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SUPERIOR COURT—DISTRICT OF ST. FRANCIS.

SHERBROOKE, Sept. 30, 1891.

Before BROOKS, J.

HON. J. G. ROBERTSON v. HON. GEO. IRVINE, and QUEBEC CENTRAL RAILWAY CO., intervenants, and PLAINTIFF, contesting intervention.

Quebec Central Railway Company—Contract—Construction of.

[Concluded from page 360.]

Is this position tenable? So far as current or running expenses were concerned, they had to be paid to keep the road in operation, and this may apply to interest on the account for cars and locomotives. I think these may be called fairly running expenses, and undoubtedly the intervenants knew that they were being liquidated as the road was operated, but the Court cannot see that the same rule should apply to capital sums. The Court cannot say that plaintiff in his individual capacity under the agreement by which he agreed to pay those capital sums the two first items in schedule, the largest portion of which were due at the date of the agreement, could subsequently pay them out of *earnings* and claim the benefit of the payment to himself individually, for that is his pretention.

But, says plaintiff, this was agreed to, and ratified by Mr. Hall, manager of the company, when the final settlement was made with Mr. Ross of these sums. If this was contrary to agreement had Mr. Hall the power to consent to this so as to bind the company, or could the representatives of the company itself, in the face of the Act which authorized them to issue these prior lien bonds for certain specific purposes, amongst others for the payment of floating liabilities and expenditures incurred as sanctioned by the present committee of bondholders, permit or allow them to be diverted from that purpose, or used for any other purpose? When the Act came into force these debts were due; they were authorized to pay them with bonds, but they were not authorized to hand the bonds over to any third persons, or any portions of them, when the debts they were authorized to pay with them had already been paid by their own monies arising from the earnings of the road.

A great deal of evidence has been gone into with regard to the items of part two of schedule, intervenants claiming that they are excessive, duplicated, and some of them did not exist. For the purposes of the present contestation, I do not think it necessary to go over them, although I have a most carefully prepared statement of them all. I find many of them settled at a small percentage. This plaintiff was entitled to do, and intervenants cannot complain of this. It would appear that several of them were made to do double duty. The vouchers for the payments are very informal, some entirely defective. Of many of them plaintiff does not furnish any legal or authentic evidence of their having been settled, but their manager Mr. Hall undertook to scrutinize many of them and reported them as being satisfactory, and to a certain extent this was binding on intervenants, and the defendant received Mr. Hall's statement as his authority. This would, I think, be sufficient to exonerate defendant as trustee, but would not, in case of an erroneous interpretation of the contract, be binding on intervenants.

A careful examination shows that of the items in schedule, parts 1 and 2, assuming vouchers to be authentic, plaintiff has paid and settled on the amounts therein mentioned very much less than the sums mentioned in the schedule.

It appears in the statutory declaration that $3,273.51 of the items in part two of schedule were paid out of earnings of the road, but it came out in evidence that this should be $5,861.55, being a difference of $2,588.04, which would cause a difference in the amount of bonds due plaintiff; in round numbers sufficient to reduce those to which he might be entitled to 39 instead of 46.

The plaintiff says that this part of the contract which authorises the retention of these bonds shows that plaintiff was entitled to all the others. He was, in proportion to amount