

Mr. ADAM CROSS, who also appeared for the defence stated that in his opinion the examination was contrary to the whole practice of law. The payment of monies into Court, in such cases, could not be made compulsory, except on defendant's voluntary admission, and it was not competent for the plaintiff's counsel to elicit such admission in a *voir dire* examination.

Mr. STONG stated he had endeavored to anticipate every difficulty in this case, in making application to the Chancellor for the appointment. His Lordship had stated that he thought the application reasonable. His Lordship had granted the appointment, to meet the difficulty raised by defendant of want of forty-eight hours notice.

His Lordship said he thought the examination ought to go on. At all events, the time would not be misapplied, even though the evidence were declared inapplicable to the purpose intended. He would wish the examination to go on without prejudice to the issue raised by defendant.

ISAAC BUCHANAN, Esq., M. P. P., was then called and sworn—I was the owner of stock in my own name of something over £50,000, in the Amherstburg and St. Thomas Railway. I acquired from William Wallace £500,000 on which the £50,000 was paid. It was transferred to me in November, 1856. I paid ten per cent into the Bank of Upper Canada, on that sum. I merely acted for shareholders of the Great Western Railway, and the Vice-President and I applied to the bank to debit me with that amount. I attended the meeting of the Amherstburg and St. Thomas Company Board of Directors on 21st November, 1857. I was then President. A resolution was not then passed by the Directors authorizing the re-payment to me of that £50,000—but a change was then made in the Board of Directors. I am not aware the new Board passed such a resolution. I believe the arrangement with Mr. Rankin and the Board nominated was, that all stock should be put in the name of Mr. Morton. I therefore transferred it all to the name of Mr. Rankin. But, while in the care going to London it was proposed to me to deviate from that arrangement and cancel the stock. This I refused to do, and I transferred the £50,000 stock to Mr. Morton. These are my reasons for supposing the new Board of Directors may have passed such a resolution. But I do not positively know such to have been the case.

Mr. STONG then read, from the minute book of the Company, a motion moved by a Mr. Askin and duly seconded, setting forth that it was just and expedient to repay Mr. Buchanan the £50,000, and that such sum be at once repaid.

Mr. BUCHANAN—I am not aware that that resolution was passed. The cheque I received from Mr. Morton was payable to my order and signed by the President of the Company. That cheque went to my credit in the bank of Upper Canada. I was debited, and the Railway was credited with the £50,000 deposit, when it was paid in.

Mr. GWYNNE then said that in his cross-examination he should go into the whole case, as the appointment was made simply for examination of witnesses.

Mr. BUCHANAN, examined by Mr. Gwynne—Although this money was called mine, it was well understood I was merely acting as trustee. And a by-law was passed by the Company in 1856, to say that no money should be drawn out of the Bank except by me, or on my order. This was served on the Bank of Upper Canada. In the following month the directors tried to upset this by-law, and I immediately got Mr. Strong to bring the bill into this Court and got an injunction against them, in order to prevent their upsetting the by-law.

Mr. H. ECCLES, Q.C., here rose and said—I appear for the present directors or some of them, who are charged in the bill with having improperly paid the money to Mr. Buchanan, and for their justification I apprehend it will be necessary for me to cross-examine Mr. Buchanan.

Mr. GWYNNE—Your lordship will see from this, that in reality the whole merits of the case must be gone into.

His Lordship—I shall not allow the examination of the case to exceed due limits.

Mr. ECCLES—I think, my lord, it would be better to allow me to cross-examine the witness before Mr. Gwynne.

Mr. STONG—Your lordship will see that this evidence is proposed to be used not only against Mr. Buchanan himself, but also against the clients of my learned friend, Mr. Eccles.

His Lordship said he thought it was better Mr. Eccles should be allowed to cross-examine the witness first.

In answer to Mr. Eccles,

Mr. BUCHANAN then deposed:—The stock said to have been subscribed by Wallace was called bogus stock by Rankin, and McLennigan, his editor. I knew there were doubts as to the goodness of Wallace's subscription, because it was written in pencil. And there were a great many other circumstances such as that it was not entered in proper columns. I was not one of those who said it was bad stock. I was in favor of the directors

appointed under the £500,000 subscription. The directors, I believe, ordered the stock to be refunded, because it was not a bona fide subscription. I transferred to Morton Wallace's stock and £800 other stock paid up by me.

Q.—Was not that money refunded to you by the President and Directors?

A.—I cannot say it was. Mr Morton bought me out, and gave me the cheque.

Q.—Was not this the same money which could not be touched without your authority?

A.—Certainly.

Q.—Well, did you give any authority to Mr. Morton to touch it?

A.—No. He handed me his cheque in payment of the shares.

Q.—Yes; but it was for your own money, over which no one had any control but yourself?

A.—It was the bank's money, of which I never paid a penny.

Q.—Well, then, but it was subject only to your order?

A.—It was subject to the order of the railway company, in my favor.

Q.—Did you not say that when they passed the by-law in October, it was expressly declared that that money could not be touched without your signature? Now, had they that authority?

A.—Yes.

Q.—Now, I ask you, was not that giving back your own money which you had deposited? That, in fact, there never was any money at all. But an entry was made in the bank books by which you are made their debtor for £50,000?

A.—Yes; and when Mr. Morton gave me the cheque they balanced my account—transferring the sum from the debit to the credit side.

Q.—Surely you do not call such an affair as that a payment of money by Mr. Morton?

A.—The proper arrangement would no doubt have been that Mr. Morton should have given security for the amount. Mr. Morton was brought in merely as contractor.

Q.—Was there, then, a written assignment made by you to Mr. Morton?

A.—Yes; the books of the Company here show an acknowledgment of it. I transferred all the stock I had to Morton.

Q.—For which he gave nothing—eh?

A.—For which he gave me this cheque.

Q.—Oh, we understand the case. It is just as set forth in the bill. Now, where is the original contract entered into between you and the former Directors of the Company?

A.—It is all set out in the bill on which I got the injunction on the £50,000.

Q.—Who got the contract?

A.—McLeod and Park.

Q.—Two of the Directors of the Amherstburg and St. Thomas Railroad?

A.—Yes.

Q.—By that contract I believe it was provided you were to get back your £50,000, in the event of a certain undertaking on your part failing?

A.—It was provided by an original clause that if the scheme was not taken up in England, they should pay the same back to me in a certain time. But that clause was afterwards expunged.

Q.—Who expunged it? It is in your bill.

His Lordship.—Whom do you refer to by the word "they?" Mr. ECCLES.—The directors were to refund to Mr. Buchanan his deposit of £50,000 if he failed to make certain arrangements in England, as to getting parties to take stock.

Mr. BUCHANAN.—There was such a clause in the original draft; but it was struck out.

In answer to His Lordship,

Mr. ECCLES explained that his object was to show that the money had been properly paid to Mr. Buchanan, and that it never was anything but a conditional deposit.

Examination resumed by Mr. Eccles.—I did not claim back the £50,000. I sold my stock and they did the rest. In reality the directors had an understanding with me that I should get back the stock. The by-law said that, I being the only creditor of the Company, there should be no contract or cheque without my approval. The directors of the railway gave a cheque for the amount on giving out the contract; but the thing was rescinded. The contract was given out to Wythes & Zimmerman. But the cheque was rescinded and never presented—the contract was not entered into. That was done by my consent. I was made a trustee either for the company or contractors—I do not

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