

paid to the total amount, but he has received more than that proportion if you take that part of the contract literally, for the third item of part 1st is admitted not to have been paid or settled by him, but by intervenants. But, says plaintiff, the third clause covers everything. But the contract is, I will settle and discharge such and such claims, no matter to intervenants whether at par or at discount, and upon my doing so, and procuring and delivering to defendant complete discharges from said several debts due or claimed, I shall obtain the bonds, or such proportion as I should settle. Does this mean that if intervenant in the meantime settles and pays these debts, and particularly those which were outstanding at the date of the agreement, that the obtaining a discharge would be equivalent to plaintiff's paying them, and entitle him to his proportion of the bonds?

But, says plaintiff, assuming that plaintiff was not entitled to have bonds for amount paid by the intervenants out of earnings: Can intervenants have a judgment for these bonds? He claims it only entitles them to an action to account or for such specific sums as they may establish plaintiff has used. The position to my mind is this: Intervenants cannot obtain a rescission of contract, but they have a direct interest in plaintiff's not obtaining a judgment against the defendant, trustee or depository of the bonds, evidence of their indebtedness for a delivery of these bonds. They have a right to intervene as being interested in the event of this suit in order to maintain their rights.

It is established here that out of the earnings of the road, without going into other questions, a sum of \$22,397.06 has been paid by them on the indebtedness which plaintiff agreed to pay in consideration of their bonds being delivered to him after payment; this is more than the value of the 46 bonds at par, which is \$486—\$22,356, and under the views expressed of the construction of the contract, plaintiff is not entitled to the bonds, irrespective of the seven bonds to cover the difference in amount paid on part two of schedule out of earnings: They have a right to ask the dismissal of action against defendant, and with this view of the case the

intervention is maintained to that extent. Plaintiff may yet complete his contract, and may yet show that he is entitled to these bonds.

It is to be observed that plaintiff, personally, seems to have had little to do with these transactions. This is shown by his own evidence. They were carried on in his name by third parties.

Judgment maintaining intervention in so far that plaintiff's action is dismissed with costs of intervention.

The judgment reads as follows:—

"The Court having heard the parties, plaintiff Joseph G. Robertson and the intervenants The Quebec Central Railway Company, upon the merits of the intervention in this cause, by their respective counsel, the defendant having failed to plead to the action, but having deposited in Court, the forty-six bonds in dispute herein, having examined the proceedings, pleadings and evidence, and deliberated;

"Considering that by Act of the Legislature of the Province of Quebec passed in the 49th and 50th year of Her Majesty's Reign, Cap. 82, intituled 'An Act to amend the Charter of the Quebec Central Railway Company,' intervenants, upon their representation that it was necessary to raise additional capital, amongst other things for the payment of floating liabilities and expenditure incurred or sanctioned by the Committee of the bondholders of said Company, the Provisional Directors of said Company therein named were authorized to issue, upon the coming into force of said Act, three thousand Prior Lien Bonds of one hundred pounds sterling each, re-payable at the expiration of twenty years, to be a first mortgage upon the whole undertaking, land, equipments, tolls and revenues of the Company, save and except existing liens and rights upon the rolling stock and equipments owned by and in use upon said railway, which Act was assented to on the 21st June, 1886, but was only to come into force upon the proclamation of the Lieutenant-Governor of the Province, made in November, 1887;

"And considering that in and by said Act certain persons, to wit: plaintiff, Messrs. Richard Dalby Morkill and Robert Newton