with the plaintiffs, by the defendants Newman and Nelles, as president and secretary; and against the latter defendants, in the alternative, for damages for misrepresentation.

RIDDELL, J., held that the contract was not binding on the company, but found the appellants liable for misrepresentation.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

E. S. Wigle, K.C., for the appellants.

A. H. Clarke, K.C., for the plaintiffs.

J. M. Pike, K.C., for the defendant company.

The judgment of the Court was delivered by BOYD C.:—We differ from the conclusions of the learned Judge because of a clause in the special Act to which his attention was not directed. He finds that the provisional directors had no power to bind the company, yet unorganised, by making the contract in question as a corporate liability, and therefore places liability for the amount on the two officers who executed the contract, on the ground that they had represented the competence of the company as a matter of fact, and so become answerable in damages to the amount of the bond.

But by the special Act, 1 Edw. VII. ch. 92, sec. 9, the provisional directors may agree to pay for the services of persons who may be employed by the directors for the purpose of assisting the directors in furthering the undertaking or for the purchase of the right of way, and any agreement so made shall be binding on the company. This special Act is incorporated with the clauses of the General Electric Railway Act, R. S. O. 1897 ch. 209, except so far as they shall be inconsistent with the express enactment of the special Act (sec. 12). True it is that by the general Act, in the section cited below, ch. 209, sec. 44, provisional directors are not empowered to enter into such contracts as the one now sued on, and under the general Act it would not be binding on the company. But the express language of the special Act is to prevail, which authorises such an engagement.

The special Act says that this can be done by the provisional directors "when sanctioned by a vote of the shareholders at any general meeting." Upon similar language it was held that a security was not affected by the non-observance of this direction, upon English authorities cited and followed in McDougall v. Lindsay Paper Mill Co., 10 P. R. 247, 252.

Apart from that, in this case the five persons incorporated and named in the Act were the owners of the company and were