

struction and Dredging Company, set forth, amongst other things, that—

“1. Mr. Bartram undertakes and agrees with Mr. Grice that the assets referred to in said agreement of 1st May, 1909, shall be turned into the said company fully paid and free from all encumbrances, and that any liabilities of the Cape Breton Dredging Company, Limited, assumed by the company without corresponding value shall be paid and discharged by Mr. Bartram and shall not in any way fall on the company.”

The main dispute between them arises from their failure to agree upon the proper construction of this part of the agreement, in so far as it relates to the liabilities which are payable by defendant. Plaintiff claims that liabilities of the Cape Breton Dredging Company, Limited, to the amount of \$34,436.83, were paid by the General Construction and Dredging Company, Limited, which under the above quoted clause of the agreement of February 23rd, 1910, the defendant should pay to the latter company, and he asks judgment directing defendant to make such payment; he also claims \$50,000 damages for breach of the agreement.

Defendant, on the other hand, claims that in respect of the amount claimed, or for part of it, at least, there was corresponding value received by the General Construction and Dredging Company, Limited, within the meaning of the clause quoted.

The \$34,436.83 is made up chiefly of an over-draft of the Cape Breton Dredging Company, Limited, in the bank, various accounts incurred by that company before the close of the dredging operations of 1908, and other accounts for maintenance, wages, repairs, and improvements to the dredging plants from the time of the close of dredging operations of 1908, shortly before the end of that year.

Amongst the assets of the Cape Breton Dredging Company, Limited, were the dredging contracts which it had entered into with the Government of the Dominion of Canada, and which were not then completed. When these contracts were being entered into there were deposited by that company with the Government sums amounting to \$9,000, which its contracts declared were for the purpose of protecting the Government against any default on the part of the contractors in the payment of wages, or for material, the Government having the right to use the same for paying any such