

the premises, the said Honorable Joseph Gibb Robertson hereby indemnifies the Company against all liabilities and claims upon the Company other than (a) The bonded debt of the Company, (b) The liability of the Company for the satisfaction of which article 4 provides, and (c) Liabilities for working expenses of the Railway incurred within six months before the coming into operation of the Act;

"And further considering that said Company, represented by said provisional directors, did afterwards issue in pursuance of said agreement and deposit in defendant's hands to be disposed of under said contract, 588 Prior Lien Bonds of the par value of £100 each, and that the same have by defendant—save and except 54 of said bonds—been delivered to plaintiff or to third persons upon his order and request, the said defendant retaining eight of said bonds for intervenants under the provisions of section two of said contract as representing monies admitted to have been paid out of the earnings of the said railway on the debts or claims enumerated in the second part of said schedule, and the balance remaining of 46 bonds being now claimed by plaintiff, who alleges that he has fulfilled all the obligations devolving upon him in virtue of said contract;

"And considering further that intervenants have by their intervention represented that they, at the time of the execution of said agreement, were unaware of the position of the Company's affairs and were induced to enter into the same by misrepresentation and concealment on the part of plaintiff, and further that at that time said sums mentioned in said schedule which plaintiff undertook to settle and cause to be discharged, had been largely settled and paid out of the funds and revenues of said Company, and that after the same was made large sums of money were with the knowledge and consent of plaintiff, but unknown to them, taken from the funds of the Company and used in the payment and settlement of said debts, and that plaintiff had not fulfilled his contract so as to entitle him to the conclusions of his demand against defendant, nor furnished the proper declarations, and asks that said agreement be set

aside, that it be declared that plaintiff hath not carried out the stipulations of said agreement, that plaintiff's action be dismissed, and defendant ordered to deliver over to them the said forty-six bonds claimed by plaintiff;

"And considering that plaintiff claims that he has fulfilled all the conditions of his contract of date the 2nd April, 1887, and claims that he was entitled to the benefit of payments made out of the earnings of the Railway pending negotiations, and which he alleges were made with the knowledge and consent of intervenants, and which were ratified and sanctioned by them;

"And considering further that it appears from the evidence in this cause that on the first two items mentioned in the first part of the schedule, to wit, \$50,000 Ontario Car Company estimated, which was by arrangement and transfer assigned to James Ross for \$40,000 and settled at that sum, and Messrs. Ross & Company Locomotive Account \$22,677, which sums plaintiff agreed to settle and cause to be discharged, there was paid out of the monies of intervenants irrespective of interest thereon from the earnings of the road prior to 14th November, 1887, when plaintiff ceased to be connected with the control and management of the road, the sum of \$22,377.06, composed of \$4,549.25 paid out of the revenues of the Company on the \$50,000 the first item of the first part of the schedule reduced to \$40,000, which latter sum was paid by James Ross for the Ontario Car Company claim and \$17,827.81 paid on the item number two of said first part of said schedule, and that a considerable portion of this amount was paid out of the monies of the Company subsequent to the 14th November, 1887, and the payment thereof ante-dated in the books of the Company as though paid on said 14th November. That nearly all of the first two items of said first part of the schedule was due and unpaid at the time of the agreement of April 2nd, 1887, when plaintiff agreed to settle and obtain a discharge for the same, and the earnings of the road which were applied in payment thereof irrespective of interest, to the extent of \$22,377.06 were not available to the payment of debts which plaintiff had assumed in consideration of the bonds deposited with defendant, and which