The Legal News.

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EXCHEQUER COURT OF CANADA.

Burbidge, J.
September 17, 1891.

THE QUEEN v. BARRY et al.

Injurious affection of land—Construction of a railway siding on a side-walk contiguous thereto—Measure of damages.

Where lands are injuriously affected, no part thereof being taken, the owners are not entitled to compensation under The Government Railways Act, 1881, unless the injury (1) is occasioned by an act made lawful by the statutory powers exercised, (2) is such an injury as would have sustained an action but for such statutory powers, and (3) is an injury to lands or some right or interest therein, and not a personal injury, or an injury to trade.

The construction of a railway siding along the side-walk contiguous to lands whereby access to such lands is interfered with, and the frontage of the property destroyed for the uses for which it is held (in this case for sale in building lots), is such an injury thereto as will entitle the owner to compensation.

Quaere: Whether the rule that compensation in cases of injurious affection only must be confined to such damages as arise from the construction of the authorised works, and must not be extended to those resulting from the user of such works, is applicable to cases arising under The Government Railways Act, 1881.

Burbidge, J.
September 21, 1891.

THE QUEEN v. FISHER.

Interference with public right of navigation—Injunction to restrain—Jurisdiction of Exchequer Court—Right to authorize such interference since the union of the Provinces—Position of Provincial Legislatures with respect thereto—Right of Federal authorities to exercise powers created prior to the Union.

An information at the suit of the Attorney-General to obtain an injunction to restrain defendant from doing acts that interfere with and tend to destroy the navigation of a public harbor is a civil and not a criminal proceeding, and the Exchequer Court has concurrent original jurisdiction over the same under 50-51 Vict. c. 16, s. 17 (d).

(2) A grant from the Crown which derogates from a public right of navigation is to that extent void unless the interference with such navigation is authorized by Act of Parliament.

(3) The Provincial legislatures, since the union of the provinces, cannot authorize such an interference.

(4) Wherever by act of the Provincial legislature passed before the Union, authority is given to the Crown to permit an interference with the public right of navigation, such authority is exercisible by the Governor-General and not by the Lieutenant-Governor of the Province.

Burbidge, J.
September 21, 1891.

ARCHIBALD v. THE QUEEN.

Contract— Construction — Implied promise—Breach thereof.

The suppliant had a contract to carry Her Majesty's mails along a certain route. In the construction of a Government railway the Crown obstructed a highway used by the suppliant in the carriage of such mails, and rendered it more difficult and expensive for him to execute his contract. After the contract had been fully performed by both parties the suppliant sought to maintain an action by petition of right for breach thereof on the ground that there was an implied undertaking on the part of the Crown in making such contract that the Minister of Railways would not so exercise the powers vested in him by statute as to render the execution of the contract by the suppliant more onerous than it would otherwise have been.

Held, that such an undertaking could not be read into the contract by implication.

Burbidge, J.
October 14, 1891.

TANCREDE DUBÉ, Suppliant, and HER MAJESTY THE QUEEN, Respondent.

Injury received on Government Railway—Negligence—Order for particulars—Practice.

Where in his petition the suppliant alleged in general terms that the injuries he received in an accident on a Government Railway in the Province of Quebec resulted from the negligence of the servants of the Crown in charge of the train, and from defects in the construction of the railway, an order was made for the delivery to the respondent of particulars of such negligence and defects.

SUPERIOR COURT—DISTRICT OF ST-FRANCIS.

SHERBROOKE, Sept. 30, 1891.

Before BROOKS, J.

HON. J. G. ROBERTSON v. HON. GEO. IRVINE, and QUEBEC CENTRAL RAILWAY CO., intervenants, and PLAINTIFF, contesting intervention.

Quebec Central Railway Company—Contract—Construction of.

HELD:—*Where R. undertook, in consideration of receiving a certain number of bonds, or a certain sum in cash in lieu thereof, to pay certain liabilities of a railway company of which he was president, and procure for the company a discharge therefrom, and it appeared that he used the earnings of the company pending negotiations prior to the execution of the agreement, to pay part of such claims which were due at the date of the agreement, and for which under the agreement he was personally liable, that he was not entitled to the equivalent portion of the bonds or cash.*

BROOKS, J.:—

The plaintiff, by action of date 30th March, 1889, alleges that by Act 49-50 Vict. of the legislature of the Province of Quebec, cap. 82, assented to on the 21st June, 1886, the Charter of the Quebec Central Railway Company was amended, authorising the provisional directors of the company in the said Act named to issue prior lien Bonds, 3,000 in number, of £100 stg. each, payable in 20 years, to be a first charge on the property of said company; that upon the coming into force of the said Act the powers of the said directors should cease, and the road be administered by a board of provisional directors consisting of Messrs. Robertson, Morkill, Hall, Norman, Shephard, Price, Bremner, Dent and Brandon, until a permanent board of directors should be elected as therein provided; that said Act should come into force by proclamation of the Lieutenant-Governor, to be issued on a declaration of the company that it was assented to by two-thirds of the shareholders, which if not given before June 1st, 1888, should render said Act inoperative; that on the 2nd April, 1887, by agreement between the provisional directors and the plaintiff it was agreed: That whereas there were certain debts amounting to about $291,494 due or claimed from the company outside the bonded debt, and certain other liabilities mentioned in said agreement, the plaintiff in consideration of $250,000 agreed to discharge said liabilities other than the bonded debt and liabilities mentioned in sections 3 and 4 of said agreement; that said provisional directors should as soon as possible after the coming into force of said Act execute and deliver 588 bonds to be held by defendant under the conditions mentioned, and then to be delivered to plaintiff according as he fulfilled conditions of said agreement; that on the 3rd Nov., 1887, the Act was proclaimed, and the provisional directors deposited with the defendant the 588 bonds; that in pursuance of the agreement he has paid the larger portion of the liabilities referred to in the agreement, has delivered the statutory declarations required, and has delivered a complete discharge from said debts, and received at different times bonds in the proportion which the discharges bore to liabilities mentioned in the schedule; that in the month of January, 1889, he delivered to defendant discharges for an amount which would entitle him to forty-three bonds, which defendant refuses to deliver; that on the 31st January, he protested defendant, who replied that he had received instructions from Price, one of the directors, and R. N. Hall, managing director, not to deliver the bonds; that plaintiff has completed all the provisions of the contract, and since January

has paid sufficient to entitle him to three additional bonds; and he asks for delivery of 46 bonds.

The defendant appeared but did not plead. Subsequently he deposited the bonds in Court, and on the 29th April, 1889, the Quebec Central Railway Company filed a petition in intervention, followed by *moyens*, filed May 16, in which they allege: That save as admitted plaintiff's allegations were untrue; that from the date of the incorporation of the company till November 3, 1887, the plaintiff was president of the company, and chairman of the board of directors, and acted in a fiduciary capacity; that during all this time R. N. Hall and R. D. Morkill were directors, R. N. Hall being the solicitor; that during his term of office he was conversant with the affairs of the company, and must be so held to be; that by 49-50 Vict. (Quebec) which came into force by proclamation of the Lieutenant-Governor, November 3, 1887, the parties named became vested with the management, but up to that time the English directors had no control over the affairs of the company. They also set up agreement *sous seing privé* as in declaration. That in carrying into force of said Act, the provisional directors handed over 588 bonds to defendant; that the Quebec Central Railway Company was never liable for the debts set forth in the second part of the schedule in said agreement, to wit, $178,209, nor were they claimed from them, as the plaintiff well knew, but if due at all were claimed from Bowen & Woodward, contractors, who for several years had been indebted to the Quebec Central Railway Company in the sum of £100,000 stg., and said debts, in part before, and in part since said agreement, were partially settled at ten cents on the dollar; that previous to the 2nd of April, 1887, the date of the agreement, the debts mentioned in the second part of the agreement had been in a large measure settled and paid by the company out of its revenues, so that on said day, in lieu of $113,285.66, there was only due by the company $58,829.42, as the plaintiff well knew; that the company was able to pay its own debts, and in fact between said date and November, 1887, did pay all such debts; that no statutory declarations in form, or containing the information required to be given, were ever delivered by plaintiff to defendant in pursuance of the agreement, and that those given were wholly insufficient; that after the coming into force of said Act, large sums exceeding $30,000 were taken from the funds of the company and expended in the payment of said debts which plaintiff was bound to pay; that plaintiff has not carried out his agreement, nor paid the debts agreed upon, but they have largely been paid out of the funds of the company; that on the 2nd April, 1887, the parties, *i. e.* directors in England, were not aware of the true state of affairs of the company, but on the contrary if they had been they would not have entered into the agreement with plaintiff, but they were misled by plaintiff, and by erroneous statements on his part, and that said agreement is void.—Wherefore they prayed: 1. That the agreement be set aside; 2. That upon its being set aside all their rights to recover bonds be reserved; 3. That it be declared that plaintiff has not carried out the agreement; 4. That the plaintiff's action be dismissed; 5. That the defendant be condemned to deliver up the bonds to the intervenants.

The plaintiff pleaded to the intervention:

1. Denying allegations of the intervention, except as they reiterate plaintiff's declaration; 2. That in the summer of 1885 the provisional directors formed a committee of English bondholders referred to in 49-50 Vic. cap. 82, and employed one Thomas Swinyard to make a thorough inspection of the property and books of the Quebec Central Railway; that such inspection was made and balance struck on the 31st August, 1885, showing a direct liability of $113,285.66, besides a liability of $178,280.71 of contractors, and arising out of construction; that the $113,285,66 included wages of the employees of the road and the current liabilities, which of necessity were payable and were paid out of ordinary receipts of the road, which was run after August, 1885, as usual, so that said amount and details were varying daily and monthly; that it was well understood and apparent that said sum of $113,285.66 was merely an estimate on the balance struck by Mr. Swinyard; that from that day till the date of the

agreement, 2nd April, 1887, several balance sheets were at different times furnished the committee of English bondholders showing variation; that when the agreement was executed in London the provisional directors there well knew that the balance shewn on said sheet was not correct at that date, and a large amount of liabilities incurred in first part had been paid and new similar liabilities incurred, and it was well understood that the direct liabilities of the road would continue to be met out of the receipts of the road, and new liabilities incurred, and the company continued to pay from ordinary receipts the ordinary expenses; that the agreement was drafted in the absence of and without the knowledge of plaintiff and forwarded to Canada for his examination and ratification, and only came into force on July 18, 1887, upon the English directors consenting to its modification, and that he has in good faith carried out all the conditions thereof; that said agreement has been voluntarily accepted and ratified and executed with the full knowledge of all the facts by the company, by the delivery of bonds, and for the purposes set forth in sec. 4, third parties not in said agreement have acquired rights; that the bonds were delivered on the 16th February, 1888, after new directors had had the control of the books for more than three months, and long after they knew that the larger portion of the items of the first part of the first schedule of Mr. Swinyard's report had been paid; that by said agreement plaintiff bound himself to indemnify the company against all claims other than bonded debt liability mentioned in sec. 4, and the six months working expenses before the coming into force of the Act (3rd November, 1887), and the company are enforcing the same; that it was always well understood that until the Act should come into force the receipts should be available for liabilities mentioned in the first part of the schedule, and of similar liabilities incurred between date of audit and coming into force of Act, and they were paid with the full knowledge and acquiescence of the directors; that the directors, and company intervenants, have, long after they knew all the circumstances, ratified the transaction and agreement, and bonds were delivered; and asks for dismissal of intervention.

On the 21st June, 1886, the Quebec Central Railway Company, intervenants, sought and obtained an amendment to their charter, 49-50 Vic. cap. 82, by which they were authorised on their representation that it was necessary, to raise additional capital for the completion of its Chaudière Valley extension, for improvements on its main line, for additional equipment, *for the payment of floating liabilities and expenditure incurred or sanctioned by the committee of the (then) present bondholders of such company*, and other purposes; to issue 3,000 bonds of £100 stg. each, to be called prior lien bonds, which should be a first mortgage or charge upon the property of said company, *save existing rights, and liens, if any, upon the rolling stock and equipment owned by, or in use upon the said railway*. It was declared that upon the coming into force of the said Act, the powers of the directors should cease, and certain parties were named, to wit, plaintiff, and Messrs Morkill and Hall of Canada, and Norman, Shephard, Price, Bremner, Dent and Brandon of England, who were entrusted with the administration of the affairs of the company until a permanent Board of Directors should be named, who were authorised amongst other things, sec. 8, to issue the said prior lien bonds, and to apply the proceeds thereof to the *purposes mentioned in the preamble of the said Act*. That the said Act should come into force only upon the proclamation of the Lieutenant-Governor in Council, which should be issued upon the declaration of the company that it had received the assent of two-thirds of the shareholders. In order to ascertain the condition of the company in 1885, prior to the amending Act, one Thos. Swinyard had been employed to examine the books of the company, as well as the road, and to report, which he did, making his report in December, 1885, in which he showed that the direct liabilities of the company apart from the bonded debt, of which the interest had been guaranteed by the Provincial Government, but which guaranty had expired, or was about to expire, were $113,285.66, of which $50,000 was estimated to be due on a claim of the Ontario Car Com-

pany for price of rolling stock, for which the road had been attached on a judgment in favor of said Ontario car company, $22,677 as due to Jas. Ross & Company on what was termed the Locomotive Account, being the price of locomotives bought of James Ross, held by him, but used by the company, and $40,688.66, other liabilities as per balance sheet of August 31, 1885, accompanying Mr. Swinyard's report, and certified to by Mr. Powers, accountant, being intervenants' exhibit No. 1, and which consisted of what may be termed floating liabilities, being accounts due tradesmen for supplies, advertising, and accounts due other roads on traffic account. Negotiations were initiated for a settlement of these claims as shown by the correspondence, with a view of obtaining legislation, and possession of the road, of which plaintiff was the president, and Mr. Woodward the manager. Mr. Woodward, the manager, made in England, on the 19th of October, 1885, a statement of the affairs of the road, *i. e.*, pending the investigation by Mr. Swinyard, in which he represented the direct liabilities at $110,471.63, from which was to be deducted $24,973.06, for contra items from balance sheet, and a probable reduction on the Ontario Car Company claim of $25,000, and the contractors' liabilities connected with construction of $172,500, of which he gives a list. In Mr. Swinyard's report this is in part 2nd a contractors' liability of $172,208.71.

Negotiations were entered into between Mr. Hall and the plaintiff, which were communicated by Mr. Hall to the English directors, on the 27th March, 1886, plaintiff's exhibit No. 16, with a view to prevent legal proceedings by which the bondholders in England would endeavor to foreclose the mortgage, and take possession of the road.

Propositions were made on the one side and on the other, and a considerable period elapsed till the 2nd April, 1887, when the agreement plaintiff's exhibit No. 1 was signed as between the plaintiff and co-directors of the one part, and plaintiff individually of the other part, represented by Mr. Hall, then in England, subject to ratification by plaintiff, by which it was declared: That certain debts mentioned in the schedule thereto annexed, consisting of parts 1 and 2 are due and claimed from the company, *i. e.*, $113,285.66 of direct liabilities, and $172,288.71 indirect or contractors' liabilities, and whereas said plaintiff has agreed to settle and discharge all of said debts for $250,000, to be provided as thereafter agreed, therefore it was agreed that the parties then legally representing the Quebec Central Railway Company, the intervenants, should as soon as possible after the coming into force of the Act 49-50 Vic., cap. 82, cause the prior lien bonds provided for by said Act to issue, and deliver 588 thereof to defendant under the conditions thereafter expressed: That the defendant should hold them intact for six months and that immediately on the expiration of the six months he should deliver 103 of said bonds in satisfaction of $50,000 of said sum of $250,000, subject to their right of redeeming by payment of $50,000 and interest, in cash, which however, is not in question in this cause, nor is the provision made for redeeming the whole of the bonds afterwards provided in said agreement, as they were not redeemed; that after the expiration of six months, upon plaintiff delivering to defendant a statutory declaration signed by himself, by James R. Woodward and by the auditor of the company, to the effect that the liabilities mentioned in the schedule comprised all the debts due and claimed from the said company, as direct liabilities, or in case of part 2, all the liabilities of the contractors which arose from and were connected with the construction and equipment of the road, and stating if any of said and what part of the receipts of the road had been used in the liquidation of said debts either in principal or interest mentioned in part 2, then defendant should hand over to plaintiff the bonds upon plaintiff procuring and delivering to defendant complete discharges from the said several debts due or claimed as mentioned in said schedule or an amount in bonds from time to time in the proportion which the discharges produced should bear to the liabilities mentioned in said schedule; provided however, that defendant should return and pay to the company a sum equal to so much of the receipts of the company as should appear from the said declaration to

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

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

On November 17, 1888..	76 bonds	
On November 26, " ..	40 "	
On November 29, " ..	60 "	
On December 14, " ..	60 "	
	—	236
November 17, J. G. Ross..		267
" " R. N. Hall..		21
" " Geo. Irvine.		10
		—
		534

He retained 8 bonds to cover the $3,273.51 paid from earnings on contractors' liabilities, leaving 46 on hand, which are in dispute in this cause, claimed by plaintiff of defendant, and claimed by intervenants.

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

quiesced in it and ratified it; your manager here Mr. Hall, consented to it, and you cannot complain. It was a going concern; I as president had a right, and was bound to pay from earnings, pending negotiations, and during the long delays, on account. You knew it. I only agreed to procure discharges of these debts, and I agreed to indemnify you against all claims except certain claims mentioned in the agreement. I abide by my agreement, and there are now other claims, notably that of commercial tax amounting to upwards of $18,000 which you call upon me to pay.

The main difficulty arises from the delays which took place, from the time the arrangements were first discussed and their completion, and the taking of the statement made by Mr. Swinyard of liabilities, August 31, 1885, as the basis of agreement in April, 1887, when there could be no doubt that there had been a change in the amount of the indebtedness, the road having continued to be operated under the presidency of the plaintiff and the management of Mr. Woodward. As to the pretension of the intervenants that the contract was improvidently made, and should be set aside, I do not see in the evidence any grounds for so setting it aside. Take for example the alleged non-liability for part 2 of schedule, contractors' liabilities. They knew that they were not claimed against the company (see Mr. Swinyard's report), though it was represented to them that probably some of them might be considered privileged, and subsidies held for their payment, but a statement was given, and understanding their nature they agreed to pay them, or rather they stipulated with plaintiff that for the consideration of $250,000, he would pay or rather settle them, as well as the direct liabilities. It is somewhat strange that they should not have directly settled these claims as best they could, for it was understood that a reduction could be had on settlement, but they arranged with plaintiff to do this, giving him the amount of $250,000 to settle $291,000, and he agreed to do it.

What was he bound to do? The words of the contract are, alleging that the debts are due and claimed as in the schedule, plaintiff undertook like as in the preamble, for the consideration of the funds to be handed over to him, to *settle and discharge said debts due or claimed*, or as it is in section 2 of contract, upon plaintiff *procuring and delivering complete discharges* from the said debts due and claimed. The main contestation and that upon which plaintiff's right to the 46 bonds depends, as the case is presented to the Court, is this: Were the earnings of the road which continued to be operated under the presidency of the plaintiff and management of Mr. Woodward, and subsequently under the management of Mr. Hall, available for the fulfilment of plaintiff's obligation? Plaintiff says, you knew they were so being applied, and consented to it, and I am entitled to the benefit of it. There is no doubt that the ordinary working expenses of the road during the time between the report and the assumption of the road by intervenants must have been paid, and there is no doubt that it was so understood by them and known by the company intervenants, but would this apply to what may be called capital account? If you look at the part first of schedule it will be found that there are two items amounting to $72.677 which may be, I think, called debts on capital. They are the very debts which in the Act of 1886, 49-50 Vic., cap. 8, sec. 1, are referred to as not affected by the prior lien bonds; *being liens and rights upon floating stock and equipment owned by or in use upon the said railway.* Plaintiff agreed to settle and discharge these claims or to procure and deliver up complete discharges for the same. What was done? The first item of $50,000 was purchased by Mr. Ross at $40,000, and intervenants were made aware of this. See plaintiff's exhibit No. 19, Mr. Hall's letter of July 1, 1886. This may fairly be said to have been made for the benefit of whomsoever it might concern, and I think that plaintiff should have the benefit of it on his contract. This was acquired by Mr. Ross, July 1886, by giving four notes of $10,000 each, and taking a transfer of the claim of the Ontario car company, and agreeing to divide any profit which might be made on it with Messrs. Woodward and Hall, but none was made, and he entered into an agreement by which the company

represented by Mr. Woodward was to pay him $4,000 annually in monthly payments of $333.33 each, six-tenths to apply on interest, and four-tenths on principal, and also an agreement to pay 16 per c. per annum on locomotive account, six-sixteenths to apply on interest, and ten-sixteenths on principal, (see plaintiff's exhibit No. 5 filed at enquête Nov. 19, 1889.) In pursuance of this, payments were made and it appears to have reduced the principal after payment of interest to $35,450.75, settled by plaintiff. Prior to April 2nd eleven payments had been made of $333.33, applicable in the proportion aforesaid of six-tenths and four-tenths, and subsequent to that time reducing it as aforesaid out of the earnings of the road. On locomotive account various payments were made reducing it to $4,849.19, settled by plaintiff, but it is to be observed that of this sum $12-974.16 was paid after the road was handed over to plaintiff, November 14, 1887, out of earnings prior to that time, which had been kept deposited in the name of the cashier on the 17th March, and $892.81 on the 13th of June, 1888. So that we have paid on these two items of what I call capital account $4,-549.25, irrespective of interest paid on the Ontario Car Company claim, reduced to $40,-000, and $17,827.81 paid Mr. Ross on locomotive account irrespective of interest, out of the earnings of the road while plaintiff was President, and which sum he had personally agreed to pay in his agreement of April 2, 1887, and nearly all of it paid subsequent to the date of that agreement, and $13,866.87 paid as late as March and June, 1888, belonging to intervenants, or monies earned by the working of the road prior to November, 1887. As to the other item of $40,608.66 which may be termed running expenses, these were all paid out of the earnings of the road, most of them prior to the agreement, and the intervenants in their agreement of April 2nd, 1887, relieving plaintiff from the payment of working expenses for six months prior to the coming into effect of the Act, and plaintiff has the advantage of this, and has not paid one dollar of the $40,608.66. Can the plaintiff be said under that agreement as it was made by him, to have the right pending negotiations to pay the debts of the company, and particularly the large sums in items one and two of first part of the schedule, out of the earnings of the company, and have such payments accrue to his own personal advantage, so as to relieve himself personally from the obligation to pay them under his agreement. But, says plaintiff, it was so understood before the board in London that I should, while the road was being carried on, pay the debts. That may be true in one sense, but is it true in the sense that he should use the funds of the company to pay these debts which he had agreed to pay, and relieve himself from payment to that extent? Should he pay out the monies of the company to meet obligations which he undertook to pay or settle? Were the earnings of the road available to him personally for that purpose? Suppose that the earnings had been sufficient to pay all the debts in part 1st and that they had been paid? should he be entitled to the $250,000 in bonds? That is his pretention, because he says, I gave you a guarantee as to all obligations except certain ones mentioned. All you required was to get a discharge, no matter if you had paid them yourselves with your own monies, while intervenants say that the guarantee was required and given because you, plaintiff, had had the management in Canada where the road was, and office and accounts were kept, and you knew just what the obligations were, and what was desired. You represented them as so much: you knew, or could know, how much. You represented that many of these claims could be settled at reduced rates. We were willing to give you a certain sum to do this: we did so, and you offered to pay and settle them with the monies you received from us; you have not done so; we find now that large sums of money have been used by you as President, to pay claims which you now ask to get the benefit of *individually*.

[Concluded in next issue.]

GENERAL NOTES.

CANADIAN LONGEVITY.—The *Montreal Gazette* of Oct. 19, under the usual obituary heading, contained five announcements of deaths, three males and two females. The united ages of these five persons amounted to 435 years, one being 95, one 87, two 86, and one 81; average 87.