tice & Macdougall were unable to provide the money, which was furnished by one Sibley, of New York. In exchange for this Prentice conveyed to him "all and singular the within written bond," that is, the bond from the Montreal Mining Company to Prentice, by a memorandum of sale written on a copy of the notarial bond by the Montreal Mining Company to Prentice. This memorandum was extended and made more full by a deed called an indenture, purporting to be made on the same day between Prentice and Sibley. By this deed it appears that Sibley was to hold nine-tenths of the property in trust for his friends and one-tenth or 160 shares for Prentice. By another bond of indenture we learn that the persons for whom Sibley was acting when he treated with Prentice, besides himself were E. B. Ward, Edward Learned, Peleg Hall and C. A. Trowbridge. We also learn that Prentice was to have his one-tenth, that is 160 shares. These shares were transferred to Prentice's name, and he got certificates for them. This last indenture was executed on the 2nd November, 1870. In December of that year, Mr. Learned wished to acquire 80 shares of the 160 shares held by Prentice, and Prentice sold them to him for $9,000. In all these transactions it seems the promises to McEwan were overlooked by Prentice and Macdougall, and he was getting restive under this neglect. Prentice and Macdougall then agreed that Macdougall's share should be 40 shares, and in order to put the remaining 40 shares out of the reach of Mr. McEwan's litigation, the whole 80 shares were on the 3rd March, 1871, assigned to Macdougall, on the understanding that 40 shares should be passed over into the name of Mr. Ashworth, in trust for Miss Auldjo, Prentice's sister-in-law, but really to be held for Prentice. In 1871 Mr. McEwan brought his action in the United States against Prentice and Macdougall, and attached the whole 80 shares which had been left standing in Prentice's name notwithstanding the transfer. In this suit of McEwan, Prentice & Macdougall succumbed, and the whole 80 shares were lost save eight which McEwan abandoned to avoid the risk of an appeal. Now Prentice's pretention is that he owes Macdougall an account of the whole 160 shares, because although they stood in Prentice's name, they were undoubtedly the property of the firm, that is three-fourths were Prentice's and one-fourth Macdougall's, that by the transactions of the firm the whole of these shares were lost save the price of the 80 sold to Learned for $9,000, and the eight shares given back by McEwan, and that Macdougall has, therefore, only a right to be credited for one-fourth of $9,000, and two shares of the eight or their value; that the one-fourth of $9,000 is $2,250, and the value of the two shares *nil*, so that plaintiff's *débat* is unfounded, and, moreover he is entitled to nothing, for his account is greatly overdrawn, and that the *reliquat* is due by Macdougall and not to him.

There is really little difference between the parties as to the main facts, and, to avoid length, I shall advert to the evidence where it is conflicting in setting out Mr. Macdougall's pretentions, which are perfectly clear. He contends that he was no party to the arrangement in London, by which Prentice promised one-half of the profits to McEwan; that in reality, he had, by special arrangement with Prentice, a right to half of the profits of this particular transaction; that for certain reasons of convenience the whole 160 shares got into Prentice's name; that Prentice sold 80 shares, his own half, for an inadequate price, namely for $9,000; that subsequently Macdougall agreed to take 40 shares to terminate a suit between him and Prentice; that Prentice agreed to take the 80 shares he had sold to his own account, and that he had given Macdougall, by a deed of sale *implying warranty*, for his share, a certain forty shares, of which Macdougall had been deprived by the fault of Prentice. Consequently he concludes that Prentice is his *garant* for these forty shares, and that he should, therefore, give him over the eight shares returned by McEwan and pay him for thirty-two or pay him for the whole forty shares. The court below adopted respondent's view and decided that appellant owed respondent forty shares or the value, fixed at $80,000, less the *reliquat de compte*, which, apart from this matter, is in favour of the defendant to the amount of $16,188.51,