The Weekly Colonist.

Tuesday, February 23, 1864.

SUPREME COURT.

[BEFORE HIS HON. DAVID CAMERON ESQ.]

MONDAY, 15th Feb., 1864.

THIRD DAY.

Bentinck Arm Co. vs. Hood.—Duncan McMartin, called and examined by Mr. McCreight. I recollect taking a journey from Mouth of Quesnelle to the trail on the west bank of the Fraser, and struck Black River in November, 1862. I struck the Bentinck Arm trail at Mekatlin; it took me 27 days to get there. We started some distance above the Mouth of Quesnelle, I should say thirty miles higher up. I was in company with George Weaver, and he got his feet frost bitten. I suppose it would take a party with proper Indian guides, and packing their grub by Indians, going the way we went, about ten days from Mouth of Quesnelle to Bentinck Arm. It is from 75 to 80 miles from the mouth of Black River to Cluskus, and about 50 or 55 from Cluskus to Meekatlin.

Mr. McCreight here sought to put in as evidence Arrowsmith's map of British Columbia.

Mr. Wood objected on account of the well known inaccuracies of the map.

Cross examined by Mr. Wood.

I am a miner: I have never made roads. I have never been to the head of salt water navigation on Bentinck Arm. We went up the west bank of the Fraser till we came to Black River, crossed it and went down the north bank of Black River, where there was an old Indian trail. I went down the trail after Mr. Hood had made it.

Gilbert Tompkins.—I remember Macdonald and Barnstone coming from Alexandria to Bentinck Arm, in May, 1860. We were 27 days going, and 14 coming back. We were looking out for the best trail; it should take from ten to fifteen days to go from Alexander to Bentinck Arm, blazing the trail. We took nine horses. We had no trouble over the slide. It was pretty rough; we left our horses below the slide.

Cross-examined.—I took the horses down the precipice: we explored the trail. We made the trail as far as we went. A party had to blaze a trail which was to be used ultimately for a waggon road. I have no interest in the line. I should use the Bentinck Arm route if it were made. There is only one precipitous place that I know of on the route. The Bella Coola river is at the foot of the slide.

Mr. John Morris called and examined by Mr. Ring.

I am acquainted with this route. I travelled from the Bentinck Arm to the slide. I started on the 30th of June, and arrived at the slide on the 8th of July. It is not an easy road to travel: in many places the trail was lost. Before I left Cariboo I told Mr. Green that I would let him know what I thought of the route. I arrived at Alexander on the 21st of July. I have travelled over the country considerably. It is good sound ground to travel over: there are Indian trails from one lake to another, and from one hunting field to another. The packers were anxious to have this route opened up. I returned by the same trail in October: it was a very excellent road when I returned. Between Sutliss and Chilacoateen, on going up, I found the trail had never been blazed. I cannot say to what extent real estate would be improved by this line of road being opened up. There was good bunch grass from Chilacoateen to Alexander.

Cross examined.—I am a civil engineer, and accustomed to the making of roads. I think it would be a season's work for a man to blaze and lay out a road from the head of Bentinck Arm to Fraser river: there are numberless creeks and rivulets. There were fragments of trails here and there. It was a very unfavorable season when I went across—there had been heavy rains. I know the slide and the precipice. Pack animals could not go up with or without loads with safety at the time when I went along there. It would take three weeks for an engineer to select and lay out a line from Bentinck Arm to the slide. In selecting a road, an engineer would have to walk over the line several times—there is the ascent of the slide, and also the ascent of the precipice, neither of them ought to be on the line of road—an engineer would not take a road over one or the other. The Indians were very troublesome to us. They levied black mail upon us. I can't say what the road would take to make. I would not make the trail for $60,000. I don't think it would be a good speculation to make a road from Bentinck Arm now, as the mines are running eastward. I had conversation with Mr. Green before going up? I let Mr. Green know what I thought of this route. I was on intimate terms with Green, but not particularly so with Cary. Am not very fond of lawyers' friendship.

Question.—Did either Mr. Green or Mr. Cary tell you that they could not do anything with the road until Mr. Hood came into it? I don't clearly recollect.

Did either of them ever say that they had hooked in Mr. Hood? I can't recollect their saying that. I think Mr. Cary told me in Cariboo that he had Hood in a tight place.

Re-examined.—It would have been an easy matter to have found another route, avoiding the slide and the precipice.

George Hunter Cary, called and examined by Mr. Ring.

I remember Mr. Green informing me that a prospecting party had gone to prospect the coast of British Columbia, and telling me he wished to secure my services to assist in any transactions which might arise out of the prospecting exhibition, and he offered me a twelfth interest. We could not tell what it would eventuate in, whether road making or laying out town sites. I told him that I would be very happy to join in it, as I believed a coast route would be a great benefit to the mines. I gave a great deal of time and attention to this route: whenever we heard of any one going up by that route we sought him out, and endeavored to procure information from him. Several packers appeared very anxious to open up the line, there was so much competition on the old route.—Mr. Scott and Mr. Nelson, who were both packers, told me they were anxious to have this line made. After the land had been taken up, many reports were circulated here with regard to the shortness and facilities of the route from the coast to the Fraser river. Mr. Green and I devoted a great portion of our time in comparing the various accounts which we obtained from the persons who travelled over that route: eventually we came to the conclusion that the general result of the reliable reports was insufficient to justify us in taking the preliminary steps to ascertain in a manner we could rely upon, the real truth of these stories—We then thought from the feeling that was abroad in Victoria, with regard to these routes, to organize a Joint Stock Company for the purpose of making a road. Having associated ourselves with several business gentlemen, and having held several meetings, I suggested that a deputation should wait upon his Excellency, and point out the facts which we had collected, and ask for a charter. The deputation went, but a promise of the charter had been already given—this took place in September or October, 1861. I then suggested to Mr. Green that we should find out who had the promise, and try to make terms with him. Mr. Green discovered the party, and despatched a messenger to British Columbia to fetch him down.—Mr. Ronald Macdonald was the party. Sometime in October he came down with Barnstone to Victoria: we had numerous conversations with them—they had both been over the trail, and both spoke of it very favorably. There were a great many expenses attendant upon the enterprise, which these two gentlemen were not in a position to bear. It was therefore arranged by myself, Mr. Green, and Macdonald, as set out in the deed of 23rd November, 1861, already in evidence. By this deed Macdonald handed over to Green the right to the charter, in consideration of his having one-twentieth part in a company which was not to have less capital than $25,000. Mr. Green then got into communication with government: there was great delay. Eventually, other charters were granted on the Lillooet and Lytton routes, and some of our principal supporters left us. In January, 1862, I went to San Francisco, where I became acquainted with several influential men of business, amongst others a Mr. Robins, with whom I was very intimate. He was managing Flint & Holliday's business. Samuel Price & Co., who were carrying on business in San Francisco, also received instructions from Mr. Green to try and do something in this matter down there. We could come to no definite understanding, because we had not sufficient information with regard to the line of road, to justify business men undertaking the responsibility of making the road. We had got no signed and sealed instrument from the government, and we could do nothing without the concurrence of those in Victoria who were associated with us. On my return from San Francisco, we eventually, in April, 1862, obtained the agreement for a charter. I thought there would be very little difficulty in getting part of the capital taken up here, and some in San Francisco, and some in England. I communicated with Mr. Flint, and received an answer dated 13th March, 1862, in which he referred me to Mr. Wallace, who had his instructions, (letter read). At the time I was in San Francisco, I had a great deal of communication with Mr. Flint, and his opinion was that if we could open the route, it would be an excellent speculation to put on a line of steamers from Victoria to Bentinck Arm, and one in which he would be prepared to assist. Mr. Green informed me that he had arranged with McKenzie to blaze a trail from Bentinck Arm towards the Fraser. On making further enquiries, I found that Mr. Robins would not return from Mexico until the latter end of June, I therefore agreed with Mr. Green, that if it were necessary, we would apply for an extention of the time for laying down the line. This was in June, 1862.—I was in bad health at the time.

The Court rose at one o'clock. At two, on re-assembling, Mr. Cooper, one of the special jury men was absent, and did not reach the Court until about twenty minutes after two. Before Mr. Cary's examination proceeded, Joseph Lynes was called and examined by Mr. Ring. I know the route be- the Bentinck Arm and Fraser river. I met Mr. Hood when he was on the line: this was the first time I went over the line.

Cross-examined by Mr. Wood.

I came back in September. I found the trail improved in parts: there was a trail by the side of the Bella Coola river. The trail was not very bad.

Mr. Cary's examination continued:

Mr. Green told me that Hood wished to join our undertaking; I showed him Flint's letter, and subsequently he saw these gentlemen, who had been associated with us and with a view to breaking off our engagements with them. I think it was about 21st or 22d June that I was unable to leave my house from illness, and Green came up on the 22d and informed me that Hood had called upon him and asked him to explain the position of the project we had in hand. Green said that he thought Hood would be a good man to take the matter in hand, he had heard that he had made a good many roads in California. I expressed my dislike to placing the matter in the hands of a person of whom I knew nothing, and I said I would see Hood. Mr. Green and myself had made up our minds to go through with this route.

Mr. Ring put a leading question as to what Cary had intended to do, to which Mr. Wood objected saying that the question was improper.

Mr. Ring took exception to the word improper.

Mr. Cary said it was quite unnecessary for his counsel to lead him.

I told Green to bring all the documents with him when he brought Hood. Shortly afterwards Green and Hood came; Green introduced Hood and I requested Green to read the agreement between himself and R. Macdonald to Hood, which he did, as also the agreement for the charter.

Mr. Ring—Was the agreement read through hurriedly?

Mr. Wood objected to this as a leading and suggestive question.

Witness—I recollect distinctly stopping Green as he went along and explaining the matter to Hood; I did so because I heard he was desirous of closing the matter immediately. The reading and explaining of these papers took at least two hours. After the documents had been read Green said to Hood in my presence as to what terms he could be admitted into the enterprise and that he wished to take the management of it. Green said he considered one-third to himself and two-thirds to Hood would be fair. Hood looked at me and I said I should be quite satisfied. I looked upon it as an exceedingly liberal offer if he performed his contract. I pointed out to Hood the terms on which the charter was to be granted to R. Macdonald, and that the same were binding on any one who took it from him; that the Government in granting the charter at the last moment had thrown all the delay they could in our way and we could expect no favor from them. I told Hood that if he felt any difficulty in fulfilling the terms of the contract as mentioned in page 3 of the agreement, he had better tell me whether he was sure of being able to put it through by the 31st July. From his conversation it was perfectly plain to me that he had been obtaining information on the point from some other sources. I also understood that Lieut. Palmer, R. N., was about to proceed to Bentinck Arm to inspect the route. I told Hood that I had no doubt if he felt any serious difficulty we could get another month's time. He said he would rather go on and do it at once than wait here to make applications for time. I had to work all that night and all the next day to get finished the papers which I was instructed to prepare; the documents were prepared by the 25th of June. I told Mr. Hood how I could carry out the arrangement which Mr. Green had suggested. Mr. Hood had explained to me that he should have the whole control of this work, and two-thirds of the net revenue as well, this net revenue to be ascertained after payment of all expenses of collecting and repairs. I told him that all the gentlemen who had originally been connected with us in the matter would consent to his having the management; also pointed out to Hood the arrangement made between Green and Macdonald. I told Mr. Hood also that I, as a professional man, would not take an unlimited liability upon myself, and that it would, therefore, be necessary to form a Company under the limited liability act; that it was necessary for that purpose that seven persons should sign the memorandum of association. That there were only four of us, Green, myself, Macdonald and himself interested, and that I should consequently have to get three more of my friends to sign the memorandum, giving them my personal undertaking. I communicated with Mr. Drake. I procured through him the powers of Attorney and declarations of trust produced from Messrs. Drake, Alston, Burnaby, Stahlschmidt and Hensley, five in all. (One of the declarations of trust and one of the powers of attorney or proxy to vote was read.) I then gave an indemnity to each of the five parties, by this arrangement I received from them full power to act for them. I explained to Mr. Hood that the documents which I had to prepare would take me some time to get ready. I explained to him before he left the house the exact manner in which I intended to draw the deed. That as a matter of formality, any matter arranged between him and the Company would have to be passed at a meeting of the shareholders. I explained to him that the shares could not be allotted to Hood until the work was done, otherwise he might sell the shares and not do the work. I told Hood that in drawing the deed between himself and the Company I should have to recite the meeting of the shareholders; he seemed to understand the thing completely; he knew what he was up to. There were to be 12,000, of which 373 were to be issued to the Company, 60 to R. Macdonald, and the rest to Hood. Until the work was done, the shares were not to be sold or transferred. I then set to work to prepare the documents. I explained these matters very carefully to Mr. Hood, and he seemed to understand them. I finished the documents by the evening of the 23rd or the 24th. I saw nothing more of Mr. Hood at that time. I wrote a certificate of the registration of the Company, (produced and read.) I had no communication with Mr. Hood after this. I had previously told him that if he wanted an extension of time to write to me and I would get it. I received no letter. The next time I saw Mr. Hood was in the latter end of September or October. I went up to speak to him about the Bentinck Arm. Hood said "why they won't speak to me at New Westminster, because the charter is to R. Macdonald." I told him to go back again and explain that he was McDonald's assign; I think it was then that I first heard of the forfeiture; he said they told him it was forfeited on account of it not being blazed. I told him not to bother himself about that, I would make it all right; I thought they were not likely to take any advantage of him. Hood said he thought we had better try for a new charter; he asked me to take the thing in hand again and try and get a new charter on the same terms as Mr. Waddington had got his charter for the Bute Inlet; I made an appointment with him and told him that Green and I and McDonald should want just the same stipulations as before, and then he asked whether I should make any law charges, I told him distinctly I should not. I think he came to my office twice after this and made some rambling statement which I could not understand; he said he was sick of Ranald Macdonald; he asked whether we would give him some land to store his goods upon. I told him it was not ours to give; I did not see him again until the next spring (1863). I then said Hood are you going to throw over the Bentinck Arm? I hear you are going to have a charter somewhere else.

Mr. Cary wanted to state what were the impressions on his mind.

Mr. Wood objected.

His Lordship said it was not evidence.

Mr. Hood said he was going on with the Bentinck Arm and had sent men there; he then asked me again to set to work and get him a new charter; I believe Hood came to my office when he came up; I then told him that I expected no difficulties in the way of getting a new charter; as soon as we had sat down Hood turned round and asked me why I had sent him down to Bentinck Arm to make a road in 14 days; I referred to the papers connected with the matter and showed him the words 31st July in the agreement, and asked him what time the Labouchere left Victoria. I said, you had 65 days, I found out my mistake, and it was 35 days; but I said that was his look out; Hood then said he wished I would get this new charter at once, so that when he came down the river he might go to work at once. A few days afterwards Hood came in again, and I said to him the whole of this matter relates back to our contract of the 25th June, and we must have the same privileges as under the old one; he did not give me any definite reply. I then saw Edward Green and told him I thought we could not get on with Hood; Hood said he did not wish to have anything to do with Ranald McDonald; I explained to him that it was the duty of Green and myself to protect McDonald; I believe Green offered to give Hood one-thirteenth of the town site; in the mean time Green had had some conversation with me relative to buying out R. McDonald; I agreed to this and to contributing one-third towards buying him out; Hood was also to pay one-third; Hood refused to pay Ranald Macdonald anything; I told Hood distinctly and plainly that I should commence an action against him. Hood said there was no necessity to have R. Macdonald in the new charter; that he was a poor man and had no friends; this was in 1863; after that I took no notice of Hood; I did not speak to him when I met him; R. Macdonald came to me on the creek one day, and asked what he should do, as Hood had offered through Cocker to buy him out; I told him if he could get a good price to sell; when I came down Mr Macdonald the Banker, asked me to get a new charter for Hood; I said I would do so.

Mr. Wood.—This I understand was after the action was commenced?

Witness—Certainly.

Mr. Wood.—Then I object to it.

An argument ensued upon this, and His Lordship ultimately decided that Mr. Cary might read a memorandum which was proposed as a basis of settlement of matters in difference, although it was headed without prejudice. Mr. Cary continued. Nothing was done upon this memorandum; when Hood came down I told him I would make the application for a charter, but it must be done in a business like manner.

Mr. Ring.—Did anything occur when you had your first interview respecting the possibility or impossibility of making the road?

Mr. Wood objected to this as a leading question put to refresh the witnesses' memory.

Mr. Ring and Mr. McCreight argued upon this point, and Mr. Cary proceeded with his evidence; I told Hood that I must have a copy of Mr. Waddington's charter and would alter it accordingly to the requirements of the Bentinck Arm; I got a copy of this charter, prepared a new one, and wrote with it; Hood signed the letter and received a reply which was favorable, the letter was read. Hood showed me the original letter; I then told Hood that I had made a blunder in giving him power only to levy one toll for a ferry over the Fraser river whereas there ought to have been a ferry over the Bella Coola river; I rectified this error and got Hood to write to the Colonial Secretary, accepting 3 cents as a maximum instead of 5 cents; Hood promised to make the same arrangements as he had made before with regard to Green's and my interest except that we were to have one fourth instead of one third.

The court here adjourned till 10 o'clock this day.

FOURTH DAY.

TUESDAY 16th Feb., 1364

The court sat at 10 o'clock, but Mr. Cary, the witness under examination, did not arrive until 11 and the court and jury were kept waiting until that time.

Mr. Cary's examination continued. Mr. Hood then returned to my office.

Mr. Ring—You spoke of having threatened Hood with an action, will you tell the court what that action was?

Mr. Cary.—The action was commenced long before the period of which I am now speaking; it was a breach of contract into which Hood had entered with the company. Mr. Cary then said the agreement which has already been referred to, and which is made between Edward Green on his own behalf and acting for the company and Wm Hood, details the arrangements made for the construction of the road.

For the breach of this agreement an action was commenced in the spring of 1863, when Hood asked me to get him a new charter; I told him I was anxious to do so and have done with the suit, this was in November.

Mr. Wood here objected to evidence being given of attempts of compromise, and quoted "Taylor on Evidence," to show that it was unnecessary for the term "without prejudice" to be expressed, it was clear, that learned counsel said, that this attempt at compromise was made in order to avoid the suit being proceeded with and were virtually without prejudice.

Mr. Ring and Mr. McCreight argued that the evidence was admissible, and Mr. Cary followed in argument from the witness box.

His Lordship ruled that the evidence was inadmissible.

Mr. Ring.—Then do I understand that your Lordship rules that I cannot give evidence of an independent fact to rebut the plea of fraud.

Mr. Cary.—Then my mouth is closed, Mr. Hood refused to sign the compromise.

Mr. Wood.—If your Lordship has decided surely there out to be an end of the matter.

The Chief Justice.—I must distinctly rule that the objection taken by the counsel for the defendant is good. Examination continued by Mr. McCreight.

Mr. Wood objected to the junior counsel examining the witness.

His Honor decided that one counsel only should examine the witness.

Mr. McCreight pursued his examination, and Mr. Wood said rather than take up the time of the jury he would waive his objection.

Mr. Cary continued—I do not recollect anything being said about the impossibility of laying out the road in time at the first interview between Hood, Green and myself. I remember asking Mr. Hood whether he was certain he could complete it without extension of time. I entered into no discussion with Mr. Hood about who had been over the route. Nothing was said about my making charges or doing the work gratuitously during this interview at my house. I don't recollect Mr. Hood making any inquiry for any documents which were not produced. Heard nothing about Mr. Hood having brought animals and goods from San Francisco. I took care to make the deed binding. I would not leave Hood a loop-hole to get out of the agreement. The special damage in this case is that I and Mr. Green for a long period were for a long time engaged over this business. That I was constantly preparing legal documents and writing to officials about this business. I paid my share of the purchase money for the land. St. Ours offered me $1,600 for 40 acres of this land before the agreement for the road was made. I would now take a quarter of that. I would not have taken double that sum. With regard to the advantages of this route over the Lillooet and Lytton routes it is that there are stoppages and transhipments on the latter. Mr. Hood, after his return to Victoria, showed me the new line which he had found, by which the slide and the precipice would be avoided. There would be a ferry over the Bella Coola river, and another over the Fraser. Mr. Hood was very sanguine about the road. He never gave me any estimate of the probable revenue. I contributed the sum of $200 or $300 to Mr. Green's expenses. I paid £10 for registering the Company. I believe Mr. Green spent $8,000 or $9,000 over this matter. Mr. Hood showed me the Colonial-Secretary's letter of September last. I told him I thought the letter satisfactory. Mr. Hood did not repudiate this agreement until he was asked to keep his word. Hood never accused me of fraud. I never heard of such a charge until I saw the plea of fraud. I recommended Mr. Morris not to go to law unless he had clear evidence in his favor.

Cross-examined by Mr. Wood—I knew nothing about the country over which this road was to go; did not know the distance from Alexander to Bentinck Arm; I estimated the distance from the Mouth of Quesnelle to Bentinck Arm as 225 miles; I had heard of the slide and the precipice; I knew there were Indian Trails: I know the position of Swift River; in June, 1862, there were certain persons connected with the Bentinck Arm, two of them, Gus Wright and Galbraith, got other charters from government; in June, 1862, or previously to that time, I did not think that Green and I could enter into fresh arrangements without consulting these parties; I did not, however consult Gus Wright, it would have been ridiculous; he had a charter for the Lillooet road; J. P. Couch I know nothing about; I asked Green to see the others; in June, 1862, I had never had any offer from any one to make this road. I never sought one; I have not the faintest doubt that under the arrangements made by Macdonald's charter I could have made the road myself in the time; I would have taken good care to have had that road blazed by the 31st of July, if the government had not given further time; I think the road was not to follow the line laid down on the map; I don't believe the company were on their last legs to find any one to carry this road through; I had only one interview with Mr. Hood; I am quite certain it was not on the 20th that I saw Hood; I only prepared one draft of this agreement, I explained paragraph by paragraph the deed of the 4th of April; the clause about the road being made as straight as the position of the land would permit—I did not point this out particularly to Hood; I did not point out to Hood what Ranald Macdonald had to do; but I emphatically pointed out that he (Hood) had to blaze or lay out the line by the 31st of July. I did not tell him what had been done in the way of blazing; I pointed out to Hood that the charter would be absolutely forfeited unless the terms as to time were complied with.—I do not know whether Mr. Hood had read the specifications. I took no instructions about drawing the deed. I was drawing it for myself and Green. I did not consider that I was drawing it for Hood: the reason I did not recommend Hood to lay this agreement before his own legal adviser was because I was sure I could not get it ready in time. Hood did not state that he would cut the road through if he could. I don't know whether Hood asked me if I was a lawyer: I told Hood if he got into any difficulty to write to me.—I told him that I had no doubt I could get an extension of time for another thirty days if it was necessary. Mr. Hood did not, upon this occasion, say anything about my charges or any legal expenses. Green and myself were to have one-third of the revenue of the toll. I told Hood that it was necessary to form a Joint Stock Company, with limited liability. I proceeded to draw the agreement. I made made the arrangements about the registering of the company. The company consisted of seven persons—they were desirous of forming a company.

Mr. Ring, followed by Mr. McCreight, objected to these questions on the ground that the certificate of registration was conclusive evidence of the incorporation of the company, which could not be rebutted.

Mr. Wood replied, and his lordship overruled the objection.

The Court here rose for one hour.

AFTERNOON SESSION.

Mr. Cary's cross-examination continued.

I do not recollect if the attention of Mr. Hood was specially called to the necessity of giving bonds. I do not remember if anything was said about bonds.

Mr. Wood asked a question about the registration of the company.

Mr. McCreight objected to the defendant's counsel disputing the effect of the deed, and said that the defendant was stopped from raising the issue of the validity of the incorporation of the Company.

Mr. Ring followed.

His Honor allowed the question

Mr. Cary.—The act requires seven persons to sign the articles, and nothing more. There was a prospectus issued.

There were directors, the first seven shareholders were the directors. Hensly, my clerk, was one, Mr. Drake was another. They met as directors; they did not act under my instructions. Hood was aware of this meeting being held. I took care to bind Hood tightly; I thought it necessary to take care of myself. I gave instructions that Green should affix a notice on the office of Saml. Price & Co. I believe this was not done. I believe there was a seal; I never saw it; I believe it was made of half a marble. I cannot say whether I knew anything of Green's writing to Hood about the time he left or not; I do not know whether Hood had an opportunity of reading the draft of the agreement. Green came to me after Hood had gone and told me he had succeeded in getting a fair copy made and Hood had read them. Green did not tell me that the Labouchere's bell was ringing when Hood signed the deed. The next I saw of Hood was in Victoria. He expressed dissatisfaction at Col. Moody having poo-hooed him. I should think Hood did not ask me or the company to pay him for his services; he never did so. I do not know whether the road is blazed from Bentinck Arm to Mouth of Quesnelle or not.

The subsequent negotiations with the government on behalf of Hood were with reference to a new charter entirely. The agreement about the land was that Green should surrender to Hood one-thirteenth part of the shares in the land. Hood never refused to make the road; the time expired on the 4th of April and the writ was issued in May.

By the court—Feeling yourself so deeply interested in this matter did it not strike you that reflections might be made on you as registering this company when you were the party interested.

Ans.—I had no judicial functions to perform and therefore could have no such feeling.

By the Court.—You have told us that you yourself were principally interested in this company—did you not feel that the public hereafter would be apt to remark on your act in registering the company in which you were so greatly interested?

Ans.—I repeat, that having no judicial authority, but simply ministerial, I had no choice but to register the company.

Tompkins recalled—I am a packer; I have about 100 animals; I offered last spring to make a packing trail for $30,000; I made the offer to Scott the packer at Lillooet; I have been in British Columbia since 1858; I have not been packing all that time. I think if this road were made, about two-thirds of the traffic would go that way; it is the best and cheapest route; there are not so many transhipments as on the other road.

Cross-examined—I undertook to make a trail to pack on from Bentinck Arm to Fraser River for $30,000; I don't know whether this was Hood's line or not; I don't know where his line was; I don't think any one has travelled the road I intended to take.

By a Juror.—Which do you consider the worst slide, on the Bentinck Arm, or on the Lytton route?

Ans.—I do not know of my own knowledge.

Ranald Macdonald called and examined by Mr. Ring—I first went over the Bentinck Arm route in 1861. I went from the Bonaparte with Mr. Barnstone. We went to explore the country. We fell in with Tomkins and Pierson. We had about nine horses with us and provisions. The witness proceeded to give a narrative of his journey. It took us 24 days to reach Bentinck Arm from Alexander. I think it is about 200 miles from Mouth of Quesnelle to Bentinck Arm. We got back to Alexander in 14 days. I expended about $575 on the expedition. I then applied for a charter and got a promise of one. In consequence of a visit from Mr. Ogilvy, I came down to Victoria and saw Mr. Green.

Mr. Ring then asked what took place between Mr. Green and the witness?

Mr. Wood objected.

His Lordship sustained the objection.

Mr. Ring continued his argument on the ground that it was to rebut the plea of fraud. Mr. McCreight followed.

Mr. Wood stated that he had withdrawn his objection if the question were put to *bona fides*.

Mr. Ring read an extract of law on the subject.

Witness continued—I had some conversation with Green, and ultimately I signed the agreement. The witness went on to give a description of the route and its facilities and advantages. I saw Mr. Hood at Fort Alexander in August, 1862. He asked me to prospect a trail to the Bentinck Arm. Mr. Hood's train arrived about the same time; the train was a large one; carrying merchandize. I also had instructions to prospect a trail from Alexander to Mouth of Quesnelle.

Cross-examined—I never constructed a road, but have seen a good deal of it. I could not have carried out this road by myself, but I might have done so in conjunction with others. I don't know how much merchandize Hood's train carried. When I applied for the charter I thought I could do it in three months; the government gave me one year. I could easily have selected a line between the 25th of June and the 31st of July. I could have laid down a passable waggon-road in the time. If I had started from Victoria at the same time that Mr. Hood did I could have got to the Fraser on the 31st July. I don't know that anyone who had never been over the road before could do so; he might have got help to explore the route.

Court adjourned to 10 o'clock this day.

FIFTH DAY.

WEDNESDAY, Feb. 17, 1864.

Bentinck Arm Co. vs. Hood.—Ranald Macdonald cross-examined by Mr. Wood—I assigned my interest under agreement of 4th April, in the spring of 1863. I remember meeting McCleod and Hood up above. I told them that I intended to assign the agreement. I had no cause of dispute with Mr. Green.

Re-examined by Ring—The road stood in very high favor. I had difficulty with Col. Moody in getting agreement in April, 1862; I went with Green to see Col. Moody. I have seen Mr. Fisher with Hood at Fort Alexander; Hood engaged him to go over the road.

Mr. Green recalled, and examined by Mr. Ring—Mr. Legh copied the agreements from Mr. Cary's draft; he was my clerk; he made two copies, one for myself and one for Hood. The first copy must have been completed several hours before the other. I state it as a fact, Memorandum produced from Green to Macdonald, and read, as to delivering certified copies of agreements to Hood by the 20th July. The reason why the agreement of 15th June was not mentioned is that it was in the possession of Hood. I handed this to Mr. Hood in an envelope marked private, and told him he ought to have copies of the other agreements. I went with him to Macdonald's office, and guaranteed that he should have copies of the other documents: On entering Mr. Macdonald's office, Hood handed the agreement to Macdonald to put into his safe. Mr. Macdonald then wrote the memorandum I have just read, in which I guaranteed to deliver copy of agreement; this must have been an hour before the Labouchere left; I therefore say Mr. Hood had ample time to read it. A letter of John Morris put in—Mr. Wood objected to its being put in. Objection supported. Cross-examined by Wood—I have reconsidered the matter and, in fact, I had not said all I could have said. He had no copy of agreement April 4. I gave him a copy of the specification on the 25th June. Mr. Legh copied it, and I gave it to Mr. Hood. Mr. Hood was hurried. I don't remember if the whistle was blowing. Mr. Hood must have been very busy.

Mr. Bishop then read the evidence taken by an order of his Honor D. Cameron, Esq., dated 23rd January, 1864, of Adam Ross, Higgins and Alexander Macdonald.

Walter Moberly, examined by McCreight—The first I heard of the Bentinck Arm was on my way from New Westminster to Hope; I met a man who told me he had been across to the Bentinck Arm, and gave me a good account of it, and he said he thought it would be the best route to Cariboo. Two or three months after this I was in New Westminster and heard that several parties had been making applications for a charter, this was at the end of 1861 or beginning of 1862. In the spring of 1862 it was almost impossible to get goods through by the Fraser river; the boating was to a great extent stopped, and the trail was very bad, and we had to pay 14 cents per one pound from Yale to Lytton; it is a distance of 56 miles. I have made several roads in British Columbia. I should first go over the line with one white man and two or three Indians to pack grub, and on my way up should fix points for making the road. The government have always allowed deviations to be made. I should say it would cost $700 to blaze it. It has never been customary in making a waggon-road, that it should be identical with the bridle-road. I have compared the form of specification of the Bentinck Arm with others; they are in a printed form. During the season of 1862 I should think 500 tons of goods would be got over the road. In the summer of 1863,