

have been used in liquidation of any of the debts mentioned in the second part of the said schedule; and in consideration of this, plaintiff agreed to indemnify the company against all claims upon them irrespective of the bonded debt, a claim then in litigation with the City of Quebec, and for working expenses for six months prior to the coming into force of the said Act.

This agreement was signed provisionally by Mr. Hall for plaintiff, and was afterwards ratified by plaintiff. In pursuance of this the 588 bonds were, the Act having been proclaimed in November, 1887, entrusted to defendant on the 14th November, 1887. The road was handed over to the English directors, Mr. Woodward remaining their manager. Up to this time, the plaintiff had been president of the road, and Mr. Woodward, manager for many years. On the 14th November, 1887, Mr. Walsh, auditor of the company, made a statutory declaration that the \$40,608.66 had been paid, excepting some \$54, not stating by whom or when; but it appears that it had been paid out of the earnings of the road from time to time between the 31st August, 1885, and the 14th November, 1887, nearly all of it in 1885 and 1886. Statutory declarations were also made on the same day or about that time by plaintiff and Mr. Woodward, and Mr. Walsh, the accountant, stating that the sums mentioned in the lists attached thereto enumerated in the first part of schedule No. 1, comprised all the debts due and claimed from intervenants on the 31st August, 1885, other than the bonded debt, the working expenses for six months prior to the 12th November, 1887, and the liabilities connected with the Levis and Kennebec Railway, the liabilities of Bowen and Woodward, arising from the construction and equipment of the road, and that only \$3,273.51 had been paid out of the earnings of the road on what were termed contractors' liabilities, part 2 schedule, since 2nd April, 1887, date of contract. Upon this declaration and certain vouchers produced by the defendant, examined as a witness in this cause, defendant handed over to the plaintiff, and to his agent Mr. Woodward, who appears to have transacted all this business for the plaintiff:

On November 17, 1888..	76 bonds	
On November 26, " ..	40 "	
On November 29, " ..	60 "	
On December 14, " ..	60 "	
	—	236
November 17, J. G. Ross..		267
" " R. N. Hall..		21
" " Geo. Irvine.		10
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He retained 8 bonds to cover the \$3,273.51 paid from earnings on contractors' liabilities, leaving 46 on hand, which are in dispute in this cause, claimed by plaintiff of defendant, and claimed by intervenants.

The question to be decided is, has plaintiff so complied with the terms of the contract that he is entitled to these 46 bonds? Interventions claim them as well, on the grounds set up in their intervention. They say that there was misrepresentation; that the so called contractors' liabilities were not due or claimed from the company; that they were unaware of the position of the company's affairs, managed by plaintiff and Mr. Woodward here, they being in England, and had they been so aware they would not have entered into the agreement, plaintiff failing to furnish them with a true state of affairs. They say that the statutory declarations were not in accordance with the agreement, and insufficient. They further say that prior to April, 1887, a large portion of the \$113,285.66 mentioned in the first schedule had been paid out of their monies, *i. e.*, the earnings of the road; that in 1887, between the date of the agreement and November, 1887, the plaintiff paid out of the earnings of the road a large portion of the liabilities; that after the coming into force of the Act, a large sum of money exceeding \$30,000, was without their knowledge or consent taken from the funds of the company and applied on debts, which if due, plaintiff had agreed and was bound to pay; that in fact plaintiff did not pay the debts mentioned in the schedule, but a very large portion of them were paid from their monies. Plaintiff on the other hand says it is true a large amount was paid out of the earnings of the road, but I had a right to pay it so, and am entitled to the benefit of it. You were aware of it, and ac-