

has paid sufficient to entitle him to three additional bonds; and he asks for delivery of 46 bonds.

The defendant appeared but did not plead. Subsequently he deposited the bonds in Court, and on the 29th April, 1889, the Quebec Central Railway Company filed a petition in intervention, followed by *moyens*, filed May 16, in which they allege: That save as admitted plaintiff's allegations were untrue; that from the date of the incorporation of the company till November 3, 1887, the plaintiff was president of the company, and chairman of the board of directors, and acted in a fiduciary capacity; that during all this time R. N. Hall and R. D. Morkill were directors, R. N. Hall being the solicitor; that during his term of office he was conversant with the affairs of the company, and must be so held to be; that by 49-50 Vict. (Quebec) which came into force by proclamation of the Lieutenant-Governor, November 3, 1887, the parties named became vested with the management, but up to that time the English directors had no control over the affairs of the company. They also set up agreement *sous seing privé* as in declaration. That in carrying into force of said Act, the provisional directors handed over 588 bonds to defendant; that the Quebec Central Railway Company was never liable for the debts set forth in the second part of the schedule in said agreement, to wit, \$178,209, nor were they claimed from them, as the plaintiff well knew, but if due at all were claimed from Bowen & Woodward, contractors, who for several years had been indebted to the Quebec Central Railway Company in the sum of £100,000 stg., and said debts, in part before, and in part since said agreement, were partially settled at ten cents on the dollar; that previous to the 2nd of April, 1887, the date of the agreement, the debts mentioned in the second part of the agreement had been in a large measure settled and paid by the company out of its revenues, so that on said day, in lieu of \$113,285.66, there was only due by the company \$58,829.42, as the plaintiff well knew; that the company was able to pay its own debts, and in fact between said date and November, 1887, did pay all such debts; that no statutory declarations in form, or con-

taining the information required to be given, were ever delivered by plaintiff to defendant in pursuance of the agreement, and that those given were wholly insufficient; that after the coming into force of said Act, large sums exceeding \$30,000 were taken from the funds of the company and expended in the payment of said debts which plaintiff was bound to pay; that plaintiff has not carried out his agreement, nor paid the debts agreed upon, but they have largely been paid out of the funds of the company; that on the 2nd April, 1887, the parties, i. e. directors in England, were not aware of the true state of affairs of the company, but on the contrary if they had been they would not have entered into the agreement with plaintiff, but they were misled by plaintiff, and by erroneous statements on his part, and that said agreement is void.—Wherefore they prayed: 1. That the agreement be set aside; 2. That upon its being set aside all their rights to recover bonds be reserved; 3. That it be declared that plaintiff has not carried out the agreement; 4. That the plaintiff's action be dismissed; 5. That the defendant be condemned to deliver up the bonds to the intervenants.

The plaintiff pleaded to the intervention:

1. Denying allegations of the intervention, except as they reiterate plaintiff's declaration; 2. That in the summer of 1885 the provisional directors formed a committee of English bondholders referred to in 49-50 Vic. cap. 82, and employed one Thomas Swinyard to make a thorough inspection of the property and books of the Quebec Central Railway; that such inspection was made and balance struck on the 31st August, 1885, showing a direct liability of \$113,285.66, besides a liability of \$178,280.71 of contractors, and arising out of construction; that the \$113,285.66 included wages of the employees of the road and the current liabilities, which of necessity were payable and were paid out of ordinary receipts of the road, which was run after August, 1885, as usual, so that said amount and details were varying daily and monthly; that it was well understood and apparent that said sum of \$113,285.66 was merely an estimate on the balance struck by Mr. Swinyard; that from that day till the date of the