In the Exchequer Court of Canada.

PETITION OF RIGHT.

Sir N. F. BELLEAU et al.

VS.

THE QUEEN.

HENRI T. TASCHEREAU,

Attorney and Counsel for Suppliants.

PETITION OF RIGHT.

In the Exchequer Court of Canada.

TO THE QUEEN'S MOST EXCELLENT MAJESTY:

PROVINCE OF QUEBEC,
DISTRICT OF QUEBEC,
CITY OF QUEBEC,
TO WIT:

The humble petition of the Honorable Sir NARCISSE FORTUNAT BELLEAU, of the said city of Quebec, Knight, the Reverend ADOLPHE-IGNACE-IRÉNÉE LEGARÉ and the Reverend JEAN-BAPTISTE-ZACHARIE BOLDUC, both of the said city of Quebec, Priests in Holy Orders, and ANDREW-CHARLES STUART, of the parish of Quebec, in the said district of Quebec, Esquire, Advocate, by their attorney, HENRI-THOMAS TASCHEREAU, of the city of Quebec, Barrister.

SHEWETH:—

1. That by an act of the late Province of Lower Canada, passed in the thirty-sixth year of the Reign of His late Majesty, King George the third, intituled: "An act for making, repairing and altering the highways and bridges in "this Province, and for other purposes," it was enacted that all occupiers of lands, whether proprietors or farmers, adjoining to the king's highways, should make and keep in good repair the said highways upon the breadth of their said lands respectively.

2. That Your Majesty's highways were made and kept in good repair under the provisions of the said statute, from the passing thereof up to the passing of the ordinance hereinafter mentioned, and long after, and were not made or kept in repair by the authority or control of the Government of the said Province of Lower Canada, or at its cost or expense.

3. That in the year eighteen hundred and forty-one, in the fourth year of Your Majesty's Reign, certain roads in the neighbourhood of, and leading to, the city of Quebec, were in such a state as to render their improvement an object of immediate and urgent necessity, and the Government of the said province of Lower Canada, felt that special legislation in reference to these highways was absolutely required, by which: Firstly, the said highways would be made, opened, improved and kept in repair under the control and management of certain Trustees appointed by the said Government, and secondly, a special fund created for defraying the expenses necessary therefore.

4. That in order to accomplish this object, His Excellency, the then Governor of the said Province of Lower Canada, by and with the advice of the Special Council for the affairs of that Province, said Governor and Special Council having all legislative powers for the time being, passed and enacted, in the said fourth year of Your Majesty's reign, a certain Ordinance intituled: "An "Ordinance to provide for the improvement of certain roads in the neighbourhood "of and leading to the city of Quebec, and to raise a fund for that purpose."

That the preamble of the said Ordinance is in the following words, which fully indicate the scope and intention thereof: Whereas "the state of "the roads hereinafter mentioned, in the neighbourhood of and leading to the "city of Quebec, such as to render their improvement an object of immediate "and urgent necessity, and it is, therefore, expedient to provide means for "effecting such improvement and to create a fund for defraying the expense "thereof, and the expenses necessary for keeping the said roads in permanent "repair."

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6. That the said Ordinance proceeded to enact that all powers, authorities, jurisdiction and control over or with regard to the roads therein mentioned or any of them, which then vested in any Magistrates, Grand Voyer, Overseer of roads or road Surveyor, or other road officer, by the said act passed in the thirty-sixth year of the reign of His said late Majesty George the Third, hereinbefore mentioned, or by any other Act or Ordinance or Law whatever, or in any District Council, should cease and determine from and after the time when the Trustees authorized to be named by the said Ordinance should assume the management, charge and control of the said roads; and further, that it should be lawful for the Governor of the said Province of Lower Canada, by Letters-Patent, 10 under the Great Seal of the Province, at any time after the passing of the said Ordinance, to appoint not less than five, nor more then nine persons, to be Trustees for the purpose of opening, making and keeping in repair the roads in the said Ordinance specified, and for acquiring property and estate, moveable and immoveable, which being so acquired, should vest in Your Majesty for the public uses of the Province.

7. That by the provisions of the said Ordinance, the Province of Lower Canada was authorised to raise, by way of loan, a sum not exceeding twenty-five thousand pounds currency, for which the said Trustees were authorised to issue and give debentures in the form prescribed in the said Ordinance, such deben- 20 tures to be redeemable at such time or times as the said Trustees should think most safe and convenient, and which should be transferable by delivery, and to bear interest payable semi-annually.

8. That over and above the said sum of twenty-five thousand pounds, the said Province of Lower Canada was further authorised to raise in like manner by way of loan, through the said Trustees, at any time and as often as occasion should require, such further sum and sums as might be necessary to enable the said Trustees to pay off the principal of any loan which should fall due, and which the funds in their hands should be insufficient to enable them to repay, thus providing for the payment of the debentures issued for the said loan at 30 maturity at all events, and exhibiting proper solicitude for the credit and character of the Province.

9. That it was further enacted by the said Ordinance that the roads to and over which the provisions of the same and the powers of the said Trustees should extend were the following :

" Firstly.—The Cove or Beach Road, between the Cliff and the River St. " Lawrence, from the boundary of the city and town of Quebec to the south " west extremity of Sillery Cove.

" Secondly.—The road called St. Louis Road, or " La Grande Allée," and " the continuation of the same, from the boundary of the said city and town to 40 " the north eastern extremity of the bridge over the Cap Rouge River, and of " the works appertaining to the same; and also the public cross road now open " at the place commonly called New Kilmarnock, and leading from the said St. " Louis Road to the said Cove or Beach Road.

" Thirdly.—The road called St. Foy Road, from the boundary of the said " city and town to a point one hundred yards beyond the place where it is " intersected by the road next hereinafter mentioned.

" Fourthly.—The road commonly called " La Suède," from the point " where it intersects the road last mentioned to the foot of the hill called " La " Côte de Champigny." 50

" Fifthly.—The road which joins the last mentioned, near the said " Côte " de Champigny," from the said point of junction to the south western side of " the land known as Hough's farm, a short distance beyond the point where the " said road is intersected by the road crossing it nearly at right angles and lead- " ing downwards towards the Cap Rouge Mill, and upwards towards the place " commonly called the " Grand Désert."

" Sixthly.—The main road from the boundary of the said city and town " in the St. Valier's suburbs (near the road leading to the General Hospital) " along the south bank of the river St. Charles, across the stream commonly " called the Little River, and to the point where the said road is intersected by 60

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" the road leading to the bridge over the river St. Charles, commonly called the " Red Bridge or Commissioners Bridge."

" Seventhly.—The road from the boundary of the said city and town near " the north end of the bridge over the river St. Charles, commonly called Dor- " chester Bridge, to the bridge over the river Montmorency, near the great falls " on the said river."

10. That the said Trustees were by the said Ordinance empowered to demand, levy, exact and receive, on each of the said roads, at the turnpike gates and toll houses to be thereon established, under and by virtue of the said Ordinance, from all and every person and persons passing upon or using the said roads, or either of them, certain tolls and rates designated and established by the said Ordinance, Your Majesty's mails and Troops on duty and persons attending funerals alone excepted. 10

11. That it was further enacted by the said Ordinance that due application of all public monies whereof the expenditure or receipt was authorised by the said Ordinance should be accounted for to Your Majesty, Your Heirs, and Successors, through the Lord Commissioners of Your Majesty's Treasury for the time being, and that the said Trustees should lay detailed accounts of all monies by them received and expended under the authority of the said ordinance, supported by proper vouchers, and also detailed reports of all their doings and proceedings under the said authority, before such officer, at such times, and in such manner and form, and should publish the same in such way, at the expense of the said Trustees, as the Governor should be pleased to direct. 20

12. That the said Ordinance was enacted to be a permanent and a public Ordinance.

13. That the said Ordinance was immediately put into force, and Trustees were duly appointed who assumed the management and control of the said highways, solely for the benefit and use of the public, and came to be vested with all the powers and authorities conferred upon them by the said Ordinance, which they exercised under the control and with the sanction and approval of Your's Majesty's Government of the said Province for the time being, gratuitously, and without fee or reward, or private interest or profit of any kind in the said roads or in the revenues thereof. 30

14. That by the operation of the said Ordinance and by the action of the said Trustees assuming the control and management of the said roads, the occupiers of lands on the said roads and each of them came to be and were released from the duty and burden of keeping the same in repair; and the obligation of providing the means for improving the said roads (which improvement was declared by the said Ordinance to be a matter of immediate and urgent necessity) then devolved on the said Province of Lower Canada. 40

15. That the said Province of Lower Canada, in order to provide means for the improvement of the said roads, by and through the said parliamentary Trustees and as authorised by the said Ordinance, raised by way of loan the said sum of twenty-five thousand pounds, and the said Trustees issued debentures for the same, as they were authorised to do under the said Ordinance; and that their act in so doing was the act of the Province of Lower Canada.

16. That the said sum of money so raised by loan was received by the said Trustees for Your Majesty, and was accounted for as public monies to Your Majesty, in the manner and form provided in the said Ordinance.

17. That the tolls exacted and levied for passing over and using the said roads, received by the said Trustees and which vested in Your Majesty, were likewise accounted for to Your Majesty as public monies by the said Trustees. 50

18. That soon after the passing of the said Ordinance, the Imperial Act passed in the third and fourth years of Your Majesty's Reign, intituled: " An Act to reunite the provinces of Upper and Lower Canada, and for the Government of Canada," came into force, and the said provinces were re-united and constituted the province of Canada.

19. That in the fourth and fifth years of Your Majesty's Reign the Parliament of the said province of Canada, passed an act intituled: " An Act to extend

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" the provisions of an Ordinance therein mentioned to a certain road on the " north side of the river St. Charles, in the district of Quebec," by which the provisions of the said Ordinance of the legislature of the late province of Lower Canada, herein before mentioned, were extended to another road, to wit, to a road leading from one of the highways mentioned in the said Ordinance to a bridge called Scott's Bridge, and thence from the said bridge to another bridge, called Red Bridge, or Commissioners Bridge, on the north side of St. Charles River.

20. That by the operation of the said last mentioned Act, the occupiers of lands on the said road were relieved from the duty and burden of keeping the same in repair, and the obligation of providing the means for improving the said road then devolved on the province of Canada, and was admitted and accepted by the said province as part of a general policy to combine and to vest in Your Majesty the legal estate with the full control and management of all roads mentioned in the said Ordinance and in the said last mentioned Act. 10

21. That the said province of Canada by various other Acts of it's legislature, extended the provisions of the said Ordinance of 1841 to other roads in and about the city of Quebec, with like purpose and effects, authorising thereby the acquisition by the said Trustees of property of great value, which being acquired, vest in Your Majesty. 20

22. That the said province of Canada, always exercised legislative as well as executive authority of the most unlimited kind over all roads to which were extended the provisions of the said Ordinance of 1841, and over the property so acquired, as fully and completely as on other highways and other property vested in and under the control and management of Your Majesty, such as provincial canals, railroads, and such like.

23. That in the sixteenth year of Your Majesty's reign, by an Act passed by the Legislature of the said Province of Canada (chapter 235), the provisions of the said Ordinance of 1841 were extended to the following roads on the north shore of the River St. Lawrence : 30

" Firstly.—To the Mail Road, between Quebec and Montreal, in the " direction of St. Augustin, for a distance of five miles beyond the place to " which it is now provided that the said road shall be macadamized ;

" Secondly.—The by-road called the Belvédère Road, which leads from " the road called the *Grande Allée* to the St. Foy road ;

" Thirdly.—A by-road which the said Trustees shall have power to open " between the said St. Foy road and the road along the little river St. Charles ;

" Fourthly.—The by-road called the Ste. Claire road, commencing at " Scott's bridge, as far as the St. Joseph road ;

" Fifthly.—The by-road known as the Bourg Royal road, and also *Route* 40 " *de la Commune*, commencing at the Beauport highroad, for a distance of two " miles ;

" Sixthly.—The by-road which leads to Laval, commencing at the Beau- " port highroad, for a distance of three miles ;

" Seventhly.—The road leading from the St. Louis highroad to the Cove " Beach road, passing by church of St. Richard ;

" Eightly.—A road which the said Trustees shall be empowered to open " to connect the north road of the little river St. Charles with the Charlesbourg " highroad ;

" Ninthly.—To the highroad in the County of Montmorency, commencing 50 " at the *Petit-Pré* and extending to the place called *Sault à la Puce*, and also " to the approaches of the new bridge to be constructed over the river Mont- " morency, as hereinafter provided ;

" Tenthly.—To the road continuing the road from the church in the " parish of St. Foy to the Cove Beach road."

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24. That by the operation of the said last mentioned Act, the Province of Canada contracted the liability and obligation of keeping the said roads in repair, and of providing the means for effecting such repair or any improvement on the said roads which public necessity required, and the occupiers of lands adjoining the same were relieved from their former obligation.

25. That a sum of thirty thousand pounds was by the said last mentioned Act authorised to be raised, by way of loan, by the said Province of Canada, for the making, repairing and improving of the different roads therein mentioned, for which loan the said Trustees issued debentures in the form prescribed by the said Ordinance of 1841, bearing interest, redeemable and payable as mentioned in the said debentures. 10

26. That the said Trustees, before venturing to pledge the credit and character of the said Province for the repayment of the said loan, brought officially before the notice of the Government of the Province of Canada the fact that the said last mentioned Act contained no provision whatever for the re-payment of either principal or interest of the said loan of thirty thousand pounds, and that there would be no funds in their hands for the repayment of the same.

27. That in answer to the said communication, the Provincial Secretary conveyed officially to the said Trustees the resolution and purpose of the Governor in Council, that the said loan should be forthwith effected and the intention of the Legislature carried out as expressed. 20

28. That the said Trustees, in pursuance of the provisions of the said last mentioned Act and of the power to raise the said sum of £30,000 by way of loan therein specially conferred, and of the instructions of the Governor in Council so conveyed to them, did raise by way of loan, for the said Province of Canada, the said sum of thirty thousand pounds, and issued debentures for the same; and that their act in so doing was the act of the Province of Canada.

29. That neither by the said last mentioned Act, nor by any other Act of the Legislature of the Province of Canada, afterwards passed, nor by any other means, was any fund created for the payment at maturity of the debentures issued for the said last mentioned loan; nor was there ever imposed or levied any rates or tolls over the said last mentioned roads, or any of them, after they were improved by means of the expenditure of the said sum of thirty thousand pounds so borrowed for the purpose, nor did there exist in the hands of the said Trustees, at any time (and this to the knowledge of the Government of the said Province), any fund whatever, for the re-payment of the said loan. 30

30. That in fact there never existed, at any time, any fund in the hands of the said Trustees, adequate for the re-payment, as they became due, of the sums raised by the said Province of Canada, for the improvement of Your Majesty's said roads or of any of them, or for the purchase of said valuable property and estate so purchased, under the operation of the said several Acts of the Province of Canada, and which has continued to vest in Your Majesty ever since, and still vests in Your Majesty. 40

31. That the debentures so issued for the said loan of thirty-thousand pounds bear date between the twenty-second day of March eighteen hundred and fifty four and the first day of December eighteen hundred and fifty-nine, and fell due between the second day of March eighteen hundred and sixty-nine and the first day of December eighteen hundred and seventy-four.

32. That by the said last mentioned Act of the Province of Canada, passed in the sixteenth year of Your Majesty's Reign, the provisions of the said Ordinance of 1841 were further extended to certain roads on the South Shore of the river St. Lawrence, to wit: 50

" Firstly.—The road commencing on the bank of the river St. Lawrence " opposite to the city of Quebec, at the place called the *Passage de Bégin*, and " extending to the parish of Beaumont, passing by the road called la *Petite* " *Route*, for the distance of three leagues and a half.

" Secondly.—The road commencing on the bank of the said river, opposite " the city of Quebec, ascending towards St. Anselme, and passing by the road

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" Thirdly.—The road commencing on the bank of the river St. Lawrence " opposite the city of Quebec, and extending to St. Nicholas, leading along the " shore, a distance of three leagues.

" Fourthly.—Lastly, the road commencing from the Lauzon wharf on " the bank of the said river, opposite the city of Quebec, ascending along the " river St Lawrence, a distance of three leagues."

33. That a further sum of forty thousand pounds was by the said last mentioned Act authorized to be raised by the said Province of Canada, by way of loan, for the making, repairing and improving of the said last mentioned roads on the south side of the river St. Lawrence, for the effecting of which loan the said Trustees were also empowered to issue debentures in the form prescribed by the said Ordinance of 1841, bearing interest, redeemable and payable as to them should seem most convenient and safe.

34. That debentures were accordingly issued by the said Trustees, acting for the Province of Canada, for the said last mentioned loan of forty thousand pounds, which bear date between the eighth day of June eighteen hundred and fifty-four and the ninth day of October eighteen hundred and fifty-eight, and fell due between the eighth day of June eighteen hundred and sixty-nine and the ninth day of October eighteen hundred and seventy-three.

35. That, in the twentieth year of Your Majesty's Reign, the said Legislature of the Province of Canada passed an Act (chapter 125), by which it was enacted that all the turnpike roads enumerated in the various acts previously passed respecting the Quebec Turnpike roads should be placed under the control and management of two separate Trusts, and the Governor General of the said Province of Quebec was authorised to appoint four persons to be styled " The Quebec North Shore Turnpike Trustees " and four persons to be styled " The Quebec South Shore Turnpike Trustees."

36. That by the said last mentioned Act, the control and management of all the said roads on the north side of the river St. Lawrence, together with the right to collect and receive the tolls thereon, and generally all the rights and powers conferred on the Trustees by the Ordinance of 1841, were given to the said Quebec North Shore Turnpike Trustees, and the control and management of all the said roads on the south side of the river St. Lawrence, together with the right to collect and receive the tolls thereon, and generally all the rights and powers conferred on the Trustees by the Ordinance of 1841, were given to the said Quebec South Shore Turnpike Trustees.

37. That by the said last mentioned Act, it was further enacted that the said Quebec North Shore Turnpike Trustees should be liable for all the debts and obligations of the Trustees of the Quebec Turnpike Roads, as well as for debentures issued by them, both in principal and interest.

38. That the obligation to pay the debentures, in principal and interest, issued for the said loan of forty thousand pounds, expended in the improvement of the roads on the south shore of the river St. Lawrence, was thus imposed on the tolls levied for passing over the roads on the north shore of the river St. Lawrence.

39. That Trustees were appointed by the Governor General of the Province of Canada, according to the said last mentioned statute, to act on the said two separate trusts, and have since controlled and managed the same.

40. That since the passing of the said last mentioned Act (XX Victoria chap. 125), none of the tolls levied on the said south shore roads have been applied to the payment of the said loan of forty thousand pounds, in interest or principal.

41. That all the monies raised by way of loan under the said several acts of the Legislature of the Province of Canada, and more particularly the said sum of thirty thousand pounds, and the further sum of forty thousand pounds

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were borrowed and received by the said Province of Canada, and were accounted for to Your Majesty by the Parliamentary Trustees empowered to make the said loans, as public monies, in the manner provided in the said Ordinance of 1841, and in the said Acts of the Province of Canada, and were expended in the improvement of Your Majesty's said highways; and that all of the tolls received and levied for the use of the said roads have likewise been accounted for to Your Majesty as public monies.

42. That each and all of the Acts of the legislature of the Province of Canada, relating to the Turnpike roads in and about the city of Quebec, including those hereinbefore particularly referred to and mentioned, were introduced and passed through the said legislature by some one of the responsible ministers of Your Majesty's Government of the said province, for the time being, and were each of them recommended to the consideration of the said legislature by a message from the Governor General for the time being.

43. That the first debentures issued for the loan effected under the said Ordinance of 1841, amounting to twenty-five thousand pounds, and the debentures issued under the Act of the Province of Canada, passed in the eighth year of Your Majesty's Reign (VIII Victoria, ch. 45,) to the amount of eight thousand eight hundred and eighty-two pounds, making in all thirty-three thousand eight hundred and eighty-two pounds, were redeemed and paid at maturity by the Province of Canada, out of the general revenues of that province, and not out of any special fund created for the payment of the same.

44. That the said Province of Canada further paid out of its general revenues, about the year eighteen hundred and fifty, large sums of monies to redeem and pay at maturity the Home District Turnpike Trust bonds and debentures issued under the provisions of Acts of the legislature of the late Province of Upper Canada, which said bonds and debentures were not payable by or chargeable against the general revenues of the said Province of Upper Canada, but out of the tolls levied on the same.

45. And your Suppliants further represent that they are the *bonâ fide* holders of bonds and debentures, in the form prescribed by the said Ordinance of 1841, issued for the said loan of thirty thousand pounds, one of which bonds and debentures is attached to the present petition as Suppliants exhibit No. 1, to the total amount of £9,708.00 or $38,832 current money of Canada, and whereof a list is attached to the present petition and forms part thereof (Suppliants exhibit No. 2).

46. That your Suppliants are likewise the *bonâ fide* holders of bonds and debentures, in the form prescribed by the said Ordinance of 1841, issued for the said other loan of forty thousand pounds, one of which bonds and debentures is attached to the present petition as Suppliants exhibit No. 3, to the total amount of £7,810.00 or $31,240 current money of Canada, and whereof a list is likewise attached to the present petition and forms part thereof (Suppliants exhibit No. 4).

47. That all the said bonds and debentures have fallen due between the dates hereinbefore mentioned, that no part of the principals of the said bonds and debentures has been paid to your Suppliants, although payment has often been requested, but that the same remain wholly due and unsatisfied, together with interest from and since the first day of July one thousand eight hundred and seventy-two.

48. That, as is already alleged, there was never any fund created for the payment at maturity of the said bonds and debentures, nor did there exist at any time, in the hands of the said Trustees, (to wit, the Trustees of the Quebec Turnpike Roads, the Quebec North Shore Turnpike Trustees, and the Quebec South Shore Turnpike Trustees) any fund whatever for the payment of said bonds and debentures, nor does there exist now in the hands of the present Trustees any fund or funds whatever for the payment of the same.

49. That the said bonds and debentures were debts and liabilities of the late Province of Canada, at the time "*The British North America Act* 1867" came into force and the Dominion of Canada came into existence.

50. That it is enacted by "*The British North America Act* 1867" as follows:

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" Section 111. Canada shall be liable for the debts and liabilities of each " Province existing at the Union.

" Section 112. Ontario and Quebec conjointly shall be liable to Canada " for the amount (if any) by which the debt of the Province of Canada exceeds at " the Union sixty-two million five hundred thousand dollars, and shall be charged " with interest at the rate of five per cent *per annum*.

" Section 113. The assets enumerated in the Schedule to this act, *belonging* " *at the Union* to the Province of Canada, shall be the property of Ontario and " Quebec conjointly (In which schedule is enumerated " The Quebec Turnpike " Trust")." 10

51. That all debts and liabilities of the Province of Canada, existing at the Union, whether due in connection with the Turnpike Trust, or from any and every other cause, were thus imposed on Your Majesty's Government of Canada for payment, and the Imperial legislation, which nullified the legal and political existence of your Suppliants' debtor, the Province of Canada, created in their favor a new debtor in Your Majesty's Government of Canada.

52. That the same legislation having enacted that " The Quebec Turnpike Trust " that is to say, all real estate and property, moveable or immoveable, and rights, connected with the said Trust, and the management and control of the said roads, and the tolls and rates collected for the use of the same, were at the 20 Union assets belonging to the Province of Canada, it necessarily follows from the said enactment that all debt and liabilities due in connection with the said Trust, and more particularly the bonds and debentures then due or to fall due under the several Acts of Parliament above referred to, such as the bonds and debentures held by your Suppliants, were really debts and liabilities of the Province of Canada, existing at the Union, and were and are consequently payable by Your Majesty's Government of Canada under the said " *British North America Act* 1867."

53 That the total amount due to your Suppliants for the principals of all the said bonds and debentures, of which they are now the *bonâ fide* holders 30 and bearers, is the sum of £17,518 or $70,072 (seventy thousand and seventy-two dollars current money of Canada), with interest from and since the first day of July one thousand eight hundred and seventy-two.

54. That your Suppliants have been unable to obtain from Your Majesty's Government of Canada payment or satisfaction of the said sum of $70,072 and interest, or of any part thereof, and have exhausted all means to obtain justice.

55. Your Suppliants pray leave to recapitulate the facts they will prove and to draw some of the legal conclusions that, in their opinion, flow from them.

I The Province of Canada did borrow the said sum of £30,000 for the improvement of Your Majesty's highways on the North Shore of the river St. 40 Lawrence, and the said sum found its way into Your Majesty's possession, and no part of it hath since been repaid, though long overdue.

II. The Turnpike road Trustees, as specially authorised by law, issued debentures for the said loan, redeemable with interest on a day named and now past, which debentures were made payable to bearer and were signed by the said Trustees.

III. The said Province of Canada was bound, by the provisions of the Ordinance of 1841, which applied to the said loan, to create a fund, by levying tolls on all persons passing upon and using the roads to be improved by means of the said loan, which fund, it was thereby enacted, should be applied solely to 50 the payment of the interest and principal of the debentures issued for the said loan.

IV. No rate or toll was ever levied or exacted for passing upon and using Your Majesty's highways improved by means of the said loan of £30,000, nor was any fund at any time created for the re-payment of the same.

V. The fund so required by law to be created vested in Your Majesty as fully as the moneys to be borrowed for the improvement of the said highways.

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VI. There is a specific contract undertaking by the said Province of Canada towards the bearers of the debentures issued for the said loan, to redeem the same and each of them, on a day mentioned in each debenture.

VII. The said debentures issued for the said loan of £30,000 were running and not yet payable at the time of the coming into effect of the "British North America Act, 1867" and of the establishment of the Dominion of Canada.

VIII. The said sum of £40,000 was likewise raised by way of loan by the Province of Canada, for the improvement of Your Majesty's highways on the South side of the river St. Lawrence, and the last mentioned sum came into Your Majesty's possession, and no part of it hath since been repaid, though it is overdue. 10

IX. The Turnpike road Trustees, as duly authorised by law, issued debentures for the said last mentioned loan, payable to bearer, redeemable on a day named in each, and now passed, which debentures were signed by the said Trustees and show on their face that the said last mentioned sum was borrowed and received for the said purpose.

X. The fund created by tolls levied on the said last mentioned roads vested and still vests in Your Majesty, and was applicable solely to the payment of the interest and principal of the debentures issued for the said last mentioned loan, but in fact no part of the fund so created was ever applied to the payment of the debentures in interest or principal. And by an Act of the Parliament of Canada, passed after the said loan had been contracted, and hereinbefore mentioned, a new loan was authorised for the improvement of the said last mentioned roads, and a preference was given to the bearers of debentures to be issued for the said loan so authorised, for payment upon the said fund created by means of the said tolls, over the bearers of debentures previously issued for the said loan of £40,000. 20

XI. By law, the receipt by Your Majesty, as loans, of the said two sums of £30,000 and £40,000 create an obligation to pay the same back, and interest thereon, which can be extinguished only by the re-payment of the said sums. 30

XII. Whether such re-payment be effected out of a special fund, which the province of Canada undertook to create, and which was pledged before its creation to such re-payment, or out of the general revenues of the said province, both of which vested equally in Your Majesty and were equally beyond the control of Your Suppliants, is matter of indifference to them, and alone concerns the credit and good faith of the said Province of Canada, which are involved in the due re-payment of all monies borrowed by it, for whatever purpose.

XIII. An annual and permanent revenue has been created and exists from tolls levied upon Your Majesty's highways about the city of Quebec, which, at the time of the coming into effect of the "British North America Act 1867," ranged from $45,000 to $50,000 a year, and which under impartial efficient management, should go on increasing with the growth of the country. The said annual revenue vests in Your Majesty, and is wholly due to the expenditure, upon Your Majesty's highways, of monies borrowed and expended in the improvement thereof, which monies still are all unpaid and overdue, and which revenue if capitalized, would realize a sum of about $800,000, and perhaps more. 40

XIV. The provision, in the said Ordinance of 1841, that the loans should be made on the credit and security of the tolls to be imposed on the roads, for the improvement of which such loans were contracted, and should be payable out of the same and not out of or chargeable against the general revenue of the Province, was one entirely in the interest of the lenders and was held out as an inducement to them to lend their monies; which made it a contract obligation in the Province of Canada to fulfil, of that highly obligatory character attaching to all promissory obligations, and created no exemption of the general revenues of the province of Canada from liability for the re-payment of such loans, except upon the double condition of the said Province having created such adequate fund, and applying such fund in fact to the payment of such loans. 50

XV. The character and credit of the said Province of Canada stand pledged to the re-payment of the said sums so borrowed by it, as fully, legally 60

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and morally as if no exemption of the said general revenues had been mentioned, and the said Province would be estopped from setting up either that it did not create an adequate fund, or that it did not in fact apply such fund to the payment of the said loans, as either and both omissions would be a breach of good faith and fair dealing, and the said Province could not take advantage of its own wrong to defeat the payment of a debt so plainly due by it. And the Act of Parliament under which the said loans were contracted could, under no rational interpretation, be so construed as to transfer the monies of the lender to the borrower without the latter being bound to return them.

XVI. Upon two occasions, the Province of Canada put its own interpretation upon the said provision and the conditions of the exemption of its general revenues for the re-payment of such loans;—the first, by the actual payment, out of its general revenues, and not out of any special fund, of a sum of $135,500 to the bearers of the debentures issued for the loan of £25,000 made by the Province of Lower Canada, and for the loan of £8,882 made by the Province of Canada, the said debentures so redeemed and paid being identical with those of Your Suppliants and issued under the same authority;—the second, by the payment out of the general revenues of the said Province of Canada, of about $800,000, as your Suppliants are informed and as Your Majesty must know, to Upper Canada turnpike road bond-holders. In both cases, the special funds undertaken to be created were not sufficient for the purpose of redeeming the debentures issued and due: hence the payment out of the general revenues.

XVII. The said two payments were made by the said Province of Canad a before it contracted the said loans of £30,000 and £40,000 aforesaid. There exists no Province of Canada, now, and the "British North America Act 1867," which put an end to its legal and political existence, has imposed upon Canada the obligation to pay all the debts and liabilities of the Province of Canada, without limit as to amount, without distinction as to cause, and among others, monies borrowed by that Province for which the debentures held by Your Suppliants were issued; and the only enquiry is: are these debts of the Province of Canada, at the Union? If so, the liability of Canada is established.

XVIII. The said sums of £30,000 and £40,000 were borrowed and received to improve Your Majesty's highways,—under the provisions of a law in which the province of Canada was bound to provide the means for effecting such improvement,—by Parliamentary Trustees authorized to raise the said sums of money by way of loan and to expend them for the said purpose.—And the monies so borrowed and received were accounted for to Your Majesty through the Lord Commissioners of Your Majesty's treasury as public monies.—Your Suppliants are at a loss to know what further evidence can be required to establish that the said Province of Canada was the borrower of the said monies.

XIX. But if any doubt could linger that the said monies were due by the province of Canada at the Union and are now payable by Canada, a patient perusal of "The British North America Act 1867," at the sections indicated must serve to dissipate such doubt.

XX. The title of Your Suppliants to be paid by Canada is the provision of an Imperial Act imposing that liability, which no legislation by the province of Ontario and Quebec can impair or invalidate, and the source of the said claim is monies supplied to Your Majesty for the public service, upon an undertaking towards Your Suppliants that the same should be repaid to them. Such a claim they fain hope and believe cannot be successfully embarassed or defeated by the country which has been enriched by the expenditure of the said monies, now lost to Your Suppliants.

Your Suppliants, therefore, humbly pray that Your Most Excellent Majesty will be graciously pleased to take the foregoing Petition of Right into Her Most favorable consideration and grant Your Suppliants relief in the premises, and grant the *Fiat* that right be done, and refer the foregoing Petition of Right to Your Majesty's Exchequer Court of Canada, in order that the *venue* for the trial may be prescribed, and Your Suppliants awarded the said sum of $70,072, with interest thereon from and since the first day of July 1872, or afforded such compensation in the premises as may be deemed just, together with their reasonable costs, and Your Suppliants, as in duty bound, will ever pray.

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Dated at Quebec, this 28th day of August, in the year of Our Lord one thousand eight hundred and seventy-seven.

HENRI T. TASCHEREAU,
Counsel and attorney for Suppliants.

APPENDIX.

Suppliants' Exhibit No. 1.

NORTH SHORE ROAD LOAN UNDER PROVINCIAL STATUTE OF 1853.

Certificate N° 257.

£250. Cy.

Quebec, 24th March 1856. 10

We certify that, under the authority of an Act of the Parliament of Canada, passed in the session held in the 16th year of Her Majesty's Reign', intituled "An act to authorize the Trustees of the Quebec turnpike road to issue debentures to a certain amount and to place certain roads under their control", there has been borrowed and received from Charles Gethings, Esquire, two hundred and fifty pounds, currency, bearing interest from the date hereof, at the rate of six per cent per annum, payable half yearly, on the first day of July and on the first day of January, which sum is reimbursable to the said Charles Gethings or bearer hereof, on the twenty-fourth day of March, in the year of Our Lord 1871, and is part of the sum to be raised under the said statute to make and complete the roads thereby authorised to be made on the North Shore of the St. Lawrence. 20

Registered by
J. PORTER,
Secretary.

H. GOWEN,
L. G. NAULT,
L. T. MACPHERSON,
A. C. BUCHANAN,
JOHN ROWLEY,
DANIEL MCCALLUM,
JAS. GIBB.
} Trustees.

List of Bond

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Suppliants' Exhibit No. 2.

List of Bonds of THE QUEBEC NORTH SHORE TURNPIKE TRUST, owned by the Suppliants.

Name of Bond.	No	Amount.	Date of Issue.	When Redeemable.	Names of Persons to whom Issued.
North Shore Road Loan under Provincial Statute 1853.	68	£ 250	14 Nov. 1854	July 1869	Thos. A. Walker
"	228	50	" 1855	14 Nov. 1870	do
"	86	50	9 Jan'y 1855	9 Jan'y 1870	do
"	146	100	19 July 1855	9 July 1870	Jacques Bourbeau
"	145	100	" 1855	" 1870	do
"	6	100	14 June 1854	14 June 1869	J. Harvey
"	7	100	" 1854	" 1869	do
"	8	100	" 1854	" 1869	do
"	27	100	15 Aug. 1854	15 Aug. 1869	Charles Rhéaume
"	28	100	" 1854	" 1869	do
"	58	100	31 Oct. 1854	31 Oct. 1869	do
"	59	100	" 1854	" 1869	do
"	66	150	14 Nov. 1854	31 Nov. 1869	do
"	13	100	19 July 1854	19 July 1869	do
"	147	50	25 " 1855	25 " 1870	do
"	109	50	5 June 1855	5 June 1870	do
"	30	100	20 Sept. 1854	20 Sept. 1869	do
"	31	100	" 1854	" 1869	do
"	32	100	" 1854	" 1869	do
"	56	100	31 Oct. 1854	31 Oct. 1869	do
"	57	100	" 1854	" 1869	do
"	71	50	22 Nov. 1854	22 Nov. 1869	Jacques Bourbeau
"	73	50	" 1854	" 1869	do
"	97	100	7 M'rch 1855	7 M'rch 1870	Thos. A. Walker
"	37	100	20 Sept. 1854	20 Sept. 1869	Jacques Bourbeau
"	38	100	" 1854	" 1869	do
"	82	100	9 Jan'y 1855	9 Jan'y 1870	Thos. A. Walker
"	100	100	22 May 1855	22 May 1870	Edw. Lagueux
"	103	100	5 June 1855	5 June 1870	Thos. A. Walker
"	105	100	" 1855	" 1870	do
"	110	100	" 1855	" 1870	A. Rhéaume
"	115	100	" 1855	" 1870	Thos. A. Walker
"	117	100	" 1855	" 1870	do
"	120	100	" 1855	" 1870	do
"	122	100	19 " 1855	19 " 1870	do
"	123	100	" 1855	" 1870	do
"	124	100	" 1855	" 1870	do
"	125	100	" 1855	" 1870	do
"	126	100	" 1855	" 1870	do
"	159	100	31 July 1855	31 July 1870	Remy Plamondon
"	167	100	28 Aug 1855	28 Aug. 1870	Thos. A. Walker
"	169	100	" 1855	" 1870	do
"	170	100	" 1855	" 1870	do
"	171	100	" 1855	" 1870	do
"	177	100	11 Sept. 1855	11 Sept. 1870	do
"	178	100	" 1855	" 1870	do
"	188	100	3 Oct. 1855	3 Oct. 1870	Jacques Bourbeau
"	189	100	" 1855	" 1870	do
"	195	100	9 " 1855	9 " 1870	C. Rhéaume
"	205	100	6 Nov. 1855	6 Nov. 1870	J. G. Parker
"	206	100	" 1855	" 1870	do
"	207	100	" 1855	" 1870	Jacques Bourbeau
"	214	100	" 1855	" 1870	William Meek
"	219	100	" 1855	" 1870	Thos. A. Walker
"	221	100	" 1855	" 1870	do
"	224	100	14 " 1855	14 " 1870	do
"	225	100	" 1855	" 1870	do
"	273	100	24 July 1856	24 July 1871	John Galera
"	277	100	" 1856	" 1871	James Vear
"	288	100	29 Sept. 1856	29 Sept. 1871	J. G. Parker
"	296	100	6 Dec. 1856	6 Dec. 1871	J. O'Brien
"	297	100	" 1856	" 1871	Jacques Bourbeau
"	298	100	" 1856	" 1871	do
"	305	100	9 Oct. 1858	9 Oct. 1873	Edouard Lagueux
"	289	100	29 Sept. 1856	29 Sept. 1871	J. G. Parker
"	279	100	24 July 1856	24 July 1871	James Vear
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Suppliants' Exhibit No. 2.—(*Continued.*)

List of Bonds of THE QUEBEC NORTH SHORE TURNPIKE TRUST owned by the suppliants.

Name of Bond.	No.	Amount.	Date of Issue.	When Redeemable.	Names of Persons to whom Issued.
North Shore Road Loan under Provincial Statute 1853.	266	£ 100	31 May 1856	31 May 1871	Charles Walker
"	226	100	14 Nov. 1855	14 Nov. 1870	Thos. A. Walker
"	136	100	4 July 1855	4 July 1870	do
"	96	100	7 M'rch 1855	7 M'rch 1870	do
"	299	50	6 Dec. 1856	6 Dec. 1871	Jacques Bourbeau
"	164	100	28 Aug. 1855	28 Aug. 1871	Thos. A. Walker
"	257	250	24 M'rch 1856	24 M'rch 1871	Chas. Gethings
"	23	50	19 Dec. 1857	19 Dec. 1872	Chas. Rhéaume
"	300	50	6 " 1856	6 " 1871	Jacques Bourbeau
"	314	100	17 Jan'y 1859	17 Jan'y 1874	Edouard Lagueux
"	313	100	" 1859	" 1874	do
"	312	100	" 1859	" 1874	do
"	315	183	" 1859	" 1874	do
"	222	100	6 Nov. 1855	6 Nov. 1870	Thos. A. Walker
"	253	125	8 M'rch 1856	8 M'rch 1871	do
"	39	100	20 Sept. 1854	20 Sept. 1869	Jacques Bourbeau
"	20	100	8 Aug. 1854	8 Aug. 1869	do
"	17	100	19 July 1854	19 July 1869	C. Rhéaume
"	36	100	20 Sept. 1854	20 Sept. 1869	Jacques Bourbeau
"	35	100	" 1854	" 1869	do
"	34	100	" 1854	" 1869	do
"	33	100	" 1854	" 1869	do
"	26	100	15 Aug. 1854	15 Aug. 1869	Chas. Rhéaume
"	25	100	8 " 1854	8 " 1869	Remy Plamondon
"	24	100	" 1854	" 1869	do
"	23	100	" 1854	" 1869	Jacques Bourbeau
"	21	100	" 1854	" 1869	do
"	22	100	" 1854	" 1869	do
"	45	100	20 Sept. 1854	20 Sept. 1869	R. Plamondon
"	42	100	" 1854	" 1869	John Harvey
Total.....	....	£9,708			
	or $	38,832			

Suppliants' Exhibit No. 3.

SOUTH SHORE ROAD LOAN UNDER PROVINCIAL STATUTE OF 1853.

Certificate No. 19. £250. Currency.

Quebec, July 5th 1854.

We certify that, under the authority of an Act of the Parliament of Canada passed in the session held in the 16th year of Her Majesty's Reign, intituled: "An Act to authorize the Trustees of the Quebec Turnpike roads to issue debentures to a certain amount and to place certain roads under their control," there has been borrowed and received from Joseph Fournier, two hundred and fifty pounds currency, being interest from the date thereof, at the rate of six per cent per annum, payable half yearly on the first day of January, and on the first day of July, which sum is re-imbursable to the said Joseph Fournier or bearer hereof, on the fifth day of July in the year of our Lord 1869, and is part of the sum raised under the said statute to make and complete the roads thereby authorised to be made on the south shore of the St. Lawrence.

Registered by
J. PORTER,
Secretary.

H. GOWEN,
E. DALAIRE,
SIM ARTEAU,
L. H. CARRIER,
A. C. BUCHANAN,
JAS. GIBB,
JOHN ROWLEY.
} Trustees

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Suppliants' Exhibit No. 4.

List of Bonds of THE QUEBEC SOUTH SHORE TURNPIKE TRUST, owned by the Suppliants.

Name of Bond.	No.	Amount.	Date of issue.	When redeemable.	Names of persons to whom issued.
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South Shore Road Loan under Provincial Statute 1853....	7	100	8 June 1854	8 June 1869	Edouard Lagueux
"	8	100	8 " 1854	8 " 1869	do
"	9	100	8 " 1854	8 " 1869	do
"	10	100	8 " 1854	8 " 1869	do
"	37	100	19 July 1854	19 July 1869	do
"	38	100	19 " 1854	19 " 1869	do
"	47	250	8 Sept. 1854	8 Sept. 1869	E. Dalaire
"	49	250	8 " 1854	8 " 1869	do
"	60	100	22 Aug. 1854	22 Aug. 1869	Henri Plamondon
"	62	100	22 " 1854	22 " 1869	Ed. Lagueux
"	97	100	12 Dec 1854	12 Dec. 1869	Thos. A. Walker
"	99	50	12 " 1854	12 " 1869	do
"	138	50	25 July 1855	25 July 1870	Edouard Lagueux
"	162	100	21 Aug. 1855	21 Aug. 1870	Thos. A. Walker
"	177	100	25 Sept. 1855	25 Sept. 1870	Edouard Lagueux
"	220	50	10 June 1856	10 June 1871	John Galera
"	243	50	4 Feb. 1857	4 Feb. 1872	do
"	245	100	17 June 1857	17 June 1872	John Vear
"	251	50	9 Oct. 1858	9 Oct. 1873	Edouard Lagueux
"	252	50	9 " 1858	9 " 1873	do
"	129	100	25 Feb. 1855	25 July 1875	do
"	149	100	7 Aug. 1855	7 Aug. 1870	Jos. Fournier
"	154	100	14 " 1854	14 " 1870	Thos. A. Walker
"	249	100	29 Feb. 1857	29 July 1872	John Galera
"	20	250	5 July 1854	5 " 1869	N. S. Fournier
"	54	250	22 Aug. 1854	22 Aug. 1869	Thos. A. Walker
"	79	250	12 Sept. 1854	12 Sept. 1869	E. Dalaire
"	70	250	29 Aug. 1854	29 Aug. 1869	Thos. A. Walker
"	45	300	19 July 1854	19 July 1869	do
"	63	100	22 Aug. 1854	22 Aug. 1869	Ed Lagueux
"	72	100	29 " 1854	29 " 1869	R. Angers
"	73	100	29 " 1854	29 " 1869	do
"	107	100	24 April 1855	24 April 1870	N. S Fournier
"	108	100	24 " 1855	24 " 1870	do
"	115	100	1 Jan'y 1855	8 Nov. 1869	Thos. A. Walker
"	21	150	5 July 1854	5 July 1869	do
"	32	150	12 " 1854	12 " 1869	do
"	19	250	5 " 1854	5 " 1869	N. S. Fournier
"	53	250	22 Aug. 1854	22 Aug. 1869	Thos. A. Walker
"	230	85	1 Aug. 1856	1 Aug. 1871	François Bégin
"	31	150	12 July 1854	July 1869	Thos. A. Walker
"	57	250	22 Aug. 1854	" 1869	do
"	39	100	19 July 1854	" 1869	Edouard Lagueux
"	173	100	25 Sept. 1855	" 1870	do
"	179	100	25 " 1855	" 1870	do
"	192	100	11 Dec. 1855	" 1870	do
"	224	100	10 June 1856	" 1870	Joseph Vien
"	250	100	29 July 1857	" 1872	John Galera
"	183	50	25 Sept. 1855	" 1870	Edouard Lagueux
"	229	50	10 June 1856	10 June 1871	J. B. Bégin
"	242	75	10 " 1856	10 " 1871	do
"	61	100	22 Aug. 1854	22 Aug. 1869	L. E. Lagueux
"	167	100	21 Aug. 1855	21 " 1870	J. Harvey
"	112	50	1st Jan. 1855	1st Jan. 1869	T. A. Walker
"	184	50	25 Sept. 1855	22 Sept. 1870	Ed. Lagueux
"	76	100	8 Sept. 1854	8 " 1869	E. Dalaire
"	119	100	4 July 1855	4 July 1870	T. A. Walker
"	120	100	4 " 1855	4 " 1870	do
"	152	100	14 Aug. 1855	14 Aug. 1870	do
"	155	100	14 " 1855	14 " 1870	do
"	136	50	25 July 1855	25 July 1870	Ed. Lagueux
"	134	50	25 " 1855	25 " 1870	do
"	77	400	12 Sept. 1854	12 Sept. 1869	E. Dalaire
"	75	150	5 " 1854	5 " 1869	J. B. Carrier
Total.....	....	£7,810			
	or $	31,240			