*, payable to me under the terms of the said contract, I am willing, if the company shall by writing require me, to accept payment of 100,000*l.* of the above mentioned balance in bonds of the said company instead of payment in cash, such bonds to be taken as of the value of 80*l.* for each bond of 100*l.*" That is what Stevens got you to write?—A. Yes.

Q. I do not understand—perhaps I am not up in this contract—what possible use could Stevens make of that letter in England?—A. Well, you had better ask him.

Q. What did he tell you?—A. He told me nothing about it.

Q. He got you to sign it?—A. He told me he just wanted to have that because he thought it would be some help to him in the financing of the company.

Q. He just wanted you to sign that because he thought it would assist him in financing for the company?—A. Yes.

Q. And you signed it upon that statement made by Stevens?—A. I did so.

Q. Of course it was in England that the financing was to be done?—A. I do not know; he did not tell me he would do it in England.

Q. He led you to believe that?—A. He did not lead me to believe anything about it.

Q. Then you repudiate that on the 29th August, 1890?—A. Yes.

Q. Well, then, prior to this 16th September, it had been arranged that the Sproule contract should be gone on with; they had to be paid \$73,000 by the company, I understand—in that neighbourhood?—A. Your book will tell that.

Q. I am not fixing you down to figures, exactly?—A. If you refer to your book—anything before the assignment of our affair to the present company—you will find all transactions in your own book. If you call the

secretary of that time and take your own book, or give him your own book, RECORD. you will get all the explanation you want.

Q. We will be able to unravel it all from that, will we?—A. Certainly.

Q. What I want to get at is this : in addition to the 200,000*l.* sterling you were getting under the contract, you were getting the road partially completed —you were getting the benefit of what the company paid up to that time—A. I was to complete that road for them.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. Had you any arrangements prior to the execution of your contract of the 16th September, with Schiller, or Sproule, or Macdonald and Preston, 10 whereby they were to come in under you and waive any claim they had in priority?—A. None at all.

Q. That was made afterwards?—A. Yes.

Q. Who was the engineer of the company?—A. Mr. Secretan was my engineer.

Q. Down to what time?—A. He was the engineer of the company from the starting of the work till I took the contract myself, 16th September.

Q. Mr. Lewis was the solicitor of the company down to a certain point? —A. Yes.

Q. And he became your solicitor afterwards?—Yes.

20 Q. When did he become your solicitor?—A. From the 16th September, 1889, Mr. Lewis was employed by me.

Q. And from that time his relationship as solicitor of the company ceased?—A. You can see it there.

Q. I see, the terminal point of the railway was either at Brandon Station, or, apparently, some point at or near Brandon Station. You must have seen the original plans that were submitted to the Government?—A. I do not know about that.

Q. What?—A. Could not say about that.

30 Q. Did you undertake your contract without looking at the plan? —A. I undertook my contract to complete as located the part partly constructed.

Q. Had you looked at the plans or profiles before you entered into that contract?—A. Did I look at the profiles?

Q. Yes?—A. Yes.

Q. Had you examined the plans before that time?—A. Yes.

Q. You were aware that the last mile or two towards the C.P.R. had not been approved by the Minister of Railways?—A. Well, I cannot give you any particulars about that.

40 Q. What?—A. I do not remember anything about that. I think the secretary would be in a better position.

Q. But you were a director when these plans were originally submitted? —A. Well, I did not take particular interest in it.

Q. Now the point of junction with the C.P.R., as I understand it, was at a point called Chater, wherever that is ; where is Chater?—A. Chater is about five miles east of Brandon.

Q. And that was the point of junction determined upon?—A. I do not know.

RECORD.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. You do not know ?—A. I certainly do not know about that.

Q. Well, you say it is not so ?—A. It was the intention to fix the terminus either at Brandon or at Chater.

Q. Why was it necessary, if they failed to go into Brandon, to go so far east as Chater ?—A. Well, they were expecting—they wanted to get bonuses from the town of Brandon, and if they could not get it, to get it from the town of Chater.

Q. You know that at the point where the railway intersects, the Canada Pacific objected to that as the point of junction ; what was the reason of that ?—A. I do not know if they did object ; I know nothing about that ; I made no arrangement with the C.P.R. ; I do not know ; there was no negotiation between me and the C.P.R. 10

Q. You were a director of the company ; you will see the documents in the possession of the company, and I think you had had other contracts for railways ?—A. Oh, I had other contracts.

Q. You are a well known contractor ?—A. I am a well known contractor, but had nothing to do with that contract.

Q. Except the knowledge you would acquire ?—A. Well, I know nothing about that.

Q. After you took your contract, did you know of any objection on the part of the Canada Pacific to the proposed point of junction ?—A. I never was notified of any objection. 20

Q. Did you yourself make any application after you took your contract with the Government to allow any portion of the line that had been previously rejected ?—A. To the C.P.R.

Q. No, the Government. Did you make any application, either yourself directly, or by your instructions, after you became contractor to the Government, asking them to sanction any portion of the line that had been previously rejected ?—A. On account of what ?

Q. Well, on account of not being a proper route ?—A. Well, if you specify on what— 30

Q. Well, now, the first mile or two miles, commencing at the proposed point of junction of the railway, the Government had refused to sanction : you were aware of that ?—A. On what account ?

Q. There is no ground stated in the Order in Council, except they had refused to sanction it. Were you a party to any application, after you became contractor, to obtain the sanction to that portion of the line ?—A. The only thing that I know that the Government engineer objected to was the excess of grade ; that is all.

Q. Then it was not necessary for you to make any application ?—A. And I made an application to Mr. Lewis here—or, not to Mr. Lewis, to Sir John Macdonald—that I would become a guarantee to conform the lowering of those grades to 60 feet, and that I would give a bond to 5,000 dollars to that extent ; that in the spring I would lower that grade to its proper grade, so as to help the company. 40

Q. That was the whole thing, the question of grade, was it ?—A. Yes.

Q. Did you make that application, or the company ?—A. I think it was my application. RECORD.

Q. Not the company ?—A. It was mine.

Q. The road when left by you was built up to a point on the C.P.R. ?—
A. It was built about three miles east of Brandon station. No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—

Q. To a point just intersecting the C.P.R. ?—A. Yes.

Q. Had you constructed any station at that point of junction ?—A. It was not necessary. continued.

Q. I asked you had you done it ?—A. No.

10 Q. There is a steep grade there, is there not ?—A. Yes.

Q. Had you got any permission from the C.P.R. to make the junction at that point ?—A. I could not say that ; it was not me that made it.

Q. Do you recollect the fact that the C.P.R. refused to permit the junction there ?—A. What I recollect is, that when this company took hold of the construction, that before the departure of Mr. Stevens for England, it was then agreed that his company would make application, and I think they did make application, to the town of Brandon for bonuses and the right of way to come to the city ; and the bonuses were to help to contribute to the bridge they had to build over the river.

20 Q. Supposing the town of Brandon had given the bonus ?—A. Well, they would have come to the town of Brandon ; and that half a mile of railway to the junction was only temporary.

Q. It was a temporary junction, the permanent junction being either at Brandon or Chater ?—A. Wherever they decided to put it ; but for me, I was obliged to complete the road as located and partly constructed ; I had nothing to do with Brandon or Chater.

Q. I asked you yesterday if you would give me a memorandum in any way of what amounts you expended in connection with the road over and above this Schiller or Macdonald and Preston contract. I want to see the
30 profit you got out of the transaction ?—A. Put your question again.

Q. You see your contract was 200,000/. sterling ; we have dealt pretty fully with what you were to pay your co-directors and what you were to pay Codd, and we know pretty well what Macdonald and Preston were to get. I want to get at what additional expenditure you had to make ?—A. Do you mean outside of Macdonald and Schiller ?

Q. Yes ; because we have that in the judgment ; we know what you had to pay the other parties ?—A. About from 175,000 dollars to 200,000 dollars.

Q. That was for what ?—A. That was in connection with the construction.

Q. That was for the rails ?—A. That was for the freight on the rails and
40 fastening, and salary and right of way and interest.

Q. You do not include the price of the rails in that ?—A. No.

Q. That was to be advanced by the company ?—A. Yes, and plant and engine and cars, and everything connected.

Q. Interest and everything ?—A. Everything connected with the undertaking.

Mr. Lewis.—That is over and above the amounts he has already spoken of.

Mr. Cassels.—Yes ; which I make in the neighbourhood of 400,000 dollars ; 226,000 dollars went to his co-directors ; 173,000 dollars went to Codd.

RECORD.

—
No. 110.
Depositions
of the
Defendant,
Alphonse
Charlesbois,
&c.—
continued.

Mr. McCarthy.—*Q.* Is Macdonald and Schiller in that 175,000 dollars ?—

A. No.

Mr. Cassels.—*Q.* That was composed of items—you say freight and rails ?

—*A.* Well, if you like to have a statement I can send you one ; I cannot do it here.

Q. Will you undertake to do it ?

Mr. Lewis.—You can do it generally.

Mr. Cassels.—*Q.* I do not want to get you down to 5 dollars or 10 dollars, but would like to get you down to 20 dollars ?—*A.* Well, it is about what I told you.

Q. What were they composed of ?—*A.* It was composed of right of way. 10

Q. Seven thousand dollars ?—*A.* I could not mention exactly ; it is more or less.

Q. You stated that yesterday ?—*A.* But I will give you on what the 175,000 dollars applies.

Q. What next ?—*A.* Freight.

Q. How much would that be ?—*A.* About 71,000 dollars.

Q. What else ?—*A.* Rail fastening and so on, about 28,000 dollars ; rolling-stocks and buildings, about 15,000 dollars ; engineering—

Q. How much was that ?—*A.* Well, you may say fairly 10,000 dollars ; 20 about that ; office expenses and so on, 32,000 dollars.

Q. Office expenses ?—*A.* Work connected with insurance.

Q. For one year ?—*A.* No, since its construction.

Q. You only began 16th September 1889, under your contract ?—
A. Certainly I did.

Q. And you had it finished in August 1890 ; you reported it as finished in January 1890 ; 32,000 dollars for office expenses and insurance ?—*A.* Well, that I will not give the exact amount.

Q. And what else ?—*A.* I gave you the rolling-stock ; well, that is about all. 30

Q. That is a pretty big figure, 32,000 dollars ; you remember you reported the road finished about January ?—*A.* Well, I do not know how to make it there.

Q. You will reconsider that item ?—*A.* Oh, I consider that 175,000 dollars to 200,000 dollars was expended on the road.

Q. That comes up to 163,000 dollars, a pretty large item. Now, you had got 50,000*l.* sterling which you have told us of ?—*A.* Yes.

Q. And made payments out of that to what amount—payments you had made to your co-directors ?—*A.* About 125,000 dollars ; the document would show. 40

Q. I will give you the exact figures, so you will have no misunderstanding about it ; you had made payments of 110,000 dollars ; that is, if you paid what you agreed to pay in cash ; you agreed to pay Clemow 23,415 dollars, Allan 47,464 dollars, Murray 11,707 dollars, including what he gave orders on the company ?—*A.* Allan 46,000 dollars.

Q. Oh, I have added up the wrong one ?—*A.* Yes, it makes 125,000 dollars.

Q. One hundred and twenty-five thousand nine hundred and forty-five dollars?—*A.* Yes.

Q. That is what you had agreed to pay them in cash?—*A.* Yes.

Q. Did you pay them that in cash, out of the 50,000*l.* sterling?—*A.* Yes.

Q. You were left with the difference between 243,000 dollars and 125,000 dollars?—Yes.

Q. Leaving a net balance in your hands of 118,000 dollars out of that 50,000*l.* sterling?—*A.* That would be about it.

Q. Which you had cash on hand?—*A.* Yes.

10 Q. After making the payments to your fellow-friends, we will call them?—*A.* Yes.

Q. Then you tell me that the utmost you expended from the 16th September 1889, down to the time that you had completed the contract, taking the whole of your figures, came to 163,000 dollars?—*A.* Taking everything that was paid in connection with that contract was in the neighbourhood—including the 125,000 dollars.

Q. I exclude the 125,000 dollars?—*A.* Well, I include it; including all the money paid, it was 525,000 dollars.

20 Q. Take your figures and give me the details of how you make it up?—*A.* Five hundred thousand dollars it is.

Q. What is it composed of? You are reading from a memorandum?—*A.* Yes.

Q. Prepared by whom?—*A.* At my office.

Q. By Mr. Secretan?—*A.* No.

Q. By yourself?—*A.* Yes.

Q. Give me the details of it?—*A.* Four former shareholders, 125,000 dollars and a little over; advanced to J. A. Codd, \$14,883.54; paid for rails—well, of course, if you include those rails, they were paid for afterwards.

30 Q. They were repaid?—*A.* Paid for rails, 86,858 dollars; freight and C.P.R. and some others, \$71,980.25; rail fastenings and so on, 28,983 dollars; right of way, 7,700 dollars; engineering, \$8,788.26; construction, \$97,046.25; that was what was being paid to Macdonald and Preston and Schiller; building, interest and insurance, 32,834 dollars.

Mr. McCarthy.—Q. Does that mean your own work of construction?—

A. Yes; advanced to Macdonald and Preston, \$6,650.92; office and partition services, &c., \$7,794.25; locomotive and car construction, 13,307 dollars.

Received on account—

Q. Let us pause there; that is the total outlay?—*A.* Yes.

40 Q. Five hundred thousand dollars?—*A.* Yes.

Q. Now, of that, 125,000 dollars went to the shareholders?—*A.* Yes.

Q. Codd was a loan from yourself to Codd?

Page 109.] Q. Fourteen thousand eight hundred and eighty-three dollars; paid for rails, 86,858 dollars, that was repaid by the company?—*A.* Yes.

Q. Was the freight repaid?—*A.* No.

Q. That item will stand?—*A.* Yes.

Q. What is 28,000 dollars?—*A.* That is the fastening.

Q. Twenty-eight thousand eight hundred and ninety-three dollars, that stands too?—*A.* Yes.

RECORD.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. Then right of way, 7,700 dollars, that stands ?—*A.* Yes.

Q. Engineering, 8,788 dollars ; that was paid by you after you took hold of the contract, was it ?—*A.* Yes.

Q. Schiller, 97,046 dollars ; that is what is embraced in the judgment ?—*A.* Yes.

Q. It has been settled for in the judgment ?—Yes.

Q. We will omit it ?

Mr. Lewis.—Oh, no.

A. That has been paid outside of what is in the judgment ; the company agreed to pay that for me.

Mr. Cassels.—Q. I want to get at how much money you paid Schiller and Macdonald and Preston ?—*A.* It says 97,000 dollars.

Q. Is part of that 97,000 dollars represented by the balance due in that judgment ?—*A.* No, that is in the bill.

Q. Did you pay them 97,000 dollars over and above that ?—*A.* No, that is the cash actually paid from this.

Q. That is the cash paid, exclusive of the judgment, is it ?—*A.* Yes.

Q. Buildings, &c., 32,834 dollars ; what buildings do you allude to ?—*A.* It was sheds ; we might have to put material under cover, and so on.

Q. I thought Macdonald and Preston were to do that ?—*A.* No.

Q. Then locomotives and so on, 13,307 dollars ?—*A.* Yes.

Q. Making a total of 500,000 dollars ?—*A.* Yes.

Q. What is this advance to Macdonald and Preston, 6,050 dollars ?—*A.* That was money I was advancing to Preston and Macdonald to pay some of the old claims.

Q. And that is deducted from there ?—*A.* No, it is outside.

Q. That is a loan then ?—*A.* Yes, an advance.

Q. Well, then, you had from the company, after paying these directors their 125,000 dollars, you had a balance left of 118,000 dollars ?—*A.* Yes.

Mr. McCarthy.—Against which he has paid 400,000 dollars ; that is what it comes to.

Mr. Cassels.—Oh, no, he has not.

Witness.—Yes, sir.

(Discussion between counsel as to figures.)

Q. That would leave you having paid, say, 157,000 dollars, which you say you have paid out yourself ?—*A.* Yes.

Q. Over and above what you got ?—*A.* Yes.

Q. That is what you say ?—*A.* Yes.

Q. Did you receive any other moneys from the company except this 50,000*l.* and the repayment of the rails ?—*A.* No.

Q. You did not ?—*A.* No, except the 24,000 dollars I got—

Q. You got that back from the Government ?—*A.* Yes.

Q. Twenty-four thousand dollars in addition ?—*A.* Yes.

Q. That would make 125,000 dollars ?—*A.* Yes.

Q. Did you receive any other sums of any kind from the company ?—*A.* No, sir.

Q. Now, I see that the Order in Council you refer to is here. Who is W. A. Allan ? Was he the gentleman you spoke of as secretary ?—*A.* Director and secretary.

Q. Is he a stockholder any more ?—A. No.

Q. When was he made secretary ?—A. In the beginning.

Q. While he was a stockholder ?—A. Yes.

Q. I understood he sold out his stock ?—A. He was one of the four.

Q. Had he any interest after this deal of the 16th September as a member of the company ?—A. No.

Q. Was he an officer of the company after that date ?—A. No.

Q. Then his connection with the company ceased on the 16th September 1889 ?—A. He had nothing more to do with the transaction after the 16th September 1889.

Q. I see in this application you made to Sir John Macdonald that Mr. Allan and Mr. Charlebois both sign the application, and Mr. T. Maine Daly and Mr. J. Travers Lewis are witnesses. (Reads application, Ex. R.) ?—A. Yes.

Q. Now, at that time, Mr. Allan was depending upon your getting these moneys out of the company ?—A. I went to Mr. Allan and asked him if he had any objection to that and he said not.

Q. Mr. Allan had an order from you ; an equitable assignment on moneys that were coming to you from the company ?—A. I just gave him an order on the company and the company accepted.

20 Q. And he could only get his pay provided you got your pay from the company ?—A. Well, that order will show.

Q. He was still assisting you to try and get these moneys. Did any other of the old directors assist you in any way ?—A. Well, Senator Clemow was one of the directors of the new company.

Q. He was not a director in the new company ?—A. Yes, he continued on ; he became afterwards.

Q. Any of the others ?—A. No, not that I am aware of.

Q. Now you had to finance to raise the difference between the 118,000 dollars and the sum you say you spent ?—A. Yes.

30 Q. Where did you get that money ?—A. Which money ?

Q. The difference ?—A. Oh, I refuse to answer that.

Q. You decline to answer that ?

Mr. McCarthy.—What is that ?

A. He wants to know where I got the money I paid over.

Mr. Cassels.—Where he got the money over and above what he paid to these men, 125,000 dollars. He had 118,000 dollars left ; he purports to have expended 150,000 dollars over and above that sum.

Mr. McCarthy.—I do not think he is bound to tell where he got it.

Mr. Cassels.—Q. You got it irrespective of the company altogether ?—
40 A. Yes.

Q. Did you get it upon your own credit ?—A. Yes.

Q. Absolutely irrespective of this company ?—A. Yes.

Q. And not upon the faith of the company in any way ?—A. No.

Q. And you decline to tell me where ?

Mr. McCarthy.—And I advise him not to do so.

Mr. Cassels.—Q. Because you say the company has nothing to do with it ?
—A. No.

RECORD.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

RECORD.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. That was a matter entirely between you and those from whom you borrowed it ?

Mr. McCarthy.—He did not say he borrowed it.

Mr. Cassels.—Did you say you borrowed it ?—*A.* No.

Q. Do you say you did not ?

Mr. McCarthy.—He declines to answer.

Mr. Cassels.—*Q.* Do you remember the time this consent judgment was entered into ?—*A.* Yes.

Q. That was done in Toronto ?—*A.* Yes.

Q. Who were there representing the company—I do not mean the 10 lawyers—what members of the company ?—*A.* I do not know the members of the company ; I was not there.

Q. Were you not in Toronto at the time of the consent judgment ?—*A.* No.

Q. Was this done without referring to you ?—*A.* I was there a day or two before ; I was just there for a couple of hours.

Q. Was Mr. Codd there ?—*A.* I saw Mr. Codd.

Q. Any other directors of the company there ?—*A.* I think Dr. McMichael was there.

Q. Do you know whether there was any resolution of the company agreeing to this judgment ?—*A.* Any resolution. 20

Q. Yes.—*A.* For what ?

To consent to such a judgment as that.—*A.* Oh, I do not know anything about that.

Q. Now the judgment was settled ; the total of your contract price, as I understand it, was 973,133 dollars ?—*A.* Yes.

Q. And then you were entitled to the Government deposit as well ?—*A.* Yes.

Q. Twenty-four thousand one hundred and five dollars ?—*A.* Yes.

Q. They made the total that would be coming to you in the neighbourhood of 997,238 dollars ?—*A.* Yes.

Q. Well, now you had received 50,000/. sterling ; that netted 243,333 30 dollars ?—*A.* Yes.

Q. The rails were 129,574 dollars ?—*A.* That is what they added it up.

Q. That is what you agreed upon ?—*A.* Yes.

Q. And then you were charged with the balance of the Government deposit 24,105 dollars, making totals 397,012 dollars ; that left a balance due you, according to this memorandum, of 600,226 dollars. I see you were allowed interest upon the settlement. What was that interest for ?—*A.* It was interest on the money due.

Q. From what date ?—*A.* From the date the road was completed.

Q. What date was that ?—*A.* I was not there ; it was not me that fixed it. 40

Q. You have adopted this decree ; it is your judgment. Then, certain allowances were made. There was an allowance for engines of 20,000 dollars ; how did that arise ?—*A.* Well, some time before the judgment, a year before it, the directors passed a resolution accepting the 20,000 dollars, in place of the two engines that I was to furnish them, and 13,000 dollars for fencing that had to be done some time ; and 3,500 dollars to cover anything that might be due on right of way.

Q. Three thousand dollars is the figure in the settlement ?—*A.* Yes.

RECORD.

Q. And rolling stock?—A. Sixty thousand dollars—

Q. Rolling stock 25,000 dollars?—A. No, no, I am speaking of what took place at the meeting of directors, and I think it was 60,000 dollars.

Q. I am talking of the settlement: there was allowed off for the engines?—A. I do not know how they fixed it.

Q. There was an allowance for rolling stock, 25,000 dollars, in the judgment. I have shown you certain allowances?—A. Well, I understood that 25,000 dollars was allowed as a compromise.

Q. For the rolling stock?—A. For rolling stock, and turntables and depôt, and everything else.

Q. What was the contest as to the rolling stock?—A. Well, the contest was that they wanted a larger number than the one I had.

Q. Then you claimed Codd owed you some 92,866 dollars?—A. Yes.

Q. That was made up of the 50,000 dollars Codd agreed to pay to you, and the sums you had advanced to Codd, and the 28,000 dollars is, I understand it, the difference in the price of the rails as between the Codd contract and the other: that is about the way that was?—A. Read the question again.

Q. Codd was charged as against his 173,000 dollars with 96,866 dollars?—A. Yes.

Q. Now, that included the 50,000 dollars Codd was to pay to you?—A. Yes.

Q. And the advances you say you made to Codd, including the difference in the price of the rails?—A. Yes.

Q. And this 5,128 dollars, what did that mean?—A. That was a balance due at the time I took the contract from the company.

Q. And the cost of spikes—was that in the same way?—A. Yes.

Q. Fifty-eight thousand nine hundred and forty dollars?—A. Yes.

Q. And the duty paid on rails 16,146 dollars?—A. Yes.

Q. That left the total due to Codd 130,055 dollars, which was called 130,000 dollars; that is the way that was made up?—A. Yes.

Q. After the judgment was made did you see the figures by which the statement was arrived at?—A. I saw a copy.

Q. And the copy is similar to what I am showing you now?—A. It is something similar to that.

Q. That is just an exact copy of it?—A. I could not say.

Q. Look and see if there is any difference?—A. Not having mine here I cannot tell.

Q. You have yours somewhere, and you think that is very similar to it?

—A. Yes.

Q. And there is no disapproval on your part to that?—A. No.

Q. We will mark that page, the statement beginning "Contract price under the contract." It is the statement referred to in the 39th paragraph of the Statement of Claim, and the account appears to be similar to the one that he—that is the way of arriving at?—A. I cannot say anything about it; I do not know how they made their figures.

Q. You got the one shown to you?—A. I got a copy, if it is an exact copy, something similar to that.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

RECORD.

—
No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois
&c.—
continued.

Q. You were told after the Judgment had been arrived at, how the account had been arrived at?—*A.* I was shown what was on the copy, nothing else.

Q. That copy that was shown to you, it was very much in the way in which I have read to you?—*A.* Yes.

Q. It began with the total amount due you, added on the balance of the Government deposit, deducted the receipt——?

Mr. McCarthy.—Oh, it is substantially the same, I think.

Mr. Cassels.—Q. Have you the copy that was furnished to you after the judgment was entered into?—*A.* I must have a copy.

Q. Have you produced it on your affidavit on production?

Mr. Lewis.—No, I have not it. I have anything the affidavit refers to.

Mr. Cassels.—Q. At all events you say you got that, and it will be produced?—*A.* Well, if I have got it.

Q. You said you had it?—*A.* I am not sure of it; I know I saw it.

Q. Now, you are attempting to sell the right of way of the road, the 50 miles constructed?—*A.* To sell what?

Q. To sell the 50 miles of railway; you are attempting to sell it?—*A.* Yes, if I do not get paid.

Q. How would you sell it? In pieces, cut it up, or how?—*A.* It is not for me to arrange; my lawyer will sell it.

Q. At all events, you claim that right under this judgment?—*A.* Yes.

Q. And you propose to enforce it unless you are stopped?—*A.* Yes.

Q. And unless you are stopped by the injunction of the Court you will try and sell the 50 miles of roadbed, under the terms of the judgment, just as the judgment gives you the right? Your statement of defence, of course, was necessarily framed on your instruction?—*A.* Certainly.

Q. I see in your statement of defence you set up that letter that we had so much fuss about, written to Stevens—"With reference to the contract I have this day entered into with the above company," &c. (Reads from page 44.) That is set out in your defence?—*A.* Yes.

Q. And sworn to?—*A.* Yes.

Q. Now, your contract was the 16th September. You claim to have finished the work about the beginning of January 1890. Now I ask you again, where did you get the money that enabled you to complete the line, over and above what you had received from the company?

Mr. McCarthy.—He declines to answer that; and I advise him to decline.

Mr. Cassels.—Q. You say that is your own affair?—*A.* I have already answered that.

Q. And you say the company has nothing to do with that?

Mr. McCarthy.—He has already said that.

Mr. Cassels.—Q. In obtaining any moneys, was the company any party in assisting you to get them.—*A.* The only thing that I have done, I gave an order on the company on the Union Bank for 150,000 dollars, which the company accepted, agreeing to pay the amount.

Q. You gave an order on the Union Bank for 150,000 dollars; when was that?—*A.* I could not tell you exactly the date.

Q. About what date?—*A.* It was in 1889.

Q. Had you been doing your business with the Union Bank?—Yes;

I had been doing business with the Union Bank, Montreal Bank and Quebec Bank. RECORD.

Q. All the banks, I fancy, on your different contracts ?—A. Yes, sir.

Q. Had you a running account with the Union Bank ?—I had.

Q. Did you get any further advances from the Union Bank on the strength of those orders ?—A. No.

Q. None whatever ?—A. No.

Q. Then the orders were given to the Union Bank for what purpose ?—

A. Oh, the Union Bank took it as collateral security.

10 Q. As collateral security to a running account that you had with them ?—

A. Yes.

Q. But no further moneys were advanced on the strength of those orders ?

—A. I got the advance of 150,000 dollars.

Q. But that you had got prior to the giving of those orders ?—A. No, no ; I got it on giving those orders.

(The last dozen questions and answers were read to the witness.)

Q. Now I want to get at the exact facts with reference to that. You had an account with the Union Bank ?—A. Yes.

Q. And it had been running for some years ?—A. Yes.

20 Q. And amounted to a large sum of money ?—A. Yes.

Q. You were concerned in other contracts outside, altogether, of this railway ?—A. Yes.

Q. You were a large contractor ?—A. Yes.

Q. The Vaudreuil Railway and other roads I know of ?—A. What is it you want to come at ?

Q. What has become of the Vaudreuil road ; who have got the Vaudreuil road ?—A. That is my business.

Q. Had that anything to do with the Great North West Central ?—A. Nothing to do with it.

30 Q. Sure ?—A. No, sir.

Q. Have you any bargain as to the destination of the Great North West Central ?—A. No, not that I am aware of.

Q. I do not mean written bargain, verbal bargain with any company, that you are going to hand it over to any company ?—A. No, sir.

Q. Sure ?—A. Yes.

Q. Go back to the Union Bank ?—A. You had better go to the Union Bank.

Q. I want to see which of the statements you made is correct. You had a current account with the Union Bank as I understand it ?—A. Yes.

40 Q. And you had large discounts there ?—A. I am not going to tell you all my business.

Q. All I want to know is this ; did you get any moneys from the Union Bank towards the fall of 1889 other than a renewal of your then indebtedness ?—A. I got 150,000 dollars on the strength of those orders.

Q. Did you get that in cash ?—A. I did

Q. Did you take up those notes then due ?—A. No, sir.

Q. It was advanced to you in cash ?—A. Yes.

Q. You are sure of that ?—A. Yes.

RECORD.

No. 110.
Depositions
of the
Defendant
Alphonse
Charlebois,
&c.—
—continued.

Q. When did you draw the order in favour of the Commercial Bank of Manitoba ? That was the McDonald and Preston order, I am told ?

Mr. Lewis.—No, Schiller.

Mr. Cassels.—*Q.* You remember Mr. Schreiber making a report about the completion of the road, and the rolling stock, and so on ; that was procured by you, or your solicitors through you, was not it ?—*A.* It was at my request.

Q. And procured by your solicitor ?—*A.* Yes.

Q. This crossing contract—have you got that here—of the 13th January 1890 ?

Mr. Lewis.—I never saw it. Produce it. 10

Mr. Cassels.—*Q.* Were you aware that Mr. White had written a letter to your sub-contractors, 27th September 1889. *A.* He might have written. (*Letter read.*)

Q. Pointing out reasons why it is an improper place for a junction ; were you aware of that ?—*A.* Well, if that was written, I think Mr. Secretan must have taken notice of that.

Mr. Lewis.—It is not Secretan ; it is Macdonald and Schiller.

Mr. Cassels.—*Q.* You do not know about that personally ?—*A.* No.

Mr. Cassels.—I want to get that statement produced upon which that judgment was based. 20

Mr. Lewis.—I never saw it.

Mr. Cassels.—Charlebois said he saw it.

Mr. Lewis.—He said a copy was sent him ; if he has it, it will be produced.

Mr. Cassels.—*Q.* I am going back to 16th September 1889 ; these were the minutes of the company I referred you to. You were present ; Mr. Clemow in the chair ; Devlin, Murray, Charlebois and Allan ; the resolution was then—“Resolved that the subscribers to the stock of the company,” &c., &c. (read down to the words, “to the full amount of such stock subscribed”). That shows that the stock at that time had not been paid in full ?—*A.* Yes. 30

Q. But the resolution is, “The annual general meeting of the Company, held 4th June, the resolution was passed by the Company’s shareholders, &c. (reads resolution) ?—*A.* When was that resolution passed ?

Q. 16th September 1889, Clemow in the chair, and these other men present ; the stock was paid then. Do you know where the money came from to pay it ?

Mr. Lewis.—Was it paid up ?

Mr. Cassels.—Yes, it was immediately afterwards transferred.

Q. Was the stock paid in full then ?—*A.* We did not transfer any paid-up stock of the Company.

Q. Was the stock paid-up in full then ?—*A.* I do not think it was ; there was a deduction made of 50 per cent. 40

Q. And no other monies paid ?—*A.* There was 30 per cent. paid by the former shareholders up to that time, and this 25 per cent. discount.

Q. How was the balance paid-up ?—*A.* It was transferred to the Company without any guarantee.

Q. Was there any agreement made by you to pay up your stock in full ?—*A.* No.

Q. Did you make any other payment?—A. No, not outside of the 30 per cent. RECORD.

Q. Were there any cheques passed by you from the shareholders to the company?—A. I do not remember. No. 110. Depositions of the

Q. What bank did you deal with?—A. I do not know; Mr. Secretan will tell you that. Defendant, Alphonse Charlebois. &c.—

Q. Do not you know?—A. No (resolution filed 16th September, '89, Exhibit "S"). continued.

Q. On the same date there was this motion made:—"It was moved by Mr. Gregson, seconded by Dr. McMichael, that the President be authorised to sign and issue a cheque to Charlebois, 243,333.33 dollars, on account of his construction contract this day entered into."

Mr. McCarthy.—He knows nothing about it.

Mr. Cassels.—Q. This is the same day the company authorised the shareholders to be paid in full, to get a discount of 5 per cent. Do not you know that 50,000*l.* was used to buy the stock up and then went back into the coffers of the company, and then went out to you in the shape of a cheque?—A. I do not know.

Q. You cannot say it did?—A. No.

Q. When did Mr. Secretan cease to be the engineer of the company?—A. How?

Q. I understand he was your engineer after a certain date?—A. After the 16th September, 1889.

Q. He was your engineer after that?—A. Yes.

Q. He could not be your engineer and engineer for the company as well?—A. It was the intention of Mr. Stevens that Mr. Secretan should continue to act for the company as for me.

Q. This order of the 5th March, 1890, I referred you to, the one signed by Allan and yourself; and the latter to the Right Honourable Sir John Macdonald, following it up (*reads documents*). Now, did you reduce the gradients to 60 feet in the mile, as stated here?—A. Yes.

Q. Was it reduced to 60 feet in the mile?—A. Yes.

Q. Are you sure of that?—A. Yes, very sure.

Q. Did you do this on the mile before you came to the junction?—A. Not on the last half mile.

Q. That has never been done?—A. It was not necessary to; because the road was accepted as it was, and it was not necessary.

Q. But as a fact the gradient was never reduced?—A. Not for the last half mile.

Q. This is the first profile, is not it; you know the plans, do not you? (*showing plans*)?—A. Yes.

Q. What plan is that?—A. That is the plan of the section to the junction.

Q. You saw that when it was made or about that time?—A. I am not in a position to say much about it; I trust to the engineer, Mr. Secretan.

Q. This is the plan you mean, perhaps (*showing another plan*). Do you know that plan?—A. Well, if you refer to Mr. Secretan he will give you all the explanation you want about those plans; I am not in a position to do so.

RECORD.

—
No, 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. Did you not see this profile when it was prepared ?—*A.* I might have seen it.

Q. Did you approve of it at the time it was made ?—*A.* I had nothing to do with the approval of it ; it was the Government.

Q. Did you approve of it before it went to the Government ?—*A.* Well, if you refer to Mr. Secretan he will be able to tell you.

Q. Do you know yourself ?—*A.* I do not know anything about it.

Q. Did you see it before Mr. Secretan submitted it to the Government ?—*A.* I might have seen it.

Q. Did you assist Mr. Secretan in the making of the plan ?—*A.* No, not at all.

Q. Who instructed Mr. Secretan to make it ?—*A.* It must have been me.

Q. It was done under your instructions ?—*A.* It was done under my instruction, or it was done under the instruction of the Secretary of the company.

Q. Do you remember giving any instructions in regard to it ?—*A.* Not as regards any special instructions ; I was only director at that time.

Q. At the time of the amended profile you were a contractor. Is that Mr. Secretan's signature ?—*A.* Yes.

Q. You are familiar with his signature ?—*A.* Yes.

Q. That is his signature. Now, this profile was prepared for submission to the Government ?—*A.* Yes.

Q. That was after you contended the greater part of the work was done ?—*A.* Well, as I told you, Mr. Secretan had power to prepare everything that was necessary.

Q. You were aware that an application had been made to the Government or to the Minister of Railways to pass the road ?—*A.* I told you that ; yes.

Q. Well, they required certain plans for the purpose of going to the Government ?

Mr. McCarthy.—Surely not.

Mr. Cassels.—Q. You were aware that the original profile or plan had not been sanctioned by the Government ; all but the last mile or half a mile, whatever it was ; and then the approval of the Government had to be obtained by somebody ?—Yes.

Q. Who gave the instructions to make the application for that approval ?—*A.* I think it was I.

Q. And to whom did you give the instruction ?—*A.* I think I gave it to Mr. Lewis.

Q. That is your solicitor ?—*A.* Yes.

Q. And Mr. Secretan, the engineer, prepared the necessary plans for that purpose ?—*A.* Yes, he must have.

Q. That is all you know about it ?—*A.* Yes.

By Mr. McCarthy :—

Q. Then I understand that until the 16th September, 1889, your connection with the company was merely as a shareholder and director ?—*A.* Yes.

Q. And I understand, also, from what you say that you had not taken a very active part in the management or in the transactions of the company until the date that I have mentioned ?—*A.* No, sir.

Q. You were a holder of 700 shares, and you had paid, first and last as I understand, upon these about 30 per cent. ?—A. Yes. RECORD.

Q. At different times ?—A. Yes.

Q. And had the other shareholders paid in like manner about 30 per cent. ?
—A. About the same thing.

Q. The arrangement that was made between the Government and the company, so far as you know, appears in the written contract that was entered into ?—A. Yes.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. And the contracts that were made between the company and Sproule
10 are also in writing ?—A. Also in writing.

Q. In the end it turned out, I believe, that Sproule was not the contractor in reality ; that there were two men behind him, Macdonald and Schiller, who claimed to be partners with him, or claimed that Sproule was acting for them ?
—A. Yes.

Q. That you had nothing to do with ?—A. No.

Q. You did not know anything at all about that ?—A. No.

Q. Now, the agreement that you have spoken of as the Murray Agreement, and which was made by Mr. Murray under the power of attorney that you sent from here, have you any knowledge about that more than what the writing
20 shows ? Have you any knowledge about that except what appears from the documents ? You were not in England ?—A. I was not in England.

Q. It was a joint power of attorney ?—A. Yes.

Q. You sent it to England ?—A. Yes.

Q. And a certain agreement and certain documents were signed by Mr. Murray in England, and that is all you know about it, I suppose ?

Mr. Cassels.—I would like an objection noted here, that I do not think my learned friend has any right to examine Charlebois in a direct way. You have no right to lead him.

Mr. McCarthy.—No, I have no right to lead him ; but there is no use
30 wasting time. He could not have had knowledge of this matter.

Mr. Cassels.—Oh, yes, he could have had knowledge ; Murray was here.

Mr. McCarthy.—Q. Now, what do you know—to satisfy my learned friend's objection—what do you know of the arrangement that was made by Murray in England with Mr. Codd ?—A. By Murray with Mr. Codd ?

Q. What do you know about that ? What is your knowledge, or your means of knowledge with relation to that ?—A. Well, the arrangement he was
to—

Q. I mean, what do you know of it ? How did you know about it ; how did you come to know there was such an arrangement made ?—A. I was not
40 aware except when I saw the agreement. I did not know what had been done.

Q. Is your only knowledge the fact that you have seen the agreement that Murray executed in England ? (Ex. "T.")—A. Yes.

Q. And that agreement was executed by you in person, apparently, here ?—A. Yes, it was served upon me.

Q. Then the agreement was sent from the other side to Canada, and it was executed by you and Devlin and Clemow and Allan here, Murray having signed it on the other side ?—A. Yes, I suppose so.

Q. Do you know anything more about this, except that the agreement was

RECORD. sent to you here and that you executed it?—*A.* Well, that 16th September, before we done anything, there was a release of that—

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of the
Defendant,
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&c.—
continued.

Q. But about the document itself, do you know anything more about the arrangement between Codd and Murray than what appears on the face of this agreement?—*A.* I know nothing more than that.

Q. Do you know why it was Murray did not act upon your power of attorney and execute the paper in England; do you remember how that was?—*A.* No, I do not remember.

Q. Then the terms of this agreement were not kept by Mr. Codd?—*A.* No, that is the reason why in Toronto—

Q. I mean nothing was done at all under the agreement by Codd?—*A.* Nothing was done.

Q. Now then, this was in April 1888, and during the year 1888, the whole of 1888, the balance of 1888, and up to September 1889, no new arrangement of any kind was made?—*A.* No.

Q. Now then, we come to September 1889. Where was it, and how was it, you happened to meet Mr. Codd in Toronto? Was it by appointment or by chance?—*A.* By appointment.

Q. And who was with Mr. Codd there?—*A.* Mr. Stevens and Mr. Gregson.

Q. You were introduced then to Mr. Stevens by Mr. Codd, or did you know Codd; had you met him before?—*A.* Oh, yes.

Q. But you had not met Stevens before?—*A.* No.

Q. You were introduced to Stevens and Gregson by Codd in Toronto?—*A.* Yes.

Q. And what did they represent themselves as having to do with this matter?—*A.* Well, we went there pretty much to know what they had to offer, and discuss matters and so on.

Q. What I wanted to know first, in what capacity did Mr. Stevens appear upon the scenes?—*A.* As purchaser of the affair.

Q. He appeared as a capitalist?—*A.* Yes.

Q. As it was represented to you, or you understood at the time?—*A.* Yes.

Q. You understood him as a principal who was going to make an arrangement with you gentlemen if he could make it?—*A.* Yes.

Q. And you say, "We went up;" who do you mean?—*A.* Clemow, Allan, myself and Mr. Lewis.

Q. Where did you meet Mr. Codd, Mr. Stevens, and Mr. Gregson first?—*A.* At the Queen's.

Q. Did you meet them at the Queen's or had you seen them here?—*A.* At the Queen's.

Q. Negotiations went on, as I understood, there for two or three days?—*A.* Yes.

Q. What was the result of that negotiation?—*A.* That Mr. Stevens was not in a position, or Mr. Codd, to satisfy the shareholders and carry on the condition of this agreement.

Q. The negotiation was, whether this agreement should be carried out, the agreement of April 1888?—*A.* Yes.

Q. And the end of it was that Mr. Stevens and Mr. Codd were not able to satisfy ?—A. They were not able to satisfy the conditions.

Q. Not able to carry out the conditions as to time ?—A. Yes.

Q. They were not able to satisfy them, or they were not satisfied to go on with it ?—A. No.

Q. Then all the arrangements based on this agreement fell through ?—A. Yes.

Q. Who was it opened negotiations with a view to the second agreement ?

Did they propose it to you, or you to them ; or how was it ?—A. As far as I can remember, I think Mr. Stevens came to me and asked me if I would not undertake to help him to carry this thing through ; if I would not undertake to do it myself ; something of that kind.

Q. Stevens asked you whether you would not undertake to do it yourself ; and that was the start of the negotiations between you individually, and Mr. Stevens and Mr. Gregson and Mr. Codd ?—A. Yes.

Q. Then, that commenced on Saturday, and was continued on the Sunday afternoon, and was finally agreed to ?—A. Well, on the Sunday afternoon it was merely referring to it.

Q. But on the Monday it was settled, and these heads of agreement were made, Exhibit " D " ?

Q. Whose handwriting is this in ?—A. I think it is Mr. Stevens himself ; it is either Mr. Gregson or Mr. Stevens.

Q. It is either Gregson or Stevens ?—A. Yes.

Q. And is that the only agreement you ever had on your own account with Mr. Codd or Mr. Stevens ; was there any other document ?—A. That is the only document.

Q. Then the terms of your dealing with Codd, the terms of your arrangement with Codd, is to be found in this paper, marked " D " ; they are all embraced here ?—A. Yes.

Q. And there are two letters attached, I see, to this agreement ; one is from Stevens and the other from Codd ; do you remember them, or will I read them ?—A. I know those two letters.

Q. Were they made part and parcel of the arrangement ?—A. Well, it was to show me about the transfer.

Q. And Codd reads, " I hereby agree," &c. (*reads letter*) ?—A. I think it was a letter in reference to the interest.

(Letters, Exhibits " D 1," " D 2," and " D 3.")

Q. The first letter from Stevens speaks for itself. I want a little explanation of the first letter from Codd (*reads Exhibit " D 2 "*). Let me understand about this 28,000 dollars. He says : " I will give you an order for 28,000 dollars on Dr. McMichael, q.c." What 28,000 dollars was that ?—A. It was for the difference on the cost of the rails.

Q. In reference to the second letter there is nothing that requires explanation. Now then, those papers being signed on the 9th September you left Toronto, or did you, and returned to Ottawa ?—A. I returned to Ottawa for the Wednesday ; I think it was Tuesday.

Q. When was it you met these gentlemen in Ottawa ?—I think it was on the following Saturday or Sunday.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

RECORD.

—
No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. Monday would be the 16th ; it would be the Monday after that you met them and closed the matter with them here ?—*A.* Yes.

Q. Now, at that time do you remember obtaining a release from Mr. Codd of this original agreement ?—*A.* Yes, I do ; it was on the 16th, was it ?

Q. On the 16th ?—*A.* Yes ; before any other thing was done.

Q. This document, endorsed on Exhibit " T," was executed on the 16th, before anything else was done ?—*A.* Yes.

Q. You had in the meantime made your agreement with your fellow-shareholders Clemow, Allan, and Devlin ?—*A.* Yes. 10

Q. How did you come to carry out the arrangement that you had made with Codd with regard to the stock. What did you do with regard to the stock ?—*A.* I just had to transfer the stock.

Q. Had it been all transferred to you in the first place ?—*A.* It had to be all transferred to me.

Q. It had all been transferred to you ?—*A.* No ; it was intended to be transferred to them.

Q. You had agreed with them and acquired the right to all the shares ?—*A.* Yes.

Q. Now tell me the form that was followed ?—*A.* Well, it was transferred directly by each one of us to Stevens ; the greatest part of it was transferred to Stevens, and some of it was transferred to Codd, Aird, and Gregson. 20

Q. Who was to determine the number of shares that were to be transferred ; who was it fixed the number you were to transfer to each of these individuals ?—*A.* Each individual had to transfer all the stock.

Q. I mean to all the parties who got them. What I want to know, who was it determined you were to give 50 shares to one man and 50 to another, and the bulk of the shares to Stevens ?—*A.* Oh, it was Stevens himself.

Q. In other words you transferred your own shares and you got your 30 shareholders to transfer their shares to Stevens or those whom Stevens pointed out ?—*A.* Well, it was transferred to Stevens to a large extent.

Q. The great bulk to Stevens.—*A.* I think 450,000 dollars.

Q. And the others were transferred according to Stevens' directions ?—*A.* Yes ; for whatever purpose they wanted it.

Q. Then the new shareholders became Stevens, Codd, Gregson, Aird and McMichael ?—*A.* Yes.

Q. And who then suggested as to how the arrangement that you had made in Toronto should be carried out, as to the form it was to take—who was it suggested that ?—You say you had made a bargain in Toronto in Mr. Codd's 40 name. Mr. Codd was representing Mr. Stevens apparently ?—*A.* Yes.

Q. Having made that bargain you came to Ottawa and acquired the shares from your fellow shareholders, and by Stevens' directions you transferred them to the parties named ?—*A.* Yes.

Q. Who was it suggested how the balance of your agreement with Codd was to be carried out ?—*A.* The balance of my agreement ?

Q. Yes, the other terms of the agreement ; who was it said how that was to be carried out ? Let me take it one by one and you will see

what I mean. "Mr. Charlebois is to arrange with Clemow, Allan, and Devlin (reads from agreement down to the words, "such amounts as Charlebois shall agree to pay them")—*A.* Yes.

Q. That you had to do?—*A.* Yes, and I did that.

Q. "Second, Charlebois is to obtain subject to Murray's consent," &c. (reads from agreement)?—*A.* Yes.

Q. "And, third, Mr. Charlebois or Mr. Murray, as the case may be, is to carry out the terms of the agreement of the 9th April 1888, subject to the present modifications, and Clemow, Allan, and Devlin to join in guaranteeing that the 10 stock is free of debt." Now, this agreement of the 9th April, as modified, was carried out by your making a contract with the Company?—*A.* Yes.

Q. Who was it suggested you should make the contract with the Company for the building of the road? Who was it planned that?—*A.* Mr. Stevens.

Q. Stevens planned that?—*A.* Yes.

Q. And in pursuance of Stevens' plan you entered into this contract to construct the road with the Company in fulfilment of the agreement you had made with Codd, in Mr. Codd's name in Toronto?—*A.* Yes.

Q. Did Mr. Clemow, Mr. Devlin, or Mr. Allan know anything at all at that time about the terms of your agreement with Codd? Did you take them into 20 your confidence and tell them what you had done, or did they know what you had done?—*A.* I do not think I said anything to them about it.

Q. You just made your bargain with them independently to enable you to fulfil your contract with Codd?—*A.* They had nothing at all to do with that.

Q. And you have told us about the rails?—*A.* Yes.

Q. I think you have told my learned friend how the term of this contract with regard to the rails was carried out, you went to Montreal?—*A.* Yes.

Q. When did you go there?—*A.* A few days after.

Q. After the 16th September?—*A.* Yes.

Q. And then you found that they were not able to pay for the rails at the 30 time?—*A.* I found they were not in a position to pay for the rails, and I saw it was going to take Stevens a long time to raise the money, and I decided to pay them myself.

Q. You said that Mr. Codd was pretending to be a creditor of the Company, had some claim, or pretending to make a claim; was he making a claim to be paid out of that 50,000 dollars which was in the hands of the Government? Was Codd making a claim he should be paid out of the 50,000 dollars deposited with the Government to secure claims?—*A.* No; Mr. Codd was making a claim; he was very often in Ottawa, and threatened to sue us on the old Souris and Rocky Mountain road, and threatened us with trouble, and 40 wanted to get his claim adjusted.

Q. What was the claim he was making?—*A.* It was in connection with the old Souris and Rocky Mountain road.

Q. Which you did not acknowledge?—*A.* I did not acknowledge it, but at the same time he was threatening to sue us, and so on, and cause us a great deal of trouble about it, but on the day we settled we had a release from him of all his pretensions.

(Adjournment for one hour.)

RECORD.

After Adjournment.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Note.—It is understood "Exhibit 8" consists of all the minutes of the 16th December 1889.

Q. The 50,000/. that you were to get under that agreement, where was that paid to you? When did you get that money, in fact? Did you get it in Toronto?—*A.* I got it on the 16th September.

Q. In Ottawa?—*A.* In Ottawa.

Q. And do you remember who you got it from, or how you got it? Do you remember the form in which you got it? Was it money or by cheque?—*A.* Cheque.

Q. Do you remember whose cheque it was?—*A.* I think it was Mr. Stevens'.

Q. Are you certain how that was, because it would appear here the Company passed a resolution directing the money to be paid to you by their own cheque?—*A.* Well, it was Stevens' cheque as president of the Company.

Q. Then that was after the shares had been assigned and the new board of directors had been appointed?—*A.* Yes.

Q. Now, with regard to your contract, you were to complete the road as located or projected; I think the language is: "The said contractor will at his own expense," &c., "50 miles of the Company's line, commencing at, or near, Brandon, in the Province of Manitoba, and then proceeding, as at present projected, located, and partially constructed," &c. Now, how was it then projected, located, and partially constructed?—*A.* Well, the grades were all made.

Q. I mean from what points?—*A.* It was three miles from Brandon on the C. P. R.

Q. Three miles east from Brandon?—*A.* Yes.

Q. Would that be between Brandon and Chater's station?—*A.* Yes.

Q. So that the projection and location had been determined on from that point before you got the contract at all?—*A.* Certainly.

Q. Was it a part of the policy of your Company when you were connected with the Company not to determine the location at Brandon until you saw whether you could get a bonus or not? Was that part of the old Company's policy?—*A.* That was part of the old Company's policy.

Q. And that, you tell us, was adopted by Stevens too?—*A.* Yes.

Q. So that the Company's policy was not to fix either Charter or Brandon?—*A.* Until they could see what they could get.

Q. To see what they could get from either one place or the other to make the location?—*A.* Yes.

Q. I suppose the desire of the Company was to go to Brandon?—*A.* The desire of the Company was to go to Brandon.

Q. Now, you finished your contract somewhere about in the year 1890, did you not? You commenced in 1889, and when had you completed your contract?—*A.* I think it was in August 1890.

Q. You commenced in September 1889, and you think it was in August 1890 you completed your contract?—*A.* Yes.

Q. At first you did not complete the contract, as I understand it, in accordance with the Government specification?—*A.* Well, there was a change in the grade. RECORD.

Q. Where was that change in the grade; from what point to what point?

—*A.* At different points.

Q. That was an increase of grade from 60 to 70?—*A.* Yes.

Q. At different places on the road?—*A.* Yes.

Q. And who was it replied to the Government to have the work as thus done—that is, that a grade of 70—accepted by the Government? Who was it made that application? Did you make it, or who did make that application?

—*A.* I made no application myself.

Q. Did you authorise any person to make the application?—*A.* I did not authorise anybody.

Q. Do you know as a fact who it was applied?—*A.* I know Senator Clemow had something to do with it.

Q. And what position did he occupy in August 1890?—*A.* He was a director of the Company.

Q. But he, I thought, ceased to be a director in September 1889?—*A.* Not that I know of.

20 *Q.* He sold out at that time?—*A.* Well, he was named again.

Q. Do you know anything about how he come to be named then?—*A.* Well, I know he told me one day—he showed me, had received his qualification.

Q. Whose place did he take on the Board?—*A.* I could not say whose place.

Q. Gregson, or Aird, or who?—*A.* I suppose it must have been someone.

Q. You do not know whom?—*A.* No.

Q. You understood Clemow was again elected to the Board of Directors?—*A.* Yes, I think he was elected about the same time Mr. Robinson, of Toronto,

30 was.

Q. You understood that Clemow, being a director of the road, was making application to the Government to have the road accepted with a grade of 70 instead of 60?

Mr. Howard.—I do not think he said that Clemow, being a director of the road, made that application.

Mr. McCarthy.—He said Clemow was a director of the road and made the application?—*A.* He must have made the application as a director of the road.

Q. That is your understanding of it?—*A.* I know they were all anxious to get the—

40 *Q.* Who do you mean by “they”?—*A.* Dr. McMichael and the rest—all in Canada.

Q. Dr. McMichael and Clemow; had you any desire to get the road accepted with a grade of 70? Would it make any difference to you?—*A.* No difference at all.

Mr. Howland.—June 3rd, 1890, is the date of the election of Hon. J. B. Robinson. The application was in March.

Mr. McCarthy.—He has given his understanding.

Q. You did not make the application at all events?—*A.* Yes.

RECORD.

No. 110
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. Here is what this letter, March 5th, 1890, says, referring to your report to Council dated to-day approving of the increased gradients on the first 50 miles of the line of the Great North Western Railway Company—do you know at whose instance, at whose request this report had been made by Sir John Macdonald, which is referred to in this document here?—*A.* It must have been at the request of Mr. Clemow; it was not from me.

Q. Will you explain to me how it was you came to sign this paper here?—*A.* Well, I arrived in Ottawa, and they presented it to me, and I signed it.

Q. Who presented it to you?—*A.* Mr. Clemow had a talk with me. 10

Q. And who else?—*A.* I think Mr. Allan was present.

Q. Why did they want you to sign it?—*A.* Clemow told me that the Company was very anxious to get the land grant certificate, and if I would sign that and give the Government a guarantee, I would make that good, it would make no difference to me, and I said I certainly would do so.

Q. It was at the request of Clemow, who represented to you that the Company was very anxious to get the order for the Government grant?—*A.* Yes,

Q. And it made no difference to you?—*A.* Clemow told me he had two or three interviews with the Government. 20

Q. And you had to do that work anyway?—*A.* Yes, and I did it, too,

Q. The effect of what took place is that you undertake here, by this letter to Sir John, dated March 5th, 1890, to do exactly what you had agreed to do before?—*A.* Certainly, nothing else.

Q. And you subsequently did so?—*A.* Yes, and we obtained a final certificate afterwards.

Q. Do you remember when you obtained a final certificate?—*A.* I think it was in August.

Q. That would be 1890?—*A.* Yes.

Q. Had you ever asked Mr. Schreiber to send up and have your work 30 examined? Did you ever make any application of that kind before March 1890?—*A.* No, I never had anything to do with Mr. Schreiber in reference to that.

Q. Did you ever authorise any person to request that Mr. Schreiber should send up and see your work and examine it and pass on it?—*A.* Not that I know of,

Q. Now there was a half mile near Brandon, or rather, I suppose, near this point which is three miles from Brandon, which you did not finish?—*A.* Half a mile. You must understand it was finished in such a way as to operate on it.

Q. But I mean you did not reduce to 60 feet grade?—*A.* No, because the 40 Company told me not to do anything of the kind, because their intention was to——

Q. That was only a temporary junction, and the Company told you not to do it, as it was their intention to go either to Chater or Brandon, and if so that half a mile would be so much waste?—*A.* Yes.

Q. Now, in addition to the moneys that you told my learned friend that you paid, you had also paid, as I understand, 30 per cent. upon your stock?—*A.* Yes.

Q. And that would be how much—21,000 dollars?—*A.* Yes.

Q. Then you had also promised to pay Mr. Clemow, Mr. Allan, Mr. Devlin, and Mr. Murray a considerable sum?—*A.* Yes.

Q. More than you had already paid?—*A.* Yes.

Q. Out of the 200,000/. that was to be paid there was first the 50,000/. that had been already paid?—*A.* Yes, sir.

Q. Then there was the rails?—The rails came afterwards; that was to be in deduction of the 150,000/.

Q. How much?—*A.* 129,000/.

10 *Q.* Then from the time on the 15th September that you assigned your stock, the forms that were gone through with, and everything that was done, was done, as I understand, by the direction of Mr. Stevens, and you had nothing at all to do with it?—*A.* That was done between Stevens and the attorney, and I had nothing at all to say to it.

By Mr. Cassells:—

Q. With regard to that half-mile you say it made no difference because the Company did not intend that as a permanent location; you were being paid for it as if you had done your work complete there?—*A.* That was to include, that was part and parcel of the line located and in construction at the
20 time I took it.

Q. You were to build it with certain grades. If you had to put grades of 60 instead of 70 it would have cost you more than making the grade at 70?—*A.* Do you know how much the difference would be?

Q. How much was it?—*A.* Couple of hundred dollars.

Q. I believe the whole thing was a mere nothing?—*A.* The eight alterations cost me about 700 dollars.

Q. Could you have made a grade of 60 at that point?—*A.* I think so.

Q. Sure?—*A.* I think so.

Q. Would not you have to go to Chater to do it?—*A.* There was no
30 difficulty in changing that to 60 on that location.

Q. Sure of that?—*A.* We might have been obliged to extend it a little, but not much; not over 200 dollars or 300 dollars.

Q. You say you never asked Collingwood Schreiber to go up and examine the line; never instructed anyone?—*A.* Before that time?

Q. Before 1890?—*A.* Not that I recollect.

Q. I think you mentioned to me that Mr. Lewis was your solicitor after the contract?—*A.* What I meant by Mr. Lewis, in reference to that letter—

Q. After you became contractor he acted for you?—*A.* I never instructed him to go to Mr. Schreiber.

40 *Q.* He acted as your solicitor after you became contractor?—*A.* Certainly he did.

Q. Was he acting for the Company as well?—*A.* He might have acted for them.

Q. Do you think it is likely?—*A.* I do not know.

Q. Are you not aware that he did apply to Mr. Schreiber, on the 6th December 1889?—*A.* He might have for all I remember; I do not remember that.

Q. Will you say he did not? Do you recollect his writing to Mr. Schreiber,

RECORD.

— —
No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c. —
continued.

RECORD. asking him to send up an inspector to leave Ottawa on the 15th instant ?—*A.* I do not recollect that.

No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Q. You cannot speak as to that ?—*A.* No.

Q. You said to Mr. McCarthy that 450,000 dollars of stock was to be handed to Mr. Stevens ?—*A.* Yes.

Q. That would be 90 per cent of the stock ?

Mr. McCarthy.—He said it was.

Mr. Cassels.—*Q.* Yes, according to your recollection ?—*A.* Yes.

Q. That would be just 90 per cent. of the whole stock ?—*A.* About 90 per cent. 10

Q. Do you know why 90 per cent was to be given to him ?—*A.* I do not know.

Q. You heard it discussed ?—*A.* He wanted it that way ; I did not ask him what was his reason ; what interest is it to me.

Q. You are the contractor ; is it no interest to you who the directors are ?—*A.* You might have taken the whole stock.

Q. Were you not interested in the *personelle* of the Company ?—*A.* I was satisfied with Mr. Stevens.

Q. Do you know why 90 per cent. of the stock was to be assigned to Stevens ?—*A.* I do not know the reason. 20

Q. Was it security ?—*A.* I do not know any reason.

Q. You know no reason ?—*A.* No, only I know 90 per cent. was assigned to him.

Q. As owner or pledgee ?—*A.* As owner.

Q. As owner ?—*A.* Yes.

Q. And therefore he ought to hold 90 per cent. of the stock as far as you know ?—*A.* Well, he was holding that.

Q. That would represent 450,000 dollars ?—*A.* Yes.

Q. And he paid 50,000*l.* sterling ?—*A.* Yes.

Q. What was he to do for the difference ? How was he going to raise the 30 balance ?—*A.* That was his business, not mine, I had nothing to do with it.

Q. You see, Codd was to get the shares under your heads of agreement of the 9th September. How did you come to change from Stevens to Codd ? Codd was the man you made your bargain with. You were to sell your stock to Codd under the heads of agreement ?—*A.* The stock was handed to the parties interested in it.

Q. By whom ?—*A.* By Stevens and Codd and all those interested in it.

Q. Are you sure Codd was present on the 16th September ?—*A.* Yes, he was.

Q. I am told he was not in Ottawa then at all ; do you know he was ?— 40
A. I think he was.

Q. Are you sure about that ?—*A.* I am almost sure he was.

Q. Codd was not co-contractor with you, was he ?—*A.* Not at all.

Mr. Charlebois produces Statement Exhibit "X," being an account of the cash paid out by him in connection with the construction of the railway and the cash received from the Company by him to date.

Mr. Howland.—This is put in by Mr. Charlebois without any admission by the Plaintiff that these are correct figures.

Mr. Lewis.—Put in as approximate figures.

Documents put in at the trial of the action in the Court below. which are not printed in full in the Case, but may be referred to by any party on the argument of the Appeal, as part of the case for Appeal, subject to the contention of the Appellants as to Exhibits Nos. 73, 75 and 136, that they were not evidence against them at the trial, and were not admitted as such, and, as against them, are not properly part of the Case.

RECORD.
No. 110.
Depositions
of the
Defendant,
Alphonse
Charlebois,
&c.—
continued.

Trial Exhibit No. "73."

Judgment in the action in the Chancery Division of the G. N. W. C. Ry. Co. *v. J. A. Codd et al.*, dated 19th day of April 1893.

10

Trial Exhibit No. "75."

Statement of Claim in same action of G. N. W. C. Ry. Co. *v. J. A. Codd et al.*, filed 11th March 1893.

Trial Exhibit No. "101."

- (1) Bill of Complaint in Manitoba action of Charlebois *v. G. N. W. C. Ry. Co.*, filed 6th May 1892. Amended 3rd October 1892.
- (2) Answer of Company, filed 21st July 1892.
- (3) Amended answer of the Company, 16th April 1893.
- (4) Judgment of the full Court, dated 27th May 1893.

Trial Exhibit No. "136."

20

Judgment entered in the Chancery Division in action of G. N. W. C. Ry. Co. *v. Aird et al.*, 27th October 1893.

Plaintiff's notices to admit and produce at Trial, put in on November 14th, 1893, by Plaintiffs, and also notices to produce and admit, put in on English Commission.

In the Court of Appeal for Ontario.

Between

James Bogle Delap, individually, and as a shareholder on behalf of himself and all other shareholders of the Great Northwest Central Railway Company (except the Defendant, John Arthur Codd), Louisa H. Mansfield, and the Great Northwest Central Railway Company
(Respondents) Plaintiffs,

and

Alphonse Charlebois, Alexander Macdonald, William Alfred Preston, John S. Schiller, Frank S. Nugent, the Commercial Bank of Manitoba, the Union Bank of Canada, William Anderson Allan, Robert J. Devlin, and John Arthur Codd - - - Defendants, 10

and

William James Crossen, Frederick John Crossen, and Joseph Henderson, executors of the last will and testament of James Crossen, deceased - - - (Appellants) Defendants,

and

The Honourable Francis Clemow, James Murray, and Daniel McMichael, and the Right Honourable Edric Frederick Baron Gifford, and Robert Lothian Curzon - - - Defendants. 20

STATEMENT OF CASE.

RECORD. 1. This is an appeal by the defendants, William James Crossen, Frederick John Crossen, and Joseph Henderson, executors of the last will and testament of James Crossen, deceased, from the judgment of the Honourable the Chancellor, dated the 25th day of November 1893, and the 22nd day of January 1894.

—
No. 111.
Statement
of Case on
behalf of the
Defendants,
William
James
Crossen,
Frederick
John
Crossen, and
Joseph
Henderson.
*Original
Record.

2. The pleadings, excepting the defence of the said William James Crossen, Frederick John Crossen, and Joseph Henderson, are printed in Volume I.* of the Case in Appeal, now lodged in the Court of Appeal for Ontario, on behalf of the defendant Charlebois, as is the said judgment. 30

3. The evidence at the trial and on the English Commission are also printed in the 2nd Volume* of the Case in Appeal, excepting the evidence given on behalf of the Appellants herein at the trial.

4. The Exhibits put in at the said trial are printed in Volume III.* of the said Case in Appeal, excepting certain Exhibits which were put in on behalf of the Appellants herein.

5. To the said Case in Appeal, these Appellants crave leave to refer upon the hearing of this appeal, and incorporate the same as part of their appeal.

6. The Writ herein was issued the 1st December, A.D. 1892.

STATEMENT of DEFENCE of the Defendants William James Crossen, Frederick John Crossen, and Joseph Henderson.

1. These defendants say that they know nothing as to the truth or otherwise of the facts alleged in the Statement of Claim, except as hereinafter mentioned.

2. And these defendants say that they are, and always have been, innocent of any fraud or improper conduct, and without knowledge of any fraud or improper conduct on the part of the other defendants, or any of them, if such fraud or improper conduct there was.

3. These defendants say that as to their position, the facts are as follows :

4. The late James Crossen and the said defendant Charlebois, upon the 13th day of January 1890, entered into an agreement under seal in the words and figures following, that is to say—

This Indenture, made in duplicate this 13th day of January, A.D., 1890.

20

Between

James Crossen, of the Town of Cobourg, in the County of Northumberland and Province of Ontario, Carbuilder,

Of the First Part.

and

A. Charlebois, of the City of Quebec in the Province of Quebec, Contractor,

Of the Second Part.

Whereas the said party hereto of the first part hath heretofore made certain railway cars hereinafter described, upon the order of the said party of the second part, and with the intent that the said cars should be and become the property of the said party of the second part so soon as the same should be paid for by him, and not otherwise or sooner ;

30 And whereas the said railway cars are now at the station on the Canadian Pacific Railway at Brandon, Manitoba, or on the line of the said Canadian Pacific Railway on their way to the said station at Brandon ;

And whereas it is desired that the said railway cars should be delivered to the said party of the second part at the said station at Brandon, but that notwithstanding such delivery the said cars should be and remain the property

p. 5240.

4 S

RECORD.

No. 111.

Statement of Case on behalf of the Defendants, William James Crossen, Frederick John Crossen, and Joseph Henderson

continued.

*Original Record.

No. 112.

Statement of Defence of the Defendants, William James Crossen, Frederick John Crossen, and Joseph Henderson.

RECORD.

No. 112.
Statement
of Defence
of the
Defendants,
William
James
Crossen,
Frederick
John
Crossen, and
Joseph
Henderson
—continued.

of the said party of the first part until the said party of the second part shall have paid the full value of the same, namely, the sum of 35,026.00 dollars, therefor to the said party of the first part ;

And whereas it has been agreed, by and between the parties hereto, that the said party of the second part shall accept a bill of exchange for the said sum heretofore drawn upon him by the said party of the first part payable at two months from the date thereof, and shall pay the same at its maturity, notwithstanding that the property in the said cars shall not pass to him until the payment of the said bill of exchange in full ;

And whereas certain other agreements have been made by and between the 10 parties hereto which are hereinafter set out ;

Now this Indenture witnesseth that, in pursuance of the said agreement, and of the acceptance and payment by the said party of the second part of the said bill of exchange, he, the said party of the first part, hereby delivers to the said party of the second part possession of the above referred to railway cars and each of them, and agrees that he shall and will give all such directions and orders to the said Canadian Pacific Railway and others as may be necessary or convenient that the said party of the second part shall have full and ample possession and control of the said railway cars and each of them, yet, so that the property in the said railway cars, and each of them, shall be 20 and remain in the said party of the first part until the said bill of exchange shall be accepted and fully paid in cash.

And the said party of the second part hereby covenants and agrees to and with the said party of the first part that he shall and will accept the said bill of exchange for the price of the said railway cars, and shall and will pay the same at maturity, and further that he shall and will insure the said railway cars for their full insurable value, and in the name and for the benefit of the party of the first part, until he, the said party of the second part, shall have paid full price for the said cars to the said party of the first part as aforesaid, and that he shall and will accept the said cars at the said station of Brandon, or as they 30 may arrive, and as soon as they do arrive, forthwith accepting such of them as may now be there ready for delivery.

And the said parties hereto hereby covenant, promise, and agree to and with each other that the said cars and each of them shall be and remain the property of the party of the first part until they shall have been paid for in cash by the payment of the said bill of exchange, and that so soon as the said bill of exchange is paid in cash the said cars and each of them shall, without further conveyance, be and become the property of the said party of the second part.

And it is further agreed by and between the parties hereto, that in case the 40 said bill of exchange be not accepted or not paid at maturity, or any renewal thereof be not paid at maturity, then, and so often as the same may happen, it shall and may be lawful for the said party of first part, by himself, or his agent or agents, forthwith to assume and take possession of the said cars and each of them, and to retain and keep the same as the property of him the said party of the first part.

And the said party of the second part agrees to pay the freight on the said cars from Cobourg to Brandon.

The following is a description of the said cars to which this Indenture RECORD.
refers :—

Twelve new 33 feet box cars, Nos. 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, and 122, all being marked "Great North West Central R." No. 112. Statement of Defence of the Defendants, William James Crossen, Frederick John Crossen, and Joseph Henderson

Two new first-class passenger coaches, Nos. 40 and 42, marked in the same way.

Two new second-class passenger cars, Nos. 44 and 46, marked as above.

10 Two new baggage, mail, and express cars, Nos. 48 and 50, marked as above.

One new conductor's van, No. 10, marked as above.

Twelve new 33-foot platform cars, Nos. 99, 101, 103, 105, 107, 109, 111, 113, 115, 117, 119, and 121, marked as above, namely, "Great North West Central R."

Five new pumper hand cars, which have been temporarily placed in the above-named box-car, No. 122.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals.

20 Signed, sealed, and } (signed) JAMES CROSSEN.
delivered in the } (signed) A. CHARLEBOIS.
presence of }

(signed) P. MITCHELL.

5. The said James Crossen died on the 9th day of December 1890, having first made his last will and testament, whereby he appointed these defendants as executors thereof, and these defendants have been duly granted letters of probate of said last will and testament.

30 6. The said Charlebois being indebted to these defendants, as such executors under the above agreement, in the sum of 39,287.00 dollars, and these defendants pressing for payment of this indebtedness, and being still in possession of the said cars, &c., it was agreed by and between these defendants and the said company and the defendant Charlebois, that in consideration that these defendants should waive their lien upon the said cars, &c., and deliver the said cars, &c., to the company, these defendants should be secured for and paid their said claims provided in the judgment set out in the 34th paragraph of the said Statement of Claim.

7. These defendants being innocent and ignorant of any wrong-doing on the part of anyone, and being desirous only of obtaining payment to their estate of the said indebtedness of the defendant Charlebois, agreed to this in good faith.

RECORD.

No. 112.
Statement
of Defence
of the
Defendants,
William
James
Crossen,
Frederick
John
Crossen, and
Joseph
Henderson
—continued.

8. The company thereupon applied to these defendants for and obtained from them an order for the delivery to them, the said company, of the said cars, &c.

9. The said cars, &c., were delivered by these defendants to the said company at the request of the said company, these defendants relying upon the said judgment.

10. The said company took possession of the said cars, &c., and used the same, and have continued to use the same, for their own purposes since said delivery, which was in or about the month of December 1891.

11. It was necessary for the purposes of the said company that they should have such cars, and it was a necessary part of the equipment of the said company's railway.

12. These defendants submit that, under the circumstances, the company are estopped from disputing the said judgment as against them, it being impossible to restore these defendants to their former position as to the said cars, &c.

13. These defendants submit further that as against them the Statement of claim discloses no cause of action, and they claim the same relief from this pleading as though they had formally demurred.

14. These defendants further submit that the plaintiffs Delap and Mansfield have no cause of action, or if they have, their position is no higher than that of the Company.

15. These defendants further claim the advantage of any pleading or of facts adduced or alleged by any of their co-defendants so far as the same are applicable to the case of these defendants.

Wherefore these defendants claim—

1. That as against them this action be dismissed with costs.
2. Such further and other relief the merits and nature of the case may require.

Delivered this 20th day of December, A.D. 1892, by Messieurs Riddell Armstrong, and Nesbitt, of the Town of Cobourg, in the County of Northumberland, these defendants' solicitors.

In the case of *Delap v. Charlebois*, tried before the Hon. Chancellor Boyd, at Ottawa, 30th October 1893, the following is the evidence given by Mr. W. R. Riddell :—

RECORD.
No. 113.

Extract
from
Evidence
of W. R.
Riddell.

W. R. Riddell, sworn—I produce the probate of the will of the late James Crossen, appointing my clients the executors. The first probate is dated on the 22nd December 1890, whereby William James Crossen and Joseph Henderson were appointed executors, and the probate shows that the death took place on the 9th December 1890 ; then by subsequent probate, which is dated of the same date, it goes on to say “By Supplementary Letters of Probate, dated 7th day of 10 July 1891, and granted to Frederick John Crossen,” setting out that Frederick John Crossen was, under the will, to be appointed executor on his attaining the age of 21 years, and having attained that age he was appointed executor under that Supplementary Probate. For some time before the death of Mr. James Crossen I knew all his business ; he consulted me in all matters of importance in connection with his business, and I knew what he was doing, and what his business was almost to the minutest particular. In 1889 sometime some cars had been built for Mr. Charlebois ; and I produce all the correspondence, if anybody wishes to see it.

His Lordship.—*Q.* What was Crossen ?—*A.* He was a car builder ; this 20 is the correspondence between Mr. Charlebois, and then our letter books show the letters in return. The cars which had been built were worth 35,026 dollars.

Q. Built for Charlebois ?—*A.* Built for Charlebois, my Lord.

Q. You mean for this road ?—*A.* Yes, my Lord. Then these cars had been sent forward, to the order of Mr. Crossen’s bank, the Bank of Toronto ; and this draft, which is dated 3rd January 1890, was sent forward with duplicate bills of lading to Montreal, with directions to the bank that the document attached should be given up on the payment of the draft. I have here copies of the bills of lading, if necessary. Then some correspondence ensued between 30 Mr. Charlebois and Mr. Crossen, the correspondence on the part of Mr. Crossen being under my personal supervision, and most of it posted by myself. (Bills of lading, Exhibit 39.) Mr. Charlebois wished the cars to be delivered up, and we refused to deliver them up until we were paid for them. Then after some correspondence, the cars still being in Mr. Crossen’s name, to the order of his bank, this document was drawn up and executed by both parties. This is a document made on the 13th January 1890 ; it was signed by Mr. Crossen upon that day, and by Mr. Charlebois, I think, on the 15th January, but whether it is the 14th or later I cannot be absolutely certain, and that document is “Whereas the said party of the first part, being James Crossen, has heretofore 40 made certain railway cars,” &c. (Reads document, Exhibit 40.)

His Lordship.—*Q.* Is that just the substance, that no property shall pass till payment ?—*A.* Yes, my Lord, and the cars are specifically mentioned ; then the former bill of exchange which I have put in having been returned, a new bill of exchange upon that agreement was dated on the 3rd January, and sent forward and accepted by Mr. Charlebois for 35,026 dollars.

Q. Is that the only one you have now ?—*A.* Yes, my Lord, that is the only one.

RECORD.

—
No. 113.
Extract
from
Evidence
of W. R.
Riddell—
continued.

Q. That is payable when?—*A.* Payable two months after the date, January 3rd.

Q. But you have held it since?—*A.* Yes, my Lord, we held it since. Then after the death of Mr. Crossen I was not only solicitor, but also a beneficiary under the will of Mr. Crossen, and I again had practically the full charge of his estate, Mr. Henderson residing most of the time in the city of Toronto, and Mr. W. J. Crossen thinking I had better do it, as I understood his business. I and my firm, Riddell, Armstrong, and Nesbitt, pressed Mr. Charlebois for payment, and we continued doing that until the decree was obtained, to set aside which this action was brought.

10

Mr. McCarthy.—*Q.* The judgment?—*A.* Yes.

His Lordship.—*Q.* Was your claim put into the judgment?—*A.* Yes, my Lord, it is mentioned in the judgment.

Q. At this amount?—*A.* At 39,000 dollars; we had a claim against Charlebois for something over that amount; it is for something like 127 dollars more than the 39,000 dollars, but our amount was taken at 39,000 dollars in the judgment as Charlebois did not know the exact amount of it, I understand. Then I had correspondence with Messrs. Chrysler and Lewis, who were acting at that time for Mr. Charlebois as his solicitors.

His Lordship.—What is your precise attitude, Mr. Meredith, towards 20 Crossen? I suppose there is no question about the claim of Crossen.

Mr. Meredith.—Not against Charlebois, but we impeach the judgment, and Mr. Charlebois is reduced to this position, *quantum meruit*.

His Lordship.—That is your position; that you must take *quantum meruit*?

Mr. Meredith.—Yes, my Lord.

His Lordship.—Do you attack his contract as grounded in fraud?

Mr. Cassels.—Yes, my Lord; the bondholders claim they have a first charge.

Witness.—On account of a letter received from Mr. Charlebois, I wrote 30 Mr. Osler a letter; I do not know whether anything turns upon it, but I received this reply. Mr. Osler was counsel for Charlebois in the transaction, and I may say the letter of Mr. Charlebois will show it; it is here. He told me to communicate with Mr. Osler. At all events I received this letter. (Reads letter, October 6th, 1891, Ex. 42.) After receiving that letter in October, I wired Stewart Chrysler and Lewis this telegram, which they have been good enough to give me: "Answer quick whether judgment giving Crossen lien on railway is issued. If issued, send copy by mail immediately." (Ex. 43.)

His Lordship.—*Q.* What are you putting this in for?—*A.* I am putting 40 them in to show I accepted the decree and came in under the decree, and changed my position under the decree.

Q. Changed your position, how?—*A.* We have given up our lien upon the cars; we have allowed the property to pass, and we no longer own the cars. Then I received a telegram: "Judgment giving Crossen lien is issued; copy mailed to-day." (Ex. 44.)

Q. You have come in under the decree and accepted the benefits of that and given up your lien; that is the result of it?—*A.* Yes. I want to show also,

in addition to giving up the lien to Charlebois, I had some correspondence with the company, the Great North Western Company, who are Plaintiffs here, in which they asked me to do something under that decree. I put in that correspondence and my answers, the final acceptance by my firm. (Correspondence Ex. 45.) This is prior correspondence ; it does not affect the matters at all. Then after coming in under the judgment, I received some correspondence from the officers of the Plaintiff company. After that, then, my Lord, on November 3rd, I received this letter ; it was handed me by Mr. W. J. Crossen, who was the executor, November 3rd, 1891, signed by Arthur Codd, secretary on the Great North West Central Railway paper. (Letter read, Ex. 46.) There is an answer to that of November 4th, which I served notice to produce.

RECORD
—
No. 113.
Extract
from
Evidence
of W. R.
Riddell—
continued.

Mr. McTavish.—Here is the letter book, November 4th, 1891—(Interrupted.)

Mr. Arnoldi.—We have found the letter.

Witness.—This is our reply on November 4th, to A. Codd, Esq., President, Great North West Central Railway of Canada. (Letter read, Ex. 47.) Then, on November 6th, we received this from Arthur Codd, Secretary, Great North-West Central Railway Company. (Letter read, Ex. 48.) Then subsequently, about December 1st, or a day or two afterwards, we received this letter from J. A. Codd, President. (Letter read.) As to the latter part of the letter, it is answered by the manager of the Car Works Company ; as to the former part of the letter I signed Riddell, Armstrong and Nesbitt, solicitors for the executors of the late James Crossen, to the authorisation, which is mentioned as being enclosed, and sent that to them, to J. A. Codd, Esq., on December 2nd, enclosed in this letter, “Herewith enclosed find written authority duly signed.” To explain the subsequent transaction, the caboose, which is a conductor’s van, different from the other cars, was built on a subsequent order of Charlebois and was not included in the original contract, and therefore the caboose did not go forward under the same bills of lading as the other cars, and that order apparently had only been drawn to cover the other cars, and then subsequently I received this letter, dated December 31st, from Arthur Codd, Secretary-Treasurer. (Reads letter.) Then upon receiving that we obtained the certified copy of the shipping bill of the caboose, and had it properly endorsed and transmitted it forward by other letters which do not seem to be produced, but of which notice to produce has been served. On January 4th, 1892—this is folio 699, letter-book—“Yours of 31st ultimo to hand, with the enclosures stated, which we herewith re-enclose,” &c. (Reads.) And that is the document we sent back upon that day, and we subsequently got shipping bills and had them properly endorsed, and sent them forward by letter of January 5th, 1892, addressed also Arthur Codd, Secretary-Treasurer, Great North West Central. (Reads.) Then immediately before the judgment was obtained, I had been threatening Charlebois with an action in the Quebec Courts ; in fact, we prepared papers with that intention, but upon the judgment being given, and we coming in under the decree, of course all proceedings in that matter stayed. Mr. Howland informs me, since this action began, that his company has been using these cars constantly.

Mr. Meredith.—That is not evidence.

RECORD.

No. 113.
Extract
from
Evidence
of W. R.
Riddell—
continued.

Witness.—I do not know why.

Mr. McTavish.—*Q.* Go on ?—*A.* And also that these cars were seized under an execution from the Manitoba Courts, which he said was obtained by some of the contractors, I do not know their names, but some of the contractors against the railway company, as he said, or suggested, at all events, by collusion with Codd. I was also informed, either by Mr. Howland or by Mr. Bristol, his partner, that the company attempted to have that judgment set aside, but failed, and that these cars were claimed then, and an interpleader is still pending, at the instance, as I understood it, of the bondholders of the Great North West Central.

Mr. Meredith.—What Mr. Bristol said is not evidence.

10

Mr. McCarthy.—*Q.* In Manitoba ?—*A.* In Manitoba. The only other point I wish to speak of is the depreciation in value of the cars, and as to that I simply have the knowledge which I have as being president of the Car Building Company, and having had a little, but very little experience in that matter, but somebody else will speak as to that.

Cross-examined by Mr. Meredith.—*Q.* Have you any correspondence with you of 1889 ?—*A.* Yes.

Q. Prior to this correspondence ?—*A.* Yes ; the letter-books of Mr. Crossen.

Q. With reference to the cost of the—(Interrupted) ?—*A.* I have all the correspondence in anywise relating to the cars or to the Great North West 20 Central Railway Company ; I can turn it up in a minute.

Q. You have got the correspondence on the other side ?—*A.* I have all except a few letters which seem to be mislaid. In order to explain that, the practice was, in Mr. Crossen's lifetime, when he received telegrams—the telegrams were received over the telephone ; they were written down, and instead of the answers going through the letter-book as answers, the answer was written on the bottom or back of the telegram, and a subsequent letter referred to that.

Q. I want a letter to the company while Mr. Allan was secretary ?—

A. That is in the other book. I produce a letter by W. A. Allan, Secretary- 30 Treasurer of the company.

Q. Letter of the 19th August, 1889 ?—*A.* Yes.

(Letter read.)

Q. Have you got the reply to that ?—*A.* Well, then, subsequently to that there appears to have been a telegram received, because it is mentioned here in a letter, September 4th 1889, in a letter to W. A. Allan. "I received your telegram as follows : It is important you should furnish prices for rolling stock, if possible." I have not been able to find the telegram, though I have searched for it.

Q. What was the reply ?—*A.* Page 404 of the estimate book ; the prices 40 that were given on that date were, for first class, 5,600 dollars each ; for second class cars, 4,300 dollars ; for baggage, mail, and express, 3,360 dollars ; box cars, twelve, each 525 dollars ; platform cars, 393 dollars each ; and then the cattle cars, 535 dollars. You will note the specifications are to have Krupp wheels, steel tired ; of course that makes a difference in the price.

Q. That is not here in this letter ?—*A.* It says, "I will furnish you with

the whole of the cars," and so on ; " You will note the specifications state that the cars are to have 40-inch Krupp wheel steel tires, and I find from the makers in Germany I might not be able to furnish them," &c. (*Reads*).

Q. Do I understand you 5,400 dollars each ?—*A.* 5,600 dollars each for first class cars ; you will understand that was just as winter was coming on.

Q. What is the ordinary price ?—*A.* That is about the average price for cars of that kind. I can give you the kind of cars they were ; these were rather superior cars to the cars ultimately supplied, of which Mr. Crossen gave estimates.

10 Q. What were ultimately supplied ?

Mr. Nesbitt.—You have a digest showing the price.

Witness.—Mr. Meredith wants to know what kind of cars they were ; I can give you a photograph of the cars if necessary.

Mr. Meredith.—Q. What cars were delivered ? There are two first-class, two second, two baggage, ten box, and two cattle ?—*A.* The cars which were ultimately delivered were the cars which were mentioned in this agreement, 13th January.

20 Q. What were they ?—*A.* Two new first-class passenger cars, numbers 40 and 42 ; two second-class passenger cars, 44 and 46 ; two baggage, mail and express ; one new conductors' van, and 12 new 33 foot platform cars, and five new pumper hand cars, and also 12 new 33 box cars.

Q. No cattle cars ?—*A.* No.

Q. And the price at which they were sold was 35,026 dollars ?—*A.* Yes.

Q. They were inferior cars to the ones for which the quotations were given in July ?—*A.* They were not such a costly car ; they were a car which would run just as long and look just as well, but they were not such a swagger car.

30 Q. Then, as I understand, all the negotiations which took place were by correspondence, and it has all been produced ?—*A.* Not all ; on two occasions, at least, and I think on three, I saw Mr. Charlebois with Mr. Crossen, but the effect of the negotiations appears in the correspondence.

40 Q. And, at all events, as far as the company or Codd was concerned, the communication was all by correspondence ?—*A.* I would not say that either, because I saw Mr. Codd here in the fall of 1891, before the time of the decree being obtained, I think ; at all events, that will appear from a letter which I wrote, and of which you have notice to produce, the first letter to Codd, and Codd was talking then about acquiring the cars, but no final arrangement was arrived at. There are two letters prior to that that I would like to refer to. There is a letter of September 10th 1891, to Codd ; on September 10th I wrote this letter to Mr. Codd ; I had seen him previously in Ottawa, and, as I say, we had some conversation about his acquiring the cars, but nothing definite was arrived at, nor can I say there was any offer made, but I wrote this letter. (*Reads.*) And then in the same letter, " in addition to what I have mentioned in my letter to-day, Charlebois says he gives us full authority to sell you these cars for the amount we claim ; of course we shall be glad to do so." Then there is something I left out before ; on October 2nd I wrote a letter, of which notice to produce has been given, to Mr. Codd, in which I said this : " The Great North West Central Railway Company of Canada are required not to take possession, nor in any way interfere with the following cars, until the same shall

RECORD. have been paid for in full, the said cars being the property of Crossens and Henderson," &c. ; "and I mention the cars specifically, and say Mr. Charlebois has given us authority to sell these cars to your company, and we have made an offer to that effect which has not been accepted."

No. 113.
Extract
from
Evidence
of W. R.
Riddell—
continued.

Q. When you say Mr. Howland told you that the company was using the cars, was not what you learned that the company was in the hands of a receiver?—A. No, that was, I understood, before a receiver had been appointed.

Q. A receiver has been appointed?—A. So I have been informed by Mr. Howland or Mr. Bristol.

Q. Do you know yourself how the road is now?—A. I do not know,¹⁰ except what I have been told by the solicitors of the Great Northwest Central. I will put in copies of all these letters.

Exhibit 37.

No. 114.
Memo. as to
grant of
Probate of
Will of
James
Crossen.

Letters of Probate issued by the Surrogate Court of the United Counties of Northumberland and Durham the 22nd of December 1890, of the last will and testament of James Crossen to William James Crossen, Frederick John Crossen and Joseph Henderson, the executors named in the said will.

Exhibit 38.

No. 115.
Bill of
Exchange
for \$35,026
drawn by
James
Crossen
upon A.
Charlebois.

\$35,026. Cobourg, 3rd January 1890, Thirty days after date for value received pay to the order of the Bank of Toronto here the sum of thirty-five 20 thousand and twenty-six dollars at the

To A. Charlebois, Esq., Railway Contractor,
No. 44 Imperial Building, St. James Street, Montreal.

(signed) JAMES CROSSEN.

Documents attached to be given up on payment of draft.

Exhibit 39.

Grand Trunk Railway Company of Canada.

No. 116.
Documents
attached to
Bill of
Exchange.

This Company will not be responsible for any Goods mis-sent, unless they are consigned to a station on their railway. Rates, weights and quantities entered on receipts or shipping notes are not binding on the Company, and will³⁰ not be acknowledged. All goods going to or coming from the United States will be subjected to Customs' charges, &c.

Cobourg, 18th November 1889. Received from James Crossen the undermentioned property in apparent good order, addressed to Engineer Secretan, Brandon, Manitoba, *via* Port Hope and Peterboro, thence *via* C. P. R. to be sent by the said Company, subject to the terms and conditions stated

above, and on the other side, and which are agreed to by this shipping note, RECORD.
delivered to the Company at the time of giving this receipt therefor.

No. of packages and species of goods.	Marks.	Weight, lbs.	Paid on.	No. 116. Documents attached to Bill of Exchange— continued.
1 New box car, No. 100	Great North-			
1 Hand car in above box car.	West Central Railway.			

R. BUCK, Agent, G. T. R.

Cobourg, 23rd December 1889. Received from James Crossen the under-
signed property, in apparent good order, addressed to the Order of James
10 Crossen, delivered on Transfer Switch, Canada Pacific Railway, Peterboro, *via*
Port Hope, to be sent by the said Company, subject to the terms and conditions
stated above, and on the other side, and which are agreed to by this shipping
note, delivered to the Company at the time of giving this receipt therefor.

No. of packages and species of goods.	Marks.	Weight, lbs.	Paid on.
1 New first-class passenger coach, No. 40.	Great North West Central	Deliver to order of Bank of Toronto.	
2 New second-class passenger cars, Nos. 44, 46.	Railway.		

The above cars are all complete. Rate \$6 each, prepaid. \$18 00

(Signed) R. BUCK, Agent, G. T. R.

20 Cobourg, 24th December 1889. Received from James Crossen the under-
mentioned property, in apparent good order, addressed to the Order of James
Crossen, delivered on Transfer Switch, Canada Pacific Railway, Peterboro, *via*
Port Hope, to be sent by the said Company, subject to the terms and conditions
stated above, and on the other side, and which are agreed to by this shipping
note, delivered to the Company at the time of giving this receipt therefor.

No. of packages and species of goods.	Marks.	Weight, lbs.	Paid on.
1 New first-class passenger car, No. 42.	Great North- West Central	Deliver to order of Bank of Toronto.	
2 New mail baggage and express cars, 30 Nos. 48, 50.	Railway.		

The above cars are all complete. Rate \$6 per car, Prepaid. \$18 00

(Signed) R. BUCK, Agent, G. T. R.

Cobourg, 24th December 1889. Received from James Crossen the
undermentioned property, in apparent good order, addressed to the Order of
James Crossen, delivered on Transfer Switch, Canada Pacific Railway,

RECORD. Peterboro, via Port Hope, to be sent by the said Company, subject to the terms and conditions stated above, and on the other side, and which are agreed to by this shipping note, delivered to the Company at the time of giving this receipt therefor.

No. 116.
Documents
attached to
Bill of
Exchange—
continued.

No. of packages and species of goods.	Marks.	Weight, lbs.	Paid on.
1 New conductor's van, No. 10	Great		
11 New box cars, Nos. 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122.	North-West Central	Deliver to order of Bank of Toronto.	
12 New flat cars, Nos. 99, 101, 103, 105, 107, 109, 111, 113, 115, 117, 119, 121.	Railway		10
5 New pumper handcars, placed in box car, No. 122.			

Rate \$6 per car. Prepaid \$144 00
(Signed) R. BUCK, Agent, G. T. R.

Exhibit 40.

* Original Record. Is printed in the statement of defence of these appellants, and is also printed on page 85 of Vol. III.* of the case in appeal of the defendants Charlebois and others.

20

Exhibit 41.

No. 117. \$35,026. Cobourg, 3 January 1890.

Bill of Exchange for \$35,026 drawn by James Crossen, and accepted by A. Charlebois.

Two months after date pay to the order of myself 35,026 dollars. Value received and charge to account of

To A. Charlebois, Esq., Railway Contractor,
No. 44, Imperial Building, St. James St., Montreal.

(Signed) JAMES CROSSEN.

Accepted payable at the Union Bank of Canada at Ottawa. A. Charlebois.

Exhibit 42.

W. R. Riddell, Esq., Q.C., Cobourg, Ontario.

Charlebois v. N.C.R. Co.

RECORD.

No. 118.
Letter from
B. B. Osler
to W. R.
Riddell,
dated 16th
October
1891.

My dear Riddell,

Toronto, 16 October 1891.

In this case, after a week's negotiations, I succeeded in getting a settlement with the railway company, and I have no doubt Mr. Lewis has forwarded to you a copy of the judgment. We provided for a first lien in favour of the Crossen Company, and of the sub-contractors over the entire road, its land grants and rolling stock, payable in six months with interest at 6 per cent. I think you will find it prudent to come in and accept the terms of this judgment. The sub-contractors, Macdonald & Co., have done so, and I doubt if you can get your money any earlier from Charlebois. This gives you absolute security, for the first lien will be only for 100,000 dollars, divided between yourself and the sub-contractors. This will cover rolling stock, road bed, and land grant. The rails alone cost 130,000 dollars.

Yours, &
(signed) B. B. OSLER.

Exhibit 43.

Telegram.

To Stewart, Chrysler, and Lewis, Barristers, Ottawa.

From Cobourg, Ontario, 17 October 1891.

20

ANSWER quick whether judgment giving Crossen lien on railway is issued ; if issued, send copy by mail immediately.

(signed) RIDDELL, ARMSTRONG, and NESBITT.

No. 119.
Telegram
from Riddle,
Armstrong,
and Nesbitt
to Stewart,
Chrysler,
and Lewis,
dated 17th
October
1891.

Exhibit 44.

Telegram.

To Riddell, Armstrong, and Nesbitt, Barristers, Cobourg.

From Ottawa, Ontario, 17 October.

JUDGMENT giving Crossen lien is issued. Copy mailed you to-day.

(signed) STEWART, CHRYSLER, and LEWIS.

No. 120.
Telegram
from
Stewart,
Chrysler,
and Lewis
to Riddell,
Armstrong,
and Nesbitt,
dated 17th
October
1891.

RECORD.

Exhibit 45.

No. 121.
Letter from
A. Charle-
bois to
Riddell,
Armstrong
& Co.,
dated 17th
October
1891.

Messrs. Riddell, Armstrong & Co., Cobourg, Ontario.

Dear Sirs,

Montreal, 17 October 1891.

I RECEIVED your letter, and was very much surprised to find you had not already accepted the terms of the judgment rendered by Judge Ferguson at Toronto, in which your clients' heirs Crossen rank as one of the preferential claims, having a first lien on the whole of the property of the railway company, the amount of the claim being payable on or before the 31st March next, with interest at 6 per cent. from the date of judgment.

When I was called to Toronto, for the purpose of ascertaining if I would ¹⁰ accept the proposed arrangement upon which the company was prepared to consent to judgment, I told my counsel, Mr. Osler, that I could not very well consent to the proposition before knowing whether the terms would be agreeable and acceptable to you on behalf of your clients. Mr. Osler told me to accept the proposed arrangement, and that he would get you to accept the decree of the court.

Upon receiving your letter I wired Mr. Osler immediately, and received his answer last night, to the effect that he had communicated with you a second time upon the subject.

From the foregoing you will readily understand that my position in the ²⁰ matter has been greatly altered since my last interview with you in consequence of this settlement, inasmuch as I contemplated at that time making arrangements with the C.P. Railway for operating the road, and upon this understanding I was relying to make settlement with you.

I trust you have by this time received Mr. Osler's communication, and that you see your way to accepting the terms of the judgment.

I certainly should have communicated with you before now if I had not been depending upon Mr. Osler to do so.

Trusting to hear from you consenting to the arrangement,

I remain, &c.

30

A. CHARLEBOIS.

Per J.S.

Messrs. Riddell, Armstrong, and Nesbitt, Barristers, Cobourg.

Re Crossen.

No. 122
Letter from
Stewart,
Chrysler,
and Lewis
to Riddell,
Armstrong,
and Nesbitt,
dated 17th
October
1891.

Dear Sirs,

Ottawa, Canada, 17 October 1891.

IMMEDIATELY upon the receipt of your telegram *re* Crossen we wired you in reply that Crossen's judgment lien had been issued, and that we were mailing you a copy of same to-day. Consequently, upon receiving your second telegram, we attended at the telegraph office, and found that our telegram had been sent, but that the wires were crossed, which caused the delay. Trusting ⁴⁰ that the delay has not inconvenienced you,

Yours, &c.

STEWART, CHRYSLER, and LEWIS.

Messrs. Riddell, Armstrong, and Nesbitt, Barristers, Cobourg, Ontario.

RECORD.

Charlebois v. G.N.W. Central.

Re Crossen v. Charlebois.

Dear Sirs,

Ottawa, Canada, 17 October 1891.

YOUR telegram of this morning asking whether judgment giving Crossen lien on railway is issued, and, if so, to send you copy by mail immediately, was duly replied to by us.

No. 123.
Letter from
Stewart,
Chrysler,
and Lewis
to Riddell,
Armstrong,
and Nesbitt,
dated 17th
October
1891.

The judgment is dated 28th September 1891, and was entered on the 3rd October instant. We enclose you a copy as requested, and would particularly refer you to page 3 thereof.

Any other particulars you may desire we will gladly afford. Please acknowledge receipt.

Yours, &c.

Enclosure.

STEWART, CHRYSLER, and LEWIS.

Messrs. Riddell, Armstrong, and Nesbitt, Barristers, Cobourg, Ontario.

Charlebois v. G.N.W. Central.

Dear Sirs,

Ottawa, Canada, 29 October 1891.

You wrote us on the 13th instant, acknowledging copy of judgment sent you, and saying that you would consider the matter.

No. 124.
Letter from
Stewart,
Chrysler,
and Lewis
to Riddell,
Armstrong,
and Nesbitt,
dated 29th
October
1891.

We would be much obliged to you if you would let us hear from you in this connection.

Awaiting reply,

Yours, &c.

STEWART, CHRYSLER, and LEWIS.

Re Charlebois.

Gentlemen,

Cobourg, Ontario, 19 October 1891.

WE have received the copy of the judgment sent, and note its form and contents.

We shall consider the matter. Thanks for your promptness.

Yours, &c.

RIDDELL, ARMSTRONG, and NESBITT.

Messrs. Stewart, Chrysler, and Lewis,
Barristers, &c., Ottawa, Ontario.

No. 125.
Letter from
Riddell,
Armstrong,
and Nesbitt
to Stewart,
Chrysler,
and Lewis,
dated 19th
October
1891.

No. 126.
Telegram
from Riddell,
Armstrong,
and Nesbitt
to Stewart,
Chrysler,
and Lewis,
dated 31st
October
1891.

Cobourg, Ontario, 31 October 1891.

Messrs. Stewart, Chrysler, and Lewis, Barristers, Ottawa.

HAVE accepted judgment. Are writing by this mail.

RIDDELL, ARMSTRONG, and NESBITT.

Re Crossen v. Charlebois.

No. 126a.
Letter from
Riddell,
Armstrong,
and Nesbitt
to Stewart,
Chrysler,
and Lewis,
dated 31st
October
1891.

Gentlemen,

Cobourg, Ontario, 31 October 1891.

THE writer has just now seen your letter of the 29th instant. Our clients, while they think that Mr. Charlebois should pay them the small balance over and above the 39,000 dollars secured by the decree, and also should pay the extra 1 per cent. (he having agreed to pay 7 per cent., and we presume the decree providing only for 6 per cent.), accept the judgment as the best thing they can do in the premises. It is, we presume, quite understood that we are to have the 39,000 dollars, and interest from 25th September 1891, until paid. Let us know as to that. We do not want any misunderstandings or "afterclaps."

Yours, &c.

RIDDELL, ARMSTRONG, and NESBITT.

Messrs. Stewart, Chrysler, and Lewis, Barristers,
Ottawa, Ontario.

Messrs. Riddell, Armstrong, and Nesbitt, Barristers, Cobourg, Ontario.

Charlebois v. G.N.W. Central.

20

No. 127.
Letter from
Stewart,
Chrysler,
and Lewis to
Riddell,
Armstrong,
and Nesbitt,
dated 2nd
November
1891.

Dear Sirs,

Ottawa, Canada, 2 November 1891.

WE beg to acknowledge the receipt of your telegram to us of the 31st ult., and your letter of the same date received this morning. Mr. Charlebois is not to-day in Ottawa, and we have forwarded a copy of your letter to his address in Montreal, which we hope will reach him during the week. When we hear from him, or when he reaches Ottawa, we will communicate with you.

Yours, &c.

STEWART, CHRYSLER, and LEWIS.

No. 128.
Letter from
Stewart,
Chrysler,
and Lewis to
Riddell,
Armstrong,
and Nesbitt,
dated 4th
November
1891.

Messrs. Riddell, Armstrong, and Nesbitt, Barristers, &c., Cobourg, Ontario.

Re Charlebois.

30

Dear Sirs,

Ottawa, Canada, 4 November 1891.

REFERRING to yours of the 31st inst., we have a letter from Mr. Charlebois to-day.

If you will look at the judgment you will observe that the 39,000 dollars is payable six months from the date of the judgment, with interest from

the 28th September last, the rate being stated in the first clause of paragraph 2, at six per cent. per annum.

We believe you have adopted the best course in this matter.

Yours, &c.
STEWART, CHRYSLER & LEWIS.

No. 128.
Letter from
Stewart,
Chrysler &
Lewis to
Riddell,
Armstrong
& Nesbitt,
dated 4 Nov.
1891—
continued.

Re Crossen v. Charlebois.

Gentlemen,

Cobourg, Ontario, 7 November 1891.

No. 129.

YOURS of the 4th is at hand. We think, perhaps, there is some misapprehension as to our position.

10 We come in under the decree so far as that we accept the provisions of the decree (that we are to have the 39,000 dollars and interest at six per cent. from the date of the decree) and abandon any lien which we have and deliver up to the Company the cars, &c. We understand that we are to receive the sum of 39,000 dollars and interest from the Railway Company.

Letter from
Riddell,
Armstrong
& Nesbitt to
Stewart,
Chrysler &
Lewis, dated
7 Nov. 1891.

But our claim against Charlebois on the 28th	Dolls.
September was - - - - -	39,287 03
Of which we have since received - - - - -	159 80
A balance of - - - - -	<u>39,127 23</u>

20 Moreover we were to be paid at the rate of seven per cent. by Mr. Charlebois. The result is that the decree does not provide for 127.23 dollars of the indebtedness, nor for the one per cent. to which we are entitled. We therefore claim that Mr. Charlebois should pay us the 127.23 dollars, and the present amount of the one per cent. for the six months, namely, 192.25 dollars, in all, the sum of 319.48 dollars. This will leave our accounts straight. We have written Mr. Osler, Mr. Charlebois' counsel, but we observe he is busy on election cases. We wrote him some time ago, as Mr. Charlebois then said he was consulting him (Mr. O.). We think that the above claim is a fair one, and think your client should pay this small amount at once.

Yours, &c.

RIDDELL, ARMSTRONG & NESBITT.

30

To Messrs. Stewart, Chrysler & Lewis, Barristers, Ottawa, Ontario.

Exhibit 46.

Trustees Crossen Estate, Cobourg.

Gentlemen,

Ottawa, 3 November 1891.

No. 130.

REFERRING to the cars which were furnished by you to Mr. Charlebois, late contractor for a part of this railway, and which are now on our property, we shall be obliged if you will inform us whether we are to consider these cars in our charge subject to your claim, or whether you look to Mr. Charlebois to protect them.

Letter from
Arthur Codd
to Trustees
Crossen
Estate, dated
3 Nov. 1891.

RECORD. We scarcely know whether to treat these cars as your property or his at present, as we understand that you do not desire to arrange with us under the decree which we obtained from the Court of Chancery, by which the property is vested in us subject to your claim.

No. 130.
Letter from
Arthur Codd
to Trustees
Crossen
Estate,
dated 3 Nov.
1891—
continued.

I am, &c.

ARTHUR CODD, Secretary.

Exhibit 47.

Re G.N.W. Central Railway.

Crossen *v.* Charlebois.

No. 131. Dear Sir, Cobourg, Ontario, 4 November 1891. 10
Letter from OUR clients, the executors of the estate of the late James Crossen, have
Riddell, accepted the decree you refer to in your letter of yesterday so far as it vests in
Armstrong & Nesbitt to you the property as you state. We do not rely upon our lien on the cars which
J. A. Codd, we have, or had, under our agreement with Mr. Charlebois. We come in under
dated 4 Nov. and accept the decree.
1891.

Of course, as against Mr. Charlebois, we shall expect him to pay us the balance not secured us by the decree; but that, of course, does not concern your company, it being merely a personal claim as against Mr. C.

We wrote your solicitors some days ago accepting the decree.

Yours, &c.

20

To J. A. Codd, Esq., RIDDELL, ARMSTRONG & NESBITT.
President G.N.W. Central Railway of Canada, Ottawa, Ontario.

Exhibit 48.

The Great Northwest Central Railway Company.

No. 132. Dear Sirs, Ottawa, 6 November 1891.
Letter from WE have received your letter of the 4th, which is satisfactory.
Arthur Codd to Yours, &c.
Riddell, ARTHUR CODD, Secretary.
Armstrong & Nesbitt, Messrs. Riddell, Armstrong and Nesbitt, Barristers, &c., Cobourg.
dated
6 Nov. 1891.

Exhibit 49.

30

The Great Northwest Central Railway Company.

No. 133. Messrs. Riddell, Armstrong and Nesbitt, Barristers, Cobourg.
Letter from Dear Sirs, Ottawa, 1 December 1891.
J. A. Codd to Riddell, REFERRING to your letter of November 4th regarding the rolling stock therein
Armstrong & Nesbitt, mentioned, we are now prepared to operate the road, and as I am leaving for
dated 1 Dec. Brandon to make arrangements to that end, I desire to be furnished with
1891.

proper authority from you to make use of the cars that are on our line. Will you therefore kindly sign the enclosed letter, and return to this office as quickly as possible. Is your Company still manufacturing cars? Please let me know if you have any box or cattle cars on hand. If so, prices and terms, deferred payments.

Yours, &c.

J. A. CODD, President.

RECORD.
—
No. 133.
Letter from
J. A. Codd
to Riddell,
Armstrong
& Nesbitt,
dated 1 Dec.
1891—
continued.

Exhibit 50.

Re Crossen v. Charlebois.

10 Dear Sir, Cobourg, Ontario, 2 December, 1891.
HEREWITH enclosed find written authority duly signed.

Yours, &c.

RIDDELL, ARMSTRONG & NESBITT.

To J. A. Codd, Esq.
President G.N.W. R. Company, Ottawa, Ontario.

No. 134.
Letter from
Riddell,
Armstrong
& Nesbitt
to J. A.
Codd, dated
2 Dec. 1891.

Exhibit 51.

Great Northwest Central Railway Company.
Secretary-Treasurer's Office.

Arthur Codd, Secretary-Treasurer.

Messrs. Riddell, Armstrong & Nesbitt, Barristers, Cobourg.

20 Dear Sir, Brandon, 31 December 1891. No. 135.
We enclose you a letter received from the General Superintendent C. P. R., Letter from
Winnipeg, *re* Caboose. We have been endeavouring to obtain this car for the A. Codd to
last two weeks, and are very much in need of it, but the C.P.R. refuse to Riddell,
deliver it to us as we have not got the original Shipping Bill, and do not know Armstrong
how your firm shipped it. The car has been laying in the C. P. R. yard here ever & Nesbitt,
since its arrival (year and a half), as Charlebois has not paid the freight dated
charges. We shall be obliged, therefore, if you will obtain a certified copy of 31 Dec.
the original Shipping Bill, and have the executors of the Crossen estate endorse 1891.
thereon an order for delivery of this car to us.

30 Kindly send this to us immediately, or otherwise we shall be compelled to
purchase a second hand caboose here, if there is any further delay in this
matter.

Yours, &c.

ARTHUR CODD, Secretary-Treasurer.

P.S.—We have shown Mr. Whyte the letter of authority you gave the
President, but he appears to think that it should have been signed by the
Executors.

Please send copy of certified bill to Brandon.

A. C.

Exhibit 52.

Great Northwest Central Railway Company.

James Crossen, Esq.,
Cobourg Car Works, Cobourg, Ontario.

No. 136. Dear Sir, Ottawa, 19 August, 1889.
Letter from I AM instructed by the directors of this Company to ask from you cash
W. A. Allan quotations for following rolling stock, and date of delivery at Brandon, in
to James Manitoba :—
Crossen,
dated
19 Aug.
1889.

2 First class cars.	
2 Second class cars.	10
2 Baggage cars.	
10 Box cars.	
10 Platform cars.	
2 Cattle cars.	

Please quote price delivered at Brandon, and for cash. An immediate reply with full particulars will oblige.

Yours, &c.
W. A. ALLAN, Treasurer-Secretary.

Exhibit 61.

Re Charlebois.

20

No. 137. Dear Sir, Cobourg, Ontario, 10 September, 1891.
Letter from I HAVE to-day had a long talk with Charlebois here. He says that he will be
W. R. only too glad if your Company will pay us the amount of our claim and debit
Riddell to him with the amount.
Mr. Codd, He says, however, that your Company cannot pay and have no money to
dated pay with. This, I presume, is only talk.
10 Sept. If you wish (or are willing) to pay us and take an assignment of our claim,
1891. or to pay and credit Charlebois with the amount I shall be glad to accommodate
you, and, if you so desire, I shall get an order of the court protecting you.
I understand that Charlebois would not enter into any arrangement with 30
you, and that you and he will probably have a fight.
Kindly let me hear from you.

Yours, &c.
(signed) W. R. RIDDELL.

To Mr. Codd,
President G.N.W. Central Railway,
Ottawa, Ontario.

Re Charlebois.

Dear Sir, Cobourg, Ontario, 2 October 1891. RECORD.

THE G. N. West Central Railway of Canada, your Company, are required not to take possession of or in any manner interfere with the following cars until the same have been paid for in full, the said cars being the property of William James Crossen and Joseph Henderson, executors of the last will and testament of the late James Crossen. No. 138.
Letter from
Riddell,
Armstrong
& Nesbitt
to Mr. Codd,
dated
2 Oct. 1891.

12 new 33-feet box cars, Nos. 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120 and 122.

10 2 new first-class passenger coaches, Nos. 40 and 42.
2 new second-class passenger cars, Nos. 44 and 46.
2 new baggage, mail and express cars, Nos. 48 and 50.
1 new conductor's van, No. 19.

12 new 33-feet platform cars, Nos. 99, 101, 103, 105, 107, 109, 111, 113, 115, 117, 119 and 121.

All the above cars are marked "Great North West Central Railway," and were built in 1889. Also 5 pumper hand-cars.

Mr. Charlebois has given our clients authority to sell these cars to your Company, and we have made an offer to that effect which has not been
20 accepted.

Yours, &c.
(signed) RIDDELL, ARMSTRONG & NESBITT,
Solicitors for said Executors.

To Mr. Codd,
President G. N. W. C. Railway, Ottawa.

Memo.—Letter of Riddell, Armstrong & Nesbitt to Arthur Codd, of 2 December 1891, has been printed as Exhibit No. 50 above.

Re Charlebois Caboose.

Dear Sir, Cobourg, Ontario, 4 January 1892. No. 139.

Yours of the 31st ultimo is to-day to hand, with the enclosure as stated, which we now herewith re-enclose. Letter from
Riddell,
Armstrong
& Nesbitt to
Arthur
Codd, dated
4 Jan. 1892.

30 The matter is receiving our attention, and we hope to be able to send you the documents required in a very few days.

Yours, &c.
(signed) RIDDELL, ARMSTRONG & NESBITT.

To Arthur Codd, Esq.,
Secretary-Treasurer Great North Western
Central Railway, Brandon, Man.

RECORD.

Re Caboose.

No. 140. Dear Sir, Cobourg, Ontario, 5 January 1892.
 Letter from Riddell, Armstrong & Nesbitt to Arthur Codd, dated 5 Jan. 1892. We have obtained from the Grand Trunk agent here a certified copy of the original bill of lading, and we have had it endorsed for the delivery to your railway by the executors. We trust that this will be sufficient.

Yours, &c.
 RIDDELL, ARMSTRONG & NESBITT.

To Arthur Codd, Esq.,
 Secretary-Treasurer Great North West
 Central Railway Company, Brandon, Man.

Memo.—Telegrams of 17th and 31st October 1891 from Riddell, Armstrong & Nesbitt to Stewart, Chrysler & Lewis are printed as part of Exhibit No. 45 above. Letters of 19th and 31st October and 7th November 1891 from Riddell, Armstrong & Nesbitt to Stewart, Chrysler & Lewis are printed as part of Exhibit No. 45 above. Letter of B. B. Osler, q.c., to W. R. Riddell, 16th October 1891, is printed as Exhibit No. 42 above.

Letters of Stewart, Chrysler & Lewis to Riddell, Armstrong & Nesbitt, of 17th and 29th October and 2nd and 4th November 1891, are printed as part of Exhibit No. 45 above.

Telegram from Stewart, Chrysler & Lewis to Riddell, Armstrong & Nesbitt, of 17th October 1891, is printed as part of Exhibit No. 45 above. 20

Letters from Arthur Codd to Riddell, Armstrong & Nesbitt, of 6th November and 31st December 1891, are printed as Exhibits No. 48 and 51 above.

Letter from J. A. Codd to Riddell, Armstrong & Nesbitt, of 1st December 1891, is printed as Exhibit No. 49 above.

Exhibit 62.

W. A. Allen, Esq.,
 Secretary and Treasurer Great North West Central Railway, Ottawa.

No. 141. Dear Sir, Cobourg, 4 September 1889.
 Letter from James Crossen to W. A. Allen, dated 4 Sept. 1889. I RECEIVED your telegram to-day as follows :—"Important you should furnish prices for rolling stock quickly as possible—answer," and replied, "Will send you prices to-night for rolling stock," which I now confirm. I should have sent you my prices for rolling stock before only I have not yet obtained the freight rates from here to Brandon, but send you my prices as follows, delivered at Cobourg.

I will furnish you with rolling stock as follows :—

Two first-class passenger coaches, 50 ft. long, to the enclosed specification, No. 46. Price, 5,600 dollars each.

Two second-class passenger cars, 50 ft. long, to the enclosed specification, No. 47. Price, 4,300 dollars each.

Two combined mail and baggage cars, 50 ft. long, to the enclosed specification, No. 48. Price, 3,360 dollars each. 40

Or I will furnish you with the above cars to the enclosed specifications only with 33-in., heavy, selected cast-iron wheels, weighing about 620 pounds each,

instead of 40-in. steel-tyre Krupp wheels for 316 dollars per car less than the above-named prices. The above prices do not include the Westinghouse air signal. If you require it on your cars I will put it on at the net cost. You will note the specifications state the cars are to have 40-in. Krupp wheels, steel-tyred. I have none of these wheels in stock, and I find from the agent that the maker, Mr. Krupp, of Germany, is so full of orders that I might not be able to get them in time for your requirements, but the cars could be built for the 40-in. wheels and supplied with the 33-in., heavy, selected cast-iron wheels until you receive the 40-in. steel-tyred wheels, if you require them. In this case, if you have a wheel borer, wheel press, and axle lathe, of course you could fit the 40-in. wheels on the axles yourself; if not, I could send you the 40-in. wheels fitted on the axles, adding the cost of the axles and fitting on.

RECORD.
—
No. 141.
Letter from
James
Crossen to
W. A. Allen,
dated
4 Sept. 1889
—continued.

If you require a dearer style of first-class car than the above, I could supply you with them finished on the outside in cherry and varnished, like I supply the C. P. R.; or if you want a cheaper car, I could furnish you with them finished inside in oak or ash with walnut or cherry mouldings. Kindly let me know in regard to this, and I could furnish you with specifications and prices for same. In regard to second-class cars, you will note the specifications state that the seats are to be either stationary slatted seats, with wooden ends and nickel-plated seat arms, the same as I furnished the C. P. R. second-class cars, or swing-back, reversible slatted seats, with Buntin pattern, cast-iron ends, and wooden arm-rests. I will furnish whichever kind you propose.

If you require floor plans for the above cars, please let me know and I will send them to you. I will also furnish you with ten box cars, 33 feet long, similar to those I built for the C. P. R., with double wood roof and wrought-iron body bolsters, trucks on the lateral motion principle, with master car-builders' standard axles, axle boxes and bearings, Scott's graduated keystone springs, and 33-inch cast-iron wheels, weighing about 600 pounds each, with a carrying capacity of 40,000 pounds. Price, 525 dollars each.

Ten platform cars, 33 feet long, similar to those I built for the C. P. R., with wrought-iron body, bolsters, trucks the same as the above box cars, and with a carrying capacity of 40,000 pounds. Price, 393 dollars each.

Two cattle cars, 33 feet long, with double wood roof, sheeted on the ends with 1-inch pine, and the sides of open framework of oak, well braced, side sliding down with a grating of round iron bars, wrought in iron body bolsters, trucks the same as the above box cars, and with a carrying capacity of 40,000 pounds. Price, 535 dollars each.

I can deliver the above cars at short dates or in any reasonable time. I have communicated again with the parties in regard to the rates of freight from here to Brandon, and as soon as I hear I will let you know. It would be well for you to apply for rates on this rolling stock from here to Brandon as well as myself, and the cars could be shipped at the cheapest rate. If you favour me with the order I will do my very best to give you satisfaction in every respect.

An early reply would oblige me.

I am, &c.
(signed) JAMES CROSSEN,

RECORD. REASONS of Appeal of William James Crossen, Frederick John Crossen, and Joseph Henderson, Executors, &c.

No. 142.
Reasons of
Appeal of
William
James
Crossen,
Frederick
John
Crossen, and
Joseph
Henderson.

1. These Appellants adopt, so far as is applicable to their case, the reasons of appeal of the other Appellants.

2. Even supposing the original contract to have been void, these Appellants submit that the judgment based thereon is not void.

3. The Plaintiff Company, after the obtaining of the said Judgment, represented to these Appellants that the said Judgment was a valid and binding one, and upon the strength of such representation received from these Appellants the rolling stock mentioned in their defence. The position of the parties has been changed and goods obtained from these Appellants upon the said representation, and the Plaintiff Company are, therefore, estopped from denying the validity of the said Judgment.

W. R. RIDDELL.

A. J. ARMSTRONG.

Of Counsel for the said Appellants.

REASONS against Appeal of the Respondents, James Bogle Delap, and others.

No. 143.
Reasons
against
Appeal of
the
Respon-
dents,
James Bogle
Delap, and
others.
* Original
Record.

In the event of its being determined that the said Appellants have the right now to appeal from the said Judgment, the Respondents above-named rely in opposition to the said Appeal upon their reasons against Appeal delivered to the Appellants, Charlebois and others, and embraced in the case printed upon the Appeal of Charlebois and others in vol. 1.*

In the Court of Appeal for Ontario.

Tuesday, the 14th day of May 1895.

No. 144.
Certificate
of result of
Appeal,
dated
14 May
1895.

	Between	
James Bogle Delap, and others (Respondents)	- - - -	Plaintiffs,
	and	
Alphonse Charlebois, and others	- - - -	Defendants,
	and	
William James Crossen, Frederick John Crossen, and Joseph Henderson, Executors of the last Will and Testament of James Crossen, deceased (Appellants),		Defendants.

30

This is to certify that the Appeal of the above-named Appellants from the Judgment of the Honourable John Alexander Boyd, President of the Chancery Division of the High Court of Justice of Ontario, pronounced on the 25th day of November 1893, and 22nd day of January, 1894, having come on to be argued before this Court on the 19th, 20th and 21st days of November 1894, whereupon and upon hearing counsel as well for the Appellants as the

Respondents this Court was pleased to direct that the matter of the said Appeal should stand over for Judgment; and the same having come on this day for Judgment: It was Ordered and Adjudged that the said Appeal should be and the same was dismissed with costs, to be paid by the Appellants to the Respondents forthwith after taxation thereof.

A. GRANT, Registrar.

RECORD.
No. 144.
Certificate
of result of
Appeal,
dated
14 May 1895
—continued.

In the Court of Appeal for Ontario,

Between

James Bogel Delap *et al.* - - - (*Respondents*) *Plaintiffs*;

and

Alphonse Charlebois - - - (*Appellants*) *Defendants*.

I, D'Alton McCarthy, of the City of Toronto, in the County of York, Esquire, make oath and say:—

1. That I acted as counsel at the trial of this action on behalf of the Appellant Charlebois.

2. That now shown to me marked Exhibit "A" to this my affidavit is a memorandum of figures dated September 27th, 1891, and said to be made by J. H. Secretan, who was, I am informed, engineer for the Defendant Charlebois in connection with the construction and work done by the said Defendant, and referred to in the pleadings herein, and which memorandum purports to show the figures agreed to by Mr. B. B. Osler and Mr. S. H. Blake on or about September 26th, 1891, which formed the basis of settlement in the action of Charlebois *v.* Great North-West Central Railway Company, and were embodied in the consent judgment.

3. That now shown to me marked Exhibit "B" is a memorandum, as I am informed, made by Mr. B. B. Osler upon which the said settlement was made, and which formed the basis of the calculation referred to herein as Exhibit "A."

4. That the said documents marked Exhibits "A" and "B" hereto were handed to me by the said J. H. Secretan after the trial of this action, and prior to the trial of this action I was not aware of their existence.

5. That happening to meet Mr. Secretan shortly after the trial and decision of this action, and in the course of conversation respecting the said trial and the difficulty that was experienced in explaining the meaning of the memorandum, which purported to show how the amount which had been agreed upon at the settlement between the parties (which is embodied in the decree made by Mr. Justice Ferguson), Mr. Secretan informed me that he had a memorandum which was based upon the memorandum kept by Mr. B. B. Osler, who had been acting as counsel for Mr. Charlebois in the said action, and he subsequently gave me the said papers marked as Exhibits hereto as "A" and "B" as aforesaid.

RECORD.

No. 145.
Affidavit of
D'Alton
McCarthy,
sworn
12 Novem-
ber 1894—
continued.

6. That in my opinion it is desirable and necessary, and in the interests of justice in this case, that the said B. B. Osler and J. H. Secretan should be examined in reference to the said documents marked Exhibits "A" and "B" hereto, and the figures therein contained, before this Court on the Appeal pending herein, and that an order should be made granting leave to the Appellant Charlebois to examine the said parties as aforesaid and to use their evidence on this Appeal.

Sworn before me at the City
of Toronto, in the County
of York, this 12th day of
November 1894.

(signed) D'ALTON MCCARTHY.

10

(signed) THOS. REID,
A Commissioner, &c.

EXHIBIT "A."

Memorandum.

No. 146.
Exhibit
"A." to such
Affidavit,
dated
26 Septem-
ber 1891.

Showing figures agreed to by Osler & Blake on September 26, 1891, which formed basis of settlement of A. Charlebois, action against G. N. W. Central Railway Company.

Contract prices	-	-	-	-	\$	973,333	00	
Paid thereon	-	£50,000	=	\$243,333				20
Rails, &c.	-	-	-	129,574				
						372,907	00	
						600,426	00	
Allowed for interest	-	-	-	-		22,000	00	
								622,426 00

Group A.

Deduct liens.

Macdonald & Schiller (including Com- mercial Bank) principal and interest	64,429	00		30
W. A. Preston (including interest)	8,400	00		
Crossen Estate (including interests and costs, say)	39,000	00	111,829	00
	111,829	00	510,597	00

First lien holders.

Group B.

Amounts payable to Charlebois or to such persons or corporations as he may have assigned same according to their relative priorities as same may prove to be	-	-	380,342	00	40
--	---	---	---------	----	----

This sum includes the following details,
not necessarily in the priority
shown :

		\$	\$
Union Bank	- - - - -	150,000 00	
Frank Ross	- - - - -	30,000 00	
A. Charlebois	- - - \$11,130 00		
Quebec Bank (?)	- - - 80,370 00		
		<hr/> 91,500 00	
10 F. Clemow,	} Interest at 4 per cent. only made to date	25,309 00	
W. A. Allan,		40,483 00	
R. J. Devlin,		30,373 00	
J. Murray,		12,677 00	380,342 00
			<hr/> 130,255 00

Group C.

D. McMichael, for J. A. Codd	- - -	94,255 00	
D. McMichael, for allowance to Co.	- - -	36,000 00	
		<hr/> 130,255 00	

Memorandum of details, explaining how amounts allowed to Codd and the
Co. are arrived at :

		\$	\$
20 Commission to Codd	- - - - -	- - -	173,333 00
Engines	- - - - -	20,000 00	
Fencing	- - - - -	13,000 00	
Right of way	- - - - -	3,000 00	
Rebate on bonus	- - - - -	25,000 00	
		<hr/> 61,000 00	
Allowance to Co. and Com.	- - - - -	- - -	234,333 00

Less—

30 Bonus	- - - - -	50,000 00	
Order	- - - - -	28,000 00	
Order	- - - - -	4,866 00	
Costs of surveys	- - - - -	5,128 00	
Extra cost of spikes	- - - - -	5,940 00	
Loan to Codd	- - - - -	10,000 00	
Duty on rails	- - - - -	144 00	
		<hr/> 104,078 00	

Total amount payable to McMichael
and Codd as per Group C. - - - 130,255 00

Toronto, September 27th, 1891.
" J. H. S. S."

RECORD.

No. 146.
Exhibit
"A." to such
Affidavit,
dated
26 September 1891—
continued.

EXHIBIT "B."

RECORD. The account of monies due to the Plaintiff, the credits and the disposition
 No. 147 of the residue, interest to date at rates agreed upon being included.

No. 147.
Exhibit
"B" to Mr.
McCarthy's
Affidavit,
sworn
12 Novem-
ber 1894.

Contract price	-	-	-	-	-	-	-	973,333 00
Paid :							\$	
£50,000 stg.	-	-	-	-		243,333	00	
Rails, &c.	-	-	-	-		129,574	00	
								<hr/>
								373,107 00
								<hr/>
								600,226 00
Allowance in lieu of int. on balances to date say	-							22,000 00
								<hr/>
Total lien	-	-	-	-	-	-	-	622,226 00

Which is payable to the following firms and persons in the following order :—

To Macdonald & Schiller or their creditors	-	-	\$	40,640	00
To them but payable by (add. int.) their order to Commercial Bank of Manitoba	-	-	-	20,000	00
add. int.					
To W. A. Preston	-	-	-	7,810	00
add. int.					
To Crossen Estate or Co. Judgt. and costs, say	-			39,000	00

To Crossen Estate or Co. Judgt. and costs, say	-	39,000	00
Note these amounts are to rank <i>pari passu</i> , in case of deficiency of assets, being for work, labour and material in the road.			

107,450 00

ACCOUNT.

Union Bank of Canada, order from Plaintiff	-	-	150,000	00
Frank Ross	-	-	30,000	00
Clemow, wh. in int. to date	-	-	25,310	00
W. A. Allan	„	„	40,483	00
R. J. Devlin	„	„	30,372	00
Capt. Jas. Murray	„	„	12,677	00
			<hr/>	
			396,292	00

Plus interest on some of above :

McD. & S., all from 1st August at 6 per cent.	-	3,789 00
---	---	----------

Preston, interest and costs	-	-	-	-	-	590 00
-----------------------------	---	---	---	---	---	--------

							400,671 00
Deduct this sum from	-	-	-	-	-	-	622,226 00
							400,671 00
							<hr/> 221,555 00

This sum is payable to the Plaintiff as follows :

\$

RECORD.

To him personally	-	-	-	-	-	-	80,088 00
To his order in favour of Dr. McMichael, Q.C.	-	-	-	-	-	-	141,467 00
Net	-	-	-	-	-	-	800,000 00
Interest	-	-	-	-	-	-	22,000 00
Bonus	-	-	-	-	-	-	50,000 00
							<hr/>
							872,000 00

No. 147.
Exhibit
"B" to Mr.
McCarthy's
Affidavit,
sworn
12 November 1894—
continued.

Deduct :

\$

10	Engine all	-	-	-	-	-	20,000 00
	Tending	-	-	-	-	-	13,000 00
	Deposit agt.						
	Right of way	-	-	-	-	-	3,000 00
	Rebate	-	-	-	-	-	25,000 00
							<hr/>
							61,000 00
							<hr/>
							811,000 00

Add :

20	Order—Rails	-	-	-	-	-	28,000 00
	Order	-	-	-	-	-	4,866 00
	Cash	-	-	-	-	-	10,000 00
							<hr/>
							42,866 00

							853,866 00
							<hr/>
							Less paid - - - - - 373,107 00

							480,759 00
							<hr/>
							Liens per list - - - - - 400,671 00

30							80,088 00
							<hr/>
	This is charged,	221,535 00					
		80,088 00					
		<hr/>					
		141,467 00					

Proof - - - - - 173,333 00

40	Order	-	-	-	-	-	28,000 00
	Order	-	-	-	-	-	4,866 00
	Cash	-	-	-	-	-	10,000 00
	Net	-	-	-	-	-	25,000 00
							<hr/>
							67,866 00

							105,467 00
							<hr/>
							Proof fails - - - - - 36,000 00

\$141,467 00

RECORD. These balances as between Plaintiff and Dr. McM., are subject to award on items in dispute, as follows :—

No. 147.	Amount repayable out of right of way deposit.	
Exhibit	Amount claimed to be paid to Plaintiffs by Defendants, on following heads,	
"B" to Mr.	now referred to arbitration, as follows :—	
McCarthy's		
Affidavit,		
sworn		
12 Novem-	Duty on rails - - - - -	\$ 144 20
ber 1894—	Spikes - - - - -	5,940 64
<i>continued.</i>	Survey of mileage, subsequent to 50 miles - - -	5,128 00
	Claim for work and material on second 50—not	
	ascertained.	10

Any amounts found to be due to the Plaintiff, on any of the above heads, to be added to the 80,088 dollars and deducted from the 141,467 dollars.

And any sum which may be added to the claims of any of the parties names as payees of the 400,671 dollars is to be deducted from the 80,088 dollars ; if any less amount is required to pay the sums now added up at 400,671 dollars, such reduction is to be payable to the Plaintiffs.

In the Court of Appeal for Ontario.

The Honourable Mr. Justice Osler.

Friday, 13 September 1895.

20

No. 148. UPON the application of the Appellants and the Respondents by their
Order of counsel consenting hereto,
the Court of

Appeal for It is ordered that a supplementary volume be added to the Case on appeal
Ontario, in this action to the Supreme Court of Canada, to be called Volume VI.,* and
dated said Volume is hereby settled as consisting of the affidavit of Mr. D'Alton
13 Septem- McCarthy, made herein on the 12th day of November, 1894, and Exhibits "A."
ber 1895. and "B." thereto.

* Original
Record.

And it is further ordered, that the Registrar of this Court do certify the
† Original said Volume VI.† as being part of the Case on appeal in this action to the 30
Record. Supreme Court of Canada.

And it is further ordered that the costs of, and incidental to the printing of the said Volume and of this Order, be costs in the cause in the said appeal to the Respondents and the Appellant, A. Charlebois.

In the Supreme Court of Canada.

Appeal from the Judgment of the Court of Appeal for Ontario.

Between

Alphonse Charlebois, *et al.* - - (Defendants), Appellants,

and

J. B. Delap, *et al.* - - (Plaintiffs), Respondents.

FACTUM of Appellant, Alphonse Charlebois, on Main Appeal.

Introduction.

This action was commenced on the 6th of December, 1892, and was tried RECORD.
10 before Chancellor Boyd without a Jury at Ottawa, on the 31st day of October, I.
and the 1st, 2nd, 3rd, and 4th days of November, 1893; and the trial was con- Factum of
tinued at Toronto on the 13th, 14th, 15th, 16th, and 17th days of November, Appellant,
1893, and judgment was then reserved. Alphonse
Charlebois,
on Main
Appeal.

Judgment was delivered on the 25th of November, 1893, overruling the demurrer of the Defendant Charlebois, and granting certain relief to the Plaintiffs.

The Reasons for Judgment are printed at page 117 of Vol. I.* of the Case. * Original

The Judgment was settled before the Chancellor on the 22nd day of Record.
January, 1894. The formal judgment is printed at page 123 of Vol. I.† † Original

20 After the judgment, the Defendant Macdonald died, and the action was Record.
revived by order of the Revivor in the name of Isabella Jane Macdonald,
executrix of the last will and testament of the said Alexander Macdonald.

The Defendants, Charlebois, Macdonald, Preston, Schiller, Nugent, the
Commercial Bank of Manitoba, the Union Bank of Canada, Allan and Devlin,
appealed from said judgment to the Court of Appeal for Ontario, and the Appeal
came on for argument before the Court of Appeal on the 14th, 15th, 16th,
19th, 20th, and 21st days of November, 1894, when judgment was reserved.

30 The Court of Appeal, consisting of four judges, delivered its judgment on
the 14th May, 1895. The Chief Justice and Mr. Justice Osler decided to dis-
miss the Appeals, and Mr. Justice Burton and Mr. Justice MacLennan were in
favour of allowing the Appeals from the Chancellor's judgment. The result
of this was that the Appeals were dismissed with costs.

The Minutes of Judgment were spoken to before the Court of Appeal, on
the 25th June, 1895, on motion by Appellants to vary the judgment of the
Court; whereupon the judgment of the Court was varied by directing (amongst
other things) that the Action of the Respondant Delap be dismissed without
costs. The certificate of the judgment of the Court of Appeal, as finally settled,
is printed on page 146 of Volume I.‡

‡ Original
Record.

RECORD. The Reasons for Judgment are printed in Volume I.,* and may be found at the following pages:—

I.						
Factum of	Chief Justice Hagarty	-	-	-	-	page 148*
Appellant,	Mr. Justice Burton	-	-	-	-	„ 158*
Alphonse	Mr. Justice Osler	-	-	-	-	„ 173*
Charlebois,	Mr. Justice MacLennan	-	-	-	-	„ 174*
on Main						
Appeal—						
<i>continued.</i>						
* Original						
Record.						

STATEMENT OF FACTS.

This Action was brought by the Great North-West Central Railway Company to set aside two judgments obtained by the Appellant, Charlebois, against the Company, in an action by Charlebois to recover a balance claimed to be due to him upon a contract for the construction of a section of that Company's line of railway.

The Great North-West Central Railway Company was a Company organized for the purpose of constructing a line of railway from some point on the Canadian Pacific Railway in Manitoba, at or near Brandon, in a north-westerly direction to Battleford. Another Company, under two different names, had previously been in existence for the purpose of constructing the same railway, but had been unable to do so.

The Souris and Rocky Mountain Railway Company was incorporated by an Act of the Parliament of Canada, passed in the year 1880, and in the year 1884 the name of the Company was changed to the North-West Central Railway Company. Construction was commenced and carried on during the summer and autumn of the year 1883, and the then contractors (who were the present Defendants, McDonald and Preston) claimed to have expended a large sum of money and that a balance was due to them, amounting to 126,000.00 dollars and upwards, by the old Company. The Company failed to carry on the work, and in 1886, by an Act, 49 Victoria, Chapter II., the Governor in Council was authorised to grant to the North-West Central Railway Company, *or to such other Company* as should undertake the construction of the railway, Dominion lands to the extent of 6,400 acres for each mile of railway, for a distance of 30 450 miles.

The Governor-in-Council was also authorised to grant a Charter for the incorporation of a new Company, and that such Charter, upon being published in the "Canada Gazette," should have force and effect as if it were an Act of the Parliament of Canada.

The Defendants, Clemow, Charlebois, Allan, Murray, and one Charles T. Bate, since deceased, in 1886 made application for a Charter, and a Charter was granted pursuant to the power given by the last-mentioned Act, and was published in the "Canada Gazette" of the 6th November, 1886.

Before accepting the Charter or organising, the Corporators learned that there were outstanding claims by McDonald and Preston, by the Defendant John Arthur Codd, and by one Archibald Young against the old Company which they might be called upon to pay, and they entered into an agreement with

reference to the said claims, dated 26th February 1887, which is printed on RECORD.
page 3 of Vol. 3* of the Case, Trial Exhibit 79.

The Corporators then for several months endeavoured to obtain the money to carry on the work of construction, but were embarrassed by the uncertainty as to the outstanding claims, and for nearly a year after refrained from accepting the Charter and from completing their organisation. Finally the Corporators made the agreement with the Defendants McDonald and Preston, dated 12th September 1887, by which McDonald and Preston agreed to settle and postpone their claims. The agreement is referred to at page 21, Vol. 3,† as
10 Trial Exhibit 18, but is printed in full in the Statement of Defence.

In substance, by this agreement McDonald and Preston agreed to accept 25,000 dollars to be paid out of the 50,000 dollars deposited in the hands of the Government, to be applied in payment of the claims for wages and materials supplied, and a further sum, nominally 50,000 dollars, by the delivery of the proceeds of the sale of bonds to that amount when the bonds of the Company should be sold.

Having made this arrangement with regard to McDonald and Preston, and having secured from Codd and Young the agreement to postpone, already referred to, the Corporators entered into a contract with the Minister of
20 Railways, dated the same day (12th September 1887), which provided that the Company should construct the road, and, in consideration of such construction, should receive the land grant of 6,400 acres per mile as therein provided.

The contract is Trial Exhibit No. 31.

The recitals are printed on Vol. 3,† page 18.

The other clauses are printed in the Statement of Defence.

On the same day the Company, composed of Clemow and his associates, entered into a contract with one John C. Sproule, for the building and completion of the first 50 miles of the Company's railway, and during the years 1887 and 1888 a large amount of work was done, so that a sum of upwards of
30 147,000 dollars was expended by the Company from the funds paid in by the five shareholders.

Some time in the year 1887 the Defendant Devlin bought out the interest of and took the place of Mr. Bate, and during the whole period from the 9th April 1888, to the 16th September 1889, the whole capital stock of the Company was issued to and was held by five shareholders as follows :—

	Clemow	-	-	-	-	-	1,000
	Allan	-	-	-	-	-	1,600
	Devlin	-	-	-	-	-	1,200
	Charlebois	-	-	-	-	-	700
40	Murray	-	-	-	-	-	500
	Making in all						5,000 shares of 100
	dollars each, or 500,000 dollars.						

RECORD.

I.
Factum of
Appellant,
Alphonse
Charlebois,
on Main
Appeal—
continued.

For the purpose of making the deposit of 50,000 dollars required by their contract with the Government, they paid up 10 per cent. upon their shares, and afterwards paid up a further sum amounting to about 147,000 dollars in all, or about 30 per cent. of the subscribed stock.

The amount paid was credited to each shareholder in his amount in the ledger of the Company.

In the year 1888 Clemow and the other shareholders entered into an agreement with John Arthur Codd, which is Trial Exhibit 3, dated the 9th April 1888, and is set out in full in the Statement of Defence of the Defendant Charlebois.

10

Briefly stated, it provided for the sale by the five shareholders of the shares held by them, and further, that they should complete the building of 50 miles of the road for the sum of 200,000*l.* sterling, payable 50,000*l.* on the transfer of the shares, and the execution of a contract by the shareholders for the construction of the 50 miles in consideration of the sum of 200,000*l.*

The transfer was to be made to the Defendant Codd or to his nominees.

So far as the shareholders are concerned, nothing further was done in the direction of carrying out this agreement until September 1889.

In the meantime Codd entered into certain relations and arrangements with the Plaintiff Delap and with one Stevens which were unknown to the share-20 holders until long after the 16th September 1889, and which may be more conveniently referred to later.

Dealing at present, therefore, with the facts as known to Clemow and his associates at the time, nothing occurred until the 7th September 1889, when an intimation was conveyed to Clemow and his associates that Codd desired to meet them at Toronto. Clemow, Allan, and Charlebois accordingly went to Toronto and met Codd, and were by him introduced to a gentleman who had come out from England with him, named Charles Richard Stevens. As appears from the evidence of all the former shareholders, Stevens appeared and represented himself to be a capitalist who was about to purchase the shares in 30 the Company. After a good deal of discussion, on the 7th September (which was a Saturday), the former shareholders declined to carry out the proposed sale to Codd, and Clemow and Allan returned to Ottawa that evening. Devlin was not in Toronto, and Murray had previously gone home to St. Catharine's.

When Clemow and Allan declined to carry out the bargain, Charlebois, thinking that perhaps he might conclude an arrangement on his own behalf, asked them what they would take for their shares and sell out to him. This occurred on the road to the station, on the evening of Saturday. They asked him what he would give, and he said he would give 200,000 dollars for the shares of Clemow, Allan, and Devlin. Allan said he would consult Devlin, and would 40 let him know. Charlebois in the meantime was to communicate with Murray, and ascertain whether he would sell.

Relying upon his ability to make some arrangement to purchase the shares of the other four shareholders, Charlebois on Monday, 9th September, entered into an arrangement with Codd and Stevens, and a memorandum of agreement was drawn up. That paper is Trial Exhibit No 7, and is printed in the Case in two different places. Part One is printed in full in paragraph 8.(j) of the

Statement of Claim. The endorsement, which is important as showing that RECORD.
Mr. Stevens was the principal for whom Codd was acting, is printed in Vol. 3,* at
page 28. I.

Between the 9th and 16th of September, Charlebois again saw Clemow, Factum of
Allan, Devlin and Murray, and they agreed to sell their shares to him, and to Appellant,
transfer them to himself, or as he might direct, for the sum of 226,000 dollars, Charlebois,
which sum was arrived at by giving Murray the same proportion for his shares on Main
as 200,000 dollars would give to Clemow, Allan, and Devlin, and was, therefore, Appeal—
based upon the proposal made by Charlebois to Clemow and Allan, in Toronto, * Original
10 on the 7th September. On the 16th September the transfer of shares was Record.
effected, and a number of papers and documents were signed and executed.

In this manner, and under these circumstances, Charlebois purchased the
shares of his former co-shareholders, at his own risk, with the expectation, no
doubt, that he would himself enter into a contract with Codd and Stevens, but
the transaction included two distinct bargains. One in which Charlebois agreed
to purchase the shares of the then four shareholders, other than himself, and the
other a bargain for the transfer of shares by Charlebois to Stevens and
Codd, and the taking by him of a contract from the new Company for
construction.

20 The price which Charlebois was willing to pay to the other four shareholders
for the transfer of the shares, therefore, does not give the measure of the price at
which the shares were valued in the sale by Charlebois to Codd and his
nominees.

The price in the latter contract was already fixed by the agreement of the
9th of April, 1888, as 200,000/., and, for reasons which will appear later, both
Codd and Stevens were desirous of adhering to the terms of that agreement as
closely as possible.

Accordingly, on the 16th September, 1889, all the shares, 5,000 in number,
were at Charlebois' request transferred from four former shareholders,
30 Charlebois at the same time transferring his own, to five new shareholders, who
were Charles R. Stevens and four other persons designated by him, and who
were merely Stevens' nominees, so as to constitute five shareholders, and qualify
them as directors. The Company then consisting of the five new shareholders,
thereupon entered into a contract with Charlebois for the completion of the
construction of the first 50 miles of railway for a sum stated in the contract
at 200,000/.

After the execution of the construction contract, Charlebois proceeded with
the work of construction of the 50 miles of railway according to the terms of
his contract, and a considerable portion of the work was completed by January,
40 1890, and on the 12th March, 1890, the work, with some trifling exceptions, was
reported to be complete by the Government Engineer. (See the facts more fully
stated in the Statement of Defence, pars. 35, 36, and 37.)

The Company then applied for and obtained an Order in Council authorising
the allotment of the Land-grant. (See pars. 38 and 39.)

Afterwards an official inspection of the work was made during the summer
by the President and Chief Engineer and other officers of the Company, and
also by the Engineer appointed by the Department of Railways and Canals. On
the 10th August, 1890, the Chief Engineer of the Government made a report

RECORD. that the section of the road was completed and equipped and in good running condition.

I.				
Factum of	See Statement of Defence, pars 40, 41, 42 and 43.			
Appellant,	See Trial Exhibit 88, Vol. 3,* p. 88.			
Alphonse		34,	"	p. 89.
Charlebois,	" "	95,	"	p. 92.
on Main	" "	134,	"	p. 92.
Appeal--	" "	34,	"	p. 116.
<i>continued.</i>	" "	132,	"	p. 116.
* Original				
Record.				

More than a year later, on or about the 11th September 1891, Charlebois 10 commenced an action in the High Court of Justice for the purpose of enforcing payment of the balance due to him under the construction contract.

In that action, after the proceedings which are detailed in paragraphs 45, 46, 47, 48 and 50 of the Statement of Defence, judgment was obtained by Charlebois against the Company for the sum of 622,226 dollars.

The Judgment is printed in full in the Plaintiff's Statement of Claim.

By the terms of the Judgment the Company were given immediate possession of the railway, and were allowed six months' time for payment of the amount due to the Contractor, upon condition that the Company should bring into Court and deposit the whole amount of the bond issue which had been 20 created by it.

The Company having made default in bringing in and depositing the bonds pursuant to the judgment, a further order or judgment was thereupon made in the action, bearing date the 29th of February 1892, and which is printed in full in the Statement of Claim.

The said judgments were not paid nor complied with by the Company, but the Company appealed from the last-mentioned judgment to the Chancery Divisional Court, which dismissed said Appeal upon the ground that it had no jurisdiction.

Thereupon the Company gave notice of Appeal from the said judgment to 30 the Court of Appeal for Ontario, but did not further prosecute its Appeal.

The said judgments, therefore, became and are still, except for the proceedings in this action, final and irreversible judgments in favour of the now Defendant Charlebois against the Plaintiff Company.

Questions for Determination upon this Appeal.

1. This action is improperly constituted, and the demurrer of Charlebois should have been allowed, and this action dismissed.

This action was commenced on the 6th December 1892, and, as the Appellant Charlebois contends, comprises two entirely separate and distinct causes of action by two sets of Plaintiffs having no interests in common, one set 40 of Plaintiffs being the Railway Company, which seeks to impeach two judgments obtained against it by the Defendant Charlebois, the other set of Plaintiffs is Delap and Mrs. Mansfield, who, claiming to have a lien upon the bonds of the Company as pledgees, sought the like relief.

The Appellants contend that the objection to the frame of the action may be raised by demurrer, and that, having been so raised, the demurrer should have been allowed and the action dismissed. RECORD.

At an early stage of the action, and before pleading, the Appellant Charlebois moved to stay the proceedings in the action upon the ground that the action of the Plaintiffs Delap and Mansfield was improperly joined with the action of the Plaintiff Company. The application was refused, but leave was given to Charlebois to plead and demur, and a demurrer was accordingly filed, which is printed at page 86 of Vol. 1 (*ante* p. 90). I.
Factum of
Appellant;
Alphonse
Charlebois,
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10 The Appellant Charlebois also, in his Statement of Defence, set out the objections in law to the Plaintiffs' action, claiming the benefit of them as if he had demurred, and these objections are therefore pleaded upon the record.

See Charlebois' Statement of Defence, pars. 56 to 64 inclusive.

The rules under the Judicature Act in force at the time (but which have since been repealed) were Rules 384 *et seq.* See Holmsted & Langton, p. 419.

By Rule 385 it was required: "That the demurrer shall state some ground in law for the demurrer, but the party demurring shall not on the argument of the demurrer be limited to the ground so stated."

20 The question now raised was fully argued both before the Chancellor and before the Court of Appeal, and if, as the Appellant contends, the demurrer is good, the judgment should be reversed, and the appeal allowed.

The question has recently been determined by the House of Lords in England, in the case of *Smurthwaite v. Hannay*, App. (1894), 494.

The point decided there was that different causes of action could not be made the subject of an action of by different Plaintiffs. The case is referred to in the judgment of Chief Justice Hagarty, of Burton, J., and of Maclellan, J.

See also *Sandes v. Wildsmith* (1893), 1 Q. B., 771.

30 These cases are the most recent, and the earlier cases are referred to in the cases cited. Demurrers have been abolished in England, so that the practice is not the same as that which prevailed in Ontario when this demurrer was filed. See Eng. Order 25 R. 1 and 2.

The English Rule allowing joinder of parties is Order XXI., Rule 1, and corresponds with Ont. Rule 300. Holmsted & Langton, page 319.

See Rule 300: "All persons may be joined as Plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative."

40 This action is brought to set aside a judgment against the Company. It is the action of the Company, and should, therefore, be brought by the Company alone, and as against Delap and Mansfield the Statement of Claim is demurrable upon the ground that they have no right to sustain the action.

In any proceedings brought to recover property of the Corporation, or otherwise to enforce rights of the Corporation, the Corporation is the only proper Plaintiff.

"Where there is a corporate body capable of filing a Bill for itself, to recover property either from its directors or officers, or from any other person, that corporate body is the proper Plaintiff, and the only proper Plaintiff. The

RECORD. only person having a right to complain was the Incorporate Society, called Charles Laffitte & Co. In its corporate character it was liable to be sued, and was entitled to sue; and if the Company sued in its corporate character, the Defendant might allege a release or a compromise by the Company in its corporate character, a defence which would not be open in a suit where a Plaintiff is suing on behalf of himself and other shareholders. I think it is of the utmost importance to maintain the Rule laid down in *Mosley v. Alston*, and *Foss v. Harbottle*, to which, as I understand, the only exception is where the corporate body has got into the hands of directors and of the majority, which directors and majority are using their power for the purpose of doing 10 something fraudulent against the minority, who are overwhelmed by them, as in *Atwool v. Merryweather*, where Vice-Chancellor Wood, under those circumstances, sustained a Bill by a shareholder on behalf of himself and others, and there it was after an attempt had been made to obtain a proper authority from the corporate body itself in public meeting assembled." *Gray v. Lewis*, L. R., 8 Ch., 1050, 1051.

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See also *Russell v. Wakefield*, L.R., 20 Eq., 474.

The Plaintiffs ought not to be permitted, by joining the names of Delap and Mansfield as Plaintiffs with the Company, to assert any new or different or additional right, as against the Defendants or any of them, beyond those which 20 they could assert if the Company were the sole Plaintiffs.

Inasmuch as the Statement of Claim does seek to establish the rights of Delap and Mansfield, arising out of the separate and distinct cause of action which they claim to have as individuals, and apart from the rights of the Company, the Statement of Claim is demurrable, and the demurrer should be allowed.

See *Croskey v. Wales*, 9 Jur., N.S., 595; 4 Giff., 314.

2. The Judgments of the 28th September 1891 and the 29th February 1892 are *res judicatæ*, and they cannot now be attacked or questioned in a new action.

The evidence and documents which relate to this question are as follows :—

30

The original action was commenced by Charlebois in the High Court of Justice, Chancery Division, on the 11th September, 1891 to recover the balance claimed to be due upon his contract, and to establish his lien upon the property of the Company until payment, in accordance with his contract.

* Original
Record.

The writ of summons in that action is printed at Vol. 3,* p. 132.

An Interim Injunction Order was obtained on behalf of Charlebois to restrain the Company from encumbering or selling their land grant, or from dealing with or disposing of their bonds. The Order was dated the 12th 40 September 1891, and is printed in the Statement of Claim.

The Railway Company had previously, on the 9th September 1891, commenced an action against Charlebois for damages for non-completion and other alleged breaches of his contract to construct.

Affidavits were filed, upon the Injunction Motion, and the President of the Company was cross-examined upon the affidavit filed by him.

His examination, which is printed at Vol. 3,* p. 134, enters very fully into the reasons which the Company then had for resisting the claim of Charlebois. RECORD.

No pleadings were filed, because the Motion for Injunction when renewed was turned into a Motion for Judgment, and after about a week's discussion a settlement or compromise was arrived at, by which Charlebois obtained the judgment of the 28th September 1891, and the action of the Company was withdrawn and dismissed. I.
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A shorthand report of the discussion between Counsel upon the argument was preserved, and a copy was put in at the trial of this case as Exhibit 81. No notes were taken on the first day of the argument, and the report, therefore, begins on the morning of the second day only. Trial Exhibit 81, Vol. 3,† p. 161. * Original
Record.
† Original
Record.

Rough Minutes were drawn up on the 26th September, and signed by Counsel. Exhibit 82, Vol. 3,‡ p. 173. ‡ Original
Record.

A Consent was signed that Macdonald and Schiller should be allowed to remain in possession. Exhibit 84, Vol. 3,§ p. 177. § Original
Record.

The Company's action was withdrawn. Exhibit 98, Vol. 3,|| p. 179. || Original
Record.

McMichael's Evidence (*ante* pp. 329 *et seq.*).

Nugent was present throughout the discussion and describes what took place. Vol. 2,¶ pp. 272 and 274 (*ante* pp. 466 *et seq.*). ¶ Original
Record.

The result of the judgment was communicated to the President (Codd) in a letter from Mr. Blake, Q.C., dated 1st October 1891. Exhibit 87, Vol. 3,** p. 179. ** Original
Record.

In this letter he congratulates him upon the victory achieved by the Company, by which they had gained three things :—

1. Possession.
2. Reduction of the contractor's claim by 100,000.00 dollars.
3. Six months' time.

The Judgment of the 28th September 1891 gave to the Company six months' time to pay, upon condition that they should forthwith deposit the bonds to the amount of 515,600/. with the Safe Deposit Company under the terms of the judgment; and that on default the whole of the moneys secured by the judgment should at once become due and payable.

The judgment of the 29th February 1892 was founded upon the finding of fact, that the Company had made default in fulfilling the requirements of the judgment of the 28th September 1891, in that the Company had failed to deposit the bonds as directed by that judgment.

The principal features of the second judgment are :—

1. Order for immediate payment.
2. Re-delivery of possession.
3. Injunction restraining the negotiation of the bonds.

The material upon which judgment was given is recited therein.

The examination of Codd, taken on 20th February 1892, is printed in Vol. 3, p. 184. Part of Exhibit 80. See Vol. 3,†† p. 205. †† Original
Record.

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See the cablegrams between McMichael and Stevens. Exhibits 90 and 91. Vol. 3,* pp. 206 and 207. McMichael's Evidence.

After the judgment of the 29th February, 1892, default still continued. The Company did not pay, but remained in possession of the road and took the benefit of the judgment, and no proceedings were taken to set it aside for nearly a year, when this action was commenced on the 6th December, 1892.

The objection that the judgments were *res judicatæ* was taken by the Statement of Defence of the Appellant Charlebois, paragraph 56 to paragraph 61 inclusive.

It was raised and discussed at the opening of the trial.

The conclusion of the Judge, line 16, page 200, was that the judgment must be set aside before any relief could be given. 10

The Appellants rely upon that position, and say that the terms of the construction contract and the other claims and charges upon which this action is founded cannot be examined or inquired into unless and until the judgments in the original action are set aside.

Although this objection of the Defendant Charlebois and the demurrer are not referred to in the Reasons of Judgment by the Chancellor, the demurrer is disposed of in the formal judgment of the Court, par. 21, p. 133.

The Appellant contends that the judgments are a bar to the action as being *res judicatæ*, as well as estoppels by matter of record.

The principle is, that a judgment in a suit upon any point is conclusive as to that point in every subsequent suit between persons who were parties to the former suit so that they cannot canvass the same question again in another action, although, perhaps, some objection or argument might have been urged upon this first trial, which would have led to a different result. *Greathead v. Bromley*, 7 T.R., 455.

A very recent statement of the law is to be found in the case of *Butler v. Butler*, Times L.R., pp. 27 and 28.

Lord Justice A. L. Smith there says, "That judgments are conclusive inter parties respecting the point directly decided therein is beyond dispute, the ground being that it is for the interest of the State that limit should be placed upon the continuance of litigation, and, consequently, the same cause of action or issue when once decided cannot be again brought up for adjudication between the same parties. * * * It would indeed be intolerable if a litigant were entitled to re-agitate and re-try issues found against him, which finding he had acquiesced in for years, and to re-open a litigation which long since had been closed. It would be a flagrant transgression of the principle upon which judgments have always been held conclusive inter parties; and the law does not permit it." 30

Newington v. Lavy, L.R., 6 C.P., 180, a case in the Exchequer Chamber, was decided upon a writ of error from the judgment of the Court of Common Pleas, and turned upon the effect of a plea of an estoppel by a judgment obtained in a former action in which Plaintiff had entered a confession upon the Defendant's plea, and withdrawn money from Court paid in with such plea.

Baron Martin, at page 188, quotes the maxim, "*memo debet bis vexari pro*" 40

una et eadem causa," and says, "causa, in my opinion, means the cause of action, and when once a cause of action has been brought into Court and judgment has been given upon it, I think the matter is altogether at an end and cannot be started again." He then quotes with approval the judgment in *Greathead v. Bromley* above referred to, and also the judgment of Willies, J., in *Langmead v. Maple* (18 C. B. N. S.), p. 270.

"I apprehend that if the same matter or cause of action has already been finally adjudicated on between the parties by a Court of competent jurisdiction, the Plaintiff has lost his right to put it in suit either before that or any other
10 Court. The conditions for the exclusion of jurisdiction on the ground of *res judicata* are, that the same incidental matter shall have come in question already in a Court of competent jurisdiction, that the matters shall have been controverted, and that it shall have been decided." 18 C.B. (N.S.), 27.

And then Baron Martin adds: "If the parties have had an opportunity of controverting it, that is the same thing as if the matter had actually been controverted and decided." L.R., 6 C.P. 189.

In the same case Lord Blackburn said, at page 193: "I incline to think that the doctrine of *res judicata* applies to all matters which existed at the time of the giving of the judgment, and which the party had an opportunity of bringing
20 before the Court. But if there be matter subsequent which could not have been brought before the Court at the time, the party is not estopped from raising it." L.R. 6, C.P., 193.

And Lush, J., at page 193, says: "Instead, however, of standing on his right to reply, the Plaintiff elected to confess the plea. To allow him afterwards to bring a second action, and to say I had an answer to the plea in the former action but, to entitle myself to costs, I chose not to avail myself of it on that occasion, would be gross injustice. The Plaintiff is bound by his confession. It is immaterial, I think, to consider whether the plea in the first action was
30 good or bad. The proper mode of contesting that is by demurrer and writ of error, and not by bringing a second action. The Plaintiff cannot get rid of the estoppel by showing that the judgment was erroneous. It seems to me that the Plaintiff bound himself by confessing the plea, and that the estoppel is complete." L.R. 6 C.P., 193.

The only question which can be discussed is, whether the issues in the second action are between the same parties and relate to the same subject-matter as in the first action. If they are the principle applies and a new action is barred.

Obviously no question can arise here as to the identity both of the parties and of the subject-matter, because the present action is brought to set aside the
40 judgments of Charlebois against this Company, which are set out and pleaded by the Plaintiff in the Statement of Claim.

Paragraphs 1, 2, 3, 4 and 5 of the claim for relief in the Statement of Claim, ask relief against the judgment of Charlebois.

In defiance of the doctrine of *res judicata*, this action is now brought to set aside a judgment regularly obtained and entered, and from which the time for appealing has gone by.

The principles which apply have not been changed in any way by the
p. 5240.

RECORD. changes in the practice under the Judicature Act, or other changes in the law.

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The High Court of Justice has no jurisdiction to set aside judgments which was not possessed by either the Courts of Common Law, or the Court of Chancery. See the Act, secs. 20 and 21. Holmsted & Langton, p. 10.

“All that the Judicature Act has done is to give to the High Court the jurisdiction which either the Court of Chancery or the Courts of Common Law had before. It has conferred no new right of relief.” *Westbury v. Meredith*, 30 Ch. Div., p. 388.

By Judicature Act—Sect. 52, s.s. 1: “The High Court may,” in cases 10 which may fall within that section, “give the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of the Ontario Judicature Act.” Holmsted & L., p. 37.

And by Section 42: “The Jurisdiction of the Court shall be exercised (so far as regards procedure and practice) in the manner provided by this Act or by the rules and orders of Court now in force or to be made pursuant by this Act; and were no special provision is contained, &c., it shall be exercised as nearly as may be in the same manner as prior to the 22nd day of August, 1891.” Holmsted & L., p. 33. 20

This section is to read in connection with Rule 3. Holmsted & L., p. 132.

The Judicature Act, therefore, gives to judgments the same force and effect as they had before: It confers no new jurisdiction upon the Courts to relieve against them or set them aside; and the jurisdiction of the Court as to practice and procedure is to be exercised in the manner provided by the Act and the Rules and Orders made or thereafter to be made pursuant to the Act.

The judgments are established by the Plaintiff's pleading. The Plaintiff Company have no status to call upon the Appellants to justify, explain, or support the judgments, unless and until they are set aside upon some valid ground. 30

But the case is rested upon the ground, and the judgment of the Chancellor assumes, that a new action may be brought to set aside a Judgment, and that sufficient reasons for so doing have been alleged in the pleadings and established by the evidence.

This Appellant disputes both of these propositions.

It is probably more convenient to discuss the second of these first, and reversing the order, the Appellant says:—

(1) That the judgment cannot be set aside for the reasons relied upon in the judgment now in the appeal.

(2) That in any case an action will not lie for that purpose. 40

As to the first ground. Under the old practice a judgment at law was final if proper steps had not been taken to set it aside or appeal from it. The same practice prevailed in Courts of Equity, but under special circumstances a Judgment might be challenged by a bill of review.

Bills of Review were abolished in Ontario, and a new practice substituted by the Chancery General Orders of 1867.

See Chancery General O., 330:—“Any party entitled by the former

practice to file a Bill of Review, praying the variation or reversal of an Order, upon the ground of matter arising subsequent to the Order, or subsequently discovered, or a Bill in the nature of a Bill of Review, or a Bill to impeach a Decree on the ground of fraud, or a Bill to suspend the operation of a Decree, or a Bill to carry a Decree into operation, is to proceed by petition in the cause, praying the relief which is sought, and stating the grounds upon which it is claimed."

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Taylor's Chancery Orders, 3rd Edition, p. 295.

The Chancery General Orders were in turn repealed by the Judicature Act, and the first set of rules promulgated under that Act were superseded by the Consolidated Rules, which took effect 1st March, 1888. See Rule 3. Holmsted & Langton, p. 132.

The practice is, therefore, now regulated by Rule 782 of the Consolidated Rules of 1888 :—

"Any party entitled to the variation or reversal of a Judgment or Order, upon the ground of matter arising subsequent to the making thereof, or subsequently discovered, or to impeach a Judgment or Order on the ground of fraud, or to suspend the operation of a Judgment or Order, or to carry a Judgment or Order into operation, is to proceed by petition in the cause, praying the relief which is sought, and stating the grounds upon which it is claimed." Chy. O. 330. Holmsted & L., p. 656.

Rule 732 applies not only to actions in the nature of a Bill of Review, though in fact they are not named in the Rule, but it also supplies the place of all the classes of proceedings in regard to Decrees named in the Chancery General Order 350, namely :—

1. A Bill of Review.
2. A Bill in the nature of a Bill of Review.
3. A Bill to impeach a Decree on the ground of fraud.
4. A Bill to carry a Decree into execution.

See Rule 786. Holmsted & L., p. 658.

The objections that can be taken to a Judgment under the practice in Courts of Equity must be founded :—

1. Upon error in law appearing upon the face of the Judgment.
2. Upon the ground of new matter discovered after the Judgment.
3. Upon the ground that the Judgment was obtained by fraud. Mitford, Eq. Pleading, 65. Daniel, Vol. II., pt. 1, p. 1526.

In the first case the Decree can only be reversed upon the ground of the apparent error. As if an absolute Decree be made against a person, who upon the face of it appears to have been at the time an infant. Mitford, Eq. Pl., p. 101.

"Error apparent does not mean an erroneous Judgment. There is a great distinction between error in the Decree and error apparent. The latter descrip-

RECORD. tion does not apply to a merely erroneous Judgment. This is a point of essential importance, because if I am to hear this cause upon the ground that the Judgment is wrong, though there is no error apparent, the consequence is that in every instance a Bill of Review may be filed, and the question whether the cause is well decided will be argued in that shape." *Perry v. Phelips*, 17 Ves., 178. See also *Greene v. Jenkins*, 29 L. J. Ch. 505.

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"A Bill of this nature does not go to the propriety of the decision upon its merits, but deals only with . . . what is contrary to the forms and practice of the Court." *Truelock v. Roby*, 2 Phill. 397.

See the practice as to actions of Review. *Daniel's Chy. Practice*, 6th Ed., 10 Vol. II., pt. 1, page 1526.

The propriety of a former Decree cannot be impugned by a Bill of Review. It is only where there is error on the face of the Decree that such a Bill can be sustained.

Haig v. Honan, 8 Clark & Fin., 321.

Hoskin v. Terry, 15 Moo, P. C. C., 493.

Dumble v. Cobourg, Peterborough Ry. Co., 29 Gr., 121 and 123.

Young v. Keighley, 16 Ves., 348.

White v. Tomney, 4 H. of L., 326.

The Defendant contends that upon these Judgments the Plaintiff is 20 excluded from obtaining relief upon the principles applicable to Bills of Review.

The Judgments now appealed from do not proceed upon the ground that there is error in law apparent upon the face of the Judgments, or either of them.

There remain two classes of objections which might have been taken by Bill under the old practice.

1. By Bill of Review to set aside the Judgment upon the ground of the discovery of new matter.

2. By original Bill to set aside the Decree upon the ground of fraud. 30

Before a Judgment can be set aside upon the ground of new matter subsequently discovered it must be shown:—

1. That the evidence is such that, if it had been brought forward at the proper time, it might probably have changed the result.

2. That at the time the party might have so used it neither he nor his agents had knowledge of it.

3. That it could not with reasonable diligence have been discovered in time to have been used.

4. That reasonable diligence was exercised after the discovery of the new evidence. 40

Dumble v. Cobourg. Peterborough & M. Ry. Co., 29 Grant, at p. 133.

The action, being the action of the Company, who were the Defendants in the former action, the Company does not show, and cannot show, that the ground upon which the Chancellor has set aside the Judgment was not open to them as a defence at the time when the original Judgment was obtained.

The Judgment now in Appeal itself shows the contrary.

The facts as to the subscription for stock, and the making of the contract

with Charlebois, were known to the Company, and to every member of it, when the contract was made in September 1889. RECORD.

The Judgment of the learned Chancellor is founded upon the deductions which he has drawn from the facts recorded in the books of the Plaintiff Company prior to, and on the 16th September 1889, and of which the Company itself, and every member of it had, upon that day, and thenceforward until the commencement of this action, actual notice. I.
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No new fact was established at the trial of this action, and the new element in the Judgment of the Chancellor upon which it rests, and without which it would be wholly unsupported, is the proposition that the proceedings which took place upon the negotiation for, and execution of, the construction contract in September 1889, two years before the date of the first Judgment, which the Plaintiffs in the present action have sought to impeach, were *ultra vires*, that is to say, that *the learned Judge has come to a conclusion which might have been arrived at by Mr. Justice Ferguson at the trial in 1891 if the Company had then chosen to avail itself of the defence upon which, in this Judgment, the Chancellor has given it relief.*

But according to the Judgment in *Dumble v. The Cobourg, P. and M. Ry.*, "The Company were bound to show affirmatively that at the time of and before the hearing of the cause, and at the time of the hearing of the motion for Judgment in the first action, the Company had not any knowledge or notice of the facts upon which they now place reliance." 29 Grant, 134.

No attempt was made by the Plaintiffs to satisfy this condition, upon which alone they would be entitled to relief, as upon the ground of the discovery of new evidence or of new matter.

No witness at the trial was called to establish such a case. The evidence shows, on the other hand, that no such condition could have been established on the part of the Company. The whole trial proceeded upon the Plaintiffs' assertion of the absolute right of the Plaintiffs to re-try the former action, without leave or condition, or preliminary proof of any kind.

3. The remaining class of cases in which proceedings may be taken to set aside a Judgment are cases in which it is sought to impeach a Judgment upon the ground of fraud in obtaining a Judgment.

The Judgment of the Chancellor does not proceed upon the ground that the Judgments impeached in this action were obtained by fraud.

There is no allegation in the Statement of Claim, that the Judgments, or either of them, were obtained or procured by fraud.

The nature of the allegations which must be established, in order to set aside a Judgment upon the ground of fraud, have been considered in the case of *Patch v. Ward*, L.R., 3 Ch., page 203. And in *Flower v. Lloyd*, 6 Ch., 300, and 10 Ch. D., 327.

In the former case, Lord Cairns says, at page 207 :—

"The fraud there spoken of must clearly, as it seems to me, be actual fraud, such that there is on the part of the person chargeable with it, *malus animus*, the *mala mens* putting itself in motion, and acting in order to take an undue advantage of some other person for the purpose of actually and knowingly defrauding him."

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And again : “ I apprehend the fraud, therefore, must be fraud, which you can explain and define upon the face of a decree, and that mere irregularity, or the insisting upon rights which, upon a due investigation of those rights, might be found to be over-stated, or over-estimated, is not the kind of fraud which will authorise the Court to set aside a solemn decision which has assumed the form of a decree.” *Ib.*, p. 207.

“ Where a judgment is obtained by fraud, there always was power, and there is still power, to give adequate relief. But that must be done by a proceeding putting in issue that fraud, and that fraud only. You cannot go to your adversary and say, You obtained your judgment by fraud, and I will have a re-hearing of the whole case until that fraud is established.” Per Lord James, *Flower v. Lloyd*, 6 Ch. D., 302. See also 10 Ch. D., at page 333.

The second point is that no action will lie to set aside a judgment upon any ground for which a petition may be presented. Rule 1782.

In all the cases covered by Rule 782, proceedings should be taken by petition in the original action. *Synod v. De Blaguiere*, 10 P. R., 11. *Dumble v. Cobourg*, 29 Grant, 121.

The spirit and intention of the practice under the Judicature Act are indicated by the provisions of the Act. R. S. O., Ch. 44, s. 52, ss. 9 and 12. *Holmsted & L.*, p. 42, 45. 20

The sub-sections show that Rule 782 should be construed so as to include all the proceedings provided for by the former Chancery General Order 330.

In any case, whether an original action can be brought after leave obtained, or whether relief should be sought by petition, *the relief is asked by way of appeal to the equitable jurisdiction of the Court, and not as a right, and the Court, even if they conclude to grant relief, should do so only upon equitable terms*, according to the practice of the Court.

To entitle the Plaintiffs to set aside a judgment upon the ground of fraud, there must be a *restitutio in integrum*. They cannot retain what the judgment gave them and re-try the action at the same time. Such restitution is now im-³⁰possible. At all events, the judgment appealed from does not profess to restore the parties to their original position.

The old order in Chancery in England, which regulated the practice in regard to Bills of Review, was in these words :—

“ No Bill of Review shall be admitted or any other new Bill to change matter decreed, except the decree be first obeyed and performed ; as, if it be for land, that the possession be yielded ; if it be for money that the money be paid ; if it be for evidence, that the evidence be brought in ; and so in other cases which stand upon the strength of the decree alone.”

The practice under this order is fully reviewed and discussed in *Partridge v. Osborne*, 5 Russ., 195, and the practice there stated is still applicable to all proceedings in the nature of a Bill of Review. 40

“ On the whole, it appears to me that the Court has, upon all occasions, been extremely jealous not to allow the rule to be dispensed with ; because in all the cases—at least in almost all the cases—to which I have referred, the permission to file a Bill of Review without performing the decree in the original suit, was founded on very particular and special circumstances.” 5 Russ., p. 250.

“ They say that the true interpretation of Lord *Bacon's* order is this—that, before you are entitled to file your Bill of Review, you must perform so much of the decree as your adversary can show that you are at that time bound to perform ; and, after considering the order, and the nature of the subject, I am of opinion that such is the true construction of the order. Whatever the party is bound to do at the time the Bill of Review is put upon file, all that he must do before the Bill is filed. But, as the permission to file a Bill of Review is always given upon the assumption, and the implied understanding and engagement, that the original decree shall be performed, I am also of opinion that, if
 10 after the Bill is filed, the period arrives when money ought to be paid, it is incumbent upon the party to pay that money ; otherwise an application to dismiss the Bill may be made to the Court on that ground.” 5 Russ., p. 251.

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In fact, however, the judgment does not justify or seek to justify itself upon any ground upon which a Petition or Bill of Review would lie.

It has been based upon the assumption that a judgment which affirms a contract in whole or in part *ultra vires* can always be impeached by a new action.

It is submitted that there is no precedent for setting aside a judgment merely upon the ground that it involves the enforcing of a contract *ultra vires*
 20 of a company.

Such a reason does not come within any recognised ground for attacking a judgment. It is not a proceeding to set aside a judgment upon the ground of error apparent upon the face of the judgment, nor upon the ground of fraud.

It is not a proceeding to set aside a judgment upon the ground of matter arising subsequent to the making thereof.

None of the grounds, therefore, upon which a Bill of Review could be sustained is applicable to this case, and if the judgment is sustained a new rule will be established, namely, that in all cases where a corporation is Plaintiff or Defendant, no judgment can be final, because it will always be open for either
 30 party to a judgment in which a corporation is concerned to bring an original action to set aside the judgment, upon the ground that the judgment enforces *ultra vires* terms of a contract.

The gravity and importance of a decision affirming such a rule cannot be over estimated.

No laches will bar, and no lapse of time, no change of position of the parties, and no equity need be shown on the part of the Plaintiff. No equity can be pleaded on the part of the Defendant, because it is sufficient if it be found that the result of the judgment is that the company will be required to expend for a purpose unauthorised by the Act under which it has been con-
 40 stituted. This is the judgment of the Chancellor.

“ The expenditure of money for a purpose unauthorised by the Act is *ultra vires* absolutely. Such expenditure cannot be validated by promoters, directors or shareholders for the time being, nor can it be sanctioned by the company itself. No judgment obtained by the consent of the company treating it as valid can remove the invalidity. It is absolutely void and no judgment can make it valid.” Vol. 1,* p. 117.

The judgment of Chief Justice Hagarty says this action is in the nature

*Original
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RECORD. of a Bill of Review, but his judgment does not suggest any principle upon which a Bill of Review could be sustained. Vol. 1,* 154, line 25.

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The case of *Scott v. Alvarez* (1895), 1 Ch. 618, is authority for the contentions of the Appellant.

The validity of the judgment has so far been discussed under the doctrine of *res judicata*.

But it is an estoppel by record as well.

There is a distinction between the two which is illustrated and discussed in the recent work upon *Res Judicata* by Hukm Chand, page 4, and the authorities there cited.

The former rests upon public interest and convenience ; its basis is the maxim *interest reipublicae sit finis litium*.

The latter is only a branch of the general doctrine of estoppel.

The difference is important in the present case.

The latter defence may be waived or abandoned, *res judicata* concerns the Court itself, which will not, even by the consent of parties, relitigate an action already fully tried.

The defence or legal bar to the further prosecution of an action which arises from *res judicata* is much stronger than a mere estoppel.

But several cases establish that a company may be bound by an estoppel to do that which but for the estoppel would be *ultra vires*.

The argument from estoppel to *res judicata* is therefore *a fortiori*.

The proposition that a company may not set up the doctrine of *ultra vires* as an answer to an estoppel was affirmed by the House of Lords in the case of *The Balkis Consolidated Company v. Tomkinson*—The Reports, Vol. 1, page 178.

In that case it was decided that where a company issues a share certificate stating that the person named therein is the proprietor of a specified number of shares in the company, the company is estopped from afterwards denying his title to the shares.

In the judgment of Lord Herschell, he says : “ The case of the *Ashbury Railway Carriage and Iron Company v. Rich*, which was much pressed upon your Lordships in the argument of the Appellants, appears to me to have no bearing on the question at issue between the parties to this appeal. The argument was put, as I understand, in this way : The company, it was said, are only authorised to issue a limited number of shares ; and to hold it liable by estoppel, as is sought to be done in this case, to a person who is not the proprietor of any of those shares, would in effect enable them to contract a liability in respect of shares beyond their authorised issue. I do not think this argument is a sound one. A person to whom the company is liable by estoppel to pay damages for refusing to register his transfer does not by reason thereof become a shareholder. Indeed the very title by estoppel implies that he is not one. It has never been laid down, and is manifestly not the law, that a company is not authorised to employ its funds in paying damages for a wrong done, and if his right by estoppel is established the company have as much committed a wrong by refusing to register as shareholder the person whose title they deny, as if his title to be registered had in fact been a good one.”

And Lord Macnaghten, at page 188, says, "Nor is there, I think, any difficulty created by the circumstance that all the shares of the Company were issued, and that the Company could not have gone into the market to buy its own shares."

"The Company are not asked to make good their representations by transferring shares to Tompkinson. They are called upon to pay damages in order to compensate Tompkinson for loss to which he has been put by reason of their misrepresentation."

And Lord Field, at page 192, says, "It was argued that the Appellants were not liable because as a corporation they could not exceed their powers by registering stock which was already registered in the names of other proprietors; and if this had been an application to compel them to do so, or to purchase other stock of an equal amount, that might have been so. But this is an action to recover damages for a wrong to which no such principle can apply, any more than other breaches of contract or duty of which they might have been guilty."

This case is authority, therefore, for the proposition that a company may be bound by estoppel to pay money for a purpose which would be *ultra vires* but for the estoppel.

By parity of reasoning, the Company cannot be said to be doing an *ultra vires* act in conforming to or paying a judgment merely because the antecedent contract was in whole or in part *ultra vires*. They pay the judgment because they are bound to pay. The contract is gone and has been merged in the judgment.

The contract for construction is completely at an end. It was merged in the judgment, and, while the judgment remains, it alone can be looked to in order to ascertain the rights of the parties. *European Central Railway Company*, 4 Ch. D. 33. See page 38.

After a judgment has been obtained on a contract no action will lie to rectify the contract. *Caird v. Moss*, 33 Ch. D. 22.

It makes no difference in the quality of the judgment that it was obtained by consent.

"It has always been the law that a judgment by consent creates an estoppel, just as much as in a case where the court has exercised a judicial discretion in the matter after hearing an argument. The basis of the law of estoppel in these cases is that, when once the parties have litigated the matter, the judgment should put an end to litigation, and if the parties agree on a judgment, that raises an estoppel just as much as if all the questions raised had been fought out." *In re South American and Mexican Company, Limited*; 10 Times L.R. 601, L.R. 1 Ch. 1895, p. 37.

The same result has been reached by the Supreme Court of the United States. *Nashville Railway Company v. United States*, 113 U.S. 266. *United States v. Parker*, 120 U.S. 89.

United States v. Ottawa, 28 Fed. Reporter, p. 407.

In any view of the law upon this subject the judgment was not one in which the compromise of the matters in dispute between the parties was arrived at outside of the court. It was reached only after nearly a week's discussion, in presence of the judge, and a compromise was made largely at his suggestion.

RECORD. In fact the judgment of the court after the argument was that there should be a compromise, if possible. (Vol. 3,* p. 170, lines 17 to 24, and Vol.* 3, p. 172, line 39.)

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It is true that in the end consent minutes were drawn and signed by counsel, but the steps taken show that this was done, not by way of collusion, but as counsel dealing at arm's length, anxious on each side to protect the interest of their clients.

It is submitted that, apart from the authorities above referred to, a judgment of this character has all the properties of a judgment of the court, and is not one resting merely on the agreement of the parties, although as an agree- 10 ment it constitutes a new contract upon new consideration, which can only be impeached and set aside upon the grounds upon which any other contract could be set aside.

The judgment was a compromise of rights which the company had power to make, and such compromise is binding and cannot be disturbed. It was so held, even where the question was whether a company had power to do that which by the terms of the compromise they agreed to do. Bath's Case, 8 Ch. D. 334. See pages 340, 343.

In that case a question arose as to whether the company could carry on the business of a fire and fidelity guarantee insurance in connection with life business. 20 An arrangement was made by which the business connected with these departments of the company should be handed over to a new company and the holders of the shares released. Bath was one of the shareholders so released, and it was sought to fix him with liability for the shares which he had formerly held. The objection made was that it was *ultra vires* of the company to release him, but it was held that they were bound by the compromise to which they had assented. The Court of Appeal determined that the corporation had, as incident to their existence, the same right to compromise claims brought against it as individuals.

See Brice on *Ultra vires*, page 170. Williams v. St. George's Harbour 30 Company, 2 D.G.J. pp. 547 and 558.

Ex parte Chorley, L.R. 11 Eq. 157.

See Cook's Case, 26 W.R. 55.

United States v. Ottawa, 28 Fed. Reporter, 407.

Assume that in this case the objection that the contract was *ultra vires* had been present to the minds of the parties as a doubtful question of law, and had been waived as part of a compromise or general settlement between the parties, then, upon the authority of Bath's Case, such a judgment would be final and binding.

Assume, again, that the defence had been raised by the company and 40 submitted to the adjudication of the judge, and by him determined to be no answer to the action; it cannot be doubted that a decision so rendered would be final and binding upon the parties unless appealed from or reversed, and that it could not be reviewed in an original action such as the present; but the result of such a judgment would be that the company's funds might be applied in the payment of money for purposes *ultra vires* of the company.

If this question had been raised by the pleadings, had been present to the

minds of the parties, and a compromise without collusion had been entered into with regard to it and a judgment obtained thereon, the judgment must be considered to be a final determination of the question; much more, if a judgment otherwise valid was obtained against the company, as in the present case, at a time when neither of the parties to the judgment had present to their minds any question of *ultra vires*. Black on Judgments, p. 345.

So far as the judgment is a contract arising out of a compromise of the questions in dispute between Charlebois and the Company it must stand upon the same footing as a contract, and if set aside must be set aside upon terms which will do justice to both parties, and if that cannot be done it should not be set aside or interfered with at all. It cannot be set aside upon the ground of a mistake of a general law, or that a particular point of law was forgotten or overlooked. *Stewart v. Stewart*, 6 Cl. and F. 966 and 967.

Viewed as a contract of record the judgment, in the view most favourable to the Plaintiffs, is voidable only and not void, and the Plaintiffs cannot have it altered in their favour and retain the benefit which they have received. Nor can it be set aside without a restitution of the parties.

Clark v. Dickson, E. B. and E. 148.

Urquhart v. Macpherson, 3 App. Cases, 831.

20 See the judgment of Mr. Justice McLennan upon this point, p. 181, line 18.

4. Apart from the defences raised by demurrer, the Appellant contends that the judgment of the Chancellor and of Court of Appeal, so far as it affirms the judgment of the Chancellor, is wrong and should be reversed.

The judgment appealed from deals with three principal branches of the case, which require separate discussion.

First. The alteration of the judgment by the reduction of certain amounts, upon the ground that the payment of these would be *ultra vires* of the Company.

30 Second. The validity of the lien declared in favour of Charlebois by the judgment, and agreed to be given by his construction contract.

Third. The validity of the bonds, the fact of issue, and the status of the Plaintiffs Delap and Mansfield as bondholders.

(1.) At the threshold a question arises for determination. The question of law and fact, as to whether the dealings disclosed in the evidence upon the transfer of the shares in the Company from Clemow and his associates to Stevens resulted in a payment up of the stock. The Chancellor has found in his judgment that there was a real payment in full of the stock in the Company held by the then five shareholders (now the Defendants, Charlebois, Clemow, 40 Allan, Devlin, and Murray).

That view has been adopted by the Court of Appeal, but Mr. Justice McLennan does not regard the question as decisive of the rights of the parties, whichever way it is determined. His judgment upon this part of the case will be hereafter referred to.

The Appellant contends that the shares were either not paid up at all and

RECORD. that the pretended payment was fictitious and illusory, or, if paid up, they were so paid up not by Charlebois or by Clemow, Allan, Devlin, and Murray, but by Stevens for his own purposes, and that the result does not affect the rights of Charlebois.

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Dealing now only with the question of whether the various transactions which took place on the 16th of September 1889 resulted in a payment up of the stock, it is necessary to refer to the evidence and papers upon that subject to show the actual facts in regard to payment. It will be convenient to discuss later on the relation of the previous agreements, and the knowledge and conduct of the parties, and the frame of the documents, as tending to show whether 10 actual payment in cash was contemplated.

* Original
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Dr. McMichael says it was contended on behalf of Mr. Stevens that the stock should be paid-up stock, and that after a good deal of discussion it was proposed that enough should be advanced by Mr. Stevens to pay up the stock to the amount of 75 per cent., and that the discount should be declared for the rest; that he understood that that was acceded to, and that Mr. Stevens placed in Dr. McMichael's hands five cheques. Then there was a resolution passed, that on payment of that amount it would be accepted, and a discount declared of 25 per cent.; that after the resolution Dr. McMichael went to the bank, because those cheques were left in his hands, and deposited them there to the 20 credit of the Company. McMichael's evidence, *Vol. 2, p. 141. Gregson's evidence, Vol. 2, pp. 413 and 414.

The cheques are printed in Vol. 3 of the case, pages 30 and 31, and are payable to the order of the Union Bank of Canada or bearer, with a memorandum on each, "Credit account of" the person to whose stock it was supposed to be applicable.

The amounts are as follows:—

						\$.	c.
Clemow	-	-	-	-	-	45,900	00
Allan	-	-	-	-	-	73,660	00
Devlin	-	-	-	-	-	54,420	00
Murray	-	-	-	-	-	22,575	00
Charlebois	-	-	-	-	-	31,620	00
						<hr/>	
						\$228,175	00

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† Original
Record.

A cheque (English Exhibit 41) was drawn by Stevens to the Union Bank of Canada for a sum of \$15,158.33, and the cheques, with the other five, were deposited at one time, as one deposit, to the credit of the Great North West Central Railway Company in the Union Bank of Canada. Vol. 3,† 40 p. 31.

† Original
Record.

Dr. Anderson, the manager of the Union Bank of Canada, was examined, and his evidence shows that there is but one deposit to the credit of the Company on that day, being a sum of \$243,333.33, which is the sum of the six cheques just mentioned. †Vol. 2, p. 178.

Mr. Woolcombe, a clerk in the Union Bank, also gave evidence, and

proved that the six cheques must have been deposited at one time, making one single deposit, or else the ledger would have shown separate entries. * Vol. 2, p. 302. RECORD.

A gentleman named Gregson, who was at that time a solicitor's clerk in the office of Stevens in England, came out to this country with Stevens to act as his secretary and assistant, and was present in Ottawa on the 16th September. His evidence was taken under the Commission sent to England, and appears at page 399 of Vol. 2,* and the following pages. I. Factum of Appellant, Alphonse Charlebois, on Main Appeal—continued.

At page 401 Mr. Gregson speaks of the cheques as having been made payable to the order of each of the former shareholders and endorsed by them. This, however, was evidently a mistaken recollection upon his part, and it is inconsistent with the documents themselves, and is corrected by his evidence upon cross-examination, pp. 413 and 414. * Original Record.

It is evident, then, from the statement of these witnesses, that Stevens had received by cable a credit at the Bank of Montreal in Ottawa on the morning of the 16th September; that he withdrew the whole sum by six different cheques made at one time, all payable to the Union Bank of Canada or bearer, and himself deposited the six cheques to the credit of the Railway Company in the account under his control in the Union Bank of Canada; and that upon the same day, by his own cheque on the Union Bank of Canada, signed by him as President of the Railway Company, he withdrew the whole money for the purpose of making payment to Charlebois of the sum of 50,000*l.* as agreed.

See the cheque, Vol. 3,† page 41.

See also the evidence of Anderson, ‡Vol. 2, pages 178, 180, and 181, as to the change which took place in the account of the 16th September, 1889. † Original Record.

The former shareholders passed a resolution at the instance of Stevens, offering a discount of 25 per cent. if the shareholders would pay up their shares. The resolution appears in the Company's minutes. The words are: 30 "Be it resolved that payment is accordingly accepted in full from all stockholders less said discount, and that the president and secretary be hereby authorised accordingly, and directed upon such payment made to issue to such subscribers certificates for the full amount of such stock subscribed." Vol. 3, p. § 238. ‡ Original Record.

This resolution is, in form, an offer by the Company to accept a payment in full, the balance required to make the payments on stock equal to 75 per cent., and upon such payment to grant a discount. The stock could not be paid up, therefore, by virtue of the resolution alone; it was a mere offer, which would amount to a contract binding upon the Company if payment should 40 thereafter be made in accordance with its terms. Now, the former shareholders never made such payment. They paid no money to the Company in any way. The cheques of Stevens, which were merely ear-marked by writing upon them the names of the shareholders respectively, were never delivered to them and never became their property. They were fictitious cheques created and used for a fictitious purpose. According to Gregson's recollection, they were written by Mr. Stevens at the bank, and, according to Dr. McMichael's recollection, they were handed to him by Stevens, carried by him to the bank and deposited by

RECORD. himself and Stevens to the credit of the Railway Company after Stevens became president, and, consequently, after the transfer of the shares to the new shareholders. The idea in Dr. McMichael's mind that the case was like the case of a purchaser advancing part of the purchase money to remove an incumbrance to complete his title, and which it would be the duty of the vendor to give credit for on account of the purchase money is wholly untenable. * Vol. 2, p. 152.

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If Stevens advanced 228,175 dollars out of the 50,000% to pay up the shares, he would have withheld that amount from the 50,000% in the payment which he made to Charlebois. This is to say, Charlebois would only have had 10 coming to him instead of 50,000%, 15,158 33 dollars, and the payment of the full amount of 243,333 33 dollars to Charlebois on the same day, and almost the same hour, is wholly irreconcilable with the theory that money was advanced by Stevens to pay up shares. It was, however, suggested that, if not considered as advanced by Stevens on account of the money coming to Charlebois, it might be considered as a loan to the shareholders by Stevens, to enable them to pay up their stock, but that theory is contrary to the evidence of Dr. McMichael. † Vol. 2, p. 152.

† Original
Record.

“ Q. Whose money was that?—A. Do you mean at that time?

Q. Yes?—A. If you are speaking legally, it was Mr. Stevens.

20

Q. Well, then did you understand that Mr. Stevens was lending these gentlemen this money?—A. No.

Q. He certainly did not lend that money?—A. I understand he was advancing it as part of his purchase money to clear the share of that liability.

Q. But you did not understand he was lending that to Mr. Clemow or Mr. Allan?—A. Oh, no.”

The result of the whole matter was that Stevens transferred 50,000% from his credit in the Bank of Montreal to the credit of an account, under his own control, as President, in the Union Bank of Canada under the name of the 30 Railway Company. The whole scheme is merely a manipulation of cheques, created and used by Stevens to carry out in appearance and form what in truth it did not do. See evidence of Dr. McMichael, who says that the forms were carried through by Stevens himself. ‡ Vol. 2, p. 169.

‡ Original
Record.

If, however, the juggling with the cheques which had been described can be held to amount to payment up of the shares, it can only be payment on account of Stevens and his associates after the transfer.

The other steps of the transaction occurring that day are carefully expressed at every step by appropriate documents. Thus the transfer of stock by the former shareholders (*see* § Vol. 3, page 43) is made by Clemow to Mr. 40 Stevens direct, but in order that Mr. Clemow should be fully protected in making such assignment, a written request by Charlebois is made out and executed, requiring and directing the other four shareholders to make the transfers to the nominees of Charlebois. Eng. Ex. 66, ¶ Vol. 3, page 35.

§ Original
Record.

¶ Original
Record.

¶¶ Original
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The four shareholders other than Charlebois executed the agreement called the Indemnity Agreement, Trial Exhibit 5, printed at ¶ Vol. 3, page 33, in which the liabilities of the five shareholders are expressly defined, and in

Clause 3 of that Agreement (the last clause), it is expressly provided that "nothing herein contained shall be construed so as to imply any covenant or warranty on the part of the former shareholders as to the payment up in full of their said shares."

Such a covenant or proviso was meaningless and absurd, if to the knowledge of every one of the parties to the said covenant all their shares had been actually paid up in full in cash before this paper was drawn.

This document, according to the evidence of Allan at page 246, Vol. 2,* and of Gregson, *Vol. 2, page 415, was almost the last paper executed, and the 10 last clause is in the handwriting of Gregson himself.

If Stevens' cheques had been made payable to the order of the five shareholders it might have been contended with much force that their endorsement of the cheques was a receipt by them of the money, and was presumptive evidence of an advance made to them by Stevens; but neither the cheques nor any other paper show a payment or advance by Stevens to the former shareholders, or any request on their part to make such advance, or any admission that such advance had been made, or any agreement on the part of Stevens that he would do so.

The finding of the Judge is a finding that the five former shareholders borrowed from Stevens 228,000.00 dollars with which to pay up the amount remaining unpaid upon their shares, and the evidence must be sufficient to support a finding in favour of Stevens in an action by him to recover this amount of money as money lent. This, as has already been said, is explicitly denied by Dr. McMichael and by all the evidence in existence upon the question. McMichael's evidence, †Vol. 2, pp. 151 and 152.

It is incredible that any of the parties contemplated such an advance, and equally incredible that, if such an advance had been made, it would not have then and there been deducted from the 50,000% paid by Stevens to Charlebois.

Further, no evidence is given to prove that such advance was made or 30 intended to be made Stevens was not called. Gregson and McMichael both proved the contrary, namely, that no money was paid or pretended to be paid to the five former shareholders, and that they had ceased to be shareholders before the money was paid into the bank.

Even if the evidence established a presumption of payment by Stevens to the Company on behalf of the former shareholders, that presumption is wholly rebutted by the evidence of the shareholders themselves, who have all been examined, and deny in unqualified terms that they ever authorised Stevens to make such payment on their behalf.

See the evidence of Clemow, Vol. 2, page 213, lines 40 to 42 inclusive; 40 page 214, lines 4 to 19 inclusive; page 215, lines 22 to 32 inclusive; page 226, lines 15 to 21 inclusive; the evidence of Allan, Vol. 2, page 228, lines 14 to 27 inclusive; lines 31 to 40 inclusive; page 229, lines 20 to 39 inclusive; page 230, lines 23 to 26 inclusive; page 245, lines 40 to 43; lines 1, 2 and 8 of Mr. Devlin's evidence, Vol. 2, page 248; Murray, Vol. 2, page 249. See page 250, lines 32 to 42; page 251, lines 1 to 6.

As throwing light upon the subject it is necessary to remember that there was no reason why the former shareholders, Clemow, Allan, Devlin and Murray

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RECORD. should agree to pay up their stock. They had agreed to transfer their shares to Charlebois, not to Stevens, and the terms upon which they agreed to sell are set forth in writing in the Agreement of Indemity, already referred to, and merely provided for the transfer of the shares as they then were.

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Trial Ex. 6, p. 36.

The four former shareholders, other than Charlebois, were paid by Charlebois upon the execution by each of them of the transfers of shares.

See the evidence of Charlebois. *Vol. 2, page 65, lines 31 to 37 inclusive.

And this payment by Charlebois to his associates was made before Stevens paid into the bank the six cheques drawn by him upon his account in the Bank 10 of Montreal.

The agreement supposed is preposterous. The sums paid, prior to 16th September, 1889, upon the shares of the former shareholders in cash, are as follows :—

Clemow	.	-	-	-	-	-	\$29,100 00
Allan	-	-	-	-	-	-	46,340 00
Devlin	-	-	-	-	-	-	35,580 00
Murray	-	-	-	-	-	-	14,925 00
							<hr/>
							\$125,945 00

The amounts required to pay up their shares have been already given, and 20 are here repeated :—

Clemow	-	-	-	-	-	-	\$49,900 00
Allan	-	-	-	-	-	-	73,660 00
Devlin	-	-	-	-	-	-	54,420 00
Charlebois	-	-	-	-	-	-	31,620 00
Murray	-	-	-	-	-	-	22,575 00
							<hr/>
							\$232,175 00

making a total for Clemow of 75,000 dollars, paid in cash ; Allan 120,000 dollars ; Murray 37,500 dollars, and Devlin 90,000 dollars, making a total of 322,500 dollars invested in cash by Clemow, Allan, Devlin, and Murray. The 30 judgment, therefore, finds, contrary to all the evidence as to their intention, that these four shareholders agreed to sell to Charlebois shares, paid up to the amount of 322,500 dollars in cash, for 226,000 dollars.

Assuming, however, that the payment of this sum was not wholly fictitious, but was in truth and in fact a loan by Stevens to the Company, if the course of dealing with this money is traced it will be seen that it has been repaid. The whole sum of 243,333 dollars was paid in to the credit of the Company by Stevens, and was used by him in paying to Charlebois the sum of 50,000l. agreed to be paid to Charlebois by Stevens upon the transfer of the shares in the Company.

The shares were transferred by Charlebois to Stevens, not to the Company, and by using the cheque upon the funds of the Company to make payment, which Stevens did, he used the Company's money to pay his own liability, and 40

by so doing he repaid himself the sum of 50,000*l.* which he had lent to the Company, and so balanced the account, and as between himself and the Company Stevens and the Company were each no worse off and no better off than they had been.

In substance, the transaction is not different from what it would have been if Stevens had drawn his cheque upon his account in the Bank of Montreal, and had given that cheque directly to Charlebois for the 50,000*l.* agreed to be paid upon the transfer of shares. The only difference is that it was paid into the Union Bank, and withdrawn immediately, leaving the exchequer of the Company at the close of the 16th September in the same state as it was at the beginning of the day.

Having analysed at length the evidence with regard to the fact of payment it is now necessary to refer to the situation of the parties, as disclosed by the preceding documents.

Reference must be made to the agreement of the 9th April 1888, because the Memorandum of the Agreement of the 9th September 1889, between Charlebois and Codd, evidently refers to it, and many of the terms of the latter agreement can only be understood by keeping in view the earlier agreement which both parties had before them. The agreement of the 9th April 1888 is printed in Vol. 1,* page 57, and is made between the five shareholders and the Defendant Codd, and recites that in consideration of 200,000*l.* (sterling) the five former shareholders did agree to assign to Codd or his nominees all the shares in the capital stock of the Company, together with 50 miles of railway, to be completed at the cost of the five former shareholders, so as to earn the land grant. This provided for two things: the transfers of the shares held by the former shareholders, and the construction of 50 miles of railway, to be completed at their expense.

The second article of the agreement provided that, upon Clemow and his associates transferring all the shares in the capital stock of the Company to Dodd or his nominees, Clemow and his friends would guarantee that the shares were clear of all liability imposed upon the Company by the terms of the 27th section of its Charter, and *from any liabilities of the former shareholders up to the date of transferring*, except the liability under their agreement with the Dominion Government to construct the railway.

It is plain that this clause did not impose upon Clemow, or his associates, any liability to pay up their stock in full. On the contrary, it implies that the stock would not be paid in full, because there could be no liability upon their shares, except to pay 100 dollars per share, and no guarantee would be necessary if the shares were paid up. The Company might be liable under the 27th section of its Charter, but the shares could not be liable, unless it was intended to transfer them with only a portion of the shares paid.

The third article, at first sight, appears to be inconsistent with the first, inasmuch as it provided for the payment of 50,000*l.* on the execution of the transfer of the stock to Codd, or his nominees, and the execution of a contract by the vendors, or some of them, to construct the first 50 miles in consideration of 200,000*l.* But, upon closer examination, it is evident that the third article merely provides the means of working out the first, and is in substance the

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R E C O R D. same, because on the payment of the 50,000*l.* the shares in the stock were to be transferred, by which the control and Charter of the Company would pass to purchaser, or purchasers, who, being then the Company, would have to execute the contract for construction on behalf of the Company, and, as the vendors were to complete the road, that contract would have to be made by them, or some of them, as contractors with the new Company so constituted.

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The consideration named in the contract for construction was to be 200,000*l.*, of which the 50,000*l.* paid upon the transfer of the stock was to form part, because Clause 3 of Article 3 provides not for the payment of 200,000*l.* upon completion, but for the payment of the balance, viz., 150,000*l.* 10 In what proportion these two ingredients form part of the consideration is not determined by this document, or by the evidence, but both undoubtedly, under the agreement of the 9th April, did form part of the consideration for the payment of the sum of 200,000*l.*

On the 5th of May 1888, Codd, who was then in England, wrote to Murray, who was also in England (English Exhibit 44), in which he states the construction placed by him upon the agreement of the 9th April 1888. He says: "That the words in the second clause of the said agreement are intended to mean that the incoming shareholders shall receive the shares referred to free from all liabilities (except such as refer to the contract made between the 20 Government and the present Company as to the construction of the railway and the land grant). This can easily be arranged by transferriny the shares as fully paid up, under the powers contained in Sections 9 and 10 of the Charter. Vol. 3,* page 23.

* Original
Record.

The agreement of the 9th April 1888 was not carried out, the vendors having on the 7th September 1889, as already stated, refused to carry out the same, and it was on the 16th September released and discharged by a release endorsed thereon under seal, a copy of which is printed in the case. Vol. 3, page 22.

The agreement of the 9th April 1888 is therefore of importance now, only 30 so far as it affords a means of construing the terms of the agreement of the 9th September, and the various agreements of the 16th September 1889.

On the 9th September 1889, after the withdrawal of Allan, Clemow, Murray, and Devlin from the agreement of the 9th April 1888, Charlebois, on his account, entered into an agreement, nominally with Codd, but really, as will be shown, with Codd and Stevens, and a short memorandum (called the "Heads of Proposed Agreement") was drawn up and signed between them. This is printed in para. 8 (j) of the Statement of Claim, page 11, Vol. 1† of the Case, and is here, for convenience, reprinted:—

† Original
Record.

"Heads of Proposed Agreement between Mr. Charlebois and Mr. Codd:— 40

"1. Mr. Charlebois to arrange with Clemow, Allan, and Devlin that they will assign to him all their interests in the undertaking, provided that when the 50,000*l.* is paid, Clemow, Allan, and Devlin shall take thereout such amounts as Mr. Charlebois shall agree to pay them."

"2. Mr. Charlebois is to obtain Mr. Murray's consent to the above arrangement, or to purchase his shares in the same way as the others."

"3. Mr. Charlebois and Mr. Murray (or Mr. Charlebois, as the case may

be) to carry out the terms of the agreement of the 9th April 1888, subject to the present modifications, and Clemow, Allan, and Devlin, to join in guaranteeing that the stock *is free of debts*." RECORD.

"4. Mr. Charlebois is to take up and pay for the 1,160 tons of rails already lying at Montreal, but the balance of the rails to be delivered to Mr. Charlebois will be delivered in due time for the execution of the contract, chargeable to the balance due at the rate of 5*l.* 13*s.* 6*d.* free in Montreal." I.
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continued.

"5. Mr. Charlebois to transfer the whole of the stock, as per present agreement of 9th April 1888, but on completion of the first 50 miles *to have paid* 10 *him an additional* 50,000 dollars, or at Mr. Codd's option to transfer to Mr. Charlebois its equivalent in stock of the Company."

"6. Mr. Charlebois to be repaid the amount paid by him for rails on or before the 1st October."

"7. *The purchaser to give within 30 days satisfactory evidence to Mr. Charlebois' bankers that all payments will be made according to the terms of present agreement.*

"The above terms to be embodied in an agreement to be supplemented to the present agreement of 9th April 1888, and subject to Dr. McMichael's approval.

20 "Dated at Toronto, 9th September 1889.

"J. A. CODD.

"A. CHARLEBOIS."

The agreement of the 9th April 1888 is referred to by implication in the first clause, which provided that Charlebois should arrange with Clemow, Allan, and Devlin to assign to him all their interests in the undertaking. Murray was not mentioned. Charlebois explains in his evidence that at the time when this agreement was signed he had not yet seen Murray, and intended to propose to Murray either to join him as a partner in purchasing from the other three, in order to sell to Codd, or, if Murray was willing to do that, he would 30 offer to buy out his interest in the same way as the other three. Charlebois, Vol. 2,* page 55. The second clause refers to Murray.

The third clause provides that Murray and Charlebois, or Charlebois alone, should carry out the agreement on the 9th April 1888, subject to the present modifications, and that Clemow, Allan, and Devlin should join in guaranteeing that the stock is free of debts. This evidently refers again to the agreement of the 9th April, and to the second article, which provided that the vendors should guarantee that the shares were clear of all liability imposed upon the Company by the 27th section of the Charter, and from any liabilities incurred by the shareholders to date of transfer, and is inconsistent with the 40 idea that there was any agreement to transfer stock as fully paid up, because the words "that the stock is free of debts" would be unmeaning, if the shares were to be fully paid-up shares.

The fifth clause is grafted upon the agreement of the 9th April, but provides that Charlebois should have, in addition to the balance of 150,000*l.* payable upon completion of the 50 miles, a further sum of 50,000 dollars.

It is evident, therefore, that in these prior agreements there is no undertaking anywhere on the part of Charlebois, or of his associates, to make the

RECORD. shares paid-up shares, but they do undertake to pay the Company's debts incurred previous to the transfer.

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The resolution passed at the directors' meeting, 16th September, page 238, is quite consistent with the explanation given in the evidence of the witnesses that the resolution was drawn by Mr. Stevens for his own purposes, and passed at his request, and that he assumed the responsibility for it, and chose to carry out the resolution by making the payment from the money in his hands as already described.

* Original
Record.

See McMichael, evidence, Vol. 2,* page 159.

„ Clemow „ „ 214.

„ Allan „ „ 228.

„ Murray „ „ 250, 251.

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The other paper, which has any bearing upon the question, is the form of transfer, Trial Exhibit 29, printed at page 22, Vol. 3, in which the shares are transferred without covenant or warranty, and in the printed form of the Exhibit the blank left for the insertion of the amount paid upon the shares is erased.

The Appellant depends and relies upon the Judgment of Mr. Justice MacLennan as to this part of the case, and submits that the finding therein is the true view to be taken of the transaction if the shares are considered to have 20 been paid up, that is, that the shares were paid up by Codd and Stevens, and that such payment cannot affect the right of Charlebois to recover under his contract.

† Original
Record.

See Vol. 1,† p. 175.

The result of holding the shares to have been paid up out of the moneys of the former shareholders, as pointed out upon the argument in the Court below, is that the sum of 50,000*l.* paid is made to do duty twice; it is made to pay up the shares and become the money of the Company, and is also used to effect the cash payment agreed to be made on the transfer of the shares. The Chancellor has attempted to meet this difficulty by holding that the money was 30 used for payment up of shares, and was applied on account of the construction contract, and, therefore, that no money was paid on account of the purchase of the stock; that the whole of the shares in this Company were transferred by the five former shareholders to Stevens, as the agent of Delap, without consideration, and, consequently, that Delap is still bound to pay for them.

‡ Original
Record.

“The effect of this,” the Judgment says, at Vol. 1,‡ p. 119, line 5, “*is to leave the stock unpaid for in the hands of Delap.*”

If this conclusion is correct, then Delap is not, and never has been, the equitable owner of the shares, because the vendors would have an equitable lien as against the vendees until payment of the price. And, as in this view, they 40 were transferred without consideration, since the 16th of September 1889, the shares have been in equity the sole property of Charlebois.

If the Company could not legally make the contract in question, admitting, for the sake of argument, that the contract is a contract by which the funds of the Company were to be employed to purchase shares, the Company cannot be relieved from the payment and, at the same time, retain the shares, but the

shares should be restored to Charlebois as a condition precedent to any relief against him. RECORD.

If the transaction is one in which the Company illegally purchased its own shares, Delap, as the present holder, is a trustee of the shares for the Company, and the shares should be restored to Charlebois, but, as a condition of such relief, the Company should first be relieved from the mortgage and all indebtedness created by the new shareholders since the 16th September 1889.

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These considerations show that it is impossible to restore the parties to the status which they had before the transaction took place, and that the Company, therefore, should not now be permitted to take credit for the sum of 50,000*l.* as having been illegally paid to purchase shares.

Charlebois' receipt for 50,000*l.* cannot be read against him, except as part of the contract in which it appears, namely, a contract for 200,000*l.*, including cost of construction and purchase. Ex. 10, Vol. 3, p. 36. See construction contract, Vol. 1,* page 63.

* Original
Record.

That is to say, the receipt for 50,000*l.* may be attributed against Charlebois as a payment upon a contract for 200,000*l.*, for both shares and construction; but upon the new contract which the Chancellor has made for him, namely, to give the shares for nothing and construct for 150,000*l.*, he has never given any receipt. If the contract price is reduced by 50,000*l.*, because it wrongfully included 50,000*l.* which was really used to buy shares, and the contract price is, therefore, reduced to 150,000*l.*, then upon that contract so altered, upon that price so reduced, Charlebois did not, in fact, receive 50,000*l.*, and should not be charged with it.

It is a difficult and, to some extent, an unsettled question in the law arising out of the doctrine of *ultra vires*, how far it is possible to separate *ultra vires* terms from a contract otherwise valid and to enforce what remains. There can be no doubt of the practical injustice of such an attempt at separation as has been made in the judgment of the Chancellor in this case. The judgment has not separated anything, except by deducting 263,000 dollars from Charlebois' judgment. It has only separated part of that which it declared to be *ultra vires* of the Company.

The shares are not ordered to be restored if that were possible, but by the operation of the judgment in Court has been made the instrument by which Charlebois has been deprived of whole capital stock of this Company, without receiving one dollar for it.

The Chancellor says he may have a personal or individual claim against Delap, &c. Charlebois never agreed to transfer his shares upon such a contract. Can the Court justly or properly make and force such a contract upon him? The judgment has not provided any remedy for the recovery of the money of which he is deprived by this judgment.

As to the amount, there is no evidence which will warrant the deduction of 263,000 dollars, or any other sum. The evidence is that a lump sum of 200,000 dollars was offered by Charlebois for the shares of Allan, Devlin, and Clemow, what is sometimes called a sporting offer; they agreed to take it. Murray's amount was arrived at by adding a sum proportioned to the number of shares held by him. That may have been a great deal more than the shares

RECORD. were worth, a great deal less ; it is no evidence of the amount at which they were placed in the minds of Charlebois and Codd in their bargain with each other, nor of what amount, if any, was included in the 200,000%. mentioned in the construction contract. This is the effect of Dr. McMichael's evidence already referred to. The two transactions had no relation to one another, except that of time. Clemow and the others did not know and had no concern as to the amount which Charlebois was to be paid upon his construction contract. Codd and Stevens did not know and were not concerned as to the amount which Charlebois was to pay to his associates for their shares.

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* Original
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Charlebois' first proposition was to pay them in cash; then Captain Murray, 10 as a friend, said he was foolish to pay them in full, as that would exhaust nearly the whole of his first payment from the Company, and that if he paid them up the amount which they were out of pocket, they should be content to wait for the balance until Charlebois' contract was completed, and he was thereby put in funds to pay the balance. The shareholders, Allan Clemow, Devlin and Murray took Charlebois' assurance that he would see them paid. *See Charlebois' Evidence, Vol. 2,* p. 64, l. 21. Charlebois' Evidence, Vol. 2,* p. 214, l. 73. Murray's Evidence, Vol. 2,* p. 250.*

† Original
Record.

And after the transfer of the shares, Charlebois made orders upon the Company which the Company accepted, and which Clemow, Allan, Devlin and 20 Murray took as security for the balance of the money which Charlebois had agreed to pay them. *See McMichael's Evidence, Vol. 2, p. 169, line 1 and line 25.*

See Indemnity Agreement, Ex. 5, Vol. 3, p. 33. Authority of Charlebois to other shareholders. Vol. 3, p. 35. Agreement re sale of shares, Ex. 6, Vol. 3, p. 36. Cheques to four former shareholders, Ex. 28, Vol. 3, p. 42.

1. As to the payment of stock, the Appellant refers to these cases ; British American Telegraph Co. *v.* the Albion Bank, L. R., 7 Ex. 119. *See* pages 123 and 124. Gray *v.* Lewis, L. R., 8 Ch., 1052. 1053 and 1054. Hay's Case, L. R., 10 Ch., 593. *See* page 600. Leike's Case, L. R., 11 Eq. 100. *See* page 106. 30 Disderi's Case, L. R., 11 Eq., 242.

It is submitted that the result of these cases, and of the cases decided upon the subject of paid up shares, is that to constitute a payment of shares there must be an actual payment by the shareholders to the Company. Not a sham payment, by depositing money to the credit of the Company in a bank account opened for the purpose, and immediately withdrawing it.

2. The terms of the contract cannot be separated.

In the case relied upon in the judgment of Mann *v.* The Edinburgh Tramway Co., App (1893) 65, the sum of 17,000%. was ascertained by the agreement, and was set apart as the amount for which Mann & Beattie undertook to 40 pay the Parliamentary expenses. *See* that Case App (1893) at page 77.

No authority can be shown where the stipulations of a contract have been allowed to be severed, except where the contract itself made them distinct and severable. The subject is discussed in Hattersley *v.* Earl of Selborne, 31 L. J., Ch. 873. Brice *Ultra Vires*, 3rd. Ed., 651.

3. In any case an executed contract such as this will not be set aside even if *ultra vires* in part, except upon terms which will do justice to all parties.

This proposition is really to some extent undetermined by cases. No case has determined what can be done when a contract is wholly executed upon one side, and nothing remains to be done on the other, except to pay money.

The subject is discussed in Brice at page 693. See page 697, also pages 700 and 701.

See also *Webb v. Shropshire Railway Company*. 3 Ch. (1893) 307. Judgment of Romer J. P. 322 and per Lindley J., who delivered the judgment of the Court of Appeal at page 332. As to the amount payable to Codd on the 9th April 1888, and thence forward until the 16th September 1889, Clemow and the four others were the only shareholders, and, if they arranged to liquidate a claim against the Company by taking it upon themselves individually, they are entitled at all events for the purpose of supporting the agreement with Codd to be subrogated to his rights against the Company. That is, they are entitled to have the claim of Codd, so far as the question whether it was a claim which it would be illegal for the Company to adopt, considered as if the release, Exhibit No. 2, had not been executed. See Exhibit 2, Vol. 3, p. 23.

Except for that Exhibit, Codd's claim against the Company, whatever its merits, was clearly one which the Company might lawfully compromise.

There is no question of fraud, or improper diversion of the funds of the Company. Being the only shareholders and the only persons interested in the assets of the Company, Clemow and his co-shareholders must be assumed in their agreement with Codd to have made the best bargain in their judgment that they could make at the time for themselves.

The Company have no right to say to these shareholders, or to Charlebois who stands in their place, it is true that Codd had at one time a claim against the Company, which would have supported an agreement by the Company to pay a large sum of money in compromise of his alleged rights. But you, as shareholders individually, without any consideration, assumed this liability and obtained a release of Codd's claim against the Company. Such payment cannot now be made as it would amount to the application of the Company's money to the payment of commissions.

The Chancellor does not say Codd never had a claim. Vol. 1,* p. 118,* Original line 25; but that there was no claim against the Company—say at the date of the contract on the 16th September 1889.

Codd did not claim to be paid anything by the Company, but by Charlebois, and any money paid to Codd would have been paid by Charlebois out of his own money, not out of the money of the Company.

As to the right of subrogation, see Sheldon on Subrogation, p. 12.

It is submitted that the contract to pay 200,000*l.* to Charlebois does not become *ultra vires* of the Company, because Charlebois intended thereout to satisfy the claim of Codd, under the so-called "excess agreement," Exhibit 1.

Charlebois could not have entered into a contract for construction unless the amount of compensation was sufficient to enable him to meet this claim and all other outstanding liabilities of the Company, because it was, among others, a burden or liability which the former shareholders and the Company had to meet, Charlebois having agreed to transfer shares free from all previously

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See the Agreement, Sale of shares from Clemow *et al* to Charlebois. Ex. 6, vol. 3, at page 38. *See* Clauses 4 and 6.

Under Section 27 of the Charter the Company were not only empowered, but were obliged, to pay the debts of the Northwest Central Railway Company and the Souris and Rocky Mountain Railway Company, and Codd claimed to be a creditor of one or both of these railways.

And if they had the power to pay debts, they had the power to agree to compromise a claim.

* Original
Record.

The reference in the Judgment to the powers of the Company is a partial quotation of the section referred to. *See* vol. 1, p.* 118, line 33.

The Judgment quotes Section 4 of the Charter as providing "that the money can only be applied for the making, completing, and equipping the railway." Section 4 only applies to the capital stock, but in any case the moneys derived from payments on account of stock are to be applied for the other purposes of the Charter. And under Sections 11 and 14 the moneys of the Company may be applied for the purpose of raising money for prosecuting the undertaking.

These words "for the prosecution of the undertaking" should receive a 20 liberal construction, because the Company were taking up an undertaking upon which a large amount of money had been expended, and which under the former Companies had contracted large liabilities; so that there were other expenses and liabilities in addition to the bare cost of construction, and because of the liability imposed by Section 27 just referred to.

† Original
Record.

No new order was given to Codd. The payment under the Judgment is not directed to be made by virtue of any order dated 16th September 1889, but by virtue of an order for what must be looked upon as a conditional promise to pay, dated 6th March 1888, given by the former shareholders in satisfaction of Codd's alleged claims against the former Companies. *See* Ex. 1, vol. 1,† page 7, 30 line 6.

That order was admittedly valid when made, and it could not be rendered invalid by reason of an agreement subsequently entered into.

The existence of the order was merely a circumstance which Charlebois had to take into account when fixing the amount of his contract.

It is said Codd held a fiduciary position, which would render the payment illegal.

That argument is met by the fact of the date just referred to. It could not be illegal to agree with Codd in March 1888 to pay 173,333 dollars, because in October 1889 he became one of the principal shareholders and president of 40 the Company.

In any case, that argument would only entitle the Company to intercept the money coming to Codd.

Upon the face of the Judgment that was at most 130,000 dollars, payable to Dr. McMichael for Codd and the Company, out of moneys properly payable to Charlebois.

In fact, the true amount coming to Codd was only 97,333 dollars, because by the agreement of the 9th September 1889 Charlebois stipulated with Codd that

he, Charlebois, should be paid 78,000 dollars in addition to the 800,000 dollars which would have remained for the shareholders after the payment of Codd under the agreement of 9th April 1888. The agreement of the 9th April 1888 was released on the 16th September 1889, and does not govern the agreement of the 16th September 1889. By the latter agreement the money payable by Charlebois under the orders held by Dr. McMichael was reduced to 97,333 dollars, and no greater amount should be deducted from the Judgment in any event, even if this part of the Chancellor's Judgment should be confirmed. See Article 7 of the Agreement of 9th September 1889. Ex. 7, vol. 1,* page 11, line 12, and vol. 3, page 28, and Ex. 19, vol. 3, page 29. See also Ex. 117, vol. 3, page 271.

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These two agreements show that the interest of Codd in the orders upon Dr. McMichael was reduced by 78,000 dollars; that is, 50,000 dollars and 28,000 dollars.

The deductions made by the Judgment have been hitherto considered, firstly, in respect of the price of shares; and, secondly, in respect of money payable to Codd, merely from point of view in which the Judgment of the learned Chancellor has regarded them, as payments which would be beyond the power of the Company to make.

20 It is submitted that the Judgment cannot be sustained in so far as it seeks to make a deduction from the amount of Charlebois' Judgment of either of these sums.

As to the money paid to the four former shareholders for the shares (126,000 dollars), that money has been paid to them by Charlebois, and does not form any part of the amount of the Judgment, it is too late for the Company to intercept it in Charlebois' hands, and the possible relief of the Company would be against the four former shareholders, to make them restore the money.

As to the money payable to Dr. McMichael under the Judgment, there is 30 no ground for reducing the amount of Charlebois' Judgment.

As to the principles upon which relief of this kind have been granted in other cases, *see* the Ambrose Lake Tin Company, 14 Chancery Division, 390.

The Albion Street Wire Company *v.* Martin, 1 Chancery Division, 580.

Southall *v.* The British Mutual Society, 6 Chancery, 614.

Whaley Bridge Company *v.* Greene, 5 Queen's Bench Division, 109, 112.

Archer's Case, 1 Chancery (1892), 322.

Re British Seamless Paper Box Company, 17 Chancery Division, 478.

New Sombrero Phosphate Company *v.* Erlanger, 5 Chancery Division, 73, *see* page 113, and 3 App. Cases, 1218.

40 Lindsay Petroleum Company *v.* Hurd, L. R., 5 P. C., 221.

The principles established by these cases are :—

1. The general rule is that an agent cannot, without the knowledge and consent of his principal, be allowed to make any profit out of his agency beyond his proper remuneration.

2. No right to recover upon this principle arises if the existence of the bargain by which the agent, whether promoter or director, obtained such an advantage, is disclosed to the Company.

3. When persons purchase property for themselves, and afterwards sell to p. 5240.

RECORD. a Company, they are not obliged to account to the Company for the profits they have made, unless they were, in fact, trustees for the Company at the time they made the purchase. This principle is established by the series of cases which arose out of the affairs of Cape Breton Mining Company.

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Re Cape Breton Mining Company, 29 Chancery Division, 795. Affirmed in Appeal.

Bentinck v. Fenn, 12 App. Cas., 652.

Edgar v. Sloan, 23 S. C. R., 644.

4. A transaction of this sort cannot be impeached, even if otherwise vulnerable, if known to all the members of the Company. 10

5. A transaction cannot be impeached where the party has either done that which is equivalent to a waiver of his remedy, or by his conduct or neglect put the other party into the situation in which it would not be reasonable to place him if the remedy were to be afterwards asserted.

Phosphate Company v. Erlanger, 3 App. Cas., 1230.

"Delay has two aspects. Lapse of time may so change the condition of the thing sold, or bring such a state of things that justice cannot be done by rescinding the contract subject to any amount of allowance or compensation. This is one aspect of delay, and it is in cases applicable to property of a mining character. But delay may also imply acquiescence, and in this respect it equally 20 bars the Plaintiff's right, for such a contract as is now under consideration is only voidable and not void." 3 App. p. 1231.

And again at 1241.

"Under these circumstances, looking to the very peculiar nature of the property, and the utter impossibility of restoring the property, and the commercial undertaking connected with it, looking at the amount of notice which the Company had and to the knowledge which they might have obtained by pressing the enquiries which the prospectus ought to have suggested, I should be of opinion that it would be contrary to the principles of equity to give to the Company the relief which, at an earlier period, they might have 30 obtained."

Setting aside the Judgment.

The Judgment finds that three sums mentioned are severable, and, being severed, that the balance will represent the real contract price from the Company. Vol. 1,* p. 118, line 39.

* Original
Record.

If this conclusion be correct, the Judgment should have stopped at that point and Charlebois' judgment should have been allowed to stand for the remainder.

In the reasons for Judgment, however, it is said the Company will be entitled to deduct the value of the work not finished by the contractor, stated to be some 61,000 dollars, Vol. 1,† p. 118, line 40. As to this a reference was 40 directed, and in the actual Judgment, as drawn, this is provided for by Sections 7 and 8, by which a reference is directed to the Master to ascertain what further sum should be deducted from the Judgment. Vol. 1,‡ p. 125.

† Original
Record.

This reference and interference with Charlebois' Judgment are wholly unwarranted by the evidence.

No evidence was given that the work was not finished, but it was shown that, upon the settlement of the Judgment, all these matters were taken into consideration, and a compromise agreed upon.

No ground has been shown for setting aside that compromise, and no provision is made by the Judgment for the allowance to Charlebois of the things which he gave up. *See* Ex. 87, vol. 3, p. 179. RECORD.
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A paper which was, perhaps, in the mind of the Chancellor when dealing with this part of the Judgment, is Ex. 26, printed in vol. 3, pages 177 and 178. Factum of
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This Exhibit was not proved or established in any way, and the evidence in regard to it is that of Dr. McMichael, who was one of the Counsel when the Judgment by Charlebois against the Company was obtained. *See* vol. 2,* p. 144. * Original
Record.

10 At line 27 he says the figures on the first page are all right. The figures on the second page deal with the manner in which they are appropriated, and as to these he said, "I know nothing about that."

And again, at line 37, speaking as to the second page, those allowances were made, but they were not charged against the 173,000 dollars in the arrangement.

At line 42 in answer: Q. Not deducted from it?—A. No.

The paper has a memorandum upon it, "submitted to Dr. McMichael without prejudice, and not to be used against Mr. Charlebois," and was produced by Charlebois with his affidavit on production, stating that he did not know who made it up, that he knew nothing about it, and it was not proved by any witness, and is not now evidence in the case. *See* vol. 2,† pp. 47 and 48. † Original
Record.

It cannot be read upon the ruling of the learned Judge, except as part of the affidavit on production. *See* page 48, line 8.

It cannot fairly be contended that, without other evidence than this, the Judgment of Charlebois should be set aside and the reference ordered for the purpose of ascertaining what deduction should be made.

II. Charlebois' right to a lien.

The question upon this part of the case is the right of the contractor to maintain the lien which is declared by the Judgment of the 28th 30 September 1891.

The Judgment of the Chancellor which refers to this part of the case will be found in vol. 1,‡ page 119, from line 10 to page 121, line 39. ‡ Original
Record.

By Charlebois' contract for construction, Section 4, it was provided that:—

(4) "The contractor shall have, in addition to such protection and lien, if any, as the law allows and accords him, a full and complete lien and first charge upon and over the first fifty miles of railway and its appurtenances, including rails, ties, buildings, equipment, roadbed, right of way, right to the land-grant thereto appertaining (if and when fully earned), right of operation of 40 said railway, and upon the whole property, enterprise, and undertaking, including the works already in the course of completion, until he, the said contractor, is and shall be paid the said full sum of £150,000 sterling as aforesaid, nor shall the Company be at liberty to take possession of or exercise any acts of possession over or respecting the said fifty miles of railway, or its appurtenances afore-mentioned, while or so long as any sum remains due and unpaid to the contractor under this contract, and the full, absolute, and sole possession thereof shall in such case remain and be vested meanwhile in the contractor." Vol. 1,§ page 65. § Original
Record.

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The contractor's lien, therefore, as declared by the contract, was two-fold.

Firstly—whatever lien the law gave to him as contractor or vendor, apart from the contract.

Secondly—the express lien given by the contract.

The contract is dated the 16th September 1889, and on 28th September 1891 the Defendant Charlebois obtained the Judgment impeached in this action, and which is printed in the Statement of Claim, page 28, vol. 1,* and clauses 1, 2, 3 and 4 of the Judgment refer to the lien of the contractor. *See* vol. 1, page 28.

In the formal Judgment in this action the lien of Charlebois is dealt with in 10 paragraphs 11, 12, 13 and 14. *See* vol. 1,* page 126.

The Appellant contends that upon this ground also the Judgment of the Chancellor is wrong, and that the Appellant Charlebois is entitled to have the Judgment reversed, and to have restored to him the lien and Judgment of the 28th September 1891, and the Judgment of the 29th February 1892, declaring and enforcing the same.

The right of the contractor to a lien is put upon three grounds.

1. The first and principal one is the express lien given him by his contract.

2. The second is his right as the vendor of the right of way, purchased by him with his own money and upon which he had constructed the railway, and 20 the title-deeds of which he holds.

3. The third is the right of lien as to the chattel property given him by common law by virtue of his possession and work done and labour expended in the construction.

These included the rights of the sub-contractors, the Crossen Manufacturing Company, who had a lien upon the cars furnished by them and sold to Charlebois to implement his contract with the Company, and the lien of the sub-contractors, McDonald and Schiller, who were in possession of the road under Charlebois as their contractor. *See* the Judgment, vol. 1,† page 119, lines 16 to 36.

† Original
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The Charter of this Company was granted by the Governor in Council under the authority of the Act 49 Vict. c. 2, and was to come in force upon proclamation to that effect being made.

The Charter was confirmed by the Act 51 Vict. c. 85, and in the Preamble to that Act it is recited that the proclamation was published in the Canada "Gazette" on the 6th November 1886, and by Section 1 of the last-mentioned Act the Charter is declared *to have the same force and effect as if it were an Act of the Parliament of Canada since the grant and publication thereof*, so that although the Act 51 Vict. c. 85 was assented to only on the 22nd May 1888, the Charter takes effect and is to be read as if enacted on the 6th Novem- 40 ber 1886.

By Section 1 of the Charter it is provided that the Consolidated Railway Act of 1879, and the Acts amending the same, shall as hereby modified apply to the said railway. Reading the date into this section it clearly means that the Consolidated Railway Act, 1879, and Acts amending the same which had been passed at any date prior to the 6th day of November 1886, shall apply to this railway.

The Chancellor has held that the Railway Act of 1888 applies so as to modify and take away in part the power to create liens and mortgages previously possessed by the Company.

Now, it may be conceded that in many matters, such as the regulation of the running of railways, the making of returns, and other matters as between the Company and the public, perhaps also in matters regulating procedure, as in the cases relating to the expropriating of land, the General Railway Act in force from time to time is by its terms applicable to Railway Companies chartered before its date. But it is contended that, so far as the Charter is to be regarded as a grant of powers and rights, such powers and rights are vested rights of the Company taking effect from the date of the Charter, and are not taken away by general legislation subsequently passed, unless expressly provided.

The Railway Act of 1888, 51 Vict. c. 29, was passed in the same Session and assented to upon the same day as the Act confirming the Charter of this Company, but the Charter of the Company came into force on the 6th November 1886, whereas the Railway Act did not come into force until the 22nd May 1888.

The Consolidated Railway Act of 1879 applies to this Company so far as the provisions relating to mortgage are concerned, notwithstanding that it was repealed by the Revised Statute of 1887.

When a statute is incorporated in another, the effect is the same as if the provisions of the former were re-enacted in the latter for all its purposes; and the repeal of the former does not repeal its provisions so far as they have been incorporated in an Act which is not repealed, and which incorporation was for the purpose of providing for a subject-matter not within the original statutes. *Exp. Rossmore*, 8 Ir. Eq., 366.

As a general principle, Acts of Parliament where they alter the rights of individuals are not to be construed retrospectively unless it is so expressly provided.

In *Fitzgerald v. Champneys*, 2 J. & H. 54, Vice Chancellor Sir W. Page-Wood gives this reason for the rule, "In passing the Special Act the Legislature had their attention directed to the special case which the Act was meant to meet, and considered and provided for all the circumstances of that special case; and having so done, they are not to be considered, by a general enactment passed subsequently, and making no mention of any such intention, to have intended to derogate from that which, by their own special Act, they had thus lawfully supervised and regulated."

By Section 2, Sub-section 2, of the Consolidated Railway Act of 1879, it is provided that Sections 5 to 34 of that Act shall apply to every railway to be constructed under the authority of the Parliament of Canada, and, unless expressly varied or excepted by the Special Act, shall be incorporated with the Special Act, form part thereof, and be constructed as forming one Act.

The powers of this Company, when their Charter came into effect on the 6th November 1886, therefore were ascertained and settled by reading as one Act the Consolidated Railway Act of 1879, the Company's Charter, and any amendments to the Railway Act passed prior to the 6th November 1886.

The whole thus constituted a Special Act, forming part thereof, and to be

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The Judgment of Chancellor, page 119, vol. 1,* line 36, is that the Railway Act of 1888 “controls the action of the Company,” as to all matters transacted after 22nd May 1888. We contend that the Judgment is wrong and should be reversed, if by these words it is meant that the powers of the Company to give liens upon, or mortgage their property, are altered or abridged. 10

It is a well recognised rule that the Statutes should be interpreted, if possible, so as to respect vested rights. *Hardcastle*, 375, 331.

If anything be certain it is this : “that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.” Per Lord Selborne, *Seward v. Vera Cruz*, 10 App. Cas. 68.

Garnett v. Bradley, 3 App. 952.

See also, and the cases there discussed, *Thorp v. Adams*, L. R., 6 C. P., 20 135 and 136.

Applying these principles to the present case. The Chancellor has held that the larger powers given by the earlier Act are cut down and abridged by the Railway Act of 1888, which took effect a year and one half after the date of our Charter.

The Judgment of the learned Chancellor says that the Railway Act of 1888 differs in many essential points, as to the power to mortgage from the Act in force when the *Grand Junction v. Bickford*, 1 S. C. R., page 637, was decided, but upon all the points that are essential to the present argument the Act of 1879, which is part of the Special Charter, is in precisely the same language as 30 the Act which was under consideration in the *Grand Junction Railway Company v. Bickford*, which was Consolidated Statutes of Canada, c. 66. (See the Judgment, vol. 1,† p. 119, 1, 10 to p. 121, 1, 39.)

† Original
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It is submitted that the Judgment upon this branch of the case offends against the General Rule of Interpretation, and construes the Railway Act of 1888 as taking away from this Company powers and rights which were vested in them by their Charter, and is, therefore, wrong.

Some points should be referred to which have evidently influenced the mind of the learned judge.

The first is that the Charter was confirmed by an Act passed on the same 40 day as the Railway Act of 1888.

But the Charter was in existence before this confirmatory Act was passed, and the confirmatory Act was not needed to give it validity.

The Charter was granted under Order in Council pursuant to the powers conferred upon the Governor in Council by the Act, 49 Vict., c. 11.

It surely cannot make any difference that by the Act 51, c. 85, s. 2, the fifth Section of the Charter was amended by adding the words “*of whom the majority shall form a quorum.*” See the Judgment, p. 119, line 27.

But the Chancellor apparently looks upon this trifling amendment as furnishing an argument in favour of the view he has adopted. For he says, "that Act amends the Charter by an addition of words as appears in Section 2."

It is contended that the learned judge is also in error in the construction placed by him upon the words in Section 1 of the Charter: "The Consolidated Railway Act of 1879 and the Acts amending the same."

These words speak from the 6th November 1886, and can only refer to amendments made prior to that date, and not to amendments to the Railway Act subsequently made.

The precise point has been determined in reference to another Statute in the case of *Ex parte* Rossmore.

"It is further contended that the words, 'or any Act for amending the same,' found in the 11th Section of the 1 & 2 Geo. IV., incorporate the 7 Geo. IV., c. 74. Although of course the Statute 7 Geo. IV. was not in existence when the Statute 1 & 2 Geo. IV. was passed, because the former Statute is in fact, as it is said, an Act amending the 50 Geo. III., c. 103. To give such a construction to the words 'amending the same' would, in my opinion, be contrary to the established principle that words are to receive their ordinary meaning.

"These words plainly refer to the Statutes then actually in force at the passing of the 1 & 2 Geo. IV., c. 74, and amending the 50 Geo. III., c. 103, and cannot be construed to refer to a Statute or a number of Statutes which had then no existence. *Ex parte* Rossmore 8 Irish Eq., 371.

"This view is absolutely enforced by the use of the present tense in the language of the Statute. *Ib.* p. 371.

As in this case the present participle "amending the same," is used, the Judgment of the Chancellor, in effect, gives to the words "amending the same" the meaning "or which shall hereafter be passed amending the same."

There were amendments to the Consolidated Railway Act of 1879 passed prior to the 6th November 1886. The most important of these was the Act, 46 Vic., c., and, therefore, as far as the particular facts afford any guide as to the intention of Parliament, they are all in favour of the present contention.

It is assumed, therefore, for the present argument, that the powers of the Company are to be ascertained from the provisions of the Charter and the Consolidated Railway Act of 1879, and the amendments thereto which were in force on the 6th November 1886.

This branch of the case is, therefore, naturally divided into these two subjects.

(1.) The express language of the Acts.

(2.) The rules of construction to be applied.

Section 1 of the Company's Charter, by making the Railway Act of 1879 applicable thereto, also embodies Sub-section 12 of Section 7 thereof, which empowers the Company "to borrow from time to time, either in Canada or elsewhere, such sums of money as may be expedient for completing . . . the railway . . . and to hypothecate, mortgage or pledge the lands . . . and other properties of the Company for the due payment of the said sums, &c." This power is given to the Company in addition to the bonding

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powers set out in Section 15 and Section 14 of its Charter or Act. Both are in force.

By Section 7 of the Consolidated Railway Act of 1879, Sub-section 2, the Company had power to purchase, hold, &c., any land or property, *and also to alienate, sell or dispose of the same.*

This clause is taken from the Railway Act, chapter 66, of the Consolidated Statutes of Canada, Section 9, Sub-section 2, and is in the exact language of the section in force in the case of the Grand Junction Railway *v.* Bickford, while Sub-section 12 of the Railway Act of 1879 is in exactly the same terms as Sub-section 11 of Clause 9 of the first Act.

In addition to the general power to borrow, conferred by Section 7, Sub-section 12, and the general power to alienate conferred by Section 7, sub-section 2, refer to the following sections of the Charter: Section 11, 20 and 23.

The proceeds of lands sold under the machinery provided in Section 20 are to be applied in payment of any mortgage or lien created by the Company thereon, which shows that a lien may be validly given by the Company, and that the estate of the trustees under this section is subject to the lien, and not the lien to the trust, as the Judgment declares. *See* page 121, line 38.

The power conferred upon the Company to constitute a board of trustees for management of the lands is pure permissive, and so far the power has not been exercised, and may never be exercised. There is, therefore, no trust of the lands which would prevent the Company from disposing in any other way, for the purposes of the Company.

Charlebois' lien upon the land grant should be absolute and not subject to any trust for administration, and the clause of the Judgment, paragraph 13, page 126, line 13, is wrong and should be varied.

It is important, perhaps, before embarking on a discussion as to the powers of incorporated companies, to consider precisely what it is that is claimed to be *ultra vires* of the Company in the present contract.

On the 16th September, 1889, according to the result of this Judgment, 30 the Company had no assets, except some partially constructed road. The capital stock to the extent of 500,000 dollars had been paid up. The Company had the power to issue bonds, but, under Section 14, no bonds could be issued at all until a contract for construction was entered into, and no bonds could be sold, except at a ruinous sacrifice, until at least one section of the road was built and in running order.

Charlebois' contract did not provide for the paying of any money after the first 50,000/. paid on the execution of the contract until the completion of that contract. He was to find everything, except the rails, which the Company agreed to advance to him, and, out of his own means, was to purchase the right 40 of way and build a railway upon it. *See* the contract, vol. 1,* page 63.

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No security for payment was given or provided for, except what is contained in this contract.

The agreement of the 9th April 1888 provided that a banker's guarantee for the payment of the balance of 150,000/. should be given before contract of construction was entered upon, but this guarantee was never given. The only substitute in Charlebois' contract was this section, Clause 4.

When fifty miles should be completed the Company would have earned a

land grant of 320,000 acres, but until completion they had neither land grant, RECORD.
road bed, right of way, nor means of paying their liability for construction.

Charlebois was to find the capital and create these, and he stipulated for two things. First. That he should have such lien as the law would give him apart from the contract; and Second. A full and complete lien and first charge by contract or covenant upon the 50 miles of railway.

Charlebois has completely performed his part of the contract. The road has been taken off his hands and has been in operation for three years.

The Company has contested his right at every step, and have hitherto 10 successfully evaded payment, and now come into Court and say that it was beyond their power to have given the lien which they did give by their contract of the 16th September 1889. There is no question of borrowing money. Charlebois has completely executed the contract upon his part.

The construction of the road was the primary object for the existence of the Company.

A contract was pre-supposed by Section 14, because no bonds could be issued until a contract for construction had been entered into.

Unless means were provided for the payment of the contractor *de die in diem*, the Company must become indebted to him, and if they had the power to 20 become indebted to their contractor, the power to secure him must be implied as fairly and properly incidental.

If the power to secure him is either expressly or impliedly given, there is no reason why such security should not be as ample as the security given under a mortgage trust deed to secure the bondholders, because the bonds could properly be sold only for the purpose of paying Charlebois and the other legitimate debts of the Company.

No right can be higher than that of the contractor under the circumstances.

The Judgment of the Chancellor adopts the rule stated in the case of the Baroness Wenlock and the River Dee in 10 Appeal Case. See his Judgment, 30 vol. 1,* page 121.

While the language quoted is not open to exception, regard should be had to the fact that the case of *Wenlock v. the River Dee Improvement Company*, was a case in which a company had borrowed money, although its borrowing power was limited to a specific sum, and there was an express prohibition against borrowing more than that sum. See the Judgment in that case, 10 App., c. 359.

The clause was inoperative and negative. "The amount to be borrowed shall not exceed in the whole the sum of 25,000*l.*;" but, as indicated in that case, the leading authority as to the general principle to be applied in the construction 40 of Statutes of incorporation is to be found in the *Attorney General v. the Great Eastern Railway Company*, 5 App. Cas. 473.

In the Judgment of Lord Selborne, it is thus expressed:—

"I assume that your Lordships will not now recede from anything that was determined in *The Ashbury Railway Company v. Riche* (1); It appears to me too important that the doctrine of *ultra vires*, as it was explained in that case, should be maintained. But I agree with Lord Justice James that this doctrine ought to be reasonably understood and applied, and that whatever may fairly be regarded as incidental to, or consequential upon those things which the
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The Judgment of Lord Justice James, which he quotes with approval, is to be found in the Report of the same case upon appeal to the Court of Appeal. 11 Ch. D. 449.

See the general observations in that Judgment at page 480.

Section 6 of the Consolidated Railway Act of 1879 is as follows:—

"Section 6. Every Company established under any special Act shall be a body corporate under this name declared in the special Act, and shall be vested with all the powers, privileges and immunities necessary to carry into effect the intention and objects of this Act, and of the special Act therefor, and which are incident to such incorporation, or are expressed or included in the Interpretation Act."

The words of the above section, "*incident to such incorporation*," are in substance the same as the clause commonly inserted in English Memoranda of Association: "To do all such things it as are incident or conducive to the objects aforesaid." And these words have been many times interpreted and a very extensive meaning given to them.

In the case of the *Peruvian Railways Company*, L. R. 2 Ch. 617, there was no power given expressly to draw Bills of Exchange, but it was held that the Directors had under this clause power to draw them, for this was a mode of providing for payment of their engagements while they were calling up their capital, and fairly came within the description of being conducive to carrying on the business of the Company. L. R. 2 Chancery, see page 624.

"When you have got a main purpose expressed and ample authority given to effectuate that main purpose, things which are incidental and which may reasonably and properly be done, and against which no express prohibition is found may and ought *prima facie* to follow from the authority for effectuating the main purpose by proper and general means."

"I think it is quite right to invite your Lordship to apply that principle to the present case.

"In order to see how it applies we must ascertain, first of all, what the main purpose here is, then what are the general powers of the Directors, then what are their special powers, and then, supposing that this is not within the natural meaning either of their general powers or of their special powers, whether it can be brought in as incidental to the main purpose and a thing reasonably be done for effectuating it." *Small v. Smith*, per Lord Selborne, 10 App. Cas., 129. See also *Simpson v. Westminster Palace Hotel Company*, 8 House of Lords, 712.

The Judgment appealed from does not determine expressly that this Company had no power to borrow, or that it had no power to incur indebtedness to a contractor, but merely that they had no power to give the lien to the contractor which they assumed to give.

It is difficult to determine the precise ground upon which this view is based, because the Judgment determines that the lien is valid as to the land grant so that it concedes the power to grant a lien, but, if the power to grant a lien be conceded, there is no reason why the Company should not give a lien as extensive as the mortgage which they are expressly empowered to give.

There is no mischief which flows from a mortgage to secure the contractor which would not flow from a mortgage to trustees to secure bondholders.

In either case the stockholders must pay or lose their interest in the road.

The argument from public inconvenience has no reference to the circumstances of this case.

Public interest and public convenience are promoted by giving the Company power to secure a contractor who is willing to build the road.

It was not a great public highway upon which they gave a lien, but an imaginary line upon a map, which the contractor under his construction contract
10 agreed to convert into a railway.

It was objected that the lien only covered 50 miles.

True, but it was the first 50 miles and all of the road then in existence, and a similar lien could have been given for each successive 50 miles without damage to any public interest. The Company would, if properly managed, have sold its bonds as each section was completed, paid the contractor, and thus removed the lien.

No question of public interest should be allowed to be set up to enable a company such as this to defeat the just claim of the contractor who created the road.

20 See Walker v. The Ware Railway Company, L. R., 1 Eq. 199, which will be referred to upon another ground.

Under the cases, and altogether apart from the provisions of the Railway Act, Charlebois was at the date of the Judgment entitled to a lien until payment, as having with his own money purchased the right of way and station grounds, &c., upon which the railway was built.

The English cases are collected in White & Tudor, L. C. vol. 1, 6th Ed., 376.

Re Walker v. Ware & Co., L. R. 1 Eq., 195.

In that case the Master of the Rolls, Sir John Romilly, said, page 199 :

30 “ Then it is said the enforcement of the lien would interfere with the rights of the public. Now, I admit that the rights of the public are to be considered ; but can it be said that a railway company may take a man's land without paying for it, and when he seeks to enforce payment of the purchase money, may set up as a defence the right of the public ? I know of no authority for such a contention, and I certainly will not be the first to sanction it. The public, in my opinion, cannot be interested in having a man deprived of his property.”

And in Wing v. Henham and Hampstead Junction Railway Company, L. R., 3 Ch., 740, it was decided that upon default of payment the landowners had
40 the right to a decree for sale, and that the public interest was secondary to the right of the landowners to be paid.

These were cases of a vendor claiming a lien upon a small portion only, a slice of the Company's property, and the case is *a fortiori* in favour of the validity of the lien, when given either by contract or by operation of law upon a whole section of railway wholly unconstructed, and to be bought and constructed solely upon the security offered by that lien.

Before proceeding to further discussion of the cases, the Railway Act of 1888 should also be looked at.

If the Act of 1888 alone applies, and is to be read according to the canon

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That such a strict construction of the Act of 1888 leads to manifest absurdity is apparent by reference to the Act.

Under Section 93 a Railway Company may issue bonds, debentures or other securities. Under Section 98 they may become parties to promissory notes.

No express power is given anywhere in the Act in any other way to borrow money to incur a debt, to create a lien or give a mortgage. 10

Whether inadvertantly or not, Section 7, Sub-section 12, of the Act of 1879, giving a Company power to borrow money, has disappeared in the Act of 1888, and Section 93 itself does not give power to borrow money otherwise than by the sale or pledge of bonds.

If pushed to its limit, this construction means that a Railway Company to which the Act of 1888 applies cannot enter into any contract except for cash.

The reasoning in the judgment of the Chancellor is to that any other mode of payment except by the sale of bonds is prohibited, because ample powers are in terms given to meet the demands of the contractor for construction by the 20 creation of paid-up stock or by the issue of bonds.

See the Judgment, page 120, line 40, but until the contractor is paid it is manifest that a contract under which he was to be paid only upon completion is the incurring of a debt which in substance the borrowing from him of the capital required to carry out the contract, and neither of these operations is expressly authorised in the Railway Act of 1888.

The construction which has been placed upon the Act of 1888, and upon the Charter of the Company by the judgment now in appeal, far from operating to carry out the purposes of the Act, is adverse to the one declared purpose for which this Company was chartered, as set forth in Section 2 of the Charter, 30 namely, *to construct this railway.*

It is incidental to the main purpose for which the Company was chartered to enter into a contract with a contractor for construction, and to give him a lien upon the property of the Company. Unless he is paid *de die in diem* the Company must be in his debt; that they should give him a lien upon the property which he is creating by his expenditure is not only just, but is an ordinary incident of such a contract. It is true that when the contract is completed means may be found to pay the contractor and to remove the lien by the issue and sale of bonds in the manner provided in the Special Act, and it would be illegal and improper to apply the proceeds of the bonds for any other 40 purpose.

See Section 14 of the Charter.

One may conceive of the creation of a mortgage and bonds printed and executed before the railway was built at all, but certainly bonds so created would be unsaleable until the road was wholly or partially constructed. In this case doubly so, because the security for the payment of the bonds would be the land grant which would only be earned when the road was constructed.

It may be said the Company could not in this indirect way borrow from Charlebois the 150,000*l.* mentioned in the construction contract, because

their borrowing power is limited to the sum of 25,000.00 dollars a mile, but this would not exceed 25,000.00 dollars a mile, but would be in the neighbourhood of 13,000.00 dollars a mile, and if the limitation applies, then it would apply to make the subsequent mortgage and bond issue void as to any excess, rather than the prior lien subsisting when the mortgage was created.

That it is legitimate to construe the Act giving the power to borrow money upon bonds, debentures or other securities in the manner here contended for, appears from the case of the Commercial Bank of Canada v. the Great Western Railway Company, 3 Moore, P. C. Cass. N. S., page 309 (1865).

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10 “A Railway Company had by its original Statute of incorporation no power to borrow money, but a subsequent Statute gave power to borrow money from time to time for maintaining and working the railway, to pledge the lands, tolls and revenues for due payment thereof, and to make bonds or debentures for securing the repayment of any sums so borrowed in certain terms:—Held, first, that the securities on which the Company had power to borrow were not restricted to bonds or debentures.”

The section of the Act discussed, in that case, 16 Vict. c. 99, Section 16, enacted that “The Company have had and shall have power and authority to borrow money, from time to time, for making, completing, maintaining and working
20 the said railroad, as they might or may think advisable, and to pledge the lands, tolls, revenues, and other property of the Company for the due payment thereof, and might and may make the bonds and debentures issued by them for securing the repayment of any sums so borrowed or to be borrowed convertible into stock of the said Company, on the terms and conditions expressed in such bonds and debentures, or in the bye-laws of the Company.”

Lord Chelmsford, L.C., in his judgment says: “It was said by the counsel for the Respondents that this section gave them power to borrow only on bonds and debentures; and from the language of the section it may fairly be argued that the Legislature supposed that all the borrowings of the Company
30 would be upon securities of this description. But it is not said that they shall not have power to borrow, except upon bonds or debentures issued by them for securing the repayment of the sums so borrowed. *If, therefore, money were borrowed by the Company for the legitimate purposes of the undertaking, it would be no answer to the lender seeking to recover his money to say that he had no bonds or debentures as security for his loan * * * If they have a right to borrow separate for the one purpose, they have equally a right to borrow for the other.*” In any view the contract itself may be viewed as a debenture. Edmonds v. Blaina, 36 Ch. D. 215.

In the Judgment of the Chancellor he determines that the lien and charge
40 created by the contract cannot be supported, for two reasons:

(1.) Because the language of the Acts relied upon in the Grand Junction v. Bickford was more favourable;

(2.) Because the proposition of law on which that Judgment rests is not now tenable.

See vol. 1,* page 120, l. 37.

As to the first of these, reference has already been made to the reasons why the powers of this Company should not be restricted by the Railway Act of 1888, if that Act is less liberal in its provisions than the Act of 1879.

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As to the second, the Chancellor does not refer to any case which has shaken the authority of *Bickford v. the Grand Junction Railway Company*. The reasoning upon which the Judgment in appeal in that case, 23 Grant, 302, is rested, is distinguishable from the facts in this case.

The Appellant relies upon the case of *Bickford v. the Grand Junction Railway Company*, 1 S. C. R. 696, and will contend that the view suggested *obiter* in the Judgment of his Lordship Sir Henry Strong, at page 737, &c., by reason of the later railway legislation, and of the case of *Redfield v. Wickham*, since decided, is now the law in Canada, and that the doctrine of the English cases decided upon the authority of *Gardner v. London, Chatham and Dover Railway*, 10 L. R., 2 Ch. 201, do not apply to Canadian railways.

The question is well discussed in *Meyer v. Johnston*, a case in 53 Alabama, at page 237, and the distinction is there drawn as to the meaning of the word "franchise."

"When a railroad corporation is authorised by its charter to borrow money and to mortgage all the means, property and effects of the Company, such security undoubtedly embraces all the franchises of the Company necessary to make the property available.

"But the franchise to exist as a corporation is not included; strictly, the franchise to exist as a corporation is not a corporate franchise, or franchise of the corporation at all.

"It is a franchise of the individual corporators, of the natural persons, who are shareholders of the capital stock, and appertains to them as such corporators, whereby they are endowed with the privilege and capacity of being constituted into and co-operating as a body politic, with power of succession, and without individual liability.

"And the Corporation as such in its collective capacity, or by its Board of Directors, has no more power to sell this franchise than it has to sell their paid-up shares of capital stock."

It is contended that this analysis of the ambiguous senses in which the word "franchise" is used puts the generally received doctrine, that corporate franchises are inalienable without express power, upon the true ground.

It was, however, argued that conceding that Charlebois had a valid lien, that was displaced by the creation of a mortgage, by virtue of the express terms of Sections 15 and 18 of the Charter.

This view has not been adopted by the learned Chancellor, who has held that the lien of Charlebois is valid *pro tanto*, and has priority over the mortgage to secure bondholders, but limited as to the property included in it to what may be termed the surplus or disposable property of the Company.

The lien given by Section 4 of the contract is merely a lien *with such rights as to sale, foreclosure, appointment of receiver, or of retaining possession until paid, as might be determined or awarded by Judgment of any Court.*

The contract, therefore, is not *ultra vires* because it provides for the sale of a railway, because it does not do so. It is left to the Court to decide the proper remedy, and therefore the lien is distinguished from the case of a mortgage with a power of sale.

The Judgment of the 28th September 1891 determined Charlebois' rights to be those of a mortgagee with a Judgment for sale.

See vol. 1, page 30, 1. 2.*

* Original
Record.

The Judgment, if erroneous, was not *ultra vires*, because the term has no application to the Judgment of a Court, but, as pointed out by Mr. Justice Maclellan, if erroneous it should have been moved against or appealed from, and if ineffectual, as for instance by assuming to deal with real property not within the jurisdiction, it can be left to its operation *quantum valeat*.

See his Judgment, vol. 1,* page 183, line 11.

In any case this action is unfounded, and is not a proper mode of attacking the Judgment.

Nothing has been done under the Judgment in the direction of selling the railway, and nothing practically turns upon it, but Charlebois desires to maintain so much of the Judgments as will enable him to work out his remedy for payment by sale of this railway in Manitoba, where proceedings have already been taken for that purpose, and a Judgment obtained, but proceedings thereon are suspended in the meantime pending the determination of this Court in this case.

The difficulty, suggested in the case of *Bickford v. Grand Junction Railway Company*, at page 735 of the Report, 1 S. C. R., arising out of the decisions in England in the case of *Gardner v. London, Chatham and Dover Railway Company, L. R.*, 2 Ch. 201, and other cases, is not applicable in this country.

The effect of that case and others is thus stated in *Redfield v. Wickham*, 20 13 App., page 474:—

“These cases show conclusively that in England the undertaking of a Railway Company duly sanctioned by the Legislature is a going concern which cannot be broken up by or annihilated by the mortgagees or other creditors of the Company. The Rule thus settled appears to rest upon this consideration, that *inasmuch as Parliament has made no provision for a transfer of statutory powers, privileges, duties and obligations from a Railway Corporation to any other person, whether individual or corporate, it would be contrary to the policy of the Legislature, as disclosed in the General Revised Statutes, and in the Special Acts incorporating Railway Companies, to permit the creditors of any class to* issue execution which would have the effect of destroying the undertaking or of preventing its completion.”

In Canada the contrary has been held by the Court of Queen's Bench for Lower Canada, in the Corporation of *Drummond v. South Eastern Railway Company*, 24 L. C. Jur., 276.

In that case the Corporation were the holders of a bond, who obtained judgment thereon against the South Eastern Company, and proceeded to take out execution for the purpose of selling a section of the railway.

The Judgment of Mr. Justice Cross contains a very full discussion of the question. Upon an appeal from the Province of Quebec, in the case just cited of *Redfield v. Wickham*, the Privy Council approved of the case of *Drummond v. South Eastern Railway Company*, and further considered the effect of the provisions of the Dominion Act, 46 Vict., c. 24, providing for the sale of railways in Canada. The conclusion of the Judgment referring to these enactments says:—

“They 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, *but they clearly show that the Dominion Parliament has recognised the rule that a railway, or a section of a railway, may as an integer be taken in execution and sold like other*

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RECORD. *immovables* in ordinary course of law, and that the railway can be seized and sold for the debts of the Company which owns such a railway." See 13 App. 476.

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As pointed out in *Redfield v. Wickham*, the railway legislation in Canada now makes express provision for the sale of railways by Section 278 *et seq.* of the Railway Act; a provision first enacted in 1883, and, as already pointed out forming part of this Company's Charter as being one of the amendments to the Consolidated Railway Act of 1879, passed prior to the 6th November 1886.

And the sale so authorised may be *under any lawful proceeding*, and is not confined to the case of a sale under the provisions of a mortgage deed. 10

The present action and the Judgment thereon in Ontario and in Manitoba are each of them lawful proceedings within the meaning of this section, and any purchaser under the Judgment of a Court of competent jurisdiction will be entitled to take advantage of the provisions of Section 278, &c., and to obtain the license of the Minister of Railways to operate the road.

The status of the Plaintiffs Delap and Mrs. Mansfield as Bondholders, or pledgees of Bond.

The Judgment of the Chancellor upon this branch of the case was as follows:—

"It appears to me that the bonds, so far as value is given, were well issued 20 and pledged to Delap and Mrs. Mansfield, but the extent of their interest will be settled on a reference if desired." Vol. 1,* p. 122.

* Original
Record.

The sections of the formal Judgment which refer to this subject are paragraphs 15 to 19 inclusive. Vol. 1,† p. 127.

† Original
Record.

The Judgment of the Court of Appeal determined that the bonds were not validly pledged by the Company to Delap, and that Delap was not entitled to hold the 465,600*l.* face value of bonds in his control, and that the claim of Delap to a lien or charge on the said bonds should be dismissed. Vol. 1,‡ p. 147.

‡ Original
Record.

Delap has served notice of a Cross Appeal to this Court, and will ask to 30 have the Judgment of the Court of Appeal upon this matter reversed, and this Appellant will in his factum as Respondent upon such Cross Appeal discuss fully his objections to the validity of the bond mortgage, and of the pretended issue of bonds thereunder, and of the title of Delap thereto; and also of the title of Mrs. Mansfield, so far as the title of Delap and Mrs. Mansfield rest upon common ground. And the Appellant therefore refers to the said factum on the Cross Appeal for such argument.

It is necessary, however, to point out here that the Judgment of the Court of Appeal, inadvertently, no doubt, does not go far enough:

(1.) In not dismissing Mrs. Mansfield's action as well as Delap's; 40

(2.) In not dismissing any claim with regard to the bonds to the nominal value of 50,000*l.* which were in the possession of Delap until after the commencement of this action, but which have not been brought into Court, and with regard to which there is no evidence forthcoming.

(3.) In not dismissing the actions of Delap and Mrs. Mansfield with costs.

The only evidence upon the subject of the amount is that of Delap.

"Q. Where are the bonds?—*A.* There was an understanding.

"Q. Where are the bonds?—*A.* I am not going to tell you until the Court says I am to.

"I think the Court will say you are to tell?—*A.* I will tell if the Court insists.

"*Mr. McCarthy.*—I submit I am entitled to an answer.

"*His Lordship.*—I think you are entitled to know where the bonds are.

"Q. Where are the bonds?—*A.* The bonds are left at the People's Bank
10 in Halifax.

"Q. All the bonds?—*A.* All that I have.

"Q. All the bonds?—*A.* All that I had.

"Q. All the bonds?—*A.* No, not all the bonds; simply all that I had.

"How much had you?—*A.* I had all the bonds, less 50,000*l.*" Vol. 2,* * Original
p. 129. Record.

Cansdale, a managing clerk in Stevens' office, says: "*A.* In consequence of Mr. Delap's request to have the bonds handed over to him, I attended with him at the National Safe Deposit Company, went through the bonds with him, had them taken out of the name of Stevens, Bawtree & Stevens, and placed
20 them in the name of J. B. Delap." Vol. 2,† p. 332.

This was on the 16th August 1892, and Delap then had possession of the whole issue, and continued to have them until after the commencement of this action, when he handed over 50,000*l.* face value to Stevens & Company. Vol. 2,†† Original
p. 393; Vol. 2,† p. 201. Record.

It does not anywhere appear that the odd 50,000*l.* worth are in the possession of Mrs. Mansfield. There is no evidence of any title to them by Mrs. Mansfield. According to Cansdale, they are in the office of the solicitors of the Company in England. Vol. 2,§ p. 397.

According to the evidence, Mrs. Mansfield never had any bonds nor any
30 claim upon any, except by derivation from Delap. Cansdale proves a notice on behalf of Mrs. Mansfield. Ex. 13.

"We, the undersigned, as solicitors for Louisa Harriet Mansfield, &c., hereby
"give you notice that the said L. H. Mansfield is interested, subject to your
"claim thereon, in the bonds of the Great North West Central Railway Com-
"pany, now deposited in your name with the National Safe Deposit Company,
"1, Queen Victoria Street, E.C., for certain advances made by her to and for
"the purposes of the said Railway Company, and we have to give you notice
"not to part with the said bonds until the claim of the said L. H. Mansfield
"thereon for the advances made by her shall have been fully paid and satisfied."
40 Vol. 3, page 207; Vol. 2,|| page 332.

No other document or instrument of pledge or charge is anywhere proved on behalf of Mrs. Mansfield.

Delap was asked to sign an acknowledgment in the form of Ex. 32., Vol. 3, page 208, but refused to do so. Vol. 2,¶ page 298, lines 1 to 6.

The Court of Appeal have determined that the bonds were validly pledged or charged in favour of Delap. *A fortiori*, they should have determined that there was no valid pledge or charge on behalf of Mrs. Mansfield.

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* Original
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The Judgment of the Court of Appeal should also have determined that there was no evidence of any valid pledge or charge with respect to the sum of 50,000*l.* not brought into Court. The Plaintiff Delap should also have been ordered to bring into Court the 50,000*l.* of bonds, face value, admitted to be in his possession at the commencement of this action, but not produced or brought into Court by him, and not accounted for. His dealing with the 50,000*l.*, after the commencement of this action, was a contempt of the Judgment of the Court, and of the injunction contained therein. *See* the Judgment, Vol. 1,* page 30, paragraph 5, and page 36, paragraph 5.

The Judgment of the Court of Appeal should have dismissed the action of 10
Delap and Mrs. Mansfield with costs. No reason is given for the extraordinary Judgment dismissing the action of Delap without costs. The expenses incurred have been very much increased by the unbounded and improper claim of Delap and Mrs. Mansfield to establish a lien upon the bonds of the Company.

For these reasons it is contended that the contract of Charlebois, and the Judgments to enforce the same, were valid and binding, and that the Judgment appealed from should be set aside and this action dismissed.

SUMMARY of the Argument.

1. The action was improperly constituted, and the demurrer should be allowed, because two entirely separate and distinct causes of action are asserted 20
by two Plaintiffs having no interests in common.

2. The claim of Delap and Mansfield should be dismissed with costs, and the demurrer against them allowed upon the ground that the action to set aside the Judgment should have been brought in the name of the Company alone.

3. The Judgments attacked in this action are *res judicata*, and no ground has been shown for impeaching them by action of the nature of a bill of review.

4. Under the practice in Ontario no action in the nature of a bill of review will lie, but a Judgment must be impeached by petition or other proceeding in the original action. 30

5. In any case the Judgments are binding at law, and any proceedings to set them aside must be made by the way of an application to the equitable jurisdiction of the Court, and relief should be granted only upon terms of restoring the parties to the position occupied by them before the Judgment. If this cannot be done, no relief should be granted.

6. The fact that a Judgment enforces *ultra vires* terms of a contract is not in itself a sufficient reason for setting aside the Judgment and opening the contract.

7. A Judgment by consent in the presence of the Court is *res judicata* as completely as a Judgment *in invitum*. 40

8. The Judgment of the Chancellor is wrong upon the merits. The original Judgments were right and should not have been disturbed.

9. The construction contract of the 16th of September 1889 was not, in RECORD.
whole or in any part, *ultra vires* of the Company.

10. Apart from the Judgment subsequently obtained, the contract having been executed could not be set aside by the Company after having accepted the benefit of it, except upon the terms of making restitution *in integrum*.

11. The lien declared in favour of Charlebois by the Judgment of the 28th September 1891 was legal, and should have been allowed to remain undisturbed.

12. Paragraph 13 of the Judgment, page 126, is wrong in making the lien of Charlebois upon the land grant, subject to the power of sale by the Company or its trustees, under the Mortgage Trust Deed dated the 2nd June 1890.

13. The finding of the Court, that Delap was not entitled to hold the 465,600*l.* face value of bonds in his control, and that the same were not nor were any of them pledged to him, involves the dismissal of the action of Mrs. Mansfield also, because the evidence shows that her claim, if any, was founded upon and derived from that of Delap.

14. The Judgment of the Court of Appeal was wrong in not dismissing the action of Delap and Mrs. Mansfield with costs.

Dated September 1895.

20

D'ALTON MCCARTHY,
F. H. CHRYSLER,
Of Counsel for the Appellant Charlebois.

In the Supreme Court of Canada.

Charlebois *et al.* v. Delap *et al.*

FACTUM of Appellants Allan and Devlin.

STATEMENT.

The Appellants, Allan and Devlin, are two of Charlebois' former co-shareholders. They are also, like Charlebois, Defendants in this action. They were not themselves parties to the action in which judgment was obtained by Charlebois against the railway company, before J. Ferguson, on 28th September 1891; but their respective interests in that judgment are included in Section 2 (d) of the judgment of J. Ferguson, printed in Vol. 1,* p. 29.

This sub-section of the judgment of the 28th September 1891, read as follows:—"The second charge on the said fund is to be the sum of 380,397 dollars, with interest at 6 per cent. on 271,555 dollars, and at 4 per cent. on 108,842 dollars, which is payable to the Plaintiff (Charlebois) for his own use, or for the use of any person or corporation to whom he may have

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* Original
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RECORD. " heretofore assigned the moneys payable to him, or a portion thereof, under
 II. " his said contract, according to their several present priorities, if any, payment to
 Factum of " any holder of any such order or orders to be considered as payment to the
 Appellants, " Plaintiff (Charlebois) by the Defendants (the railway company)."

William
 Anderson
 Allan and
 Robert
 J. Devlin—
continued.

The claim of the Appellants Allan and Devlin arose in this way: Allan was, on and prior to the 16th September 1889, the owner of 1,600 shares, of 100 dollars each, of the stock of the railway company, upon which he had (roughly speaking) actually paid up 30 per cent. in cash to the company. Devlin was, in like manner, the owner of 1,200 shares of the stock of the company, upon which he had also paid 30 per cent. in cash to the company. 10 These two Defendants, now Appellants, owned their 2,800 shares of stock between them; or, in other words, upwards of one-half of the 5,000 issued shares. They had, therefore, on the 16th September, 1889, the largest interest in the company.

On the 7th September 1891, when Charlebois' co-shareholders declined to sell out their shares to Stevens in Toronto, the Appellant Charlebois offered Allan 200,000 dollars for his shares and the shares of Clemow and Devlin. The Appellant Allan and his co-shareholder the Honourable Mr. Clemow agreed to sell their shares to Charlebois accordingly; but the Appellant Allan said he would have to see Mr. Devlin before closing for him 20
 * Original Record. (Evidence, Vol. 2,* Charlebois, pages 56, 51, and 62; Clemow, Vol. 2,* p. 213; Allan, Vol. 2,* p. 227). The Appellant Devlin subsequently consented, and it was agreed between them and Charlebois that Messrs. Clemow, Allan, and Devlin should sell their shares to Charlebois, as they stood (Vol. 2,† Clemow, p. 226, line 15; Allan, Vol. 2,† p. 230, line 21), for 200,000 dollars.

† Original Record.

† Original Record.

§ Original Record.

At first the sellers expected that they would get cash for the purchase price of their shares; but when they came to assign same on the 16th September, 1891, Charlebois, at Defendant Murray's instance (Charlebois' Evidence, Vol. 2,† p. 62, line 7), merely paid them by cheque the amount of their outlay, being the 30 per cent. which they had respectively paid up on 30 their shares (Allan, Vol. 3,§ p. 230, line 11), and offered each of them orders on the railway company for the balances due them on the purchase price, such orders to be paid out of the first moneys coming to Charlebois from the company upon Charlebois' construction contract.

|| Original Record.

The railway company, of which C. R. Stevens was then President, and J. A. Codd, Secretary, having on the same day passed the necessary resolution for that purpose (Vol. 3,|| p. 239, line 10), the Appellant Charlebois gave to the Appellant Allan an order on the railway company for 37,465.27 dollars, payable as mentioned, and Allan assigned his shares to C. R. Stevens, at the instance and request of Charlebois, who had meanwhile agreed to transfer same 40 to Stevens when he got the shares from his co-shareholders.

¶ Original Record.

In like manner the Appellant Devlin assigned his shares to C. R. Stevens, at Charlebois' instance and request, receiving from Charlebois, in addition to his 30 per cent. cash outlay, an order on the railway company, payable as aforementioned, for \$28,098.94. The written authority of Charlebois to his co-shareholders, directing them to assign the shares (they had sold to him) to C. R. Stevens, is printed in Vol. 3,¶ at p. 35.

The orders, or assignments, thus given to Allan and Devlin by Charlebois, in payment of the balances due them by him for the purchase price of their shares, are not printed; but the order similarly given to the Honourable F. Clemow for \$20,415.79 is printed at Vol. 3,* at p. 30. Allan and Devlin's orders are in the same terms exactly, except that the amounts are different.

The following is a copy of the order held by the Defendant Clemow, and a copy of the company's acceptance thereof under seal, Allan's and Devlin's being to the same effect:—

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10 “ To The Great North West Central Railway Company.

“ Out of the moneys arising from or under my construction contract with
“ The Great North West Central Railway Company, dated the 16th day of
“ September 1889, for the first fifty miles of said Company's line, and payable
“ to me upon completion thereof, pay to The Honourable Francis Clemow, or
“ order, the sum of 23,415.79 dollars, and charge said amount to me upon my
“ said contract.

“ This is to be deemed a complete equitable assignment of so much of said
“ moneys (with interest at 4 per cent. per annum until paid).

“ Dated at Ottawa, 16th September, 1889.

20

(signed) “ A. CHARLEBOIS.”

“ The Great North West Central Railway Company, pursuant to resolution
“ of the Board passed to-day, hereby accept this order and assignment, and
“ agree to pay same out of the moneys herein mentioned.

“ Dated 16th September 1889.

[Company's Seal.] (signed) “ CHAS. RICH'D. STEVENS,
“ President.
(signed) “ J. A. CODD,
“ Secretary.”

There is an agreement between Charlebois and the Defendants, Messrs.
30 Clemow, Allan, Devlin, and Murray, stating the terms upon which the Defendants
so sold their shares to Charlebois (Vol. 3, p. 36, Trial Ex. 6). The figures
are all set out in that agreement; and by Clause 9 thereof it is agreed between
them and Charlebois that, “ should the Company make default “ in payment of
the equitable assignments hereinbefore referred to, according to the tenor
“ thereof, after same have been duly accepted by the Company and delivered
“ to the former shareholders by Charlebois, the latter shall not be responsible
“ or liable personally for the payment of same, which are to be accepted by the
“ former shareholders instead of the said Charlebois' personal liability for the
“ amounts therein named; but the said Charlebois will do all in his power to
40 “ cause said orders to be duly paid, and shall not himself take or receive any
“ money of the fund thus partially assigned until said orders or assignments
“ are paid in full.”

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* Original
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By another agreement, executed on the same day, by and between the same parties (Vol. 3,* p. 35, line 913), it was agreed that "Nothing herein contained shall be construed so as to imply any covenant or warranty on the part of the former shareholders as to the payment up in full of their paid shares."

The Appellants Allan and Devlin, therefore, sold their shares to Charlebois for so much cash; and, as to the balance, took Charlebois' orders on the Railway Company, payable out of his construction contract moneys, and agreed to look to the Company for the amount of the orders, instead of to Charlebois, whom they released from further liability upon the orders. This the Company 10 agreed to, and a complete novation ensued.

ARGUMENT.

* Original
Record.

The Chancellor has, by his judgment, deducted the cash paid by Charlebois to his former co-shareholders, and also the amount of Allan's and Devlin's two orders (and also the amount of two other similar orders held by the Defendants Clemow and Murray) from the sum found due to Charlebois and his assigns by the judgment of Ferguson, J. The Chancellor's ground for so doing is, that the Company's fund cannot be used to pay for stock (Vol. 1,* p. 118, lines 21 and 34), and that "the effect of this," says the Chancellor, will be to "leave the stock in the hands of Delap unpaid for; but (that) the true way 20 of working out relief is to let this claim for the purchase money of the stock . . . remain as a personal or individual claim against Delap, by Charlebois and the other transferrors; (and), Delap being a joint plaintiff with the Company, there arises no difficulty on this head." "The stock," the Chancellor adds, "should also be charged with this amount." (Chancellor's judgment, Vol. 1,† p. 119, lines 5-9.)

† Original
Record.

‡ Original
Record.

The foregoing is the judgment of Boyd, C., but unfortunately the remedy thus indicated was not given to any of the vendors of the shares by the terms of the formal judgment of the Court (Vol. 1,‡ p. 123), the formal judgment in this respect being at variance with the Chancellor's written judgment. 30

At the least, the Appellants Allan and Devlin ask that effect should be given to the Chancellor's findings in their favour, and that a personal order be made against the Plaintiff Delap for the balance of the purchase price of the shares, and the stock charged in his hands with the payment thereof. Allan and Devlin are entitled, at the least, to have the judgment herein made consistent with the Chancellor's decision.

§ Original
Record.

But the Appellants Allan and Devlin deny that, "to the extent of these sums, the transaction between Charlebois and the Company manifested in the construction contract is impeachable as being *ultra vires* of the Company" (Boyd, C., Vol. 1,§ p. 118, line 35), and they rely on the reasons presented on 40 this point by the Appellant Charlebois. The Appellants Allan and Devlin would confidently refer to the judgment of Maclellan, J. A., herein (Vol. 1,§ page 174) in support of their contention, and more particularly to the following passages:—

"They sold to him for agreed sums, of which they received part in cash,

"and the remainder in orders upon the Company to be paid out of the money which might become due to the contractor upon his contract." RECORD.

"When, therefore, the contracts between the Company and Charlebois came to be executed, the situation was that the two contracting parties were at arms' length, and could contract with each other like strangers, there being no relation of trust or confidence or duty between them." (MacLennan, vol. 1, * p. 175, line 18, *et seq.*)

"Now, whatever else may be said of this construction contract, in my judgment it cannot be said to be *ultra vires* of the Company. On the face of it, it was good. The Railway Board could agree for the construction of the 50 miles at any price it thought fit. That was a thing, unquestionably, within its power. It might be improvident. The contract price might be excessive, it might even be fraudulent, but it was not *ultra vires*. . . . In my opinion it was clearly binding on Charlebois both at law and in equity, and without any possible ground on which he could be relieved from it." (MacLennan, vol. 1, † p. 177, line 19.)

"Undoubtedly, however, it was optional with the Company either to affirm or to rescind the contract with Charlebois, while Charlebois had no corresponding right. The company could either have set the contract aside, or they could hold him to it, and seek their redress exclusively against the directors. The company could say:—'We will let the contract with Charlebois stand, but we will call upon Codd or Stevens to pay or indemnify the company against the 245,000 dollars, the unpaid price of the shares. . . .'"

"It would be an essential part of the company's case that the transfer of the shares had been a part of the transaction; and, therefore, on the simple principle that whoever seeks equity must do equity, if they would have the money, they must see that the shares are restored. Nothing is better settled than that the condition of rescission, even in cases of fraud, is restitution. . . . But the company do not seek rescission." (MacLennan, p. 179, line 34, and p. 180, line 10.) ‡

"It seems to me that the great part, if not all, of the difficulty arises from calling and treating the construction contract as an *ultra vires* contract. It was not *ultra vires* at all in my judgment. What was wrong about it was that, for reasons of their own, it was made by the directors for a larger sum than it ought to have been made for, and under circumstances which gave the company certain rights of action against its own Directors, and also against Charlebois." (MacLennan, p. 182, line 20.) §

The Appellants Allan and Devlin say that the fact that the Company may have had a right of action against its own Directors, Stevens, Codd, Delap, &c., to oblige them to pay for the shares, is no reason why the company should be now relieved from payment of the accepted orders of the company which Allan and Devlin hold, and the amount of which orders is included in Charlebois' judgment of 28th September 1891. The company's right of action, if any, was a right of action against its own Directors, Stevens *et al*, and not a right of action against the vendors of the shares sold to Charlebois, who was at liberty to pay for them in any manner and out of any funds he pleased.

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continued.

* Original
Record.

† Original
Record.

‡ Original
Record.

§ Original
Record.

RECORD.

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Factum of
Appellants,
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Anderson
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continued.

The Appellants Allan and Devlin ask that the judgment of Ferguson, J., be restored, and they rely upon and adopt the reasons set forth on behalf of the Defendant Charlebois on this appeal, so far as same are applicable.

They say that the transaction, so far as the original shareholders were concerned, was a sale to Charlebois by them of their shares, which included not only their interest in the first 50 miles of the railway, but also all their interest in the rights and franchises of the company for the 450 miles, including the right to a land grant of 6,400 acres per mile for the whole distance, for which they were to receive the sum of 226,000 dollars (in all) and which sum was originally intended to be paid in cash. Owing, however, to 10 subsequent arrangement, they agreed, as a matter of accommodation to Charlebois, to accept as security for the balances due to them on the purchase of their shares, instead of cash, orders or assignments by Charlebois upon the first moneys to be earned by him by building the railway for the company.

This transaction left the Defendants Allan and Devlin ordinary creditors of the railway company, and as such there can be no question as to their right to recover against the railway company the amount of such indebtedness.

The arrangement as to the transfer of stock having been made at the instance and request of Stevens, Delap's agent, who thereupon became the transferee of all the shares of the company, and there being no intention at 20 the time that there should be any further stock issued, and no further stock having been issued, nor any person defrauded by the form of the transaction, the company cannot be heard now to say, as representing subsequent shareholders or the same shareholders, that there was anything illegal or improper in the transaction. In any event, if the transaction be repudiated, it can only be so repudiated upon the parties being restored to their original position, which the company does not offer to do in this action, and which is now impracticable.

One result of the Chancellor's judgment is, that, without there being any pretence of fraud on the part of Allan and Devlin, they are left without pay- 30 ment of a large portion of the purchase-money agreed to be paid for their shares by Charlebois; and, although they released Charlebois from personal liability upon his giving them accepted orders upon the company, yet they are not restored to the position of being able to hold Charlebois for the balance of the purchase price, and by this judgment they are now deprived of any claim against the company for the amount. And this, notwithstanding the fact that the Chancellor himself stated, in his written judgment, that Delap had not paid for the shares, and that the stock should remain charged with the unpaid price thereof accordingly.

The Appellants Allan and Devlin submit that, if the judgment of the 40 Chancellor be adopted, in so far as releasing the company from the liability on their accepted orders, then the Trial Judge should have given them a formal order (in accordance with his written judgment) charging the stock in the hands of Delap with the amount of the purchase-money due them and remaining unpaid, and should also have made a personal order against Delap for such

payment (in accordance with his written judgment). The Appellants Allan and Devlin ask that the Chancellor's judgment, if held to be otherwise correct, shall be amended thus, so as to give them the relief mentioned.

Dated, September 1895.

RECORD.
II.
Factum of
Appellants,
William
Anderson
Allan and
Robert
J. Devlin—
continued.

In the Supreme Court of Canada.

In Appeal from the Court of Appeal for Ontario.

BETWEEN

Alphonse Charlebois, Alexander Macdonald, William Alfred Preston,
John S. Schiller, Frank S. Nugent, The Commercial Bank of
10 Manitoba, The Union Bank of Canada, William Anderson Allan,
Robert J. Devlin and William James Crossen, Frederick John
Crossen and Joseph Henderson, Executors of the Will and
Testament of James Crossen, deceased.
(Defendants) Appellants ;

AND

James Bogle Delap, individually and as a shareholder on behalf of
himself and all other shareholders of the Great North-West Central
Railway Company (except the Defendant John Arthur Codd),
Louisa H. Mansfield, and The Great North-West Central Railway
20 Company - - - - - (Plaintiffs) Respondents ;

AND

The Honourable Francis Clemow, James Murray, Daniel McMichael,
John Arthur Codd and the Right Honourable Edric Frederick,
Baron Gifford, and Robert Lothian Curzon - - - - Defendants.

FACTUM of the Respondent Charlebois upon the cross-appeal of the Plaintiffs,
James Bogle Delap, Louisa H. Mansfield, and the Great North-West
Central Railway Company.

III.
Factum of
Appellant
Charlebois
on Cross-
Appeal.

The Plaintiffs have given notice of appeal to the Supreme Court of Canada
from the Judgment of the Court of Appeal for Ontario whereby the cross-
30 appeal of the Plaintiffs was dismissed, without costs, and the claim of James
Bogle Delap on the bonds was dismissed.

RECORD.

III.

Factum of
Appellant
Charlebois
on Cross-
Appeal—
*continued.** Original
Record.

Upon the cross-appeal the Respondent Charlebois relies upon the Judgment of the Court of Appeal. In the Reasons for Judgment of the learned Judges of that Court the subject is discussed at the following pages :—

By Chief Justice Hagarty, in Vol. 1,* p. 157, at line 17, where he says :—
 “ As to Delap’s alleged claim on the bonds as securities pledged to him, I
 “ hardly see its validity as to the moneys advanced to him up to the remission
 “ to England of the executed bonds. Nearly all advances, or securities given
 “ to obtain advances, were prior thereto ; and apparently without reference to
 “ any bargain or contract that he was to have bonds therefor. On the contrary,
 “ it would seem that his advances were to give him command of the stock, 10
 “ which he has ultimately got into his own hands, by the transfers in the
 “ Company’s books.”

† Original
Record.

The Judgment of Mr. Justice Burton, Vol 1,† page 167, beginning at line 28, where the question is fully discussed, his conclusion being found at page 172, line 16, where he says :—

“ I am of opinion, therefore, that the Plaintiffs have failed to make out a
 “ case as pledgees of the bonds, and that the appeal on that branch of the case
 “ must also be allowed, and that the action of Delap and Mrs. Mansfield as
 “ to the lien on the bonds should have been dismissed with costs.”

‡ Original
Record.

The opinion of Mr. Justice McLennan upon the subject is to be found in 20 Vol. 1,‡ page 184, beginning at line 11, and at line 31, he says :—

“ I do not think the bonds in question were ever lawfully delivered to these
 “ Plaintiffs by way of pledge or security. They were, as I think, according to
 “ the evidence, issued and sent to England ; not to be pledged or delivered by
 “ way of security, either for past debts or present advances, but for the purpose
 “ of being sold out and out ; and that the Company never authorised anyone to
 “ deal with them otherwise. It is admitted that, so far as either of them ever
 “ had possession of any of the bonds, such possession was obtained after (and
 “ not before or at the time) their advances were made.”

It will be seen that the three judges concur in holding the claim of Delap 30 upon bonds to be invalid, although Chief Justice Hagarty gives his opinion that Mrs. Mansfield had made advances upon the security of the bonds.

The facts with regard to the bonds are as follows :—

Under Section 14 of the Company’s charter, 51 Vic., c. 85, the directors are empowered to issue bonds, and “ 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 may be able to obtain for the purpose of raising money for
 “ prosecuting the undertaking.”

At a meeting of the directors held on the 17th September 1889, it was resolved that a special general meeting of the shareholders of the Company be 40 called for the purpose of passing a resolution authorizing the issue of bonds, under the powers given by the charter, and that such meeting be held at Ottawa on 21st day of October 1889. Vol. 3,§ p. 239.

§ Original
Record.

A special general meeting was accordingly held on the 21st October, 1889, and resolutions were passed reciting the provisions of the Charter, and resolving, “ that the directors be and they are hereby authorised in pursuance of

“ the said Act to issue bonds under the seal of the said the G. N. W. Central Railway Company, signed by its president or other presiding officer, and countersigned by its secretary and the treasurer, payable at such time and in such manner, and at such place or places in Canada, or elsewhere, and bearing such rate of interest as the directors shall think proper, and 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 may be able to obtain, for the purpose of raising money for the purpose of prosecuting the said undertaking.” Vol. 3, * p. 243.

RECORD.
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III.
Factum of
Appellant
Charlebois
on Cross-
Appeal—
continued.
* Original
Record.

- 10 The mortgage deed was produced at the meeting and initialled by the president as approved, and the directors were authorised to use such mortgage deed as security for the bonds by them issued, with such modification, amendments, or alterations, as they might see fit to make. Vol. 3,† p. 243.
- † Original
Record.

Afterwards a meeting of the directors was held on the 2nd November, 1889. The resolution was then passed, authorising the directors of the company to issue “ bonds, &c., and to 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 may be able to obtain for the purpose of promoting the said under- “ taking.” Vol. 3,† p. 244.

- 20 On the 11th November, 1889, the directors authorised the execution of a power of attorney from the Great North-West Central Railway Company to J. A. Codd, appointing him attorney of the company to sell and dispose of the bonds of the company “ at such price as we may authorise our said attorney, “ and to make such arrangement, arrangements, agreement, or agreements for “ the sale and disposal of the said bonds of the said company to any person or “ persons, syndicate or syndicates, or otherwise as our said attorney shall think “ advisable, provided, however, that our said attorney shall not make any sales “ of the said bonds except as is agreed to by us.” Vol. 3,§ p. 74, l. 33.
- † Original
Record.

§ Original
Record.

30 This power of attorney was the only power in force on the 2nd June, 1890, when the mortgage to Gifford and Curzon was executed.

It is contended that the second mortgage to Gifford and Curzon was issued without the authority of the shareholders, and is therefore void.

1. Because the power to issue bonds and to give a mortgage securing them must be derived from a meeting of shareholders, as required by the Act.

See Section 14 of the Special Act,
And Section 93 of the Railway Act.

2. That the power cannot be delegated to the directors, and, therefore, that so much of the resolution as authorised the directors to alter, amend, or modify the mortgage and bonds was void.
- 40 3. The mortgage of the 2nd June, 1890, and the issue of the bonds secured thereby was never submitted to or confirmed by a meeting of shareholders.

RECORD.

III.

Factum of
Appellant
Charlebois
on Cross-
Appeal—
continued.

* Original
Record.

† Original
Record.

‡ Original
Record.

4. The authority given by the meeting of the 21st October, 1889, was exhausted by the execution of the first mortgage to the Imperial F. and I. Agency Company. (Exhibits, *Vol. 3, p. 93.)
5. The resolution of the directors of the 27th June, 1890, assuming to act upon the authority conferred by the shareholders, was illegal and void.
6. The second mortgage contains no trust as to the proceeds of money arising from the bonds.

Compare the first mortgage, †vol. 3, p. 93,
With the second mortgage, ‡vol. 3, p. 105.

10

The second mortgage authorises the issue of bonds to the amount of 10,750,000 dollars, being the total issue for 430 miles at the rate of 25,000 dollars a mile, to be issued in series, of which the first series, for the sum of 2,500,600 dollars (515,600*l.*) to be called series "A," were to be issued. Vol. 3, p. 105.

§ Original
Record.

The bond is in form a covenant to pay to bearer the sum of money named therein at maturity, but each bond is declared to be issued upon and subject to the conditions endorsed, which shall for all purposes be deemed to be incorporated therewith. Exhibit 102, §Vol. 3, p. 228.

20

By the condition endorsed the holders of bonds are declared to be entitled *pari passu* to the benefits and subject to the provisions of the mortgage of the 2nd June, 1890. (p. 229.)

The issue of the bonds to the amount of 10,000,000 dollars under the mortgage of the 2nd June, 1890, is *ultra vires* and void.

The company proposed to issue bonds in respect of the whole mileage from Brandon to Battleford, 430 miles, to be issued in series, of which the sum of 515,600*l.* was designated as series "A."

The whole mass of bonds were to be payable *pari passu* out of the whole line, and in several series, the same not being issued at the same time, but 30 successively, with possibly an interval of many years between them.

No such arrangement is authorised by the company's charter.

The capital issue attempted, of 515,600*l.*, being the full amount of the borrowing power of the company up to 100 miles, was illegal and void, as being *ultra vires* of the borrowing powers of the company, because there was no contract in existence for the construction of more than 50 miles. See Sec. 14 of the charter.

|| Original
Record.

The Plaintiffs contend that the issue was valid, because a second construction contract had been made by the company with Charlebois. Ex. 24, || vol. 3, p. 65.

40

The time of commencement is stated, in the alleged second contract, as follows:—At page 66, line 34.

"The work to be commenced within one month *after the Company shall give the contractor notice* in writing so to do, but unless such notice shall *be given within three months after the signing of this contract*, the time fixed for the completion shall be extended by a period equal to the time such notice is delayed beyond three months from the date hereof, *and in any case,*

"such notice shall be given within ten months from the date of signing the contract." RECORD.

III.

By the last clause of the contract, time is declared to be of the essence of the contract. Factum of Appellant Charlebois on Cross-Appeal—*continued.*

The contract, then, was conditional upon notice being given by the company, and such notice could only be given within ten months from the date of the contract, which was dated the 16th day of October, and the right to give such notice consequently expired on the 16th day of August 1890.

No notice was ever given, and the contractor never at any time became liable to construct under this second contract. It was a sort of a springing contract, to come into effect upon the giving of notice.

No more than 50 miles, therefore, of the company's railway ever were constructed or under contract for construction as required by the charter.

The existence of a contract for construction under sec. 14 is a condition precedent.

It may be said that the attempted issue of bonds may be held good for the 50 miles actually under construction, but the bonds are charged rateably over the whole of the property of the company, including the second 50 miles as well as the first 50 miles.

20 The mortgage of the 2nd June 1890, is fraudulent and void, as being a fraud upon the creditors of the company including Charlebois, under the Common Law and the Statute, 13 Eliz., chap. 5, because it conveys the whole property of the company to the trustees in trust to permit the company to use and work the railway, while the trustees have no power to take any proceedings to protect the interests of the holders or any other of the creditors of the company until the company shall make default for 12 months in payment of some principal money owing upon its bonds. The bonds are not payable for 20 years.

There is no provision made enabling the trustees to enforce the mortgage upon default in payment of the interest. Clause 3, *vol. 3, p. 106.

* Original Record.

By clause 4, the trustees may appoint a person as receiver of the mortgaged property, if default shall be made by the company in payment of interest upon any bonds intended to be thereby secured and for the time being outstanding (thereinafter called the said bonds) for six calendar months. But they are not compelled to do so, and the receiver when appointed is to be the agent of the company. †Vol. 3, p. 106.

† Original Record.

By clause 5, the trustees are not bound to exercise the trusts or powers, except on the request in writing of persons registered as bondholders. ‡Vol. 3, p. 107.

‡ Original Record.

40 The provisions of the deed show it to be a voluntary deed, intended to have the effect of defeating and defrauding creditors, by making the company execution proof.

The trusts for the disposition of the money under the mortgage, such as the power to lend money to the company for the erection of farm buildings, fences and drainage, are *ultra vires*, and fraudulent against creditors, and are manifestly framed in the interest of the mortgagors, so as to give them control of the revenues of the company through the agency of the trustees of the mortgage. §Vol. 3, p. 109.

† Original Record.

RECORD.

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III.
Factum of
Appellant
Charlebois
on Cross-
Appeal—
continued.

By sec. 20 of the charter, the purchase money arising from the sale of lands must be applied in the first place to the satisfaction of the mortgage, and in the next place in accordance with the trusts declared in sec. 19, that is, in payment of the expenses, connected with the acquisition, survey, management and sale of the lands, &c.

If the mortgage is void for any of the reasons mentioned, the bonds cannot have any greater force than so many evidences of debt, because the bonds themselves do not import any charge upon the property of the company, and without the aid of the mortgage, Delap and Mansfield are in no better position than simple contract creditors, who are entitled to be paid with other 10 such creditors out of the assets of the company after secured creditors are paid.

A person named Cansdale, who was the managing clerk in the office of Stevens, Bawtree and Stevens, the solicitors in England for the company, came out from England in June 1890, bringing with him the unsigned bonds and mortgage, which had been prepared in England by Stevens' firm, to have them executed in Canada by the president, J. A. Codd. He says he met Codd in New York. "I told him the object of my coming over to Canada was to have the bonds signed and sealed, which I had with me, and also to have the mortgage trust deed registered." Vol. 2,* p. 325, line 20. 20

* Original
Record.

When asked as to the arrangement for giving security to Delap, he says, "The mere handling of the bonds made it a first charge." Vol. 2,† p. 327, line 3. And when asked how that arrangement appeared, he says, "I believe the arrangement was entered into when Mr. Delap first came in connection with the matter, that was some time in 1889, I cannot tell you the exact date."

† Original
Record.

"Q. Was that consummated by this document, Heads of Agreement between James Bogle Delap and John Arthur Codd?—A. Yes."

"Q. If that agreement does not comprise a clause stating that Delap was to have these bonds as soon as issued, do I understand you to say that 30 was the agreement at the same time?—A. What I say is this, it was always understood, and I told Delap over and over again long before I went to Canada, he was to have these bonds." Page 328, line 6, vol. 2.‡

‡ Original
Record.

Cansdale while in Canada was present at two meetings of the directors of the company, the first one was held on 27th June 1890, and the minutes are printed in §vol. 3, p. 248.

§ Original
Record.

At that meeting a resolution was passed ratifying alterations made in the mortgage trust deed.

Another meeting was held on the 3rd July for the purpose of correcting some formal defect in the proceedings with regard to the mortgage. The 40 minutes of this meeting are printed in ||vol 3, 249. Both meetings were called at Cansdale's request. See his evidence, vol. 2,¶ p. 328, line 28; also p. 331, line 12.

|| Original
Record.

Although the two meetings were expressly called in reference to the bond mortgage and the issue of bonds, no resolution appears authorising either Codd or Cansdale to deal with the bonds, or to hold them or pledge them for or to Delap or Mrs. Mansfield. In fact, the evidence shows that Cansdale was merely an agent to procure the signing and sealing of the bonds, and to carry them to

¶ Original
Record.

England, where they were to remain in the custody of Stevens & Co., as solicitors for the company, until they could be sold or disposed of to the public, and that no such sale or disposition ever took place.

The evidence of Cansdale, upon the face of it, is the evidence of a man who was perfectly reckless as to his statements. At page 330, line 15, he says that the obligation intended to be covered were such moneys as Delap had already advanced, and, four lines further down, he makes a statement utterly inconsistent with it.

At the time Cansdale went to Canada, the only advance which Delap had made was the sum of 50,000*l.*, sent out to C. R. Stevens, to purchase Charlebois' shares. Vol. 2,* p. 343, line 40, p. 343, lines 1 to 12.

Mrs. Mansfield had not advanced any money. Vol. 2,† p. 343, line 42.

Cansdale's account of what took place at the time of the delivery of the bonds, is as follows:—

“ Q. When you asked Codd for the bonds after they had been signed, what did you say to him?—A. I do not think I asked him for the bonds in the ordinary acceptance of the word, I said to him, they are all signed and sealed, you are to deliver them to me, which he did; he said, all right.” Vol. 2,‡ p. 350, line 7.

“ Q. You have told us nothing that was said between you and Codd on the occasion of these bonds being thus packed up and dispatched to England?—

“ A. I told you all that transpired between us in reference to the delivery of the bonds to myself.

“ Q. There was no more talk between you on the subject?—A. No, the thing was done.

“ Q. No further explanations were asked or required?—A. No.

“ Q. No other documents produced at the time, or contract in respect of the matter?—A. I do not understand you.

“ Q. There were no papers either referred to or passed between you and Codd on that occasion?—A. In reference to the handing of these bonds?

“ Q. Yes?—A. Certainly not.”

When the bonds reached England they remained for more than a year in the office of Stevens, Bawtree and Stevens, but, as Cansdale said in his evidence, because there was a small fire close to the office, the bonds were on the 19th August 1891 taken to the Safe Deposit Company, and they remained there in the custody of Stevens, Bawtree and Stevens until the 16th August 1892, when it seems that the receipt of the Safe Deposit Company given to Stevens and Company was returned by them, and a new receipt given to Delap. This included the whole amount of the bonds.

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Original Record	{	Vol. 2, page 357, line 26.
		“ 2, “ 393.
		“ 2, “ 201.
		“ 2, “ 397.
		“ 3, “ 207.
		“ 2, “ 332.
		“ 3, “ 208.
		“ 2, “ 298.

RECORD.

III.

Factum of
Appellant
Charlebois
on Cross-
Appeal—
continued.

* Original
Record.

† Original
Record.

‡ Original
Record.

RECORD.

III.

Factum of
Appellant
Charlebois
on Cross-
Appeal—
continued.

* Original
Record.

The bonds of the nominal value of 120,000*l.* which had been left in Canada by Cansdale, remained in Canada until some time about the 28th of October 1891, when Cansdale, being again in Canada, requested Codd to send them by express to Stevens' firm, as Codd told him he should not want them for Charlebois.

Long after the 16th of August 1892, and after the commencement of this action, Delap, at Stevens' request, permitted Stevens' firm to regain possession of 50,000*l.* of bonds, retaining for himself the remainder of the issue, namely, 465,600*l.*, which is the amount now in court. Vol. 2,* p. 201.

With regard to the 50,000*l.* of bonds unaccounted for, and as to which no 10 explanation is given, Mrs. Mansfield can have no better title to them than Delap had.

As to the bonds in court, it is obvious that Mrs. Mansfield, upon the evidence, is not entitled to assert any claim against them.

† Original
Record.

Further evidence as to the disposal of the bonds will be found at the following pages:—Vol. 2,† page 374; page 375, lines 1 to 3; page 384, line 6.

‡ Original
Record.

Delap's agreement, already referred to, shows that there was no provision in it giving him any title to be secured by the delivery of bonds, see the agreement, Vol. 1,‡ p. 9.

1. The Defendant objects that the Plaintiff Delap is not a holder of bonds. 20 He had bonds in his possession which he received from Stevens, who occupied a fiduciary position towards the company.

§ Original
Record.

Stevens was the solicitor of the company in England. He was also the solicitor of the trustees for the mortgage. (Vol. 2,§ p. 334, line 26.) Charles R. Stevens was a director of the company, having been elected at the annual general meeting held on the 7th June 1892, and had no power or authority to give up the possession of the bonds of the company to Delap for any purpose whatever, and Delap's obtaining possession was, under the circumstances, a wrongful taking by Delap, which did not in any way bind the company, and they would be entitled now to compel Delap to restore the bonds to them. 30

Gaslight Improvement Co. *v.* Terrell, L.R., 10 Eq., pp. 168 and 175.

2. Codd himself had no authority to part with the bonds of the company except by way of sale for a price to be submitted to and approved of by the board of directors. The only authority he had is contained in the power of attorney, dated the 11th November 1889, which was approved at a board meeting of the directors held on the same day. Vol. 3. p. 245. Vol. 3, p. 74.

The power is to sell and dispose of the Bonds at such price as we may authorise and "to make such arrangements or agreements for the sale and disposal of the said Bonds as our said attorney shall think advisable, provided however, that our said Attorney shall not make any sales of the said bonds 40 "except for such prices as is agreed to by us."

There is not one word in the power of attorney which would authorise the handing of the bonds to Stevens in the manner disclosed in this evidence, and for the purpose stated by Cansdale.

|| Original
Record.

The power to borrow upon bonds does not enable one to hand them over as security for part advances. The loan of 50,000*l.*, under Delap's agreement, was to Codd, not to the company. See agreement, Vol. 1,|| p. 9.

Although the handing over of the bonds to Stevens, as alleged, is not authorised directly or by implication by any resolutions of the directors, there are a number of resolutions of the board which are quite inconsistent with the contention.

On the 8th December 1890, at a meeting of the directors, a resolution was passed, "That the directors, feeling the great importance of a speedy settlement of the differences between the contractor and the company, consider it desirable and request the president to proceed to England for the purpose of effecting a final adjustment of all matters relating to the enterprise, and that he be given a power of attorney for such purpose." Vol. 3,* p. 254.

The power of attorney was accordingly given by the company to Codd, bearing that date, which authorised Codd to sell and dispose of the bonds, and also to borrow money on security of the said bonds and to cancel the present issue, with power of substitution. Vol. 3,† p. 127.

It was said at the trial that the second power of attorney was unimportant, because it was claimed that the delivery of bonds to Delap was under the first power of attorney, but both series should be examined.

The Defendant's claim that the delivery of the bonds under the circumstances above mentioned could not constitute an issue of bonds.

Under the company's charter, the directors are authorised to issue bonds.

It must be the act of the board, and a president alone cannot issue bonds, nor can the board delegate to the president their power to issue bonds, consequently authority to Codd must be established either by the power of attorney or by the resolution of the directors.

Cartmell's case, L.R., 9 Ch., 691.

The power is to issue bonds, and the word "issue" is defined in two cases.

In the Attorney General v. Birbeck, 2 Q. B. D., page 611, Lord Coleridge discusses the meaning of the word "issue," as used in regard to notes in the English Stamp Act. "The word means the delivery of notes to persons who are willing to receive them in exchange for value in gold, in bills, or otherwise; the person who delivers them being prepared to take them up when they are presented for payment."

In Levy v. Abercorris Slate and Slab Company, 37 Chy. Div., page 264, the word "issue," as applied to debentures, defined by Chitty, J.

"It must be issued; but issued is not a technical term, it is a mercantile term, well understood. 'Issue' here means the delivery over by the company to the person who has the charge."

The issue must be the act of the company.

The person who claims title to the bond must trace such title through the company, and the unauthorised delivery to him of bonds cannot confer upon him any title at all.

The principle is well illustrated in Mowatt v. Castle Steel Ironworks Co., 34 Chy. Div. 58.

In the judgment of Cotton, L.J., at page 62, he says: "It is argued that, as they bore the date the 10th May 1882, that must be treated as the day on which they were issued. But the debentures must be delivered before they can be binding on the company. The fact of their being dated and sealed p. 5240.

RECORD.

III.

Factum of
Appellant
Charlebois
on Cross-
Appeal—
continued.

* Original
Record.

† Original
Record.

RECORD. "does not show that they were delivered. There was a resolution that
 "debentures to the amount of 10,000/. should be sealed, but not that they
 "should be delivered. They were accordingly perfected and sealed, but they
 "were not delivered, and, if not delivered and issued, they could not belong to
 "the holder."

III.
 Factum of
 Appellant
 Charlebois
 on Cross-
 Appeal—
continued.

"But another point has been raised before us. It is said that the company
 "and the other debenture holders are estopped from saying that these bonds
 "were not issued. I will not go through the cases which were cited on the
 "question whether the company was estopped, because it is clear that even if
 "the company is estopped (though I do not say it is) the other debenture 10
 "holders cannot be bound."

The facts of this case are very similar to the present one.

No claim can be put forward on account of bondholders unless either the trustees or all bondholders are before the Court, because the company are entitled to a judgment for redemption upon payment of the amount due not merely upon part of the issue but upon the whole issue.

By Section 15 of the Charter the bonds authorised, without registration or formal conveyance, "shall be the first preferential claims and charges upon
 "the said company, and the undertaking, tolls, and income, and real and per-
 "sonal property thereof, now or at any time hereafter acquired, save and 20
 "except, as is provided for, in the last preceding clause, and each holder of the
 "said bonds shall be deemed to be a mortgagee or incumbrancer upon the said
 "securities, and shall have priority as such."

By Section 17, all bonds, debentures, and other securities, hereby authorised, may be made payable to bearer, and shall in that case be transferable by delivery.

By Section 18, "It shall not be necessary, in order to preserve the priority,
 "lien, charge, mortgage, or privilege purporting to appertain to, or to be created
 "by any bond, that such bond or mortgage deed should be registered, but every
 "such mortgage deed shall be deposited in the office of the Secretary of State, 30
 "and of such deposit notice shall be given in the 'Canada Gazette.'"

The Silkstone and Haigh Coal Company had power under the Articles of Association to borrow money on the security of the company for its property, and for that purpose to create mortgages and issue debentures. They accordingly borrowed a sum of money for which they gave debentures payable to bearer, and purporting to charge the undertaking, lands, property, revenues, and effects, both present and future, of the company. Afterwards they borrowed for the purposes of the company upon deposit of title deeds of the colliery.

Held—That the mortgagee, by equitable deposit, has precedence over the debentures, *Wheatly v. Silkstone Colliery Company*, 29 Ch. D., 715. 40

The last case is a direct authority, under a similar security, given under a similar statute, and shows that the charter has not the meaning contended for by the Plaintiffs.

It has not the effect, at all events, of makings such bonds absolute first charges upon the property of the company, so as to cut out all prior liens and charges.

It cannot, at the most, do more than give a first charge upon the property of

the company as they held it, at the date of the mortgage, subject to all valid RECORD.
liens and charges then subsisting. —

To give it the effect contended for would be to make the mortgage and bonds issued thereunder a first charge, not only upon the property of the company, but upon the property of other people.

III.
Factum of
Appellant
Charlebois

For example—1. Upon land acquired for right of way, but not paid for, and upon which the owner retained a vendor's lien for unpaid purchase money. 2. Upon rolling stock and chattel property entrusted to the company, but not paid for, and upon which the seller retained a lien by agreement. 3. Or, as in 10 this case, upon property on which there subsisted a contractor's lien for moneys due for construction.

The meaning is merely that the bonds form a first preferential charge upon the assets of the company, as mentioned, having priority over ordinary unsecured creditors subsequent in priority, but subject to all the charges provided for by the mortgage deed, and also to the classes of claim provided for in Clause 14.

F. H. CHRYSLER,
Counsel for the Respondent Charlebois, upon
the Cross Appeal of Delap and others.

In the Supreme Court of Canada.

20

Appeal from the Court of Appeal for Ontario.

Between

Alphonse Charlebois, *et al.* - - - (Defendants) Appellants,

and

James Bogle Delap, *et al.* - - - (Plaintiffs) Respondents.

FACTUM on behalf of the Appellants, William James Crossen, Frederick IV.
John Crossen, and Joseph Henderson, Executors of the last Will and Testament Factum
of James Crossen, deceased. of the

This is an appeal by the Defendants from the judgment of the Court of William
Appeal for Ontario, in so far as such judgment affirms the judgment of the James
Honourable the Chancellor of Ontario, in giving relief to the Plaintiffs by setting Crossen,
30 aside a judgment pronounced by the Honourable Mr. Justice Ferguson in the Frederick -
year 1892, in an action between the present Appellant (Defendant), John
and the Great North West Central Railway Company. Crossen, and
Joseph
Henderson.

RECORD.

IV.
Factum
of the
Appellants,
William
James
Crossen,
Frederick
John
Crossen, and
Joseph
Henderson
—continued.

The facts of the case, in as far as these Appellants are concerned, may be shortly stated. Prior to the month of January 1890 the late James Crossen built certain cars for Charlebois (the contractor for the construction of a portion of the Great North West Central Railway), who intended to supply them to the Railway Company, and these cars had, at the date above referred to, been shipped to the order of Mr. Crossen's bank, with directions that the bill of lading, sent forward at the same time, should be given up on the payment of a bill of exchange for the price of the cars, drawn by Mr. Crossen on Charlebois. The draft was not accepted or paid, and the cars were not delivered to Charlebois, but on the 13th day of January 1890 a contract was entered into between 10 Crossen and Charlebois, by the terms of which, on the acceptance by Charlebois of the bill of exchange, the cars were to be delivered to him, but the property was not to pass until payment of the bill.

The cars were not delivered to Charlebois under the contract, and he, not having paid the bill of exchange, was being pressed for payment, and at the same time the Railway Company was exhibiting a desire to get possession of the cars.

While things were in this position Charlebois, in September 1890, issued a writ out of the Chancery Division of the High Court of Justice for Ontario against the Railway Company, to enforce his claims under the construction 20 contract.

Before the trial of this action of Charlebois *v.* the Great North West Central Railway Company Mr. Crossen died, in December 1890, and these Defendants as executors of his will became the owners of the cars. The trial took place in October 1891, and on the 16th of that month counsel for Charlebois wrote the solicitor for these Defendants that a settlement of the action had been arrived at, and that the judgment provided for a first lien over the road, land grants, and rolling stock of the railway in favour of these Appellants for the amount of their claim against Charlebois, and asked them to accept the terms of this judgment, and give possession of their cars to the 30 Railway Company. The next day Charlebois himself wrote urging the same thing.

After some consideration it was decided to accept the terms of this judgment and deliver the cars to the Company, and the solicitors of these Appellants, in answer to a letter from the Company, wrote on the 4th November 1891, as follows :—

“ Cobourg, Ontario, 4 November 1891.

“ *Re G.N.W. Central Railway.—Crossen v. Charlebois.*

“ Dear Sir,—Our clients, the executors of the estate of the late James Crossen, have accepted the decree you refer to in your letter of yesterday, so far 40 as it vests in you the property as you state. We do not rely upon our lien on the cars which we have, or had, under our agreement with Mr. Charlebois. We come in under and accept the decree.

“ Of course, as against Mr. Charlebois, we shall expect him to pay us the

balance not secured us by the decree; but that, of course, does not concern your RECORD.
Company, it being merely a personal claim as against Mr. C.

"We wrote your solicitors some days ago accepting the decree.

"Yours, &c.

"RIDDELL, ARMSTRONG, and NESBITT.

"To J. A. Codd, Esq.,

"President G.N.W. Central Railway of Canada, Ottawa, Ontario."

To this letter the Company replied, on the 6th November 1891 :—

"We have received your letter of the 4th, which is satisfactory."

10 Subsequently formal authority was given to the Railway Company, at the request of the Railway Company, by these Appellants to receive the cars, and the Company took possession of and has ever since been using them.

The clause in the judgment on which these Appellants relied for security in giving up their cars will be found at pp. 28 and 29 of Vol. I.* of the case in * Original
appeal. Record.

20 These Appellants adopt, in as far as they are applicable, the reasons of appeal from the judgment of the Court of Appeal mentioned in the factums of the other Defendants, and submit that at all events the lien conferred by the said judgment of February 1892, in favour of these Defendants, is a valid one. For it is not disputed that cars such as those here in question were a necessary part of the equipment of the railway, and that the Company might lawfully purchase such cars. Nor is it disputed that on the representation of the Company, and in the *bonâ fide* belief that the judgment had created a valid lien on all the property of the railway, these Defendants parted with possession of their cars, and that it is impossible to restore them to their former position; and they submit that as a result the Company is estopped from denying the validity of the judgment and lien, and that the other Plaintiffs can be in no higher position than that occupied by the Company; and they submit, further, that the original contract on which the judgment was based was not *ultra vires* of the Company,
30 or void for any other reason, and even if it were void it does not follow that the judgment is void also.

The judgment, although referred to as a consent judgment, was, as expressed by Mr. Justice Burton, the result of a case that was fought most strenuously by and on behalf of the Railway Company by able counsel acting *bonâ fide*, and, as the learned judge further says, "even if the Company had set up in that action all the matters which they have brought forward in the present one they would have failed. There is an entire absence of anything like proof that the judgment was obtained by fraud or collusion of any sort.

40 These Appellants rely on the reasoning adopted in the Court of Appeal by the Honourable Mr. Justice Burton and the Honourable Mr. Justice MacLennan.

These Appellants will refer to the following among other cases: *Hawkin v. Bourne*, 8 M. & W. 703; *Cook's Case*, 26 W.R. 55; *Williams v. St. George's Harbour Co.*, 2 DeG. & J. 547; *Prince v. Seligman*, 11 Times L.R. 473; also to the cases referred to in the factums of the other Appellants.

W. R. RIDDELL,

HUGH E. ROSE,

Of Counsel for the said Appellants.

IV.

Factum
of the
Appellants,
William
James
Crossen,
Frederick
John
Crossen, and
Joseph
Henderson
—continued.

RECORD.

In the Supreme Court of Canada.

Charlebois et al., v. Delap et al.

FACTUM of Appellants, the Union Bank of Canada.

V.
Factum
of the
Appellants,
the Union
Bank of
Canada.

**Sic.*

The Appellants, the Union Bank, claim 150,000.00 dollars, and interest, from the Respondent Railway Company, under the judgment of Mr. Justice Ferguson of the 28th September 1891, obtained by Charlebois against the Company.

This sum of * 150,000.00 dollars represents money borrowed on the 2nd of November 1889 from the bank by Charlebois with which to carry out his contract for the completion of 50 miles of the railway. It was thus borrowed 10 about seven weeks after the contract was signed, under the circumstances hereinafter mentioned.

The Appellants, the Union Bank, maintain that the bank has, by contract, separate and substantive rights against the Company in support of the bank's large claim, in addition to the reasons put forward by the Appellant Charlebois why his judgment should be upheld. The Appellant bank relies on the arguments presented on behalf of Charlebois, so far as applicable, but also desires to enforce its own additional rights of action subsisting prior to the judgment of Ferguson, J., which has been attacked by the Company, as well as its rights under such judgment. 20

† Original
Record.

This 150,000.00 dollars is contained in the amount mentioned in Section 2 (d) of the judgment of Mr. Justice Ferguson, set out on page 29 of Vol. I.†

This clause of the judgment reads as follows :—"The second charge on the said fund is to be the sum of 380,397.00 dollars, with interest at 6 per cent. on 271,555.00 dollars, and at 4 per cent. on 108,842.00 dollars, which is payable to the Plaintiff for his own use, or for the use of any person or Corporation to whom he may have heretofore assigned the moneys payable to him or a portion thereof under his said contract, according to their several present priorities, if any, payment to any holder of any such order or orders to be considered as payment to the Plaintiff (Charlebois) by the Defendants (the Railway Company)." 30

The sums above mentioned were ordered, by Section 3 of the judgment, to be paid into the Bank of Montreal, at Ottawa, and in default of their being so paid within six months from the date of judgment, then said judgment directed that "the Plaintiff may proceed to exercise all his rights as chargee of the said premises and all of them, the said rights being the full rights of a mortgagee with judgment for sale."

‡ Original
Record.

The bank's claim arose in this way : When Charlebois made his agreement with Codd in Toronto on the 9th September 1889 (Vol. I.,‡ p. 12), agreeing with certain variations to carry out the old shareholders' agreement of the 9th April 1888, it was provided therein, by Clause 7, as follows : "The purchaser to give, 40 within 30 days, satisfactory evidence to Mr. Charlebois' bankers that all payments will be made according to the terms of present agreement."

§ Original
Record.

This agreement of the 9th September 1889 was at the same time endorsed by Mr. C. R. Stevens, Delap's solicitor and agent (Vol. 3,§ p. 28, line 35), as

follows: "With reference to the within heads of agreement, I hereby undertake that, so soon as within arrangements are carried out, I will take the necessary steps to prove to Mr. Charlebois' bankers that all payments which will become due under the said agreement will be paid at the times mentioned, and that the rails will be provided as arranged, such proofs to be in such form as Mr. Charlebois' bankers may desire, and to be given within 30 days.

(signed) "CHARLES R. STEVENS."

RECORD.
—
V.
Factum
of the
Appellants,
the Union
Bank of
Canada—
continued.

Charlebois' construction contract, between himself and the Company, was afterwards executed a week later at Ottawa, on the 16th September 1889
10 (Vol. I.,* p. 63).

This contract, on the face of it, is a construction contract for 200,000*l.*, of which 50,000*l.* is acknowledged to have been paid in cash; and by Section 2 thereof (Vol. I.,† p. 65) the Company agrees with Charlebois, upon completion and equipment of the 50 miles of railway to the satisfaction of the Government, "to pay at the City of Ottawa to the said contractor, his executors, administrators, or assigns, the further sum of one hundred and fifty thousand pounds sterling money (150,000*l.*), making in all the sum of 200,000*l.*, in full payment for said completed 50 miles of railway, to be delivered to the said Company after said inspection and approval thereof."

20 The Union Bank's claim is upon three orders, or assignments, drawn by Charlebois upon and accepted by the Railway Company under seal on the 2nd November 1889, aggregating 150,000.00 dollars, which orders the bank took and hold as collateral security for repayment by Charlebois of the 150,000.00 dollars borrowed on notes by Charlebois from the bank on that day, for the purpose of raising money to proceed with his contract for completion of the first 50 miles of railway.

The three orders in favour of the bank are set out in Vol. 3,‡ p. 73, but the Company's acceptance under seal has not been printed therein, by some mistake.

30 However, both the orders and the acceptances are printed on page 94 of Vol. I.§ in the Statement of Defence of the Union Bank.

The first order and the Company's acceptance of it read as follows:—

(Order.)

"To the Great North West Central Railway Company:—Out of the moneys arising from and payable to me under my construction contract with the Great North West Central Railway Company (dated 16th day of September 1889, for the first 50 miles of said Company's line), and payable to me upon completion thereof, pay to the Union Bank of Canada, or order, the sum of 75,000 dollars, and charge said amount to me upon my said Contract. This is to be and to be deemed a complete equitable assignment of so much of said moneys. Dated, at
40 Ottawa, this 2nd day of November 1889.

(signed) "A. CHARLEBOIS."

(The Acceptance.)

"To the Union Bank of Canada:—The Great North West Central Railway Company, pursuant to Resolution of the Board passed on the 7th October 1889,

* Original
Record.

† Original
Record.

‡ Original
Record.

§ Original
Record.

RECORD. and of the bye-law of the Company, hereby accept the foregoing assignment, and agree to pay the same out of the moneys therein mentioned. Dated, at Ottawa, the 2nd day of November 1889.

V.
Factum
of the
Appellants,
the Union
Bank of
Canada—
continued.

“As witness the Corporate Seal of the Great North West Central Railway Company.”

The two other orders in favour of the Union Bank, for 50,000 dollars and 25,000 dollars respectively, are in the same form, and are similarly accepted under the Company's Corporate Seal.

* Original
Record.

The resolution referred to in the foregoing acceptance by the Company is Exhibit 35, printed in Vol. 3,* p. 241, and on page 64, as follows:—

10

“Minutes of a meeting held at the Windsor Hotel, Montreal, on the 7th October 1889, at which the following directors were present:—C. R. Stevens, J. A. Codd, H. K. Gregson.

“The Minutes of the last meeting of directors, held on the 21st September 1889, having been read and confirmed, it was:—

“Moved by Mr. Gregson, seconded by Mr. Codd:—That the contractor, Mr. Charlebois, having informed the Company that he was desirous of giving orders to the Company to pay to third parties various amounts out of the balance payable to him upon completion of the first 50 miles of railway, and having requested the Company to accept such orders when received, that the Company do accept such orders, provided they do not exceed in the aggregate the balance due to Mr. Charlebois.—Carried.”

† Original
Record.

In addition to the foregoing, the Union Bank took a document from the Railway Company (Evidence, Vol. 2,† p. 82) before making the advance to Charlebois, which document forms a material part of the Railway Company's contract with the bank, and reads (Vol. 3, p. 74) as follows:—

“Ottawa, November 2, 1889.

“Manager, Union Bank, Ottawa, Ontario.

“Dear Sir,—In accepting the orders of Mr. Charlebois on our Company for (150,000 dollars) one hundred and fifty thousand dollars, I beg to state that there is sufficient margin in the amount to be paid Mr. Charlebois upon completion of his contract for the first 50 miles of our road to meet this amount over and above all similar or other orders previously accepted by our Company against the amount payable to him upon completion of the first 50 miles.

“ (signed) J. A. CODD,
“President of the Great North West Central Railway.”

The foregoing is some of the documentary evidence upon which the Union Bank's claim is based, in addition to Charlebois' judgment of 28th September 1891.

Having thus shortly presented the bank's documentary evidence, it will be here well to state the circumstances under which the advances were made, and the necessity for such advances.

It is to be borne in mind that Charlebois, at the outset, received only 243,333 dollars from the Company, and that there were no progress estimates provided for in his construction contract. Charlebois would, therefore, need

money to go on with the work, upon the completion only of which he was to get the balance of his contract price. Charlebois' evidence throughout (Vol. 2,* pp. 24, 70, 72, &c.) is that the road itself cost more than 13,000 dollars per mile to build and equip. His summary of the amounts expended (Vol. 3,* p. 223) shows 538,580 dollars and 32 cents expended, including therein the 126,000 dollars paid by him to his four former associate shareholders. And in computing the cost to Charlebois of the building of the railway. it is proper to include the amounts thus paid by him to the four other shareholders, and also the 21,000.00 dollars formerly paid in by himself on his shares, because these sums all went into construction previous to 1889. This sum (538,580 dollars) amounts to nearly 11,000 dollars per mile, added to which Charlebois became responsible for 125,000 dollars more, for equipment, &c., bringing the total cost of the road to Charlebois to upwards of 13,000 dollars per mile.

As stated, therefore, he would need, in addition to the 243,333 dollars he received in cash from the Company, a considerable sum of money wherewith to complete his contract work. And so he borrowed 150,000 dollars from the Union Bank.

Having regard to Charlebois' arrangement with Codd and Stevens in Toronto on 9th September 1889, namely, that they would satisfy his bankers that the payments provided for in the Construction Contract would be duly met, Mr. McCarthy asks Charlebois at the trial (Vol. 2,† p. 76) :—

† Original
Record.

“ Q. It was provided by this Agreement made in Toronto that he (Stevens) was to satisfy your bankers in thirty days that this 150,000£. would be forthcoming?—A. Yes.

Q. What was said about that when the contract was signed? Was it ignored or forgotten?—A. No.

Q. Well, what was said about that?—A. It was understood when the contract was signed that he was to execute that.

Q. That was still to be executed?—A. Certainly.

30 Q. That provision was still to be carried out?—A. Yes, and a few days after he told me Madame Stevens desired to go to Niagara Falls and in the West a little, “ and if you insist on that clause being carried immediately I will have to return to London, because I am limited to thirty days.” Oh, I tell him, “ You should not refuse Madame Stevens to go to Niagara ; if you send me a resolution of the Board where I will be able to give orders on the Company ” —(Interrupted).

Q. What is that?—A. I asked him if he would pass a resolution authorising me to give order on the Company that the Company would accept, that might do until he returned to England.

40 Q. Then he did return to England?—A. Yes, but he passed that resolution empowering me to give order on the Company that the Company would accept.

Q. What did you give orders to the Company for?—A. In case that I wanted to raise money myself.

Q. Did you get a resolution of that kind?—A. Yes.

Q. Then he said that if he would give you that resolution you would postpone—(Interrupted). A. That I will wait ; that will give him time to go to the West, and that he could do it as soon as he returned to London, and he said so, yes.

RECORD.

V.
Factum
of the
Appellants,
the Union
Bank of
Canada—
continued.

* Original
Record.

Q. I see that resolution was on the 7th October. I will put in copy of it in a moment."

The following is the resolution referred to (Exhibit 35,* vol. 3, p. 241 and p. 64):—

"Minutes of a meeting held at the Windsor Hotel, Montreal, on the 7th October 1889, at which the following Directors were present:—C. R. Stevens, J. A. Codd and H. K. Gregson:

"The minutes of the last meeting of directors, held on the 21st September 1889, having been read and confirmed, it was moved by Mr. Gregson and seconded by Mr. Codd:—That the contractor Mr. Charlebois having informed 10 the Company that he was desirous of giving orders to the Company to pay to third parties various amounts out of the balance payable to him upon completion of the first 50 miles of the railway, and having requested the Company to accept such orders when received: that the company do accept such orders provided they do not exceed in the aggregate the balance due to Mr. Charlebois. (Carried)."

Q. You said you saw Mr. Codd there, did you know that Mr. Codd became President of the Company? Were you aware that Mr. Codd became President of the Company?—A. Yes.

Q. Mr. Stevens was the first President after Mr. Clemow; I see Mr. Codd 20 afterwards became president?—A. I knew only when he got to Ottawa.

Q. After he got to Ottawa?—A. Yes.

Q. When did you first know that Mr. Codd had become president?—A. Some time after Mr. Stevens had left.

Q. And you do not know any more than I do why it was he became president?—A. No, I did not ask him.

* * * * *

"Mr. Bristol.—That copy of the resolution is now proved.

Mr. McCarthy.—Q. I am putting in the very document given to the man by Mr. Stevens. Who was it gave you this?—A. Mr. Stevens himself; it is 30 certified by the President, and it is a copy (Vol. 3,† p. 64)."

† Original
Record.

Again, on page 78, Vol. 2, in answer to Mr. Moss, for the Bank, Charlebois speaks of having got the resolution in order to raise money.

"Mr. Moss.—Q. Did you make application to the Union Bank for a loan of money?—A. I did, sir.

Q. And for what purpose did you use the moneys?—A. I wanted to use it in the construction of the Great North West Central.

Q. Then you gave certain orders, did you not?—A. Yes, I gave three orders to the Union Bank, 75,000.00 dollars, 50,000.00 dollars and 25,000.00 dollars.

40

Q. All dated 2nd November 1889, signed by you?—A. Yes.

A. Then there is appended to them the acceptance under the seal of the Company, to each of them?

His Lordship.—I suppose this is one of the claims allowed in the judgment?

Mr. Moss.—Yes, my Lord."

† Original
Record.

"Mr. Moss.—(Vol. 2,† p. 28). Q. Did you take these to the Bank?—A. I took those to the Bank.

Q. With the acceptance of them ?—*A.* Mr. Codd was along with me when I went to the bank. RECORD.

Q. Now, you made an application then for the bank to advance the moneys upon these ?—*A.* The application was talked of a few days before. V. Factum of the

Q. Then, when you got them you renewed the application, did you ?—*A.* I went to the bank with these orders, and handed them to Mr. Anderson in presence of Mr. Codd. Appellants, the Union Bank of Canada—continued.

Q. That is the manager of the bank ?—*A.* Yes.

Q. Was there anything else ? Did Mr. Anderson require anything further from you ?—*A.* Well, he got a letter. A letter was drawn by the bank there, and I brought it to Mr. Codd to be signed.

Q. Is that the letter ?—*A.* That is the letter.

Q. You brought it to Codd to be signed ?—*A.* He signed it in my presence.

Q. You brought that to Mr. Anderson along with the orders ?—*A.* Yes.

Q. And then you got the money, did you ?—*A.* Yes."

The letter here referred to is Exhibit 54, printed in Vol. 3,* at p. 74, and is as follows :— * Original Record.

"Ottawa, 2nd November 1889. Manager, Union Bank, Ottawa, Ontario.

Dear Sir,—In accepting the orders of Mr. Charlebois on our Company for 150,000 dollars, I beg to state that there is sufficient margin in the amount to be paid to Mr. Charlebois, upon completion of his contract for the first 50 miles of our road, to meet this amount, over and above all similar or other orders previously accepted by our Company against the amount payable to him upon completion of the first 50 miles. (Signed) J. A. Codd, President of the Great North West Central Railway."

"*Mr. Moss.*—(Vol. 3, p. 82.) Q. You got the money then from the bank ?—*A.* I got the money.

Q. And left those with the bank ?—*A.* Yes.

Q. And the bank have held them ever since ?—*A.* Yes.

Q. Now, in arranging for amounts under this judgment, I see there is a clause here that the second charge on the fund is to be the sum of 380,000 dollars, with interest at 6 per cent., &c. Now, in that sum, is the sum of 150,000 dollars included ?—*A.* This sum of 150,000 dollars is included.

Mr. McCarthy.—What are you reading from ?

Mr. Moss.—I am reading from the judgment ; it is Sub-clause (*d*) of paragraph 2 of the judgment.

Q. And, of course, as you have not been paid, the Union Bank have not been paid that sum ?—*A.* No."

Again, in Vol. 4,† pp. 52 and 53, Charlebois deposes, on discovery, in reply to Mr. Cassels :— † Original Record.

"*Mr. Cassels.*—Q. In obtaining any moneys, was the Company any party in assisting you to get them ?—*A.* The only thing that I have done, I gave an order on the Company on the Union Bank for 150,000 dollars, which the Company accepted, agreeing to pay the amount.

Q. You gave an order on the Union Bank for 150,000 dollars ; when was that ?—*A.* I could not tell you exactly the date.

Q. About what date ?—*A.* It was in 1889.

* * * * *

RECORD. Q. Then the orders were given to the Union Bank for what purpose?—

—A. Oh, the Union Bank took it as collateral security.
 V. Q. As collateral security to a running account that you had with them?
 —A. Yes.
 Q. But no further moneys were advanced on the strength of those orders?
 —A. I got the advance of 150,000 dollars.
 Q. But that you had got prior to the giving of those orders?—A. No, no;
 I got it on giving those orders.

Factum
of the
Appellants,
the Union
Bank of
Canada—
continued.

* * * * *

Q. All I want to know is this: did you get any moneys from the Union 10
 Bank towards the fall of 1889 other than a renewal of your then indebtedness?
 —A. I got 150,000 dollars, on the strength of those orders.

Q. Did you get that in cash?—A. I did.

Q. Did it take up notes then due?—A. No, sir.

Q. It was advanced to you in cash?—A. Yes.

Q. You are sure of that?—A. Yes.

* Original
Record.

The bank manager's statement of what took place (Vol. 2,* p. 176), in
 answer to and called by Mr. Howland, for the Respondent Company, is as
 follows:—

“Q. Your bank is claiming under certain orders on the Company which are 20
 alleged in the bank's defence in this action?—A. Yes.

Q. Amounting to 150,000 dollars?—A. Yes.

Q. Tell me what you know of the origin of that claim?—A. Well, we
 discounted 150,000 dollars of Charlebois' paper, and took as collateral security
 these orders.

Q. Now, you say this transaction originated in the head office?—A. Well,
 the application for it was made down there, and they told me to do it.”

† Original
Record.

(Vol 2,† p. 179.) “Q. Those orders that you took purported to be against
 the balance that might be coming to Charlebois out of a certain contract with
 the Great North West Central Railway Company; that was the effect of the 30
 order?—A. They speak for themselves.

Q. But that was the general effect of the order; that was what they related
 to; contract between Mr. Charlebois and the Great North West Central
 Railway?—A. Yes.

Q. Was that contract produced to you?—A. No.

Q. It was not produced to you?—A. No.

Q. On whose representation as to the contents of that contract did you
 act?—A. From my head office.

Q. There again we come back to the head office; then did you not go to
 the office of the Company and ask to see the contract referred to?—A. No.” 40

† Original
Record.

By Mr. Moss.—(Vol 2,† p. 182.) “Q. What was it you first learned about
 the matter of Mr. Charlebois' application to the bank for the 150,000 dollars?
 —A. He applied through my head office, if I recollect right, to get it, and they
 told me to give it to him.

Q. They told you to give him 150,000 dollars?—A. Yes; not all at
 once, but as he got it.

Q. That is to say, you placed to his credit 150,000 dollars?—A. Yes.

Q. But you learned what he wanted it for?—A. Yes ; to construct 50 miles of this Great North West Central Railway in the north-west. RECORD.

Q. That is what it was required for?—A. That is what he told me he wanted it for, yes.

Q. Then he presented these orders upon the Company to you before that money was advanced?—A. Yes.

Q. And this letter from Mr. Codd was also procured before that?—A. Oh, yes, before the money was advanced.

Q. And then you chequed out the money, or rather you paid out the money on Charlebois' cheques?—A. Yes.

Q. In that way, whatever he wanted, when he drew a cheque upon it, the money was paid out?—A. Yes.

Q. That is the way in which the transaction was carried through?—A. Yes.

Q. I suppose you did not inquire anything about the money at all?—A. Oh, no, I could not look to the disposition of money ; we never do.

Q. Then you have held these orders ever since?—A. Yes.

Q. You heard of this judgment being recovered, did you not?—A. I heard of it at the time, oh, yes.

Q. And you have been looking to that judgment as part of your security?—A. I regard that as collateral security.

Q. Part of your security?—A. Yes.

Q. And you have not taken any steps, I believe, against anybody since?—A. No, I have been trusting on that judgment a good deal."

Subsequently, on the 7th of September 1891, Charlebois brought an action against the Railway Company for the balance due upon his contract, with the result that judgment was entered up, in the terms already mentioned. This judgment was for the full balance of Charlebois' claim, including all sums which Charlebois had assigned to the bank and to others. The total amount of the judgment was made payable to Charlebois, for his and their use ; but it was provided that payment to any of the other holders should be considered good payment under the judgment, *pro tanto*.

It will be remembered that when Charlebois succeeded in getting judgment against the Company, on 28th September 1891, Mr. Osler, Q.C. (on behalf of the contractor), and Mr. S. H. Blake, Q.C. (on behalf of the Railway Company), on 23rd September 1891, vigorously presented their respective arguments. A shorthand* report of the second day's proceedings was preserved, and is now in evidence (Vol. 3, p. 161), and it is to be observed that on one point at least the counsel there engaged were agreed, namely, that the Union Bank had to be paid. On p. 169 (Vol. 3†) Mr. Osler suggests that the Company should put its bonds in the hands of a trust company, whereupon :—

"Mr. Blake.—We cannot do that ; we have to pay the bank, and to pay all these others.

Mr. Osler.—Wait a moment ; the contractor is equally interested in the payment of the bank, because he is liable to the bank ; his is not a debt which the Railway Company have relieved him from. It is only an order which he has given to the Railway Company and which they have accepted.

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continued.

* Original
Record.

† Original
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Mr. Blake.—All I say is, I am not going to agree, on the part of the Defendants, that 150,000 dollars for which we are liable to the Union Bank to go to Charlebois.

Mr. Osler.—We do not want that. What I am endeavouring to say is this : we are just as much interested in the Union Bank being paid as they are.

His Lordship.—They need not have accepted your orders at all. They did accept your orders, so the money is still owing.

Mr. Osler.—We are liable to the Union Bank, and we want them paid first.”

* Original
Record.

Therefore the judgment of 28th September 1891 was entered ; the Bank’s claim of 150,000 dollars and interest being provided for by clause 2 (d) of this 10 Judgment (Vol. I.,* page 29), which clause reads as follows :—

“ The second charge on the said fund is to be the sum of 380,397.00 dollars, with interest at 6 per cent. on 271,555.00 dollars, and at 4 per cent. on 108,842.00 dollars, which is payable to the Plaintiff (Charlebois) for his own use, or for the use of any person *or Corporation*, to whom he may have assigned the moneys payable to him or a portion thereof under his said Contract, according to their several present priorities, if any, payment to any holder of any such order or orders to be considered as payment to the Plaintiff (Charlebois) by the Defendants (The Railway Company).”

† Original
Record.

The judgment in question further states (paragraph 2, line 5, p. 29 of 20 Vol. I.†) that the amount thereof is, at the request of the Plaintiff (Charlebois), declared to be payable as therein provided, and that the fund (the judgment debt) is charged accordingly in favour of such persons, including the Union Bank, as above mentioned.

Bank’s Position Altered.

The Bank therefore maintains that, under and by reason of this judgment its position has been changed at the instance and request of the Appellant Charlebois, in such a way that the Bank cannot be now placed in its former position, and is therefore entitled to hold its judgment in any event.

‡ Original
Record.

For, the financial position of the Railway Company and its assets have 30 undergone serious changes since the judgment in question was entered on the 28th September 1891. Since then, in accordance with the terms of the judgment, the Company was given by Charlebois six months extension of time to pay (Vol. I., p. 29, line 3) ; the stock of the Company has completely changed hands (Vol. 3‡, p. 222) ; bonds of the Company to the extent of 50,000/. are now outstanding in unknown hands ; while (in addition) the Plaintiff Mansfield has successfully claimed in this action upon the balance of the bonds in Court for advances alleged to have been made by her since the date of the judgment in question ; the railway itself has, since then, been for a long time past in the hands of a Receiver ; and, as alleged by the Plaintiffs (Vol. I., § p. 37, sec. 53) 40 former contractors have since, September 1891, got judgment and execution in Manitoba against the Railway Company in (1892) for nearly 60,000.00 dollars. All this, and much more, has transpired since the judgment was entered ; rendering it impossible to replace the Bank in its former position except by payment or by a judgment as of the date of 28th September 1891.

§ Original
Record.

It will be remembered, too, that Charlebois gave the Company, by the terms of the judgment, six months further time within which to pay the judgment.

The claim of the Bank was included in the judgment of September 1891, whereby Charlebois accorded the Company six months' time. In this way, the Bank's position was altered by reason of, and under the judgment.

Upon the trial, both the Chancellor and Counsel for the Plaintiffs admitted the validity of the Bank's claim. His Lordship the Chancellor remarks, for instance (Vol. I.,* p. 79, line 13), "so far as proving that these were valid claims to be paid the Union Bank out of this road, I suppose this cannot be disputed." To which Mr. Meredith, Counsel for the Plaintiffs, assented. As the Chancellor said, at page 80 of Vol. 2,* "It is already proven that the Union Bank have a good claim against Charlebois, I do not know that that would be a matter of inquiry, because it is *res judicata*." And, in discussing it with Mr. Moss, on the same page, the Chancellor says:—"I do not see the necessity of all this evidence to support your claim as a *bona fide* claim, because it is proved already." And later on, at foot of page 81, the Chancellor says, in response to Mr. Moss, Counsel for the Bank:—"The judgment being taken away will not affect your recovery against the Company, on those (orders), as independent evidences of debt, but at present those are merged in the judgment."

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Bank's Claim now unprovided for.

Unfortunately, however, the judgment does not now, as altered and amended by the Chancellor, provide for the Bank's claim. This is the Bank's complaint.

The Chancellor's judgment is based upon the legal doctrine that the Company cannot use its funds for purposes other than the construction of the railway and as provided in its Charter. The Chancellor does not, however, set aside the judgment; but, notwithstanding that the Construction Contract is merged in the judgment, the Chancellor has examined the circumstances under which the contract was entered into, and has held that 436,658.00 dollars must be deducted from the judgment, because this sum represents the purchase price of shares and the payment to be made to Codd. The Chancellor, however, while he disturbs the judgment does not set it aside, but upholds it for the balance. This balance, allowing legal interest (say 10,600.00 dollars for 13 months) amounts to 174,168.00 dollars of an *intra vires* judgment. The sub-contractors' claims, including the Commercial Bank, by the terms of the Consent judgment come in ahead of the Union Bank, although the Union Bank claims priority by reason of its orders being earlier in point of time and notice. But assuming the priorities of the Consent judgment to be correct, and deducting therefor the sub-contractors' claims of 111,829.00 dollars from the 174,168.00 dollars *intra vires* judgment, there is only a balance of 62,339.00 dollars left to pay the Union Bank, leaving out the question of extras included in the judgment, and the set off of allowances against the same, which may be made under the reference granted to the Company by the Chancellor.

Substantive Rights of Bank.

It therefore becomes material to the Bank to show that it has an independent right to be paid in any event; and that the Bank's judgment for 150,000.00 dollars and interest should be sustained at all events.

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• Original
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First, then, as to the Bank's substantive rights under the original transaction. Whether or not Charlebois' contract with the Company may properly be attacked as being partly *ultra vires*, it is certain that it was competent for the Company to make a contract for the construction of the railway with a contractor. Section 4 of the Company's Charter directs that the Company's Capital Stock "shall be applied to the making, completing and equipping and maintaining of the said railway, and other purposes of this Charter, and no other purpose whatsoever." Section 14 of the Charter takes it for granted that the Company can make a contract for construction with a contractor. The section mentioned refers to the railway "under contract to be constructed;" hence it follows as an incident to such a power, that the Company has power to finance for its contractor, and to arrange with any financial institution to repay an advance to be made by such institution to the contractor for the purposes of construction. (See "Wood on Railroads" (1894), Vol. 1,* page 536; Section 169.)

It will be remembered that the Company had to satisfy Charlebois' bankers within 30 days that the balance of his contract price would be duly paid. This, Stevens and Codd both agreed to, on the 9th September 1889. Meanwhile, and as it afterwards proved in part substitution for such agreement, the Company passed the resolution of the 7th of October 1889, at the Windsor Hotel, Montreal. This resolution was a direct *invitation* to the public to advance Charlebois money for the purpose of his contract work. Charlebois was not getting progress estimates; his contract did not provide for any; and so he required money at the outset for construction purposes. It was on faith of this resolution or invitation that the bank took the orders in question. It was all done in perfect good faith, no doubt. Neither the Company nor Charlebois, throughout the conduct of the matter and up to the entry of judgment, ever contemplated the possibility of the original contract being *ultra vires* in whole or in part. Mr. Blake, as counsel for the Company, did not even raise the point, notwithstanding that the matter was fought out for a week between himself and Mr. Osler. Stevens undoubtedly supposed, at the date of the passage of the Montreal resolution, that the Company would have money forthcoming to pay Charlebois in full. The resolution was therefore passed in good faith, and in substitution for Stevens undertaking to satisfy Charlebois' bankers of the Company's financial responsibility.

Charlebois' Construction Contract bears no evidence on its face of anything *ultra vires*. It moreover provides that Charlebois *may assign* the contract moneys, the balance of 150,000.00 dollars being made payable to himself or his assigns.

The orders which Charlebois gave to the Bank on the 2nd November 1889, along with a copy of the Montreal resolution which Stevens had given him, should be scrutinised. He therein assigns 150,000.00 dollars of the moneys arising from and payable to him under his *Construction Contract* for the first 50 miles of the Company's line, "and payable to me upon completion thereof." If such orders had been merely notified to the Company, the Bank would be mere equitable assignees. But the Company, on receiving notice, did more. It accepted the orders under its Corporate Seal, pursuant to the Montreal resolution, "and agreed to pay the same out of the moneys therein mentioned." That is, out of the *construction* moneys due Charlebois. In other words, the Com-

pany agreed with the Bank to pay the Bank 150,000 dollars on one condition, namely, that Charlebois completed 50 miles of railway for the Company. The fulfilment of this condition is conceded. The Bank advanced the 150,000 dollars to the contractor upon the invitation of the Company as contained in the Montreal resolution.

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But the Company did more. As a term of its contract with the Bank, the Company agreed by separate written instrument, at the same time, that there would be sufficient margin in the amount to be paid Mr. Charlebois upon completion of his contract for the first 50 miles of railway to meet this amount,
10 over and above all similar or other orders previously accepted by the Company against the amount payable to Charlebois upon completion of the first 50 miles. The Bank's orders were, therefore, accepted and taken *free from equities*. *Re Northern Assam Tea Company, ex-parte Universal Assurance Company, L. R. 10 Eq., 458.* "The assignee of a chose in action takes it subject to all equities available against the assignor; but the person entitled to such equities may release them, either expressly or by implication arising from his course of conduct." This was a case where the Company had a primary lien and right of
set off on the debentures of any member of the Company who might be indebted to the Company. The holder of certain debentures, who was also a shareholder,
20 sold his debentures, and his transferees registered the assignment: Held, that the Company had precluded themselves by their conduct from setting up their lien for unpaid calls as against the transferees.

Mr. Buckley, in his work on Companies (6th Edition, 1891) on page 359, says: "But the rule that a chose in action assignable only in equity, must be assigned subject to the equities existing between the original parties to the contract, is a rule which must yield, when it appears from the nature or terms of the contract that it must have been intended to be assignable free from and unaffected by such equities (in *re Agra & Masterman's Bank, L. R. 2 Chy., 391, 397*); or where a debtor has precluded himself from setting up such
30 equities against the assignees."

Lord Justice Wood, in *ex-parte City Bank, re General Estates Company, 3 Chy., 758*, said "The authorities go to this, that where there is a distinct promise held out by the Company, informing all the world that they will pay to the order of the person named, it is not competent for that Company afterwards to set up equities of their own."

The cases of this kind collected by Mr. Buckley are chiefly with respect to debentures issued in England, where debentures were not formerly assignable by mere delivery, and were construed as mere choses in action. Mr. Buckley concludes that "the foregoing cases establish this, that if the contractors, with
40 a view to induce people to become assignees of instruments of this kind, represent that there are no equities, or that they will not take advantage of any equities which there are between them and the original contractees, this affords a good defence to any subsequent attempt on their part to set up these equities."

But the Union Bank's case, the present case, is even stronger, for there is a judgment for the debt as well.

Mr. Buckley says, page 361, if bonds or debentures, invalid in the first instance, have been transferred, and there be circumstances sufficient to affect the Company with notice of the transfer, and, with that knowledge, judgment

RECORD. has been allowed to pass in an action brought by the assignee in the name of the original holders for interest due, or to recover the principal, the Company cannot subsequently dispute their validity.

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Thus, in Hulett's case, 2 J. & H., 306, the assignee of debentures, issued in payment for work done by a person who was still an honorary director, but whose name was not inserted in the list of directors, was, under such circumstances, held entitled to prove on the debentures, he having no notice that the assignor had acted as a director.

Again, the Chancellor's judgment goes no further than this, that the Company cannot lawfully pay 436,658 dollars of the moneys secured by the 10 judgment of September, 1891, because the Company's original contract to pay it was, in part, an act transcending its powers. It was as if the Company had no funds for such purposes, to the extent of the amount mentioned.

But, at the worst, the Bank's claim on its orders is in no way different from the case (say) of a claim against the Company upon *ultra vires* bonds. In *Ex-parte* Chorley, 11 Equity, 157, the Company had no power to issue debentures, except a borrowing power limited to one-third of the capital paid up. No capital had ever been paid up when the bonds in question were issued. The only power the Company there had to borrow money was conferred by its Act, and that power never came into operation. However, the holders of the 20 bonds had brought an action and obtained judgment thereon against the Company. The Company had pleaded to the action, but had agreed to let judgment go upon being given three months' time. It was held that, though it was assumed that while in the hands of the original holder the bonds were invalid, yet as they were intended to be assignable, and had been assigned for value and a judgment obtained thereon, the judgment was conclusive evidence of a debt against the Company. To quote from the judgment: "It was clear that the debentures were originally invalid, but there were circumstances sufficient to affect the Company itself with knowledge of the transfer, and with that knowledge judgment was allowed to pass in the action. After that it was 30 not open to the Company to dispute the validity of the claim. That a contract not originally binding upon a Company may become so by a judgment obtained in an action upon it is also clear by *Williams v. St. George Harbour Company*, 2 Deg. & J., 547, cited in support of the claim." (*Ex-parte* Chorley, L. R., 11 Equity, p. 163.)

In the case just mentioned, the Company exceeded its powers by borrowing at all, but its promise to repay the moneys thus raised was held to be valid by reason of the judgment. Even assuming Charlebois' contract to be *ultra vires*, the Union Bank's case is on all fours with this one.

But, apart from the judgment, the Bank submits that its contract with the 40 Company, which it was competent for the Company to make with the Bank, entitled the Bank to a judgment against the Company for 150,000 dollars and interest, in any event, because the Bank's contract with the Company was practically an agreement by the Company to pay the Bank 150,000 dollars for moneys advanced by the Bank for the use of the contractor for construction. Payment was not made to depend upon there being enough construction moneys in the Company's hands upon the completion of the contract. It was part of the Bank's agreement with the Company that there would be moneys enough.

The Bank's orders were upon the construction moneys only. The Bank ought not therefore to be now prejudiced by a deduction of any moneys, included in the contract price, which it is *ultra vires* of the Company to pay. The Bank took no assignment of any such moneys. If by reason of the Chancellor having directed that Charlebois ought now to give credit to the Company for the first 50,000% on account of the Construction Contract, and if by reason of the Company having paid 129,574 dollars for rails, and 24,105 dollars to Charlebois since the contract was signed, there is not enough construction moneys left to pay the Bank's claim; then under *Brice v. Bannister, L. R.*, 10 3 Q. B. D. (C. A.) 569, and kindred cases, the Company must pay twice over, and pay the Bank now; for the Company agreed with the Bank that there would be construction money enough.

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Bank objects to Reference Ordered.

In addition to the *ultra vires* doctrine upon which the Chancellor deducts portion of the judgment moneys, the Chancellor has also referred to a Master the question of how much is due to Charlebois for construction, and what allowances should be made to the Company. The Bank contends that, as the Chancellor has upheld the judgment, and since there is no evidence warranting the Court to set aside the Government engineer's certificate of completion, that 20 the decision granting a reference is wrong and illogical. If the Chancellor's judgment on the point of *ultra vires* be consistent, then the Bank says that, at all events, there is nothing to warrant a reference with respect to the balance due Charlebois, which balance will be coming to the Union Bank under the judgment. That balance was settled by the Engineer's certificate of completion and by the judgment itself, and neither the certificate nor the judgment has been successfully attacked for fraud, and cannot be re-opened in that respect.

The Bond-mortgage void as against the Union Bank.

1 The appellant Bank further maintains that the Mortgage Deed to the Trustees for bond holders, and the claims of Delap and Mansfield thereunder, 30 are both void as against the Bank's claim for 150,000 dollars.

The Bank, as already stated, claims upon its assignment of money payable for construction to Charlebois, and for construction only. It has been already demonstrated that one of the chief terms of its assignment to the Bank was, in effect, that such assignment was absolute and was made free of the equities affecting Charlebois' contract with the Company. By the Bank's agreement with the Company, at the date of the making of its advances for construction purposes, the amount represented by its orders was to be repaid on the happening of one condition only, viz.:—the completion of the contract work, which fact is conceded.

40 Now, the Bank is, under its assignment or orders, entitled also *pro tanto* to all Charlebois' rights, both with respect to his contract lien and also as virtual assignees *pro tanto* of his judgment, by the terms thereof. "For when the assignor of a debt has collateral securities for the debt, the assignee will be entitled to the full benefit of such securities." (Cavanagh on Money Securities, 2nd. Ed., 403; Story's Equity, sec. 1047 a.) "As the debt is the

RECORD. principal, and the security but an accessory, the transfer of the former is a transfer of the latter, according to the maxim, "*Omne accessorium cedit principali*" (Cavanagh p. 303 ; *Walker v. Jones*, L. R. I. P. C. 50.) And, as stated in Freeman on Judgments, 4th. Ed., sec. 425, every transfer of an assignable cause of action has the effect of assigning any judgment recovered thereon.

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The bank advanced the \$150,000.00 to Charlebois for construction purposes on his notes but also collaterally on faith of the railway company's agreement with the bank to pay the amount out of the moneys arising from the construction contract. This agreement was absolute, being on one condition 10 only, namely the completion of the work. The advances were made *bonâ fide* for value, and without any notice or knowledge on the part of the bank of any of the alleged infirmities affecting Charlebois' contract.

Now, assuming that the subsequent bond mortgage of 2nd June 1890 did not exist, the bank maintains that it would be entitled to enforce its judgment for \$150,000.00 against the property of the railway company and to sell the railway in execution, as was done in *Redfield v. Wickham*, L. R. 13 App. Cases, 467.

The bank says that the bond mortgage does not exist as against the bank.

The bank maintains that the mortgage is void as against it. The Respon- 20 dents, on the other hand go so far as to say that, even assuming Charlebois, contract lien to be valid law, nevertheless the subsequent statutory mortgage deed of the 2nd June 1890, to trustees Gifford and Curzon, renders the claims of Delap and Mansfield superior to those of Charlebois, and to those of others claiming under him, including the Appellant bank.

The bank, however, maintains that (assuming the bond mortgage to be valid) the equity of the bank to be paid out of the proceeds of sale of the company's property is superior to any equity in Delap and Mansfield arising by virtue of the mortgage trust deed.

For both the Statute (Railway Act) and the mortgage itself accords no 30 rights to bondholders, except by and through the Trustees (Vol. 3, p. 107).

* Original
Record.

† Original
Record.

‡ Original
Record.

And Trustee Lord Gifford was, both prior to and at the date of his execution of this mortgage (2nd June 1890), himself a director of the railway company (Gifford's evidence, Vol. 2,* p. 318), having been elected a director on 2nd November 1889 (Vol. 3,† p. 245), and again on 3rd June 1890 (Vol. 3,‡ p. 247). A trustee of the mortgage deed was thus affected with notice of Charlebois' prior charge. He knew that the whole property of the company had been already charged in favour of Charlebois for the balance of his contract price. He presumed, no doubt, that the primary motive of the mortgage deed was to raise money to pay off the contractor whose claim 40 was paramount ; and, if the bonds had been thus utilized, the mortgage deed might then have been honest enough. But while, as between the company, on the one hand, and the trustees and bond-holders, on the other, the mortgage deed might be good and valid ; yet the bank maintains that as against third persons and creditors of the company already secured upon the same property, even by an unregistered lien such as Charlebois', the holders of such bonds claiming through a trustee having notice of the prior incumbrance cannot prevail.

And not only was Trustee Gifford thus actually affected with notice but the RECORD.
 bond mortgage was prepared by and in the office of Solicitor Stevens (Cansdale's
 evidence, Vol. 2,* pp. 325, 334 (lines 23 to 35), 346), who as president of the ^{V.}
 railway company had himself previously signed Charlebois' construction of the
 contract in Canada. Stevens' firm were, too, solicitors in 1890), not only for the Appellants,
 Railway Company but also for the trustees Gifford and Curzon, for the Plaintiff the Union
 Delap (Cansdale, Vol. 2,* p. 334, lines 26 to 34 ; and p. 346, line 38), and for the Bank of
 Plaintiff Mrs. Mansfield (Cansdale, pp. 330 & 355, line 36). of Canada—
 continued.

So not only had the trustees notice of Charlebois' prior contract lien, but * Original
 10 all the Plaintiffs (Respondents) herein were similarly affected (Le Neve v. Record.
 Le Neve, 3 Atk. : 646 ; Bursot v. Savage, L. R., 2 Eq., 134). Moreover, *long*
before the bonds in question got into the hands of Delap (on 16th August 1892,
 Vol. 3, p. 207 ; and Delap's evidence, Vol. 2,* p. 201), Delap was himself aware † Original
 of Charlebois' judgment (Vol. 2,† p. 203, line 40), and both the trustees had Record.
 been duly served with copies of it (Gifford's evidence, Vol. 2,* p. 318, line 34, and
 Curzon's evidence, 2, p. 383, line 16.)

But notice to the trustees is all that was really necessary. Jones on
 Corporate Bonds and Mortgages, 2nd Ed., sec. 299, thus expresses the law :—
 “Notice to trustees under an ordinary mortgage deed of a railroad company is
 20 notice to the holders of the bonds secured by the mortgage. Such trustees are
 considered in the light of agents for negotiating of the loan. They act for
 those who lend their money on the security of the mortgage. They are charged
 with the duty of protecting the interests of the bond-holders, who are unconnected
 individuals, having no ready means of acting together except through the
 trustees, whom the law appoints to act for them. Notice to the trustees is held
 to affect the title in their hands with reference to incumbrances upon the Trust
 property. Actual notice to the trustees of a prior equitable mortgage is notice
 of it to the bond-holders, who therefore take their bonds subject to the legal
 consequences of the incumbrance.”

30 Again, in sec. 33 of Jones, the case of *Miller v. Rutland & W. R. R. Co.*,
 36 Vt., 452, is referred to. “The trustees,” says the writer, “under these
 mortgages, were the agents of the holders of the bonds, and notice to the agent
 was notice to the bondholders, who therefore took the bonds subject to all the
 legal consequences of the existence of the equitable first mortgage. Notice to
 the trustees should be held to affect the title in their hands, with reference to
 all rights existing in respect thereto under the trust.” Mr. Justice Barrett, in
 giving judgment in the case, said :—“Though it be obvious and readily conceded
 that bondholders acquire their rights, in reference to the security provided by
 the mortgage in trust, by the purchase of the bonds, and with such purchase the
 40 trustees have no connection, nor any agency in reference to the transfer thereof,
 yet it is not at the same time true, that, in reference to the security for holding,
 enforcing, and administering it according to the provisions of the trust, the trustees
 are the agents of the parties interested and entitled by reason of being
 bondholders. We are unable to assent to the proposition that the trustees
 are only agents of the *cestuis que* trust for holding the legal title. They are
 agents for holding just such title as is created by the transaction, and for
 administering it according to the terms of the trust ; and whatever title the
cestuis que trust have, whether legal or equitable, is through, and in virtue of,

RECORD. the title conveyed to and held by the trustees. Even if it should be granted that the trustees were agents merely for holding the legal title, still, as the rights of the *cestuis que* trust depend upon and are to be asserted through that legal title, whatever affects such legal title in its creation in the trustees must affect the rights and interests that are dependent upon it. If the legal title is charged with an incumbrance in its creation in the hands of the trustees, it is difficult to see how the *cestuis que* trust can have an equity suspended upon that legal title that shall over-ride such incumbrance. However that might be as a proposition applicable to a dry trust, still, as to a trust which, in addition to the holding of the title, is administrative of the property for the purpose of effectuating the security, the trustees must be regarded as the agents of the *cestuis que* trust with reference to their rights and interests, both in the title held and in the administration and fruits of the trust, according to its terms and legal operation."

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The bond mortgage of 2nd June 1890 was at the date of its execution to a large extent a mortgage of after acquired property. The Government Engineer's certificate of completion is dated 10th August 1890, two months later. Such property came therefore to the trustees incumbered with an equitable charge in favour of the contractor, of which Trustee Gifford had notice.

The Judgment of the Supreme Court in *Rose v. Peterkin*, 13 S. C. R., 677, 20 is illustrative of the point contended for. See the Judgment of the present Chief Justice, at page 706, quoting Lord Westbury in *McCormick v. Grogan*, L. R. 4 H. L., 97 :—"The Court of Equity has from an early period decided that even an Act of Parliament shall not be used as an instrument of fraud ; and if in the machinery of perpetrating a fraud an Act of Parliament intervenes, the Court of Equity, it is true, does not set aside the Act of Parliament, but it fastens on the individual who gets a title under that Act, and imposes upon him a personal obligation, because he applies the Act as an instrument for accomplishing a fraud."

The utmost effect, therefore, of the Statute is to make the bonds the first 30 charge only if and when in the hands of *bonâ fide* holders *without* notice. No Registry Act, however strongly worded, has been hitherto construed as having greater effect. For instance the judgment of Lord Cairns in *Agra Bank v. Barry*, L. R., 7 H. L., 147, quoted approvingly by Chief Justice Strong in *Rose v. Peterkin*, p. 705, is clear on the point :—

"Any person reading over that Act of Parliament (the Irish Registry Act) would perhaps in the first instance conclude, as has often been said, that it was an Act absolutely decisive of priority under all circumstances, and enacting that in every circumstance that could be supposed, the deed first registered was to take precedence of a deed which, although it might be executed before, was not 40 registered until afterwards. But, by decisions, which have now, as it seems to me, well established the law, and which it would not be, I think, expedient in any way now to call in question, it has been settled that, notwithstanding the apparent stringency of the words contained in this Act of Parliament, still, if a person in Ireland registers a deed, and if at the time he registers the deed either he himself or an agent, whose knowledge is the knowledge of his principal, has notice of an earlier deed, which, though executed, is not registered, the registration which he actually effects will not give him priority over that earlier

deed. And, my Lords, I take the explanation of these decisions to be that which was given by Lord King in the case of *Blades v. Blades* upwards of 150 years ago, the case which was mentioned just now at your Lordships' Bar. I take the explanation to be this, that inasmuch as the object of the Statute is to take care that by the fact of deeds being placed upon a register those who come to register a subsequent deed shall be informed of the earlier title, the end and object of the Statute is accomplished if the person coming to register the deed has, *aliunde*, and not by means of the register, notice of a deed affecting the property executed before his own. In that case the notoriety, which it was the object of the Statute to secure, is effected; effected in a different way, but effected as absolutely in respect of the person who then comes to register as if he had found upon the register notice of the earlier deed."

Assume for a moment that Charlebois' lien is good in law, on the ground that the Company had power to borrow money and alienate its property independent of the statutory provisions respecting bonds, and having regard to the fact, that a railway in Canada may now be seized and sold under execution (13 App.: Cases 477) and is not now in that respect under legislative protection as in England. Assuming, then, that Charlebois' lien is good in law, if the bonds be nevertheless the first charge by Statute, they are so only in the hands of innocent holders without notice (through the trustees or otherwise) of prior unregistered incumbrances. And both Trustee Gifford and the alleged bondholders are, as we have seen, sufficiently affected with notice. In any case, Charlebois' charge upon the property (assigned *pro tanto* to the Bank) is a prior equitable charge of which a trustee for the bondholders had notice; and the protection afforded to bondholders by the Statute can at most only apply to innocent holders. In the harshest view of the Bank's case, its security under Charlebois' lien should be treated as an equitable charge of which the Trustee and the bondholders had notice, and should at all events rank *pari passu* with the bonds. More especially should this be at least the result, in view of the Company having (as remarked by Hagarty, C. J. O., Vol. 1,* page 155, line 33 *et seq.*) reserved the right in dealing with Charlebois to pay him 100,000% of the balance of the contract price *in bonds*, at the value of 80 cents in the dollar.

V.
Factum
of the
Appellants,
the Union
Bank of
Canada—
continued.

* Original
Record.

SUMMARY.

In conclusion, by way of summary, the Union Bank submits that it is entitled to have judgment against the Railway Company for 150,000 dollars and interest, as of the 28th September 1891, and to hold as security therefor the security accorded to Charlebois by his contract and under the judgment of Ferguson, J., for the following reasons:—

(a) On the grounds set out and presented by the Appellant Charlebois, so far as applicable.

(b) Because the contract moneys were by the contract itself made assignable, and were assigned *pro tanto* to the Bank, for full value and to innocent holders, in terms freed from the equities subsisting between Charlebois and the Company, and payable upon one condition only, viz., the completion of the works;

RECORD.

V.
Factum
of the
Appellants,
the Union
Bank of
Canada—
continued.

(c) Because the Bank's assignment of the 150,000 dollars was an assignment only of moneys payable for construction, and it was part of the Bank's agreement with the Company that these moneys had not been exhausted, but would be available in liquidation of the Bank's assignment upon the completion of Charlebois' contract for construction ;

(d) Because if, by reason of payments made by the Company since the date of the assignments held by the Bank or by reason of deductions made from contract price by the Chancellor of sums included therein, the payment of which is alleged to be *ultra vires*, there is not sufficient pure construction moneys left in the amount of the judgment thus reduced to repay the Bank, then the Bank 10 should nevertheless be held entitled to be paid in full and to have judgment accordingly, upon the principle of *Brice v. Bannister*, L. R. 3. Q. B. D., 569 ; for the Company accepted the Bank's orders on the construction moneys, and agreed that there would be funds enough upon completion to pay these orders ;

(e) Because the Bank's claim is meritorious, inasmuch as the Bank's money was advanced for the purposes of construction and went into the work ;

(f) Because, since the judgment of Ferguson, J., 28th September 1891, the Bank's position has been altered and the assets of the Company have undergone such change as to render it impossible to restore the Bank to its former position, prior to the judgment, except by payment to the Bank of 20 150,000 dollars and interest, or by affirming its judgment for that amount as of the date 28th September 1891 ;

(g) Because, whether Charlebois' contract was partly invalid originally or not, the judgment in favour of the Bank has been entered, and acted on by the Company (which has accepted benefits thereunder), and the Company cannot now dispute its validity as against a *bond fide* innocent holder such as the Bank (*Hulett's Case*, 2 J. & H. 306 ; *ex parte Chorley*, 11 Equity 157). The Company had its day in Court, and the Bank's claim has now passed into a judgment (*United States v. Ottawa*, 28 Federal Reporter, 407) ;

(h) Even assuming the Chancellor's judgment to be correct as to the 30 partial invalidity of the contract, there is no foundation for the Chancellor's order of reference to take an account of the moneys otherwise owing to Charlebois for construction, to thus enable the Company to reduce the amount of the judgment still further. The engineer's certificate has not been impugned, nor has it been successfully attacked in any manner ; and the question of the completion of the contract cannot be thus re-opened at this stage.

(i) The Mortgage Deed to the Trustees for bondholders is void as against the Bank's claim, since both the holders and Trustee Gifford had notice of Charlebois' prior equitable lien (*Jones on Corporate Bonds*, 2nd Ed. ; Sections 33 and 299).

Dated September 1895.

J. TRAVERS LEWIS,
Of Counsel for the Bank.

In the Supreme Court of Canada.

CHARLEBOIS *et al.**v.*DELAP *et al.*

FACTUM of the Appellants, Macdonald, Preston, Schiller, and Nugent, and the Commercial Bank of Manitoba.

VI.
Factum
of the
Appellants,
Alexander
Macdonald,
William
Alfred
Preston,
John S.
Schiller,
Frank S.
Nugent,
and the
Commercial
Bank of
Manitoba.

The Appellants, Macdonald, Preston, Schiller, and Nugent, claim 64,429 dollars and interest, under the judgment of Mr. Justice Ferguson of the 28th day of September 1891, obtained by Charlebois against the Great North West
10 Central Railway Company.

The said sum of 64,429 dollars represents the amount owing to these Appellants by Charlebois for work done by them in the construction of the first 50 miles of the said railway, under a contract dated 3rd October 1889 (Vol. 3, p. 54).

The Appellants, the Commercial Bank, claim 37,771 dollars 45 cents and interest under the said judgment, which sum is included in the 64,429 dollars above mentioned, and represents money borrowed from the bank by the Defendants, Macdonald and Schiller, for which security was held in the form of promissory notes made by the Defendants, Macdonald and
20 Schiller, to the bank, together with interest on the said notes, making in all the said sum of 37,771 dollars 45 cents, the said money being borrowed to enable the Defendants, Macdonald and Schiller, to carry out their contract for the completion of the said 50 miles of railway.

The promissory notes above mentioned were signed by the firm of Macdonald and Schiller, with the exception of the note for 155 dollars, which was made by M. Turriff, and endorsed by Macdonald and Schiller. The dates and amounts are as follows :—

						\$	c.
	16th June 1890	-	-	-	-	7,000	00
	24th June 1890	-	-	-	-	44,000	00
30	22nd August 1890	-	-	-	-	1,331	63
	25th August 1890	-	-	-	-	4,158	50
	25th August 1890	-	-	-	-	8,200	00
	1st September 1890	-	-	-	-	3,900	00
	3rd September 1890	-	-	-	-	155	00
	1st November 1890	-	-	-	-	4,145	58

The said sum of 64,429 dollars is contained in the amount mentioned in s. 2 (a) of the judgment of Mr. Justice Ferguson, set out on page 29 of Vol. 1,*
in which judgment it was ordered that the Railway Company should pay the
40 sum of 626,226 dollars and interest, and "the said sum is, at the request of the said Plaintiff (Charlebois), declared to be payable to the following persons, in the following order of priority, and the said fund is charged accordingly in favour of such persons." S. 2 (a) of the judgment reads as follows :—
p. 5240. 5 K

* Original
Record.

RECORD.

VI.

Factum
of the
Appellants,
Alexander
Macdonald,
William
Alfred
Preston,
John S.
Schiller,
Frank S.
Nugent,
and the
Commercial
Bank of
Manitoba—
continued.

“(a). To Macdonald and Schiller, the sub-contractors on the road, 60,644 dollars, and 3,789 dollars for interest on the said sum to date, in all 64,429 dollars, which sum includes the order for 20,000 dollars, dated the 10th of June 1890, accepted by the Defendants (the Great North West Central Railway Company), and now in possession of Frank S. Nugent, Esq., which lien the said parties represented herein by their solicitor and counsel, the said Mr. Nugent, agree to accept as cash, and to credit the same in the suit now pending in the courts of Manitoba by the said Macdonald and Schiller against the said Plaintiff (Charlebois) as if paid into court in the said suit. The said sum is paid as the amount found due by the final certificate of J. H. E. Secretan, 10 civil engineer, the Plaintiff’s (Charlebois’) engineer, with interest as agreed upon, the said Macdonald and Schiller being at liberty to continue their action in the province of Manitoba for the recovery of any alleged balance that may be claimed by them against the Plaintiff (Charlebois).”

The order above referred to, for 20,000 dollars (Vol. 3,* p. 110), was accepted by the Defendants, the Great North West Central Railway Company, and was endorsed over to the bank by the Defendants, Macdonald and Schiller, but was never paid.

* Original
Record.

The above sums were ordered by s. 3 of the judgment to be paid into the Bank of Montreal, Ottawa, and in default of such payment, within six months 20 from the date of the judgment, then the judgment directed that “the Plaintiff may proceed to exercise all his rights as chargee of the said premises and all of them, the said rights being the full rights of a mortgagee, with judgment for sale.”

These Appellants rely on the arguments presented on behalf of Charlebois so far as applicable, but seek also to enforce their own rights of action, which subsisted prior to the judgment of Ferguson, J., which has been attacked by the Company.

The chief facts of the case appear in the main factum of the Appellant, Charlebois, to which these Appellants beg leave to refer.

30

The claim of the Commercial Bank arose as follows: previous to the 10th day of June 1890 the Defendants, Macdonald and Schiller, requiring a loan for the purpose of carrying out their said contract, applied to the Commercial Bank for the various sums of money above mentioned (\$37,771.45). The bank advanced the said moneys on the faith of the said judgment of 28th September 1891; on the faith of the agreement between the Defendants, Macdonald and Schiller, and the Great North West Central Railway Company (Vol. 1,† p. 49), by which Macdonald and Preston agreed to accept \$25,000 which was to be paid out of the \$50,000 deposited in the hands of the Government to be applied in payment of the claims for wages and materials supplied, 40 and a further sum of nominally \$50,000 by the delivery of the proceeds of the sale of bonds to that amount, when the bonds of the Company should be sold; and on the faith of the construction estimates for the Great North West Central Railway Company, made by H. F. Forrest, of the work executed and material delivered on account of Macdonald and Schiller, and the said estimates were produced to the bank at the time the account with the said bank was opened, and from time to time as the moneys were advanced.

† Original
Record.

The estimates were as follows, and will be found on pp. 72, 75, 76, and 83 RECORD.
of Vol. 3:—

					\$.	c.	VI.
31st October 1889	-	-	-	-	14,706	36	Factum
28th November 1889	-	-	-	-	28,986	82	of the
29th November 1889	-	-	-	-	1,753	00	Appellants,
30th November 1889	-	-	-	-	24,254	18	Alexander
1st January 1890	-	-	-	-	25,162	82	Macdonald,
							William
							Alfred
							Preston,
							John S.
							Schiller,
							Frank S.
							Nugent,
							and the
							Commercial
							Bank of
							Manitoba—
							<i>continued.</i>

By the construction agreement made between Charlebois and the Railway
10 Company on the 16th of October 1889 (Vol. 3,* p. 68, s. 11) it was agreed as
follows:—

“In the event of the Company neglecting or refusing to pay the current
estimates, the contractor can cease work and retain a lien on the railway until
such estimates are paid with interest, and a time corresponding with the delay
thus caused shall be allowed to the contractor for the completion of the work.”

By the agreement made between Charlebois and Codd on the 9th of
September 1889 (Vol. 1,* p. 11), by which Charlebois agreed with certain
variations to carry out the old shareholders' agreement of the 9th of April 1888,
it was provided therein by Clause 7 as follows:—“The purchaser to give within
20 thirty days satisfactory evidence to Mr. Charlebois' bankers that all payments
will be made according to the terms of present agreement.”

The agreement of 9th of September 1889 was at the same time endorsed
by Mr. Stevens, Charlebois' solicitor and agent (Vol. 3,† p. 28, line 35), as
follows:—“With reference to the within heads of agreement, I hereby under-
take that so soon as the within arrangements are carried out I will take the
necessary steps to prove to Mr. Charlebois' bankers that all payments which
will become due under the said agreement will be paid at the times mentioned,
and that the rails will be provided as arranged, such proofs to be in such form
as Mr. Charlebois' bankers may desire, and to be given within thirty days.”

30 On the 16th September 1889 Charlebois' contract for construction between
himself and the Company was executed (Vol. 1,‡ p. 63). By this contract
(Vol. 1,† p. 65, s. 2) the Company agreed with Charlebois that upon completion
and equipment of fifty miles of railway to the satisfaction of the Government
“to pay at the city of Ottawa to the said contractor, his executors, adminis-
trators or assigns, the further sum of one hundred and fifty thousand pounds
sterling in money (£150,000), making in all the sum of two hundred thousand
pounds, in full payment for said completed fifty miles of railway, to be delivered
to the said Company after said inspection and approval thereof.”

The foregoing is some of the documentary evidence on which the Com-
40 mercial Bank's claim is based, in addition to the judgment of 28th September
1891.

From the evidence taken at the trial the following may be extracted as
bearing out the statements above mentioned:—

Alexander Macdonald examined (p. 256).

“Q. You had previously, and during the term of this contract, obtained
moneys from the Commercial Bank of Manitoba?—A. Yes.

RECORD.

VI.
Factum
of the
Appellants,
Alexander
Macdonald,
William
Alfred
Preston,
John S.
Schiller,
Frank S.
Nugent,
and the
Commercial
Bank of
Manitoba—
continued.

Q. And in September of 1891 you were indebted to the bank in respect of the moneys so obtained to the extent of some 35,000 dollars or more?—A. I would not say 35,000 dollars, but about 33,000 dollars.

Q. You had previously, according to the papers I have, had estimates of the amount of work that had been done by you?—A. Yes.

Q. And showing the amount you were entitled to be paid?—A. Yes.

Q. These are the estimates signed by Mr. Forrest, the engineer?—A. Yes.

Q. And those estimates were apparently handed by you to the Commercial Bank of Manitoba?—A. Well; we had them in there with us when we went for money to show what we needed.

Q. Did you, as a fact, show these estimates to the manager of the Commercial Bank?—A. Yes.

Q. And for what purpose?—A. To show we had plenty of money coming to us to pay the amounts.

Q. So that on the strength of these they paid the advances?—A. Yes.

Q. And apparently these estimates were from time to time assigned by you to the bank?—A. Well, they paid the money; the most of the time I took the estimates into the bank.

Q. You gave Mr. Nugent instructions to act for you at the time of the settlement?—A. Yes.

Q. How did he happen to go there? Did he know the case was going on?—A. Yes, they were to meet there.

Q. By arrangement?—A. Yes; there was a suit going on and Mr. Nugent wanted to be there to see how it would end.

Q. And at the time he apparently gave an assent to the judgment, and after that you went out of possession?—A. I remember getting a letter from Mr. Nugent here, and I remember him stating this in his letter, that the judgment was as good as the Manitoba wheat.

His Lordship.—Q. After knowing of the judgment did you go out of possession?—A. Yes.

Mr. Watson.—Q. Why did you do so?—A. Because we were depending on the judgment.

Q. Was that fact communicated to the Commercial Bank of Manitoba?—A. Yes, I told them myself.

Q. That the judgment had been obtained, and that you were going out relying upon that?—A. Yes.

Q. Previous to that had you or not been pressed by the bank for payment?—A. They wanted to get paid.

Q. After that did they press you for payment?—A. No, not after that.

Q. After that they did not?—A. No.

Q. Then I believe you subsequently assigned this judgment to Mr. Nugent?—A. Yes.

Q. And this is the assignment, is it, executed by you and by Mr. Schiller, 6th October 1891 (Vol. 3,* p. 180)?—A. Yes.

Q. And thereupon you obtained from him a declaration of trust?—A. Yes.

Q. Which is attached to the assignment executed the same day?—A. Yes.

* Original
Record.

Q. And in this he undertakes in the third place to pay to the Commercial Bank of Manitoba the sum of 20,000 dollars in payment and satisfaction of the 20,000 dollars order given by them ?—*A.* Yes.

Q. That was the order assigned by you to the Bank ?—*A.* Yes.

Q. This was the order given by Mr. Charlebois ?—*A.* Yes ; I handed it in myself.

Q. That is assigned by you on the back of it—pay to the order of the Commercial Bank of Manitoba, 10th June 1890 ?—*A.* Yes.

Q. And handed to you about that time ?—*A.* Just a few days after it was 10 signed.

Q. Then after payment of that he has to pay certain other claims and finally to distribute the balance rateable amongst your creditors, including the Commercial Bank of Manitoba ?—*A.* Yes.

Q. And that would be sufficient to satisfy all ?—*A.* Yes.

Q. Have you ever been paid any part of that ?—*A.* No.

Q. When, as a matter of fact, did you give up possession afterwards ? How soon after the—(Interrupted) ?—*A.* Well, it was some time after ; we were up there ; it was on the 14th December that we handed the road over.

Q. On the 14th December you handed the road over ?—*A.* Yes.

Q. To whom—to the Company ?—*A.* To the Company ; Mr. Codd was 20 there.

Q. Did he or not allege any special reasons for obtaining it ?

Mr. Meredith.—Oh, no.

Mr. Watson.—Q. Was Mr. Codd there previous to September 1891 ?—*A.* Yes.

Q. That is on the road and about there ?—*A.* Yes.

Q. Did he know the condition in which it was at that time ?—*A.* Yes, he did.

Q. Previous to the time the judgment was assented to ?—*A.* Yes.

Q. He had gone over it and saw the position of it ?—*A.* Yes. 30

Cross-examined by Mr. Howland (p. 258).

Q. When the charter of this Company was got, you secured protection for yourselves by Clause 27 in that charter, did you not ?—*A.* Yes.

Q. By the clause which provided that all moneys expended in construction should be a charge on this Company ?—*A.* Yes.

Q. That is what you understood was the effect of that charter ?—*A.* Yes.

Q. And you were active in getting it for that purpose, you and Preston ?—*A.* Yes.

Q. And it was your claims the Government had in view, was it not ?—*A.* Yes. 40

Q. And your claims were arranged by the Great North West Central Railway Company by a contract of the 12th September 1887, were they not ?—*A.* Yes.

Q. And the amount was defined at 75,000 dollars, of which you were to have 25,000 dollars in cash out of the Government deposit—the deposit of

RECORD.
VI.
Factum
of the
Appellants,
Alexander
Macdonald,
William
Alfred
Preston,
John S.
Schiller,
Frank S.
Nugent,
and the
Commercial
Bank of
Manitoba—
continued.

RECORD. 50,000 dollars in the hands of the Government, and 50,000 dollars in the form of, or the proceeds of 50,000 dollars bonds?—*A.* The agreement is there.

Factum
of the
Appellants,
Alexander
Macdonald,
William
Alfred
Preston,
John S.
Schiller,
Frank S.
Nugent,
and the
Commercial
Bank of
Manitoba—
continued.

Arthur Andrew Jackson examined (p. 271).

Q. You are the assistant manager of the Commercial Bank of Manitoba?—*A.* Yes.

Q. And you were in charge during the time of the currency of the account with Macdonald and Schiller?—*A.* Yes.

Q. The bank is now in course of liquidation?—*A.* Yes.

Mr. Watson.—I put in an order allowing the liquidators to continue this 10
defence. The total amount of the indebtedness of Macdonald and Schiller to the
bank was some 37,771.45 dollars, represented by these promissory notes.

Witness.—These are the notes.

Q. And those with interest amount to the sum named?—*A.* Yes, about 37,000 dollars odd.

Q. Mr. Macdonald has stated that the contract by him with the railroad was produced to the bank at the time the account opened; do you recollect that?—*A.* Yes.

Q. And that the estimates were presented from time to time in procuring the advances?—*A.* Yes.

Q. Did that have anything to do with the advances made by the bank?—*A.* It had. 20

Q. You were afterwards informed of the recovery of the consent judgment in September by Mr. Nugent?—*A.* Yes.

Q. Previous to that had you or had you not been pressing for payment?—*A.* Yes.

Q. Did you do so afterwards?—*A.* No, sir, we relied upon the judgment.

Frank S. Nugent examined (p. 232).

Q. You are a practising solicitor in Winnipeg?—*A.* I am. 30

Q. And also here?—*A.* Also a member of this bar.

Q. You came to Toronto in September, 1891, with respect to the matter of the action of Charlebois against the Great North West Central?—*A.* Yes.

Q. On behalf of Macdonald & Schiller and on behalf of the Commercial Bank of Manitoba?—*A.* And also W. A. Preston.

Q. And having instructions from all these parties?—*A.* Yes.

Q. Were you present when the judgment was pronounced?—*A.* Yes.

* * * * *

Q. I observe the first claim was in favour of your bank, Macdonald & 40
Schiller?—*A.* Yes; that point was hotly contested by Charlebois and myself, we
contending that unless we had first place in the judgment we would not consent
to the judgment, as we had possession of the road, and we were given that after
a hot discussion between Mr. Osler and myself. We were in actual, armed

possession by men camped on the dump, and Mr. Osler's reply was, "Well, we do not want anybody shot;" Well, then, I said, "you will give us our rights."

Q. That first place is given to Macdonald & Schiller to the extent of \$64,429?—A. Yes.

Q. That included the order accepted in favour of the Commercial Bank?—A. Yes.

Q. For \$20,000?—A. Yes; I had the order with me, and it includes that.

Q. It includes the balance of the claim?—A. They are to take the benefit of my declaration of trust for the balance of the claim.

10 Q. Well, now, but for this provision of the first charge would this judgment have been consented to?—A. No; and they never would have had possession to this day.

Q. What have you relied upon since?—A. Expressly on that judgment; we had negotiations before that 26th September you will see there. but that was afterwards conceded in the judgment, and of course we relied on that expressly from that day to this.

Q. Has your position been changed by reason of that—(Interrupted)?—A. Most materially; we would have been on the dump and they would never have got it without paying us.

20 Q. And you speak with respect to all the parties you represented, including the Commercial Bank of Manitoba?—A. Yes; because the bank advanced their moneys relying on our lien; every time we got an advance from the bank we went and showed how much money was coming to us, and showed them the contract giving us the lien, and they relied expressly on that lien in giving us the money, and it was because of that we asserted our position, and would not give it up until we were satisfied.

Q. Was this made known to the parties in settling the judgment?—A. Yes; and it was fought for hard. They wanted to place us in common right with the rest of the creditors and Charlebois, and we declined.

30 Q. And made it known to the bank on your return what the judgment was?—A. Yes; I explained the purport of it and how it was obtained, and it was after that the bank let my clients remain easy after that judgment.

RECORD.
VI.
Factum
of the
Appellants,
Alexander
Macdonald,
William
Alfred
Preston,
John S.
Schiller,
Frank S.
Nugent,
and the
Commercial
Bank of
Manitoba—
continued.

SUMMARY.

In conclusion, the Commercial Bank submits that it is entitled to have judgment for the said sum of \$37,771.45 and interest, and to hold as security therefor the lien on the road, given up under the agreement of F. S. Nugent with the Railway Company, dated December 2nd, 1891, and the security given to Charlebois by his contract under the judgment of Ferguson, J., for the following among other reasons:

1. On the grounds set out and relied upon by the appellant Charlebois, so far
40 as applicable.

2. Because the moneys mentioned in the contract were made assignable by the contract itself, and were in effect assigned to the bank, who were innocent

RECORD. holders for value, and such moneys were freed from any equity between Charlebois and the Company.

VI.

Factum
of the
Appellants,
Alexander
Macdonald,
William
Alfred
Preston,
John S.
Schiller,
Frank S.
Nugent,
and the
Commercial
Bank of
Manitoba—
continued.

3. Because the claim of the bank is for money advanced for the purposes of the construction of the road, and went into the work.

4. Because the bank, in reliance on the security of the judgment, changed its position, and it would be inequitable and unjust now to deprive it of this security of the judgment.

And the Appellants, Macdonald, Preston, Schiller and Nugent submit that they are entitled to have judgment for the said sum of \$64,429 and interest for the reasons above mentioned and to hold as security for such judgment the lien ¹⁰ and the security above referred to.

L. ROBINSON.
A. H. O'BRIEN.

In the Court of Appeal for Ontario.

Friday, the 4th day of October 1895.

Between

James Bogle Delap, individually and as a shareholder on behalf of himself and all other shareholders of the Great North West Central Railway Company (except the Defendant, John Arthur Codd), Louisa H. Mansfield, and the Great North West Central Railway Company,

(Respondents) Plaintiffs,

10

and

Alphonse Charlebois, Alexander Macdonald, William Alfred Preston, John S. Schiller, Frank S. Nugent, the Commercial Bank of Manitoba, the Union Bank of Canada, William Anderson, Allan, and Robert J. Devlin,

(Appellants) Defendants,

and

20

John Arthur Codd and William James Crossen, Frederick John Crossen and Joseph Henderson (executors of the last will and testament of James Crossen, deceased), the Honourable Francis Clemow, James Murray and Daniel McMichael, and the Right Honourable Edric Frederick Baron Gifford and Robert Lothian Curzon,

Defendants.

Upon the application of counsel for the (Appellants) Defendants, Alexander Macdonald, William Alfred Preston, John S. Schiller, and Frank S. Nugent, in the presence of counsel for the Respondents, for an order declaring the judgment of this Court in respect of their application at the argument of the Appeal to be allowed to file their defence in this action, and upon hearing what was alleged by counsel aforesaid,

30 This Court doth declare that the said Appellants were permitted to argue the Appeal as if their said statement of defence had been permitted to be added at the trial; and that the case was considered and decided in this Court as if that had been done.

And this Court doth order that the costs of this application be costs upon the Appeal in this Court.

(signed) A. GRANT,
Registrar.

RECORD.

In the Supreme Court of Canada.

Between

Alphonse Charlebois, *et al.*,
(Defendants) Appellants,
and

James Bogle Delap, individually and as a shareholder on behalf of
himself and all other shareholders of the Great North West Central
Railway Company (except the Defendant, John Arthur Codd), Louisa
H. Mansfield, and the Great North West Central Railway Company,
(Plaintiffs) Respondents. 10

RESPONDENTS' FACTUM.

VII. This action was brought for the purpose of setting aside a judgment made
Respondents by consent by Mr. Justice Ferguson, in a former action then pending in the
Factum. Chancery Division of the High Court of Justice for Ontario, wherein the
Appellant Charlebois was Plaintiff, and the Respondent Company was
Defendant.

It is submitted that the judgment of the learned Chancellor in this action,
confirmed by the Court of Appeal, reducing and varying the said consent
judgment, is right and should be sustained.

A judgment by consent may be set aside or varied for any reasons for 20
which an agreement may be set aside or varied.

A fortiori it may be set aside for fraud in the consent.

Huddersfield Banking Company *v.* Lister.
12 Reports, 1895, July part, page 107.

The consent judgment, in part set aside by the learned Chancellor's
judgment appealed from, was procured by fraud.

At the trial of the former action of Charlebois *v.* G.N.W.C. Railway
Company the Defendant Company purported to be represented by John Arthur
Codd (Defendant in this action), then purporting to act as president.

The Company was not otherwise represented than by the Defendant Codd 30
and by Dr. McMichael (a Defendant herein), another director acting under
Codd's instructions, without any meeting of the board or shareholders of the
Company, or communication with the real proprietors of the stock of the
railway.

Mr. S. H. Blake, Q.C., who appeared as counsel, acted only on the
representations and instructions of Codd and McMichael as for the Company.

The Defendant Codd was disqualified from acting as president under the
57th section of the Railway Act of 1888, on account of a secret indirect
beneficial pecuniary interest which he had in the very contract upon which the
Defendant Charlebois based his claim in the said action against the Company. 40

In an action afterwards brought by the Company against Codd to enforce
this disqualification he was declared, by reasons of the facts next hereinafter

stated, and appearing in evidence in the present Appeal, to be legally incapacitated from holding the office of president or director of the Company. **RECORD.**

Under the agreements touching Codd's interest McMichael was merely the hand to receive payment for Codd of that interest, and was in fact trustee of that interest for Codd. **VII. Respondents Factum—continued.**

Trial Exhibits 73 and 75, Vol. IV.,* page 67. *** Original Record.**

The Defendant Charlebois, it will appear, had the most intimate knowledge of the Defendant Codd's interest in the contract, and of his motives for fraudulently agreeing to a judgment against the Company, and also of
10 McMichael's position as the hand to receive and protect that interest of Codd, and as trustee of the same for Codd.

The Defendant Codd's interest arose under an agreement made the 6th of March 1888, between him and the Defendants Charlebois and others, the then proprietors of this railway; Ex. 1, Vol. I.,† page 7, par. 8a, commonly referred to as the Commission Agreement. **† Original Record.**

The Defendant Codd became by that instrument at that time entitled conditionally to a commission or share, amounting to 173,133 dollars, to be received by him out of the proceeds of a sale of the railway and franchise, when actually received in full, but only in case he first procured the full net
20 cash sum of 800,000 dollars to be paid in full to the then proprietors, the Defendants Charlebois, Allan, Devlin, Clemow, and Murray, in addition to the sum of 173,133 dollars, which was then to become his own share or commission, making a total price of 973,133 dollars.

The Defendant Codd was to procure a sale of the railway pursuant to the terms of an option or offer of sale and contract for construction of first 50 miles, made by the Defendants Charlebois, Clemow, Allan, Devlin, and Murray to the Defendant Codd, bearing date 9th April 1888.

Exhibit 3, printed in Vol. I.,‡ page 57 (*see* Vol. III.,‡ page 22). **‡ Original Record.**

By subsequent agreement, called a construction contract, dated the 16th
30 September 1889, being Exhibit 9, Vol. I.,§ page 63, which contract the learned Chancellor finds to have been made *ultra vires* and in fraud of the Company, the optional contract of the 9th April 1888, for the part construction and transfer of the railway, between the Defendant Charlebois and others and the Defendant Codd, above referred to, set forth in Vol. I.,|| page 57, was converted into a nominal contract for construction direct by the Defendant Charlebois with the
Company, accompanied by a contemporaneous transfer of the shares in the Company; simultaneously, by endorsement on the agreement of the 6th March 1888 (*see* Vol. III.,¶ page 21, line 15), the Defendant Codd's conditional
interest in the purchase money was converted into a like conditional interest in
40 the contract money, to become due to him only when the whole of the nominal, and as it is submitted, fraudulent, contract sum was paid by the Company to Charlebois as contractor.

It was only through the payment of the whole contract money by the Company to Charlebois, as earned on the contract, that Codd would become entitled to his share from the contractor.

RECORD.

VII.
Respondents
Factum—
continued.

At and prior to the consent judgment the secret condition of Codd's interest or share in the contract was not known to any person interested in or representing the Company, except Codd and McMichael, but was known to Charlebois, Clemow, Allan, Devlin, and Murray.

At the date when the Defendant Codd, as president of the railway, consented to a judgment against the Company, on the contract, Ex. 9, the terms of the secret agreement had not been fulfilled so as to entitle the Defendant Codd to any claim for his commission or share.

There had been paid over at the date of the making of the said contract only the sum of 243,000 dollars in cash, and, later, rails, valued at 129,000 10 dollars.

The balance of the contract sum of 973,133 dollars Codd had not procured through the Company or otherwise, and was unable to procure it.

At the date of the consent judgment the Defendant Charlebois, as contractor, had brought an action against the Company, claiming that he had completed the railway, and was entitled to the unpaid balance of the original contract sum of 973,133 dollars.

Had the Defendant Charlebois then obtained judgment against the Company on the contract, and realised out of the assets of the Company, under the judgment, a less amount than would include Codd's commission, the Defendant 20 Codd would have for ever lost his claim under the secret terms of his agreement of the 6th of March 1888, and would have had no claim against Charlebois or any person for his conditional interest in the contract.

There were no pleadings in the said action, but Charlebois moved therein for an injunction.

Codd did not set up or bring to the attention of the Court the true defence of the Company, namely, that the Defendant Charlebois' contract with the Company was fraudulent and void as against the Company, and *ultra vires* thereof, in respect of the Defendant Codd's interest, and other large amounts, mentioned in the judgment of the learned Chancellor in this action, because the 30 disclosure would have destroyed Codd's own prospective contingent interest.

He merely urged, by way of defence to Charlebois' motion, what was perfectly true, that Charlebois had not fully completed his contract for construction, and that the balance was not yet due to him.

At the same time that the Defendant Codd was opposing Charlebois' motion, he was making offers to the Defendant (then Plaintiff) Charlebois to consent to a judgment against the Company if the Defendant Charlebois would agree to certain terms, which were entirely with a view to Codd's own secret benefit. The Defendant Charlebois ultimately did agree to the terms stipulated by Codd, and by consent the motion for an injunction was 40 turned into a motion for judgment, and judgment was thereupon entered, with the following conditions for the Defendant Codd's benefit:—

1. A judgment was entered making the Company a debtor for the full balance of the contract, including Codd's 173,133 dollars.

2. The Defendant Charlebois recognised the Defendant Codd's claim to a certain balance, being the original sum of 173,133 dollars, less certain deductions

formerly privately agreed to between Charlebois and himself, transferring those amounts to the Defendant Charlebois. RECORD.

3. The balance agreed to be paid to the Defendant Codd, was made a judgment charge upon the Company, payable through the Defendant Charlebois' judgment against the Company on his contract. The Defendant Codd would thus be enabled to pay himself the amount out of the proceeds of the bonds of the Company, should he succeed in floating them. VII.
Respondents
Factum—
continued.

4. The judgment provided for putting the Defendant Codd in a position to have possession of the railway, and an opportunity for a limited time to float the bonds of the Company, for the purpose of paying the Defendant Charlebois' judgment, including the amount coming to himself.

5. The Statements A. and B. proved by the affidavit of D'Alton McCarthy, q.c., and admitted on the argument in the Court of Appeal, copies of which are printed as an appendix to this Factum, and Ex. 26, Vol. III.,* p. 177, * Original Record. show how the figures in the consent judgment were arrived at, from which it appears that Codd obtained collusively.

(a) A remission of 25,000 dollars, being one-half of the 50,000 dollars he had conceded to Charlebois by fifth clause of the agreement of 9th September 20 1889.

See Vol. I.,† p. 11–12, and Vol. III.,† Ex. 19, p. 29.

† Original
Record.

(b.) Relief from liability to Charlebois for advances to the extent of 49,788 dollars, which are in the account charged to the Company, without any colour of right in relief of Codd personally.

6. The Defendant Codd, in procuring payment of the Defendant Charlebois' claim in full by the Company by the consent judgment was protecting himself from probable liability incurred for the sum of \$150,000 to the Defendants, the Union Bank, by the representations and undertakings given by the Defendant Codd in fraud of the Company, upon which the Union Bank made the advances to the Defendant Charlebois on his contract.

30 These appear in Exhibit 54, Vol. III.,† page 74.

† Original
Record.

See also page 169, Vol. III.,§ lines 7 to 40.

On these terms being agreed to in the Defendant Codd's personal favour, and from these motives, to the Defendant Charlebois' knowledge, the Defendant Codd as president waived on behalf of the Company any contention that the Defendant Charlebois' contract was not complete, and agreed to the judgment against the Company. § Original
Record.

Interest was added without any proof, when admittedly deductions were made because the contract had not been completed, and therefore interest could not have been payable.

40 The judgment, even on a computation based on a contract price, was over \$50,000 greater than the true amount.

The Defendant Codd also waived the Company's right, which formed part of the contract with the Defendant Charlebois, to tender payment of the balance purporting to be due in bonds of the Company.

Further, the judgment gave effect to a lien and mortgage purported to be

RECORD. given by the contract in violation, as the learned Chancellor has found, of the Railway Act and in fraud of bond and other creditors of the Company.

VII.
Respondents
Factum—
continued.

The Defendant Codd colluded with the then Plaintiff Charlebois in concealing from the Court the fact that a bond issue had been made and large advances made thereon to the Company for purchase of the rails supplied to the Defendant Charlebois and other purposes, and consented to an order impounding the whole issue of bonds and enjoining the Company from dealing with them except for the purpose of paying the Defendant Charlebois as first chargee by virtue of the consent judgment.

Of all these facts of fraud on the part of Codd the then Plaintiff Charlebois 10 was not only well aware, but he was a participator in all the acts and transactions leading up to and constituting the frauds charged.

* Original
Record.

See his evidence at the trial, Vol. II.,* p. 14 *et seq.* ; Vol. IV.,* p. 1 *et seq.*

There was no adjudication by the Court upon any question of evidence or law submitted to it.

The question of the *vires* of the Company to enter into the contract which the judgment enforced was not set up or adjudicated upon.

The respondents submit that the judgment gave effect to a fraudulent and *ultra vires* contract, which neither the directors nor even the Company itself had power to enter into.

It is necessary to refer historically to the origin of the Company, showing 20 the objects and conditions attached to the subsidies appropriated for it, the special conditions under which it was incorporated, and the proceedings resulting in the pretended contract in fraud, as it is submitted, of the Company and the Act of incorporation.

The Great North-West Central Railway Company was created under authority of an Act of Parliament, 1886, 49 Vict., c. 11, Clause 2 and Clause 5. It did not originate as an ordinary incorporation, sought by individuals for a private purpose, but was created by law for a specific public purpose, namely, for constructing a railway of four hundred and fifty miles, from Brandon to 30 Battleford, by means of subsidies of public land granted and appropriated out of the public domain for that purpose by the Parliament of Canada,

† Original
Record

Incorporation was granted as a means of giving effect to the general objects so declared by Parliament, and upon terms and conditions set forth in a charter dated the 22nd of July 1886 ; also in a contract between the Company and the Government of Canada, dated the 12th September 1887 (Ex. 31, p. 18, Vol. III.†), which charter and contract are confirmed by Act of Parliament of 1888, 51 Victoria, chapter 85.

Besides the powers, conditions and restrictions expressed in the charter, there were incorporated in the charter the provisions of “the Railway Act of 40 1879 and amending Acts.”

The term “amending Acts” must be read as including repealing Acts, inasmuch as at the date of the charter the Act of 1879 had been repealed by an Act respecting the Revised Statutes of Canada, 49 Vict. chap. 4, sec. 5, and the Rev. Stat. Can. of 1886, cap. 109, enacted in its stead.

Similarly, in the confirming Act of 1888, "amending Acts" must be read **RECORD.** as incorporating the Railway Act of 1888, which was then law.

The Act has been so construed by Parliament by an Act passed in the Session of 1895, entitled, "An Act respecting the Great North-West Central Railway," wherein it is declared that the time for completion of the railway by the Railway Act had expired. VII.
Respondents
Factum—
continued.

This was the case pursuant to the terms of the Act of 1888.

Had the terms of the Act of 1879 applied, the charter would have had another year to run.

10 The scheme of the subsidy, and of the charter and contract for the purpose of utilizing the same and the above Acts of Parliament relating thereto was as follows :

A land subsidy at the rate of 6,400 acres per mile was appropriated ; chargeable as a whole with the construction of 450 miles of railway as a whole.

The Company was to be placed in possession of proportions of the subsidy as the work proceeded, but the mode of charging the land granted or applying the proceeds of sale was strictly defined, so that no part thereof could be applied to any other purpose than the construction of the railway until the railway had
20 been completed as a whole.

The terms of the subsidy contract between the Government and the Company in this respect were in the spirit of the law as declared in the case of the Government of Newfoundland *v.* The Newfoundland Railway, 13 Appeal Cases, p. 210, and were very carefully guarded by the terms of the various charters, contracts and enactments.

Not only was the subsidy granted but the very incorporation of the Company was for a public purpose.

The power of the Company thus specially constituted with regard to bonding or otherwise charging its land subsidy, railway and franchise is to be
30 construed not largely but strictly.

Any evasion of the provisions, whether by the Directors or by the Company itself, it is submitted would be not only fraudulent but *ultra vires* of the Company.

See 49 Vict., c. 11, sects. 2, 4, 5, which provide for the land subsidy and chartering by letters patent of persons undertaking the construction of the Railway.

51 Vict., c. 85. Setting out and confirming the charter granted to Clemow, Bate, Allan, Murray, and Charlebois.

Let it be here noted that the corporator Bate was succeeded by the
40 Defendant Devlin shortly after the granting of the charter.

The five corporators when 51 Vict. c. 85, was passed were therefore Clemow, Devlin, Allan, Murray, and Charlebois.

In 1887 and 1888 the defendants hereinafter named other than Codd were the sole corporators and directors of the Company, and in their corporate capacity were the contractors with the Government of Canada.

A scheme was entered into by the Defendant John Arthur Codd and the

RECORD. Defendants Charlebois, Devlin, Allan, Clemow, and Murray for the purpose of effecting a sale of the shares for their benefit. In the manner in which this contract was ultimately carried out the above restrictions were evaded, and the land subsidy and chartered powers of the Company converted to the directors' private benefit, in defiance of the fulfilment of the condition and objects of the subsidy and incorporation.

VII.
Respondents
Factum—
continued.

By Clause 27 of the charter the land subsidy in their hands was charged, in addition to the construction of the road, with the amount that remained due for construction to the contractors who had commenced an abortive construction under a previous expired charter, called the Souris and Rocky Mountain 10 Railway, for a route somewhat different, but to which the said land subsidy had been originally appropriated.

The former contractors and creditors, at whose instance and for whose benefit solely this provision was inserted in the Act of Incorporation of the Great North West Central Railway Company, were the Defendants Macdonald and Preston.

* Original
Record.
† Sic.

Macdonald, Vol. II.,* p. 258, line 19 *et seq.*, p. 259, lines 1 to 18.
Preston, Vol. III., p. †

In 1887, before the Defendants Charlebois and others, the original corporators, accepted the charter, the amount of the cost of the former construction above referred to was ascertained between the Company and Macdonald and Preston at the sum of 125,000 dollars. 20

‡ Original
Record.

This sum was reduced to 75,000 dollars by a settlement, and the Company undertook to pay it in the manner and on the terms set forth in an agreement dated the 12th of September 1887, Exhibit 18, Volume I.,‡ page 49, namely, 50,000 dollars in bonds of the Company, the balance in cash.

The Defendant Codd at one time pretended to have a claim against the Company for large undefined sums, which the Respondents say was utterly unfounded.

Codd never at any time formulated his claim or alleged any facts in support 30 of it.

The inquiry for claims under Clause 27 of the Charter was made and closed with his knowledge, without any claim on his part having been presented.

The learned Chancellor has found as a fact upon the evidence before him that Codd had no claim against the Company.

§ Original
Record.

Vol. I., § p. 118, l. 25.

The conclusion is irresistible from the facts that the Directors were well aware that Codd's claim was not *bonâ fide*, and it is clear that they never admitted its validity. 40

Original
Record.

Charter, Section 27, Volume I., page 47, paragraphs 10, 10a.
Macdonald, Volume II., page 258, 259.
Charlebois' depositions, Vol. IV., page 10, Exhibit 103, Vol. III.,
page 25.
McMichael, Volume II., pages 153 and 154.
Charlebois, Volume II., page 11, 251.
Allan, Volume II., page 232, lines 8 to 18.

The Defendant Codd purported to release this claim by an instrument bearing date the 8th of April, 1888, Exhibit 2, Volume III., page 23. RECORD.

No consideration is stated in the document.

No connection between this release and the conditional commission agreement of the 6th of March, 1888, appears on the face of the documents.

The Defendant Codd had attained his object by securing certain conditional profit to himself out of the sale by the corporators of the Company's franchise and subsidy.

By the accompanying agreement with the corporation, dated 9th April, 10 1888, Volume I.,* page 57, he was given a nominal option of purchase in form connected with a contract as to certain construction to be done by the vendors. * Original Record.

But in substance he was made the agent of the directors to effect a sale for their benefit as the shareholders of the railway.

After the recitals the substance of the agreement commences with the first and second clauses on page 58, and purports to be a contract providing on the one hand for the construction of 50 miles of the railway, and on the other hand for the transfer of the railway franchise free of liabilities.

The contract was to be for the building, by the vendors Clemow, Devlin, Allan Murray, and Charlebois, of 50 miles, and transferring the same with the 20 franchise for the sum of 200,000£. to the purchasers.

The Company, it is to be observed, was not a party to the contract, and is in no wise mentioned as concerned in it.

Before the sum and terms to be obtained by Codd for all parties were agreed upon, the directors, with the cognisance of Codd, had taken steps to ascertain the actual cost of construction and equipment of the first 50 miles of the railway, and also what amount of cash advance would enable the vendors to get the work executed and to tender the 50 miles of road completed, so as to claim the balance of the contract sum of 200,000£.

The Company entered into a contract with a responsible contractor, 30 Sproule.

Sproule, with his associates, Macdonald and Preston, were to provide the capital, and construct the road at their own risk.

The cost to the Company of the road was settled by this contract at 200,000 dollars, for grading, ties, bridging, and track laying.

Contract with Sproule, 12th September, 1887, Trial Exhibit 4, Vol. III.,† † Original Record.
page 6.

The same contractors at the same time estimated with the directors, and offered to carry out the remaining items for completion. These were ballasting and fencing, 32,300 dollars, making the contract price in all 232,000 dollars. 40 (The contract for these items was ultimately given to these contractors, and performed by them at the above figures.)

Preston Ev., Vol. III.,‡ p. 209, l. 35 ; pp. 210-212, 213, l. 20, to 214 ‡ Original Record.
to l. 30.

Deducting the drawback of 10 per cent. from the price, left 210,000 dollars to be paid as the work proceeded. The work was to be executed in the course of three months unless suspended by the Company.

RECORD.

—
 VII.
 Respondents
 Factum—
continued.

Thus rather less than two-thirds of the estimates would become payable by the terms of the contract until one month after the Company's engineer had accepted and certified the completion of the road.

\$140,000 therefore, was all that would be required to be paid to the contractor during progress.

The rails, which cost not exceeding 129,000 dollars, were to be supplied to Sproule under the Sproule contract by the Company.

Under contract of 9th April, 1888 they were to be supplied by Codd to the vendors, and deducted from the purchase money.

The rolling stock, costing 55,000 dollars, was not necessary until completion, and in the end was actually obtained on credit.

* Original
 Record.

See Exhibit 40, Vol. III.,* p. 85. Exhibits Nos. 52 and 62, Crossen Case, p. 26 and 29.

There was left 110,000 dollars cash in the vendors' hands out of the 250,000 dollars to cover; (1) land damages (250 acres of prairie land), 12,000 dollars; (2) transport of rails from Montreal to Brandon, 180,000 dollars; leaving 18,000 dollars for engineering and incidentals.

The Company's engineer's salary was to be 750 dollars for the three months.

† Original
 Record.

Directors' Minutes, Vol. III.,† p. 232.

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£50,000 was, therefore, ample cash in hand to enable the road to be completed, with considerable margin.

Over and above there was 50,000 dollars cash lying as a deposit in the hands of the Government, which the vendors reserved to themselves, and of which, at the time of the ultimate contract on the 16th September, 1889, 23,225 dollars remained unexhausted, after all payments under the 27th Section had been settled and provided for.

‡ Original
 Record.

Exhibit 105, Vol. III.,‡ p. 25.

£50,000 being the cash advance required, it was stipulated that on 50,000% being placed in the hands of the vendors, and the banker's guaranty produced for the balance, all the shares in the Company might be unconditionally transferred to the Defendant Codd, or his nominee.

§ Original
 Record.

These terms appear under the third clause of Ex. 3, Vol. I.,§ page 58, sub-section (1) and clause 4, sub-section (b) on page 59

The Company's assets, the shares carrying the land grant and franchise, after transfer, were not in any manner chargeable with the balance of 150,000% to be represented by the banker's guarantee.

On Codd's succeeding in carrying out this sale, the vendors or contractors, therefore, would have 50,000% sufficient to enable them to have the road completed under the Company's existing contracts and tenders, the rails supplied, a banker's guarantee for the balance of 150,000%, less allowance for rails 129,000 dollars, leaving about 620,000 dollars, of which they would only have to pay out 137,000 dollars, leaving a net profit on the price of the shares, or on the contract of 483,000 dollars, less 50,000 dollar bonds to be transferred to Macdonald and Preston under contract of 12th September 1887.

The Defendant Codd's share of the profits, 173,333 dollars, under his secret RECORD.
contract with the directors of the 6th of March 1888, would come out of the
above profit balance of 433,000 dollars when paid over in full.

The true amount of these claims to be met out of the contract, and of the Respondents
cost of construction of the railway, was known to both the directors and the Factum—
Defendant Codd, to be a sum not exceeding in the whole 540,000 dollars, leaving continued.
the balance of 433,000 dollars as a profit to be divided between the Defendant
Codd and the Defendants, then directors of the road, in the proportions and sums
agreed upon.

Directors' Minutes, 8th April 1888, Volume III.,* page 233, and 2nd of * Original
10 April 1888. Record.

Charlebois' Evidence, Volume II.,† pp. 27, 28, 29.

† Original
Record.

While the contract was really a contract for the sale of the right to the land
grant subsidy, carried by the vendors' shares at the above profit of 433,000
dollars out of the total price of 973,133 dollars, the Defendant Codd was put in
a position, by the form of the contract, to represent to financial people, or in-
vestors in England, that the contract was validly and substantially a contract
for the building of 50 miles of the Company's road for 973,000 dollars, at about
25,000 dollars per mile, as a reasonable price.

Any apparent excess in this price, if perceived, could be covered by the
20 representation that the vendors protected the Company from liability for unde-
fined claims charged by the Act of Parliament upon the Company under
Section 27.

By the scheme embodied in the contract with Codd, of the 9th of April
1888, the vendor, directors, or some of them, while intending to become the
contractors for the construction of the railway, were apparently to be personal
contractors, not with the Company, but with the purchaser personally, relying
upon his credit, or that of his banker, for the 150,000£., beyond the cash sum of
50,000£. placed in their hands.

These first corporators, as such, were not merely the shareholders of the
30 road; they were the first provisional, and afterwards the elected, directors of
this Railway Company.

A trust attached to them as corporators.

A further trust attached to them as directors of this subsidised corporation,
involving, among other things, the conservation of the enterprise and property
entrusted to them in that capacity, for the purposes authorised by the instru-
ment of incorporation.

Their knowledge of the cost of building the railway acquired as directors
they were bound to use for and not against the Company, and to place at the
disposal of their successors for the benefit of the corporation.

40 They were clothed by the provisions of the Act, 49 Vict., c. 11, under
which the corporation was created with a special trust of a public character,
which they were bound to fulfil in respect of the building of the railway as
contemplated out of the grant of public lands provided for that purpose.

The incorporation was for the construction of a railway intended to be
450 miles in length with power to extend to the Rocky Mountains.

The terms and circumstances of incorporation by necessary implication

RECORD. prohibit the selling of any block of the land grant, except in aid of the construction of the whole road.

VII.

Respondents
Factum -
continued.

The implied prohibition extends to the alienation of or dividing up the road into portions and selling piecemeal, and the pledging or selling for their own profit of a portion of the subsidy, pending completion of the whole subsidised railway.

It will be seen, it is submitted, that these trusts and prohibitions have been violated by the acts of the corporators, in the mode in which they carried out the contract in question ; and that it has been sought, by the consent judgment which is impeached, to render these illegal acts unimpeachable. 10

* Original
Record.

Codd first fulfilled the only condition in the contract of 9th April 1888, in respect of which time was of the essence, namely, the sixth clause. Vol. I.,* p. 59.

In the first instance he applied to a financier in London, named Treherne, who undertook to guarantee the sum of 50,000*l.* in a manner which was accepted by the vendors through their agent, the Defendant Murray.

The acceptance is by the Defendant Murray's letter of the 9th of May 1888.

† Original
Record.

Volume III.,† page 24.

Directors' Minutes of the 17th September 1888.

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‡ Original
Record.

Volume III.,‡ page 235.

In some way not explained, Treherne afterwards dropped out of the agreement with the Defendant Codd ; but in 1889 the Defendant Codd at length made arrangements to actually raise money through a firm of solicitors, Messrs. Stevens, Bawtree and Stevens, of London.

By the terms of the offer placed in Codd's hands it appeared that the financial contractees on payment of the 50,000*l.* advanced, might take into their hands the whole capital stock of the railway free from any lien for the balance of the contract price, and so might raise this sum of 50,000*l.* by pledge of the shares and franchise. 30

Accordingly, Stevens, Bawtree and Stevens obtained the first payment of 50,000*l.* for the Defendant Codd from a client of theirs, the Plaintiff Delap, who agreed to lend the same upon security of a pledge of the stock.

The contract is dated 20th of July 1889.

§ Original
Record.

Exhibit 65, Vol. I.,§ page 9.

It becomes important to note that the Defendant Codd and the solicitors, Messrs. Stevens, appear to have been working together in a joint interest from the beginning

|| Original
Record.

Vol. II.,|| page 97, to line 15 ; pages 106, 107, 108.

Their mutual interests were settled and reduced to writing in an agreement 40 dated the 16th September 1889. Simultaneously with the carrying out the contracts in question.

¶ Original
Record.

Exhibit 66, Vol. III.,¶ page 40.

The existence of this agreement of the 16th of September 1889, or of the prior understanding embodied in it, was never made known to Mr. Delap until

August 1892, long after all the events out of which the present litigation has arisen. RECORD.

Vol. 3,* page 99, lines 20 to 30 ; page 100, lines 1 to 20.

The true position, unknown to Delap, was that the Stevens' firm, or C. R. Stevens, had an interest equivalent to a partnership in the Defendant Codd's purchase of the shares.

In ignorance of this fact, and relying upon the Stevens' firm, who had been his family solicitors, to advise and represent him faithfully, Delap, on their advice, first entered into the agreement of the 20th of July 1889, and afterwards, upon Messrs. Stevens' advice and representations, placed a sum of 55,000*l.* in the hands of Charles Richard Stevens, one of the firm, to be advanced upon a pledge of the shares, strictly on the terms for his security of the said agreement of the 20th of July 1889.

Delap's Evidence, Vol. II.,† pages 112, 113, 114, to line 20.

During the interval between Treherne's endorsement of the contract and the contract between the Defendant Codd and the Plaintiff Delap, a change had taken place in the position.

The Company, apparently not relying upon the Defendant Codd's success, and being required by the terms of their contract with the Government to make some progress with the road, had called up some 80,000 dollars upon the stock, and expended it in construction.

This was in addition to the 50,000 dollars previously called up and deposited with the Government as security for the fulfilment of their contract, including the assumption of the former liabilities of the Souris and Rocky Mountain Railway.

There was thus about 130,000 dollars paid up upon 500,000 dollars of stock subscribed out of an authorised capital of 2,000,000 dollars.

To the extent of the moneys paid up upon the stock under the Railway Act, it would be unlawful, therefore, for vendors or purchasers to apply the proceeds of bonds to recoup their paid-up calls on stock.

Railway Act, 1888, Section 276.

Stevens, however, having his own speculative interest in the matter, persisted in advancing the Plaintiff Delap's money.

On September 9th 1889, Codd and Charlebois entered into an agreement, Trial Exhibit 7, Vol. I.,‡ page 11, paragraph 8j, and Vol. III., page 29 Trial Exhibit 19, whereby Charlebois was to procure Clemow, Allan and Devlin to assign him their interests in the undertaking, to procure Murray's assent, or buy his share also, and either with or without Murray, to carry out the agreement of April 9th, 1888, subject to the modifications set forth ; one of which was that "Charlebois should on completion of the first 50 miles have paid him an additional 50,000 dollars, or at Mr. Codd's option to transfer to Mr. Charlebois its equivalent in stock of the Company."

Then Clemow, Devlin, Allan, Murray, and Charlebois, on the 11th of September 1889, with the cognizance and concurrence of Codd and Stevens, changed the basis from a contract in which the vendors were to construct the

VII.
Respondents
Factum —
continued.
* Original
Record.

† Original
Record.

‡ Original
Record.

RECORD. railway for the purchasers into a contract with the Company, under which the Company was saddled with the whole sum of 200,000 $\frac{1}{2}$., which included 436,658 dollars, representing Codd's commissions and the purchased money of the shares.

VII.
Respondents
Factum—
continued.

* Original
Record.

† Original
Record.

This Agreement of the 11th of September 1889 was reduced to writing, and is stated in Trial Exhibit 6, Vol. III.,* page 36.

Charlebois' understanding of both Agreements is given in his evidence, Vol. II.,† pages 27, 28, and 29, and Vol. IV.,† page 6, lines 18-32; p. 24, 10-15; p. 25, lines 5-10, line 34.

He says he was aware of and explains the transference of the liability of 10 the individual vendors to the Company thus brought about.

That all the contracts which bear the date of the 16th September in question form part of the transaction agreed to on the 11th of September is shown by Charlebois' evidence, pages 25 and 26, especially page 26, lines 30 to 40, in Vol. IV.†

‡ Original
Record.

§ Original
Record.

The several passages relating to the contention of the Respondents the Company in this respect are printed in Vol. IV.,§ with black line on the margin, for easy reference.

It appears also from the evidence of Charlebois, Clemow, McMichael, and Allan, that on the 16th of September, when the parties met, the documents 20 bearing that date, and executed by all the parties, have been prepared.

Mr. Lewis, who acted as solicitor for Clemow, Allan, Devlin, Murray, and Charlebois, prepared these documents.

He was not put in the box by Charlebois, and it is fair to say that had he been in the box the conduct of the parties and the frauds and breaches of trust on the part of Charlebois and his co-directors, that are charged, would have been fully confirmed by his evidence.

|| Original
Record.

Not only does the evidence prove the facts, but the five director trustees are, under the circumstances, concluded on these questions of fact by the recitals and contents of the written documents bearing their signature and seal, 30 and proved in evidence, namely, Trial Exhibit 5, Vol. III.,|| page 33, trial Exhibit 12, Vol. III.,|| page 36, Trial Exhibit 6, above set forth, Vol. III.,|| page 36, and the other documents in evidence, showing the transaction by which the Sproule construction contract was put an end to, Macdonald and Preston made sub-contractors to Charlebois, and Charlebois' contract in question for the same construction, made direct with the Company, by which the said sum of 436,658 dollars was added to the ascertained cost of construction, making the contract price 200,000 $\frac{1}{2}$ stg. to be paid to the Company.

Since 1887 the Company had had its contractor, Sproule, of whom the Defendants Macdonald and Preston were the associates or assignees. The 40 grading work was being performed by these contractors, and the whole construction was, in fact, continued and completed by them at the gross price of 238,000 dollars, after the transaction of the 16th September 1889. Shortly before that date, and as a step to those transactions the contractors were induced by Charlebois, his co-directors and Codd, to consent to surrender their contract with the Company, and to become nominally sub-contractors under Charlebois, but really to do the work upon the terms of the original contract with the

Company, with the intervention of Charlebois' name as substituted contractor RECORD.
with the Company.

Preston's Evidence, Vol. III., p. 210, 211, 213, l. 20.

VII.

Respondents

Factum—
continued.

It was now definitely and specifically agreed by Codd, Stevens, and the Defendant Charlebois, with the cognizance of the Defendants, Murray, Clemow, Allan, and Devlin, to cover up the true nature of Codd's and Steven's purchase of the shares of Charlebois *et al.*, and Codd's commission by including the sums formerly to be and now paid up on the stock, and the additional profit price thereon, with Codd's commission, in the amount of the nominal construction
10 contract of Charlebois with the Company, increased for these purposes to the sum of 973,133 dollars, named in the agreement of 9th April 1888. Volume 1,*
p. 57.

* Original
Record.

It was implied in the representations to the Plaintiff Delap that upon the construction of the contract of April 9th, 1888, the transaction would involve neither risk of loss nor liability to Delap. The pledged shares were therefore to be transferred either paid up in fact or at least free from liability. Codd and Stevens, and their solicitor, Dr. McMichael, insisted upon this construction of the contract of April 1888. On Saturday, the 14th September 1889,
20 the 16th of September 1889, the contention of Codd and Stevens was acceded to.

McMichael's evidence, Vol. II., † page 140, l. 30.

† Original
Record.

Gregson's " " " 400, l. 40.

On the morning of the 16th September 1889, the mode of giving effect in a legal manner to this understanding was arrived at. It is clear that the vendors, through their solicitor Mr. Lewis, then pointed to the power under the tenth section of the charter, and to a resolution of the Company, giving effect to it on the 4th of June 1889, authorising the directors to accept payment in full for stock, and to allow such discount thereon as they might deem
30 expedient and reasonable.

See Volume III., ‡ page 236.

Gregson's Evidence, Vol. II., § p. 413, ll. 1-30.

McMichael's Ev., Vol. II., || p. 152, ll. 20-30.

‡ Original
Record.

§ Original
Record.

|| Original
Record.

It was now agreed that the amount of discount to be allowed on the payment up in full of the shares should be 25 per cent.

A computation was then made of the amount required to be paid in to the Company for that purpose, and the money, 228,175 dollars, was obtained by Charlebois on behalf of the vendor shareholders from Charles Richard Stevens, being part of the sum of 55,000£ obtained by him from the Plaintiff Delap.

40 The cheques passed direct to the credit of the Company on account of the different shareholders.

The shares were thus in fact and were certified to be paid up and so entered

RECORD. in the Company's books by the secretary, the Defendant Allan, and were transferred as paid-up shares.

VII.

Respondents
Factum—
continued.

* Original
Record.

† Original
Record.

Allan's Ev., Vol. II.,* p. 244, l. 20. p. 245—246.

Directors' Minutes, Vol. III.,* p. 238, ll. 1—18.

Montague Anderson, Vol. II.,† p. 178.

Exhibits—Cheques, Stevens to Clemow,

Allan, Devlin, Murray, Charlebois, Vol. III.,* pp. 30, 31.

Exhibit 104, page 32.

Exhibit 89, page 43.

Thus there was 375,000 dollars actually paid up on the shares upon 10 transfer.

The minor items of construction to finish the railway were added in Charlebois' contract, the cost of which had been originally computed with Macdonald and Preston, and not included in the original contract with Sproule, namely, ballasting 26,000 dollars, fencing 12,000 dollars, and engines and rolling stock, 55,000 dollars, and right of way 12,000 dollars.

Charlebois also undertook to hand over out of the bonds he was to receive under his contract bonds to the amount of 50,000 dollars, which were to be handed by the Company to Macdonald and Preston, as ascertained and agreed by the agreement of the 12th September 1887, in settlement of the balance of 20 their statutory claim.

‡ Original
Record.

See second clause agreement, 9 April 1888, Vol. I,‡ p. 17.

§ Original
Record.

Charlebois' Evidence, Vol. II.,§ p. 32.

The total amount of the above additions, previously estimated and known to the directors (Preston's evidence *vide supra*), was about 105,000 dollars.

Added to Sproule's original contract, 200,000 dollars, and the rails (furnished by Codd and Stevens), 125,000 dollars, transporting them 80,000 dollars, and Macdonald and Preston's bonds 50,000 dollars, they would have made the total construction cost about 500,000 dollars, for which all the necessary cash was placed in Charlebois' hands in advance.

The balance added by the pretended new contract by Charlebois with the Company being the profit sum of about 436,000 dollars, it was agreed between Codd and the directors should be divided as follows :

(1) As found by the Chancellor's judgment to Charlebois' co-directors and shareholders, as the price of their shares in the capital stock of the Company, a sum of 226,632 dollars, together with 36,893 dollars, the value of Charlebois' share at the same computation.

|| Original
Record.

Charlebois' Evidence, Vol. II.,|| pp. 27, l. 30, pp. 30-31. Ex. 10, Vol. III., p. 223.

(2) The sum of 173,133 dollars formerly agreed to be payable conditionally to the defendant John Arthur Codd. RECORD.

Charlebois' Evidence, Vol. 2,* pp. 33-34.

See agreement, Exhibit 7, 9th September 1889, between Charlebois and Codd, Vol. I,* p. 11.

Exhibit 5, Clemow *et al* and Charlebois, Vol. III,* pp. 33, 34 and 35.

Agreement, Charlebois and Clemow, Exhibit 6, Vol. III,* p. 36.

Macdonald's Ev., Vol. II.,† p. 259, at line 20 to end ; pages 260, 261, 262, 263, to line 30. † Original Record.

10 Preston's Ev., Vol. III.,‡ pages 210, 211, 213, at line 20. ‡ Original Record.

In addition to these documents, all of which were executed on or before the 16th of September 1889, the nominal contract between Charlebois and the Company was prepared and agreed to between Codd and Charlebois, with the knowledge of Clemow, Devlin, Allan and Murray, on the 16th September 1889.

Exhibit 9, Vol. I.,§ page 63, and

Exhibit 12, Vol. I.,|| page 66.

§ Original Record.

|| Original Record.

To carry out these arrangements a continuous Board meeting was held on the 16th September 1889, at the beginning of which the members were the original shareholders and directors, the defendants Charlebois, Clemow, Allan,
20 Devlin and Murray.

After the papers had all been prepared and agreed to, transfers of shares were made by the old directors successively, to new directors, who successively took the place of the retiring directors, and when all the original directors had retired from office, but remaining present, their successors confirmed and executed the draft contract between Charlebois and the company, and the cash sum of 50,000*l.* in the company's hands was paid out to Charlebois as contractor by the company's cheque and a receipt for said sum given on the construction contract.

See Exhibit 10, vol. iii., p. 36.

30 Directors' Minutes, 16th September 1889, page 237, 238 and 239, particularly page 339, lines 5 to 10.

McMichael's Evidence, vol. iii., pages 139, 174, 189, 194.

Gregson's Evidence, vol. iii., pages 399-424.

} Original Record.

By these transactions Charlebois was nominally substituted as contractor of the company in the place of its existing contractor Sproule, for the purpose of enabling a new contract price to be made increased by the sums intended to be divided between Charlebois and his fellow directors and John Arthur Codd, being the amounts which the Chancellor has directed to be excluded from the amount declared to be payable by the consent judgment of September 1891.

RECORD.

VII.
Respond-
ents' Factum
—continued.

Moreover, in further violation of the provisions of the Railway Act and Charter, the subsidy, a section of the railway, and the franchise, were charged with a lien for this overwhelming and fraudulent amount.

The lien had all the character of a bonded obligation; but nevertheless none of the conditions under which alone bonds could be lawfully issued, charging the subsidy and railway, were observed.

The charter, section 14, required that bonds should be issued only after authority from a special meeting of shareholders, duly called for that purpose by advertisement, as provided by the Railway Act.

The contract with Charlebois containing the lien was, to his knowledge, 10 not authorised by a meeting of shareholders, but only at a meeting of directors, and without notice to shareholders.

It is true that the old directors, who, before the transfer, settled the so-called construction contract, and the new directors, who, after the transfer, confirmed it in the name of the company, purported to hold the entire share capital of the company; but it is to be specially noted that the company was enabled under its charter to issue 1,500,000 dollars more stock to future shareholders.

The learned dissenting judges seem to lay down the extreme proposition that any agreement made by directors for their own benefit and contrary to 20 their duty, however much against the interests and objects of a public company it may be, and however injurious it may be contemplated to be to future shareholders, may be legalised if assented to by all existing shareholders.

If this doctrine is correct, as is submitted it is not, under decided cases, the confirmation can, at all events, only be by way of waiver or estoppel operating upon the company through an estoppel upon its shareholders, and those subsequently deriving title through them.

Here it is submitted that it is important to observe that Charles Richard Stevens, having become a joint speculator with Codd in the purchase, and having 30 entered into the arrangements he did contrary to the understanding with his client, called for and received the 55,000% from the Plaintiff Delap upon the false representation that the contract of pledge of the 20th July 1889 was about to be carried out according to its terms.

In so obtaining the money really in his own interest, and handing over the 50,000% for his own purposes, Charles Richard Stevens ceased to act as Delap's solicitor, and notice could not be imputed to Delap of his unauthorised acts, as the learned Chancellor finds.

Nevertheless, Stevens was trustee of the shares from the moment of their transfer to him by Charlebois and his co-directors. 40

Had Stevens fulfilled the understanding with Delap he would have received the shares as trustee for Delap *simpliciter*.

The equity of redemption would have been in Codd alone.

Having got the shares by handing over his principal's money, his secret departure from the simple position by having acquired an interest in the shares from the pledgor, could not alter the right of Delap to hold him as absolute trustee of the shares for Delap until repayment of the advance.

This circumstance, that Stevens, in equity, held the shares merely in trust

for Delap pending the repayment of his money, is wholly overlooked by the two learned judges of the Court of Appeal who have dissented from the judgment dismissing the Appeal. RECORD.
—
VII.

Now it is submitted that a corporate body can only be bound, if at all, by the waiver or estoppel affecting its shareholders, if such shareholders had vested in them the whole legal and equitable title in all the shares. Respond-
ents' Factum
—continued.

Here the apparent shareholders, on the 16th September 1889, were, in fact, mere trustees of the shares, to absolutely secure the absent pledgee Delap against any encumbering or other misuse of the corporate powers in derogation from the pledgee's complete security and safety under his contract of July 1889.

The acts which the company attacks were in breach of that trust, and as fraudulent as against the *cestui que trust* of the shares, as they were illegal as regards the company.

They both were innocent and both injured by the transaction.

Can they therefore be estopped ?

Can either the company or the holder of the equitable interest in the shares be estopped by the unauthorised act of the trustee ?

Moreover, the doctrine that a person in whom the possession and apparent dominion over property is vested by the real owner may bind his principal, though acting in excess of his instructions and powers, and in fraud of him, is limited in all the cases to cases where the party dealing with the fraudulent agent is not only without knowledge of the want of authority, but also without connection with any fraud.

He must be not only without notice, but an innocent party.

Now the acts which Stevens assented to in violation of the charter of the company were participated in by the Defendant, Charlebois, and his fellow vendors, and their interest and benefit is inseparably dependent upon the performance of the acts of the illegality of which they were aware in law.

30 The substance of the whole transaction was—

1. To deliberately charge the company with an immense profit sum for the benefit of the retiring and incoming directors, where the complete contract could have been to their knowledge, as it actually was, carried out by the company's original contractors without any portion of such additional profit ; in violation of the Railway Act, and the whole spirit and intent of the legislation respecting the land grant and the charter.

2. To create this unnecessary charge upon the company for the purpose of charging it indirectly with the price of a purchase of shares made from one set of directors for the benefit of the incoming directors, in violation of the 40 276th section of the Railway Act, 1888.

3. Creating, for the defendant Charlebois' benefit, to enable him to carry out this illegal charge, an enormous mortgage lien upon the 50 miles of road, the relative proportion of land grant, and the whole rolling stock and franchise of the company, in priority to bonds, and so crippling the company in raising money on bonds for the completion of the road, precisely as has been done under the consent judgment and consequent order founded on this contract.

RECORD. The 19th section of the charter declares a trust of the proceeds of sales of the lands whenever made by the company or its delegated trustees.

VII. The company is given all necessary power to raise money on the lands by means of the bonding power.

Respond-
ents' Factum
—continued. The application of the money in this case is expressly made subject to the same trusts as in case of sale.

The mode of exercising this power is carefully guarded by the 14th section.

There is neither any express power to create mortgages or liens in any other way, nor is there any provision as to the disposition of proceeds of any other mortgages or liens created upon the same lands.

The inference is that other mortgages or liens of these lands were not contemplated by the Act.

Otherwise the trusts could be evaded, as it has been sought to evade them in this case, by creating a lien or mortgage otherwise than by bonds, and selling the lands thereunder free from the trusts.

Further, it would be possible to evade all the safeguards as to the method of creating a mortgage imposed in the case of bonds, by the 14th section, as has been done in this case by means of the so-called lien in the construction contract.

20

Another circumstance is to be noted affecting any question of estoppel.

Delap's money was paid direct to the company by agreement between Codd and Stevens on the one hand, and Charlebois, Clemow, Murray, Allan, Devlin, on the other hand, at the request of Charlebois, with the assent of Clemow and the others, for the purpose of crediting their respective shares with the amount necessary to make them fully paid-up shares. They became fully paid-up shares, and thereupon were transferred to Stevens, who, unknown perhaps to Charlebois, *et al.*, thereby became in equity trustee for Delap as pledgee.

Now, there, no doubt, was on the evidence an understanding between Codd and Stevens and Charlebois that the new board of directors which Charlebois and his fellow retiring directors had assisted to construct out of the new holders of the shares, should cause the company to enter into an illegal contract with Charlebois, whereby he was to be given a contract large enough to enable him to pay the retiring shareholders for their stock at the ultimate expense of the company.

But how could Delap, either at the time or now, be bound by such an understanding?

His money had been lent upon security of the shares, innocently, as far as he was concerned.

It was paid to the party—the company—in the manner desired by those who borrowed it.

His money became the company's money, and yet it is not a debt to him from the company.

Until it is returned to him by someone he is not bound to surrender the shares.

While holding or controlling the shares he was not only not bound to assent to the carrying out of an illegal agreement to the prejudice of the company, but he was entitled to resist its execution and fulfilment.

Even if on the part of Stevens the whole transaction for the acquisition for Codd and Stevens of the shares and the intended subsequent contract to be given to Charlebois by the company, formed an illegal agreement, the rule is that the illegal part, to be performed in the future, cannot be enforced or supported ; and, on the other hand, that the shares transferred on the illegal future consideration cannot be recovered. RECORD.
VII.
Respond-
ents' Factum
—continued.

A fortiori, they cannot be recovered from an innocent party who had advanced money on them.

Each party is bound to know the extent of corporate powers, 3rd Ed. 10 Brice, on *ultra vires* 665-667, and cases cited.

Even misrepresentation by company's officials of the legal corporate capacity of the company is no ground for relief against the company.

A purchaser cannot recover the price when he has got what he bargained for, although the subject matter of the sale may turn out to be a thing of no value ; *a fortiori*, he cannot recover when the failure of consideration is partial.

Addison on Contracts, 9 Ed. 121.

(Benjamin 6 Am. Ed. 573-587.)

Hall *v.* Conder, 26 L. J. C. P., 136, which was the case of an agreement 20 to purchase a patent, and defendant sought to set up invalidity of patent, but there being no warranty, express or implied, no fraud alleged, and defendant having same means of knowledge, plea held bad.

Cites also Lambert *v.* Heath, 15 M. & W., 487, which is the well-known case of sale of scrip certificate of shares which turned out valueless, company being afterwards wound up ; purchase money paid cannot be recovered.

Addison also refers to the well-known case of a man discounting a note without endorsing it, and the note turning out afterwards to be forged.

No implied warranty of quality.

Benjamin, 6 Ed. Am., 594.

30 It is a question for the jury whether the thing delivered be what was really intended by both parties as the subject matter of the sale.

Benj. 6 Ed. Am., 558, cites above cases, and also

Mitchell *v.* Newhall, 15 M. & W., 308.

See also Leake on Contracts (1878), 109.

Effect of illegality.

Scott *v.* Brown, Doering McNab & Co. (1892), 2 Q. B. 724.

Neither at the time of the making of the contract of the 16th September 1889, nor at the time of the consent judgment in 1891, were the shareholders called together to sanction the arrangement.

40 The party having the only substantial interest and risk, the plaintiff Delap, had no knowledge of the real facts until shortly before the commencement of this action.

See Delap's Evidence, vol. ii.,* p. 124.

It is submitted that, in any event, the existing shareholders could not bind the corporation as to matters *ultra vires*, either by a contract or by a judgment, consented to for the purpose of affirming it.

* Original
Record.

RECORD. This company, incorporated to construct 450 miles of railway, had at this time an authorised capital of 2,000,000 dollars.

VII. On the 16th September only 500,000 dollars had been subscribed and allotted, Respondents' Factum and 1,500,000 dollars remained to be subscribed and allotted.
—continued.

The company was arranging only for the construction of 50 miles, being the first 50 miles of the road.

The prospective construction of the balance of the road involved necessarily future issues of the reserved stock, new shareholders and new financial arrangement.

The future financing could not but be prejudiced by the undue burdening of 10 the company's property, enterprise and assets.

The objects of incorporation might be entirely defeated by the excision of the first section of the railway, and a large section of the land grant.

The directors, in respect of the duty of conserving the charter objects and purposes, were trustees for future as well as present shareholders, and were not empowered to wilfully violate them by the concurrence of the shareholders for the time being.

Society of Practical Knowledge v. Abbot, 2 Beav. 559.

Re Ambrose Lake Tin & Copper Mining Company, 14 Chy. Div. 390.

Lindley on Companies, pages 370 and 371.

20

Flithcroft's Case, 21 Chy. Div. 519.

Re Sombrero Phosphate Company v. Erlanger, 5 Chy. Div. 73, page 113.

Bly v. Brent, 2 Y. & C., 295.

Wenlock v. Dee, 36 Chy. Div., 674, and note.

London Trust Co. Ltd. v. Mackenzie, 9 Times Law Reports, 201.

The shifting of the stock and directorship at the meeting of the 16th September, referred to by the learned Chief Justice in the Court below, as "the transformation scene," was a transparent scheme intended to change Charlebois the trustee director, a participator in and having most complete knowledge of all the previous transactions, and the real instigator of what was done, into an 30 independent contractor, to construct the road on the terms fixed by himself as such retiring director.

The defendant Charlebois was the man who, with the assistance of his solicitor, framed all these schemes and put them in operation, by which the company was defrauded, or, at any rate, illegally charged with liability.

Charlebois could not possibly transform himself into position of an independent contractor.

It is contended by the appellants that all these matters of complaint have been irrecoverably cured by the consent judgment impeached in the pleadings.

It is submitted on the contrary that a case has been made out on the part of 40 the respondents sufficient to impeach the judgment referred to on the ground of fraud, and the judgment of the learned Chancellor should therefore be sustained.

In respect of the sum of 436,000 dollars above mentioned, the contract was *ultra vires* of the company for the reasons and upon the authorities stated in the judgment of the learned Chancellor in this action. *Mann v. Edinburgh Tramway Company* (1893), App. Ca. 69.

It is submitted that the consent of the company, even if we assume it to

have been given, as far as the company could give it in an action, could not be held to operate, to confer, or create powers or obligations on the part of the company, which were prohibited or not conferred by the statutes creating the corporation.

The parties to the consent judgment must be assumed to know the law, and the extent of the corporate powers—(3rd Ed. Brice on *ultra vires*, 665–7), and not having submitted the question to the Court, they must be held to have done an illegal thing in agreeing to a judgment enforcing a contract beyond the company's powers.

RECORD.
—
VII.
Respond-
ents' Factum
—continued.

10 We have not to deal here with a decree affirming such matters to be *intra vires*, on such matters being in issue ; we have merely to deal with the judgment submitted or agreed to by the company to do things wholly beyond their powers, and with the contention that such a consent judgment necessarily validates the company's acts, otherwise *ultra vires*, and creates an estoppel as a matter of record against the company.

"If this be the law," as remarked by the learned Chief Justice in the Court below, "an easy method can always be devised to enable directors of a company to do wholly unlawful acts, and then agree to a judgment against them to make such acts valid, and insure their performance when challenged."

20 One of the dissenting judges of the Court of Appeal, Mr. Justice McLennan, page 182, vol. i.,* concedes that the contract with Charlebois "was one which at the time the company might have repudiated, and might have obtained relief against."

* Original
Record.

"But," the learned Judge proceeds, "being a real and not a sham contract, and one under which Charlebois had a real *bonâ fide* claim, when an action was brought upon it, the company was bound to bring forward what defences they had."

The learned Judge, therefore, holds that the judgment founded on the contract was absolute and unimpeachable.

30 In looking at the question whether the contract was or was not *bonâ fide*, we must look at the substance and intention of the parties, and not at the form which they adopted for the very purpose of concealing such substance and intention.

The substantial fact was that the so-called construction contract, which the company was caused to make with Charlebois, was nothing but a fraudulent form.

The company had its contractor Sproule and his associates.

They were to continue and complete the actual work with their own means and credit.

40 They had formerly tendered for the minor items required for finishing the railway, and this work was also arranged to be put into their hands.

To meet all the necessary payments to them, and the other items to be provided by the contractor, the company was made to actually furnish him in advance with the whole cash sum so required ; surely an unheard-of proceeding in a *bonâ fide* contract between a company and its contractor, dealing at arm's length.

Charlebois was not a contractor in the sense that he was called on to undertake risk.

RECORD.

VII.
Respond-
ents' Factum
—continued.

He was merely made an agency for using the company's money, and taking advantage of the work of the company's own contractor to give a colour to fraudulent additions to those expenditures.

There were *bonâ fide* risks and expenditures, but they were not intended to be made by Charlebois.

The same learned judge concedes that the judgment might be upset if shown to be obtained by fraud (p. 182, line 10).

* Sic.

He concedes also in agreement with the learned* Councillor (182, line 33), that the contract included the sum of 173,000 dollars, which was not due to Codd by the company; that it was a profit intended to be made by Codd 10 unlawfully, as a director out of the construction contract. He considered that the judgment ought to be reduced by that amount.

The circumstances recited in the opening portion of this factum show, it is submitted, that this illegal interest in the contract, conceded to be as well known to Charlebois as to Codd, entered into the motives and considerations of both parties in agreeing to a judgment against the company.

The learned judge's contention (p. 180, line 10), that because "it would be an essential part of the company's case that the transfer of the shares had been a part of the transaction, therefore on the simple principle that whoever seeks equity must do equity, if they would have back the money they must see 20 that the shares are restored."

This is to imply that one party, the company, which has been robbed by a combination between two other parties accompanied by an agreement between themselves by which certain considerations have passed from one to the other of the defendants, the defrauded party, the company, must intervene in their private transaction and make one party to the fraud restore to the other something which the company never received and over which it has no control, before the company can assert its own rights against either or both of these, who have joined in defrauding it.

It is submitted that the learned judge has entirely overlooked the material 30 facts and the law relating to the corporation, and its relations as a corporation to its component shareholders and future shareholders.

It is submitted that whatever equities to restitution arise between the defrauding parties is a subsequent matter to be tried between themselves, and cannot be made a plea for enforcing their joint fraud upon the innocent party, the company.

Next, as to Defendants claiming under Charlebois.

There are no equities which can derogate from the right of the company as a corporation to resist the enforcement of the *ultra vires* and prohibited agreement attempted to be forced upon it by collusion of its directors and 40 nominal contractor.

R. S. O., chap. 122, Sec. 11.

Exchange Bank *v.* Stinson, 32 U. C. C. P., page 158.

Martin *v.* Bearman, 45 Upper Canada Q. B., 205.

Price *v.* Bannister, Law Reports, 3 Q. B. D., 569.

Gov. of Newfoundland *v.* Newfoundland Ry., Law Reports, 13 Appeal Cases 210.

Mitchell v. Goodall, 5 Ontario Appeal Reports, 164.

RECORD.

It is further submitted that on the evidence no substantial change of position has in fact taken place on the part of any person without notice, introducing any equity to bar the company's right.

VII.
Respond-
ents' Factum
—continued.

1st. As to Charlebois' co-directors, the defendants Clemow, Allan, Devlin and Murray.

A portion of the purchase-money of their stock was paid them in cash by Charlebois on the 16th September 1889, namely, the equivalent of the moneys previously paid up by them on their stock.

10 The balance being a pure profits to them, was, by the terms of their agreement with Charlebois, made contingent on Charlebois receiving the money from the company on his contract.

Exhibit 5, vol. iii.,* page 33.

Exhibit 6, vol. iii.,* p. 36.

Allan's Ev., vol. ii.,* p. 242, l. 20-30.

* Original
Record.

It was no debt of his to his co-shareholders.

They were to that extent partners with him.

They were fully affected with the illegality of the transaction from the beginning, and cannot complain if their expected shares of their illegal gains 20 fall along with his.

2nd. As to the Defendants, the contractors Macdonald and Preston, they were by their own consent converted by the arrangement of September 1889, into sub-contractors under Charlebois.

It is submitted that the balance of their claim may be fully satisfied out of the balance of the consent judgment remaining unaffected by the Chancellor's decree.

They did not change their position in consequence of the constant decree.

It appears on the evidence that they did not forthwith deliver up possession of the railway, pursuant to the consent judgment, but in the end delivered it 30 upon a special secret agreement with the Defendant John Arthur Codd, and upon contemporaneously receiving a special benefit, namely, employment upon work in further construction, which was given them, and for which they were paid out of the company's moneys.

Exhibit 84, vol. i.,† p. 87.

Exhibit 110, vol. iii.,† p. 275.

Macdonald's Ev., vol. ii.,† p. 264-5.

Preston's Ev., vol. iii.,† p. 215, l. 25.

† Original
Record.

† Original
Record.

They did not therefore change their position by virtue of the consent judgment.

40 But if they did, it is submitted that their claim for the unpaid balance due them from Charlebois, except in respect to interest, is in no worse position under the learned Chancellor's decree in this action than it was under the consent judgment, so far as it affects the contract.

Under the consent judgment, this claim was to be realised out of the assets of the company by the intervention of Charlebois.

The amount must be realised by the company out of the same assets without his intervention, and paid over to them as his assignees.

RECORD. 3rd. The same remarks apply to the claim of the Defendants, the Crossen Company.

VII. Respondents' Factum
—continued. Their claim, except as to interest, is within the amount unaffected by the Chancellor's decree.

They did not change their position on the terms of the consent decree.

They gave up the rolling stock long after the date fixed for their acceptance and delivering under the judgment and under a separate agreement.

Their position is also improved by the relief of the company's assets from the unlawful burdens under the Charlebois' contract and consent judgment.

4. As to the Defendants, the Union Bank, they have not changed their 10 position in any respect in consequence of the consent judgment.

In respect to the contract they claim under a certain assignment by Charlebois of part of his moneys, and acceptance by the company conditional on the money becoming due, and finally on a collateral personal representation in writing by the defendant, John Arthur Codd, that the amount assigned was within the balance of the amount of the contract for construction, notwithstanding all previous assignments and payments.

Original Record. { Exhibit 53, vol. iii., p. 73, 74.
Exhibit 54, p. 74.

The last representation was false and fraudulent and not in the course of 20 the duty of the defendant John Arthur Codd as acting president, and could not bind the company.

Barnett, Hoares & Co., South London Tramways Co., 18 Q. B. D. 815.

Re Devala Provident Gold Mining Co., 27 Chy. Div., 593.

In re Meux Executor 2 DeG. M. & G., 522.

Holt's Case, 22 Beav. 48.

Nicholl's Case, 3 De G. & J., 387.

Moody v. Brighton and South Coast Ry., 1 Best and Smith, 290.

Fifth Edition, Lindley on Companies, 155.

Marseilles Extension Ry., Law Reports, 7 Chy. 168.

Brice on *Ultra Vires*, 3rd edition, 583-4, and 563.

30

The letter from Codd and the acceptance of the assignment was obtained on the advice of the Bank solicitor; he was the same solicitor who had acted for Charlebois and his co-defendant and taken the leading part in the transaction of the 16th September—scarcely a month before—and was still acting in the matter of the contract for Charlebois.

He was familiar with all the details of the fraud, must be presumed to have it fresh in mind, and through his intervention notice must be imputed to his clients, the Union Bank, of the fraudulent character of the claim of Charlebois, and the falsity of the defendant John Arthur Codd's representation, 40 and also of Codd's interest in the Charlebois' contract, disqualifying him from acting as president, and giving him a fraudulent interest in promoting Charlebois' plans.

On the other hand, the solicitor had no personal interest in the fraud, and was not designing to defraud his clients the Union Bank.

He does not come, therefore, within any exception from the presumption.

The Defendants the Union Bank have no equity.

Bourinot v. Savage, L. R., 11, Eq:

Portsea Island Society v. Buckley, 12 R. Court of Appeal, July 1895,
page 100.

Hargreaves v. Rothwell, 1 Keen, 160.

Mangles v. Dixon, 3 H. of L., Ca. 702, 733-4-5.

Kennedy v. Green, 3 My. & K., 699.

RECORD.

VII.
Respond-
ents' Factum
—continued.

In regard to the moneys advanced by the Bank to Charlebois there is no proof that it went to the company's benefit.

10 Charlebois had received 243,333 dollars from the company and did not expend more than that amount for the company's benefit.

The learned Chancellor has found that the lien in favour of the Defendant Charlebois agreed to be given by the contract, and affirmed by the consent judgment was unauthorised and unlawful as it affected the railway.

The Respondents submit the decision was right for the reasons in the learned Chancellor's judgment.

The Respondents further submit that the lien is invalid also as affecting the land subsidy of the company earned by the construction of the first 50 miles, because such a lien could only be created upon the terms and conditions, and
20 for the purposes under and for which a charge on the lands by way of bonds could be created.

Under the 19th section of the charter, the company itself is declared as trustee of the lands forming the subsidy.

It is inconsistent with the scope and terms of the Act authorising the charter, the charter itself, the Act confirming the same, and the Railway Act, that the land subsidy should be charged in any other manner than by the bonds of the company issued under authority of the shareholders at a special meeting called for that purpose upon the four weeks' notice and advertisement prescribed by the Charter and Railway Act.

30 The clauses referring to mortgaging lands are limited to lands which the company is empowered to purchase, speculating in aid of its resources.

In acquiring such lands it might be necessary to mortgage them for purchase money, and the company is so far specifically empowered.

The clauses in that behalf in the 11th section of the charter, and the references to mortgages on lands are to be construed distributively as relating to the classes of lands to which they apply.

If such lands have been paid for in cash, they are discharged from all mortgages.

After payment of such specific mortgages on such lands, the proceeds of
40 such lands shall be merged in and applied upon the trusts declared in the 19th section in respect to lands forming part of the subsidy.

Case in respect of the Bonds.

It is submitted that the bonds issued by the company are the first preferential claims and charges upon the said company, the undertaking, tolls, income and real and personal property thereof, at any time acquired, and each

RECORD. holder of the said bonds is a mortgagee or encumbrancer upon the said securities entitled to priority as such.

VII.

Respond-
ents' Facts
—continue

Charter, Section 15.

The only exception is provided for by Clause 14, namely, first, the rents and revenues are to be subject in the first instance to the payment of working expenses of the railway ; and second, a mortgage may be made upon the whole property, assets, rents and revenues of the company to secure bonds.

The issue of the bonds in question was regular ; the following were the steps :

17th September 1889, meeting of directors, resolutions passed for meeting 10 of shareholders to take place 21st October 1889, to authorise issue of bonds.

* Original
Record.

Vol. ii.,* pp. 326 and 404.

Trial Exhibit 64, vol. iii.,* p. 239.

21st October 1889, meeting of shareholders, issue and sale or pledge of bonds authorised.

† Original
Record.

Trial Exhibit 64, vol. iii.,† p. 243.

2nd November 1889, a resolution of directors for the following among other purposes : “ And that the president (J. A. Codd) be authorised to sell or pledge the said bonds at the best price and upon the best terms and conditions which at the time he may be able to obtain, and that he may make the 20 said bonds payable at such times as can be agreed upon between him and the purchaser of said bonds ; ” and further approving of a mortgage to be executed to secure the bonds.

It appears that the mortgage then before the directors was prepared, but, the trustees to whom it was made failing to act, was never delivered, and subsequently the defendants Gifford and Curzon were appointed trustees, and a mortgage made to them to secure the bonds of the company.

Original
Record.

See minutes of directors' meeting of 27th June, 1890.

English Ex. 10, vol. iii., p. 248.

And minutes of directors' meeting 3rd July 1890, English
Ex. 11., vol. iii., p. 249.

30

The mortgage trust deed to Gifford and Curzon, 2nd June 1890.

English Ex. 1, vol. iii., p. 105.

The bonds had been prepared for issue in accordance with the resolutions of the meeting of shareholders on the 21st of October 1889, to the amount of 515,600*l.* sterling.

The Plaintiffs, Delap and Mansfield, claim to hold these bonds issued by the company as security for advances made by them to and for the benefit of the company, and also on behalf of Messrs. Stevens, Bawtree and Stevens and C. R. Stevens, residents in England, who have also made advances upon the 40 security of the said bonds for the same purpose.

Messrs. Stevens, Bawtree and Stevens and C. R. Stevens are not parties to this action, nor have they been represented in any way in the proceedings.

The validity of the bonds, apart from the question of the validity of the RECORD. pledge, has not been seriously questioned.

The company admits, and comes into court admitting the validity of the bonds, and the pledge of the sums to Delap and Mansfield.

VII.
Respond-
ents' Factum
—continued.

The bonds are payable to bearer.

Delap and Mansfield have them, and have brought them into court, subject to their pledge.

It is submitted that the company admitting the pledge of valid bonds which Delap and Mansfield claim, no one else may contest their position.

10 The trustees Gifford* and Curzon are the trustees to whom the mortgage * *Sic.* to secure the bonds was made.

They entered an appearance and filed a defence in the action, and were represented by counsel at the trial.

See Judgment, vol. i.,† p. 123.

† Original
Record.

They supported the validity of the issue of bonds and of the mortgage to them as trustees securing the same and the pledge of the bonds.

The validity of the issue of the bonds and of the mortgage was attacked by the Defendants in their pleading and at the trial.

20 On the appeal to the Court of Appeal the appellants there did not make the Defendants Gifford and Curzon parties to the appeal.

The objection was taken by the present respondents, that in the absence of Gifford and Curzon the judgment of the learned Chancellor holding the issue of the bonds and the mortgage to secure them and the pledge to have been valid, and the same could not be attacked.

They again submit the same objection.

Before the Court of Appeal, on the argument, after the objection was taken (of which previous written notice had been given, a copy of which accompanies this factum), Mr. McCarthy, q.c., counsel for the appellants, in commencing his reply, informed the court that in consequence of the objection
30 he withdrew the contention made on the part of the appellants against the validity of the mortgage to secure the bonds, and the court below in considering their judgment did not consider the question of the validity of the mortgage as contested.

It is submitted that it is not open to contest upon this appeal.

It is submitted that it was not open to the Court of Appeal to consider, in the absence of Gifford and Curzon, and it is submitted they did not consider the question of the validity of the bond issue or the mortgage, and that it is not open upon this appeal to contest the validity of the issue of the bonds, in the absence of Gifford and Curzon.

40 They are not parties to the present appeal.

Without in any way waiving this position on the part of the respondents, they say that in any event the bonds were validly issued, and that the plaintiffs Delap and Mansfield are valid pledgees of the bonds for advances made by them, and that the Chancellor's judgment to that effect should be affirmed.

The company always intended to pay for construction and equipment by moneys to be raised upon the bonds.

See their transactions in this respect.

RECORD. Trial Exhibit 79, agreement 26th February 1887, vol. iii,* page 3,
 VII. under which Codd was appointed to sell the bonds for this very purpose.

Respond- See agreement with Macdonald and Preston, 12th September 1887,
 ents' Factum for payment of liability to them for construction by bonds.
 —continued.

* Original Trial Exhibit 18, vol. iii,* page 21.
 Record. See the agreement of 9th April 1888, which provides by the letters between

Murray and Codd, vol. iii, 23 and 24, in May 1888, that bonds were to be issued for this purpose.

Then on the 16th of September 1889, at the time of the transaction in question, Charlebois, by his letter, a part of his agreement, Trial Exhibit 11, 10
 vol. iii,† page 36, agrees to accept 100,000*l.* of his contract price in bonds of the company.
 † Original Record.

Obviously Charlebois at that time knew that bonds were to be issued, and he gave the option of payment to himself in bonds in part.

He cannot complain of the issue of bonds as any surprise or fraud as respects him.

Both under the agreement of 9th April 1888, and the contract of 16th September 1889, it is provided that on payment of the first 50,000*l.* of the 200,000*l.*, the whole of the shares are to be transferred to the purchaser.

No lien is preserved upon them for the remaining 150,000*l.*, but reliance 20 is placed upon the banker's guaranty to be obtained.

Obviously the purchasers stipulated for and obtained the stock to enable the early issue of bonds to raise the money required.

The stock was accordingly transferred on the 16th September 1889, when the 50,000*l.* was paid, and was utilized to issue bonds, part of which, as we have seen, Charlebois had agreed to accept in part payment under the contract for construction.

The bonds have been used as is now shown to secure moneys advanced in fulfilment of the intention with which they were authorised.

Now it is true that moneys were raised for the purpose of completing 30 and equipping the company's railway, in addition to the 228,000 dollars paid over on the 16th of September 1889, Delap's money, which sum went to complete the payment up of the shares of stock, as before explained.

There was a sum of \$15,555.55, making in all 50,000*l.* sterling of Delap's money then paid over.

The \$15,555.55 was then paid by the company to Charlebois as part payment of the price of construction.

The advance was made for this purpose, so far as Delap was concerned.

Subsequently the Plaintiff Delap, in October 1889, accepted a bill for 25,000*l.*, 4th October 1889, for the company, to pay for the rails which were 40 subsequently laid upon the company's line.

‡ Original Trial Exhibit 21, vol. iii,‡ page 63.
 Record. Subsequently Mr. Delap drew a bill on the company for 27,000*l.*

18th December 1889, and got the loan from the International Trustee Assets and Debenture Company by giving other security, which, with the company's acceptance of this bill, enabled him to raise the amount required to take up the previous draft.

Mr. Delap has since paid off the Trustee Assets and Debenture Corpora- RECORD.
tion.

Subsequently in December 1891, Mr. Delap purchased engines for the use of the company, which the company were to take off his hands, and which have ever since been in the use of company, for which he advanced 3,000*l.* sterling. VII.
Respond-
ents' Factum
—continued.

Mr. Delap, in his evidence, proves these several advances and other advances.

It appears also that other large sums advanced by Stevens firm and shown in their account against Delap, Trial Exhibit 119, page 225, are claimed by the Stevens firm to have been advanced on Delap's account.

See Delap's evidence, vol. ii.,* page 290, lines 3 to 12 ; lines 22 to 56.

* Original
Record.

Page 293, lines 19 to 23.

Page 294, line 40.

Page 295.

Delap always understood that he was to be paid out of the proceeds of the bonds, if they were sold ; if not, the bonds were to be held for him.

The above passage shows this, and also

20 Page 116, lines 12 to 16.
Page 122, lines 34 to 37.
Page 126, lines 8 to 10.

That this was the understanding of all parties is made clear by the course pursued when the bonds passed from the custody of Stevens, who held them for Delap, Mansfield, and himself, to Delap.

Delap was to have first charge ; accordingly, when the bonds passed to him, Stevens notified him that subject to Delap's charge as pledgee of the bonds Mansfield and Stevens firm claimed to be pledgees.

See notices, Trial Exhibits 124 and 125, vol. iii, pages 207 and 208.

The notices were given by Stevens firm, 16th August 1892.

30 Mrs. Mansfield had also been advancing money for the purposes of the company through Stevens, from time to time, and it appears that when the bonds were delivered by the President of the company an actual advance was then made on her behalf by Stevens' agent, Cansdale.

See Cansdale's evidence, vol. iii,† page 00.†

† Original
Record.
‡ Sic.

These advances having been made by Stevens, and intended to be repaid out of the proceeds of the sale of the bonds, and that the bonds should be held to secure them meanwhile, the actual issue of the bonds which had been prepared, came about in the following manner :

40 After preparation of the bonds as above shown to have taken place, Codd, being President of the company, spent some time in England, returning to Canada in May 1890.

He writes to Stevens on the 23rd of May 1890, letter English Exhibit 5, vol. iii., page 109, in which the following passage occurs :

" Unless this is done the bondholders are not safe (*i.e.*, Delap, &c.), and should I lose control of the property of the company, which I expect to do in

RECORD. less than three weeks, unless I have a little cash to proceed with, the courts may register some judgment or claim ahead of the mortgage bonds."

VII.
Respond-
ents' Factum
—continued.

* Original
Record.

Stevens, insisting on security for his clients Delap and Mansfield and for himself, writes to Mr. Codd as President, on the 31st May 1890.

See Evidence, vol. ii., pages 324, 376, and 382.*

See English Exhibit 6, vol. iii., page 102.*

This letter contains the following passages :

"It is now proposed that the bonds should be issued at once, and we have given instructions for them to be printed, and they will be all ready in the course of a day or two."

"The terms of the trust deed are almost identical with the former deed." 10

"The object we have in carrying out this plan is that all parties who have advanced money may obtain security for the amounts due to them, and in addition to this we believe that we have a very good prospect of being able to dispose of a large number of bonds within a short time at a reasonable discount."

"At the present moment it is our intention to send you an acceptance for 1,000*l.* to enable you to proceed with matters temporarily, whilst we are carrying out the above negotiations, and this will be sent upon the distinct understanding that the bonds are signed and sealed and returned to us, other- 20 wise we do not see our way to make any advance at all."

"As regards the remainder of the bonds, we will write to you very fully as to their disposal after consultation with Mr. Beddall next week, our present idea being that you would send to us here a large number of them as security for Mr. Delap, and also to dispose of them to the general public to the best advantage."

"In order to carry out all these arrangements, it may be necessary and advisable that one of us should go to Canada, and if this is so we shall not hesitate to do so with as little delay as possible."

Immediately after the writing of this letter, Cansdale, confidential clerk of 30 Stevens, and Mr. Hewitt Stevens, both called as witnesses, came to Canada, bringing the bonds here from England to be signed and issued, and to take them back on the terms of the letter above referred to.

† Original
Record.

See Cansdale's evidence, vol. ii.,† pages 324 to 332.

Cansdale proves that the object of his visit, to issue the bonds for the purpose of securing Delap and the others who had advanced money, was explained to Mr. Clemow and the other directors and thoroughly understood by them, and that the bonds were handed over as security for the moneys that had been advanced by Delap, Mansfield, and others, subject to their being sold to raise money for these purposes ; and he proves also that at the time of handing 40 over of the said bonds in July 1890, he made the further advance hereinbefore referred to of 1,500 dollars out of moneys of Mrs. Mansfield to the company, on the security of the bonds which he then received.

‡ Original
Record.¹

See Codd's letter to Stevens, 7th August 1890, English Ex. 12, vol. iii.,‡ p. 115, where he says, "I have often explained this to you. How can you be "in danger of loss when you hold the bonds? How can you possibly lose

“ when you have the bonds covering 50 miles of splendid road and equipment, RECORD.
 “ 320,000 acres of land, and a good paying traffic ready ? ”

It is submitted that Delap, Mansfield, and the others who had advanced money to and for the Company were entitled to have the bonds issued and sold, and to have them pledged to them as security for the repayment of their advances, until they could be sold and money thus realised for that purpose. VII.
Respond-
ents' Factum
—continued.

It is submitted that they were validly issued.

While they remained in Stevens' possession from July 1890, forward, they held them to secure Delap, Mansfield, and themselves.

10 When they handed them to Delap, he held them for the same purposes, namely, to secure himself first, then Mansfield and Stevens firm.

See notices, &c., above referred to.

Shareholders only can take objection, not creditors.

Royal British Bank *v.* Turquand, 5 E. & B., 248 ; 6 E. & B., 327.

Fountain *v.* Caermarthen Ry. Co., L.R., 5 Eq., 316.

Approved in Landowners and West of England, &c. *v.* Ashford,
 16 Chy. 427.

Debentures issued and pledged for antecedent debt valid.

Re Inns of Court Hotel Co., L.R., 6 Eq., 82.

20 Cited and followed.

Howard *v.* Patent Ivory Mfg. Co., 38 Chy. 169.

See cases cited Brown and Theobald, Law of Railways, pages 85 and 109.

Re Regent Canal Iron Works Co., 3 Chy. 43.

The Plaintiffs, Delap and Mansfield, as pledgees of the bonds, have a right to come into Court to protect their security before their money is repayable.

Legge *v.* Matheson, 2 Gifford 71.

Weldo *v.* Midhants Ry Co., 16 “ Weekly Reporter,” 409.

Edwards *v.* Standard Rolling Stock Syndicate, 1893, 1 Chy. 574.

30 Even if, for the sake of argument, we assume Charlebois' lien by the contract and judgment to be valid, the bondholders are not bound by it for the following reasons :

1. As has been submitted, they are prior by the interpretation of the Statute.

2. They were not parties to the action in which the consent judgment was pronounced, and are not bound by the judgment in that action.

3. If the company are to be held to have had the right to create the lien Charlebois claims by his contract they had under the Statute at least an equal, if not a higher, right to create bond debts, and to issue bonds as a first charge.

40 Charlebois did not in any case by his contract get a lien or charge.

He got merely an agreement for a lien or charge, which would come into effect only when his contract was completed.

It was postponed till that event.

The contract was made in September 1889.

The railway was not completed when he sued in 1891, and was only completed after his judgment, by which the bondholders are not bound,

RECORD. In the meantime, bond debts are incurred, as has been shown, and the bonds are actually issued and delivered to the pledgees in July 1890, before Charlebois pretended even that he had completed the road.

VII.
Respondents' Fac tum
—continued. It is submitted that apart from the question of the validity of Charlebois' contract it must be postponed to the bonds.

Exception was taken to the validity of the issue of bonds as covering the second 50 miles of the railway, and it was contended that there was no contract for the construction of the second 50 miles, and, therefore, no right to issue bonds.

The mortgage, the validity of which is incontestable, was made to secure 10 bonds as well in respect of the second 50 miles as of the first.

* Original Record. The contract for the second 52 miles is Trial Exhibit 24, Vol. III.,* page 65, dated 16th of October 1889.

† Original Record. Work under this contract was performed to the extent of surveys and otherwise, and Charlebois claims repayment in respect of this work, and it will be found included in the statement of the amount of his claim arrived at in the consent judgment before referred to as Ex. 26, Vol. III.,† page 177. Costs of surveys, 5,128 dollars, on page 178, which Charlebois explains in his evidence to be in respect of the second 50 miles.

See statements admitted in court below in appendix hereto.

20

It is submitted that this question is not open to the Appellants on this appeal.

Demurrer and Parties.

No demurrer for misjoinder of parties lies.

Consol. Rule 385, H. & L. 419 and notes.

Young v. Robertson, 2 O. R. 434.

The parties objecting must apply under Consolidated Rule 324, H. & L. 354.

Here Charlebois did apply in December 1892, under rule 324, to have the action made one by the company alone on the ground that there was a misjoinder 30 of Plaintiffs.

His application was refused.

He appealed to the Divisional Court, and his appeal was dismissed on 9th June 1893.

He dropped the matter at that stage.

The demurrer had then been on the files since 20th January 1893.

It is submitted this finally disposed of the question of misjoinder of Plaintiffs.

Original statement of claim delivered 1st December 1892.

Charlebois' defence and demurrer delivered on 20th January 1893. De- 40 murrer on the ground that "Delap and Mansfield have no status to maintain this action jointly with the Plaintiff Company."

Thereafter the Plaintiffs obtained an order allowing them to add parties, and amended their statement of claim radically on 8th March 1895, making a new case.

Charlebois delivered his defence to amended statement of claim 22nd March 1893 without demurrer. RECORD.

Thereafter Plaintiffs, on 4th April 1893, obtained on notice leave to further amend, and on 5th April 1893 delivered their re-amended statement of claim, to which Charlebois delivered his re-amended defence on 14th April 1893, without demurrer. VII.
Respond-
ents' Factum
—continued.

It is submitted the demurrer which was to the original statement of claim became dead after the Plaintiffs' first amendment, if it ever were effectual.

The demurrer never was set down for argument, but came before the learned Chancellor at the trial on a motion for leave to set it down at the trial.

In addition to the facts above stated it then appeared that the Defendants had treated the question of misjoinder as disposed of after the dismissal of their appeal by the Divisional Court.

Moreover, it appeared that they had actually obtained an injunction in the action as against the Plaintiffs, Delap and Mansfield, in respect of the bonds, and had compelled them to bring into Court the bonds in their control, which they had done.

This was a waiver of any objection of the kind.

On these facts, and on the ground that if the demurrer had merits it could not be entertained at that stage, after all the expense of the action had been incurred, the learned Chancellor refused to entertain it, and, in fact, it was not pressed before him, and he does not deal with it in his written judgment nor in his endorsement on the record. See Vol. II.,* p. 12, line 17 *et seq.*

* Original
Record.

As to the status of Delap and Mansfield as parties—

The company is entitled to sue in this action for the removal of the restriction in respect of the bonds imposed by Charlebois' contract and judgment, conjointly with the other relief asked for.

Delap and Mansfield are the holders of the bonds, and it is submitted properly may, as they do, join with the company in asking for the necessary declaration in relief of the bonds.

30 This is not inconsistent with or separate from the company's action.

The action is the company's action in respect of all relief claimed.

In the Statement of Claim it is not asked that any enforcement of the claim of Delap and Mansfield in respect of the bonds should take place. The learned Chancellor's judgment goes beyond what the Plaintiffs asked for in directing an account of what is due to them.

Delap and Mansfield are the proper parties to join with the company to assert the validity of the issue of the bonds. It is not necessary that the trustees under the mortgages to secure bonds should do so.

40 The trustees refused to do so, and were made Defendants, and by their defence concede the Plaintiffs' right to relief on the bonds.

The charter of the Company, Section 15, makes every holder of bonds an incumbrancer, and does not contain the provision of the Railway Act relating to the prosecution of the rights of bondholders by the trustees.

The mortgage here does not entitle the trustees to the possession or custody of the bonds under any circumstances.

FRANK ARNOLDI,
O. A. HOWLAND,
Counsel for Respondents.

RECORD.

VII.

Respond-
ents' Factum
—continued.

In the Court of Appeal for Ontario,

Between

James Bogel Delap *et al.*

(Respondents) Plaintiffs ;

and

Alphonse Charlebois,

(Appellants) Defendants.

I, D'Alton McCarthy, of the City of Toronto, in the County of York, Esquire, make oath and say :

1. That I acted as counsel at the trial of this action on behalf of the 10 Appellant Charlebois.

2. That now shown to me, marked Exhibit "A" to this my affidavit, is a memorandum of figures, dated 27th September 1891, and said to be made by J. H. Secretan, who was, I am informed, engineer for the Defendant Charlebois, in connection with the construction and work done by the said Defendant, and referred to in the pleadings herein, and which memorandum purports to show the figures agreed to by Mr. B. B. Osler and Mr. S. H. Blake on or about 26th September 1891, which formed the basis of settlement in the action of Charlebois *v.* Great North-West Central Railway Company, and were embodied in the consent Judgment. 20

3. That now shown to me, marked Exhibit "B," is a memorandum, as I am informed, made by Mr. B. B. Osler, upon which the said settlement was made, and which formed the basis of the calculation referred to herein as Exhibit "A."

4. That the said documents, marked Exhibits "A" and "B" hereto, were handed to me by the said J. H. Secretan after the trial of this action, and prior to the trial of this action I was not aware of their existence.

5. That happening to meet Mr. Secretan shortly after the trial and decision of this action, and in the course of conversation respecting the said trial, and the difficulty that was experienced in explaining the meaning of the memorandum, 30 which purported to show how the amount which had been agreed upon at the settlement between the parties (which is embodied in the decree made by Mr. Justice Ferguson), Mr. Secretan informed me that he had a memorandum which was based upon the memorandum kept by Mr. B. B. Osler, who had been acting as counsel for Mr. Charlebois in the said action, and he subsequently gave me the said papers marked as Exhibits hereto as "A" and "B" as aforesaid.

6. That in my opinion it is desirable and necessary, and in the interests of justice in the case, that the said B. B. Osler and J. H. Secretan should be examined in reference to the said documents marked Exhibits "A" and "B" hereto, and the figures therein contained, before this Court on the Appeal pending herein, and that an order should be made granting leave to the Appellant Charlebois to examine the said parties as aforesaid, and to use their evidence on this Appeal.

RECORD.
VII.
Respond-
ents' Factum
—continued.

10 Sworn before me at the City of Toronto,
in the County of York, the 12th day } (signed) D'ALTON McCARTHY.
of November 1894.

(signed) THOS. REID,
A Commissioner, &c.

Exhibit "A."

Memorandum.

Showing figures agreed to by Osler & Blake on 26th September 1891, which formed basis of settlement of A. Charlebois' action against G.N.W. Railway Company.

	Contract price	- - - -	\$973,333 00
	Paid thereon - £50,000 =	\$243,333 00	
20	Rails, &c.	- - - 129,574 00	
		<u>372,907 00</u>	
		\$600,426 00	
	Allowed for interest	- - - 22,000 00	
		<u>\$622,426 00</u>	

Group A.

Deduct liens :

	Macdonald & Schiller (including Commercial Bank) (principal and interest)	\$64,429 00
30	W. A. Preston (including interest)	8,400 00
	Crossen Estate (including interest and costs, say)	39,000 00
		<u>\$111,829 00</u>
		\$510,597 00

First lien holders.

RECORD. Group B.

VII.
Respond-
ents' Factum
—continued.

Amounts payable to Charlebois, or
to such persons or corporations
as he may have assigned same, ac-
cording to their relative priorities
as same may prove to be - - \$380,342 00

This sum includes the following details,
not necessarily in the priority
shown :

Union Bank	- - - - -	150,000 00	
Frank Ross	- - - - -	30,000 00	
A. Charlebois	- - \$11,130 00		
Quebec Bank (?)	- 80,370 00		
		91,500 00	
F. Clemow	- - - - -	25,309 00	
W. A. Allan	Interest at 4 per cent. -	40,483 00	
R. J. Devlin	Only made to date -	30,373 00	
J. Murray	- - - - -	12,677 00	\$380,342 00
			<u>\$130,255 00</u>

20

Group C.

D. McMichael, for J. A. Codd - - \$94,255 00
D. McMichael, for allowance to Co. - 36,000 00 \$130,255 00

Memorandum of details, explaining how amounts
allowed to Codd and the Co. are arrived at :

Commission to Codd	- - - - -	\$173,333 00
Engines	- - - - -	\$20,000 00
Fencing	- - - - -	13,000 00
Right of way	- - - - -	3,000 00
Rebate on bonus	- - - - -	25,000 00
		<u>\$61,000 00</u>
Allowance to Co. and Com.	- - - - -	\$234,333

30

Less—

Bonus	-	-	-	-	-	-	\$50,000 00
Order	-	-	-	-	-	-	28,000 00
Order	-	-	-	-	-	-	4,866 00
Cost of surveys	-	-	-	-	-	-	5,128 00
Extra cost of spikes	-	-	-	-	-	-	5,940 00
Loan to Codd	-	-	-	-	-	-	10,000 00
Duty on rails	-	-	-	-	-	-	144 00
							<hr/>
							\$104,078 00

10

Total amount payable to McMichael
and Codd, as per Group C. - - - - \$130,255 00

Toronto,
27 September 1891.

“J. H. S. S.”

Exhibit “B.”

The account of moneys due to the Plaintiff, the
credits and the disposition of the residue, interest to date
at rates agreed upon being included.

20	Contract price	-	-	-	-	-	-	\$973,333 00
	Paid							
	£50,000 sterling	-	-	-	-	-	\$243,333 00	
	Rails, &c.	-	-	-	-	-	129,574 00	
								<hr/>
								\$373,107 00

\$600,226 00

Allowance in lieu of interest on balances to date, say 22,000 00

Total lien - - - - - \$622,226 00

30 Which is payable to the following firms and persons
in the following order :

To Macdonald and Schiller or their creditors	-	\$ 40,640 00
To them but payable by (add interest) their order to Commercial Bank of Manitoba	- - -	20,000 00
Add. interest.		
To W. A. Preston	- - - - -	7,810 00
Add. interest.		
To Crossen Estate or Co., judgt. and costs, say	-	39,000 00

40 Note these amounts are to rank *pari passu*, in case of
deficiency of assets, being for work, labour, and material
in the road

\$107,450 00

RECORD.

VII.
Respond-
ents' Factum
—continued.

Account.

Union Bank of Canada, order from Plaintiff	-	\$150,000 00	
Frank Ross	- - - - -	30,000 00	
Clemow, which includes interest to date	- -	25,310 00	
W. A. Allan	„ „ - - - - -	40,483 00	
R. J. Devlin	„ „ - - - - -	30,372 00	
Capt. Jas. Murray	„ - - - - -	12,677 00	
		<hr/>	
		\$396,292 00	
Plus interest on some of above :			10
McD. and S., all from 1st August at 6 per cent.	-	\$ 3,789 00	
Preston, interest and costs	- - - - -	590 00	
		<hr/>	
		\$400,671 00	
Deduct this sum from	- - - - -	622,226 00	
		<hr/>	
		400,671 00	
		<hr/>	
		\$221,555 00	
This sum is payable to the Plaintiff as follows :			20
To him personally	- - - - -	\$ 80,088 00	
To his order in favour of D. McMichael, Q.C.	-	141,467 00	
Net	- - - - -	800,000 00	
Interest	- - - - -	22,000 00	
Bonus	- - - - -	50,000 00	
		<hr/>	
		\$872,200 00	
Deduct :			
Engine all	- - - - -	\$20,000 00	
Tending	- - - - -	13,000 00	
			30
Deposit agent.			
Right of way	- - - - -	3,000 00	
Rebate	- - - - -	25,000 00	
		<hr/>	
		\$61,000 00	
		<hr/>	
		\$811,000 00	

Add,—

Order—Rails	-	-	-	-	-	\$28,000 00	
Order	-	-	-	-	-	4,866 00	
Cash	-	-	-	-	-	10,000 00	
							\$42,866 00

RECORD.

VII.

Respond-
ents' Factum
—continued.

						\$853,866 00	
Less paid	-	-	-	-	-	373,107 00	

10

						\$480,759 00	
Liens per list	-	-	-	-	-	400,671 00	
							\$80,088 00

This is charged, \$221,535 00
80,088 00

\$141,467 00

					Proof	-	-	\$173,333 00	
Order	-	-	-	-	-	-	\$28,000 00		
Order	-	-	-	-	-	-	4,866 00		
Cash	-	-	-	-	-	-	10,000 00		
Net	-	-	-	-	-	-	25,000 00	67,866 00	

20

							\$105,467 00		
Proof fails	-	-	-	-	-	-	36,000 00		
								\$141,467 00	

These balances, as between Plaintiff and Dr. McM., are subject to award on items in dispute, as follows :—

30 Amount repayable out of right of way deposit.

Amount claimed to be paid to Plaintiffs by Defendants, on following heads, now referred to arbitration, as follows :

Duty on rails	-	-	-	-	-	-	\$ 144 20	
Spikes	-	-	-	-	-	-	5,940 64	
Survey of mileage, subsequent to 50 miles	-	-	-	-	-	-	5,128 00	
Claim for work and material on second 50—not ascertained.								

Any amounts found to be due to the Plaintiff, on any of the above heads, to be added to the \$80,088 and deducted from the \$141,467.

40 And any sum which may be added to the claims of any of the parties' names as payees of the \$400,671 is to be deducted from the \$80,088 ; if any less amount is required to pay the sums now added up at \$400,671, such reduction is to be payable to the plaintiffs.

RECORD.

FACTUM ON CROSS APPEAL OF RESPONDENTS (THE PLAINTIFFS).

VIII.
Respondents,
Factum—
Cross-
Appeal.

The matters for argument in support of this cross appeal necessarily arise and must be argued in opposing the chief appeal.

For all purposes of this cross appeal the Respondents incorporate in this factum that part of the factum of the Respondents on the main appeal under the head of "The case in respect of the bonds," and such other parts of the factum as are necessary to support the same to save expense of reprinting the same here.

1. The Judgment of the Court below errs in holding that there was not a valid pledge to Delap on the bonds because 10

(a) The Company admits the validity of the pledge and comes into Court admitting it. The amount advanced upon the pledge is not properly in question.

(b) Charlebois in respect of the bonds has no position higher than any other creditor and no *locus standi* to impeach either the validity of the bonds or the pledge of the same by the Company.

(c) The evidence as set forth in the factum proves conclusively the pledge to Delap.

(d) The question was one of fact which the learned Trial Judge, the Chancellor, had found in favour of the pledge. 20

(e) The question could not properly be dealt with in the absence of Gifford and Curzon.

2. The reason for Judgment by the learned Judges of the Court below show that the only Judge who considered the question of the validity of the pledge to Delap was the Chief Justice. The learned Chief Justice, it is respectfully submitted, overlooked the evidence in the case upon the subject.

Osler, J.A., agreed with Chancellor's finding in favour of the pledge.

MacLennan and Burton, JJA., deliver their opinions on the point, that there was no valid pledge of the bonds by the delivery to Cansdale, in 1890, the clerk of Stevens firm; that there was no pledge at all; that there could not be a valid 30 pledge for past advances.

* Original
Record.

Vol. I.,* pages 171, 184-5.

Here, then, Hagarty, CJO. and Osler, J.A. on the one hand agree in finding that the evidence proves that there was a valid pledge of the bonds, but they differ on the question of the proof of the specific pledge to Delap only, but they both differ—*toto cælo*—in their holding and the grounds of it from MacLennan and Burton, JJA.

3. It is submitted, therefore, that the opinions of the Judges of the Court below were insufficient to reverse the learned Chancellor, and that the Judgment in respect of the pledge to Delap should be reversed.

4. The learned Chancellor found upon the question of fact that the bonds were duly issued, and as to the pledge in favour of Delap and Mansfield, upon the evidence before him. 40

It is submitted that this finding of fact by the Trial Judge should not be **RECORD.**
disturbed.

VIII.

5. The learned Chancellor and the Court below should have set aside Respond-
entirely the Judgment of the 28th September 1891, and the order of February Factum—
1892, and also the construction contract of the 16th day of September 1889, all Cross-
in the pleadings mentioned, and should have relegated the Defendant Appeal—
Charlebois to so much as he might be able to recover as a *quantum meruit* continued.
in respect of work actually performed and materials supplied upon and in
respect of the work in question at such time as he should be entitled to
10 be paid.

6. The learned Chancellor and the Court below should have declared that
the bonds issued by the Plaintiff Company, and mentioned in the Judgment
below, to the extent of the moneys for which the same are pledged, and the
moneys advanced or intended to be secured thereon, were, and are entitled to be,
and that the same are the first preferential claim and charge upon the Company,
and the franchise, undertaking, tolls and income, rents and revenues, and real
and personal property of the Plaintiff Company, pursuant to Statute in that
behalf in priority to the claim of Charlebois, all other creditors not being bond
creditors of the Company.

20 7. That in any event the said Judgment should not give the Appellant
Charlebois or any other creditor for construction claiming under him, any higher
position or priority than the persons holding the said bonds as security for money
advanced to or for the Company.

8. That the lien claimed by Charlebois is invalid as affecting the land
subsidy of the Company earned by the construction of the first 50 miles, because
such a lien could only be created upon the terms and conditions, and for the
purposes under and for which a charge on the lands by way of bonds could be
created.

Under the 19th section of the charter, the Company itself is declared a
30 trustee of the lands forming the subsidy.

It is inconsistent with the scope and terms of the Act authorising the charter,
the charter itself, the Act confirming the same, and the Railway Act, that the land
subsidy should be charged in any other manner than by the bonds of the
Company issued under authority of the shareholders at a special meeting called
for that purpose upon the four weeks' notice and advertisement prescribed by
the charter and Railway Act.

The clauses referring to mortgaging lands are limited to lands which the
Company is empowered to purchase, speculating in aid of its resources.

In acquiring such lands it might be necessary to mortgage them for
40 purchase money, and the Company is so far specifically empowered.

The clauses in that behalf in the 11th section of the charter, and the
references to mortgages on lands, are to be construed distributively as relating
to the classes of lands to which they apply.

RECORD. If such lands have been paid for in cash, they are discharged from all mortgages.

VIII.
 Respondents'
 Factum—
 Cross-
 Appeal—
continued.

After payment of such specific mortgages on such lands, the proceeds of such lands, shall be merged in and applied upon the trusts declared in the 19th section in respect to lands forming part of the subsidy.

FRANK ARNOLDI,
 O. A. HOWLAND.

In the Court of Appeal for Ontario.

Between

James Bogle Delap *et al.* - - - (Respondents) Plaintiffs 10
 and

Alphonse Charlebois *et al.* - - - (Appellants) Defendants.

TAKE NOTICE that on the argument of the Appeal of the Defendant Charlebois before this Court, the respondents Plaintiffs will, in addition to the matters in the printed Case as delivered by the Appellant, read and refer to the following papers and Exhibits used on the trial in the Court below, which have been omitted from the printed Case, that is to say :—

(1) Passages from the examination of the Defendant Charlebois for discovery in the action as marked by Mr. Cassels in his brief and put in at the trial. 20

(2) Exhibit 73.

(3) Exhibit 75.

(4) Exhibit 101.

(5) Exhibit 136.

(6) The orders for the commissions to take evidence in England in the Judgment referred to dated the 10th and 11th days of May, 1893, respectively.

(7) The notice to produce and the notice to admit served by the Plaintiffs in the action and put in at the trial.

And further take Notice that the same Respondents say that the printing of the document in Volume one of the said printed Case, at page 86, therein called Statement of Defence of the Defendants Macdonald, Preston, Schiller and Nugent, was an error and was improper, and that the same forms no part of the case for appeal, and that such defence was no part of the record in the Court below.

And further take notice that the same Respondents will apply to the Court if necessary, on the argument of the said appeal, to allow the said documents to be printed as a supplement to the printed case, if the same have not been earlier printed, or the printing of the same dispensed with.

And further take Notice that on the argument of the said Appeal the RECORD. Respondents will object to the said Appeal proceeding in the absence of the Defendants Gifford and Curzon, on the ground that the last-named Defendants are necessary parties to the said Appeal, and that their defence should be included in the Appeal case, and that they should be parties to the said Appeal.

VIII.
Respon-
dents'
Factum—
Cross-
Appeal—
continued.

Dated this first day of November, 1894.

Yours, &c.
HOWLAND, ARNOLDI & BRISTOL,
Solicitors for Respondents Plaintiffs.

10

To Messrs. Chrysler & Lewis, Solicitors for the Defendants Alphonse Charlebois, William Anderson Allan, Robert J. Devlin and the Union Bank of Canada.

And to Messrs. McCarthy, Osler, Hoskin & Creelman, their Agents.

To Messrs. Mills & Mills, Solicitors for the Defendant John Arthur Codd.

To Messrs. Riddle, Armstrong & Nesbitt, Solicitors for the Defendants the Crossen Estate.

And to Messrs. Millar, Riddle & Le Vesconte, their Agents.

To Messrs. Watson, Thorne, Smoke & Masten, Solicitors for the Defendants the Commercial Bank of Manitoba.

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To Messrs. McMichael, Mills & McMichael, Solicitors for the Defendants Clemow, Murray & McMichael.

To Mr. R. M. Macdonald, Solicitor for the Defendants Gifford & Curzon.

To Messrs. Robinson, O'Brien & Gibson, Solicitors for the Defendants Alexander Macdonald, William Alfred Preston, John S. Schiller, and Frank S. Nugent, and the Commercial Bank of Manitoba.

And to Messrs. Moss, Barwick & Franks, Agents herein for Messrs. Chrysler & Lewis, Solicitors for the Defendants the Union Bank of Canada.

RECORD.

IX.
Order of the
Supreme
Court of
Canada,
dated
28 March
1896.

In the Supreme Court of Canada.

Saturday the 28th day of March, A.D. 1896.

Present :

The Honourable Mr. Justice Gwynne,
The Honourable Mr. Justice Sedgwick,
The Honourable Mr. Justice King,
The Honourable Mr. Justice Girouard.

The Honourable Mr. Justice Taschereau being absent, his judgment was announced by the Honourable Mr. Justice Gwynne, pursuant to the statute in that behalf.

Between

10

Alphonse Charlebois, Alexander Macdonald, William Alfred Preston, John S. Schiller, Frank S. Nugent, the Commercial Bank of Manitoba, the Union Bank of Canada, William Anderson Allan, Robert J. Devlin and William James Crossen, Frederick John Crossen and Joseph Henderson, executors of the last will and testament of James Crossen, deceased - - Defendants—Appellants.

and

James Bogle Delap, individually and as a shareholder on behalf of himself and all other shareholders of the Great North-West Central Railway Company (except the Defendant John Arthur Codd), Louisa H. Mansfield, and the Great North-West Central Railway Company - - - Plaintiffs—Respondents.

20

and

The Honourable Francis Clemow, James Murray, Daniel McMichael, John Arthur Codd, and the Right Honourable Edric Frederick, Baron Gifford, and Robert Lothian Curzon - - Defendants.

The appeal of the above-named Appellants from the judgment of the Court of Appeal for Ontario, dated the 14th day of May and the 25th day of June in the year of our Lord 1895, whereby it was adjudged by the said Court of Appeal for Ontario that the appeal of the above-named Appellants to that Court from the judgment of the honourable the Chancellor of the Chancery Division of the High Court of Justice for Ontario, pronounced on the 25th day of November in the year of our Lord 1893, and the 22nd day of January in the year of our Lord 1894, should be dismissed with costs, and that the cross-appeal of the above-named Respondents should also be dismissed without costs; and whereby it was also further adjudged that paragraphs 17 and

18 of the judgment of the Honourable the Chancellor should be varied, as in the said judgment of the Court of Appeal for Ontario is set forth, having come on to be heard before this Court on the 6th, 7th, 8th, 9th, 11th, 12th, 13th, 14th, and 15th days of November in the year of our Lord 1895, in presence of counsel, as well as for the respective Appellants as for the respective Respondents above-named, whereupon, and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment.

RECORD.

IX.

Order of the
Supreme
Court of
Canada,
dated
28 March
1896—
continued.

10 1. This Court did order and adjudge that the bonds in question in this action were not validly pledged by the Respondent Company to the Respondents James Bogle Delap and Louisa H. Mansfield, or to either of them, and that the Respondents Delap and Mansfield were not, and are not, nor is either of them, entitled to hold the four hundred and sixty-five thousand six hundred pounds (£465,600L.) face value of said bonds in their control, or in the control of either of them, and brought into Court in this action by the Respondent Delap for all or any moneys owing to them or to either of them, and that the said bonds were not, nor were any of them, pledged by the Respondent Company to them or to either of them for the repayment of all or any moneys alleged to be
20 owing by the Company to them or either of them, and that the claim of the Respondents Delap and Mansfield to a lien or charge on the said bonds, and the action of the said Respondents Delap and Mansfield to enforce the same should be, and the same was, dismissed without costs in this Court or in the Courts below, and that the said bonds should be subject to the further order of the High Court of Justice for Ontario, and did order and adjudge the same accordingly.

2. And this Court did further order and adjudge that the above-named Defendant Codd is not entitled to the amount of one hundred and thirty thousand dollars (\$130,000), made payable to the Defendant McMichael as trustee
30 in, and by Sub-section (e) of paragraph 2 of the Judgment of the Honourable Mr. Justice Ferguson of the 28th day of September, in the year of our Lord, 1891 in question in this action, and that the said sum of \$130,000 (one hundred and thirty thousand dollars) belongs to the Respondent Railway Company and not to the Defendant Codd, and that the same be not recoverable under the said Judgment against the said Railway Company, and did order and adjudge the same accordingly.

3. And this Court did further order and adjudge that, subject to the other provisions of this Judgment, the said appeal of the above-named Appellants should be, and the same was allowed without costs in this Court or in the Courts
40 below, that the said Judgment of the said Court of Appeal for Ontario, in so far as the same dismissed the appeal of the above-named Appellants from the said Judgment of the Chancellor, should be, and the same was, reversed and set aside, and that the said Judgment of the Honourable the Chancellor of the High Court of Justice for Ontario should be, and the same was reversed and set aside, and the action of the Plaintiffs, Respondents herein, should be and the same was dismissed without costs, and did order and adjudge the same accordingly.

RECORD.

IX.
Order of the
Supreme
Court of
Canada,
dated
28 March
1896—
continued.

4. And this Court did further order and adjudge that the cross-appeal of the above-named Respondents should be, and the same was, dismissed without costs, and did order and adjudge the same accordingly.

5. And this Court did further order and adjudge that there should be no costs in the said appeals or in the said action to any party thereto, either in this Court or in the Courts below.

6. And this Court did further order and adjudge that the sum of five hundred dollars (\$500) paid into Court as security for the costs of the said appeal be forthwith paid out to the above-named Appellant Charlebois or his solicitors.

X.
Judgment of
Mr. Justice
Gwynne.

In the Supreme Court of Canada.

10

Charlebois *et al.* - - - - - Defendants-Appellants.

v.

Delap *et al.* - - - - - Plaintiffs-Respondents.

Appeal and Cross-appeal.

Gwynne, J.—However much we may sympathise with the Plaintiff Delap in what upon the evidence does certainly appear to be the cruel way in which he has been involved to the extent of some 90,000/. expended in the construction of this road, we must bear in mind that we are not adjudicating upon a case wherein his rights to redress against any persons for the injuries of which he may have reason to complain are submitted to the Court for adjudication thereon. The action is not one instituted by Delap against the Railway Company for the purpose of having any question as to his rights and interest in certain bonds of the Company in his hands, determined by the Judgment and decree of the Court. Whether Delap is or is not a holder of bonds of the Company in the only right in which he claims to hold them, namely, as a pledge and security for certain advances made by him to the Company, is a matter of no importance in this suit, as the Company are acting in concert with him as Co-plaintiffs in seeking relief against a consent Judgment obtained in an action instituted by the now Defendant Charlebois, as Plaintiff against the now Plaintiffs, the Railway Company, upon the ground that such Judgment was obtained solely, as is charged upon, the fraudulent consent thereto of the then President of the Company, and upon the ground further that the Judgment contains certain declarations and directions as assented to by the Company which were *ultra vires* of the Company to assent to, and of the Court to decree. True it is, that the Statement of Claim contains an allegation wholly unnecessary, as it appears to us, to the effect that Delap is a holder of bonds in the Company, and stating the circumstances under which the consideration for which he became such holder, but he does not, and, framed as the suit is, he could not successfully, claim any special relief as such bond-holder. No relief is prayed different from that which is prayed by the Company. Whether Delap is or is not the holder of the

bonds of which he claims to be holder would have been a question of importance in this suit if he was sole Plaintiff claiming a right as bondholder to set aside the consent judgment upon the ground of its being for any reasons fraudulent or *ultra vires* as against the holder of bonds, but no such question arises here, for whatever irregularity, if any, there was in the first institution of the suit by Delap claiming relief upon behalf of himself and all other shareholders, except those excepted, there can be no doubt that the Railway Company are now Plaintiffs, and are upon the Record co-plaintiffs with him, and the Company have no doubt a right to the relief prayed if a case warranting such relief being

10 granted is established. The Court below have determined, in which I concur, that Delap's rejoinder with the Company as a co-plaintiff if objectionable originally cannot now be a matter of any importance whatever, and the conclusion from such adjudication, in my opinion, is that the Judgment of the Court of Appeal at Toronto, which has assumed to declare "that the bonds mentioned in the suit were not validly pledged by the Company to the Plaintiff, James Bogle Delap, and that the Plaintiff, Delap, was not entitled to hold the 465,600*l.* face value of bonds in his control brought into Court in this action by him, and that the said bonds were not nor were any of them pledged by the said

20 Company to him for the repayment of all or any moneys owing to him by the Company, and that the claim of the Respondent, Delap, to enforce the same should be dismissed without costs here or below" must be set aside as an adjudication upon a matter for adjudication upon which the suit is not framed, and in respect of which no relief is prayed. As already pointed out the suit is not framed for any such purpose. The only relief prayed is the setting aside of the consent judgment for the reasons stated in the Statement of Claim. To the whole of the relief prayed the Plaintiffs, the Railway Company, are entitled, if the case as it is presented should be established. The 17th, 18th, and 19th paragraphs of the learned Chancellor's Judgment must, in my opinion, be expunged for a like reason from his judgment, for

30 the learned Chancellor therein pronounces a Judgment affirming the validity of the pledge of the bonds to Delap, which, as already observed, was a declaration not warranted by the frame of the suit any more than was the Judgment of the Court of Appeal for Ontario negating such pledge, and all right of Delap to the bonds by way of pledge or otherwise. By the erasure of these paragraphs from the learned Chancellor's Judgment the parties interested, that is to say, the Company and Delap as having actual possession of the bonds will be able to settle between themselves their respective rights. Until they shall differ upon the matter, and shall submit their difference to the Court, it will be expedient to withhold the expression of judicial opinion upon the subject. As to the

40 residue of the learned Chancellor's Judgment I do not think it necessary to refer to any of the matters in evidence further back than the 7th September 1889, for I agree with the view taken by Mr. Justice Burton that upon that day the evidence shows clearly that the agreement of April 1889, which was the *sine qua non* foundation of the agreement of July 1889 which Delap by the advice of his solicitors the Messrs. Stevens & Company entered into with Codd was entirely put an end to and absolutely abandoned. Thereupon as the evidence also shows Charlebois entered into an agreement with all of his co-shareholders in the Company for the purchase at a fixed price of their respective shares upon

RECORD. which 30 per cent. had been paid up and expended by the Company. He then entered into negotiations with Codd and Stevens who were then acting in concert as co-adventurers or co-partners for the sale and transfer to them and their nominees of the whole of the shares which had been subscribed for and taken in the capital stock of the Company, including his own, and so to make such transferees of the stock sole members of the re-organised Company, who, when so re-organised, should give him a contract for building 50 miles of the railway of the Company at the price or sum in the whole of 200,000*l.* sterling, equal to 973,133.00 dollars. These negotiations were finally reduced to a contract which substantially was as follows: That Charlebois should be 10 paid 50,000*l.* sterling, equal to 243,333.00 dollars, upon the execution of the contract, and certain other sums for rails during the progress of the work, and the balance upon the completion of the 50 miles. Out of this balance, however, when paid there was an agreement between Charlebois and Codd that the former should pay to Codd 173,133.00 dollars, being the difference between 800,000 dollars and 200,000*l.* sterling for his, the said Codd's, personal use and benefit. Now Charlebois' contract being for a fixed price for the transfer of the shares, and for building of the road, it is manifest that he must acquire all the shares not held by himself by purchase from the persons holding the shares, and this manifestly was known to Codd and Stevens, with whom he was contracting, and 20 he must also transfer his own shares, and cause all the shares owned by the other shareholders to be transferred to them and their assignees before the contract with the Company for building the 50 miles of road could be executed. This also was well known to Codd and Stevens, who, together with their nominees claiming under them, were to constitute the Company to execute the contract with Charlebois, and as the persons with whom Charlebois was negotiating and their nominees were to be sole members of the re-organised Company to enter into a binding contract with him in their corporate capacity, I cannot see that it was a matter of any importance to Charlebois how such persons, when constituted into the 30 re-organised Company, should arrange between themselves as individual shareholders, and themselves as constituting the corporate body, as to the manner in which the sum to be paid to Charlebois should be apportioned and entered in the books of the Company. That was a matter of easy adjustment between themselves with which Charlebois had nothing to do. Neither the re-organised Company, nor the persons forming it, had any concern with the amount Charlebois might have to pay to his co-shareholders to procure the transfer of their shares as he had agreed to do; nor as to the manner in which, or as to the funds out of which he should pay such amount, although it must have been well-known to Codd and Stevens that the amount so to be paid by Charlebois 40 must naturally constitute an element, in his determining the amount to be paid to him in case his proposal should be accepted, nor had they any concern with the amount of profit which Charlebois might probably derive from the contract if his proposal should be accepted, further than to consider whether the amount demanded by him was in their Judgment so large that they must decline acceding to it. It might be that the amount necessary to be paid to his co-shareholders for their shares would be more than he was prepared to pay in cash, and he might possibly require to have the payment deferred until he

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Mr. Justice
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continued.

should build the 50 miles of road, and should receive the full amount then to be paid to him. It is apparent that the Company was one of these Companies formed, as is not unusual in this country, for the purpose of constructing railroads, not as purely commercial undertakings, and not constructed wholly or chiefly with subscribed capital, but chiefly upon the security of Government or Municipal subsidies or both. In the present case the subsidy was a Government land grant which could not be obtained by the Company until they should enter into a contract for building 50 miles of road to be completed by a fixed date. A question has been suggested whether Charlebois' proposal was that he should
 10 procure the shares to be assigned and transferred as paid up in full, or that he should transfer or procure them to be transferred as they then were with 30 per cent. paid thereon, but I cannot see how any question upon this point, if any such does exist, between the parties to the transaction can affect the present case.

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continued.

Assuming the payment of 75 per cent. upon the amount of stock which had been subscribed for prior to the 16th September 1889, to be by force of the resolution of the old Company payment in full of these shares, the amount necessary to pay such 75 per cent. was very little short of 50,000*l.* sterling, and the evidence shows that upon that day Stevens, although it was with
 20 Delap's money, paid that amount to the Company as originally organised upon the subscribed shares severally and respectively, so as to make them to be actually and truly paid in full in conformity with the resolution of the Company as formerly constituted. If Charlebois had agreed with Stevens to pay the shares up in full, so as to transfer them as shares paid up in full, it is plain that he did not do so unless Stevens paid the money upon the shares as a loan to Charlebois and upon his promise to repay Stevens the amount which promise Charlebois fulfilled. Of this we have no evidence, nor is it necessary that we should have any evidence upon the point in this case, for if Charlebois agreed with Stevens to pay up the shares in full and has not done so, it is Stevens
 30 who alone can call him to account for the non-fulfilment of his promise.

What the evidence establishes beyond all doubt is that on the 16th September 1889 before the Company was re-organised by the transfer of the shares to Codd and Stevens and their nominees the shares were actually and truly and *bonâ fide* paid to the Company to the amount of 75 per cent., and to that amount, or if that amount did under the resolution aforesaid constitute payment in full, then these shares in whosoever hands they now are must be held to be to all intents and purposes shares paid up in full, or at least to the amount of 75 per cent., which amount the Company has actually received and has enjoyed the full benefit thereof. There seems to be no foundation
 40 whatever for the suggestion that the payment of the money by Stevens on the 16th September 1889 was merely fictitious. He paid the money beyond all question upon the shares and to the Company, who have applied it to their own purposes. No part of the money so paid has ever been returned. It is impossible, therefore, to say that the proceeding was in any respect fictitious, or anything else than an actual payment upon the shares and to the Company. With any controversy between Delap and Stevens as to the propriety of the application in such a manner of Delap's money by Stevens this suit is not concerned.

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continued.

There is not, in my opinion, any ground whatever for imputing fraud to Charlebois or to any person as regards the amount paid by Charlebois for the shares or for avoiding the contract entered into with him by the Company as *ultra vires* in whole or in part by reason thereof or by reason of his having reimbursed himself therefor by the amount promised to him in that contract to be paid by the Company. The Company have in virtue of that contract acquired the Government subsidy, and they must in all justice abide by the terms of the contract with Charlebois in virtue of which they have acquired the subsidy to the extent at least of 800,000 dollars, which appears to be the whole of the amount to be paid to and which was asked 10 by Charlebois for his own benefit. In so far therefore as the learned Chancellor's Judgment has reduced the consent Judgment in respect of the moneys comprised in the 200,000*l.* sterling as representing the value of the shares, it is in my opinion erroneous and must be reversed, but as to the 173,133.00 dollars which was agreed to be paid to Codd and as security therefor, was also included in the 200,000*l.* sterling mentioned in the contract executed by the Company, that amount being so imposed as a liability upon the Company constituted in my opinion a manifest fraud upon the Company, and as the consent Judgment appears to have been obtained solely upon the consent of the President Codd thereupon to be benefited by that fraud, the consent Judgment must be set aside 20 at least *quoad* that amount which cannot be reduced by reason of any part thereof having been already paid by Charlebois to Codd, or by reason of Charlebois having accepted any charge purported to be imposed by Codd upon the amount. It is Charlebois' misfortune for which the Company cannot be made responsible that he should have paid to Codd any part of that sum before himself receiving it. As regards this 173,133.00 dollars the learned Chancellor's Judgment must, in my opinion, be maintained.

Now, by deducting from the principal sum of 600,226.00 dollars this sum of 173,133.00 dollars, we arrive at the sum of 427,093.00 dollars, or the precise sum which, if the whole work had been finished as provided for in the contract 30 would have been then due to Charlebois in respect of 800,000.00 dollars, the whole of the sum named in the contract which was really payable to him for his own benefit. But it is contended that in point of fact the whole work was finished, and therefore upon this point the learned Chancellor has directed a reference to the master. I should be very glad to be in a position to be able to determine this question without a reference for the enormous expense of this suit which already cannot be short of 25 per cent. of the whole claim, makes it extremely desirable to prevent (if possible) any further delay and the incurring the expense of an inquiry before the Master. Perhaps the parties may be able to agree upon this point without prosecuting the reference which otherwise 40 would be necessary.

The substantial variance which I thus make in the Judgment of the learned Chancellor requires also a variance in its form, and I think it should be varied as follows :—

Let the 1st, 2nd, and 3rd paragraphs remain. Expunge the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 14th, 16th, 17th, 18th, 19th, 25th, 26th, and 27th paragraphs and substitute therefor the following :—

4th. Insert for 4th paragraph the 11th paragraph of the learned Chancellor's RECORD.
Judgment.

5th. Insert for 5th the 12th paragraph of the learned Chancellor's Judgment of
Judgment. Mr. Justice
Gwynne—

6th. Declare that in so far as relates to the sum of 173,133 dollars, that
sum being part of the sum of 200,000/. named in the contract, of the date of
16th September 1889 and being made part of such sum for the sole benefit of
the Defendant, John Arthur Codd, the Defendant the said Charlebois had no
right to recover the same or any part thereof against the said Company, and
10 declare that by reason of that sum being included in the calculations whereby
the sum of 622,226 dollars mentioned in the consent judgment was arrived at,
the said consent judgment was and is fraudulent as against the said Company,
and should be for such fraud, and the same is hereby therefore vacated, annulled,
reversed, and set aside. continued.

7th. Declare that at the date of the consent judgment the Defendant
Charlebois was entitled to have judgment against the Company for no greater
sum than the sum of 427,093 dollars, together with so much of the 22,000
dollars of interest as was attributable to the said sum of 427,093 dollars less
the amount of the work and materials, which were contracted for by Charlebois,
20 to be finished and supplied if any there were not then finished and supplied.

8th. Refer it to the Master to take an account of the amounts, if any, which
should be charged to Charlebois for the non-completion of the work, if the
Master shall find it not to have been completed, and declare that such amount if
any, shall be deducted from the said sum of 427,093 dollars, and thereupon
enter judgment, *nunc pro tunc*, as of the date of the consent judgment for the
said sum of 427,093 dollars, and the proportion of the said sum of 22,000
dollars by way of interest as the Master shall find to be properly attributable to
the said sum of 427,093 dollars less such sum, if any, as upon the taking of the
account aforesaid he shall find to be chargeable to Charlebois in respect of such
30 unfinished work or unsupplied material.

9th. Declare that the persons and Corporations mentioned in the 10th
paragraph of the learned Chancellor's judgment shall have the like charge upon
the amount to be recovered by the judgment hereby ordered to be entered, *nunc
pro tunc*, as by the said consent judgment they were declared to have upon the
amount therein mentioned. Declare this by recital of the provisions of the
consent judgment as to these parties in full as therein, and declare that the
judgment hereby ordered to be entered *nunc pro tunc*, shall be subject to the
like provisions.

10th. Declare the Defendant Charlebois to have a like lien for the amount
40 of the judgment hereby ordered to be entered *nunc pro tunc*, as he is in the 13th
paragraph of the learned Chancellor's judgment declared to have, and in framing
this declaration adapt simply the language of the 13th paragraph of the learned
Chancellor's judgment to the judgment hereby ordered to be entered *nunc
pro tunc*.

RECORD.	11th.	Adopt paragraph 15 of the learned Chancellor's judgment.
<u>X.</u>	12th.	" " 20 " " "
Judgment of	13th.	" " 21 " " "
Mr. Justice	14th.	" " 22 " " "
Gwynne—	15th.	" " 23 " " "
<i>continued.</i>	16th.	" " 24 " " "
	17th.	Reserve further considerations and further costs.
	18th.	Adopt paragraph 28 of the learned Chancellor's judgment.

I confess that I have not been able clearly to determine the precise mode in which the amount, 600,226 dollars, was arrived at which so precisely to a cent. 10 corresponds with the amount recoverable, assuming Charlebois' contract price to have been 800,000 dollars, and that his contract had been fully completed. If there should be anything in the Exhibit 26 or elsewhere in the Exhibits which may appear to require consideration other than is covered by the above directions it may be spoken to on the minutes ; but it must be understood that no allowance can be made in favour of Mr. Charlebois in respect of the item of 50,000 dollars spoken of in the Exhibit 26 as " Bonus," nor in respect of any payment or loan to Codd upon or in respect of the 173,133 dollars above mentioned.

I should have preferred directing an ordinary judgment as in an action upon 20 a covenant to pay money to be entered for Charlebois in the judgment hereby substituted for the consent judgment, without burthening the judgment with charges in favour of his creditors not parties to the suit which was instituted by him against the Company, but I presume there was some reason for the adoption of that course which is certainly not usual, and as the learned Chancellor has adopted the same course I have also adhered to it, and the judgment as above varied seems to me to give to the Defendant Charlebois the utmost that he was entitled to when the consent judgment was entered.

As to the costs of this appeal, I think the proper order to make will be that as between the Plaintiffs and the Defendant Charlebois, they must respectively 30 bear their own costs, and as to the appeals of the Defendants, who claim under the Defendant Charlebois, these appeals were wholly unnecessary, and never should have been prosecuted, and as the Appellants had no interests distinct from those of Charlebois their appeals must be respectively dismissed with costs to be paid to the Plaintiffs by them respectively.

Upon the judgment being varied, as above, the appeal of Charlebois and the cross-appeal of Delap should be dismissed without costs.

A true copy.
(signed) C. H. MASTERS,
Reporter, Supreme Court of Canada.

In the Supreme Court of Canada.

Charlebois *v.* Delap.

Taschereau, J.—I am of opinion to allow the principal appeal with costs. I adopt my brother King's reasoning. The cross-appeal by the Plaintiffs should be dismissed with costs. The incidental appeals of the Banks, the Crossens, Schiller and Preston, Allan and Devlin, and others, should all and every one of them be dismissed with costs. These appeals were quite unnecessary, and I should have been disposed to give treble costs against these appellants had it been in my power to do so. I agree with what my brother
 10 Gwynne says on these incidental appeals.

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 Judgment of
 Mr. Justice
 Taschereau.

A true copy.
 (signed) C. H. MASTERS,
 Reporter, Supreme Court of Canada.

In the Supreme Court of Canada.

Charlebois *v.* Delap.

King, J.—A Company incorporated for definite purposes has no power to pursue objects other than those expressed in the Act or Charter, or such as are reasonably incidental thereto. (Ashbury Railway Carriage Company *v.* Riche, L. R. 7 H. L. ; Attorney General *v.* Great Eastern Railway Company, 5 A. C.) The assent of every shareholder makes no difference.
 20

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 Mr. Justice
 King.

The same is the case in respect to the powers exercisable by such a corporation in attainment of authorised objects.

"I am of opinion not only that the objects which the Corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the Corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions." Per Lord Watson (*Wenlock v. River Dee Company*, 10 A. C.).

Then as to the application of the Company's funds to purposes other than those so as above authorised, Lord Herschell in *Mann v. Edinburgh Northern Tramways Company* (A. C. 1893) says of this :—
 30

"No approval of those who may happen to be directors at the time when the Company is formed, or of those who may happen at that time to be all the shareholders in the Company can possibly give it validity, because it is something which the Company itself cannot do, and which it cannot be authorised to do either by its then directors or by its then shareholders."

In the present case the charter of the Company (which by Act 49 Vic. c. 11 (D) is declared to have the force of an Act of Parliament) after providing that the capital stock shall be two millions of dollars to be divided into shares of 100 dollars each, declares that :—

40 "The money so raised shall be applied in the first place to the payment of all expenses and disbursements connected with the organisation of the Company and other preliminary expenses, and making the surveys, plans and

RECORD. estimates connected with the works hereby authorised, and all the remainder of such money shall be applied to the working, completing and equipping and maintaining of the said railway and other purposes of this charter and no other purpose whatever."

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King—
continued.

The purpose named in the charter was the construction of a railway from a point on the Manitoba and North Western Railway, or from Brandon on the Canada Pacific Railway to Battleford, a distance of about 450 miles.

A contract for the construction of the first 50 miles was entered into between Charlebois and the Company on the 16th September 1889.

The alleged *ultra vires* character of the contract lay (as contended) in the 10 improper inclusion in the contract price of the price of shares transferred by Charlebois to some of the directors, and of a bonus or commission of 173,000 dollars to one of them.

The whole of the subscribed stock amounted to 500,000 dollars in 5,000 shares, which up to the 16th September 1889 were held by Messrs. Charlebois, Clemow, Allan, Devlin and Murray, and upon which 30 per cent. representing 150,000 dollars had been paid up. These gentlemen were also the directors of the Company.

In 1888 the shareholders had entered into an agreement with Mr. Codd to sell him their shares (*i.e.*, all the subscribed shares) and to complete 50 miles 20 of road then under construction for the sum of 200,000*l.* sterling, Codd to pay 50,000*l.* on the transfer of the shares within a month, and the balance on completion of the 50 miles within several months thereafter. And the shareholders agreed (as they well might, for they were not purporting to bind the Company) that upon payment in full they would allow to Codd for commissions, &c., the very considerable difference between 800,000 dollars and 200,000*l.* sterling. Codd was not able to make his financial arrangements within the time named, and the matter remained in suspense.

In 1889, however, he fell in with the person he was looking for, a wealthy gentleman named Delap, a client of a firm of London solicitors, Stevens, 30 Bawtree and Stevens, who agreed to advance 50,000*l.* sterling to Codd to enable him to carry out the agreement. Delap was (*inter alia*) to have transferred to him 90,000*l.* of the shares of the Company as security.

Early in September Codd came to Canada accompanied by Stevens, who came out in the interest of Delap, and who was supplied by him with the 50,000*l.* Soon after arrival they met Clemow, Allan and Charlebois at Toronto. The parties, for some reason, failed to come to terms. Upon this happening, Charlebois proposed to his fellow shareholders to buy them out, naming a price. After Messrs. Clemow and Allan had the opportunity of conferring with their associates, the four agreed to sell to Charlebois their 4,300 shares for the sum 40 of 226,000 dollars.

In anticipation of the assent of the others Charlebois entered into an agreement with Codd on the 9th September, by which he agreed to carry out the agreement of the year before with modifications, one of which was that on the completion of the 50 miles he was to be paid an additional 50,000 dollars or, at Codd's option, its equivalent in stock. Afterwards Codd, in consideration of Stevens having obtained the 50,000*l.* to enable him to purchase the shares, agreed to transfer to the latter one-half of the shares, and all profits of the

undertaking were to be divided equally. Any moneys coming to Codd out of the 200,000% were to belong to him absolutely. And until all moneys advanced, or which might be advanced, by Stevens or any of his clients should be repaid, Stevens was to hold 90 per cent. of the paid-up shares of the Company as security for such repayments.

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continued.

Interviews and negotiations took place between the several parties during the week preceding the 16th of September, and on that day the directors met to carry out what had been agreed upon. Two main things were to be done: there was to be a transfer of all the shares to Stevens or his nominees, and
10 (upon the installation of the new Board of Directors) a contract between Charlebois and the Company for the construction of the first 50 miles. At request of Charlebois Messrs. Clemow, Allan, Devlin and Murray were to transfer direct to Stevens or his nominees.

The price to Charlebois for the 4,300 shares of his associates was, as stated, 226,632 dollars. Adding a proportionate amount for his 700 shares, the price to the purchasers for the whole would be about 263,000 dollars.

These shares were transferred as "fully paid up." How they came to be so will be stated presently. If Delap's money in Stevens' hands was to be paid out for shares on which 30 per cent. only had been paid up, the holders of
20 the shares would be subject to the contingent liability of 70 per cent., and Delap's security might be inadequate.

The plan was then adopted of using the 50,000% in fully paying up the shares, and then (having thus guarded against future liability, &c., and having put the Company in funds) of using these funds through the medium of a construction contract to pay Charlebois for the shares of himself and his associates.

It seems difficult to wholly acquit any of the parties of some connection at least with this plan.

The retiring shareholders, at the meeting of the 16th September, helped to
30 pave the way. By resolution they recited that they had offered to pay their stock in full less a discount of 25 per cent., and under Clause 10 of the charter declared such discount expedient and reasonable. They also directed that such certificates be issued upon such payment being made, and adopted a form of transfer for paid-up shares.

It is clear from the minutes that certificates of paid-up stock were then immediately issued. Mr. Allan then made a transfer of his paid-up stock, and it was resolved "that Mr. Allan, having sold and assigned his stock in the Company, and tendered his resignation as a director of the Company, his resignation be accepted, and that Mr. Stevens, being duly qualified, be elected
40 a director in his place."

Then the other shareholders, one by one, sold and assigned, and were succeeded as directors by their transferees. Stevens was then elected President, and after loaning the Company \$15,158.33 (the balance of the Delap money left after fully paying up the shares) it was resolved that a construction contract be entered into with Charlebois. This contract, which was at once executed, was for £200,00* sterling, of which 50,000% were to be paid down. * Sic. Then four assignments by Charlebois in favour of Messrs. Clemow, Allan, Devlin and Murray, amounting in all to \$100,687.84 of the moneys first

RECORD. thereafter payable under the contract, were presented to and accepted by the Company. Payment to Charlebois of the 50,000*l.* (\$243,333.33) under the contract was then ordered, and the meeting closed. Out of this \$243,333.33 Charlebois paid to his associates 129,945 dollars, an amount about equal to the 30 per cent. paid up by them. The balance was provided for through the four assignments just alluded to.

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continued.

It ought to have been stated that Stevens had deposited to the credit of the Company out of the 50,000*l.* the 45 per cent. required (with the allowed discount) to fully pay up the shares.

It is contended by Mr. McCarthy that this was merely a piece of book-keeping, or at most a device of Stevens for his own purposes, and that in reality the \$243,333.33 were paid by Stevens for the shares. He contends that Stevens had no authority from Charlebois or his fellow shareholders to pay up the shares on their behalf. It seems to me that this contention overlooks the resolution. They say in these that they propose to pay up, and they direct stock certificates to issue upon such payment. They certainly had no intention of paying out of their own moneys, nor did they do so, and yet they obtained and transferred fully paid-up shares. We must conclude therefore that they adopted the means by which they were enabled to do what they did. Some of them probably, possibly all of them, at one time thought that the transaction might be carried out differently. But before they got through they must have understood that the real effect of what was being done was to make use of the Company (as a temporary expedient at least) to carry the transaction of the purchase of the shares. Mr. Charlebois could scarcely have had a doubt that the Company was the paymaster for the price of the 5,000 shares sold by him. It is not, however, a question of good faith. "The question is not whether in what they did they intended to do wrong, but whether they have between them attempted to accomplish an illegal thing."

Mr. Justice MacLennan, while admitting that the effect was to cast upon the Company the burden of paying for the 5,000 shares to the extent of about 245,000 dollars, expresses the opinion that the only effect as against Charlebois would be to give the Company (had it acted promptly) the right to elect to avoid the contract on the ground of the equity between the Company and its directors, with knowledge of which Charlebois was affected. But as the burden was cast upon the Company by means of a contract, how could the contract be made use of to compel the payment of moneys which the Act forbids to be so made? The transaction seems to me to be clearly *ultra vires* (at least *pro tanto*), and I fully agree with what the learned Chief Justice of Ontario has said about it.

But now we come to a wholly different question. Charlebois is not suing upon the contract. That has become merged in the judgment rendered upon it, and the present proceedings are to set aside that judgment or to restrain its enforcement.

The proceedings in which the said judgment was obtained are stated in the record as follows:—

"The original action was commenced by Charlebois in the High Court of Justice, Chancery Division, on the 11th September 1891, to recover the balance claimed to be due upon his contract, and to establish his lien upon the property of the Company until payment in accordance with his contract,"

An Interim Injunction Order was obtained on behalf of Charlebois to restrain the Company, from encumbering or selling their land grant, or from dealing with or disposing of their bonds. RECORD.
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The Railway Company had previously, on the 9th September 1891, commenced an action against Charlebois for damages for non-completion and other alleged breaches of his contract to construct. Judgment of
Mr. Justice
King—
continued.

Affidavits were filed upon the injunction motion, and the President of the Company was cross-examined upon the affidavit filed by him.

No pleadings were filed, because the motion for injunction when renewed ¹⁰ was turned into a motion for judgment, and after about a week's discussion a settlement or compromise was arrived at by which Charlebois obtained the judgment of the 28th September 1891, and the action of the Company was withdrawn and dismissed.

The judgment declared that Charlebois had a lien on all the property of the Company for 622,226 dollars, which the Company was ordered to pay within six months, in default of which Charlebois could exercise over the property the full rights of a mortgagee with judgment for a sale. The Company was to be entitled to immediate possession, and retain it until default, and all the bonds issued were to be deposited with a deposit Company in England, and not to be ²⁰ pledged except to pay Charlebois, and the contracts held by Charlebois for further construction of the road were to be transferred to a nominee of the Company, Charlebois to retain the plant. These directions were complied with, except that the bonds were not deposited. The judgment contained also this provision :—

“The said sum of 622,226 dollars is, at the request of the said Plaintiff, declared to be payable to the following persons in the following order of priority, and the said fund is charged accordingly in favour of such persons :—

““(a.) To Macdonald and Schiller, the sub-contractors on the road, 60,640 dollars, and 3,789 dollars for interest on the said sum to date, in all 64,429 ³⁰ dollars, which sum includes the order for 20,000 dollars, dated the 10th June 1890, accepted by the Defendants and now in possession of Frank S. Nugent, Esq., which lien the said parties, represented herein by their solicitor and Counsel, the said Mr. Nugent agrees to accept as cash and to credit the same in the suit now pending in the Courts of Manitoba by the said Macdonald and Schiller against the said Plaintiff as if paid into Court in the said suit. The said sum is paid as the amount found due by the final certificate of J. H. E. Secretan, civil engineer (the Plaintiffs' engineer), with interest as agreed upon, the said Macdonald and Schiller being at liberty to continue their action in the Province of Manitoba for the recovery of any alleged balance that may be ⁴⁰ claimed by them against the Plaintiff.

““(b.) To W. A. Preston, fencing contractor, 7,810 dollars, and for interest 590 dollars, in all 8,400 dollars, the said Preston hereby accepting the provisions of this judgment by the said solicitor and Counsel, the said Nugent consenting thereto in full of his claims against the said Plaintiff.

““(c.) To the Crossen Estate or Company, for their judgment and costs against the Plaintiff, 39,000 dollars. The three preceding claims are to rank as

RECORD. between themselves *pari passu*, and these claims are payable by the Defendant Company in six months from this date, with interest on their respective sums of principal money from this date. And these parties accepting the provisions hereof do so in full of all other liens now claimed, and deliver up possession of the said railway and all the property thereof to the Defendants.

XII.
Judgment of
Mr. Justice
King—
continued.

“(d.) The second charge on the said fund is to be the sum of 380,397 dollars, with interest at 6 per cent. on 271,555 dollars, and at 4 per cent. on 108,842 dollars, which is payable to the Plaintiff for his own use or for the use of any person or corporation to whom he may have heretofore assigned the moneys payable to him, or a portion thereof, under his said contract according to their several present priorities, if any payment to any holder of any such order, or orders, to be considered as payment to the Plaintiff by the Defendants.

“(e.) The third and last charge on the said fund is to be the residue, namely, the sum of 130,000 dollars, with interest thereon to date payable to Daniel McMichael, Esq., Q.C., as trustee, in full satisfaction of all claims under a certain order, or agreement, for the payment of a sum stated therein at \$173,333.33 in full adjustment of all matters in dispute between the said parties hereto, J. A. Codd, the said D. McMichael, trustee, the Defendants and all other persons waiving and declaring all personal claims against the Plaintiff under the said order, or agreement, as satisfied and discharged.”

The learned Chancellor was of opinion that the judgment has no greater validity than the contract, because it was determined by consent, and the Company could not validly give a consent to treat as valid what was *ultra vires*.

The learned Chief Justice of Ontario, however, draws no distinction between a decree by consent and one otherwise determined. “It seems just the same,” says his Lordship, “as if on Plaintiff stating all his claims, lawful and unlawful, the Company either says nothing against them in case of judgment, or formally confesses them to be well founded. The suit was simply for moneys alleged to be due, which stand admitted by the Defendants.”

In the case of *In re South American and Mexican Company* (1 Ch. 1895, 37), decided subsequently to the Chancellor’s judgment, it is held that a judgment by consent creates an estoppel to the same extent as a judgment where the Court has exercised a judicial discretion. Lord Herschell says at p. 50: “The truth is, a judgment by consent is intended to put a stop to litigation between the parties, just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end. And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments and were to allow questions that were really involved in the action to be fought out again in a subsequent action.”

In *Huddersfield Banking Company v. Lister* (2 Ch. 1895, p. 273) an order in the course of winding-up proceedings was made by consent, and had been completed and acted upon but without affecting interests of third parties. The order was set aside on the ground of common mistake, and it was held that a consent order can be impeached upon any grounds which would invalidate the agreement it expresses.

The case of *Jenkins v. Robertson* (L. R. 1, H. L. 117), merely decided (touching the point here) that where the public at large may be bound by the result of an action brought by an individual the result will not so bind unless it was arrived at after judicial consideration, and that it would not bind the public if arrived at by consent. This is so referred to by Vaughan Williams, J., in 1 Ch., 1895, at p. 46. RECORD.
XII.
Judgment of
Mr. Justice
King—
continued.

Such being ordinarily the effect of a judgment by consent, is it different where the cause of action arises on a transaction *ultra vires* of the Defendant Company? If in an action the defence of *ultra vires* is raised and the decision is against the defence, the Company is certainly in no better position than an individual to raise again a decided issue.

On principle it does not differ apart, of course, from fraud or collusion if the Company for one reason or another abstains from raising the question of *ultra vires*. It is the Company that is in Court, and the Company is to be bound the same as others by what it does and by what it leaves undone. Between the same parties, or privies, and in respect to the same cause of action, the judgment binds not only as to defences in fact raised, but to such as might have been raised. It would seem against all reason to leave it open to a Company upon a change of management to re-open litigation. If the judgment binds the Company when recovered it binds notwithstanding any change in the constitution of its governing body. Otherwise you could never get to the end of litigation with an incorporated Company, and no one would be safe in acting upon a judgment against such a Company. The effect of a judgment must be the same, whether the claim sued on is *ultra vires* or not. The judgment forms a new obligation, having a character of its own, and it is not *ultra vires* for a Company to pay the amount of a judgment recovered against it. *Balkis Consolidated Company v. Tomkinson*. (App. Case (1893) 407.)

Then, if a Company being in Court gives its consent to a judgment being rendered against it, it is as mischievous to allow questions that were really involved in the action (here the question whether the Company owed Charlebois a certain amount) to be fought out again in a subsequent action as if the action were against individuals. The learned Chief Justice was impressed by the possible result of enabling directors to do wholly unlawful acts and then agree to a judgment against them to make such acts valid. But the same thing might be said of judgments by default. And besides such a course of conduct as that supposed would amount to fraud and collusion and vitiate any judgment so obtained.

It has been said that judgments obtained on *ultra vires* contracts operate by way of ratification. I think this hardly the proper ground on which to put it. The necessity in the administration of justice of reaching a point where there shall be an end of litigation—*interest * republicae ut sit finis litium*—which is perhaps the weightiest consideration operating to give to judgments recovered the effect which in all jurisprudence they are admitted to have, seems to be as pressing a necessity in a case where a Company is a Defendant and where the question is as to its power to contract, as where the Defendant is *sui juris*. * Sic.

Apart altogether from fraud or collusion, there is however in the case of all judgments the right, upon sufficient and proper grounds, to maintain a suit in equity for relief against the judgment, either to set it aside wholly or in part, or to restrain the execution of it.

RECORD. Fraud is, of course, one ground for relief, *i.e.*, not fraud as to the cause of action, for that is a matter which should have been raised in the original action, but fraud in the obtaining of the judgment. Collusion is another ground. There are other grounds for relief, as where a party without fault of his own is shown to have been prevented from fairly presenting his case.

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Judgment of
Mr. Justice
King—
continued.

Now, here none of the learned judges have found fraud or collusion in respect of the obtaining of the judgment, and this ought not to be found by us at this stage.

Nor was the Company without its fault prevented from presenting its case. The transactions relative to the contract were known to all the shareholders, and there is no reason to suppose that any defence which the then shareholders or the Company at that time desired to make was omitted to be made.

The Company, however, is entitled to show the facts as to Codd's breach of duty, and to claim that the amount secured to him by the judgment shall be declared to belong to it. This would not be to contradict the judgment to which Codd was not formally a party, but is wholly collateral and merely proceeds upon the ground that the Company is beneficially entitled to the amount secured through Charlebois to him by the judgment. Moreover there has been no appeal by Codd.

The learned Chancellor thought that the stock should be charged with the amount of the price of Charlebois' shares, and that Mr. Delap should be considered liable to Charlebois for the amount. As Mr. Delap is manifestly the person who would chiefly profit by the relief asked for, so far as regards the price of the shares, it would seem as though (in the view of the whole case taken by the learned Chancellor) the fulfilment of Mr. Delap's declared obligations might very well have preceded the enforcement of the equitable relief sought for.

As to the matter of the lien and its validity, I do not think it necessary, from my point of view, to do more than refer to the judgments of Mr. Justice Burton and Mr. Justice McLennan.

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Then as to the issue of the bonds, the same observation may be made. The issue to Mrs. Mansfield seems scarcely to rest on stronger grounds than those which the Court of Appeal thought insufficient in the case of Mr. Delap.

The result is that the appeals should be allowed and the action be dismissed, except so far as the judgment relates to the sum of 130,000 dollars payable to the Defendant Codd, which sum is to be deducted and not to be recoverable upon the judgment.

Inasmuch as the conduct of Mr. Charlebois and his associates in reference to the contract was the occasion of all this litigation, it seems proper that they should not have their costs. The others who claim through him must also bear their own costs. Accordingly, there will be no costs to any party either here or below.

Sedgewick and Girouard, J. J., concurred in this judgment.

A true copy.

(signed) C. H. MASTERS,
Reporter, Supreme Court of Canada.

IN THE PRIVY COUNCIL.

No. 33 of 1896.

ON APPEAL FROM THE SUPREME COURT
OF CANADA.

BETWEEN

THE GREAT NORTH-WEST CENTRAL RAIL-
WAY COMPANY, JAMES BOGLE DELAP,
INDIVIDUALLY AND AS A SHAREHOLDER ON
BEHALF OF HIMSELF AND ALL OTHER SHARE-
HOLDERS OF THE GREAT NORTH-WEST CENTRAL
RAILWAY COMPANY (EXCEPT THE DEFENDANT,
JOHN ARTHUR CODD), AND LOUISA H.
MANSFIELD - - - - (*Plaintiffs*) *Appellants*,

AND

ALPHONSE CHARLEBOIS, ALEXANDER
MACDONALD, WILLIAM ALFRED
PRESTON, JOHN S. SCHILLER, FRANK
S. NUGENT, THE COMMERCIAL BANK
OF MANITOBA, THE UNION BANK OF
CANADA, WILLIAM ANDERSON ALLAN,
ROBERT J. DEVLIN, AND WILLIAM
JAMES CROSSEN, FREDERICK JOHN
CROSSEN, AND JOHN HENDERSON,
EXECUTORS OF THE WILL OF JAMES CROSSEN,
DECEASED - - - - (*Defendants*) *Respondents*.

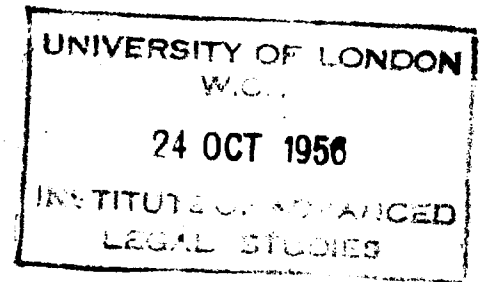
RECORD OF PROCEEDINGS.

GADSDEN & TREHERNE,
28, Bedford Row, W.C.,
for Appellants.

BOMPAS & Co.,
3, Great Winchester Street,
for the Commercial Bank of Manitoba,

AND

HARRISON & POWELL,
5, Raymond Buildings,
Gray's Inn, W.C.
for remaining Respondents.



Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Great North-West Central Railway Company and others v. Charlebois and others, from the Supreme Court of Canada ; delivered 1st April 1898.

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

SIR HENRY DE VILLIERS.

[*Delivered by Lord Hobhouse.*]

This suit was instituted for the purpose of invalidating a contract purporting to be made on the 16th of September 1889 between the Plaintiff Company and the Defendant Charlebois, and a judgment obtained upon it by him against the Company on the 25th September 1891. The main questions are ; 1st, whether the contract was a breach of trust by the Company's Directors and Charlebois as alleged in the claim, or was *ultra vires* of the Company according to the majority of judicial opinions below ; and if so, 2ndly, whether the judgment obtained on it could be impeached. There is also another judgment or order passed in February 1892 ; but that, it is agreed on all hands, is only supplemental to the earlier one and must stand or fall with it.

The Chancellor of Ontario who presided at the trial held that the contract was as to certain payments covered by it *ultra vires*, and that the judgment having been obtained by consent was

impeachable to the same extent as the contract. On appeal the Ontario Court, consisting of four Judges, was equally divided. Two Judges, differing in their reasons, thought that at least the judgment of 1891 ought not to be impeached. But the Chief Justice and another learned Judge concurred with the Chancellor. The appeal therefore stood dismissed. Then the case was carried to the Supreme Court of Canada, consisting of five learned Judges. Mr. Justice Gwynne differing from the rest of the Court thought that the decree below should be maintained in some important particulars. The other four, whose views are stated by Mr. Justice King, held that, though the contract was as regards the payments complained of *ultra vires*, the judgment of 1891 was not impeachable except as to one item amounting to 130,000 dollars. To that extent therefore the Plaintiff Company has got relief; but in other respects their suit stands dismissed, though without costs.

The suit is framed in a very unusual way, because the Company has joined to it as co-Plaintiffs, Mr. Delap who sues not only as a shareholder on behalf of himself and all others but also in the character of a holder or pledgee of the bonds, and Mrs. Mansfield who sues as another holder or pledgee. The objection of misjoinder was not taken successfully in the Courts below, and it must be taken as decided between the parties in this suit that misjoinder is not fatal to it. As the matter is treated by the Supreme Court no embarrassment arises from the joinder of bondholders, but in the view of their Lordships there is difficulty in deciding the issues raised by their presence.

The history of the contract has been loaded with a vast amount of preliminary detail which may have been necessary in the first instance for

the exact understanding of its nature, but is quite unnecessary now. There is little dispute upon any material matter of fact. The facts necessary to found their Lordships' judgment are mostly stated by Mr. Justice King in delivering the views of the majority of the Supreme Court. The contract is on the face of it quite legal and regular. It is for the construction by Charlebois of 50 miles of railway in consideration of 50,000*l.* paid down by the Company, and 150,000*l.* more to be paid by them on completion. The objections to it are founded on extraneous circumstances.

The Company was formed in the year 1886 under the Public Statutes and a Charter from the Crown. The nominal capital is two million dollars. In 1887 five thousand shares of the nominal value of 100 dollars each had been issued and 30 per cent. paid up on them. They became all vested in five persons who were also Directors of the Company: viz. Charlebois, Clemow, Allan, Devlin, and Murray. In 1888 those five persons agreed with one Codd that for the sum of 200,000*l.* they would sell him all their shares and also construct the first 50 miles of railway, but Codd was to have a bonus for himself equal to 173,000 dollars out of the 200,000*l.* Codd could not find the money, nor was any forthcoming till Delap took the matter up in 1889 and offered to find 50,000*l.* In September of that year one Stevens acting for Delap, Codd, and the five shareholders, made arrangements among themselves to the following effect: Charlebois was to buy up 4,300 shares held by the other four at the price of 226,000 dollars: these shares and the remaining 700 belonging to Charlebois himself, valued on the same principle at 37,000 dollars, were to be transferred to Stevens or his nominees: 45 per cent. or 225,000 dollars was to be paid upon the 5,000 shares,

which, after allowing a discount of 25 per cent. in consideration of immediate payment, would make them fully paid-up shares; and certificates of paid-up shares were to be issued: Stevens was to pay 50,000*l.* reckoned as 243,000 dollars, to the Company's credit at their bank: the transferees of the shares were to become Directors of the Company and Stevens to be President: then the Company so reconstituted was to make a contract with Charlebois, in form a simple construction contract, for 50 miles of road at the price of 200,000*l.*: 50,000*l.* (being in fact the sum paid to the Company by Stevens) was to be handed over to Charlebois immediately: out of it he was to pay over to his four colleagues at once sums aggregating 126,000 dollars, and he was to secure to them the balance of the price of their shares by assignments of portions of his contract price, equal to 100,000 dollars more: Codd also was to have his old bonus of 173,000 dollars out of the contract price. In stating these sums of money their Lordships have for brevity used round figures.

All these arrangements were carried into effect in due form on one day, viz. the 16th September 1889. The effect on the Company was this: that it was saddled with the payment of 200,000*l.* ostensibly for the construction of 50 miles of road; and it was made to appear as getting a length of road valued at 200,000*l.*, whereas in point of fact that sum was not paid or estimated for construction, but was calculated to cover Codd's bonus and the price of shares, which had nothing to do with construction.

The only argument which the Defendants' counsel can find to support the transaction is founded on a contention that the 50,000*l.* never became the money of the Company but remained the property of Stevens till it passed to Charlebois. How far that would affect the substantial rights

of the case need not be discussed because it cannot be maintained as a matter of fact. Mr. Macarthy cannot resist the conclusion that if the shares became paid-up shares the money must have passed to the Company. He is therefore driven to argue that the careful processes employed to give the shares the character of paid-up shares were all a farce and are to go for nothing; and that the shares remained liable in the hands of their transferees to calls of 70 per cent. Such a suggestion did not meet with favour in any of the Courts below and their Lordships do not view it with any greater favour. They have no doubt whatever that the 50,000% became, and was intended to become, the property of the Company, and as such served a very material purpose; although it was the common intention of the limited groups of outgoing and incoming shareholders to pay it back immediately to Charlebois. That being so, it was unlawful to apply the money to purposes which had nothing to do with construction under the veil of a construction contract.

This conclusion is also the conclusion arrived at by the Supreme Court. That Court further holds that so far as regards a sum of 130,000 dollars part of the 173,000 ordered to be paid to Codd the judgment of 1891 cannot be enforced. But as regards the other subjects of dispute the Supreme Court holds that the contract has become merged in the judgment, and that the judgment ought to be enforced. This then is the next question to be considered.

In stating the material facts that relate to the judgment their Lordships again refer to the statements of Mr. Justice King. On the 9th September 1891 the Company sued Charlebois for breach of contract, and two days afterwards Charlebois sued the Company to recover the balance due on his contract and to establish a lien on the road which the

contract purports to create in his favour. He then moved for an injunction, when affidavits were filed and Codd who was then President of the Company was cross-examined. After about a week's discussion the parties came to an understanding with one another; the motion for injunction was turned into one for judgment, which was passed accordingly on the 28th September and is the judgment in question. It is agreed at this Bar that nobody except Codd was served with notice in the suit; that there is no trace of any meeting or action of anyone else connected with the Company; that no pleadings were filed; that the question of the contract being *ultra vires* was not raised; nor were the facts stated on which it could be raised.

The judgment declares that Charlebois has a lien on the Company's railway and other property for the sum of 622,226 dollars, and it orders the Company to pay that sum with interest. At the request of Charlebois that sum is to be distributed in various channels: to himself, for his own use or for the use of any person or corporation to whom he might have assigned the moneys payable under his contract, 380,397 dollars with interest; to Mr. Macmichael as trustee for Codd 130,000 dollars, to which Codd's original bargain for 173,000 dollars had been reduced by dealings between him and Charlebois; and three other sums to three sets of claimants under Charlebois, either as sub-contractors or purveyors of rolling stock.

Of course those Judges who think that the contract though improper was not *ultra vires* have no difficulty in holding that the judgment is binding, whether by way of ratification or by its own force. But the difficulty is to reconcile an opinion that the contract is *ultra vires* with an opinion that a judgment obtained as this was is a binding judgment. The authorities referred to by the Supreme Court do not relate to

contracts *ultra vires*. It is quite clear that a Company cannot do what is beyond its legal powers by simply going into Court and consenting to a decree which orders that the thing shall be done. If the legality of the Act is one of the points substantially in dispute, that may be a fair subject of compromise in Court like any other disputed matter. But in this case both the parties Plaintiff or Defendant in the original action and in the cross action were equally insisting on the contract. The President who appears to have been exercising the powers of the Company had an interest to maintain it, and took a large benefit under the judgment. And as the contract on the face of it is quite regular, and its infirmity depends on extraneous facts which nobody disclosed, there was no reason whatever why the Court should not decree that which the parties asked it to decree. Such a judgment cannot be of more validity than the invalid contract on which it was founded.

The next question is how to deal with a contract vitiated in such important respects. The Courts in Ontario held that the payments *ultra vires* could be so separated from the lawful payments for construction, that it was open to them to maintain the contract while disallowing the wrongful payments. The Appellants object to that course, and so do the Counsel for Charlebois; both preferring that the contract should be wholly set aside, and that Charlebois should be left to recover the value of his work. Not only is that the more direct and usual course, but it seems to their Lordships that to resolve the consideration for the contract into its component elements is not a simple thing, and they are not satisfied that justice is done by it. It might well be that Charlebois was satisfied with the round sum of 200,000*l.* because it covered large items in the complicated arrangements between

he various parties; and he may have given to the Company works the value of which is greater than the contract price diminished by the unlawful payments to Codd and for the shares. Their Lordships think that the contract and the judgment should be set aside, and that there should be an enquiry how much is due to Charlebois over and above the 50,000% which was paid to him on the 16th September 1889.

There has been a great deal of argument about the validity of the lien adjudged to Charlebois. The case is a very peculiar one. By his contract Charlebois was to have a full and complete lien and charge for the unpaid 150,000% upon the road and its equipments, and upon the land grant earned by it, with a right of operating the railway. At that time no road was made. In September 1891 Charlebois or his sub-contractors gave up to the Company the use of the road then made, and the Company thereby earned and received a land grant. That was one of the terms of the judgment of September 1891. The same judgment affirmed his right to the lien as granted, and went on further to declare that he had the full rights of a mortgagee with judgment for sale, and that the Company were to be subject to the order of the Court as to any conveyance required.

Independently of the infirmity which affects the judgment on the grounds before stated, it is difficult to maintain the lien so expressed. The land is stated to be in Manitoba, and the sale of it cannot be conducted nor possession given by an Ontario Court, nor of course has either the Supreme Court of Canada or Her Majesty in Council, sitting in appeal from an Ontario Court, any wider jurisdiction. In point of fact their Lordships are given to understand that a receiver appointed by the Manitoba Court is in possession. Moreover it

is not contended by Mr. Macarthy that Charlebois could exercise the power of operating the road. If he had retained possession on the ground that he was unpaid, the property would have remained idle and useless to everybody.

Their Lordships do not now discuss the somewhat intricate questions as to the powers which the Company have to create charges on their line or on their land subsidy under the Charter and the Acts of 1879 or 1888. They think that the lien must share the fate of the rest of the judgment which creates it. As between the Company and Charlebois, Mr. Blake undertakes on behalf of the Company that directly they can float the bonds which they have power to issue and are trying to issue, he shall have a sufficient amount to secure him the balance ultimately found due to him. No doubt it is hard upon him not to be paid for his work; but the hardship comes of his having a debtor who is without funds and without personality, and restricted in legal capacity; and it cannot be remedied by retaining an illegal judgment, even if that could be of any effectual service to him.

It is now necessary to advert to the other Respondents. Mr. Macarthy appears for the Union Bank of Canada, and he contends that as regards advances made by them to Charlebois the Company are estopped from disputing the validity of the contract. The Bank was not a party to the suit of 1891, nor is it named in the judgment of that year, but it claims to be one of the persons or corporations to whom Charlebois assigned money and for whose use 380,000 dollars were to be paid to him. Its case is that in October 1889 the Directors of the Company passed a resolution to accept Charlebois' orders for payment to third parties, provided they did not exceed the balance due to him; that Charlebois then applied to the Bank to advance

150,000 dollars; that he drew orders upon the Company in favour of the Bank to be paid out of the moneys arising from and payable under the construction contract; that the Company accepted those orders, and at the same time stated that there was sufficient margin to meet them in the amount due to Charlebois over and above similar orders previously accepted by the Company. This is represented as a distinct undertaking on the part of the Company that the sum paid to Charlebois shall be sufficient to meet the advances of the Bank. It seems to their Lordships that the Bank cannot stand on a higher footing than Charlebois himself, and that indeed is the view which has prevailed in the Courts below. The terms of the judgment certainly do not place the Bank on any higher footing; for the payment is to be to Charlebois for the use of himself and his unspecified assignees. And the statement of the Company which has been relied upon does not amount to more than this, that the previous charges were not such as to reduce the amount estimated as coming to Charlebois below 150,000 dollars. It is straining the effect of the correspondence to say that the Company entered into a positive engagement that the Bank should have 150,000 dollars whatever the state of the accounts under the contract might prove to be, or that the Company have precluded themselves from showing the true facts which affect the contract.

The executors of Crossen have a different case. He supplied rolling stock to Charlebois which has never been paid for. By special contract made with Charlebois in January 1890 the property in that stock was to remain in Crossen until paid for. The Crossen executors were not parties to the suit of 1891, nor did they appear on the 28th September. The judgment orders that the Company shall pay to them 39,000 dollars; and in November 1891 the

solicitors of the executors wrote to the Company, saying that they accepted the decree so far as it vests the property in the Company, and that they waived their lien on the cars. The cars have since been used for the road by leave of the executors.

The other Respondents are in a very similar position. Macdonald and Schiller constructed part of the road under a sub-contract with Charlebois. On the 28th September 1891 the sum of 64,429 dollars was owing to them, and they were in actual possession of the road. The Commercial Bank of Manitoba has advanced money to them on the security of these interests. Nugent is the assignee of their interests in trust for them and the Bank. Preston is another sub-contractor for part of the road, who on the 28th September 1891 remained in possession, 8,400 dollars being due to him. None of these persons were parties to the suit of 1891, but Nugent appeared in Court as solicitor for Macdonald Schiller and Preston on the 28th September. The judgment orders the Company to pay the sum of 64,429 dollars to Macdonald and Schiller, and the sum of 8,400 dollars to Preston. The Company agreed by writing under the hands of its President and a Director that until payment the sub-contractors should remain in possession.

It will be seen that each of these parties, who had no share in the illegalities of Charlebois's contract, possessed in September 1891 rights and interests which though not capable of being turned into immediate profit for themselves, it was important for the Company to acquire for the purpose of beginning the work of the railway. Those rights were surrendered on or soon after the date of the judgment, and it would be unjust to their possessors not to place them in a position as good as circumstances

admit. The difficulties of maintaining the lien have been stated before, but their Lordships conceive that justice will be done, and the position of the Crossen executors and of the sub-contractors and the Manitoba Bank will be no worse, if it is now declared that they are to have *pari passu* the first charge on whatever sum is found due to Charlebois. This was the course adopted by the Ontario Courts.

Though the Union Bank does not stand upon the same footing with the other Respondents, there is no reason why it should not as against Charlebois be declared entitled to the next charge on his debt; and their Lordships understand that Mr. Macarthy, who represents both these parties in this appeal, is desirous that such a declaration should be made.

It remains to deal with the suit so far as it is the suit of Delap in his character of bondholder, and of Mansfield. Their Lordships have intimated that the joinder of these parties is embarrassing. It may be that, for the time, and for the one purpose of asserting the priority of bondholders over Charlebois's lien, the interests are identical. In other respects, as for instance in the questions raised whether or no the bonds are valid, and whether or no they have been pledged, the interests of the co-Plaintiffs viz. the Company or the body of shareholders whom Delap represents on the one hand, and of the bondholders on the other hand, may be found at variance with one another. It is not averred that the bondholders have attempted to take possession of the property, and have been shut out by Charlebois' lien. All they aver is the abstract proposition that they have the first charge on the Company's assets, and that to give priority to Charlebois was not within the competence of the parties or of the Court in the suit of 1891. And they pray no

relief whatever in respect of the contract or judgment, except that which is prayed by the Company.

Under these circumstances their Lordships must express their concurrence in the view taken by Mr. Justice Gwynne on this head. It seems to them that in a suit constituted as this is, it is unnecessary and undesirable to affirm or to deny that Delap and Mansfield are the creditors of their co-Plaintiffs, and that the action of the Court should be confined to the issues between the Company and the Defendants.

Delap also sues on behalf of himself and all other shareholders. So far as the interests of all shareholders as a body are concerned, it is difficult to see how they differ from those of the Company. But the learned Chancellor of Ontario dealt with Delap's position separately in the following passage of his judgment:—

“ In taking the accounts Charlebois must give credit for the
“ first payment of 50,000*l.* sterling as paid upon the con-
“ struction contract. The effect of this will be to leave the
“ stock in the hands of Delap unpaid for ; but the true way of
“ working out relief is to let this claim for the purchase
“ money of the stock, \$226,000 plus \$70,000 remain as a
“ personal or individual claim against Delap, by Charlebois
“ and the other transferors. Delap being a joint Plaintiff
“ with the Company, there arises no difficulty on this head ;
“ the stock should also be charged with this amount.”

And in his decree he reserved the consideration of questions affecting the charges of Plaintiffs or Defendants on the stock or shares of the Company, by way of further directions in the suit.

That part of the Chancellor's decree was affirmed by the Court of Appeal. In the Supreme Court it was reversed as a necessary consequence of the view taken by that Court of the judgment of 1891. Their Lordships entertain a different view of that judgment ; but they cannot concur with the Ontario Court in the propriety of their decree on the points now under consideration. They agree with the learned

Chancellor that the immediate effect of the transactions of 16th September 1889 was to leave the shares or the bulk of them in the hands of Delap or of Stevens his agent unpaid for. If the rights of all parties had been declared at that moment, it seems that Charlebois, having his 50,000*l.* attributed to construction, might have claimed against Stevens on account of the shares. What has taken place since that time to affect such claims is unknown so far as this litigation is concerned. The matter may be very simple, or may be very complicated. It is one with which the Company as such is not concerned; nor can the shareholders viewed as an aggregate body be concerned in it. It raises questions between Delap as an individual shareholder, and perhaps other individual shareholders, on the one hand, and Charlebois on the other hand. This suit was not framed to raise such questions, and their Lordships cannot think it right to bring them in by way of further enquiry. Charlebois should be left to prosecute his claims independently of this suit. Their Lordships have before intimated that relief should be confined to questions between the Company on the one hand, and Charlebois and the interests derived from him on the other. That seems to them a necessary condition of efficiency and finality for such decree as can be passed.

Their Lordships wish to add how strongly they are impressed with the difficulty of working out justice to the parties in this suit, or indeed by any judicial process. The case seems to be one of those in which all parties alike have been thrown out of their calculations by the small returns of an enterprise expected to be more lucrative. In such a case the process of working out legal rights by litigation leads to lamentable delay and expense. That process must be followed if no better offers, but it would be better if the parties concerned could see their

way to some just and comprehensive arrangement which could receive legislative sanction.

Their Lordships think that it may assist the parties if they indicate in detail the frame of the decree which they will humbly advise Her Majesty in Council to make. As regards costs in the Courts below they have followed the views of those Courts in many particulars, departing from them only when obliged to do so by the difference of their view from that of the Supreme Court on the main question of the judgment, and from that of the Ontario Courts in giving relief to or against bondholders and individual shareholders.

As regards the costs of this appeal their Lordships think that it would not have been safe for the Executors of Crossen or for the claimants under sub-contracts not to appear. In point of fact they do retain important interests under the decree now proposed, though they cannot keep the legal position given to them by the judgment of 1891. The conclusion is that so far as costs arise solely between the Appellants on one hand and the Respondents Macdonald Schiller Nugent, Preston, the Bank of Manitoba, the Executors of Crossen Allan and Devlin on the other, the parties should bear their own costs. So far as the costs of the Appellants have been increased by the appearance and opposition of the Union Bank of Canada, their costs should be paid by those Respondents. All other costs of the Appellants should be paid by the Respondent Charlebois.
