

Province of Canada,
DISTRICT OF MONTREAL. }

SUPERIOR COURT.

ARTHUR C. WEBSTER,

Plaintiff.

vs.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

Defendants.

The Defendants for *Defense au fonds en Droit* to Plaintiff's Action in this cause, not confessing or acknowledging any of the matters and things in the said Declaration set forth to be true, say that all the allegations matters and things in Plaintiff's Declaration contained are and each of them is wholly and altogether unfounded in law and not sufficient therein for the said Plaintiff to have or maintain against the said Defendants the conclusions in the said declaration taken or any or either of them or the action of the said Plaintiff in this behalf against the said Defendants and this they are ready to verify.

Wherefore the said Defendants humbly pray that by the Judgment of this Honorable Court, the said Plaintiff's Action be hence dismissed with costs, distraction whereof is prayed by the undersigned Attorneys.

(Signed,) CARTIER & BERTHELOT,
Defendants' Attcys.

Montreal, 10th June, 1888.

Reasons or *moyens* alleged by the Defendants in support of the foregoing *Défense au fonds en Droit* :

1st. Because from the allegations of the Plaintiff's said declaration, it appears that the right to recover damages by reason of the alleged refusal of Defendants to transfer the shares in said declaration referred to (if any such right exist) is vested in the parties therein named as transferees of said shares to wit in the firm of Lemessurier, Routh and Co. and in the City and District Savings Bank and not in the said now Plaintiff, and because no demand by Plaintiff on the Defendants to transfer said stock is alleged in said declaration, or any legal cause or reason by which the Plaintiff can demand damages or recover the alleged loss referred to, by reason of a refusal to comply with the alleged demands made by the said transferees.

2dly. Because by the Law regulating the transfer of shares in the said Railway Company the Defendants, a form of transfer is provided, and it is thereby also provided that a duplicate of the transfer in the form so provided, should be delivered to the Directors of the said Company to be filed and kept for the use of the said Company and that an entry thereof should be made in a Book to be kept for that purpose, and because it is not in Plaintiff's declaration alleged that the transfer of the said shares was made in the form provided for and embodied in said Law, or that a duplicate thereof was delivered to the said Directors, and because the alleged offer to surrender the duplicate by the said transferees is not a sufficient compliance with said law, nor could such offer made by the said transferees avail or be pleaded by the said Plaintiff.

3dly. Because the pretended right of the Plaintiff to recover from the Defendants the sums of money in Plaintiff's declaration referred to appears from the said declaration to rest upon alleged contracts with the said transferees and upon debts alleged to be due them by Plaintiff and on alleged transfers to them of said shares, as collateral security for said debts, and upon alleged demands and protests in respect of said shares and refusals by Defendants to comply with their said demands whereas by law, no such right is or can be by reason of said allegations, vested in the Plaintiff against the said Defendants, by reason of alleged contracts, debts and transactions between Plaintiff and the said transferees to which the Defendants are not alleged to have been privy, and because the refusal to comply with the said demands of said transferees in transferring said stock would confer on said transferees a right to a similar action against Defendants on their part and for their benefit but not upon the now Plaintiff.

4th. Because the alleged fall or depreciation in the price or value of said shares and the alleged incidental loss and damages in Plaintiff's declaration referred to, does not impose on Defendants any responsibility in law to pay Plaintiff for such alleged, diminution in value, damage or loss, in as much as the Plaintiff appears to have transferred and was by law obliged to transfer the said shares absolutely to the transferees for value paid and irrespective of the alleged understandings in Plaintiff's declaration mentioned, and because such pretended fall in the price or value of said stock is not nor can the same be taken or held as recoverable by Plaintiff from the Defendants, without allegations showing actual damage suffered by him by reason of his undertakings as Vendor or transferor to the said Vendees or transferees and in the quality of Vendor or transferor solely and not from any indirect interest in any surplus remaining over, after the application of said shares as collateral security in payment of said alleged debts, whereas no

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DUNKIN,
for Plaintiffs.