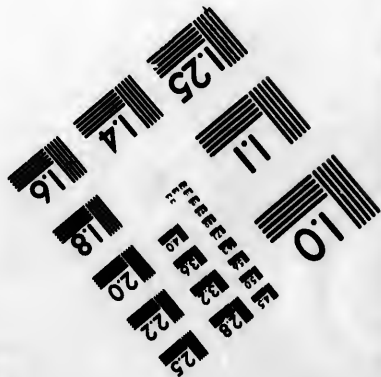
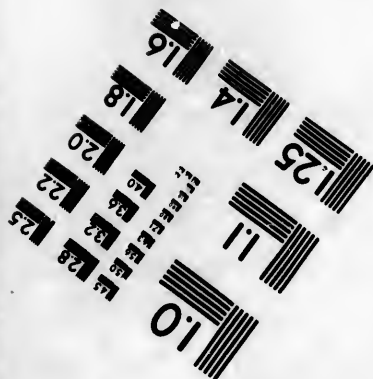
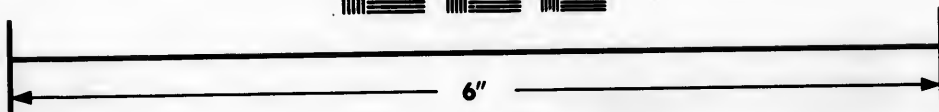
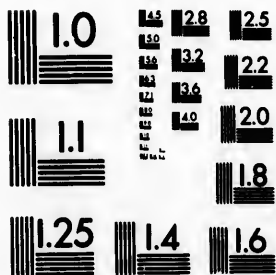


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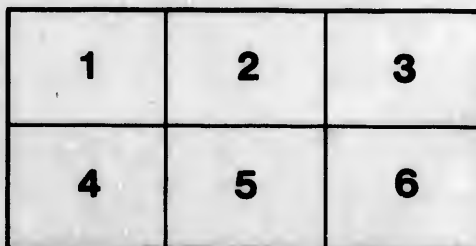
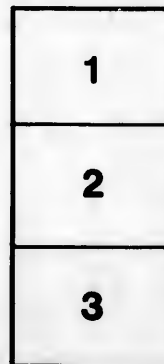
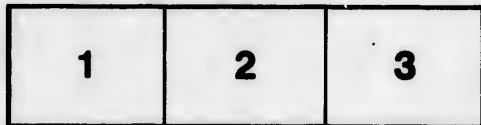
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In Chancery.

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ALEXANDER M'GLENAGHAN

vs.

ISAAC BUCHANAN, *ET AL*

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PLAINTIFF'S BILL

AND

ANSWER OF DEFENDANT.

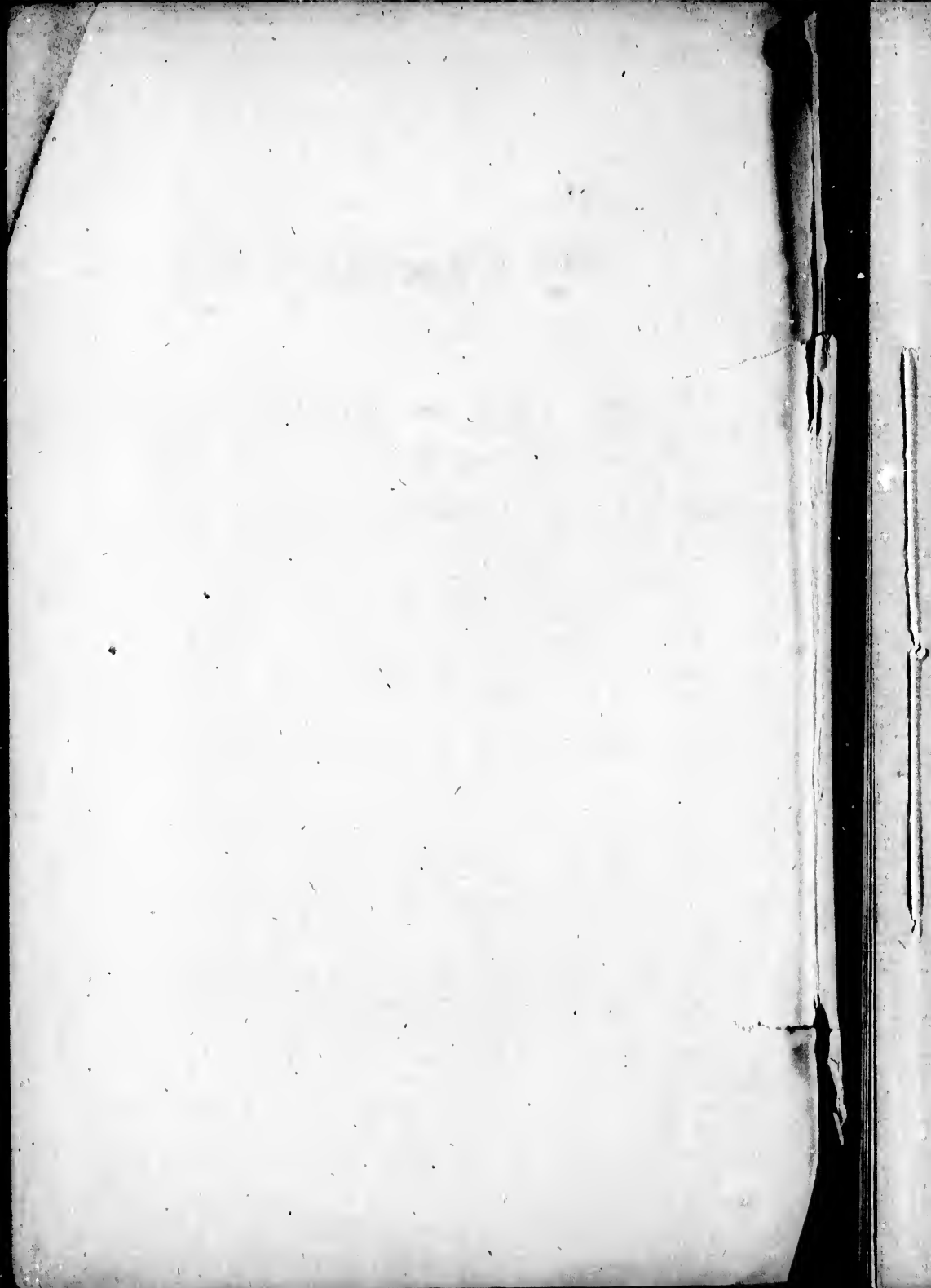
ISAAC BUCHANAN

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TORONTO:

PRINTED AT THE GLOBE STEAM JOB OFFICE, 25, KING ST. WEST.

1859.



**In Chancery.**

*Between* ALEXANDER McCLENAGHAN, who sues on behalf of himself and all other the SHAREHOLDERS IN THE NIAGARA AND DETROIT RIVERS RAILWAY COMPANY, except such of the Defendants hereinafter named as are such Shareholders,

*Plaintiffs,*

AND

Bill filed 29th  
of November,  
1858.

ISAAC BUCHANAN and JOHN MERCER, THOMAS G. RIDOUT, CHARLES BABY, GEORGE GOTT, HENRY H. CUNNINGHAM, JOHN FERRIS, JOHN B. ASKIN, JAMES CUTHBERTSON, and PAUL J. SALTER and JAMES B. WILSON, GEORGE MACBETH, JOHN SMITH, THOMAS RAE, JOSEPH BERTHELOT, ANDREW THOMPSON and JOHN H. CORNELL, and GEORGE SOUTHWICK, E. P. STEPHENS, E.

S. WARREN, DUNCAN STEWART, JOSIAH STRONG and HENRY MCKENNA and COLIN MUNROE, The HONORABLE MICHAEL H. FOLEY, WALKER POWELL, D. B. PRESBY, JOHN MCKAY, DAVID CHRISTIE, and JOHN G. KOLFAGE, and THE NIAGARA AND DETROIT RIVERS RAILWAY COMPANY,

*Defendants.*

CITY OF TORONTO, }

To the Honorable WILLIAM HUME BLAKE, Chancellor of Upper Canada.

The Bill of Complaint of ALEXANDER McCLENAGHAN, of the Town of Woodstock, in the County of Oxford, Gentleman, who sues on behalf of himself and all other the Shareholders in The Niagara and Detroit Rivers Railway Company, except such of the Defendants hereinafter named, as are such Shareholders,

SHEWETH AS FOLLOWS :—

1. By a certain Act of the Parliament of Canada, passed in the sixteenth year of Her Majesty's Reign, intituled

“An Act to amend and extend the Charter of the Woodstock and Lake Erie Railway and Harbour Company,” the said Company were incorporated and had given to them powers to construct a Railway on and over any part of the country lying between the Town of Woodstock and the Harbours of Port Dover and Port Burwell, inclusive, on Lake Erie.

2. By an Act passed in the sixteenth year of Her Majesty's Reign, intituled “An Act to amend and extend the Charter of the Woodstock and Lake Erie Railway and Harbour Company,” the said Company were authorized to extend their Railway from Port Dover or from Simcoe, or from any part between those places to Dunnville, in the County of Haldimand.

3. By a certain other Act of the Parliament of Canada, passed in the eighteenth year of Her Majesty's Reign, and intituled “An Act to amend the Charter of the Woodstock and Lake Erie Railway and Harbour Company,” power was conferred on the said Company upon certain prescribed terms being complied with to extend their Railway from Dunnville, in the County of Haldimand, to, at or near the Suspension Bridge across the Niagara River, in the Township of Stamford, in the County of Welland; and also to extend their Railway from Otterville, in the County of Oxford, or from Port Dover, in the County of Norfolk, or from any point between the two last named places to St. Thomas in the County of Elgin; and by the same Act power was also given to the said Company by resolution to be adopted at a Special General Meeting of Shareholders, to amalgamate and unite with any other Railway Company.

4. By a certain other Act passed in the eighteenth year of Her Majesty's Reign, and intituled an “Act to incorporate the Amherstburg and St. Thomas Railway Company,” the said last mentioned Company was incorporated and authority was thereby given to it, to construct a Railway from the Town of Amherstburg to the Town of St. Thomas; and power was also thereby conferred on the said last mentioned Company, to amalgamate with any Railway Company east of St. Thomas, terminating



either at the Ningara River or at any port on Lake Ontario, or at either of them.

5. One William Wallace having in the month of June, one thousand eight hundred and fifty-six, subscribed for stock in the said Amhertsburg and St. Thomas Railway Company, to the amount and value of fifty thousand pounds ; and having subsequently duly assigned and transferred to the said Isaac Buchanan, the whole of such stock ; he the said Isaac Buchanan, after the said transfer of the said stock to him, and whilst he was the holder thereof, and sometime in the month of July, one thousand eight hundred and fifty-six duly paid into and deposited in the Bank of Upper Canada the sum of fifty thousand pounds to the credit of the said Amhertsburg and St. Thomas Railway Company, as and by way of deposit of ten per centum on the amount of such five hundred thousand pounds of Stock, pursuant to the provisions of the said Act of Incorporation of the said Amhertsburg and St. Thomas Railway Company.

6. Your Complainant became in the month of November, one thousand eight hundred and fifty seven, the holder of ten Shares of twenty-five pounds each, in the Capital Stock of the said Amhertsburg and St. Thomas Railway Company, upon which there had been paid up, pursuant to the said Act of Incorporation, a deposit of ten per centum, and your Complainant was the holder of the said Shares at the date of the amalgamation between the said Woodstock and Lake Erie Railway and Harbour Company, and the said Amhertsburg and St. Thomas Railway Company hereinafter mentioned.

7. Upon the twenty-first day of November, one thousand eight hundred and fifty-seven. the Defendant, John Mercer, was the President, and the Defendants Thomas G. Ridout, Charles Baby, George Gott, Henry H. Cunningham, John Ferris, John B. Askin, James Cuthbertson, and Paul J. Salter, were the Directors of the said Amhertsburg and St. Thomas Railway Company, duly constituted and elected pursuant to the said Act of Incorporation of the said last mentioned Company.

8. Upon the said twenty-first day of November, one thousand eight hundred and fifty seven, there was standing

to the credit of the said Amherstburg and St. Thomas Railway Company, in the Bank of Upper Canada, amongst other monies, the sum of fifty thousand pounds being the said deposit of ten per cent., which had been as aforesaid paid up by the said Defendant, Isaac Buchanan, on the said five hundred thousand pounds of Stock, so held by him as aforesaid.

9. On the said twenty-first day of November, one thousand eight hundred and fifty-seven, at a meeting of the said Directors of the said Amherstburg and St. Thomas Railway Company, duly convened, and at which were present all of the said Defendants, the then President and Directors of the said last mentioned Company, a resolution was unanimously passed at the instance of the said Defendant, Isaac Buchanan, by which the said Board of Directors determined and resolved that the sum of fifty thousand pounds then standing to the credit, and being part of the funds of the said last mentioned Company as aforesaid, should without any consideration whatever therefor, and by way of bonus or gift merely, be paid to the said Isaac Buchanan, and the President and Secretary of the said Company were thereby authorised and empowered to sign a cheque upon the said Bank of Upper Canada, in favour of the said Isaac Buchanan, for the said sum of fifty thousand pounds.

10 The said President and Secretary of the said Amherstburg and St. Thomas Railway Company did accordingly, in pursuance of the said Resolution of the said Board of Directors, and upon the same day sign and deliver to the said Isaac Buchanan a cheque upon the funds of the Company, on the Bank of Upper Canada, for the said sum of fifty thousand pounds, upon and by means of which the said Isaac Buchanan procured the payment to him by the said Bank, of the said sum of fifty thousand pounds out of the funds of the said Company.

11. And your Complainant charges that the said Defendants, who, as Directors of the said Company, assented to the said resolution, and authorized in manner aforesaid the payment of said money to the said Buchanan, by so doing committed a Breach of Trust and duty as such Directors, and the said Isaac Buchanan (who had full notice

of all the circumstances aforesaid attending the passing of the said resolution, and who well knew that the said Directors were acting wrongfully in passing the said resolution and in causing and authorizing the said fifty thousand pounds to be paid to him,) as your Complainant expressly charges, concurred and participated in such Breach of Trust, and having alone reaped all the fruits thereof, is liable to make good the same.

12. Resolutions having been passed at special meetings of the Shareholders of the said Woodstock and Lake Erie Railway and Harbour Company, and the said Amherstburg and St. Thomas Railway Company, authorizing the amalgamation of the said two Companies, in pursuance of the powers conferred upon them by the said Act of Parliament; such amalgamation was, by indenture, bearing date the eleventh day of February, one thousand eight hundred fifty-eight, and made between the said Woodstock and Lake Erie Railway and Harbour Company of the first part, and the Amherstburg and St. Thomas Railway Company of the second part, carried into effect, and the said two Companies were united and amalgamated thereby into one Company, under the name of the Great South Western Railway Company.

13. By the said indenture the following persons were appointed to be Directors of the said amalgamated Company, that is to say the said Defendants, John Mercer, James G. Wilson, George Macbeth, Paul Saulter, John Ferris, John Smith, Thomas Rae, Joseph Berthelot, Andrew Thompson, Joseph Mercer, John H. Cornell and Charles Baby, and your Complainant, a majority of whom were declared to be a quorum, and the said indenture (to which the Plaintiffs crave leave to refer, as the same is set forth in the Schedule, to the Act of Parliament next herein after mentioned), also contained in pursuance of the hereinbefore mentioned Acts of Parliament, many provisions as to the election of the Directors of the said amalgamated Company.

14. By a certain other Act of Parliament passed in the year one thousand eight hundred and fifty-eight, and intituled "An Act to amend the Charter of the amalgamated Company, heretofore intituled the Great South Western

Railway Company, and to change its name to the 'Niagara and Detroit Rivers Railway Company,'" the said deed of amalgamation [except as in the said Act provided] was confirmed, and the name and style of the said amalgamated Company was changed to the said "Niagara and Detroit Rivers Railway Company."

15. It was further provided in and by the said last mentioned Act, that an Election of Directors should take place at noon, in the Town Hall, in the Town of St. Thomas, in the County of Elgin, on the second Tuesday after the passing of the said Act, and that the Directors then elected should hold office until the next annual Election of Directors thereafter, to be held on the first Tuesday in June, in the following year, as by the said Act to which your Complainant craves leave to refer, will fully appear.

16. Upon the said amalgamation taking place, your Complainant became thereupon, and by the effect thereof, and of the said several Acts of Parliament passed prior thereto, a Shareholder in respect of this said ten Shares in the said Company thereby created, and upon the said last mentioned Act of Parliament of one thousand eight hundred and fifty-eight, being passed, your Complainant became a Shareholder in respect of the same ten shares in the said Company thereby created, the said Defendants, the 'Niagara and Detroit Rivers Railway Company, and your Complainant, still is such Shareholder.

17. Upon the twenty-fourth day of August, one thousand eight hundred and fifty-eight, being the second Tuesday after the passing of the said Act of one thousand eight hundred and fifty-eight, a General Meeting of the Stockholders of the said amalgamated Company was, in accordance with the said last mentioned Act, held at noon of that day, in the Town Hall of St. Thomas, in the said County of Elgin, and the persons then present being Stockholders in the said Company proceeded to the Election of Directors, when a riot and disturbance took place in the said Town Hall, in which the said Stockholders, or persons claiming to be such, were assembled, and after much confusion, noise and violence, the said persons split and divided into two contending parties, each of which assumed to be the majority of Shareholders in the said

Company and each of which proceeded on such assumption to elect Directors, when one of the said contending parties assumed to elect Directors of the said Company certain of the Defendants hereto named, viz: the said Defendants, George Southwick, E. P. Stevens, E.

S. Warren, Duncan Stewart, Charles Baby, Joseph Mercer, Josiah Strong, John Ferris, Henry McKenna, Alexander McClenaghan, Paul Salter, John Mercer, and James Cuthbertson. And the said other party assumed to elect as Directors of the said Company certain others of the said Defendants hereto, viz: the said Defendants, George Macbeth, Colin Munro, the Honourable Michael H. Foley, James G. Wilson, Walker Powell, Andrew Thompson, John H. Cornell, John Smith, D. B. Presby, John McKay, David Christie, Thomas Rae and John G. Kolfage.

18. Each of the said several bodies of Directors claim to be the legally constituted governing body of the said Niagara and Detroit Rivers Railway Company, and insist upon the rights and powers appertaining to such bodies, and to control the affairs of the said Company, and a suit is now depending in this Honourable Court, instituted by the firstly mentioned set of Directors or persons claiming to be Directors in the name of the said last mentioned Company, against the secondly mentioned class or set of persons claiming to be Directors, for the purpose of having the questions of the rights of the said contending parties declared and determined by the decree of this Honourable Court.

19. The Shareholders of the said Company, other than the defendants and your Complainant, are very numerous, and are unknown to your Complainant, and it is not in the power of your Complainant to ascertain the names of such Shareholders so as to make them parties by name to this suit, and by reason of their number (such Shareholders being more than forty in number, it would be very inconvenient so to do.)

20. Owing to great uncertainty and confusion of the affairs of the said Company in consequence of the said contest between the said several bodies respectively claiming to be Boards of Directors, there are no recognized legal guardians of the rights and interests of the said

Company to sue in respect of the said Breach of Trust, for the recovery of the said trust monies so wrongfully appropriated by the said illegal payment to the said Isaac Buchanan.

21. The said Isaac Buchanan, being a person largely engaged in commercial transactions, and being also involved in great pecuniary difficulty, arising out of many Railway speculations, in which he has been engaged, your Complainant is apprehensive that the said sum of fifty thousand pounds will be lost to the said Company, to the great prejudice of the Shareholders thereof, unless the said Buchanan is forthwith ordered to pay the same into this Honourable Court, to abide the order of this Honourable Court.

Your Complainant therefore prays that the payment of the said sum of fifty thousand pounds to the said Defendant, Isaac Buchanan, may be declared by the Decree of this Honourable Court to have been a Breach of Trust on the part of the Directors authorizing the same, and that the said Defendant, Isaac Buchanan, may be ordered and decreed to repay and make good the same to the said Defendants, the Niagara and Detroit Rivers Railway Company, or that the said Directors, who authorized the payment of the same to the said Isaac Buchanan, may be ordered to repay and make good the same in manner aforesaid, and that the said Isaac Buchanan, or the said Directors, may be ordered to pay the said sum of fifty thousand pounds into Court, to the credit of this cause, to abide the order of this Honourable Court.

And that for the purposes aforesaid, all proper direction may be given, and accounts taken, and that your Complainant may have such further and other relief as to your Honour may seem meet.

And your Complainant will ever pray, &c.

## THE ANSWER

Of Isaac Buchanan, one of the defendants to the Bill of complaint of Alexander McClenaghan, the above named Plaintiff, (sworn on 10th, and filed on 11th January, 1859.)

In answer to the said Bill, I, the said Isaac Buchanan, say as follows:—

1. That by the Act in the said Bill of Complaint mentioned to have been passed in the Eighteenth year of Her Majesty's Reign intituled an "Act to incorporate the Amherstburg and St. Thomas Railway Company, it was among other things provided that the defendants, George Southwick, George Macbeth, and John G. Kolfage, together with one John M'Leod, one Edwin Larwill, one Elhan Paul, and one Arthur Rankin, hereinafter called the Provisional Directors, or a majority of them should cause Books of Subscription to be opened in the towns of Amherstburg, Windsor, Chatham, and St. Thomas, for thirty days, and afterwards in such other places as they should from time to time appoint, until the meeting of shareholders thereinafter provided, for receiving of subscriptions of persons willing to become subscribers to the undertaking by the said Act authorized, and for that purpose that it should be their duty, and they were thereby required to give public notice in one or more newspapers published in the said towns, as they or a majority of them might think proper, of the time and places at which such Books would be opened and ready for receiving subscriptions, as aforesaid, and the persons authorized by them to receive such subscriptions, and the bank or banks into which the ten pounds per cent thereon by the said Act required to be paid, should be paid, and the time by the Act limited for such payment, and that every person whose name should be written in such Books as a subscriber to the said undertaking, and who should have paid within ten days after the closing of the said Books into such incorporated Bank, or any of its branches or agencies, ten per centum on the amount of stock so subscribed for to the credit of the said Company, should thereby become a member of the said Company;

and further, that so soon as five hundred thousand pounds of the capital stock of the said Company should have been subscribed, and the ten per centum should be paid thereon, as aforesaid, a general meeting of the shareholders should be held at the town of Amherstburg, or St. Thomas, or some intermediate place, for the purpose of putting the said Act into effect, which meeting should be called by the seven persons hereinbefore named, and called the Provisional Directors, or a majority of them; thirty days public notice thereof being given by advertisement, as in the said Act mentioned; at which said general meeting the shareholders having paid ten per cent on their stock, subscribed as aforesaid, should choose nine Directors of the said Company, and having the qualification in the said Act mentioned. And by the said Act it was further provided that no shareholder should be eligible to be elected a Director unless he should be a bona fide stockholder in the said Company to the amount of two hundred and fifty pounds, and unless he should have paid up all calls on such stock; and by the said act the said Company were empowered to amalgamate with any Railway Company, to the east of St. Thomas, either to the Niagara River, or to any port on Lake Ontario, or to both of them.

2. That in pursuance of the provisions of the said Act, the said Provisional Directors caused four several Books for subscription of stock to be opened, as required by the Act, and in the month of September, in the year of our Lord one thousand eight hundred and fifty-five, caused an advertisement to be published, as required by the Act, whereby they limited a day in the month of December then next for closing the said Subscription Books, and whereby they required the ten per cent deposit required by the said Act, to be paid into the Bank of Upper Canada, its branches or agencies.

3. That afterwards, the said Provisional Directors, by advertisements published in the manner as required by the Act, enlarged, and from time to time extended the period for closing the said Subscription Books, but never did alter, by any public advertisement, the Bank into which the said deposits were to be paid.

4. That one of the Books so opened for the receiving of



subscriptions of stock was delivered to the defendant, John G. Kollage.

5. That the said Arthur Rankin, one of the said Provisional Directors, and being then a Member of the Provincial Parliament, applied to the Legislature in the Session held in the nineteenth and twentieth years of Her Majesty's Reign, for an Act to amend the said Act incorporating the said Amherstburgh and St. Thomas Railway Company, and thereupon an Act was passed intituled "An Act to amend and extend the Charter of the Amherstburgh and St. Thomas Railway Company," and such Act received the Royal Assent on the first day of July, in the year of our Lord one thousand eight hundred and fifty-six.

6. That as I verily believe the object of the said Arthur Rankin, in procuring the passing of the said last mentioned Act, was with the view of obtaining the control of the said Company for his own personal and pecuniary gain, and that with that view he had many interviews with one Samuel Zimmerman, since deceased, a man of large capital, and by occupation a contractor for the construction of Railways and other public works, during the progress of the said last mentioned Act through the Legislature; and that finally on the third day of July, in the year of our Lord one thousand eight hundred and fifty-six, immediately after the passing of the said last mentioned Act, the said Arthur Rankin, in pursuance of verbal arrangements previously made with the said Samuel Zimmerman, entered into an agreement in writing with the said Samuel Zimmerman, whereby it was among other things agreed that the said Arthur Rankin should use his influence to endeavour to procure for the said Samuel Zimmerman, a favourable contract for the building of the Railway of the said Amherstburgh and St. Thomas Railway Company from Amherstburgh to St. Thomas, and that he, the said Arthur Rankin, should participate therein with the said Samuel Zimmerman, with a privilege reserved to the said Samuel Zimmerman, at any time within twelve months, of purchasing the interest of the said Arthur Rankin in such contract at and for the sum of twenty-five thousand pounds, and that the said Arthur Rankin should use his influence as a Provisional Director of the said Amherstburgh and St.

Thomas Railway Company, to so frame the Board of Directors of the said last mentioned Company, as to secure such contract to the said Samuel Zimmerman.

7. That, as I believe it was part of such agreement that with the view of enabling the said Arthur Rankin to accomplish such design he the said Samuel Zimmerman, should subscribe his own name in the books of the said Company for a large amount of stock, and that he should procure a sufficient number of other persons friendly to him, and to his obtaining such contract, and who could be depended on in co-operating with the said Arthur Rankin, in procuring for him such contract, to subscribe for stock in the said Company to amounts respectively sufficient to qualify them to be elected as Directors of the said Company, and that the amount of stock so to be subscribed by the said Samuel Zimmerman and his said friends, should be the sum of two hundred and fifty thousand pounds, or thereabouts, and an amount sufficient to authorize the election of Directors under the said last mentioned Act, and that immediately upon such stock being subscribed, the said Arthur Rankin should procure the Stock Books for subscription of stock in the said Company to be closed by the said Provisional Directors, and should proceed to the election of Directors of the said Company at the earliest possible period consistent with the provisions of the Act in that behalf, while the said Zimmerman and his friends could control the election of such Directors.

8. That the said Arthur Rankin, and as I verily believe in pursuance of such agreement so made with the said Samuel Zimmerman, convened a meeting at St. Thomas, on the fifth day of the said month of July, of five of the said Provisional Directors including himself, the said Arthur Rankin, and that he did not invite John McLeod and John G. Kolfage, the other two of the said Provisional Directors, to attend such meeting, but kept them in ignorance thereof, for the reason that, as I believe, the said Arthur Rankin apprehended that if they should be present he might be unable to accomplish his design, and that at such meeting the said Samuel Zimmerman, by pre-arrangement with the said Arthur Rankin, attended and subscribed his name for a large amount of stock in the said Company,

and procured further subscriptions to be made in the name of six other persons, friends of the said Samuel Zimmerman, as subscribers for stock in the said Company, to an amount in the aggregate which together with the amount so subscribed for by the said Arthur Rankin and his friends, amounted to a sum a little in excess of the said sum of two hundred and fifty thousand pounds in the said Act passed in the session held in the nineteenth and twentieth years of Her Majesty's Reign mentioned.

9. That, thereupon the said Arthur Rankin, without having explained to the said Provisional Directors present at such meeting, the circumstance of his having made such agreement as aforesaid with the said Samuel Zimmerman, procured the said Provisional Directors to order the closing of, and to close, all the said books so as aforesaid opened for the subscription of stock in the said Company.

10. That, several months prior to the said month of July in the year of our Lord one thousand eight hundred and fifty-six, the Directors of the Great Western Railway Company, as well those residing in Canada as others of them residing in England, had observed the importance and advantage it would be to the shareholders in the Great Western Railway Company to subscribe for and acquire the Stocks, as well of the said Amherstburgh and St. Thomas Railway Company as of a certain other Company called the Woodstock and Lake Erie Railway and Harbour Company, for the purpose of constructing, in the interest of the shareholders of the said Great Western Railway Company, the Railways by the said Amherstburgh and St. Thomas Railway Company, and the said Woodstock and Lake Erie Railway Company authorized to be constructed.

11. That as one of the chief of the original promoters of the said Great Western Railway Company, which I was, I entertained, and was known to entertain the view, that it would be for the public interests, and for the interest of the stockholders in both works, that the said Great Western Railway and the Railways authorized to be constructed by the said Amherstburgh and St. Thomas Railway Company, and the said Woodstock and Lake Erie Railway Company should be conducted and owned by one and the same body

of Shareholders, and the subject had for many months prior to the said month of July become a subject of deep interest and consideration, upon the part of the Canadian Directors of the Great Western Railway Company, and of the Directors of the same Company residing in England, and of all persons interested in the success of the latter Company, and had been the subject of frequent conversations between the Directors of the said Great Western Railway Company in this country and myself.

12. That during several months prior to the said month of July a continued correspondence had been carried on between the Directors of the said Great Western Railway Company residing in Canada, and the Directors of the same Company residing in England, upon the last mentioned subject, and such correspondence had so far progressed that in or about the month of June in the said year of our Lord one thousand eight hundred and fifty-six, it appeared by such correspondence from time to time communicated to me by the Vice President of the said Great Western Railway Company, who was the organ of the said Company, through whom such correspondence was carried on, that the English Directors of the said Company coincided in the said opinion, that it would be of the utmost importance and value, that the said Railways authorized to be constructed by the said Amherstburgh and St. Thomas Railway Company, and the said Woodstock and Lake Erie Railway Company, should be constructed by and for the benefit of the Shareholders in the Great Western Railway Company, and they expressed themselves desirous of effecting such object.

13. That the majority of the Directors of the said Great Western Railway Company, both those residing in England and in this country, and all such Directors then in this country, concurred in this view, with the exception only that the managing Director of the said Company was of opinion, that the contemplated benefit, should be offered to the said Shareholders, in the said Great Western Railway Company, through the said Samuel Zimmerman.

14. That after the passing of the said Act, which received the Royal assent on the said first day of July, in the year of our Lord one thousand eight hundred and fifty

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ix, and after the closing of the said Stock Books in the said Amherstburgh and St. Thomas Railway Company, on the said fifth day of July, and after that the design of the said Arthur Rankin in procuring such Books to be closed, namely, to aid in carrying into effect his agreement with the said Zimmerman, had become known or suspected, and shortly before the fifteenth day of the said month of July, at the request of the Vice President and other Directors of the said Great Western Railway Company, and for the benefit of the Shareholders in the said Great Western Railway Company, and because the said Company could not as a Company interfere in the matter, came into communication with John McLeod, one of the said Provisional Directors, and with one Theodore J. Park, who had respectively subscribed their names for Stock in the said Book, so as aforesaid delivered to the said John G. Kolfage, and who, as the said Vice President informed me, professed to have authority from William Wallace to dispose of twenty thousand Shares of Stock in the said Company, alleged to have been subscribed for by the said William Wallace, for the purchase of such twenty thousand Shares so alleged to have been subscribed for by the said William Wallace.

15. That I did thereupon come into communication with the said John McLeod and Theodore J. Park, who then alleged that they were authorised by the said William Wallace to dispose of the said amount of Stock so subscribed for, by and in the the name of the said William Wallace, to such person or persons as would be willing to advance the deposit thereon required by the Act incorporating the said Company, and as they, the said John McLeod and Theodore J. Park might think best for the interest and success of the said Amherstburgh and St. Thomas Railway.

16. I say that I had thereupon interviews with the Vice President of the said Great Western Railway Company and others of the Directors of that Company who were acting in concert for the purpose of endeavoring to procure the said Amherstburgh and St. Thomas Railway to be constructed by the Shareholders of the said Great Western Railway Company; and eventually arranged and agreed between us, that, in the event of my becoming, and for the

purpose of enabling me to become, on behalf of the Shareholders in the Great Western Railway Company, possessed of the said amount of Stock so alleged to have been subscribed by and in the name of the said William Wallace, the Vice President of the said Great Western Railway Company, acting upon the views expressed and concurred in by and between the majority of the Directors of the said Great Western Railway Company, as well those residing in England as in this country, should provide that a sufficient sum of the funds of the said Great Western Railway Company standing to the credit of the said Company in England, and unproductive there, should be transferred to this country and be lodged in the Bank of Upper Canada, being the Bankers of the said Great Western Railway Company, to the credit of the said Great Western Railway Company, upon the understanding that such sum should not be drawn by the said Great Western Railway Company out of the said Bank of Upper Canada, until the object of securing the Stock in the said Amherstburg and St. Thomas Railway Company being taken by the Shareholders of the said Great Western Railway Company should be attained; and that upon the faith of such arrangement, the said Bank of Upper Canada, as the Bankers of the said Great Western Railway Company, should open an account with the Amherstburgh and St. Thomas Railway Company, and should credit that Company with the amount of fifty thousand pounds, being the ten per cent deposit required upon the said Stock so alleged to have been subscribed by the said William Wallace; and should open in like manner an account with me debiting me with the amount of such fifty thousand pounds deposit; and that the said Bank of Upper Canada should in like manner credit the said Amherstburgh and St. Thomas Railway Company with the deposits required to be paid upon Stock subscribed for in the said last mentioned Company, by persons acting in concert with me, and whose deposit should be arranged for with the said Bank of Upper Canada through me, and through the debit account so to be opened in the books of the said Bank of Upper Canada in my name as aforesaid; and thereupon the negotiations between me, on behalf of

the Shareholders in the said Great Western Railway Company, and the said John McLeod and Theodore J. Park, for the purchasing the Stock so alleged to have been subscribed for by the said William Wallace, were on or about the fifteenth day of the said month of July finally concluded, and the same as concluded were contained in the documents following, that is to say, a letter addressed and signed by the said John McLeod and Theodore J. Park, and delivered to me, and in the articles of agreement and indenture hereinafter mentioned.

17. That the said letter so addressed to me was in the figures, or, to the purport and effect following, that is to say:—

“MR. ISAAC BUCHANAN,

“DEAR SIR,—As agents for Mr. Wm. Wallace, who has left entirely in our hands the disposal of his interest in his subscription of five hundred thousand pounds in the stock of the Amherstburgh and St. Thomas Railway Company, we undertake that if you will give him the loan of the ten per cent. deposit necessary to said stock, or pay the amount to any party or parties who may have lent him said amount, we will guarantee to you the repayment of the said advance, which will amount to fifty thousand pounds. It is, however, understood, and we hereby guarantee, that we will transfer the said stock of five hundred thousand pounds to your name, or any other or others you may appoint, thus cancelling his debt of fifty thousand pounds to you. We hereby also guarantee to you that Mr. Wm. Wallace will join us as parties to an agreement this day gone into between you and certain of the original subscribers to the Stock of the Amherstburgh and St. Thomas Railway Company, and be guided entirely by you in the selection of Directors of the said Company.

“We are, dear Sir,

(Signed)

“JOHN McCLEOD,

“THEODORE J. PARK.”

18. That the said agreement referred to in the said letter is in the words and figures, or to the purport and effect following, that is to say :

"It is agreed between Theodore J. Park, John McLeod, and others who may hereafter sign this agreement, representing original Stock taken by such persons in the Amherstburgh and St. Thomas Railway Company, of the one part, and Isaac Buchanan of the other part, in consideration of shares in the Amherstburgh and St. Thomas Railway Company subscribed for, by and in the name of William Wallace, amounting to five hundred thousand pounds being assigned by the said William Wallace to the said Isaac Buchanan, he the said Isaac Buchanan agrees to use the power which the assignment of the said shares shall vest in him to procure a terminus of the said Railway at Amherstburgh as well as at Windsor, and will make an understanding with the parties to whom he shall transfer such shares that they shall carry the said Road to Amherstburgh.

["And the said Theodore Park and John McLeod agree with the said Isaac Buchanan, that in the event of the said Isaac Buchanan, being unable to effect such an arrangement whereby the said Railway shall have a terminus at Amherstburgh, they, the said Theodore Park and John McLeod, will within sixty days after receiving from the said Isaac Buchanan a written notice of his failure to effect such arrangement, procure to be refunded to him all moneys advanced by him on account of such shares, and procure him to be released from all obligation and liability in respect thereof.] And it is further agreed be-

This has been omitted:  
 (Signed) ISAAC BUCHANAN.  
 (Signed) THEODORE J. PARK.  
 (Signed) JOHN McLEOD.  
 So in original.

tween all the parties signing, or who shall sign this agreement, that on the said Isaac Buchanan advancing or lending to subscribers to the stock of the said Company, the means of paying the deposit thereon to entitle them to vote, every co-operation will be afforded by such persons, in satisfying the capitalists whom Mr. Buchanan expects to interest in the immediate construction of the Amherstburgh and St. Thomas Railway, especially that the Directors who shall be appointed at the first election of Directors of the said Company upon the votes given in respect of such stock, shall from time to time, when required, retire from the Board of Directors to make room for other gentlemen in



England or elsewhere, who may be wished by the Shareholders to be procured by Mr. Buchanan, to be Directors of the said Company."

19. That the said agreement was signed by the said Theodore J. Park, John McLeod, William Wallace and myself.

20. That the said Indenture was in the words and figures, and to the purport and effect following, that is to say :—

"This Indenture, made the fifteenth day of July, in the year of our Lord one thousand eight hundred and fifty-six, between William Wallace, Esquire, of Fort Erie in the township of Bertie, of the first part, and Isaac Buchanan of the city of Hamilton, Esquire, of the second part. Whereas the said William Wallace is an original subscriber for shares in the Books of Stock of the Amherstburg and St. Thomas Railway Company, to the amount of five hundred thousand pounds of lawful money of Canada, being twenty thousand shares in the capital Stock of the said Company; and whereas the said Isaac Buchanan has advanced and paid to the said William Wallace the sum of fifty thousand pounds for the purpose of paying to, and to the name and credit of the said Company a sum of ten pounds per centum upon the said Stock, payable under the Act incorporating the said Company, which said advance has been made by the said Isaac Buchanan upon an agreement made with the said William Wallace, that he, the said William Wallace, shall as soon after the first election of Directors of the said Company as possible, assign and transfer in the Books of the said Company the said twenty thousand shares unto and into the name of the said Isaac Buchanan, or unto or into the name or names of such other person or persons as he shall appoint, and that he, the said William Wallace shall, in the meantime, hold the said twenty thousand shares as a Trustee for, and for the use and benefit of the said Isaac Buchanan, his Executors, Administrators and Assigns. Now this Indenture witnesseth, that in consideration of the said sum of fifty thousand pounds so advanced and paid by the said Isaac Buchanan to the said William Wallace, he, the said William Wallace doth hereby for himself, his Executors and Admin-

istrators covenant with the said Isaac Buchanan, his Executors, Administrators and Assigns, that he, the said William Wallace, his Executors or Administrators, shall and will, as soon as possible after the first election of Directors of the said Company, assign and transfer in the books of the said Company the said twenty thousand shares in the capital stock of the said Company, unto and into the name or names of the said Isaac Buchanan, his Executors, Administrators or Assigns, or unto and into the name or names of such other person or persons as he or they shall direct and appoint. And that in the meantime, the said William Wallace, his Executors or Administrators shall and will hold the said twenty thousand shares as a Trustee or Trustees, for, and for the sole use and benefit of the said Isaac Buchanan, his Executors, Administrators, or Assigns, and that the said Isaac Buchanan, his Executors, Administrators or Assigns shall receive to his and their own sole use and benefit, all the scrip certificates to be issued for or in respect of the said twenty thousand shares; and further, that the said William Wallace shall and will, at the first election to be held for electing Directors in the said Company, vote in respect of the said twenty thousand shares for such persons to be Directors of the said Company as the said Isaac Buchanan, his Executors, Administrators or Assigns shall name or direct, or that the said William Wallace, his Executors or Administrators, shall and will execute and deliver a legal proxy to the said Isaac Buchanan or to such other person or person as he, the said Isaac Buchanan, shall name and appoint, empowering the said Isaac Buchanan, or such other person to vote at the said first election of Directors in respect of the said twenty thousand shares in the name of the said William Wallace, his Executors or Administrators. And the said Isaac Buchanan, for himself, his Executor, Administrators and Assigns, covenants with the said William Wallace, his Executors and Administrators, that he, the said Isaac Buchanan, his Executors, Administrators and Assigns, shall and will accept the transfer of the said twenty thousand Shares, and indemnify and save harmless the said William Wallace, his Executors and Administra-

tors, from the payment of all calls to be made in respect of the said twenty thousand Shares."

That the said Indenture was executed by the said William Wallace and me.

21. That the said sum of fifty thousand pounds in the said Indenture mentioned to have been advanced by me to the said William Wallace, was the same sum of fifty thousand pounds procured to be entered in the Books of the Bank of Upper Canada to the credit of the said Amherstburgh and St. Thomas Railway Company, through the medium of the debit of fifty thousand pounds charged to me in an account opened for the purpose with the said Bank of Upper Canada, under and in pursuance of the arrangement in that behalf made with me by the Vice President and others the Directors of the said Great Western Railway Company as herein set forth.

22. That the said agreements herein before set forth were entered into by me at the direction and request of the said Vice-President and Directors of the said Great Western Railway Company, and the said several documents were prepared by the Solicitor of the said Great Western Railway Company, by the like direction.

23. That thereupon on the same fifteenth day of July in the year of our Lord one thousand eight hundred and fifty-six, the Vice-President of the said Great Western Railway Company delivered to the said Bank of Upper Canada Bills drawn by him with the sanction of the Directors of the said Company in this country, upon funds of the said Great Western Railway Company lying unproductive in England, to the amount of forty thousand pounds sterling, for the purpose of having the proceeds thereof lodged with the said Bank of Upper Canada, to the credit of the said Great Western Railway Company, upon the understanding and terms in that behalf hereinbefore mentioned, and for the purpose aforesaid.

24. That upon the said Bills being so delivered to the said Bank, and upon the faith that they would be honoured upon maturity, the said Bank opened two accounts, the one of such accounts being with the said Amherstburg and St. Thomas Railway Company, whereby the said Bank

credited such Company as and for deposits upon shares in the said Company, subscribed by the said William Wallace, under the said agreement made with me and the said Theodore J. Park and John McLeod, the sum of fifty thousand pounds, or thereabouts, and the other of such accounts debiting me with the like sum.

25. That I entered into the said arrangement, whereby I became debited with such amount in the Books of the said Bank, at the request of the said Vice-President and Directors of the said Great Western Railway Company, and solely for the benefit of the said Great Western Railway Company, and their shareholders, and not for any personal object of my own, and I did so upon the faith and belief that the said arrangement would have been carried out by the said Great Western Railway Company and their shareholders, which faith and belief I hesitated not to entertain, as the object desired to be attained was unquestionably for the benefit of the shareholders in the said Company, and because the said Company and their shareholders had on two previous occasions made use of me for similar purposes, the one of such occasions being in the year one thousand eight hundred and fifty-three, when they procured me to subscribe in my own name for stock in the said Great Western Railway Company, to the amount of two hundred and fifty thousand pounds, to prevent such stock falling into the hands of persons desirous of acquiring it for purposes adverse to the interest of the said Company; and the other of such occasions being in the year one thousand eight hundred and fifty-two, when they, in like manner, procured me and other shareholders in the said Great Western Railway Company, to subscribe for the whole of the stock of a certain Railway Company, called the Hamilton and Toronto Railway Company.

26. That the Provisional Directors hereinbefore named, and mentioned in the Act incorporating the said Amherstburgh and St. Thomas Railway Company, assuming to act under the powers conferred upon them by the said Act, appointed the seventh day of August in the year of our Lord one thousand eight hundred and fifty-six, at the hour of twelve o'clock noon, or thereabouts, at the town of Amherstburgh, as the time and place for the first election

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of Directors of the said Company, to take place under the provisions of the said Act, at which time and place a meeting of persons professing to be Shareholders in the said Company, and to meet in pursuance of the said appointment of the said Provisional Directors, was held in the Town Hall in Amherstburgh aforesaid, when William Duff, James Dunbar, John Ridsdale, John G. Kolfage, Peter Menzies, J. Berthelot, and the hereinbefore mentioned Theodore J. Park, John McLeod, and William Wallace, were elected directors of the said Company.

27. That the said Directors were elected by means of the votes of the said William Wallace, upon the said twenty thousand shares of Stock, the deposit of ten pounds per cent. upon which had been so as aforesaid credited to the said Company, in the books of the said Bank of Upper Canada, and by means of the votes in respect of one hundred and fifty shares, subscribed by and in the names of the said other persons elected as Directors, the deposit upon the greater part of which one hundred and fifty shares had been paid by me to the credit of the said Company, in the Books of the said Bank upon the same understanding and agreement, that in so doing, I was acting on behalf of and for the benefit of the said Great Western Railway Company and their Shareholders.

28. That on the same seventh day of August, and at the same time, and at the said town of Amherstburgh, at a tavern called Horseman's Inn, the said Arthur Rankin, George Southwick, George Macbeth and Edwin Larwill, claiming to act as the majority of the said Provisional Directors, held another meeting professed to be held in pursuance of the said appointment made by the said Provisional Directors, for the election of the first Directors of the said Company, which meeting was attended by the said Samuel Zimmerman and his said friends, who had so as aforesaid, subscribed their names for Stock in the Books of the said Company, on the previous fifth day of July, that before proceeding to such election of Directors, the said Arthur Rankin, George Southwick, George Macbeth and Edwin Larwill, claiming to be entitled to act as a majority of the said provisional Directors, did, as I am informed and believe by resolution, declare that the said Stock alleged to

have been subscribed for by the said William Wallace, in the said book delivered to the said John G. Kolfage, was not, and did not form, any part of the subscribed capital of the said Company, and that the same should not be recognized as Stock at the election of Directors then about to take place, and they disavowed the said credit opened at the said Bank of Upper Canada, in respect thereof.

29. That thereupon, the parties present at such meeting, claiming to be Shareholders in the said Company, and meeting as such, proceeded to elect Arthur Rankin, George Macbeth, the said John McLeod, hereinbefore named, George Southwick, Roswell Benedict, Gilbert McMicking, James Zimmerman, Joseph Augustus Woodruff, and John William Dunklee, which said five last mentioned persons were the nominees of the said Samuel Zimmerman, whom upon such election, they declared to be Directors of the said Amherstburgh and St. Thomas Railway Company.

30. That the said George Southwick, though one of the persons named as a Provisional Director in the said Amherstburgh and St. Thomas Railway Company, never had, as I am informed and believe, become a Shareholder in the said Company, and never complied with the terms of the said Act, in respect of becoming a Shareholder in the said Company, and so never in fact qualified himself to be elected a Director of the said Company.

31. That as I am informed and believe, the persons attending the said meeting at which the said last mentioned election of Directors took place, formally renounced the said Stock alleged to have been subscribed by the said William Wallace, and passed a resolution, declaring that the said alleged subscription of Stock by the said William Wallace was invalid, and that the Stock so alleged to have been subscribed by him did not form any part of the subscribed capital Stock of the said Company, and that the said William Wallace was not in fact a Shareholder in the said Company.

32. That as I am informed and believe the said Arthur Rankin, George Southwick, George MacBeth, Roswell Benedict, Gilbert McMicking, James Zimmerman, Joseph Augustus Woodruff and John William Dunklee, shortly after their said election as Directors of the said Company,

at a meeting by them held, as such Directors, elected the said Arthur Rankin as President of their Board, and afterwards at the same, or a subsequent meeting held by them as such Directors, recorded in the books of the Company, and acted on, the resolution of the said meeting, renouncing the said amount of stock alleged to have been subscribed by the said William Wallace, and declaring that the same formed no part of the subscribed capital stock of the said Company.

33. That as I am informed and believe upon the basis of such subscription of Stock by the said William Wallace, being invalid, the said Samuel Zimmerman was induced to subscribe, and did subscribe for the whole balance of the capital stock of the said Company, remaining after allowing for the said amounts of stock already subscribed for by the said Samuel Zimmerman and his friends, on the said fifth day of July, in the year of our Lord one thousand eight hundred and fifty-six, and after allowing for the amount subscribed for by the said respective persons who with the said Arthur Rankin were elected as aforesaid Directors of the said Company, and after allowing for the amount of stock subscribed for by the persons who other than the said William Wallace, were by the said meeting held at the said Town Hall at Amherstburgh elected or purported to be elected Directors of the said Company.

34. That after the said election of Directors held at the said Town Hall, in the said Town of Amherstburgh, and on the same seventh day of August, a meeting of the said persons so there elected as Directors of the said Company, was held, at which meeting the said John McLeod was elected President of the said Board of Directors of the said Company, and at the same meeting, a resolution of the said Board of Directors was passed, whereby it was Resolved "That the Stock Book of the said Company should be reopened, and further that the balance of shares in the capital stock of the said Company, on which the first instalment had not been paid up according to law, except sixty shares which had been subscribed for by the said George McBeth, and which were in the meantime to be retained, as it is uncertain whether they were paid for as the law directs, namely, nineteen thousand

“seven hundred and forty shares be allocated to Mr Isaac Buchanan on his paying the amount of the first instalment, namely, forty-nine thousand three hundred and fifty-five pounds, into the Bank of Upper Canada or any of its agencies to the credit of the Company.”

35. That the said sum of forty-nine thousand three hundred and fifty-five pounds was to have been entered in the Books of the said Bank of Upper Canada to the credit of the said Company, in the same manner, and in pursuance of the same arrangement made by me with the Vice President and other Directors of the said Great Western Railway Company, as the deposit in respect of the said Stock alleged to have been subscribed by the said William Wallace was entered to the credit of the said Company.

36. That I thereupon authorized the said Bank of Upper Canada to credit the said Amherstburgh and St. Thomas Railway Company, in the said account so aforesaid opened in the Books of the said Bank, with the said sum of forty-nine thousand three hundred and fifty-five pounds, ten per cent deposit thereon, and to debit me with the like sum upon the same arrangement upon which the credit in respect of the said Stock alleged to have been subscribed by the said William Wallace, was entered in the Books of the said Bank.

37. That for a long time I was under the impression and belief, that the said sum of forty-nine thousand three hundred and fifty-five pounds, had been accordingly entered in the books of the said Bank to the credit of the said Company, and I did not discover that the same was not so entered until the early part of the year of our Lord one thousand eight hundred and fifty seven, when I ascertained that the same had not been so entered by the said Bank, in consequence of the said Vice President and Directors of the said Great Western Railway Company not having delivered to the said Bank, Bills upon funds of the said Great Western Railway Company, to an amount sufficient in accordance with the said arrangement with the said Bank in that behalf, to have justified the said Bank in making the necessary entries in their said Books, and thereupon the said Directors cancelled the said allocation of the said Stock to me.



38. That about the said month of August, one thousand eight hundred and fifty-six, I also acquired Stock in the said Woodstock and Lake Erie Railway Company, to an amount sufficient to give to me the controlling influence in the said last mentioned Company, so as to enable me to offer a through line from the Niagara River to the River Detroit, to the Shareholders of the said Great Western Railway Company.

39. That shortly after the said respective elections of the said respective Boards, the said John McLeod as the said representative of the Board of which he was President, and the said Samuel Zimmerman, as representative of the Board of which the said Arthur Rankin was President, proceeded to England for the purpose of endeavoring respectively to procure the capital for the actual construction of the road to be subscribed and taken by English capitalists.

40. That the said John McLeod went with letters and credentials to the Shareholders of the said Great Western Railway Company to tender to them the Stock in the said Amhertsburgh and St Thomas Railway Company, controlled by me and those acting with me.

41. That upon, the arrival in England of the Bills so as aforesaid drawn by the Directors of the said Great Western Railway Company in this country, upon the funds of the same Company in England, and delivered as aforesaid, to the said Bank of Upper Canada, certain Directors of the said Great Western Railway Company in England, being a minority of the members of the Board of Directors of the said Company there, taking advantage of the absence of a majority of the said Board, and in breach of faith with their co-Directors, refused to accept the said Bills, and the same were returned protested for non-acceptance and non-payment.

42. That in consequence of such refusal to accept the said Bills, the Chairman of the English Board of Directors of the said Company resigned his seat as a Director of the said Company, and I was duly elected a Director of the said Company in his place, for the especial and express purpose of proceeding to England and appealing to the Shareholders of the said Great Western Railway Company, and tendering to them the said capital Stocks of the said

Amhertsburgh and St. Thomas Railway Company, and of the Woodstock and Lake Erie Railway Company, controlled by me, in pursuance of the arrangement by which I became possessed of the control over such Stock, and for this purpose I was furnished by the Directors of the said Great Western Railway Company with a power of attorney under the seal of the said Company.

43. That I accordingly did proceed to England for the purpose aforesaid.

44. That Alexander McClenaghan, the Plaintiff in this suit, during all the time during which the proceedings hereinafore mentioned were going on, although not a Shareholder, and not claiming or pretending to be a Shareholder in the said Amhertsburgh and St. Thomas Railway Company, was aware of all of such proceedings, and was continually publishing divers articles in a certain newspaper, edited and published by him for the purpose of being, and, which accordingly were directly, forwarded to the Shareholders of the said Great Western Railway Company in England, wherein he alleged and insisted that the said Stock so as aforesaid alleged to have been subscribed by the said William Wallace, was fraudulently so subscribed, and that his said alleged subscription was fraudulent and void, and that the amount, so alleged to have been subscribed by him, formed no part of the Stock of the said Company, and consequently, that the said Board of Directors of which the said John McLeod was President, was not a legal Board, and had in fact no legal existence, and that I had no control, in fact, over, or interest in any part of the Stock of the said Company, and that, on the contrary, the Board over which the said Arthur Rankin presided, was the only legal Board, and that the Stock subscribed for by the said Samuel Zimmerman and his friends, was the only legal Stock upon and by virtue of which the said Company was legally constituted.

45. That the said articles so published by the above Plaintiff were, as I verily believe, published by the direction and at the instance of the said Arthur Rankin, and others acting with him, whose paid agent for that purpose, as I verily believe the said above Plaintiff was, and he received large sums of money therefor.

46. That I found it impossible upon my arrival in England, to overcome the evil effects the said publications had created, and in consequence I failed in procuring the Shareholders of the said Great Western Railway Company to take the said Stocks in the said Amherstsburgh and St. Thomas Railway Company, and the said Woodstock and Lake Erie Railway Company.

47. That the said Samuel Zimmerman likewise, in consequence of my claim to the control of the Stock of the said Company adversely to him, failed in procuring capitalists in England to embark in the said undertaking as controlled by him.

48. That by reason of the said Shareholders having repudiated the acts which I had done solely for their benefit, and by reason that my connections in business, and my partners apprehended that under the circumstances hereinbefore mentioned, I might in law be personally held responsible for the said amount of Stock, in the event of its appearing that the subscription of the said Wallace was good in law, I was compelled to leave the Mercantile firm of which I was a member.

49. That I never did doubt, nor had I any sufficient reason to doubt the validity of the said subscription for Stock by the said William Wallace, until I was in England in the month of September in the said year of our Lord, one thousand eight hundred and fifty-six, when on the eighteenth day of that month, shortly before my return to Canada, the said William Wallace, for the first time, informed me that the subscription had been made by him in pencil in the Books of the said Company in the month of May, one thousand eight hundred and fifty-six, before the passing of the said Act, which received the Royal assent on the first day of July, one thousand eight hundred and fifty-six, and that the pencil subscription had been written over with ink after the closing of the Books of the said Company on the fifth day of July, one thousand eight hundred and fifty-six.

50. That notwithstanding these irregularities and doubts as to the said subscription, which were then for the first time communicated to me, and notwithstanding that I never anticipated or intended assuming any personal responsi-

bility in the matter, I and my partners in business became and were apprehensive that the debit and credit accounts which I had obtained to be opened with the said Bank of Upper Canada in respect of the said Stock, might make me responsible in respect of such Stock.

51. That accordingly I entered into a treaty in England with the said Samuel Zimmerman and one George Wythes, who was acting with the said Samuel Zimmerman, for the transfer to them of all Stock controlled and possessed, or supposed to be possessed by me in the said Amherstburgh and St. Thomas Railway Company, and in the said Woodstock and Lake Erie Railway Company, and thereupon an agreement to that effect was entered into by and between the said Samuel Zimmerman and George Wythes and me, one indispensable term and condition of which agreement and of the projected transfer consequent thereon, was that I should be relieved from all liability in respect of the said debit account opened against me in the Books of the Bank of Upper Canada, and from all demands of the said Amherstburgh and St. Thomas Railway Company and the Shareholders thereof against me in respect of the said Stock.

52. That I and the said Samuel Zimmerman returned to Canada in the month of October, one thousand eight hundred and fifty-six, for the purpose of carrying into effect the said agreement.

53. That various difficulties impeded the completion of such agreement, among others of which difficulties were certain claims of certain Municipalities, against the said Woodstock and Lake Erie Railway Company, whose concurrence in the proposed arrangement was necessary, and whose interests I felt myself bound in honour to protect.

54. That for the protection of my interests, under the circumstances, upon my return from England I applied to the said Amherstburgh and St. Thomas Railway Company, and to the Board thereof, of which the said John McLeod was President, for the passage of a Bye Law to give full effect to the agreement hereinbefore mentioned to have been entered into between me and the said John McLeod, Theodore J. Park, and William Wallace, upon my arranging to have the said credit in favour of the said Company opened

at the said Bank of Upper Canada; and thereupon at a meeting of the said Board, of which the said John McLeod was President, held on the tenth day of the said month of October, the proceedings following were had in the premises, which proceedings were recorded in the minutes of the said Company, in these words, that is to say: "The President having explained the circumstances which have led to the impossibility of making immediate arrangements under which the work could be at once proceeded with, suggested that it is the duty of the Board to pass a By-Law to relieve Mr. Isaac Buchanan, as far as in their power lies, from being injured in his private business and credit, by his requiring, for some time longer, to continue his responsibilities connected with the Company, he having, without any view on his part to personal advantage, furnished the means to its organization, on the single understanding that the direction would be handed over to the capitalists whom he should induce to build the Road, or to his nominees, the following By-Law, to be known as By-Law A., was then proposed by John McLeod, Esquire, President, seconded by Theodore Park, Esq., and carried unanimously: 'Be it enacted that until Mr. Isaac Buchanan arranges with capitalists to undertake the construction of the Railway, under the Charter of the Amherstburgh and St. Thomas Railway Company, and have his nominees for that purpose introduced to this Board, there shall no farther calls be made on the shares, nor any contract entered into, nor any cheque drawn on the Bank of Upper Canada, unless, he approves of the same by his signature, this By-Law being declared to be irrevocable without the consent of the said Isaac Buchanan, as embodying the former understanding, now made a formal agreement, dated the tenth day of October, in the year of our Lord one thousand eight hundred and fifty-six.'"

55. That the said By-law having in due form of law been passed and approved, the President of the said Company was duly authorized and required to set and affix thereto the seal of the said Company.

56. That in the month of November one thousand eight hundred and fifty-six, the said Arthur Rankin and the

other persons acting with him, who, other than the said John McLeod, were elected, or who claimed to have been elected Directors of the said Company, at the said meeting held at Horseman's Inn in the town of Amherstburgh, filed a Bill in this Honourable Court in the name of the Amherstburgh and St. Thomas Railway Company, as plaintiffs against the said William Wallace and the said persons who, other than the said John McLeod, were elected or claimed to have been elected Directors of the said Company at the said meeting, held on the seventh day of August, one thousand eight hundred and fifty-six, at the Town Hall of the said town of Amherstburgh, and against me as Defendants to the said Bill, whereby, after stating certain matters in connection with the alleged subscription of the said William Wallace, for and by reason of which it was urged and insisted that the said alleged subscription of five hundred thousand pounds was fraudulent and void, it was prayed to the effect that it might be declared in accordance with the terms of the said Resolutions of the said meeting of the Shareholders in the interest of the said Rankin, by the decree of the said Court of Chancery in the said cause, that the said alleged subscription of the said William Wallace was fraudulent and void, and that the election of Directors held by virtue of and under such alleged Stock, was void and of none effect, and that in effect the said amount of Stock alleged to have been subscribed for by the said William Wallace was not part of the subscribed capital of the said Amherstburgh and St. Thomas Railway Company, and that the said William Wallace never had been a Shareholder in the said Company.

57. That having ascertained it to be the fact, that the Directors of the said Company elected at the said meeting, held at the Town Hall in the town of Amherstburgh, contemplated entering into a contract for the construction of the Amherstburgh and St. Thomas Railway, and contemplated using for that purpose, the credit procured as aforesaid by me, to be opened with the said Company in the books of the Bank of Upper Canada, and contemplated further effecting an immediate amalgamation with the said Woodstock and Lake Erie Railway Company, which last

mentioned Company was heavily involved in liabilities which they were unable to meet, all which designs and intentions of the said Directors of the Amherstburgh and St. Thomas Railway Company, were in direct violation of the terms upon which I embarked in the said undertaking, and upon which I obtained the said credit account to be opened with the said Company, in the books of the said Bank, and with the provisions of the said By-law, passed for my protection, I, in the month of December, one thousand eight hundred and fifty six, filed my Bill in this honourable Court, against the said Directors and the said Amherstburgh and St. Thomas Railway Company, whereby I prayed to the effect that the said By-law of the said Amherstburgh and St. Thomas Railway Company, passed and adopted on the said tenth day of October, in the year of our Lord one thousand eight hundred and fifty six, might be declared to be a valid and subsisting By-law, and binding upon the said Directors of the said Company, and that the said Directors might be restrained by the order and injunction of this Court, from making calls on the Stock subscribed for by me, and from entering into any contracts or agreements, and from drawing any cheques on the said Bank of Upper Canada, without my assent in writing, and that in case this Court should decide in the suit instituted by the said Arthur Rankin and others, in the name of the said Amherstburgh and St. Thomas Railway Company, for the purpose of having the said subscription for Stock, by the said William Wallace declared to be void, then that I might be paid the said money so procured by me to be entered in the books of the said Bank of Upper Canada, to the credit of the said Company, as the deposit upon the said Stock so subscribed for by the said William Wallace, and for further relief.

58. That I obtained in the said suit an injunction under the seal of this Honorable Court in accordance with the prayer of my said Bill, which injunction was duly served upon the defendants to my said Bill, and never has been set aside or altered.

59. That for the purpose of reconciling the conflicting interests of the several persons claiming to be Shareholders in the said Amherstburgh and St. Thomas Railway Com-

pany and of putting an end to the litigation in respect thereof and of terminating the difficulties arising from there being two bodies claiming to be the said Company, and from there being two Boards both claiming to be Directors of the said Company and from the circumstance of there being two alleged capital Stocks of the said Company, negotiations were carried on between the said two Boards, and between the said Samuel Zimmerman, and the several persons claiming to be Shareholders in the said Company, for the purpose of perfecting and carrying into effect the said agreement between the said Samuel Zimmerman, George Wythes, and me, which negotiations were nearly completed when the same were interrupted and delayed by the death of the said Samuel Zimmerman, which occurred on the twelfth day of March one thousand eight hundred and fifty-seven, and I verily believe that all persons claiming to be Shareholders in the said Company concurred in the terms and conditions of the said agreement for relieving me from all liability in respect of the said Wallace subscription, and of the said account at the said Bank.

60. That subsequently to the death of the said Samuel Zimmerman, negotiations for reconciling the said conflicting interests, and terminating the said difficulties were renewed, to which negotiations the executors of the said Samuel Zimmerman were parties, and many propositions for adjusting the said difficulties were made and considered.

61. That eventually the said Arthur Rankin, and those acting with him, procured one James Morton to consent to assume the position which by the arrangements which were in progress at the time of the death of the said Samuel Zimmerman, it was contemplated that he the said Samuel Zimmerman should have assumed.

62. That the said Arthur Rankin also entered into negotiations with me for the purpose of procuring my co-operation, and the co-operation of those acting with me to enable him the said Arthur Rankin, and those acting with him, to complete the settlement of the conflicting interests and difficulties as the same were by the said Arthur Rankin contemplated to be settled through the intervention of the said James Morton.

63. That for the purpose of enabling him, the said Arthur



Rankin, and those acting with him, to complete the contemplated arrangement with the said James Morton, he the said Arthur Rankin, on the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty seven, procured me to sign an agreement, which was and is in the words and to the purport and effect following, that is to say, "Memorandum of an agreement between Isaac Buchanan, of Hamilton, Esquire, and Arthur Rankin, of Sandwich, Esquire, for himself and others: Mr. Rankin to relieve Mr. Buchanan of his liability to the Bank for the fifty thousand pounds paid on his Stock in the Amherstburgh and St. Thomas Railway Company, and from all liability on his subscription of Stock, the said Stock to be assigned to Mr. Rankin or his nominees, this to be done within two weeks. Mr. Buchanan is to obtain the resignation of seven, or at least of a majority of the present Directors of the Amherstburgh and St. Thomas Railway Company to Mr. Rankin's nominees, to be placed at the Board. Mr. Buchanan to place on the Board of the Woodstock and Lake Erie Railway Company, such persons as may be required, or at least a majority of the Board the subscription of the three hundred thousand pounds Stock in the Woodstock and Lake Erie Railway Company shall be made, and the thirty thousand pounds paid in simultaneously with the transfer of the Stock, in the Amherstburgh and St. Thomas Railway Company. Mr. Buchanan shall be paid his disbursements out of the profits of the Eastern line, from St. Thomas to the Suspension Bridge, at the rate of three hundred pounds sterling per mile, the amount to be paid to him being thirty four thousand five hundred pounds sterling, in addition to the Bond now held from the Woodstock and Lake Erie Railway and Harbour Company, of eighteen thousand five hundred pounds, or thereabouts, the same to be paid in first class Bonds as soon as possible: these payments being at least, five per cent on the monthly estimates, as the road is in progress of construction, and Mr. Buchanan's loan to the Woodstock and Lake Erie Railway and Harbour Company, of eighteen thousand five hundred pounds above mentioned, to be repaid by first class Bonds of the

"amalgamated Company. Mr. Wythes to have the right  
 "to carry out his portion of his present contract if he thinks  
 "proper to do so, the same being one half of the contract,  
 "from the Niagara to the Detroit River, excepting thereout  
 "that portion of the road between St. Thomas and Otterville,  
 "or the point of intersection of the main line with the  
 "Woodstock and Lake Erie Railway, not exceeding thirty-  
 "fivemiles in length. It has afterwards been yielded to Mr.  
 "Rankin by Mr. Buchanan, and is now agreed between  
 "them that, if the amalgamation is complete, and the three  
 "hundred thousand pounds is subscribed for simultan-  
 "eously with the transfer of the Stock, in the Amherstburg  
 "and St. Thomas Railway Company, the payment of the  
 "thirty thousand pounds may be delayed for thirty days  
 "from the date hereof, should this be an object with Mr.  
 "Rankin and his friends, but it is distinctly understood  
 "and agreed that if the said thirty thousand pounds is not  
 "paid within the thirty days, Mr. Buchanan is to have the  
 "option of being replaced in his present position."

64. That the said agreement was, on the said twenty-ninth day of August, in the year of our Lord, one thousand eight hundred and fifty-seven, signed by the said Arthur Rankin and by me.

65. That thereupon the said Arthur Rankin proceeded to complete his arrangements with the said James Morton, for the purpose of putting the said James Morton in the place and stead of the said Samuel Zimmerman, and to terminate thereby all the existing difficulties and litigation.

66. That thereupon the said James Morton addressed to me a letter of the date of the ninth of September, one thousand eight hundred and fifty-seven, in the words and to the effect following, that is to say:—

"DEAR SIR,—If you will agree to extend the time for  
 carrying out your Railway agreement with Mr. Rankin of  
 the 29th ultimo, as expressed in agreement between him  
 and you of that date, and also in your letter to him of same  
 date, until 9th October, so as to enable me to have the  
 privilege of the presence and advice of the Honourable  
 John A. Macdonald, I will see that the conditions bind-

ing on Mr. Rankin will be carried out, should the matter in question meet his, the Attorney General's, approval.

"I am Dear Sir,

"Yours truly,

(Signed)

"JAMES MORTON."

67. That on the same ninth day of September, I addressed and sent to the said James Morton in reply to his said letter to me, a letter in the words and to the purport and effect following, that is to say:—"In consideration of your having agreed to become security for the performance of Mr. Rankin's agreement with me, so expressed in the above letter, I hereby extend the time for carrying out the agreement between him and me referred to, as desired by you."

68. That the said James Morton having consulted upon the matter with the said Honourable John A. Macdonald, he, the said John A. Macdonald, on or about the eighth day of the said month of October, appended to the said agreement a memorandum to the effect following, that is to say:—"That he, the said John A. Macdonald, did not think that the said James Morton could safely have anything to do with the enterprise, unless subscribed shares should be transferred to parties named by Morton, and unless new Boards of Direction should be legally organized, but, that if this should be done, he thought that Mr. Morton might confirm the agreement and apply himself to the organization of the Amalgamated Companies and the construction of the Road.

69. That thereupon, the said Arthur Rankin continued his negotiations with the said James Morton, and finally, in the latter end of the said month of October, came to a definite arrangement upon the subject with the said James Morton, whereby it was among other things provided, that he, the said Arthur Rankin, should transfer to the said James Morton all the Stock subscribed for by him; the said Arthur Rankin, in the said Amherstburgh and St. Thomas Railway Company, and that he should procure, in like manner, transfers to be executed by the executors of the said Samuel Zimmerman deceased, and by the friends of the said Samuel Zimmerman, who had subscribed for

Stock in the said Company, in the manner hereinbefore mentioned, transferring to the said James Morton all the Stock by them respectively subscribed for in the said Company, and that in like manner, I should transfer to the said James Morton all the Stock held by me in the said Amherstburgh and St. Thomas Railway Company, and in the said Woodstock and Lake Erie Railway Company, and that I should procure my nominees, who were subscribers for Stock in the said Amherstburgh and St. Thomas Railway Company, in like manner to transfer to the said James Morton the Stock in the said Company subscribed for by them respectively, so as to center in the said James Morton the whole of the respective amounts of Stock subscribed for by the said respective parties, represented by the said two several Boards of Directors of the said Amherstburgh and St. Thomas Railway Company, with the exception of the Stock held by George McBeth, who was co-operating with the said Morton; and that, thereupon, the said James Morton should transfer to a sufficient number of persons agreed upon, by and between the said Arthur Rankin and James Morton, to constitute a new Board sufficient amounts of Stock in the said Amherstburgh and St. Thomas Railway Company, to qualify them to be Directors of the said Company, and that the said Company so re-organized, should relieve me from all liability in respect of the said debit account opened against me in the said Bank of Upper Canada, and from all liability in respect of the Stock in the said respective Companies, held or claimed to have been held by me, and that in like manner, the Board of the said Woodstock and Lake Erie Railway Company should be remodelled, and that, thereupon, the said Amherstburgh and St. Thomas Railway Company, so re-organized, after I should be so relieved, as aforesaid, should be amalgamated with the said Woodstock and Lake Erie Railway Company.

70. That in accordance with such arrangement, made and entered into between the said Arthur Rankin, and the said James Morton, he, the said Arthur Rankin and the executors of the said Samuel Zimmerman, and the several persons who had subscribed their names for shares in the said Amherstburgh and St. Thomas Railway Company,

and who had been acting in concert with the said Arthur Rankin and the said Samuel Zimmerman, did assign and transfer to the said James Morton the respective amounts of stock subscribed for by them in the books of the said Amherstburgh and St. Thomas Railway Company, and at a meeting specially convened of the shareholders in the said Company on the twenty-first day of November, one thousand eight hundred and fifty-seven, for the purpose of completing the arrangement made between the said Arthur Rankin and James Morton, and for re-organizing the said Company, I assigned and transferred all stock held or claimed to be held by me in the said Amherstburgh and St. Thomas Railway Company to the said James Morton; and the other Directors of the said Amherstburgh and St. Thomas Railway Company who were acting with me, also severally and separately resigned their respective seats at the said Board, and assigned and transferred to the said James Morton the stock subscribed for by them in the said Company, and in the place of the said Directors from time to time on the said twenty-first day of November resigning their seats, and transferring their stock, as aforesaid, the said James Morton from time to time, at the request, instance, and nomination of the said Arthur Rankin, assigned and transferred to the defendants, John Mercer, Charles Baby, George Gott, Henry H. Cunningham, John Ferris, John B. Askin, James Cuthbertson, and Paul J. Salter, respectively sufficient stock in the said Amherstburgh and St. Thomas Railway Company, to qualify them to be elected Directors, and they were, on the same twenty-first day of November, elected accordingly Directors of the said Company, and thereupon, on the same day, the defendant, John Mercer, was elected President of the said Company, and the said respective persons last named were so made shareholders in the said Company, and Directors thereof, for the express purpose of carrying out the said arrangement made between the said Arthur Rankin and James Morton, and of relieving me from all liability in respect of the said stock held or claimed to have been held by me, and from all liability in respect of the said debit account opened against me in the said Bank of Upper Canada, and for the purpose of effecting an amalgamation with the said Woodstock and Lake

Erie Railway Company, which could not be effected unless upon the basis of my being wholly relieved from such liability.

71. That on or about the twenty-fourth day of the said month of November, I assigned and transferred in like manner and for the like purpose, to the said James Morton all stock held by me in the said Woodstock and Lake Erie Railway Company, the Board of which last mentioned Company was also remodelled at the instance of and to meet the views of the said Arthur Rankin and James Morton, and I ceased to be a shareholder in the said respective Companies.

72. That as I am informed and believe the whole course of the proceedings of the said Amherstburgh and St. Thomas Railway Company upon the said twenty-first day of November, had previously been arranged and devised by and between the said Arthur Rankin and James Morton, under the advice of counsel, and the object of the said proceedings was by removal of the conflicting interests and causes for the then pending suits in this Honorable Court, to reorganize the said Amherstburgh and St. Thomas Railway Company, and to enable it when so reorganized by settlement with me as aforesaid, to proceed with the construction of the through line authorized to be constructed by the said Amherstburgh and St. Thomas Railway, and and the said Woodstock and Lake Erie Railway Companies, when those Companies should be amalgamated.

73. That at the time of the said John Mercer as President of the said Amherstburgh and St. Thomas Railway Company signing the cheque, whereby my liability at the said Bank of Upper Canada in respect of the said Stock was wiped out and cancelled, the whole number of actual bona fide Shareholders in the said Amherstburgh and St. Thomas Railway Company did not exceed, as I verily believe, the number of eleven, and they all concurred and still do concur in the said cheque being given, and approved of the same having been given, and there is not, as I verily believe, one person who being a shareholder in the said Amherstburgh and St. Thomas Railway Company, disavows such proceedings, or who alleges that he has or pre-

tends to have any claim against me for or by reason of my having received such cheque.

74. That the said cheque was handed to the said James Morton or to his agent for the purpose of effecting in what the said Arthur Rankin and the said James Morton and others the Shareholders introduced into the said Company by the said Arthur Rankin and James Morton, as aforesaid, were advised to be the most proper and effectual manner of carrying into effect the agreement by which I was to be relieved from my said liability, and to cease to be a stockholder, and of thus procuring the amalgamation of the said Companies, which, until I should have been so relieved could not have been effected.

75. That upon the said cheque being given to me, the said respective Companies, with full knowledge of and acquiescence in the said cheque having been given, as aforesaid, and of the said object for which the same was given, proceeded to arrange the terms of the proposed amalgamation, and on the same twenty-first day of November, as I am informed and believe, a draft of a deed of amalgamation, which had been prepared at the instance of the said Arthur Rankin and James Morton, was under the consideration of the said Board, of which the said John Mercer was President.

76. That the said Bank of Upper Canada would not cancel in their books my said liability upon view alone of the said cheque, in consequence of the said Arthur Rankin and others, the persons claiming to be Directors of the said Amherstburgh and St. Thomas Railway Company, by virtue of the said election held at Horseman's Inn, in the town of Amherstburgh, having, at or about the time of their causing to be filed the Bill in this Court hereinbefore mentioned, served a notice upon the said Bank, requiring the said Bank not to pay out any portion of the monies in their books to the credit of the said Amherstburgh and St. Thomas Railway Company, without the written order of the said Arthur Rankin as president of the said Company.

77. That thereupon the said Arthur Rankin addressed a letter to the said Bank, authorizing them to honour the said cheque so signed by the said John Mercer, and he

at the same time addressed a letter to his solicitor, who is the solicitor of the above Plaintiff in this suit, authorizing on the part of the Amherstburgh and St. Thomas Railway Company an abandonment of all further proceedings in this Honorable Court against me, and thereby, and not otherwise, the then pending litigation in this Court, in respect of the said matters, was terminated.

78. That I never would have consented to part with the control which I had or believed myself to have had over the said Amherstburgh and St. Thomas Railway Company, or to any amalgamation with the said Woodstock and Lake Erie Railway Company, which latter Company was heavily involved, except upon such terms as should effectually and completely have relieved me from said liability at the said Bank of Upper Canada, occasioned by the opening of the said debit and credit accounts aforesaid, and I say that I believe no effectual mode of extricating the said Amherstburgh and St. Thomas Railway Company from the difficulties occasioned by the said conflicting interests, could have been devised otherwise than by my being relieved from all my said responsibility, and under the circumstances herein appearing I deny that the said cheque, whereby my said responsibility was cancelled, was given without consideration, as in the plaintiff's Bill alleged, and I submit that the consideration herein appearing, proceeding from me, whereby alone the said Companies were enabled to amalgamate, was a good and valid consideration for cancelling my said responsibility in the manner aforesaid, and I submit that under the circumstances herein appearing, attending my embarking in the enterprise, and having regard to the terms and conditions upon which the said accounts with the said Bank were opened; after I failed in obtaining the object for which I embarked in the said undertaking, the shareholders in the said Company had not any right to the use or benefit of the said credit so as aforesaid obtained by me to be entered in the books of the said Bank nor have any of such Shareholders any right or equity to dispute the cancellation of my said responsibility, and I say that such my relief from responsibility by the cancellation of the account in the said Bank,



was absolutely essential to the interests of the said Company, and to advancing the progress of the Railway of the said Company, and I submit that under the circumstances herein appearing, it was quite competent for the said Company either to cancel or resume for the benefit of the said Company the said amount of five hundred thousand pounds of stock, and to make new dispositions thereof, and that in fact, so far as I was concerned, the said Company have effectually cancelled or resumed the said amount of Stock.

79. And I deny that the resolution in the said Bill mentioned to have been passed in the said twenty-first day of November, or any resolution was then passed at my instance, or that I was aware of the contents of any resolution then passed by the Directors of the said Amherstburgh and St. Thomas Railway Company, introduced into the said Company by the said Morton, or that I in any manner took part in the proceedings of the said twenty-first day of November, further than in assisting in placing and centering in the said Morton the entire control of the said Company, and thereby enabling him wholly to control the affairs of the said Company, in pursuance of the agreement made between him and all the former shareholders in the said Company. And I deny that the said cheque was given to me under any other circumstances or otherwise than as herein appears; and I further say that it was necessary that the said cheque should be drawn in my name, owing to the existence of the said By-Law A., which had been served upon the said Bank.

80. That in the month of February, one thousand eight hundred and fifty eight, upon the faith of my responsibility having been removed by the delivery of the said cheque, and the consequent entries thereon made in the Books of the said Bank and with the full knowledge of the fact of the said cheque having been delivered to me for the purpose of cancelling my said liability, and for the express purpose of enabling the said Companies to amalgamate, they, the said respective Companies, with the approbation of the shareholders thereof, did by deed executed under the seals of the said respective Companies, bearing date the eleventh day of February, in the year of our Lord one thousand eight hundred and fifty-eight, become amalgamated under

the name and style of the Great South Western Railway Company.

81. That during the progress of the said negotiations between the said Samuel Zimmerman, in his lifetime, with the respective rival Boards of the said Amherstburgh and St. Thomas Railway Company, and with the Board of the said Woodstock and Lake Erie Railway Company, and with the respective Shareholders in the said Companies, to procure their concurrence in the said agreement made between me and the said Samuel Zimmerman and George Wythes, and during the progress of the negotiations between the said Arthur Rankin and James Morton, and between them and the Shareholders in the said Companies, to procure their concurrence in the arrangements made between the said Arthur Rankin and James Morton, whereby it was provided that I should be effectually relieved from all such responsibilities as aforesaid, the said above Plaintiff, although not a Shareholder in either of the said Companies, was a party to, and privy to, and was taking part in all such negotiations and arrangements, in the character, as I verily believe, of hired agent of the said Arthur Rankin, and he, from time to time, published in the paper edited and published by him, the progress of the said negotiations and arrangements.

82. That I verily believe he was present at the meeting held on the said twenty first day of November, one thousand eight hundred and fifty seven, when the said cheque was signed by the President of the said Company, and that he was there as the agent of the said Arthur Rankin, and was aiding, assisting, and advising in the giving of the said cheque.

83. That after the said cheque had been given, he published in the said paper edited by him, on the twenty sixth day of the said month of November, an article in the words following, that is to say :

“Settlement of the difficulties of the Woodstock and Lake Erie and the St. Thomas and Amherstburgh Railway Companies :

“The idea of a fusion of interests may be said to have originated with us, and when that idea was proposed to Mr. Buchanan, on the one part, and to Mr. Rankin on the other, it met with the most hearty approval of those gentlemen. The conditions imposed by the capitalists into whose hands the road had

"fallen, were that the Stock of both Companies should be transferred direct to them. This was done so far as the western road was concerned on Saturday last, when through that party a new Board was constituted, consisting of John Mercer &c., &c.

"The members of the Eastern Board were also in London at the time, for the purpose of undergoing a similar change, but owing to the absence of the Receiver General, an adjournment took place until the following Monday, in Toronto, On Monday the members of both Boards met as appointed, and on Tuesday evening, all the preliminary arrangements had been so far perfected, that the deed of amalgamation was unanimously approved. The members of both Boards will meet at Toronto on the fifteenth proximo, when the amalgamation will be ratified by the Shareholders.

84. That by a clause in the said deed of amalgamation, it was agreed that for and during the current year, from the time of the said amalgamation agreement taking effect, until the second Tuesday in January one thousand eight hundred and fifty nine, the defendants hereto, John Mercer, James G. Wilson, George McBeth, Paul J. Salter, John Ferris, John Smith, Thomas Rae, Joseph Berthelot, Andrew Thompson, John H. Cornell, and Charles Baby, and the above complainant, and one Joseph Mercer, should be Directors of the said amalgamated Companies, and that after the said agreement should be appointed to take effect, which was by the said agreement provided to take place on the eighteenth day of March last, the qualification of a Director in the said amalgamated Companies, should be stock held in the said amalgamated Companies by such Directors to the amount of two hundred and fifty pounds at the least, on which ten per cent at the least shall have been paid up, and that a quorum for the transaction of business should consist of such number of the Directors as should be fixed by a resolution or By Law of the Board of the amalgamated Companies, and that until the number for a quorum should be so fixed, the quorum should be composed of a majority of the Directors.

85. That in the Session of the Parliament of the Province, held in the twenty-second year of Her Majesty's reign, the parties to the said deed of amalgamation, which said deed of amalgamation had been executed upon the faith and with the knowledge that I had been relieved from all liability as aforesaid, by means of the said cheque, applied to the Legislature, and procured an Act to be passed confirming the said

amalgamation, so upon the faith of my being so, as, aforesaid relieved from all responsibility, as aforesaid, effected and making some alterations in the terms and provisions of the said deed of amalgamation.

86. That the said Act of Parliament was procured to be passed by my concurrence and upon the faith that I had been in the manner hereiu aforesaid relieved from all responsibility in respect of the Stock in the said respective Companies, formerly held or supposed to have been held by me, and in respect of the said debit and credit account opened in the said Bank of Upper Canada, for deposit upon the Stock in the said Amherstburgh and St. Thomas Railway Company. And I further say, that in the said Act, I was expressly relieved from all liability in respect of the said nineteen thousand seven hundred and forty shares hereinbefore mentioned to have been allotted to me. And I say that if it had been alleged or pretended by any person at the time of the passing of the said Act, or if it had been supposed that any liability on my part, in respect of the said Wallace Stock, or in respect of the said Debit account of the Bank of Upper Canada still remained, I verily believe, that a clause would have been inserted in the said Act, which would have expressly relieved me from all liability, and I say distinctly, that during the progress of the said Act through the Legislature, all the parties to the obtaining of the same acted upon the faith and basis, that all my liabilities and responsibilities had been removed and extinguished by virtue of the delivery to me of the said cheque, and the consequent entries thereon made in the books of the said Bank, and that the object of all parties interested in the said amalgamated Company, in applying for such Act was, to remove all doubt as to the Stock, and other difficulties connected with the said amalgamated Companies.

87. That by the said Act of Parliament it was provided that an election of Directors of the said amalgamated Company should take place at the Town Hall, in the Town of St. Thomas, in the County of Elgin, on the second Tuesday after the passing of the said Act, and that the Directors then elected should hold office until the next annual election of Directors, thereafter to be held on the first Tuesday in June, in each year, at the time and place aforesaid, or at such other place as the Directors should by By-Law, from time to time direct and appoint, anything in the said deed of amalgamation to the contrary notwithstanding, and further, that if any Director should cease to be qualified during his year of office, the other quali-

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fied Directors, or a majority of the quorum of the Board, should at a meeting duly convened, nominate some qualified stockholder to be a Director in his place at a meeting called for, that purpose, and further, that the amalgamated Company might require, should they deem it desirable, all parties subscribing for stock in the said Company, to pay a deposit of not more than ten per cent. thereon; that the amount of such deposit should be decided by the Board of Directors, and that future calls for instalments should at no one time exceed five per cent., nor should more than one call be made within thirty days; and further, that the clauses of the Railway consolidation Act, as well as the several Acts amending the same, with respect to "General Meetings," and the first, second and third sections of clauses intitled "Shares and their Transfer," and of "Shareholders", should be incorporated with the said Act.

88. That on the twenty-first day of August, eighteen hundred and fifty eight, as I am informed and believe a minority of the parties who were then Directors of the said Company in pursuance of the terms of the said deed of amalgamation, and of the said Act passed in the twenty second year of her Majesty's reign, and qualified to act as such Directors; (at the instance and suggestion, as I believe, of the said Arthur Rankin, and of the above plaintiff,) after the passing of the said last mentioned Act, secretly and fraudulently met together, and affected to pass a resolution which they termed a By-law, but to which the seal of the said Company was not affixed, and could not legally have been affixed, whereby they pretended to open Stock Books for subscription of Stock in the said Company, the actual Stock Books of the Company having previously been closed by the unanimous vote of the Board of Directors, and whereby they pretended to enact and declare that persons subscribing for Stock in such books should become Shareholders in the Niagara and Detroit Rivers Railway Company, upon payment of ten cents, as a deposit upon every one hundred dollars of Stock.

89. That thereupon, certain persons acting in concert with the said Arthur Rankin and the said plaintiff, did, as I am informed and believe, affect and pretend to become Shareholders in the said Company by subscribing among them for Stock to the amount of eight millions of dollars, whereupon they pretended to pay as a deposit to a person colluding with them and pretending to be a Treasurer of the said Company, whereas he was not such Treasurer, the sum of eight thousand dollars,

and although as I believe, no bona fide or actual payment even of such sum was in fact made.

90. That the persons so pretending to subscribe for the said eight millions of dollars, on the twenty fourth day of the said month of August, affected to elect by virtue of the votes upon such pretended Stock, the Defendants, George Southwick, E. P. Stevens, E.

S. Warren, Duncan Stewart, Charles Baby, Joseph Mercer, Josiah Strong, John Ferris, Henry McKenna, Paul Salter, John Mercer and James Cuthbertson, and the above plaintiff, Directors of the said Company.

91. That the object of the said parties in such proceedings of the twenty first and twenty fourth days of August, was, as I believe fraudulently to endeavour to deprive the real bona fide Shareholders in the said Company of their right to control the proceedings of the said Company, and wrongfully to give to the said Arthur Rankin a contract for the construction of the said Niagara and Detroit Rivers Railway.

92. That the said Niagara and Detroit Rivers Railway Company and the bona fide Shareholders therein insist that the proceedings of the said parties, in affecting to open such Stock Books and to subscribe therein for such eight millions of dollars, and to elect Directors thereunder, were and are absolutely void and of non-effect, and were contrived in fraud of the said Act passed in the twenty second year of her Majesty's reign, and in fraud of the actual bona fide Shareholders in the said Company.

93. That the illegal and fraudulent assertion of the Defendants, George Southwick, E. P. Stevens, E. S. Warren, Duncan Stewart, Charles Baby, Joseph Mercer, Josiah Strong, John Ferris, Henry McKenna, Paul Slater, John Mercer, James Cuthbertson, and the above plaintiff, Alexander McLenaghan, to be Directors of the said Company, constitutes as I am informed and believe, the sole obstacle to the bona fide Shareholders in the said Company, regulating and conducting the affairs of the said Company, for the interest and benefit of the said Company and the Shareholders therein.

94. That the said last mentioned persons, including the said Plaintiff, usurping the name and style of the Niagara and Detroit Rivers Railway Company, on the fifteenth day of October in the year of our Lord one thousand eight hundred and fifty eight, caused a Bill to be filed in this Honourable Court, in the name of the said Company, as Plaintiffs against the parties claiming to be Directors of the said Company, by virtue of an election held under the said Act passed in the twenty-second year of Her

Majesty's reign, at a Meeting of the bona fide shareholders in the said Company held for that purpose, whereby it is prayed to the effect that it may be declared by the decree of this Honourable Court, that the said persons so pretended to be elected as Directors by means of the votes on the said eight millions of dollars, are the true Directors of the said Company, for the reason among other reasons alleged in the said Bill, that the five hundred thousand pounds, alleged to have been subscribed for by the said William Wallace was fraudulent and void, and that the fifty thousand pounds deposit thereon entered in the Books of the said Bank of Upper Canada, had been cancelled by the said Amherstburgh and St. Thomas Railway Company, to whose credit the same had been entered in the said Bank.

95. That if the said Five hundred thousand pounds so subscribed for by the said William Wallace, is now part of the subscribed Capital Stock in the said Company, then there was not on the said twenty-first day of August a sum of eight millions of dollars of the Capital Stock in the said Niagara and Detroit Rivers Railway Company, remaining unsubscribed for, or which could have been subscribed for.

96. That the said above Plaintiff was not, at any time prior to the cancellation in the Books of the Bank of Upper Canada, of the debit against me of fifty thousand three hundred pounds, a shareholder in the said Amherstburgh and St. Thomas Railway Company, and as I am informed and believe, the said Plaintiff was not at any time a bona fide shareholder in the said Amherstburgh and St. Thomas Railway Company, and I believe that it will appear that the assertion of the above Plaintiff, that he was, in the month of November, eighteen hundred and fifty seven, or at any time a shareholder in the said Amherstburgh and St. Thomas Railway Company, is untrue.

97. That I believe that it will appear that although the said Alexander McClenaghan is named in the said deed of amalgamation, yet that he was not at the time of the said amalgamation a bona fide shareholder in either of the said Companies so amalgamated, but that his name was procured to be inserted in the said deed by the said Arthur Rankin for private and personal purposes, and that there is a secret understanding and agreement existing between the said Arthur Rankin and the said above Plaintiff, whereby the said Plaintiff is to participate with the said Arthur Rankin, in the event of his succeeding, as I believe the object of the Plaintiff's Bill

to be, to extort from the parties bona fide interested as shareholders in the said Niagara and Detroit Rivers Railway Company, a large sum of money, which the said Arthur Rankin demands as the price of his abstaining from wrongfully disturbing and molesting the said bona fide shareholders in the management of the said Company.

98. That I verily believe that the reason of the said Arthur Rankin in attempting to impede the action and proceedings of the said Company, in procuring to be filed, as I believe him to have procured to be filed, the said Bill at the suit of the Niagara and Detroit Rivers Railway Company as plaintiffs, and the said Bill of the above plaintiff, is, that he alleges that the said James Morton has not kept some agreement which the said Rankin alleges that he the said James Morton made with him, at the time of the said Rankin procuring the transfer to the said James Morton of the said amount of Stock, in the said Amherstburg and St. Thomas Railway Company, so as aforesaid transferred to the said James Morton, as a consideration for the said Rankin procuring such Stocks to be so transferred and the control of the said Amherstburg and St. Thomas Railway Company to be centered in the said Morton.

99. That I verily believe that it will appear, on the evidence in this suit being taken, that the above plaintiff is not, and I submit and insist that he is not a legal or bona fide shareholder in the said Niagara and Detroit Rivers Railway Company.

100. I submit that under the circumstances herein appearing, the said plaintiff is not qualified or competent to file the Bill filed by him in this Honourable Court, upon behalf of any of the Shareholders in the said Niagara and Detroit Rivers Railway Company.

101. That the action of the said Amherstburg and St. Thomas Railway Company, on the said twenty-first day of November eighteen hundred and fifty-seven, whereby my said debit account in the said Bank of Upper Canada was wiped out, and cancelled, was the action of all the bona fide Shareholders in the said Company, and was founded on good and valid consideration, as being the basis of the subsequent amalgamation with the said Woodstock and Lake Erie Railway Company, and that under the circumstances herein appearing, neither the said plaintiff or any other person claiming to be a shareholder in the Niagara and Detroit Rivers Railway Company, hath any equity to file a Bill in this Honourable Court against me in respect of the matters in the said Bill alleged.

102. That from the allegations contained in the said Bill, and



the matters in this my answer set forth, it appears, that the plaintiff, and others acting with him, still dispute or claim a right to dispute the validity of the subscription of the said William Wallace, and contend, and claim the right to contend, that the said amount so alleged to have been subscribed by the said William Wallace, never was part of the subscribed capital stock of the said Amherstburgh and St. Thomas Railway Company, and is not now part of the subscribed capital stock of the said Niagara and Detroit Rivers Railway Company, and that the decision of this honourable Court, upon the validity of such subscription is a necessary preliminary to the granting any part of the relief by the said plaintiff's Bill prayed, and the decision of this honourable Court, as to who were bona fide Shareholders in the said Amherstburgh and St. Thomas Railway Company, and who as such are bona fide Shareholders in the said Niagara and Detroit Rivers Railway Company, is also essential before the relief prayed for by the said plaintiff's Bill could properly be granted, and I submit that for those purposes, the plaintiff's Bill is not properly framed but that all persons claiming to have been Shareholders in the said Amherstburgh and St. Thomas Railway Company, including the said James Morton, and the said Arthur Rankin, should under the circumstances herein appearing, be made, parties defendants to the said plaintiff's Bill, if it should appear that the said plaintiff has any interest, qualifying him to file any Bill, as plaintiff, in respect of the matters in his said Bill alleged.

103. I submit that if the action of the said Amherstburgh and St. Thomas Railway Company in procuring, as herein appears, the cancellation of my said debit account in the said Bank of Upper Canada, can be now disturbed at all, and I submit that it cannot now be disturbed, the Shareholders in the said Niagara and Detroit Rivers Railway Company, which Company was constituted upon the basis of my said debit having been cancelled, are competent to determine all matters connected with the cancellation of my said debit account in the Books of the said Bank of Upper Canada, and to determine what is most for the interest of the Company, in respect of the distribution and appropriation of the Capital stock of the said Company, and that the alleged confusion and uncertainty of the affairs of the said Company in consequence of the contest in the said Bill alleged to exist between the several bodies therein alleged to claim to be the said Board of Directors of the said Company, affords no sufficient grounds for divesting the *bona*

*vide* Shareholders in the said Company of their jurisdiction and right to regulate the appropriation of the Capital stock of the said Company, in such manner as may most conduce to the welfare of the said Company.

104. That I am informed and believe, that in a contract which has been entered into by the said Niagara and Detroit Rivers Railway Company, with the said James Morton, for the construction of the Railway of the said Company, he the said James Morton hath consented and agreed to accept and retain, in part payment of his said contract, the said sum of five hundred thousand pounds of paid up Stock in the said Company, which I believe is the same stock so transferred to me by me, or stock substituted therefor, and that thereby the said Company have provided that they shall have, and will have, the full benefit of the whole of the said sum of five hundred thousand pounds, and that the said Company has obtained due security for the performance of the said contract.

105. That I verily believe one of the objects of the plaintiff in filing his said Bill, is, in collusion with the said Arthur Rankin, to procure the control of the said Company for the persons claiming to be Directors of the said Company, under the votes given in respect of the said eight millions of dollars, who, as I am informed and believe, have already given or agreed in the event of their succeeding through the medium of the above plaintiff's Bill, and of the said Bill filed in the name of the said Niagara and Detroit Rivers Railway Company, as plaintiffs in acquiring control of the said Company, to give to the said Arthur Rankin a contract for the construction of the Railway of the said Company, to the great damage, wrong and prejudice of the *bona fide* shareholders in the said Company, and I further say that up to the present time, the said plaintiff hath persisted in treating the said Wallace stock as illegal stock, upon which no sum by way of deposit was ever paid.

106. That inasmuch as under the circumstances herein appearing I cannot now be restored to the position which I held, or was deemed or supposed to have held, in the said Amherstburgh and St. Thomas Railway Company, and to the control of the said Company in the event of the cancellation of my said debit account being undone, the plaintiff's Bill should for that reason be dismissed out of this Honourable Court, with costs.

107. I deny it to be true that the *bona fide* shareholders in the said Niagara and Detroit Rivers Railway Company are very numerous, and I do not believe they exceed twenty in number, and I submit that if it should appear to this Honour-

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able Court that the said plaintiff hath sufficient interest to entitle him to file his Bill in this Honourable Court, all bona fide shareholders in the said Company should be made parties hereto before the relief prayed by the said plaintiff's Bill, or any relief in the premises could be granted, and that by the decree to be made, if any decree should be made in this suit, other than a decree dismissing the said plaintiff's Bill, I should be secured in exemption from all responsibility in respect of the said deposit procured by me to be entered in the Books of the Bank of Upper Canada, to the credit of the said Amherstburgh and St. Thomas Railway Company, such exemption from responsibility having formed the express and essential condition to my consenting to surrender the control which I possessed, or was supposed to possess, in the said Company.

108. And I submit that under the circumstances herein appearing, all the persons who with the plaintiff claim to be Directors of the said Niagara and Detroit Rivers Railway Company, by virtue of the said alleged election, held under the said alleged subscription of eight millions of dollars, ought to be made parties as plaintiffs, and not as defendants, on the record in this suit.

109. And I submit that under the circumstances herein appearing, and also inasmuch as the said Arthur Rankin claims, as I am informed and believe he does claim, an interest in the stock in the said Company, which is held by the said Morton by virtue of some agreement in that behalf between them, he, the said Arthur Rankin, and the said James Morton are necessary parties to this suit, and also that they should be decreed to indemnify me against the said plaintiff's demand, in case this Honourable Court should be of opinion that any decree can properly be made against me in respect of the fifty thousand pounds in the plaintiff's Bill mentioned.

110. And I submit that under the circumstances herein appearing the said Niagara and Detroit Rivers Railway Company, inasmuch as the said Company has been constituted upon the basis of my responsibility in respect of the said deposit account having been effectually cancelled, should indemnify me against the Plaintiff's demand, in case this Honourable Court should be of opinion that any decree can properly be made against me in respect of the said fifty thousand pounds in the Plaintiff's Bill mentioned.

111. And I submit that if it shall appear that the said Plaintiff is a Shareholder in the said Niagara and Detroit River Railway Company, that he as such Shareholder in a Company

constituted upon the basis of my having been effectually relieved from all such responsibility, is a party who should contribute to indemnify me against all claims in respect of the said fifty thousand pounds, and that for this reason it is not competent for the Plaintiff to file his Bill in this Honourable Court against me, praying the relief thereby prayed against me.

112. And I further submit and insist that inasmuch as all of the persons claiming to be Stockholders in the Amherstburgh and St. Thomas Railway Company, on the twenty-first day of November, one thousand eight hundred and fifty-seven, concurred and acquiesced in the said arrangement, by which the debit account in the said Bank of Upper Canada, was discharged by the said cheque, and still do concur therein, the said Plaintiff cannot sue in their behalf as well as upon his own, and that this suit is therefor improperly constituted, and the said Stockholders should be expressly named and made parties to this suit.

113. And, I further submit that inasmuch as such Shareholders claim also to be Shareholders in the Niagara and Détroit Rivers Railway Company, the said Plaintiff cannot represent them in this suit.

114. And I also submit, that if it shall appear that under any circumstances the said plaintiff was a Shareholder in the said Amherstburgh and St. Thomas Railway Company, as alleged in the said Bill, then that the said plaintiff, having concurred and acquiesced in the arrangement aforesaid, such acquiescence is an effectual bar to this suit; and further, that the said plaintiff having full notice and knowledge of all the said transactions of the said twenty first day of November, eighteen hundred and fifty seven, his delay and laches in filing the said Bill, is a further bar to any relief sought thereby.

115. And I further submit, that none of the Shareholders of the Niagara and Detroit Rivers Railway Company, as such, have any such equity as the said plaintiff alleges in his said Bill, and I also claim the benefit of this objection the same as if I had formally demurred to the said Bill.

116. And I further say, that I am a large creditor of the said Niagara and Detroit Rivers Railway Company, under and by virtue of certain Bonds of the Woodstock and Lake Erie Railway Company, and that except the municipalities who made advances to the said last mentioned Railway Company, I am the only creditor to any large amount.

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And under all and every, the circumstances aforesaid, I claim to be hence dismissed with my costs in this behalf wrongfully sustained.

(Signed) ISAAC BUCHANAN.

(Signed) JOHN W. GWYNNE, Q. C.

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