

5. Owing to such refusal the said F. B. McNamee thereupon arranged with three residents of the Province named Robertson, Huntington, and Nicholson for immediate prosecution of the work by them as additional and temporary partners of the firm of "F. B. McNamee and Company," but the Plaintiff, though not objecting to this arrangement as between the parties themselves, declined to recognize such additional partners as contractors with the Government in respect of the Dock.

6. Subsequently, for greater security and with a view of placing the subject matter of the construction of the Dock within the terms of the Dominion and Provincial legislation which had taken place in relation to it, a further contract, dated the 4th of October, 1880, was entered into between the Plaintiff, as Chief Commissioner aforesaid, and the same 10 contractors, viz: Francis Bernard McNamee, Anthony Gilbert Nish, and James Wright, as constituting the firm of "F. B. McNamee and Company," whereby it was agreed that the former contract of the 24th of February, 1880, should be considered cancelled, and that, subject to certain legislative conditions mentioned, the Dock should be constructed by the said firm according to specifications referred to, and in consideration of the before-mentioned sum of \$350,997.20, or such other sum as might be due to them under such specifications; and besides other security for the fulfilment of the contract, the sum of \$10,000 was deposited for that purpose by the said firm with the Government.

7. Prior to the execution of the last-mentioned contract, the various competitive tenders for the construction of the Dock, which had been received at the Lands and Works 20 Department, were submitted for consideration to the Lieutenant-Governor in Council, and the tender of the said "F. B. McNamee and Company" being much the lowest, was accepted, and the contract for the work awarded to them by the said Council, and the contract of the 4th of October, 1880, was thereupon executed, as stated in the last paragraph.

8. No contract or agreement, verbal or written, expressed or understood in relation to the Dock, except the said contracts of the 24th of February, and the 4th of October, 1880, was at any time made between the Plaintiff, in his official capacity, or otherwise, and the firm of "F. B. McNamee and Company," or any of its members or alleged additional 30 members.

9. The contract of the 4th of October, 1880, remained in force until about August, 1883, when the Dock, in an unfinished state, was transferred by the Province to the Dominion for completion by the latter, that is to say, the said contract was in force for nearly three years, during which time the Plaintiff successively filled the official and judicial positions mentioned in paragraphs one and two.

10. Under the contract of the 4th October, 1880, large sums of money were, from time to time, paid to the contractors therein mentioned, for work done on the Dock, the Plaintiff being Chief Commissioner at the time, and such payments were made with the Plaintiff's official sanction and approval, upon which they were dependent.

11. The Defendant is and has been for more than six years immediately preceding 40 the date of the commencement of this action, the proprietor and publisher of a newspaper called the "Daily British Colonist."