

ca. file no. 933 of 1859

Provincial Secretary's Office

## THE GREAT SOUTHERN

OR

# NIAGARA AND DETROIT RIVERS RAILWAY

### Facts for the information of Honorable Members of the Legislative Council.

By the Act intitled "An Act to amend the Charters of the Amalgamated Company heretofore intituled 'the Great South Western Railway Company,' and to change its name to the Detroit Rivers Railway Company," passed during the Session of 1856, thirteen gentlemen were appointed Directors of the Company for the time being.

At the time of the passing of this Act nearly the whole of the subscribed Stock was in the hands of Mr. Morton, of Kingston, who had acquired it by means of untrue representations made to the Directors without the performance of the conditions upon which alone it had been transferred to him, and without any payment whatever having been made to the Company, as a deposit upon such Stock.

Nearly four-fifths of the Capital Stock, however, remained unsubscribed, and at the disposal of the Directors for the time being. The majority of these Directors, having already been imposed upon by Mr. Morton, resolved to dispose of the unsubscribed Stock to new Shareholders, who subscribed for the same at a regular meeting of the Board, which all the Directors were notified to attend, and at which seven of the thirteen were present.

The Directors, acting under the legal advice of Mr. Eccles and Mr. Strong, Baristers, had passed a By-law requiring all parties subscribing for Stock to pay a deposit thereupon to the Treasurer of the Company. This deposit was accordingly paid, and the necessary certificate therefore given to each subscriber by the Treasurer.

The meeting for the election of a new Board, at St. Thomas, on the 24th of August last, was attended by the Directors named in the act, as well as by a large number of Shareholders. Seven of the old Directors contended that Mr. Morton, was, strictly speaking, not entitled to vote as a Shareholder, inasmuch as his stock had been illegally obtained, was originally invalid, and no payment by way of deposit had ever been made thereupon. While six of the Directors urged, that Mr. Morton, and certain other parties, to whom he had transferred a portion of his stock, were alone entitled to the privileges of Shareholders, and that the parties who had recently become Shareholders, although the latter had paid to the Company the required deposit, were not entitled to vote as such Shareholders.

After much angry discussion among the Directors, and other interested parties, an attempt was made, at the instance of Mr. McBeth, forcibly to exclude from the room the majority of the Directors named in the act, and to prevent the new Shareholders from voting. This attempt, however, was unsuccessful, and a new Board was elected upon the votes of Shareholders, holding nearly four-fifths of the shares, upon which the lawful deposit had been paid to the Company. This Board is known as "the Mercer Board," so called after the name of its President.

Shortly afterwards, the majority of the Directors named in the Act, together with most of the Shareholders, having retired from the room, Mr. McBeth, Mr. Morton, Mr. Henry De la Quere, the Hon. Mr. Col. John Prince, McLeod, Mr. Isaac Buchanan, and certain others of

their friends, went through the form of electing another Board, founded upon the shares held by Mr. Morton, upon which no deposit whatever had been paid, and which were but little more than one-fifth of the Capital Stock of the Company.

Of this latter Board, Mr. McBeth was chosen President, and the Hon. Col. Prince, who had taken a prominent part in the proceedings of the meeting as the legal adviser of Mr. McBeth, Morton, &c., appointed a Solicitor. This Board is known as the McBeth Board.

In September last, a suit in Chancery was instituted by the Mercer Board against the McBeth Board, to restrain the latter from pretending to act as a Board of Directors, &c.

This suit is still pending and undetermined.

In December then following another suit in Chancery was instituted by an individual Shareholder against Isaac Buchanan, Esq., and all the parties claiming to be Directors, to compel Mr. Buchanan to refund to the Company a large amount of money, alleged to have been illegally paid to him, by the Directors of the then Amherstburgh and St. Thomas Railway Company.

In this latter suit, facts have been brought to light in evidence, which clearly show, that the ultimate decision of the Court in these cases, cannot be otherwise than unfavorable to the pretensions of the McBeth Board.

Hence their appeal to the Legislature to give them, by Legislative enactment, a position which they can never obtain by the decree of the court.

The Mercer Board has put the railway under contract sub-contractors are now engaged in the work of construction, and already the line has been cleared 100 feet in width for many miles through the woods in the county of Essex, while the Company have secured the right of way, from almost all the resident proprietors in the counties of Kent and Essex, for upwards of fifty miles from the terminus on the Detroit River; and, if allowed to proceed without Legislative interference, their arrangements and connections are such, that they feel confident of being able to complete the whole road and open the line for traffic within a reasonable period.

The real object of the bill introduced by the Hon. Col. Prince, solicitor to the McBeth Board, will at once be understood by hon. members, if they will peruse the foregoing statement, which can be substantiated by evidence, should a committee be appointed to investigate the subject.

C. F. ELLIOT, Secretary,

Niagara and Detroit Rivers Railway Company.

Toronto, March 26th, 1859.

Subjoined are those portions of the evidence taken in the last mentioned Chancery suit, which establish the invalidity of the stock held by Mr. Morton, and as a necessary consequence, the illegality of the so-called McBeth Board which was elected thereupon.

## IN CHANCERY,

M'CLENNIGHAN *et al* v. BUCHANAN *et al*.

(BEFORE VICE-CHANCELLOR BROWN.)

In this case, Mr. W. Strong and Mr. E. Blake appeared for the plaintiff, and Mr. Gwynne, Q. C., and Mr. Adam Crooks for the defence. Mr. Eccles, Q. C., also appeared for certain of the directors, defendants.

This was an interlocutory motion to compel defendant to pay into Court the sum of £50,000 alleged to have been illegally obtained from the Company—the application being based on the ground that Mr. Buchanan was in embarrassed circumstances.

The bill filed in the case was read by Mr. Strong.

Mr. Gwynne said that the whole objection taken by defendant against the bill was that it was filed in order to obtain a decree from the Court that the money in question belonging to Company and had been improperly obtained by the present defendant, Buchanan. In the motion before the Court it was thought to obtain that which was in fact a hearing of the cause. They sought to go into a matter of evidence which ought only to be gone into when the cause was at issue. The object of the motion was to compel defendant to pay into Court this sum of £50,000.