

to the carriers. Some of the claims so presented were paid, and the defendants duly paid the plaintiff his 50 per cent. of the amounts received by them.

Then the plaintiff took up the matter of a great number of shipments of steel-bars carried by the Canadian Pacific Railway Company, under a classification which the plaintiff said was not the proper one. The plaintiff first "constructed an overcharge" in respect of two or three small shipments of goods of the class in question; the defendants presented this to the railway company, and it was paid. Then the plaintiff, with the concurrence of the defendants, "constructed" a large overcharge, \$6,881.46, and presented it. The railway company denied liability, and also made a claim upon the defendants for the return of the amount refunded in respect of the small shipments.

The plaintiff then applied to the Board of Railway Commissioners for a ruling as to the tariff rate applicable to the shipments in question. While the question was before the Board, the defendants demanded from the plaintiff the return of all the papers relating to the claims in question, and instructed the Board to disregard the application for a ruling, the reason alleged by the defendants being that these freight accounts were the property of the Imperial Munitions Board, and that it was the intention of that Board to apply for a reduction in rates. The result of this action on the part of the defendants was that the Railway Board made no ruling. The plaintiff was sure that the ruling would have been in his favour.

His claim in this action was to be paid \$3,440.73, either as his half of the sum which he says would have been recovered from the railway company if the defendants had not prevented the recovery, or as payment for his services in connection with the audit of the bills and the prosecution of the claims.

The first defence—that the plaintiff was not retained to "construct" the overcharges in question or to present the claims to the railway company—entirely failed upon the facts.

The second defence was that, even if the plaintiff was retained, the defendants had not failed in the performance of any duty towards him arising out of the contract or otherwise.

As to this the plaintiff's contention was that the defendants, having sent him the bills, and having caused him to do the greater portion of the work which he had contracted to do in respect of them, were under an obligation to him to leave the bills with him and to refrain from any act which would prevent his carrying his work to completion and gaining his reward.

The defendants had failed in the performance of their legal obligation.