There is one other transaction that must be referred to. Small sales of preference and common stock were made from time to time by Alexander Simpson, but it proved difficult to dispose of, and the great bulk of it remained unsold. In June, 1905, however, plaintiffs' manager was negotiating with W. L. Marler, local manager of the Merchants Bank, for the sale of all the remaining stock, at a price sufficient to pay off the notes and leave a small balance over. The sale was in fact agreed to, subject to the condition that the purchasers should be given immediate control of the board. The amount of stock was sufficient for this, but the purchasers could not be ready with their money until a few days after the annual meeting, and the stock while held in trust was non-votable. To get over the difficulty Alexander Simpson, as trustee, executed transfers of the stock to himself, Marler, and one Glenney, the accountant in the plaintiffs' bank, intending in this way to get and hold control of the board until the completion of the sale to Marler's clients. The president of the company, however, declined to sign stock certificates or to receive the votes of the transferees at the meeting, and in consequence the scheme fell through, and with it the proposed sale of the stock.

The defences sought to be set up are as follows:—

(1) The company allege (though in this they are at issue with the other defendants) that the execution of the agreement of 13th September, 1901, by Louis Simpson, on behalf of the company, was unauthorized, and that the agreement does not bind the company. This is clearly not a defence. Assuming it to be true, it cannot invalidate the notes sued on. They were admittedly signed by the company, and the proceeds placed to the company's credit and drawn out by them.

(2) All of the defendants allege that under the terms of the agreement (assuming it to bind the company) plaintiffs were under obligations to carry the loans until 12 months after completion of the work, and that, as the work has not yet been completed, the action is premature. If it is material, I must of course assume that the work referred to in the agreement has not been completed. There is, however, nothing whatever in the agreement as to when the loans were to be repaid, and the contracts embodied in the notes themselves must, therefore, govern. The clause of the agreement relied on is the 14th, which I have quoted in extenso, and