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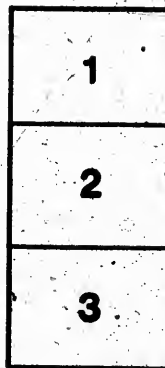
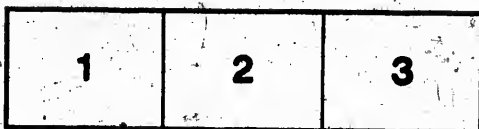
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IN THE COURT
OF
ERROR AND APPEAL.

JOHN G. BOWES,

Appellant,

AND

THE CITY OF TORONTO,

Respondents.

ON APPEAL FROM THE COURT OF CHANCERY.

J. W. GWYNNE, *Solicitor for Appellant.*

O. MOWAT, *Solicitor for Respondents.*

PRINTED BY MACLEAR, THOMAS & CO., KING STREET, TORONTO.

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IN CHANCERY,
BETWEEN THE CITY OF TORONTO, PLAINTIFFS;
AND
JOHN G. BOWES, DEFENDANT.

THE PLAINTIFFS' BILL.

TO THE HONOURABLE WILLIAM HUME BLAKE,
CHANCELLOR OF UPPER CANADA.

The Bill of Complaint of the City of Toronto, a Corporation,

SHEWETH—

That on the 25th day of November, 1850, the City Council of the City of Toronto aforesaid, passed a resolution agreeing to grant as a gift in aid of the Toronto, Simcoe and Huron Union Railroad Company, on certain conditions therein mentioned, the sum of £25,000 in Debentures of the said City, payable in Twenty Years, with interest half-yearly, in the meantime, at Six per cent.; the said Debentures to be delivered as the Railroad proceeded, and in a proportion of one to ten upon the expenditure thereon. That on the 18th day of August, 1851, the said Council passed another resolution agreeing to lend the said Company, on certain conditions in such resolutions mentioned, the further sum of £35,000 in like Debentures, to be delivered in like proportions. That by some arrangement between the said Company and Messieurs M. C. Story & Company, the persons who were employed by, and who contracted with, the said Company, to build the said Railroad, the said Debentures were to be delivered to the said Contractors; and that divers private negotiations took place between John G. Bowes, the Defendant hereto, Mayor of the said City, and the said Contractors, for the sale of the said Debentures to the said Mayor. That Debentures of the said City, payable in England, were worth par or a

premium in the English Market, and could, as the said Mayor knew or believed, be negotiated there at par or a premium; if what he knew or believed to be the proper means for that purpose were taken. That the City could have negotiated the same, even in Canada, at a higher rate than for Eighty per cent. on the amount thereof. That, however, the said Mayor, being desirous of making a profit out and by means of the said Debentures, and to facilitate the purchasing, legalising and paying for the same, secretly proposed to, and prevailed upon the Honorable Francis Hincks, who resides in the City of Quebec, in Lower Canada, out of the jurisdiction of this Honorable Court, and then was and is still Inspector General of the Province of Canada, and a Member of the Parliament and Executive Council respectively thereof, to join him in the purchase of such Debentures as the City would issue to the said Contractors, and that half the profits of the transaction should be paid to or retained by the said Hincks for his agency in the matter.

That afterwards, and on the 28th day of June, 1852, a By-law was passed by the said Council, embodying the effect of the said two resolutions, but not providing any rate for the payment or redemption of the said Debentures, and without the prior publication of such By-law, as the law required, and though the attention of the said Mayor and Common Council had been called, before the passing of the said By-law, to the illegality thereof by reason of the said circumstances, and though some members of the Council objected to the passing thereof on the ground of such illegality. That on the Thirtieth day of June aforesaid, the said Contractors, in pursuance of the said negotiations with the said Mayor, addressed a letter to him at his request, proposing to sell to him £24,000 of the said Debentures (to which sum thereof they supposed themselves to be immediately entitled under the said By-law,) he paying them Eighty per cent. therefor on the deposit of the said Debentures in such Bank in the City of Toronto as he might designate. That the said Mayor secretly accepted the said proposal, in his own name, but really in pursuance of the said arrangements between him and the said Hincks, and communicated the said letter and acceptance to the said Hincks. That the intention and agreement of all parties to the said sale were, that the whole of the Debentures to be issued

to the Contractors by the said City should be sold under the arrangement and at the rate referred to in the said letter. That the said Mayor managed to defer the issuing of any of the said Debentures until the Twenty-first day of July in order to afford time for the raising of the money by the said Hincks. That on that day £10,000 of the said Debentures were issued and deposited by the Chamberlain by direction of the said Contractors in the Upper Canada Bank at Toronto, being the Bank where the Cash Account of the City was kept, and through which the money transactions of the City always took place; and that the sum of £8,000 was paid by the said Bank as agents to the said Contractors therefor, through the instrumentality of the said Bowes and Hincks, and partly on the security of the Debentures so deposited.

That afterwards the said Railroad Company, being unable or unwilling to grant the security required by the By-law, for the said loan the said Mayor proposed to the said Contractors, and it was arranged between them (subject to the approbation and concurrence of the said Common Council, so far as such approbation and concurrence might be necessary) that the said gift and loan should be abandoned, and that in lieu thereof, the said Contractors should sell to the said City 10,000 Shares of the Stock, which they then held in the said Railroad Company, and which was of the nominal but not actual value of £5 a Share, and could have been bought for cash at the time for less than half the nominal value thereof; and that Debentures or instruments purporting to be Debentures of the said City, to the nominal amount of £40,000 should thereupon be issued to the said Contractors, and that the same, with the said Debentures already issued, should be the purchase money of the said Stock; and, that the private agreement hereinbefore mentioned for cashing the Debentures at eighty per cent, should apply to the Debentures to be so issued as last mentioned; and that such Debentures should accordingly be deposited in the Bank of Upper Canada, as mentioned in the said letter; and that the said Contractors should receive therefor in cash, the sum of £40,000 only, or four-fifths of the nominal amount of such Debentures, in full payment thereof and therefor, thus leaving a profit on the transaction of £10,000 or thereabouts, for the said Bowes and Hincks.

That the said agreement, so far as communicated to the said

Common Council, was sanctioned by them in full faith and confidence that the whole agreement had been communicated to them, and that the terms communicated to them were the best terms that it was possible to make with the said Contractors; but the said Mayor did not communicate to the said, Common Council, that the purchase money or amount for which the said Debentures were to be sold was £40,000 only, or in fact any part of the arrangement the said Mayor had made with the said Hincks, or the said Contractors for the purchase or cashing of the said Debentures.

That the object of the said concealment by the said Mayor was to enable the said Mayor to obtain and appropriate to his own use, or such other illegal uses as he might choose, so much of the said sum of £10,000 as should not be required for paying disbursements connected with the transaction or for compensating the said Hincks for his agency therein.

That the said Mayor might have made or procured an arrangement to save the City the said sum, instead of arranging for obtaining the same for himself, but made no attempt to do so.

That after the making of the said agreement, and after the same had been sanctioned by a resolution of the said Council, but not otherwise, the Contractors in pursuance and part performance of the said agreement, so entered into with the said Mayor for the said City as aforesaid, transferred to the City, through the agency of the said Mayor, 10,000 Shares of the said Stock; and that Debentures to the amount of £33,000 in the whole, were from time to time issued, and were upon being so issued deposited by the Chamberlain of the City in the said Bank, by direction of the Contractors given at the request of the said Bowes, under and in pursuance of the said agreement hereinbefore mentioned; and many of the said Debentures were issued before any actual transfer of the Stock therefor took place.

That the money agreed to be paid to the Contractors on and for the said Debentures was from time to time paid to them by the said Bank, through the security and instrumentality of the said Hincks, in pursuance of the said arrangement between him and

the said Bowes, and without the said Mayor's making any payment or advance whatever for or on account thereof.

That meanwhile, and on the 23rd day of August, 1852, the said Council agreed to petition Parliament for an Act to legalise the issue of £100,000 of Debentures of the said City, one half for the purchase of the Stock, and the other half for consolidating the City Debt; and a petition to that effect was accordingly presented at the opening of the Legislature.

That on the 22nd day of September a bill for that purpose was introduced into the Legislative Assembly, and on the 29th day of the same month, Mr. Ridout, the Cashier of the said Bank, by direction of the said Hincks, for the joint benefit of the said Hincks and Bowes, offered the City a loan of £100,000 under the act to be passed in pursuance of the said petition, on condition that the said Debentures should be taken in part payment thereof.

That a certain Act of the Parliament of this Province, intituled, "An Act to authorize the City of Toronto to negotiate a loan of £100,000 to consolidate a part of the City debt," was then procured to be passed and was passed on the 7th day of October last. That on the 11th day of the said month the said offer was accepted. That on the 18th or 19th of the same month, £7,000 of the illegal Debentures, being the residue of the said £50,000 were issued through the procurement and with the concurrence of the said Mayor, and deposited in the said Bank, and bought from the Contractors for £5,600 cash, which was raised and paid as in the case of the Debentures previously issued as aforesaid. That on the following day the said Common Council passed a by-law authorising the Mayor to subscribe for, or take, receive, and hold Stock in the said Company to the amount of £50,000 for and on behalf of the said City.

That there was no authority whatever for issuing the said Debentures or purchasing the said Stock, except as hereinbefore appears; and your complainants submit whether what hereinbefore appears to amount to any such authority.

That on the 2nd November following, a by-law was passed by the Council without any previous publication, authorising the said

loan of £100,000, and the same was effected according to, and in pursuance of the offer made through Mr. Ridout, and hereinbefore mentioned. That the old Debentures were returned to the Chamberlain as part of the loan, at par, and the said Bank passed the remaining £50,000 to the credit of the City agreeably to the said statute. That the Debentures so issued were immediately sent to England, and either immediately, or before, sold to other persons at or above par for the joint benefit of the said Bowes and Hincks. That there was a profit made by the said Bowes and Hincks on the purchase aforesaid, after deducting disbursements of nearly £10,000, one half of which was retained by the said Hincks for his agency in the matter, and the other half, or the sum of nearly £5,000 was received by the said Bowes, which the said Bowes improperly and illegally, and in breach of his duty in that behalf to the City as Mayor thereof, paid into the funds of the firm of Bowes & Hall, of which the said Bowes is the principal partner, instead of paying the same over to the said City. That the said Mayor persists in illegally holding the said sum to his own use and for his own benefit, without any account to the said Corporation therefor, and will do so unless prevented by the decree of this Court, to be pronounced in this suit.

That throughout the whole of the said transactions the said Defendant Bowes was an active party, and used the influence he had, and which was considerable as Mayor, and otherwise, to procure the passing of the several Resolutions and By-laws of the Council hereinbefore mentioned, and to procure the several acts and proceedings hereinbefore mentioned, to be performed and taken on the part of the Council and its officers, respectively as aforesaid: in all which the said Mayor had it in view to facilitate the making of the said profit, but that through the contrivance of the said Mayor, the said Common Council, until long after the several matters hereinbefore mentioned had taken place, was kept wholly ignorant, and did not even suspect, that the Mayor had any such private interest therein as hereinbefore appears, or had or expected having any part or interest whatever in the negotiation or sale of any of the said Debentures or in the profit thereof; but, on the contrary, the said Council believed that, in the advice and recommendations he from time to time gave to the

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Council, and the members thereof, and upon which they acted, or by which they were influenced, and in the active part he took from time to time in reference to the same matters, he was wholly disinterested, except as he had an interest in common with all the other inhabitants and Rate-payers of the City, and that in fact the said agreement with the Contractors, and the said By-law and Act of Parliament were all shaped, framed, and carried out through his means in such a way as might enable him, and under the hope that he would be enabled, to possess himself of the said £5,000, without any discovery being ever made thereof by any of the parties interested therein, or entitled to call him to account therefor.

That the said Contractors have not and do not pretend to have any claim to the said sum of £5,000, or any part thereof. That the said sum hath been wrongfully and illegally diverted from the funds and uses of the said City, and that since the discovery thereof the said Mayor frequently and solemnly denied that he had any concern therein.

To the end, therefore, that the said John G. Bowes may be ordered to restore and repay to the said Corporation, to be applied to the proper uses and purposes of the funds so diverted and misappropriated by him as aforesaid; and that an account of the said funds may be taken and all proper directions in respect of the said accounts and funds respectively given. And that your Complainants may have such further and other relief in the premises as shall seem meet. Your Complainants pray that a subpoena may issue under the seal of this Honorable Court directed to the said John G. Bowes calling upon him to appear to this Bill and observe what this Honorable Court shall direct in that behalf.

And your complainants will ever pray, &c.

O. MOWAT.

Note:—The original Bill was filed on the 18th day of March, A.D. 1853, and the Plaintiffs were, David Patterson, Arthur Lepper, Hugh Miller and Robert Sargeant, all of the City of Toronto, Merchants, and Jonathan Watson of the same place, Leather Dealer, they being also inhabitants of the said City of Toronto, and suing on behalf

of themselves and all other inhabitants of the City of Toronto; and the Defendants were John G. Bowes and the City of Toronto.

To this Bill the Defendant Bowes filed his answer on the 23rd of August, 1853, which answer is printed *post*.

A replication having been filed to this answer, the first depositions of the Defendant John G. Bowes, and of Thomas Ridout were taken before the Court which depositions appear *post*.

The Plaintiffs on the leave of Court, further amended their Bill, under an order, by which the Defendants were declared to be at liberty to demur to or answer the amended Bill as an original Bill; and all evidence already taken was to be used as evidence under the amended Bill; and the Court reserved the costs of all parties of the amendment and motion to amend until the cause should be finally disposed of.

To this amended Bill the Defendant John G. Bowes, filed his answer on the 24th day of November, 1853, which answer is also printed *post*.

The remainder of the depositions, &c., were taken under the pleadings as they thus stood.

The leave of the City Council having been subsequently obtained for substituting the name of the City as Plaintiffs', the Bill was further amended by making this change and omitting the charges incidental thereto, under the following order:—

“ Upon the application this day made to the presiding Judge in Chambers by Counsel for the Plaintiffs, and the said Defendants, the City of Toronto consenting thereto, and the Defendant John G. Bowes not appearing though duly served with notice of this application, as by affidavit appears; and on reading the affidavit of Joshua George Beard, now Mayor of the said City, and a copy of the Bill with certain proposed amendments, and the several proceedings had in this cause: It is ordered that the Plaintiffs be at liberty to amend their Bill in this cause by striking out the names of the present Plaintiffs, and substituting therefor the name of the Corporation of the City of Toronto as Plaintiffs, and by making such

further amendments as may be necessary so far as the same are incidental and consequential upon the said substitution; and that the answers of the Defendant Bowes do stand as the answers to the said Bill as so amended; and that the replication, depositions, and other proceedings had in the cause hitherto be taken as the replication, depositions and proceedings under the amended Bill; and that the hearing of the said cause do take place at the time for which the same hath been set down, and that the suit do in all respects after such amendment, stand in the same plight and condition in all respects as before the amendment; and this Order is to go without the usual security for costs required in such cases by the practice of the Court being first given, the Solicitor for the said Bowes having without prejudice to any question waived the same on the undertaking of the Plaintiffs' Solicitor to give the same when demanded.

ANSWER OF DEFENDANT BOWES.

[Filed 23rd August, 1857.]

The answer of John G. Bowes, one of the defendants to the Bill of complaint of David Patterson, Arthur Lepper, Hugh Miller, and Robert Sargent, of the City of Toronto, Merchants, and Jonathan Watson, of the same place, Leather Dealer, they being also inhabitants of the said City of Toronto, and suing on behalf of themselves and all other inhabitants of the said City of Toronto.

This Defendant denies it to be true, that any such agreement as in the said Bill of complaint is alleged, or any agreement to the like effect, was ever made or entered into by and between this Defendant and the said Messieurs Story & Company, in the said Bill mentioned; but this Defendant says, that in the Month of November, 1850, the City Council of the City of Toronto, at the joint request of the Board of Trade of Toronto and the Directors of the Toronto, Simcoe and Huron Union Railway Company agreed to grant as a gift to the said Railway Company the sum of £25,000 in Debentures of the said City, payable in Twenty Years, and bearing interest at the rate of Six per centum per annum, such Debentures to be issuable and delivered to the said Railway Company in proportions or instalments of Ten Pounds

per centum as the work of the Railway of the said Company should progress; that in the Month of August, 1851, the City Council of the said City of Toronto, at the request of the inhabitants of the said City of Toronto, expressed at a Public Meeting of the said inhabitants for the purpose convened, agreed to grant further aid to the said Railway Company in the shape of a loan of £35,000 in like City Debentures, such loan to be secured by the bonds of the said Railway Company, payable in ten years, with interest half yearly; that in the month of June, in the year of our Lord 1852, the said City Council passed a by-law, authorising the Mayor of the said City of Toronto for the time being, to cause Debentures of the said City of Toronto to be issued and delivered to the said Railway Company to the amount of £60,000, upon the conditions in the said By-law specified. And this defendant says, that on the 21st day of July, 1852, Debentures of the said City of Toronto to the amount of £10,000 were issued to the said Railway Company, upon account of the said gift of £25,000.

And this defendant says, that objections having been raised by the said Railway Company to securing to the said City of Toronto re-payment of the said proposed loan of £35,000 in the manner required by the resolution of the said City Council authorizing the same, various modes were suggested, as well by the said Railway Company as by various members of the said City Council, to obviate the difficulty in which the said Company was placed, by its inability to meet its engagements in consequence of the said loan of £35,000 being withheld until the security contemplated by the resolution authorising such loan should be perfected, and the said Messieurs M. C. Story & Company, in the said Bill mentioned as the Contractors of the said Railway, expressed their readiness to assent to any other arrangements which would enable them to meet certain pressing engagements, which they had entered into upon the faith of the said £35,000 loan being perfected.

And this defendant says, that as Mayor of the said City of Toronto, this defendant had divers interviews with Mr. Berczy, then President of the said Railway Company, for the purpose of arriving at some arrangement relative to the said £35,000 which might prove satisfactory to all parties concerned, and on the 29th day of July, 1852, the said Mr. Berczy suggested to this Defendant that his Defendant should propose to the said Messieurs Story & Company,

to whom the said gift of £25,000 belonged, that they, the said Contractors should surrender the said gift upon condition, that the said Railway Company should waive all right to the said loan of £35,000 and that in lieu of such gift and such loan the said City of Toronto should take Stock in the said Railway Company to the amount of £50,000, and that the said City of Toronto should issue their Debentures for an amount which, together with the amount already issued on account of such gift, should come to the said sum of £50,000.

And this defendant says that he acquiesced in such suggestion of the said President of the said Company the more readily, because blame had been attached by certain of the inhabitants of the said City to the said City Council for making the said gift of £25,000 instead of subscribing for Stock, when it was ascertained as the fact was that the said gift and all benefit thereof had been handed over by the said Railway Company as a bonus to the said Contractors.

And this defendant says that in pursuance of the suggestion of the said President of the said Railway Company this Defendant upon the same 29th day of July, had an interview with one Mr. Learmond upon behalf of the said Contractors and made to him the said proposition, so as aforesaid suggested by the said President of the said Company, and the said Mr. Learmond, then in the presence of the said President of the said Railway Company, assented thereto, and upon the evening of the same 29th day of July, this defendant communicated the same proposition to the said City Council, and in communicating the same, this Defendant did communicate the same faithfully and truly, and withheld nothing whatever save that the said proposition had emanated from the said President of the said Company, and thereupon the said City Council passed a resolution, authorizing the Standing Committee on Finance and Assessment, to complete such arrangement upon certain conditions in the said resolution set forth, and to which resolution this Defendant craves leave to refer.

And this Defendant says that the said resolution of the said City Council having been communicated to the said Railway Company, the Secretary of the said Railway Company, upon the 30th day of the same month of July, enclosed to this Defendant a resolution of the Board of Directors of the said Railway Company, which was in the words following: "Resolved,—That the Board of Directors

"agree to the proposed arrangement between the City Council and M. C. Story & Co., submitted in the resolution of the City Council of the 29th instant, without prejudice to the existing arrangements between the Council and the Board and the Contractors, in the event of the one proposed not being accomplished; And further, without prejudice to the other parts of the said existing agreements which are not to be affected in any way by the substitution proposed for certain parts of those agreements."

And this Defendant says that upon the said 30th day of July, and in pursuance of the said last mentioned agreement, 3250 Shares in the Capital Stock of the said Railway Company, amounting to the sum of £16,250 were issued by the said Railway Company, to and in the name of the said City of Toronto; and this Defendant says that on the 31st of the same month of July, Debentures to the amount of £5,000 of the said City of Toronto, and upon the 3rd day of August 1852, the further sum of £10,000 of like Debentures were issued to the said Railway Company, and on the 18th day of the said month of August, 1750 Shares in the Capital Stock of the said Railway Company, amounting to the further sum of £8,750 were issued to and in the name of the said City of Toronto, and on the 30th day of the same month of August, 4250 Shares in the Capital Stock of the said Railway Company, amounting to the further sum of £21,250 were issued to and in the name of the said City of Toronto, and on the 31st day of the same month of August, Debentures of the said City of Toronto to the further amount of £13,000 were issued to the said Railway Company, and on the ninth day of the month of September, 1852, 750 Shares in the Capital Stock of the said Railway Company, amounting to the further sum of £3,750, being the balance of the said sum of £50,000 referred to in the said resolution of the said City Council of the 29th day of July, 1852, were issued to and in the name of the said City of Toronto, and on the 30th day of the said month of September, Debentures of the said City of Toronto to the further amount of £5,000 were issued to the said Railway Company, and on the 19th day of the month of October, 1852, the said Railway Company, being, as this Defendant believes that they were, entitled to receive Debentures of the said City of Toronto to the amount of £7,000, being the balance of the said sum of £50,000 Stock, Debentures of the said City of Toronto, to the amount of the said sum of £7,000, were on the said 19th day of October, issued to the said Railway Company.

And this Defendant says that all of the said several Debentures, so as aforesaid issued by the said City of Toronto, were, as this Defendant verily believes, so issued with the sanction of the Finance Committee of the said City of Toronto, and in pursuance of the Resolution of the City Council, in that behalf: and the said Debentures were as this Defendant verily believes, deliverable to the said Messieurs Story and Company, by virtue of an arrangement between the said Railway Company and the said Messieurs Story and Company, entitling them to receive the said Debentures, and from the time of the said Debentures respectively being issued, the same became, and were the absolute property of the said Messieurs Story and Company.

And this Defendant says, that doubts having been entertained as to the legality of the said subscription of £50,000 Stock in the said Railway Company, and the City Council of the said City of Toronto, being, as they were, desirous in good faith to carry out the said agreement embodied in the said Resolution of the 29th day of July, 1852, and being desirous also of being empowered to effect a loan for other purposes, the said City Council petitioned the Legislature for the passing of an Act, which was subsequently passed, intituled, "An Act to authorize the City of Toronto to negotiate a loan of £100,000 to consolidate a part of the City Debt," and in such an Act the subscription of the said Stock, of £50,000 is, as this Defendant is advised and believes, recognized and confirmed.

And this Defendant says, that on the 18th day of October, 1852, a By-Law of the Common Council of the said City of Toronto, was also passed, which, although the same purports to be authority for the Mayor of the said City of Toronto to subscribe for 10,000 Shares, of £50,000 in the Capital Stock of the said Railway Company, was in fact passed for the purpose of legalizing and confirming the issue of Stock so as aforesaid made to and in the name of the said City of Toronto, to the said amount of £50,000.

And this Defendant denies it to be true that the said By-Law was procured to be passed or was passed in consequence of or in pursuance of or for the purpose of carrying out any such agreement between this Defendant and the said Messieurs Story and Company as in the said bill is alleged. And this Defendant denies that any such agreement was made or entered into.

And this Defendant says that the said Messieurs Story and Company received the whole of the said Debentures for £50,000, and appropriated the same to them seemed fit. And this Defendant denies it to be true that the said Debentures for £50,000 were redeemed, or that it was ever agreed that they should be redeemed by the substitution of Debentures to the amount of £40,000, or by the payment of the sum of £40,000, arising from the sale of Debentures issued under or by virtue of the said Act, entitled, "An Act to authorize the City of Toronto to negotiate a loan of £100,000 to consolidate a part of the "City Debt;" but the same were, as this Defendant believes, redeemed by the issue of Debentures of the said City of Toronto, to the amount of Fifty Thousand Pounds, by the Chamberlain of the said City in pursuance of the said Act of Parliament.

And this Defendant denies it to be true that by any of the transactions or matters attending the issue of any of such Debentures the said City of Toronto has incurred a loss of £10,000 or of any sum of money; or that the said sum or any sum has by this Defendant, or to his knowledge and belief by any person been diverted from the uses of the said City of Toronto.

And this Defendant says that the subject matter of the said bill of complaint was, upon the petition of the said Complainants and others, brought under the notice of the City Council of the said City of Toronto; and that in consequence of the report of said Committee and of the evidence adduced before the said Committee, the said City Council in the free exercise of their judgment, and uninfluenced by any misrepresentations of this Defendant—for this Defendant denies the making of any misrepresentations in the matter—declined to cause any proceedings to be taken against this Defendant, for the reason, as this Defendant believes, that the said City Council are satisfied, and well aware that there is not, as this Defendant says there is not any foundation in fact, for the allegations and charges made by the Complainants against this Defendant.

JOHN W. GWYNNE.

(Signed),

J. G. BOWES.

The Defendant John George Bowes, on the Twenty-third day of August, one Thousand Eight Hundred and Fifty Three, appeared before me at my chambers in the City of Toronto, and signed the fore-

going answer in my presence, and thereupon was sworn before me, That he had read the said answer, and knew the contents thereof; and that the same was true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believed it to be true.

A. BUELL.

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THE SECOND ANSWER OF THE DEFENDANT.

[Filed, 24th November, 1853.]

*The Answer of John George Bowes, one of the Defendants to the Bill of complaint of David Paterson, Arthur Lepper, Hugh Miller, Robert Sargent, and Jonathan Watson, Plaintiffs, suing on behalf of themselves and all other inhabitants of the City of Toronto, filed in this Court on the 20th day of October, in the year of our Lord 1853.*

In answer to the said Bill, I, John George Bowes, the above Defendant, say that to the best of my knowledge, information and belief, Debentures of the City of Toronto, payable in England, were not worth par or a premium in the English market as in the said Bill is alleged, and that neither in that or in any other market, could they have been negotiated at par as in the said Bill is alleged. And I say that to the best of my knowledge, information and belief, the said City could not have negotiated the Debentures in the said Bill firstly mentioned, at a higher rate than 80 per cent. on the amount thereof, if the same had been offered for sale by the City in the Canada market, and I say that such a transaction, even if it could have been effected, would have involved a clear loss to the City of 20 per cent.; whereas under the terms upon which the said Debentures in the said Bill mentioned were issued, the City of Toronto, negotiated the same, and only issued the same at par.

And I say that the By-law of the 28th day of June, in the year of our Lord 1852, was, with all due deliberation, passed by the Council of the said City of Toronto, at which I presided in my capacity of Mayor, notwithstanding the alleged objections to the said By-law in

the said Bill mentioned, partly, as I believe, for the reason that doubts were entertained as to the validity of such objections, and partly because the Railway Company and the Contractors in the said Bill mentioned expressed themselves to be most anxious that such By-law should be passed notwithstanding such objections; and because the said Council were of opinion that the action of the inhabitants of the said City, who, in public meetings assembled for the purpose, had requested the said Council to aid the said Railway Company, and that the action of the said Council by their votes and resolutions of the 25th day of November, 1850, and of the 18th day of August, 1851, in the said Bill mentioned, adopting such desire of the inhabitants, had already given to the said Company and Contractors, a just legal, moral and equitable claim to have such By-law passed, and to have the same legalized, if such objections should prove valid.

And I admit it to be true, that the said Contractors in the said Bill mentioned, not only believing themselves to be as in the said Bill is mentioned, but being, as I submit they were, justly entitled to the absolute control over the Debentures referred to in the letter of the 30th day of June, 1852, in the said Bill mentioned, did address to me the letter of that date, and did thereby offer to sell to me the £24,000 of Debentures to which the said Contractors had, in the manner in the said Bill and herein as afore is mentioned, become entitled; and that I, upon behalf of myself and partner, one John Hall, trading under the name and style of Bowes and Hall, did, together with Francis Hincks, in the said Bill mentioned, eventually agree to purchase, and did purchase, from the said Contractors the said £24,000 of Debentures so offered to me at the rate in the said Bill mentioned.

And I say that I am informed and I believe it to be true that the said Contractors had offered to sell the said Debentures and all other Debentures of the said city, to which they believed themselves to be entitled, to divers persons at the rate of £75 per cent.; and I admit that they did sell the whole of the Debentures of the said City to which they did become entitled as herein is mentioned, to me and my said partner, John Hall, and to the said Francis Hincks, at the rate of £80 cash for every £100 of Debentures; and I believe that if they could have gotten a better price they would not have so sold the same.

And I deny it to be true that by any management of mine the issuing of any of the said Debentures in the said Bill mentioned was deferred until the 21st day of July, 1852, as in the said Bill is alleged; and I say that I had no control whatever in delaying the issue of the said Debentures; and I say that if any delay did take place after the respective times when the said Contractors showed themselves entitled to receive such Debentures by compliance with the vote and resolutions of the Council of the said City relating thereto, such delay must have arisen, as I believe, from the circumstance that the Chamberlain of the said City, whose duty it was to prepare such Debentures, was unable to have them properly filled up, and executed for issue. And I admit it to be true that upon the security of the said firm of Bowes & Hall I did raise the sum of £8,000 to pay to the said Contractors, and that after payment of that sum to them, they, the said Contractors, did, after receiving the Debentures of the said City, issued upon the said 21st day of July, deposit the same, or cause the same to be deposited, in the Bank of Upper Canada, and I upon behalf of the said firm of Bowes & Hall claim to be entitled, together with the said Hincks, to the said Debentures so deposited, as purchasers thereof from the persons entitled to the absolute control over such Debentures. And I admit it to be true that the said Railway Company in the said Bill mentioned, did decline to give the security required by the resolution of the Council of the said City authorizing the loan of £35,000 in the said Bill mentioned; and I say that notwithstanding their declining to give such security, they nevertheless were desirous of receiving the benefit of such loan; and I say that the inhabitants of the said City having, at a public meeting for the purpose held, expressed their desire that the said Council should, upon behalf of the said City and the said Railway in the said Bill mentioned, and the said Council having by their resolution in the said Bill mentioned, adopted such desire of the inhabitants of the said City, and the said Railway Company having been unwilling to comply with the terms upon which the said loan of £35,000 was authorized, applications were made by and on behalf of the said Railway Company to several, as I believe, of the members of the said Council to have reconsidered the terms of the said resolution, authorizing the said loan of £35,000; and I say, that having been as I was myself, personally opposed to the said gift of £25,000, and many of the inhabitants of the said City having ex-



pressed themselves dissatisfied with the vote of the said Council authorizing the same, I was desirous of taking advantage of the refusal of the said Railway Company to give the security required as conditional for the said loan of £35,000, so far as to endeavor, upon the ground of such refusal, to obtain from the said Railway Company terms more beneficial to the said City and more agreeable to what I conceived to be the views of a majority of the inhabitants thereof, consistently with a due regard to the votes and resolutions of the said Council then already passed, and with the just rights of the said Railway Company acquired thereunder; and I say that, finally, on or about the 29th day of July, 1852, the President of the said Railway Company proposed to me, that, with a view of settling the differences existing between the said Railway Company and the Corporation of the said City, relative to the proposed aid to the said Railway, I should propose to the said Contractors, who by arrangements between them and the said Railway Company were entitled to the said gift of £25,000 that they should resign the same, and that the said Railway Company should resign the said loan of £35,000 and that in lieu of such gift and loan the said City should subscribe for and take Stock to the amount of £50,000 in the said Railway Company, which Stock was then at the disposal of the said Contractors, and that the said City should pay for such Stock by the issue of Debentures to the said amount of £50,000. And I say that believing that such an arrangement would be, in fact, most beneficial to the said City, and to propose the same to the said Contractors, and it was accepted by them, and at the next meeting of the said Council, I communicated the same to the said Council, and it was, upon due deliberation, adopted by them; and I say that by such an arrangement the said City has been very materially benefitted, and that no more favorable arrangement for the said City could have been obtained from the said Railway Company and Contractors in the said Bill mentioned; and I say that the Council of the said City in authorizing the subscription of Stock in the said Railway in manner and upon the terms aforesaid, did so upon due deliberation of the propriety of the step upon its merits, and because, as I believe they were, by so doing, most effectually consulting the interests of the inhabitants and rate-payers of the said City. And I say that I do not know what the actual marketable value of shares in the said Railway Company was, nor that they had any marketable value,

at the time that the said City Council agreed to convert their engagements with the said Railway Company into Stock, and I do not believe that Shares in the Capital Stock of the said Railway Company could then have been bought for half the nominal value thereof, as in the said Bill is alleged, nor do I believe that they were then in the market at all for sale at any discount. However, I say that the view of the said Council was faithfully to carry out, in substance, their engagements with the Railway Company to aid their undertaking; and that to have purchased Stock in the said Railway Company, by or on behalf of the said Council, otherwise than as subscribers at par, never was nor would have been for a moment contemplated by the said Council; and I say that, if the said Council had wished to purchase Stock in the said Railway Company at a discount of £50 per cent, as in the said Bill it is alleged might have been done, such a transaction never could have been of any benefit to the said Railway Company, and never would have been assented to by them; and, I say that, according to the best of my knowledge, information, and belief, the same never would have been, or with any propriety could have been, entertained in the Council of the said City; but that such a proposition would have been regarded as a fraud upon the said Railway Company, and as an attempt, without any pretext upon the part of the said Council to evade their engagements, deliberately made with the said Company. And I admit it to be true that £50,000 worth of Stock in the said Railway Company has been duly allotted to the said City, and the certificates of Shares therefor received by the said City; and that the Chamberlain of the said City did, as I believe was his duty, issue £50,000 of Debentures of the said City in payment of such Stock—which Debentures were, by arrangement between the said Railway Company, and the Contractors, as in the said Bill is alleged, deliverable to, and were delivered to, the said Contractors, or to their order.

And I admit it to be true, as in the said Bill is alleged, that the Council of the said City of Toronto did petition Parliament for the passing a Bill to authorize the City of Toronto to negotiate a loan to consolidate a part of the City Debt; and I say that, in so doing, the Council of the said City acted deliberately, and with a view to the interests of the said City; and I say that such Bill was, by the Legislature of the Province, passed into a law; and

say that thereby also the said City has been very materially benefited.

And I say that the said By-law in the said Bill mentioned to have been passed in the month of October, 1852, was, as I believe, passed for the purpose solely of confirming the Resolution for the taking of Stock in the said Railway Company, passed on the 29th day of July, 1852; and I submit, whether, after the passing of the said Act of Parliament, such By-Law was necessary, and whether or not the issuing of the said Debentures, or the subscription of Stock in the said Company is defective or illegal, for the reasons in the said Bill in that behalf suggested, I submit, ought to be referred to the proper tribunal in a matter calling in question the legality of such subscription and the issue of such Debentures.

And I deny that the said sum in the said Bill mentioned, or any sum, has been diverted from the funds of the Corporation of the City of Toronto—or that the Rate-payers or inhabitants of the said City have been or can be prejudiced by the transaction in the said Bill complained of. And I submit that the Contractors in the said Bill mentioned, had, as it was intended that they should have, the power of disposing of the said Debentures so as aforesaid delivered to them, and that they had a perfect and absolute right to dispose of the same to me, or to any other person; and I submit that the circumstance of my being a member of the Council of the said City was no impediment to my acquiring from the said Contractors an interest in the said Debentures, or to my purchasing the whole of such Debentures from them. And I admit that out of the purchase of the said Debentures from the said Contractors, the firm of Bowes & Hall have realized the sum of £4,123 9s. 11d. Currency, and no more; but I deny that such sum, or any part thereof has been in any way realized out of the City Funds, or that the Funds of the City, or the interest of the Rate-payers of the said City have been thereby prejudiced; and I admit that upon the occasion of proposing to the said City Council that they should convert their engagements with the said Railway Company into Stock, as herein aforesaid, I did not communicate to the said Council the fact of the said Contractors having offered to sell to me any of the Debentures to which the said Contractors conceived themselves to be

entitled, but I say that I had communicated such fact previously to the Finance Committee of the said Council at a meeting of that Committee, and I submit that the fact of such offer having been made to me by the said Contractors, or the fact of my having any interest in such Debentures were matters wholly irrelevant on the question of the propriety of the said Council adopting such proposition for the taking of Stock, and that neither of such facts should have had any effect in enabling the said Council to come to a just conclusion upon the said proposition; and I say that the said proposition was deliberately considered by the said Council, and was adopted by them upon the merits of the proposition itself, and that the adoption thereof by the said Council was highly beneficial to the said City, and to the Rate-payers and inhabitants thereof; and I say that whether or not I had agreed to purchase any of the said Debentures from the said Contractors, my conduct in the Council relative to the several Resolutions and votes of the said Council in the said Bill referred to, would have been precisely the same as it has been; and I would have acted precisely in the same manner as I did act if any other Rate-payer or inhabitant of the said City had contracted for the purchase of the said Debentures from the said Contractors; and I say that I never have either upon any of the occasions in the said Bill referred to, or upon any other occasion given my vote, nor have I ever exercised any influence for or against any Resolution or matter before the Council, from any other motive than that of consulting the interests of the said City, and of the Rate-payers and inhabitants thereof, consistently with a due regard to the obligations and engagements of the said Council; and I submit that neither the Plaintiffs in the said Bill mentioned, nor any of the Rate-payers or inhabitants of the said City, nor the said City Council have any claim upon, or interest in any part of the said sum, so as hereinafore mentioned, realized by the said firm of Bowes & Hall, nor have they any right to call in question the sale of the said Debentures by the said Contractors; and I say that I believe the reason why the Council of the said City of Toronto have refused to take any proceedings against me in respect of the matter alleged in the said Bill, is because the said Council is convinced that, as I submit the fact is that, the City of Toronto have not any legal, moral, or equitable claim against me to recover to the use of the said City any part of the said sum, so as aforesaid realized by the said firm of Bowes & Hall; and that the funds of the said

City, and the interests of the Rate-payers and inhabitants of there have not been in any way prejudiced thereby.

(Signed),

J. G. BOWES.

The Defendant, John George Bowes, on the 24th day of November, 1853, appeared before me, at my chambers, in the City of Toronto, and signed the foregoing answer in my presence, and thereupon was sworn before me that he had read the said answer, and knew the contents thereof, and that the same was true, of his own knowledge, except as in matters which are therein stated to be on information and belief, and as to those matters he believed it to be true.

A. BUELL.

DEPOSITIONS TAKEN *VIVA VOCE* IN COURT ON  
12TH SEPT. 1853, ON PART OF THE PLAINTIFFS.

JOHN GEORGE BOWES sworn—saith, I am Mayor of Toronto.—  
This is the 3rd year of my Mayoralty.

I know the Plaintiffs, Patterson, Lepper, Miller Sargeant and Watson. Patterson and Lepper are electors; I believe Miller is an elector; also Sargeant. All the Plaintiffs are inhabitants of Toronto and Rate-payers, I believe. I don't think Watson resides in the City. They have all been inhabitants and Rate-payers some years except Watson, as to whom I don't know.

I recollect the circumstance attending the taking £50,000 Stock in the Northern Railway Company by the City. The proposition came through me, suggested by Mr. Berczy, the President of the Company. I made an offer on the subject, subject to the approbation of the Council. I made the proposition, and it was accepted by Mr. Lawmond. I had only one conversation on the subject of the proposition with Mr. Lawmond who was one of the Contractors. I had a conversation also with Mr. Berczy before communicating the matter to the Council. I think Berczy was present when the proposition was made, or before it was accepted. The conversation lasted only a few minutes. No communication had taken place previously on the subject with the Council. The City was to give Debentures for the Stock—Debentures of the City, amounting to £50,000, the same amount as the Stock. It was arranged between me and Mr. Lawmond that he should take £50,000 Debentures for £50,000; Stock, and the Company should cancel the agreement for the bonds and loan for £25,000, and £35,000, respectively.

I did not know what use the Contractors were to make of the Debentures. Lawmond was acting on behalf of all the Contractors. They had previously made to me an offer to sell £24,000 Debentures. There had been a grant of £60,000 and £24,000 was the amount then due. The offer was two or three days after the by-law passed. There was no proposition with them on the subject previously to the letter containing the offer. There was talk about it. No doubt they spoke to me on the subject, but not on the sub-

ject of buying the Debentures. I don't recollect, however, any such conversation. I have no belief that they offered to sell me the Debentures before receiving the letter. I believe I had no conversation with Story & Co. about purchasing Debentures before receiving the letter. I believe there was a conversation a day or two before, in which they offered to sell the Debentures, the £24,000. I don't recollect any other conversation before the letter in which the offer to sell the Debentures. I don't recollect whether the letter was written at my suggestion or not. On receiving the letter I had a meeting of the Finance Committee called, and urged to them the expediency of themselves purchasing these Debentures, but they unanimously refused to do so. There is no minute of that meeting. It was soon after the letter was received. Messrs. Thompson, Hutchinson, Sheard, myself and some others were present at it. I did not shew them the letter. I stated to them that the offer of the £24,000 had been made to myself at 1 per cent. per annum discount. The City had not then funds to take up the Debentures. I said to them they ought to get a credit, but did not suggest any method of doing so, and they made no suggestion—would have nothing to do with the matter.

I don't think any agreement was made before the 29th June, 1852, as to what amount in cash was to be paid to the Contractors. They offered them at 80 cents. upon the dollar to me on £24,000. It is asked "whether this offer was accepted." That question is objected to—Not put.

Witness proceeds:—The offer was made to and accepted by me to take £24,000 Debentures at 80 cents to the dollar. Not on my own account. I accepted the offer eight or ten days after it was received. No arrangement was made as to what the Contractors should receive on the rest of the £50,000 Debentures. Only £10,000 of the £24,000 were issued. This was after my acceptance of the offer. The money was paid over to the Contractors for the £10,000 Debentures at the rate of 80 cents. to the dollar. No similar arrangement was carried into effect as to the remainder of the £24,000. The arrangement of 80 cents. to the dollar was the arrangement carried out throughout the whole £50,000 Debentures of which £40,000 were issued after 29th of July 1852, and the £10,000 before. £50,000 Debentures were issued for £50,000

Stock. All that the Contractors received in money for the £50,000 Debentures was £40,000. I did not buy the £50,000 Debentures for myself. It was not understood that the proposition in the letter as to the £24,000 should be carried out as to the rest of the £50,000. No subsequent arrangement, however, was made between me and the Contractors. £10,000 of the £24,000 was purchased by me at 80 cents to the dollar, and the remainder of the £50,000 Debentures were purchased at the same rate, but not under any arrangement with me. I was interested in this arrangement under which the £40,000 were purchased. I had the same interest in the £40,000 as in the £10,000. There was not a profit made to my knowledge by any body upon the transaction, of £10,000. I think there was a profit of £5,000 made on it. I think not £9,000. I think as much as £8,000 was made, or thereabouts. This entered into the business of the firm of Bowes & Hall, of which I am a member. The share of the firm was £4,000, or half of the profit that was made. The other member of the firm is John Hall. I am entitled to five-eighths of the profits of the business, or thereabouts, as I believe. This sum has gone into the business of the firm, like any other moneys of the firm. This was a partnership transaction from the first. Hall expected to have the benefit from the first.

I think the Debentures as signed, were sent to the Contractors to be filled up. When completed they gave an order that they should be lodged in the Bank. They were signed by me before they were filled up. I think the Chamberlain signed them afterwards. That is the practice. I believe all the Debentures were deposited in the Bank of Upper Canada. £2,500 were kept by the Chamberlain by the direction of the Contractors, but afterwards they were sold like the rest. Some of the Debentures were lodged in the Bank by the Chamberlain, by the direction of the Contractors. I don't know, or believe that they all were. I think these directions were given from time to time.

The £40,000 Debentures were bought at the same rate as the £10,000, but not under the same arrangement. I cannot say when the second arrangement was made, under which the £40,000 were bought. I was not aware of it at the time, but subsequently



I was made aware of. I can't say whose money it was with which the Contractors were paid.

Monday 13th September 1853.

*Examination of Defendant Bowes resumed.*—I think £8,000 was the exact profit made, or very close to it. The Debentures did not bring par. Drafts were drawn on Glyn & Co. of England, for the amount, or nearly the amount necessary to pay the Contractors for the Debentures. The drafts were for 70 per cent of the amount of £50,000. This I learn from the Cashier of the Bank of Upper Canada.

These drafts were cashed by the Bank of Upper Canada here and the money paid by the Bank to the Contractors. I believe the Debentures were placed as a collateral security at the Bank by the person who drew the drafts. I speak here of the Debentures issued under the Resolution of Council, of July 1852, and the By-law of June 1852; not of the Debentures issued under the By-law of October. There was a Letter of Credit from Glyn & Co. The offer to purchase the Debentures was made by me for a third party, and that third party drew the draft on Glyn & Co.

The arrangement originated in the Contractors proposing to me to purchase the Debentures; and I then made the offer to the third party, and his acceptance was communicated through the Bank of Upper Canada; and I communicated the acceptance to the Contractors. I mentioned no name to them, but said that the Bank of Upper Canada would pay for the Debentures at 80 cents. to the dollar. I took the Contractors to the Bank. I did not mention to the Contractors the name of any other person unless Bowes & Hall. I informed them that the purchase was not made for myself. At the same time Bowes & Hall were interested to the extent of one half of the profit made by the transaction. I proposed to the third party to enter into the transaction. I told him what the Debentures could be bought at, and added, that I thought by keeping them, some profit might be made of them. I intended to advance funds of the firm. I could not have raised beyond £10,000 but for the assistance of the third party. In consequence of the drafts being drawn, I advanced no funds of my own, or of the firm. The security of the firm was at first given to raise £10,000, or a little more, but that was

replaced by the drafts. I gave a letter of credit to advance that sum to the Bank, and that sum was raised upon my letter of credit. The Debentures were not deposited till afterwards. I believe the letter of credit was only to enable the Contractors to get the money until the drafts should be drawn in England. The drafts were drawn, I think, between the 21st and 31st July, but I do not know of my own knowledge when they were drawn. I understood it was Glyn & Co's money that authorised the drafts, or rather the letter of credit sent over by Glyn and Co. My belief is that Glyn & Co. had placed funds to the amount of the letter of credit at the disposal of the third party of whom I have spoken. I take this to be the nature of the letter of credit. I never saw the letter of credit. I suppose the Debentures were deposited in the Bank as collateral security to Glyn & Company. I do not know that Glyn & Company had any profit on the transaction beyond the usual per centage on the drafts. I do not know that any person other than my firm and the third party had any share in the profits of the transaction. I believe there was no other.

I did not make the proposal to the third party for the benefit of the City. I had previously recommended to the Finance Committee not to allow the Debentures to issue, but to take them themselves, as their legality had been questioned, and I thought that issuing them would be injurious to the City; and I thought then, that I had a right to purchase them, as any private merchant might. The Finance Committee refused to adopt my suggestion. I did not tell them how money might be raised.

I had not spoken to the third party upon the matter until after I had received the letter about the £24,000 Debentures, but I may have spoken to him about raising money generally for the City, and I believe I did. I am convinced that I had not spoken or written to the third party about purchasing these Debentures. I wrote to him very shortly after seeing the Finance Committee; perhaps the day following. I mailed the letter to him. I do not recollect sending a letter by Mr. Cotton to him. I believe I did not. I wrote several letters on the subject to this person, and I received one or two, or more from him. I cannot say how many. I destroyed the letters from him as private letters. It was a

business transaction. I have been a merchant in large business for many years. It is not the habit of men of business to destroy letters unless those marked private. Those so marked we do not keep. I think I kept no copies or drafts of the letters I sent, but I entered portions in a memorandum book. The drafts may have remained for a day or two. I should say that I marked my letters to the third party private, and that the letters to me were so marked, or I should not have destroyed them. Those I received may have remained on my desk for some time. I do not think I preserved any for one month, but I cannot swear that I did not.— It was on my private desk that letters remained. No one but myself wrote at it, except my partner, when at home. I cannot swear that some of the letters may not have been destroyed after this suit was commenced. There was no desire expressed either by myself or the third person, that the thing should be kept private. I did not before give the explanation which I now give, because a persecution was got up against me in the City, through newspapers and otherwise, assailing me in respect of the transaction. This persecution was after the correspondence, and was not the cause of the letters being marked private. I wished the transaction to be kept private, just like any other business transaction. An additional reason was, that a third party was concerned as a purchaser, whose consent that it should be otherwise than private has not been obtained or asked for.

I have not yet found the memorandum book in which portions of the letters were entered. I cannot recollect when I saw it last. it was not filled up. I did not recollect it till after I had made my first affidavit. When I recollected it I went to my Counsel, and then I did not know but what I had it. I searched for it after seeing him. I had made some search before.

I never communicated to the Finance Committee or to the Council, anything about the arrangement I had made with the third party for the purchase of the Debentures. I thought I was under no obligation to do it.

Counsel advised that the Debentures issued under the By-law of June for the issuing of £60,000 Debentures was not valid. The City Council thought they might legally exchange City Debentures for Stock. Before the passing of the By-law the opinion of

he Counsel against its legality was communicated to the Council. The opinion of two Counsel, Counsel for the Contractors, the other way, was also before the Council. It was thought in the Council that they could purchase Stock with City Debentures. I have not seen the opinions in favor of the By-law. The Contractors were willing to take the Debentures notwithstanding the doubts as to their validity. I never doubted their validity, and was willing to purchase them. I think the third party was aware of the adverse opinions. It was mentioned in Council that, if the Debentures were illegal, an Act of Parliament might be obtained to legalize them. The Council petitioned for an Act, enabling them to substitute other Debentures for them. I think a petition was drafted about the 9th June. I think it was only before the Council once, a notice given and the petition adopted, probably at the next meeting of Council. The draft of the Act was prepared by the City Solicitor. I was in Quebec when it went down, and spoke to some members about it.

A proposition came from England, I believe to purchase the Debentures issued under the By-law of October. I do not know and never heard who purchased those Debentures. I know nothing of the offer for the purchase of the £100,000 of Debentures till it came to me officially, and I communicated it to the Council. I believe that communications passed between the third party here and the parties in England who offered to purchase, before the offer to purchase. I do not know that it was before the offer to purchase. I learned from the third party that £8,000 was the amount of the profit made on the sale of the Debentures of which I have spoken. I do not know it otherwise

£100,000 of new Debentures were issued, £50,000 of which went to redeem the £50,000 of old Debentures issued, and for the other £50,000, the City got that amount of Cash. The new Debentures were payable in England in Sterling money. The old ones, I think, were payable at the Bank of Upper Canada here. The difference of exchange between England and here varies somewhat. Usually from 9 or 11 per cent. usually 11 or nearly that.

I was absent from Toronto in the early part of October to the

10th. I do not know why any of the old Debentures were issued after the passing of the By-law of October. The Contractors received only 60 per cent. on the dollar upon those, as well as upon those previously issued. The Contractors would, no doubt, have received 80 cents. to the dollar from the Corporation, upon those Debentures as well as from any other quarter.

I suppose I knew of the passing of the Act as soon as it was passed. I was at Quebec at the time. It had passed the two Houses, I think, before I left Quebec; and I think it was my impression when I left that it had; and when I was leaving Quebec the Governor was at the House giving his assent to Bills. I believed, when I left, that the Bill had received, or would receive the royal assent that day. That was my impression.

In writing to the third party I may have said that the Council could get the £50,000 Debentures legalized, and that they were pledged to the Contractors to get them legalized. I believe nothing was said in the Council as to whether they should be legalized by Act of Parliament or how.

I think, when I was about going to Quebec about Railroad matters, it was suggested in Council that I should endeavour to get an Act legalizing the Debentures, and to enable us to effect the loan, which we had asked for eighteen months before. This was some time before the Petition was sent down. I cannot say whether this was before or after the passing of the By-law of June 1852.

I do not recollect forming any opinion as to what Debentures issued under the Act would sell at, whether at par or not. I may have said they were worth par. I do not recollect when our proportion of the profit made on the Debentures was received by our firm. I think the sum was £4,000, within a few shillings. I have not my books here. I mean the books of Bowes & Hall. That sum is regularly entered in the books of Bowes & Hall. Our firm has no papers relating to the transaction except the one produced.

*Explanatory Statement.*—The only arrangement made by me with the Contractors was that they should take £50,000 Debentures for £50,000 Stock, and cancel the agreement for the gift of

£25,000 and the loan of £35,000 I considered that on these terms I was getting the Stock at 1 per cent. in the Pound. I considered that it was the most advantageous bargain that could be made for the City. Not a word was said between me and the Contractors about the value of the Stock.

*Explanatory Examination.*—The City was under obligation to make a gift to the Railroad of £25,000. Afterwards they came under an engagement to loan to them £35,000. These two sums, amounting to £60,000 were the subject of a By-law passed on the 28th June 1852. The legality of this By-law was doubted, on the ground of its not providing a sinking fund for payment of the amount. The By-law was not published. It was supposed that the Railroad Act authorised such a By-law. The Contractors were anxious to receive the Debentures for the £60,000, notwithstanding these doubts, to meet their pressing demands. At the time this By-law passed, or afterwards, there was no arrangement between me and the Contractors which would have precluded them from disposing of the Debentures in any way they pleased. Soon after the By-law passed the Debentures became the property of the Contractors as the work proceeded, so far as the City was concerned. They could compel the City to issue the others on compliance with the conditions: they could not in good faith have been withheld from them. At the time the letter was written to me by the Contractors, containing the offer of the £24,000, there was no arrangement between us for the conversion of the gift and loan into Stock. That was an after-thought, arising from the difficulty about the security: and the proposition for it emanated from the President of the Company. The exchange was a loss to the Contractors. They lost the gift of £25,000, and a loan of £35,000, and gave the City £50,000 Stock instead. The City gained proportionably.

The Debentures were absolutely purchased from the Contractors. There was no arrangement with them at any time for their redemption. The arrangement for the purchase of them was subsequent to the Finance Committee refusing to have anything to do with them. From that time I considered that it was open to any private person to buy them.

The By-law of the 19th October was passed, I think, at the suggestion. We have not since endeavoured to sell Debentures payable in England.

gestion of the Solicitor. It was supposed that the Resolution was binding on the City. The Debentures issued for £60,000 under the By-law notwithstanding the conversion into Stock. The Contractors were entitled to receive them as the work progressed. They were issued to the Contractors as they transferred the Stock.

Previously I had endeavoured to effect a loan for the City, at par in England, but never succeeded. I think now, the City Debentures would not fetch par. The City could have offered no security which would have induced a third person to enter into an agreement whereby par could have been obtained for the Debentures.

As to the memorandum book that was lost, I made every search for it without success.

There was never any contract, arrangement or agreement whatever between me and the Contractors, that the transaction relating to the Debentures should be anything but a *bona fide* and absolute sale.

*Re-Examined.*—The Conditions I have mentioned related to the Certificates of the Engineer as to the progress of the work. There was also a Condition that the engagement for the gift and loan should be released. Formal releases were afterwards executed by the Company. I don't know when this was done. I may have signed the Debentures before this was done, but I don't know. They are never signed without an Order in Council, and I always know that that is right.

I don't suppose that there would have been any objection on the part of the Contractors to take the £40,000 from the City as well as from me if the City would have done it. In fact, I think they would rather have done so.

There was no arrangement with the Contractors further than the letter binds them.

I should think it would have been possible to sell the Stock at 50 per cent. discount at the date of the Resolution. The gift of £25,000 belonged to the Contractors as I understood. They suffered the loss. It was made over to them by the Company.

I am speaking of Debentures payable here as being at a discount.

We have not since endeavored to sell Debentures payable in England. City Debentures have been stated in the "Globe" Newspaper to have been quoted in England at 3 per cent. Premium. I don't know whether it is so.

*Per Cur.*—There was no fresh arrangement made with the Contractors after the letter offering the £24,000. The whole transaction proceeded on the basis of that letter. The Contractors were not bound beyond the £24,000. They could have sold the Debentures to any other party. Before the loan of £100,000 was taken up, the Debentures had passed out of my hands. I was only the owner in part. The rest was held by the other party. I did not interfere with the Debentures after the Letter of Credit of Glyn, Halifax & Co. was received. I did not abandon all interest in them.

*By Mr. Vankoughnet.*—The remainder of the Debentures beyond the £10,000 were lodged in the Bank on the tacit understanding that the Contractors should receive the 80 Cents to the Dollar, according to the original offer in the letter.

(Signed)

J. G. BOWES.

*Thomas Gibbs Ridout, called by Plaintiffs.*—I am Cashier of the Bank of Upper Canada, and have been so for a number of years.

I know some of the Plaintiffs, and have heard of the rest of them, I know Mr. Bowes, I know Mr. Cartwright and Mr. Lawmond—Members of the Firm of Story & Company.

I was applied to last year, I think in the latter end of June, in regard to the negotiation for certain City Debentures on behalf of the Contractors. I think the first I heard of it was a Letter from Mr. Hincks to myself. No Debentures had then been offered to the Bank. I do not know whether any had issued at that time. The purport of the letter was that Messrs. Story & Company had engaged to sell £50,000 of City of Toronto Debentures at 20 per cent. discount, and he wished that the Bank would assist him in the negotiation—that Glyn & Co. had desired to have the Debentures at the Bank at their security—that Mr. Hincks would be authorized to draw upon Glyn & Co., upon Bank Certificates being sent of the Debentures being deposited for something less than 80 per cent. of the amount of the Debentures; and Mr. Hincks wished the Bank to advance the money to the



Contractors as Debentures should be deposited from time to time in the Bank—that Glyn & Co. said they would give Mr. Hincks a credit for the amount upon the Debentures being deposited. Mr. Hincks inclosed to me a letter from Glyn & Co., authorizing Mr. Hincks to draw for £15,000 or £20,000 sterling, the Bank holding the City Debentures. Mr. Cartwright and Mr. Bowes came to the Bank shortly afterwards and said that an arrangement was made for the sale of £50,000 of Debentures at 20 per cent. discount, and asked if they could receive 80 per cent. upon the Debentures as they should be deposited; I answered in the affirmative. They said that the Debentures could be issued from time to time by the Chamberlain and lodged to their account. The Debentures were not then ready, and a sum was advanced to them upon Mr. Bowes, security of £3,000, or £4,000, or it may have been £8,000. This was temporary until the Debentures should be prepared. This interview was after my receiving Mr. Hincks' letter. I think the temporary advance was made upon the occasion of Mr. Bowes and Mr. Cartwright first coming to the Bank as I have mentioned. The first Debentures were lodged at the Bank on the 22nd July. The amount was £10,000. I think the temporary advance was previous to that. I think Certificates of the amount of Debentures deposited were sent shortly before the first Draft of Mr. Hincks on Glyn, Halifax & Co. I answered Mr. Hincks' letter acceding to his proposition. The Debentures were placed in the Bank from time to time by the City Chamberlain. They were issued slowly, and Cartwright, or his Agent Dr. Beatty, were in the habit of coming to the Bank to see if they were deposited. The money as advanced was carried direct to the credit of Story & Company. We advanced 80 per cent. as the Debentures were deposited. The last £10,000 sterling was negotiated by Mr. Hincks with Glyn & Company in England. The other payments were made on Mr. Hincks' Drafts on Glyn & Company. No other party than Mr. Hincks drew any Drafts on Glyn & Company in this transaction. I believe the letter from Mr. Hincks and the enclosure from Glyn & Company were all that I received. I considered that they were final and perfected the transaction. I took no other part in the matter than what I have stated, nor did the Bank. I did not hear till some time afterwards that any question had been raised as to the legality of the Debentures, but after we heard of it we went on cashing the Debentures, as we heard that the defects could be remedied. The question was not

brought before the Board of Directors. Mr. Hincks did not communicate to me that the Debentures had been questioned. Nothing was done by the Bank to remove the alleged defect: they relied on Glyn & Co. £82,000 of City Debentures in sterling money were issued and placed in the Bank by the Chamberlain, and thereupon the old £50,000 of Debentures were given up to the Chamberlain, and the difference, £49,760 was placed to the credit of the City. The whole £82,000 sterling of Debentures were sent by the Bank to Glyn & Company, with instructions to hand them to Masterman upon his paying the amount, which was to be placed to the credit of the City £40,000 sterling, equal to the above sum of £49,700 currency.

The £50,000 Debentures first deposited we considered to be the property of Glyn & Company. I considered that they and Mr. Hincks were interested in them. I thought them the property of Mr. Hincks subject to the amount advanced by Glyn & Company. I never understood whether Mr. Hincks had any partner in the transaction. Mr. Bowes did not explain that he had any share in the transaction, nor did Mr. Hincks. I know nothing of any arrangement between Mr. Hincks and Mr. Bowes. I do not know that Mr. Bowes informed me that the defects in the Debentures could be remedied, or that Mr. Hincks did. The Bank proposed to the City to buy the £82,000 Debentures. We did so at the desire of Mr. Hincks, who instructed us to send them to Glyn to be handed to Masterman, on payment of £41,000 sterling. I did not know what the Debentures would sell for in England, whether at par or not. I knew nothing of how the Debentures were negotiated in England. The Debentures were sent to England, and by return of mail Glyn & Company advised us of having received for us from Masterman the sum they were to receive, £41,000 sterling. The difference between the £40,000 advanced by us to Story & Company, and the sum brought by the second set of Debentures was not paid by us to any one.

I do not know how that was arranged in England. Glyn & Company got £82,000 sterling of Debentures and paid us £41,000. What became of the difference I do not know, Debentures were not issued for quite the full amount of £100,000. Mr. Hincks in his letter said he had arranged to sell the Debentures in England. He did not say at what rate. Exchange for some months past has been sold at eleven,

It has seldom been less. The City has to pay certain charges in London on the payment of the interest on the Debentures which they would not have to pay if the interest were payable here. The Bank sells Exchange to the City as to individuals, and they should purchase their Bills here in time to remit to England when the interest falls due.

*Cross-Examined.*—I do not think the City could have negotiated these Debentures at par either in London or here. It is difficult for a Corporation like this to get money in London, unless introduced by some well known name. I have always thought that Story's loss on the £50,000 first Debentures assisted the City in selling the remaining £50,000 at par. The communications with Mr. Bowes were not in his official capacity but as an individual and a member of the firm of Bowes & Hall. The letter securing the temporary advance of £7,000 or £8,000 was signed by Bowes & Hall, I think.

(Signed)

THOMAS G. RIDOUT.

*Depositions taken viva voce in open Court this Sixteenth day of December, A.D. 1853, in a certain cause pending in the said Court of Chancery, wherein David Paterson and others are Plaintiffs, and John G. Bowes and the City of Toronto are Defendants.*

THOMAS GIBBS RIDOUT, sworn for the Plaintiffs, saith:

I received letters from Mr. Hincks relating to the matters in question in this cause [*Mr. Gwynne objects to the production of these Letters as not evidence against Mr. Bowes, and they are produced subject to this objection*]*—the paper marked M,* contains a true copy of every thing in those letters at all material to the matters in question in this suit; (this copy is admitted by the opposite side as sufficient evidence) the first letter dated 5th July, 1852, is the first communication I received from Mr. Hincks on the subject; the date is a true date. I have compared the paper marked M. with the originals. I do not remember making any proposal to the City as early as April, 1852, respecting the negotiation of Debentures. The Bank, I do not think,

in the winter of 1851 and 1852 made any inquiries respecting the negotiation of Debentures in England. I did not think it worth while, as I thought it could not be done unless the Bank guaranteed them. The Mayor wrote a letter in the fall of 1851 to the Bank to enquire if they could negotiate Debentures. I don't think any answer was returned to this letter; the letter was written as Mayor. I don't recollect any proposal made by me on the subject in the summer of 1852 to the City. I was aware that Provincial Bonds were at a large premium; at this time City Bonds could not have been negotiated at par in England. I don't recollect informing the City that they could; in fact they were negotiated afterwards. I did not inquire, I think, when they could be negotiated or not. I cannot account for the Debentures going off so well in London as they did. I don't think they would have sold for less had they been sold on behalf of the City. I think Mr. Hincks' influence in the money market in England helped them off very much. I answered the letter of 5th of July from Mr. Hincks. I agreed to make the required advance. I had not seen the letter for some time when I said I did not know Mr. Bowes was interested. Mr. Bowes came to the Bank soon after I received the letter of 5th July, with Storey & Company, but he did not appear throughout to have any personal interest in the matter: he came 2 or 3 times. I don't remember Mr. Bowes alluding to Mr. Hincks on this occasion, but suppose he must. I don't think I produced the letter of 5th July. I have no doubt I mentioned it to him. I soon forgot that Mr. Bowes had any interest in the matter, but knew it then. Mr. Bowes had no reason then to expect any other negotiation of the Debentures but that proposed by Mr. Hincks. He must have called at the Bank on this business, and must have inquired about it; he told me Storey & Company were the parties who held the Debentures. The interview had reference to the business mentioned in the letter: it was a few days afterwards that Mr. Bowes gave the guarantee I have already mentioned in my former evidence. Mr. Bowes did not, I think, call during the summer of 1852 on this business; he called 2 or 3 times. I never thought much of Mr. Bowes in the matter, he did not appear to have any interest in it. Mr. Bowes never spoke to me on the business as Mayor of the City; I always saw the Chamberlain. At the two or three interviews I have mentioned, he, Bowes, came, I think to get small advances made to Storey & Company: he did ask them as a favor to himself. He seemed

anxious that Storey & Company should get the money, although the Debentures had not issued. He never told me he had any interest in the matter, or gave me to understand that he had from his manner. Early in the Spring of 1852 Mr. Bowes came to the Bank and said he could buy Debentures in the market at 20 per cent. discount, and wanted to know if the Bank would lend him £5000 for the purpose, which they refused. I had no private conference with Mr. Bowes. I cannot tell whether I thought him then acting as Mayor or not. I was in doubt about it. Mr. Bowes asked for the advance for Story & Co. I suppose because the Debentures were not issued. The letters from which I have made extracts in paper M are the only letters I received from Mr. Hincks I believe, on this business, except the letter about making the offer to the City to purchase the £100,000 Debentures. The letter of the 22nd October relates to the £100,000 Debentures. The City has transacted its business with the Bank of Upper Canada for some years; the Bank has had also the Government account for some years. The paper marked N is a correct statement of the manner in which the moneys were advanced to, or placed to the credit of Story & Co. and the times the Debentures were deposited in the Bank.

*Cross-Examined.*—There was a guarantee from Bowes & Hall given by Mr. Bowes for £8,000 to raise the first money for Storey & Co: I considered Mr. Bowes then acting in his private capacity.— Mr. Bowes called at the Bank to manage this matter at the times I have mentioned. I knew the Contractors claimed the Debentures, they said the Chamberlain would lodge the Debentures on their account from time to time in the Bank; it was publicly known that they claimed the Debentures. I understood they claimed the Debentures and were selling them. I suppose the application in 1851 to me, was to know whether the Debentures could be negotiated at par. I thought not: without the Bank's guarantee they could not have been sold at all probably, without some person introducing them. The City did not wish to sell the Debentures in 1851 at 20 per cent. discount. That was the current price at the time, as also in 1852. The Debentures were lodged slowly, and the Contractors complained of it. The letter dated the 6th of July was in fact written and received in August.

*Per Cur.*—The Bank has bought and sold City Debentures many

years. They have varied in price, sometimes more, sometimes less than 20 per cent discount; that was the market price in 1852. An ordinary person taking them to the London Market could not have sold them at all. They must have been introduced by some person of influence. I carried on the transaction on the foot of the letter dated the 5th July, but subsequent letters enlarged the amount.

(Signed) THOS. G. RIDOUT.

*John G. Bowes sworn for the Plaintiffs, saith*—I think the Contractors spoke to me about the purchase of Debentures more than two or three days before the date of the letter written by them to me. I don't think I had any conversation about purchasing them myself at all. They spoke to me perhaps two or three months before the date of the letter about selling the Debentures, but not to myself, or I cannot tell whether to myself or not. I made no arrangement with them for purchasing Debentures from them until after I received the letter in question. I mean the letter dated the 30th June. I sent, I think, a copy of this letter to Mr. Hincks a day or two after I received it. I suppose I made a proposal to him to join me in purchasing them at the same time. I cannot say whether this was the first time I mentioned the matter to Mr. Hincks. I was at Quebec and may have spoken to him on the subject before. It must have been in the summer. It may have been a month or two before I received the letter. I don't know what Mr. Hincks refers to in his letter of the 5th July, unless to a conversation I had previously with him—there was no arrangement or understanding. There may have been a conversation between us on the subject of purchasing Debentures previous to my receipt of the letter of the 30th June: I am not sure however that there was any such communication. I doubt it, but still it is likely there was one. I am not aware that Mr. Hincks was in communication with anybody else as to the purchase of Debentures. I don't know what led Mr. Hincks to suppose that Debentures would not be issued so soon, except, perhaps, some previous conversation with me. I don't recollect receiving the letter referred to in the letter from Mr. Hincks of 6th July. I don't recollect getting a letter from him desiring me to put off paying the Contractors, till next mail. I may have received such a letter. I have no belief about it. I think not. I think I had a communication with Mr. Cotton before

receiving the letter of 30th June; it was only a conversation about the City purchasing the Debentures. He was not a member of the Corporation. I had no conversations with him about my purchasing Debentures, but had about Mr. Hincks purchasing. I have no idea when they occurred. I have no recollection of a conversation with Mr. Cotton about Mr. Hincks purchasing for the joint benefit of himself and me: there may have been. There was a conversation with Mr. Cotton, but I cannot say whether before or after the receipt of the letter. I have no belief of it. I am sure I had no conversation with Mr. Cotton at any time about any purchase in which he was to be interested that I know or believe. I never knew him in the transaction. I don't know, and have no belief, whether Mr. Cotton was aware of the purchase by myself and Mr. Hincks. I have no idea what the allusion to Mr. Cotton in the letter of 9th August from Mr. Hincks refers to. I have found no letters or copies of letters from Mr. Hincks since I was examined. I have not found the memorandum book referred to in my evidence. I think it must have been taken out of my counting-house. I don't think Mr. Cotton ever wrote to me about these matters. I don't recollect writing to him about any Debentures; I don't believe I ever did. I never spoke to the Company or the Contractors about the purchase of any other Debentures. I don't recollect when I first formed the intention to purchase the Debentures. I don't think I formed any intention to buy the Debentures, which were to be issued to the Contractors or Company before the receipt of the letter of 30th June. I am not sure whether it was before or after the receipt of that letter that I laid the matter before the Finance Committee, probably about and subsequently to the time of receiving the letter. And before I laid the matter before the Finance Committee, I formed no intention of purchasing the Debentures myself. I mean the offer that was made to me of the Debentures at 20 per cent. discount. I was at one time a Director of the Northern Railway. I don't recollect the time; probably in the beginning of 1851, not I think in 1852. Mr. Armstrong succeeded me. It is probable, and I have no doubt I expressed the opinion mentioned at page 44 of the printed Report referred to by me in the schedule to my affidavit made on production of Books and papers: that was my opinion then and still is. I did not know why City Debentures should not fetch as much as Provincial Debentures if properly negotiated. I have said so subsequently; that was my opinion then, and I still

think they ought. I understood the Debentures could not be negotiated without the guarantee of the Bank of Upper Canada, to whom we had applied for a loan. I considered the proper way of negotiating Debentures was through the Bank. I did volunteer to write to capitalists in England on the subject. I did write to Mr. Dunn, enquiring what Debentures would bring in England; his answer was unsatisfactory. I wrote to no English capitalist on the subject, and to no other person than Mr. Dunn as to the negotiation of City Debentures. I wrote to Mr. Wilson of Quebec on the subject about the same time; his answer was similar to Mr. Dunn's:—that the Debentures had not been introduced into the English market, but that he was about to open an agency. I wrote to Mr. Dunn in my capacity as Mayor I think. I have no draft or copy of either of these letters. I keep no copies of letters except of our own business letters. I don't think I have got Mr. Dunn's answer; I don't know what is become of it; I looked for it some time ago. I have not got Mr. Wilson's letter. I think it was destroyed like other letters. We keep our business letters. I did not bring either of these letters before the Council nor the Finance Committee. Mr. Dunn was for many years Receiver-General of Upper Canada and Canada. He was residing in England when I wrote to him. Mr. Dunn, I believe, offered to negotiate the Debentures, but his whole letter was so unsatisfactory that I did not lay it before the Finance Committee. I think he said to the effect that the Debentures were not known in England, and he doubted whether they could be sold. I don't believe that any City Debentures had then been sold in England. I don't think my letter to Mr. Dunn related to the Debentures in question, but to Debentures generally. I got no other information from Mr. Dunn that I recollect. When I determined to buy the Debentures, I don't know why I applied to Mr. Hincks rather than any other friend. I had other friends who could have assisted me. If I had applied to English capitalists, and the Debentures had been properly introduced, they would have sold as favourably I think. I had no correspondence with English capitalists, and I know of no one who could have disposed of the Debentures so well as Mr. Hincks. I believe Mr. Hincks to be well known in England; and has been for several years. At the time the Debentures were purchased we were uncertain whether there would be a profit or loss on the transaction, although we expected a profit, and at the risk it would not have been done by the City. I don't know whether Mr.



Hincks would have negotiated the Debentures for the City for the same remuneration. I never asked him to do so, or to negotiate any Debentures for the City. I have no doubt there was no prior publication of the By-law of 28th June, 1852. I think some objection was made to it as illegal; two opinions were taken on it. I received no security for the advances of £8,000 to Story & Company, for which my firm gave a guarantee. There was no deposit of Debentures whatever on the occasion; and I had no security whatever. The Debentures issued under the By-law for the issue of the £100,000 were payable in London. I cannot tell why, except that Mr. Ri. but may have mentioned it in his letter. I recollect no other reason. The proposition in his letter was submitted to the Finance Committee and approved by them. I was no party to the arrangement except as a member of the Council. It is better for the City that Debentures should be payable here in Currency, than in England in Sterling money.—The understanding was, that the £50,000 Debentures issued to the Contractors were to be legalized. They could not be legalized without providing a sinking fund. This was what we wished to avoid. I was at Quebec, and understood, but not officially, that the Act had passed. I opposed the gift of £250,000 to the Company. What I advocated was first, that £100,000 Stock should be taken, then that £50,000 should be taken, and when these failed I voted for the gift of £250,000 although I was opposed to it, to prevent the loss of the Road. I don't recollect whether I supported the loan of £350,000, but it had my concurrence. The proceedings of the Finance Committee relative to the advances to the Contractors had my approbation. I believe I was a member of the Finance Committee, though not the Chairman; and if I did not oppose their proceedings they had my approbation. The papers marked 1, 2, 3, 4, and 5, are the thirds of exchange by which a portion of our profit in the transaction in question was received. I received them from Mr. Hincks, inclosed to me or my firm. I don't know which. I don't know when they may have come to me, I have no belief on the subject. It made no difference whether they are addressed to me or the firm. The letters to Mr. Hincks were from me—some of the letters from Mr. Hincks were addressed to me personally. I doubt whether all of them were. I think

the letters were addressed personally to myself, for the most part, at all events, though perhaps, to the care of the firm. The endorsement "Pay to I. T. Parson & Co." was made here by one of our clerks by our order. The rest of our share of the profit was paid in money by Mr. Hincks to me at Quebec in cash. I don't recollect whether I gave a receipt. I think not.

I think Mr. Hincks never gave any account or memorandum shewing how the amount of £4123 9s. 11d. was arrived at.

I think it was in January last that it was first rumoured that I was concerned in these Debentures. I don't know that I ever mentioned to any body that I had any concern in the negotiation. I don't know that any member of the Council was aware of the fact. I don't know that any body was aware of it except to suspect, before I stated it here in Court. I don't recollect any conversation with any member of the Council upon the subject after the ruinour arose. I don't think that I ever stated to any member of the Council what was not the fact. What I denied was, that I had used the City funds. I never was asked whether I had any interest in the Debentures. I may have been asked the question though I don't recollect it; but in my answer I had reference to the charge that I had used the City funds, I never mentioned, intentionally, to any body, anything relating to the matter. This understanding arose as to what I stated with regard to the capacity in which I spoke. What I said was, that I never used the City funds, or had any interest as Mayor in the negotiation of the Debentures. I never gave any member of the Council to understand intentionally that I had no personal interest in the matter. I never heard that I had been misunderstood on this point until after the suit commenced. I told Mr. Cawthra I had no interest. I spoke as Mayor, but whether I said so or not I don't know. I always spoke in that capacity on this subject, but did not always say so. I don't recollect any conversation during the negotiation of the Debentures on the subject.

I was present at the meeting of the Council on the 21st of February 1853, when the report was brought up that the Mayor had an interest in the Debentures. I said nothing on the subject upon that occasion. I did not say anything about the resolution, stating he had not participated in the purchase—leave, I believe, was not given to the individuals who asked to sue in the name of the Corporation.—

The letter marked O is my handwriting. I think it was addressed to Mr. Cotton.

*Cross Examined by way of explanation.*—I consider the purchase of the Debentures as a matter of business of my firm. I am not in the habit of speaking to other persons about the business of the firm. Had Mr. Dunn's letter held out any hope that par could have been got for the Debentures, I would have submitted it to the Finance Committee. I have every reason to believe that they could not have been negotiated at par, but I thought they ought to have brought par.

I had nothing to do with bringing forward the By-law in question. The Mayor had nothing to do with bringing forward any By-law—they are brought forward by a Committee. I have no vote in the Council unless there is a tie. I used no influence with any member of the Committee to bring forward the By-laws. I was not present when the By-law for granting £60,000 to the Contractors was brought forward. I am a member ex-officio of all standing committees. I took no part in the negotiation of the £100,000 Debentures. I made no proposal for the purpose. The proposal was made by the Bank. From the time the Council directs the issuing of Debentures the Mayor has no control over them. I never refused to sign these Debentures, or interposed any delay in issuing them. They were, I believe, expediated as much as possible after they were ready. I don't think there could be any object in delay. That money, or a portion of it, was got for the Contractors and received by them before they were issued. City Debentures bear interest from their date. I believe they are dated when they are issued—they are signed by the Mayor before they are issued.

In this case it was a gain to the City that the £100,000 Debentures were made payable here. They would have been at 20 per cent discount, the then current price of Debentures payable here. I think when the By-law of the 1st November 1852 was passed, it was understood that some persons in London had proposed to purchase the Debentures. This information was received from Mr. Ridout's letter.

(Signed),

J. G. BOWES.

*James Cotton for the Plaintiffs sworn, with*—I know Mr. Bowes, also Mr. Hincks; Mr. Bowes mentioned to me that Debentures were to be issued to the Directors of the Northern Road, and that a speculation could be made in them. I think this was in February 1852. Mr. Bowes proposed that we should purchase the Debentures on joint account. This was before any issue. Conversation took place from time to time to the effect, that when issued we should make the purchase. It was suggested that Mr. Hincks should be employed to negotiate them. I think the proposition came from Mr. Bowes, but I am not sure. I had a conversation with Mr. Bowes in reference to a proposition from the Contractors, or a negotiation with them; we partly agreed that the Debentures should be purchased from the Contractors on joint account, at 20 per cent. discount. Mr. Bowes was the medium of communication. There was no definite amount fixed between Bowes and myself at first. I left that to Bowes. I had communication with Mr. Hincks before the final arrangement with Mr. Bowes. I cannot tell when my first conversation with Mr. Hincks was. It was verbal, and may have been a month or six weeks before the first Debenture was deposited. My first interview was at Quebec. I had a conversation with Mr. Bowes previous to my first communication with Mr. Hincks relating to our purchase of the Debentures, but I cannot distinctly state its purport. Mr. Bowes said he had already communicated with Mr. Hincks. When I first spoke to Mr. Hincks, he had knowledge of the matter, or appeared to have. I will not be positive that I had more than two interviews with Mr. Hincks. I may have. The last one was immediately preceding the first issue of Debentures. I informed Mr. Bowes on my return of my conversations with Mr. Hincks.

I had conversations with Mr. Bowes as to the illegality of the By-law of the 28th June. We proposed to get over the difficulty by having the debt of £100,000 consolidated; and that by changing them into sterling they would be more valuable. This was some time in the beginning of June. I can't be certain. I can't be positive whether I stated this to Mr. Hincks. I never applied to Mr. Hincks for the purpose of having an act passed. It was said by Mr. Bowes that Mr. Hincks's name would have the effect of getting a better price for the Debentures than any other person, and that it would be necessary to give him an

interest in the Debentures, as it would be necessary to have his assistance to procure an Act to consolidate them. I saw the letter from the Contractors of the 30th June. I think this was a day or two after its date. Mr Bowes shewed it to me in his own office. Mr. Bowes told me some time prior to the date of that letter that he would propose the offer of the Contractors to the Finance Committee. He said, at the same time, that they could not accept it, because they were not in a position to raise the money to buy them. He said that he would make the proposition in order that they might not find fault with him hereafter. This was the only reason that I recollected. I on one occasion took a letter from Mr. Bowes to Mr. Hincks. Mr. Hincks resident at Quebec. I read that letter. It was written by Mr. Bowes. It had reference to the purchase of Debentures. I conversed with Mr. Bowes on the subject matter of the letter—my conversation was with reference to the mode of raising the money for the purchase of the Debentures. The letter had reference to the same subject. It was delivered to me open. I sealed it in Mr. Bowes's Office. Mr. Bowes directed it to be delivered to Mr. Hincks. My communications were with Mr. Bowes alone. The name of the firm was never mentioned. I understood that his interest was individual.

*Cross Examined by Mr. Gwynne.*—I do not think I was one of the first to originate the charge against Mr. Bowes. I never did speak of it. I was in Quebec in December 1852, and when I came up here there were placards about charging Mr. Bowes with chiseling the City out of £10,000. I was no party to them, or any other placards on the subject. I have stated some parts of my evidence, but I don't recollect what part. I did state that Mr. Bowes and I were to purchase on joint accounts. I mentioned it to Mr. McDell and others but I can't say to whom. I did not state that I could give evidence before the Committee of Council. I do not know how my evidence, became known. I was called on to give evidence before the Committee of Council. I can't say how I came to be so called on. If I did not state before that I was chiselled out of my share, I state it now. I took great umbrage at my being so chiselled, but I stated nothing about it. I may have stated that I carried a letter from Bowes to Hincks.

The loss of the Guelph Contract was not the cause of my umbrage. It was one amongst many others. I brought an action of

slander against Mr. Bowes, but that action had no reference to the loss of the contract. I have a strong feeling against Bowes. I can't tell, exactly the period of my first interview with Bowes about the Debentures, but I think it was six months prior to the 30th June. I am certain it was three months prior to that date. I cannot tell when we agreed to purchase on joint account. I can't tell how long prior to the 30th June that was. I have not the slightest idea. It was definitely agreed that Bowes and I should purchase on joint account, and that we should get Mr. Hincks's assistance. Mr. Bowes told me he had written to Dunn and Wilson, and shewed me the letter. We had agreed to buy them, if, as the work went along, we should think it prudent. I never spoke to the Contractors on the subject. I saw the Contractors at Bowes' Office about the day the letter of the 30th of June was written. It was thought better that I should not speak to the Contractors. It was thought better to leave the matter in Bowes' hands. I did not think it wrong then, that the Mayor should make the purchase. The object of applying to the Finance Committee was to avoid any blame being attached to Bowes thereafter. I was then in negotiation with the Contractors of the Northern Road about some of the matters, and it was thought better not to meddle in this.

It was finally agreed that Bowes and I should purchase when we learned that the Contractors would sell at 20 per cent. discount. This was a month prior to the 30th June. This was after I had seen Mr. Hincks. When I saw Mr. Hincks Bowes and I were the only parties interested. I do not know how far I stated this to Mr. Hincks, but so far as I know, Mr. Hincks had no reason of any kind to form any other opinion than that Mr. Bowes and myself were exclusively interested.

After the Contractors agreed to take 80 cents. on the dollar, Mr. Bowes requested me to take a letter to Quebec to get Mr. Hincks to give directions to the Bank to advance the money for me and Mr. Bowes, on the Debentures being deposited in the Bank. I delivered the letter to Mr. Hincks. He read it, and told me that he would telegraph and write to Mr. Ridout to make the matter all right.

It was understood that Mr. Hincks was to have a share for negotiating the Debentures, the nett proceeds after that was to be decided



between Bowes and myself. I made no arrangement with Mr Hincks. Mr. Bowes did that. I don't know when the arrangement was made with Mr. Hincks. I don't know that any such arrangement was ever made.

I only heard it from Bowes. He never stated to me the amount to be paid to Hincks.

There was no other arrangement as to raising the funds other than I have stated. When I returned, I told Mr. Bowes that Mr. Hincks said it was all right.

I can't say when I had the conversation with Mr. Bowes as to the illegality of the By-law of the 28th June: we had several conversations before and after the 28th June. Our arrangement for an application to consolidate the debt was previous to the 28th June. I don't recollect that our arrangement on that subject was communicated to Mr. Hincks. My first conversation with Mr. Hincks was a casual one relating to the probability of the purchase of the Debentures.—That was the whole purport of our conversation. I don't recollect distinctly what did pass. There was nothing of moment. My second interview was on the subject of Bowes' letter about raising the money. He said that it would be all ready. I always talked as if myself and Bowes were the purchasers. I may have had conversations since, but I do not recollect when or where. I understood that the offer was to be made to the Finance Committee. I remember the purport of my conversation, but I cannot tell the date. It was before the letter of the 30th June came from the Contractors, but I can't say how long. When Mr. Bowes wrote to Quebec by me we did not discuss the terms. The draft of the letter was written when I came to the office. I have not yet discovered that I was not a purchaser. I have not yet discovered that I am not to have my share. I never knew that Mr. Bowes intended to deprive me of my interest until I heard his evidence. I had reason to think so from his acts, but never knew it till I heard his evidence. I thought from the hostile course he was pursuing towards me that he would try to cheat me. I did not make any claim because I was waiting for the result of this suit. I do not know when the Bill was filed. I believe that Mr. Bowes has received the money, but being on bad terms and finding now a clamour in town about it, I do not see fit to make an application to him. I



was not a party to posting placards about the matter against Mr. Bowes. I never did say to any person that I could have been a witness for the City against Bowes. There was a definitive agreement that the Debentures should be purchased by Mr. Bowes and myself.

*Re-Examined.*—Prior to the letter of the 30th June I had no communication with Mr. Hincks as to raising the money; but Mr. Bowes informed me that he had made such arrangements three weeks or a month prior to my taking the letter to Quebec. A few days previous to my going to Quebec Mr. Bowes told me that the Engineer had given his certificate, and that he would delay the issue of the Debentures till Mr. Hincks' letter to the Bank should arrive. When we first talked of purchasing the Debentures Mr. Bowes told me that he had written to Wilson and Dunn, and that Dunn had offered to negotiate the Debentures on good terms: in fact not to charge anything for the business. Mr. Bowes shewed me a letter from Mr. Wilson or Mr. Dunn, I won't be sure which. The application to Dunn and Wilson was for our mutual benefit in the negotiation of the Debentures. It was not agreed between Bowes and myself what share Mr. Hincks should have. My impression, and I think Mr. Bowes' too was, to give Mr. Hincks whatever he would demand for the job. Some time previous I had conversation with Mr. Hincks as to the negotiation of some Debentures in England. Nothing was done. It was merely a matter contemplated. We contemplated having Mr. Hincks' assistance from the first. We could not have raised the necessary amount ourselves. I would not have entered into the arrangement for a purchase if I had not assistance from some person. We never contemplated raising the funds ourselves. I had a letter from Mr. Hincks as to the negotiation of previous Debentures belonging to myself. They were municipal. I cannot say of what municipality. He offered to negotiate them at 1 per cent. I shewed the letter to Mr. Bowes. Mr. Hincks said the Debentures were worth 95 par, payable in London, at least he proposed that as a limit.

*Per Cur.*—It was definitively arranged that Mr. Bowes and myself should purchase the Debentures on joint account; it was before this that the application was made to Mr. Dunn and Mr. Wilson;

about a month or two before this. I have a clear recollection of seeing Mr. Dunn's or Mr. Wilson's answer, but I cannot say which and I may have seen both. This was before the arrangement was concluded, perhaps a month previous. I cannot say whether I saw the letters or heard their contents from Mr. Bowes. I had not arranged with Mr. Bowes what Mr. Hincks was to receive for his assistance. We have had communications about it, and it was supposed that Mr. Hincks might require a third or one half. When I left Toronto with the letter, I had the full belief that I was to have half of what Mr. Bowes received, and remained under that impression.

I returned from Quebec in about three weeks. I have made no application for my share. I never applied at the Bank or to the Contractors, or the Chamberlain, to know how matters were proceeding; but Mr. Bowes stated to me between July and November 1852, what was doing. He told me what amount of Debentures were issued and lodged; and during this time he treated me as entitled to half. I did not hear that the Debentures had been negotiated and the proceeds received, until Mr. Bowes stated it in Court. I had reason to believe before that such was the case. I did not know of the amount of profit, or that it had been received, until Mr. Bowes stated it in Court. In December last when I returned from Quebec I saw Mr. Bowes about different matters; and our interview was of such a nature that we have not spoken since. I have seen Mr. Hincks since, but did not speak to him on the subject. I may have stated to parties that I had been chiseled out of my share of my profit.

*By Mr. Gwynne.*—I understood Mr. Bowes to state in his evidence that I had no interest in the profit on the sale of the Debentures. I am not positive.

(Signed)

JAMES COTTON.

*Depositions taken viva voce in open Court this Twenty-first day of December, A.D. 1853, in a certain cause pending in the said Court of Chancery, wherein David Paterson and others are Plaintiffs, and John G. Bowes and the City of Toronto are Defendants.*

JOHN HUTCHINSON, sworn for the Plaintiffs, saith :

I was an Alderman of this City until a short time ago. I think in October. I had been an Alderman nearly two years. I recollect the several proceedings relative to the Debentures in question in this cause. I heard first confidentially from Mr. Cotton in July or August, 1852, that Mr. Cotton and Mr. Bowes were interested in the Debentures in question. This was after the £60,000 By-law had been passed, and after the change to the £50,000 Stock. All I learned then from Cotton was, that he and Bowes were jointly interested in Debentures to be purchased, and were likely to make a good thing of it. I asked for no further particulars. The conversation was confidential. I did not communicate this conversation until the matter had all come out. I did not before because it was confidential. It was some time after the communication occurred that Cotton's difference with Bowes occurred. I think I supported the £60,000 By-law, and I was in favor of the change to the £50,000 Stock and supported it. I think Bowes took an active part in procuring this change. He had then a good deal of influence in the Council. I was not influenced by him; his opinion had weight with me. He exerted no direct influence over me. Had I known that Bowes was interested in these Debentures, I think it would have affected my conduct on the occasion. I was then a member of the Finance Committee, and until I resigned my office. Mr. Bowes did not mention an offer he had received from the Contractors to take 80 cents. on the dollar on the Debentures at any meeting of the Finance Committee at which I was present. I am satisfied of this. I never saw the letter written by the Contractors to Bowes on the subject. I first heard of the offer in December I think. The purchase of Stock was from the Contractors, but I thought at the time that it was from the Company. I heard that it was from the Contractors first in December.

I am a merchant here, and have been since 1848, during that time the rate of Exchange on England here has been from 10 to 11 and 12 per cent premium. There is an advantage in negotiating a loan in England, because money is plenty, and the rate of interest low, provided there was confidence in the security.

*Cross-Examined.*—I did not hear from Cotton that he and Bowes were interested in the Debentures until the 29th July, I think.—Cotton and I have lived together for some years. I am sure this conversation was after the change from the £60,000 to the £50,000 Stock, I have no doubt of it. I did not get any particulars and did not think anything about it: only City Debentures were mentioned in the conversation. I could not judge whether anything was wrong in it because I heard no particulars. I did not think Cotton had reference to the £60,000 Debentures. I did not know it had, and thought nothing about it. I could form no opinion as to what Debentures were meant, and did form none. There were some small Debentures issued about that time, none from which £10,000 could be made. I know the £25,000 was a gift to the Company. I did not know it had been given to the Contractors. I might have heard it. I don't recollect whether I was a member of the Council when the £35,000 loan was voted, or whether I took any part.

I first became a member of the Council in January 1852. Had I known that Bowes was interested in the Debentures I should have enquired into the matter, and had there been anything improper I should have exposed it to the other members of the Council. I think the Mayor was enabled from his official position to purchase the Debentures. I don't think he had the means or the credit individually. I think it would have been less improper had I done it. His position as Mayor was, I think, used in the transaction: he could not have got the money without it. I don't think the Bank would have taken the guarantee of £3,000 if Bowes had not been Mayor, it is mere matter of opinion. I never heard Mr. Ridout say so. I think the City has lost by the amount not being saved to the City. The City, I think might have got the Stock at much less than par—they got it at par—they sold the additional £50,000 Debentures at par. They did not get value for the Stock—the did not get it for

its marketable value. I consider it was worth from 50 to 75 cents on the dollar. I have heard it was in the market. I think purchasing the Stock from the Contractors and not the Company altered the position of the City—they ought to have purchased on the most advantageous terms from the Contractors. They were represented in the Company. I don't know whether they could have purchased at a discount from the Company. Bowes acting for the City could have got the Stock at a discount, I think. I think he could have purchased from the Contractors for less than from the Company. If Bowes had produced a letter from the Inspector-General or Government, saying that a law would be passed legalizing the Debentures, I think he could have got an advance of £40,000 from the Bank for the City. I think the City could have got the £50,000 Stock for £40,000. The object of the City in giving the £25,000 was to benefit the Company; afterwards I believe, they wished to benefit themselves. I don't think the Company could have prevented the Contractors from selling the Stock at 20 per cent. discount. I thought at first the City were becoming original subscribers, as they purchased from the Contractors. I consider they were not original subscribers. I understood the Company relinquished the £25,000 gift on condition of the City taking £50,000 Stock. I think the City might properly purchase the £50,000 Debentures for £40,000, under the peculiar circumstances considering their illegality, which was, I think, the cause of their being at 20 per cent discount. I did not know that ordinary Debentures were fetching more. I have heard that the ordinary discount was 1 per cent. per annum: the Debentures to the Contractors could not, I believe, be negotiated. I think if the Contractors had got an assurance that the Debentures would be legalized, they might have got par, and the City could not have purchased at a discount. I think the Contractors were getting full value for the Debentures—they were well paid for the work. Under such circumstances I think it would not have been wrong for Bowes as Mayor to purchase the Debentures at a discount for the City, although having the means of legalizing them. I was examined before the Council on this matter, and the reason I gave for thinking that there was anything wrong was, that the Stock was purchased from the Contractors, and not from the Company. I still think it so and also think it wrong, because the Mayor made use of his position,

I think the Mayor used the credit of the City in raising the £40,000. I think the Mayor acting as such in the matter was using his influence as Mayor, and using the credit of the City. I think the position of the Mayor and the credit of the City were in a degree identical. I was told by Mr. Cotton that the Mayor had used his position in the matter, which I consider using the credit of the City.

I will not undertake to say that the Mayor did not say the Contractors had been offering the Stock through the City at a great discount. I don't recollect it, and never heard it. I don't know the fact that they were so offered. I have heard that they were offered. I have seen the Report marked P. before; it is, I think, correct as far as regards my own evidence, at p. 35. It is the Report authorised by the Council and signed by the Clerk. I think differently of the Mayor from what formerly did, owing to this transaction and other matters. Mr. Cotton was concerned in some of these. I have heard reports from Cotton of the Mayor's conduct—my impression is founded partly upon these and partly upon my own observation. I was not party or privy to posting the placards against the Mayor. I was not present when any of them were posted. I did not know that any of my clerks aided in it. I believe now that my clerk had something to do with it. I saw a copy of the placard in my office, whether before or after they were posted I don't know. I will not say it was not before. I did not see the manuscript. I am positive I never saw them being posted. I think I did not see the placard in Cotton's Office before it was put up. I saw a copy in his office, the same I think that I saw in my own Office. I never had a good opinion of the Mayor. I dare say Cotton informed me of the transaction in question before the placards were posted. He gave me to understand that Mr. Hincks was interested. I thought he was to receive a third: that they were all interested equally.

*Re-Examined.*—I have had no quarrel with Mr. Bowes that I know of. I have not spoken to him as an individual for some time—since December or January last. I was one of those who resigned my office as Alderman. I did so because I thought that Mr. Bowes had disgraced the City, and I disgraced myself by sitting under him. I

saw the writing marked Q, signed, sealed, and delivered, as his act and deed by Mr. Cotton. I am a subscribing witness to it. It was executed on the day of the date.

*Per. Cur.*—I did not take an active part in the proceedings in the Council relative to the issuing of Debentures. I don't recollect the passing of the By-law of the 29th June 1852. I have been for years intimate with Cotton. I heard nothing from Cotton about the purchase of Debentures before July or August, and December. I am not aware of any other Debentures in which such a speculation could be made, except those to be issued to the Contractors. I thought little about it at the time, but afterwards referred the matter to these Debentures. If I had given the matter any consideration, I should, at the time, have referred the conversation to the Debentures in question. I recollect a petition in August for consolidating the debt. It did not then occur to me then that there was anything improper in the transaction I had heard of. I knew the proceeding for consolidating the debt was going on.

I did not know until December that Bowes was purchasing £50,000 Debentures at 20 per cent. discount. I did not hear in July or August who was selling the Debentures. All I heard was that Bowes and Cotton would clear £10,000 on a purchase of Debentures. I have no doubt that the current price then was 1 per cent. per annum. I don't know what was then the market value of the Stock. I have heard that Stock could then have been purchased at a discount, but do not know it. I never saw it offered for sale, or heard of a sale of it. I don't know whether it could then have been purchased at all; if not, the only profit to be derived by the City must have been from the purchase of their own Debentures. I am not aware that there were any funds in the hands of the City that could have been used for the purpose. I have no actual knowledge that the Mayor used his position as such in procuring the advance from the Bank.

I think the Bank must have been influenced by the position of the Mayor—they would give credit to any assurance he gave as to legalize the Debentures. The Mayor could not dispose of the City funds without the concurrence of the Chamberlain. I recollect Mr. Ridout's

offer of the loan for consolidating the debt, and the subsequent By-law. I dare say I took part in these proceedings.

(Signed) JOHN HUTCHINSON.

WILLIAM CAWTHRA called by plaintiffs:—

I lent £20,000 on the 1st of January 1844, as I think, to the City that was at 6 per cent. interest at par—those Debentures will fall due on the 1st of next month. I made an offer to the Mayor and to Mr. Thompson of the Council to renew the Debentures, I think in May 1852. Besides the City Debentures, I held a mortgage of City property. I mentioned the subject several times to the Mayor and Mr. Thompson and possibly also to Mr. Beard. I was willing to renew at par for 5 or 10 years: five certainly, and I think I should have had no objection to renew them for ten years. The Debentures I held are payable both principal and interest, at the Bank of Upper Canada here. I believe the City Debentures generally are payable at the same place. After the consolidation Act passed an offer was made to me to redeem the Debentures, which I refused, as I was not prepared without more notice to meet so large a sum. I am a director of the Bank of Upper Canada, and have been so for some years. The Government account is kept at the same Bank. It is a valuable account. I should be sorry that the Bank should lose it. I was not aware as a director of the advance made on the Debentures. The matter was not brought before the board that I am aware of. I think it was not. I do not think the Bank would advance £8,000 to any mercantile firm in Toronto or on their guarantee unless upon some good paper connected with it. For some years past money has been more abundant, and money obtainable at lower rates. I have found it so myself as an investor of money.

*Cross-Examined.*—When willing to renew the Debentures it was upon the same security, including the mortgage or City Property. I have both bought and sold City Debentures. I have bought them as low as 30 per cent. I believe as one motive I had in taking £20,000 in Debentures was, if possible to raise their value and place them at par. It had not that effect. About the time of the issue of the Debentures in 1852, I was in the market willing to buy Debentures. I would have given more than eighty per cent. for City Debentures. I have no



recollection of the Contractors offering any to me. I think they did not. When I made inquiries about renewing the Debentures I thought the Mayor and Mr. Thompson shewed a shyness about treating with me. It caused no coolness between us I believe.

I think the Debentures issued in 1852 which I purchased, I bought at a discount at about  $\frac{1}{2}$  or  $\frac{1}{4}$  per cent. per annum. In 1850 my agent in my absence purchased Debentures at a very low rate, since then the City Debentures have been more difficult to purchase. It is more difficult to sell a large amount to one hand at a good rate than a small one.

It would have been impossible, I think, in October 1850, to have negotiated £100,000 of City Debentures at par in Toronto. I cannot say at what rate they could have been negotiated. I think Mr. Hincks advised me to take consolidated Debentures in lieu of those I held and to give up my mortgage. I declined to do so. The consolidated Debentures alluded to, were not part of the £100,000 Debentures, but Debentures consolidated under the general Municipal Act.

*Re Examined.*—In purchasing Debentures to a considerable amount I should do them on better terms for the seller than 1 or 2, but in the case of a very large sum, £4,000 or £5,000 it would be difficult, as it is a sum not readily raised. I think money here is worth more than six per cent.; and that Debentures at a discount for that reason, and mortgages even good ones also.

*By the Court.*—Between 1844 and 1852 City Debentures were pretty generally sold at a discount of 1 per cent. per annum. I think none have been so low as 30 per cent. within that period. I bought a small amount at that rate, I think, before 1844. I cannot say if any sales have been made at us great a discount as 1 per cent. per annum since 1850. So large a sum a £100,000 could scarcely have been raised in Toronto at any rate.

Considerable amounts of City Debentures have been issued since 1844. For the last three or four years money has become so comparatively plentiful that I have had some difficulty in picking up any Municipal Debentures.

If £8,000 of City Debentures were lodged by any mercantile firm

with their guarantee to that amount, it would be quite a different thing from their guarantee without such deposit. In such case the Bank might advance the amount.

(Signed)

WM. CAWTHRA.

JOSHUA G. BEARD, sworn for the Plaintiff, saith :

I was a member of the City Council in 1852, and several years before, and I have been an Alderman for several years to January 1853. I was a member of the Finance Committee in 1852. I recollect the different proceedings between the City and the Northern Railway Company in question in this cause. Mr. Bowes took an active part in the proceedings for assisting the Company. I never thought he had an interest in the Debentures issued to the Contractors until he gave his evidence here, from his assertion that he had not. The opinion of Mr. Bowes had weight with the Council in those matters, in which the Government had to be consulted; it had weight with me—it would have had none had I known that he was interested. I never heard of the offers of the Contractors to sell the Debentures at 80 cents on the dollar: I heard of it first about this time last year. Mr. Bowes denied in the Council that he had any thing to do with them; he denied it to me invariably. Bowes told me that Cotton was trying to ruin him because he had lost the contract for the Guelph Railroad. Bowes never qualified his denials by saying that he had no interest as Mayor: he said he had no more concern than I had. I took it for granted that what he said was true. He wanted my assistance to secure his re-election as Mayor; and I promised and gave my assistance, believing that he had no concern with the Debentures. I never saw the letter of the Contractors to Mr. Bowes that I recollect. It was stated when the legality of the By-law was in question, that the Debentures would be worth par to the Contractors at New York if they had them. I think Mr. Bowes must have been present when this was mentioned. I was seldom absent from the Committee. I don't recollect the offer of the Contractors being brought up there. I think I have heard from the Mayor that the City Debentures would be at par in England if they knew our resources as well as we ourselves. I recollect the application to the Legislature to consolidate the debt. The Mayor went to Quebec to get the Debentures already issued, legalized; he

said the Government would not do it, but would sanction a loan of £100,000. We wanted £50,000 to pay some claims and the £50,000 issued to the Contractors legalized. He mentioned no individual by name. He was at Quebec when the Bill was passed through the Lower House. I saw him the morning after his return; he said they had had the greatest success; that Mr. Hincks had shoved it through two or three stages in one night, and he left confident of success. I said I thought the arrangement not advantageous; that we had better let the Debentures run and have the £50,000 or £100,000 for improvements. But Mr. Bowes said Mr. Hincks would not do it in any other way. Bowes was very frequently at Quebec that summer: he said the consolidation Act would be passed by the Council. Mr. Bowes shewed me the printed Bill which he brought up.

*Cross-Examined.*—Had I known that Bowes was interested in the Debentures I think I still should have voted for the change from the £60,000 gift and loan to the £50,000 stock. I cannot tell whether such knowledge would have had any effect on the Council generally: probably it would not have had an effect on the change: that it would still have been carried into effect: it ought not I think to have had any such effect, because I think the change was beneficial to the City. The £25,000 was a gift, and the £35,000 was a loan. These obligations were entered into upon a Petition from a meeting of inhabitants, presided over by Mr. Arnold, and also an application from the Board of Trade, with the view of aiding the Northern Road. It was intended that the proceedings for effecting this object should be legal: the inhabitants were opposed to the taking Stock to the amount of £100,000. The Debentures for the £25,000 and £35,000 were to be issued to the Company or Contractor to be disposed of as they thought fit. It was stated by a person appearing to be the Attorney of the Contractors, that they could get par for the Debentures if they had them at New York: the Contractors were present. My opinion was that members of the Council should not buy Debentures. The Mayor was asked in Council, when the matter was talked about, whether he had any concern with the Debentures: he said no. This was before the election, and I have no doubt with a view to it. I understood him to say that he never bought them, and had had nothing to do with them. He made earnest protestations to this effect, and I believed him. I am perfectly on friendly terms with Mr. Bowes. I think his anxiety was to get into the Council and to hurry at once what the

called the calumnies that were got up against him. One per cent per annum was full value for the Debentures. It was understood when the money was subscribed that no Sinking Fund was to be established. This was the reason the legality of the By-law was doubted. The object of the Council was to get the Debentures legalized without creating a Sinking Fund. Bowes might have stated, and I think he did, that the Government objected to legalizing the Debentures without creating a Sinking Fund. It was not contemplated by the Council to raise £100,000 for future works. The City only wanted £50,000, and the Act was passed to raise this amount, and to redeem the £50,000 Debentures already issued. I don't think the City has lost money by the transaction of Mr. Bowes, otherwise than that the City ought to have it. It was not intended that the City should subscribe for Stock. It was stated by Mr. Gamble that we could not get rid of the £25,000 gift except by purchasing Stock from the Contractors, they having received the £25,000 as a bonus from the Company. The City had to deal with the Contractors in order to get rid of the £25,000 gift. If the City had subscribed for the Stock it must have given pound for pound, but it would have been a matter for the consideration of the Council whether to do this or purchase from individuals. The £25,000 was relinquished on condition of the City taking £50,000 Stock. The City were expected to pay money for the Stock. If we had subscribed for Stock we must have paid the calls like an individual. If we had had the money we still should have issued Debentures for the Stock and used the money for other purposes. The market price for Debentures, if legal, then was 1 per cent. per annum. If the Contractors had got this they might have disposed of them as they pleased. Whether the City would have redeemed the £50,000 Debentures with £40,000 money, I don't know. The City was not in a position to raise the £50,000 without the Act of Parliament. The City could not expect more favourable terms than par for the £100,000 Debentures and this the City did get

*Re-Examined.*—I understood when I voted for the £25,000 gift that no Sinking Fund was to be created. It was openly stated and well known. I had the same impression when the £35,000 loan was agreed upon. It was Mr. Cameron I think that suggested that the Sinking Fund was necessary, and that there was some illegality as to publication: and in consequence of this, opinions were taken. I was

present when the Act was passed for issuing £60,000 Debentures after getting the opinions. It was suggested that the Bill should be brought in and the facts stated. This was done, and there was a good deal of discussion, and it was urged that if the Debentures were issued the City would be injured and the Contractors would lose. I don't recollect whether anything was said about a Sinking Fund. It was intended that the Government should legalize the Debentures in some way or other, and upon this supposition I voted for the By-law. I knew that the Debentures to be given to the Bank were to be payable in England.

*By Mr. Gwynne.*—The Contractors wanted money to purchase iron, which was expected to rise in price; but whether this was the way they expected to get par for the Debentures I don't know. I understood they would be worth par to them at New York. I don't know whether the iron was to be bought at New York.

*Per Car.*—The Contractors were satisfied that the Debentures would shortly be legalized, and did not think that any inconvenience would arise by issuing them at once, and using and holding them in the meantime. They wished to have them at once, because they wished to buy iron before the price rose. Some Debentures were sold at  $\frac{3}{4}$  per cent. per annum; others at 1 per cent. per annum. Debentures were generally sold at the latter rate. I know of sales to a large amount at this rate. The question as to converting the £60,000 gift and loan to £50,000 Stock was not much discussed in the Finance Committee. It was generally considered advantageous to the City. Taking the Stock and giving the Debentures at the same rate it was thought that the arrangement was beneficial. There was some person on behalf of the Contractors pressing the change from £60,000 gift and loan to £50,000 Stock. Mr. Thompson as Chairman of the Finance Committee had previously had an interview on the subject with the Agent of the Contractors and persons representing the Company. He mentioned the result of the interview, and thereupon the Council determined to make the change. Where contracts are made and payment is to be made in Debentures, the tender is raised so as to make up to the Contractor the loss of 1 per cent. per annum discount on the Debentures.

J. G. BEARD.

JOSEPH SHEARD, called for Plaintiffs:

I was an Alderman of the City in 1852; and a member of the Finance Committee. I was present at the passing of the By-law for taking Stock. The Mayor was present; he spoke several times, and appeared very anxious that the By-law should pass. I do not recollect anything being said about a Sinking Fund, but its illegality was questioned for want of proper publication, and for not providing for redeeming the principal as well as interest. I opposed the taking the Stock on the Road on the ground that the Stock was not worth the Debentures. I had heard the Stock was worth only 50 cents to the dollar. It was said in Council that the Debentures would be worth par to the Contractors if the Bill were passed. I never heard of any proposal to the Finance Committee by the Mayor, that the City should purchase the Debentures at 80 cents to the dollar. I remember no letter being laid before the Committee from the Contractors to that effect. The Mayor never said that he thought of making the purchase himself. I was first aware of his being interested in the Debentures in January last, or rather I then first heard it rumored.

*Cross-Examined.*—The By-law of which I have spoken was for taking £50,000 Stock in the Railroad. I believe I was in the Council when the By-law was proposed for issuing £600,000 Debentures to cover the £25,000 gift and £35,000 loan. I do not distinctly recollect what passed on that occasion, or that I took any part in it. I suppose the Council went into Committee upon it, but I do not recollect. I do not recollect whether I objected to it. I was aware of the £25,000 gift and £35,000 loan. I do not think I should have opposed their being carried out. I heard of the Resolution to substitute £50,000 Stock a short time before it was proposed in Council. I do not know what passed in the Finance Committee in regard to it. I think I was not present. I attended pretty regularly about that time in the Finance Committee. I may have been absent once or so. In Council it came before Committee of the whole. I do not remember who was in the chair. I opposed the proposed change as contrary to law—no Sinking Fund being provided for. Others opposed it; also Mr. Carr and Mr. Robert Beard: I think it was spoken of as a By-law. Reference was made to the opinions of counsel on the subject. I opposed it also because I thought we did not get value for it, because the Stock of the Railroad was of less value. The Resolution

was carried by a large majority. I believe City Debentures were then at a discount of 1 per cent. per annum. I did not know of any Railroad Stock being then for sale. I understood that persons were present at the Council on behalf of the Contractors pressing the passing of the By-law, notwithstanding the alleged illegality. It was represented as a matter of urgency with them to get the Resolution passed.

*By the Court.*—I am not aware of any one being deputed to negotiate with the Railway Company about the substitution of Stock for the gift and loan. Mr. Thompson may have been, but I rather think it was the Mayor. I thought, of the two, that it was more advantageous to the City to take £50,000 Stock in the Railroad than the footing of £25,000 and £35,000 loan.

JOSEPH SHEARD.

• JAMES ASHFIELD, sworn for the Plaintiffs, saith:

I am a member of the City Council, and was in 1851 and 1852. I supported the Resolution for granting £25,000 to the Company; also the Resolution for the loan of £35,000; and also supported the By-law for carrying the gift and loan into effect, and also the Resolution for converting it into the taking of the £50,000 Stock. These Resolutions and By-law were supported by the Mayor. He supported the matter in all its stages as I did. I think he had a good deal of influence with the Council during these proceedings—that is with a majority. I suspected that the Mayor was interested in the Debentures first when a Committee of inquiry was appointed to investigate the matter. I suspected this before, in the early part of the year, if not before. I would not have supported the Resolution for converting the gift and loan into Stock, had I known that a more favourable arrangement could have been made. I thought it the best arrangement that could be made.

*Cross-Examined.*—I was not a member of the Finance Committee. I thought the change for converting the £60,000 gift and loan to £50,000 Stock highly advantageous, and therefore I supported it, and not from the Mayor's influence. It was the opinion of the majority. This opinion would not have been affected if I had known that the

Contractors would sell the Debentures at 20 per cent. discount. I believed that City Debentures were then at 1 per cent. per annum discount. People were anxious to get them at that rate. I did not know of any Northern Railroad Stock being then in the market. I did not hear of the proposed change long before it was proposed in Council. I think Mr. Thompson, Chairman of the Finance Committee, brought it forward, but am not certain whether it was he or the Mayor; if it was not the Mayor, it was stated that it was in consequence of a conversation between the Mayor and Mr. Berezy. There were persons said to be connected with the Company and Contractors present when the matter was discussed. I judged of the measure upon its own merits without a reference to whether the Contractors were going to sell the Debentures or who was going to purchase them.

JAMES ASHFIELD.

JOHN CARR, called by Plaintiffs;

I was a member of the City Council last year. I resigned in October last. I was not a member of the Council, I think, when the gift of £25,000 was agreed to. I was a member when the £35,000 loan was passed, and I think present in Council. I was a member when the £50,000 Stock was agreed to be taken. I was present when the By-law was passed for the issuing of £100,000 Debentures to consolidate the debt. The Mayor advocated strongly the passing of these By-laws, gift and loan, and when I made any opposition he endeavoured to persuade me to support them. After the rumors arising as to the Mayor having an interest in the Debentures, I put a question to him on the subject in Council, and he positively denied having any interest. My question was, whether he had received any benefit or expected to receive any benefit from the speculation about the £50,000 Debentures. He had previously answered a similar question from Mr. Romain, that he had neither directly or indirectly received any benefit from it, and did not expect to receive any. He answered my question by referring to his answer to Mr. Romain; and when further pressed he appeared annoyed and indignant, and said that if further pressed on the subject he should make it a personal matter. I have heard him declare the same thing both in and out of Council.

*Cross Examined.*—I put the above question to the Mayor about



12 months ago; I think the latter end of last year. I think it probable that I voted for the £50,000 Stock; I thought it a good exchange for the previous gift and loan. The Mayor always took an active part in favour of the Railroad. He advocated it as advantageous to the City. I opposed the issue of the Debentures for the £50,000 as they were considered illegal. If that was at the same time as the change of the Stock for the gift and loan I opposed the whole. The Contractors proposed the issuing of the Debentures through some members of the Council. I opposed it as wrong. I think I voted for consolidating the City debt, and issuing Debentures for the purpose. I think City Debentures in the early part of 1852 were at a discount of about 1 per cent. per annum for the time they had yet to run. When the Mayor was questioned in Council he said that he had never purchased any City Debentures except through an Agent, and to whom he had paid half per cent.

JOHN CARR.

CHARLES J. ORTON, sworn for the Plaintiffs, saith:

I am a Director of the Northern Railroad and a Shareholder. I have been a Director about 2 years. I also have acted as Agent for the Contractors in some matters until about 6 months ago. I hold £2,500 worth of Stock. I don't think the Contractors hold nearly as much as £100,000 worth of Stock. I don't know of any sales of Stock in the last or present year of any consequence. I don't know the price. Very little Stock is held by private individuals less than £15,000 which it was originally. I don't know of any sales of Stock for money. It might or might not sell at 50 per cent. discount. I did not represent the Directors while their Agent in all matters, only for the purchase of right of way. I was acquainted with the transactions between the Company and Contractors as far as the Board of Directors was concerned relating to the change from £160,000 to £150,000. The arrangement for the purchase of Stock by the City was of no advantage to the Company. The £35,000 loan was to be paid to the Contractors. The Company gave their Bonds to the Contractors in lieu of the £35,000 Debentures when the arrangement was made for the purchase of Stock by the City. This was the only advantage the Company derived from the arrangement, if it was one. I think the Contractors had agreed to accept the Bonds before the

Company gave up the £35,000 loan. The arrangement however was all one, and the acceptance of the Bonds depended on the relinquishment of the £35,000.

*Cross-Examined.*—The Company left the management of the change from the £60,000 to £50,000 to the Contractors. They were to carry it out and the Company did not interfere. The Company, did not care what the Debentures were sold for. It was of importance to the Contractors to get money at the time of this negotiation. They were very anxious to have the arrangement for £60,000 carried out. They agreed to the second arrangement, and were anxious that it should be carried out.

*Per Cur.*—The Company gave over the £25,000 gift and £35,000 loan to the Contractors as part of their arrangements. The Company was unable to give security to the City for the £35,000, and it was necessary to make a new arrangement; and then the proposition for the £50,000 Stock in lieu of the £60,000 gift and loan was agreed to by the Contractors.

CHARLES J. ORTON.

KIVAS TULLY called for the Plaintiffs :

I was a member of the City Council in 1852. I remember the passing of the By-law for the issue of £100,000 Debentures. At the exchange of taking Stock of the Railroad Company in lieu of the gift and loan previously agreed to. I never heard a word of Mr. Bowes' interest in the Debentures at that time.

The first I heard of it was from placards on the wall. I never heard until to-day of Mr. Cawthra's offer to renew the Debentures held by him. I supported the By-law for negotiating the £100,000 loan.—When the exchange was made with the Railway Company of taking Stock instead of the gift and loan we heard nothing of the necessity of a sinking fund; nor until the return of the Mayor from Quebec when we learned that the Government refused to legalize the Debentures unless there was a provision for a sinking fund of two per cent. I think the Mayor stated so from the Chair. I think this was upon the occasion of his first visit. This was perhaps 6 or 8 months before the passing of the Act authorizing the loan. It was not expected that a sinking fund would be necessary in the case of Debentures issued

to purchase Stock, as the Stock might be disposed of. I was in favor of the negotiation of the £100,000 loan. If I had known of Mr. Bowes' interest in it I certainly should not have voted for it until I understood the whole circumstances of the case. If I had known of Mr. Cawthra's offer to renew his loan it would have made a difference with me, as a principal reason for the issue of the new Debentures was to meet those held by him. I think it was mentioned in Council that Mr. Bowes was negotiating a loan in England shortly before his election for Mayor. This was given as a reason for his re-election.— That and his general support for Railways induced me to vote for him.

In 1852 he had a good deal of weight in the Council as a good man of business, and a supporter of public improvements.

*Cross-Examined.*—The mayor did not use any influence with me to induce me to vote for the issuing of the Debentures. I supported the measure on its merits, as necessary for the progress of the Railroad. If I had heard of the Mayor having an interest in the Debentures I should have made enquiry to see if all was right, as I think no member of the Council should purchase Debentures. It might have affected my vote for the Debentures. I thought the Debentures issued ought to be legalized, and that was one reason why I voted for the £100,000 Debentures: I was not a member of the Finance Committee.

The mayor went to Quebec on other City matters besides the Debentures. I have understood that the County of Simcoe Debentures were illegal, for want of a provision for sinking fund in the same manner as those of Toronto. I do not think that the City lost by the transaction in question.

If the Mayor bought the Debentures I should have hesitated as to my vote because the Contractors might have sustained a loss. I thought the whole arrangement was beneficial to the City, and still think so. I thought the Contractors took the Debentures at par.

If any stranger had purchased the debentures I should not have hesitated as to my vote; but I considered it a different thing when a member of the City Council purchased; but I do not think that the

interests of the City, have been prejudiced by the policy of the act, or the effecting of the loan under it.

(Signed)

KILIAS TULLY

AND JOHN TULLY sworn for the Plaintiffs, saith

I have the Hon. Mr. Justice's letters are the letters referred to in Gabriel's Commission as marked T and U] containing the offers relating to the negotiation of the Debentures to the amount of £100,000. I received them as Chamberlain of the City which I was then and am still.

I have a letter from Messrs. Hagerty & Crawford offering to lend £25,000 for 20 years, at 6 per cent., deducting 2½ for expenses and commission; which I understood from Mr. Crawford would be 4 per cent. This offer was made on the 9th or 10 of October 1872.

The Finance Committee declined the offer. I think there was no other offers to lend money to the City at that time of any consequence.

The Debentures issued to the Contractors were, all lodged by me in the Bank of Upper Canada at the request of the Contractors and with the knowledge of the Mayor and Finance Committee. These Debentures were signed by the Mayor and myself as Chamberlain.— Generally the Mayor signed Debentures first. I don't generally put my name until they are on the eve of being issued, to prevent accident: they are filled up before the Mayor signs them. The Debentures in question were filled up by Mr. Boyd in the body of the City. The Coupons were some of them filled up by a young man in the Broad Company's office and sent to me and completed. The Contractors urged the issuing of the Debentures as soon as an offer was made for issuing them; they seemed exceedingly anxious to get them; there was a considerable amount of Debentures over due, probably £4,000 or £5,000 or £6,000 when the £100,000 loan was negotiated; some of them several years, because sometimes payment was not demanded, and at other times when payment was asked parties were requested to wait until an arrangement could be made. I think there was over £4,000 over due when the £100,000 loan was negotiated. Some were

about to fall due, not to a large amount, perhaps £2,000 or £3,000 during that year: about £3,000 or £4,000 have fallen or will fall due this year £20,000 will be due to Mr. Cawthra on the 1st January next and £10,000 to the Insurance Company. The Insurance Company; were willing to take payment of theirs before due as they could make investments within a limited time: they are all retired now. All the Debentures I have mentioned were payable in Toronto at the Bank of Upper Canada. The Bank pays the interest and charges it to the City. It makes no charge for this. Before the £100,000 loan was negotiated the City had no Debentures payable in England. The proceeds of the £100,000 Debentures were put to the credit of the City the day they were issued I think. The Bank allowed 4½ per cent. on the £20,000 reserved to meet Mr. Cawthra's Debentures from 1st January last; on the rest of the £50,000 the Bank allowed no interest: it is within a very short time that the amount beyond that reserved for Mr. Cawthra has been withdrawn. I think there is still about £1,000 in the Bank over and above the £20,000. Several of the City notes have not been presented until some time after they fell due. The £20,000 due to Mr. Cawthra is the only part of the debt payable out of the £100,000 loan remaining unpaid except about £2,000 or £3,000 notes not presented. I think I was aware of the passing of the Act on the 11th October; the Mayor was in Quebec when the Act was passed. An imperfect copy of the Act was presented to the Finance Committee on the 11th October. I received a certified copy of the Act on the 22nd October: the last £7,000 of the Debentures were issued on the 19th; they were signed by me I think on that day; by the Mayor previously; he told me he signed them before he went to Quebec. I can't recollect myself whether he did or not; I see no reason to doubt that he signed them before he went to Quebec. There is no minute of the Finance Committee authorizing the issue of the £7,000 Debentures, but they met that day, and I have no doubt they sanctioned it: there are minutes for all the previous issues. The Mayor had power to issue the £7,000 Debentures from the Act of the Council the day before. This may account for the absence of a minute; the minutes are in my custody. I am often present at the meetings of the Finance Committee, during the whole or part of the time. I was present I think at the meeting of the 28th April, 1851. I think I was present at the meeting of 21st June, 1851, and at that of the 2nd July, also 30th July and of 6th September.

*Cross-Examined.*—I think in consequence of the minute of 28th April, 1851, the Mayor applied to the Bank of Upper Canada to know on what terms they would guarantee the payment of the interest on the £100,000 loan. The Bank said they could not raise the loan unless the interest was guaranteed. The Mayor applied to the Bank in June, 1851, and got their assistance in raising a loan in England in order to reduce those outstanding notes and the Debentures due and to become due. The same object was kept in view until the £100,000 was raised: and the Corporation has always been anxious to effect a loan at par if possible. The Bank declined assisting, as useless, without the guarantee of the interest. I think there was an application to know what they would charge for the guarantee. Mr. Ridout said he would communicate with persons in England on the subject of raising money; the result must have been unfavourable. I have known no loan since I have been Chamberlain of so large amount effected on such advantageous terms as the £100,000 loan. We gave Mr. Cawthra additional security which made a difference in his case. I think the Insurance Company also had a mortgage.

We pay a commission of 1 per cent. on the interest to the Bank of Upper Canada for the payment of the interest; this is much counterbalanced by getting the loan at par. If the Debentures had been payable in Toronto without any collateral security the discount upon them would have far counterbalanced the commission of 1 per cent. on the interest. On Hagarty and Crawford's offer, the Debentures were to be payable here. The Contractors were deemed entitled to receive £50,000 Debentures. If we had not issued the £7,000 under the £50,000 we must have issued them under the £100,000. We were bound to the Contractors. Part of the £4,000 for opening Colborne Street was paid to the Contractors for that work; part was sold: that issued at par was in payment of work. When the Corporation issue Debentures at par for work, it is considered that the City pay more for the work. In the Summer of 1852 the market price of City Debentures having 20 years to run, was, I think, 20 per cent. discount or 1 per cent. per annum: there were many sales at that rate. While the Contractors had control over their £50,000 Debentures, the City had no funds wherewith to purchase them. The City could not have raised £40,000, to redeem them: had they wished to redeem them they must have issued other Deben-

tures to the amount of £50,000 Debentures, except by accepting the offer of Hagarty and Crawford so far as it went; I never knew any other offer beyond theirs. It was a long time afterwards.— Debentures bear interest from the date of issuing them. Hagarty and Crawford's tender came at the same time that the Bank's did; and the Finance Committee accepted the Bank's as more advantageous; the credit of the City was not used by the Mayor in purchasing the Debentures. It could not be used without my knowledge. The Seal of the City, which is in my custody, never has been used for the purpose.

No delay was used in issuing the Debentures upon receiving the Certificate of the Engineer of the Railroad. This Certificate was necessary before the Debentures could be issued. The Certificate came through the Finance Committee, and they made an order for issuing the Debentures. Everything was done to expedite the issuing of the Debentures. The Coupons were filled up at the Railroad Office to expedite them. I don't know what object the Mayor could have had in withholding the £7,000; he did not in fact withhold it; had the condition been complied with the Contractors would have received the whole in July: the Debentures were lodged in the Bank for the Contractors. The City has received par for the whole £100,000. The City has sustained no loss from the transactions that have occurred. I consider that the City has gained; the transfer of the £60,000 gift and £50,000 Stock was very favorable to the City. It had been in contemplation for a considerable time to raise a loan of £50,000, and it was done as soon as an opportunity of doing it beneficially occurred. A considerable amount of Debentures has been issued since the £100,000 loan; they have been sold at 1½ per cent. per annum. The effecting the £100,000 at par had the effect of improving the rates of the Debentures. The notes of the City I have mentioned were payable in a year with interest; it was very desirable to convert such securities into Debentures. The issuing of notes was injurious to the City. The Bank would not assist the City while the notes were in circulation; the notes passed current; there was no difficulty in the City redeeming them: they were always redeemed readily, and therefore passed current. The City has received its Cash for the Stock from the

Northern Railway: they have raised it not as original subscribers but as on a transfer from the Contractors. I think by arrangement with the Company, but do not know. Certificate was for £50,000 Stock. Mr. Berczy wrote a letter, offering to forego all objections to the legality of the Debentures; and I think this letter had an effect on the Finance Committee in inducing them to pass the By-law. The Contractors were always very urgent that the Debentures should be issued. Toronto Debentures were not known in the New York market. I don't think they could have been sold there at par, or better than they could be sold here. I have no doubt the sacrifice made on the Debentures of the Contractors assisted the City in raising the remaining £50,000, although the £100,000 loan was raised so long before. Mr. Cawthra's and the Insurance Company's Debentures fell due; yet upon the whole I think the City has gained by the transaction notwithstanding the loss of interest by getting the money at par; the loan could not have been raised so favourable since. I heard that the Contractors were raising money to purchase ours I was present at the meeting of the Finance Committee on the 11th October. The proposal of Mr. Ridout which was considered at that meeting appeared to them advantageous. It is not improbable that the Mayor may have signed the £7,000 Debentures before he went to Quebec; he went, I think, about the end of September or beginning of October. It was probable he might be detained in Quebec, and the Contractors might want the Debentures before he returned. The official notice of the passing of the Act was received after the issuing of the £7,000 Debentures. The Contractors were applying for them.

*Re-Examined.*—The City has purchased Exchange sometimes before the interest becomes due in order to meet it. The Bank of Upper Canada pays it and charges the City with the current rate of exchange. The Committee considered the Bank's offer was for the whole £100,000, and it was not considered whether Hagarty and Crawford's offer would have been less advantageous than the Bank's, had the Bank advanced the remaining £75,000 at par. I have made no calculation to ascertain the comparative advantages of Hagarty and Crawford's offer and the Bank's, supposing the remaining £75,000 advanced at par. I think there was no advertisement as to taking up the loan of £1,000,000. I spoke to several



parties about it. I know no reason why the parties who sold the Debentures in England could not have sold them as advantageously for the City. I don't know on what terms they were sold in England. My opinion as to the expediency of accepting Mr. Ridout's offer was founded on sales here. I did not suspect that Bowes had anything to do with the purchase of the Debentures until it became rumored about the town.

*Per Cur.*—There were £15,000 or £16,000 notes falling due in 1852, which it was necessary for the Corporation to meet. There was no avoidable delay in issuing the Debentures after the By-law of 28th June, 1852. The Mayor did nothing to delay the issuing of them. He gave me no directions to that effect.

(Signed)

A. T. McCORD.

Thursday, 22nd December, 1853.

GEORGE BEATTY called by Plaintiffs:

I am a general agent of the Contractors of the Northern Railroad. I have been so since they commenced operations here. I do all their business in their absence. Paper R. is my handwriting. I prepared it a few days ago from the book of the Contractors kept by myself in my own handwriting. It shews correctly the certificates of the Engineer of work done from time to time. The dates are of the days on which I received the certificates. It also shews correctly the certificates of Stock deposited with the Chamberlain, with the correct dates, except that 24th July should be 30th July. The 1750 shares, 750 shares and 2,000 shares of the £38,500 shares, were original shares issued directly to the City. The Contractors drew £8,000 from the Bank of Upper Canada. The third class of entries shews the dates on which we knew the amount of Debentures credited to us at the Bank, and to have been placed to our credit. We were raising a great deal of money at that time, and did not get the Debentures as rapidly as we desired or expected. In order to expedite them we had the coupons, with the exception of a few at the commencement filled up in our office. I applied several times to get the Debentures issued, and urged expedition. I do not know exactly the causes of delay. Sometimes I believe the absence of the Mayor: sometimes

the Debentures not being filled up. At that time the Stock of the Company had no marketable value. I knew of none being offered except a few shares held by persons in the country which were offered at a merely nominal price. The Contractors subscribed for £150,000 of Stock; this was under their contract. The County of Simcoe took £50,000. Private subscriptions were to the amount of about £15,000. I do not know whether any further sum has been taken by individuals lately.

Sales have been made lately at 40, 35, and 27½ per cent discount. I cannot say whether the Stock is rising in value. Since the 1st of July last about 200 shares have been taken by individuals; previous to that, very few. The £35,000 loan to the Company by the City was taken by the Contractors in the Company's bonds, so that the City have no lien on the road. The bonds were taken by the Contractors as a payment of so much upon the work.

*Cross-Examined.*—The sale of the Stock to the City was not effected by me. It was done by Mr. George A. Lawmond, a member of the firm of Storey & Company; he and Mr. Courtwright had special powers to act for the firm.

It cost a great deal of labour to fill up the coupons. There were forty of them to each Debenture. The amount of each Debenture was £250; they were filled up in my office for the sake of expedition. I cannot say what time elapsed between the deposit of the certificates and the deposit to our credit at the Bank—there may have been duplicate certificates one of which was handed to the Finance Committee from time to time, but I do not know it. When speaking of delay I do not wish to impute any intentional delay, but our necessities made us impatient; the Chamberlain showed every disposition to expedite matters. I never thought there was any intentional delay.

I could form no estimate of the value of the Stock in 1852, as there was none in the market, and it could not be said to have any marketable value.

*Re-Examined.*—I do not think that the delay was at all accounted for on the ground of the legality of the Stock being questioned on

the 15th May 1852. We received from the Engineer a certificate of £100,000 being due to the Contractors for work done, and expected to receive at once the £24,000 due by the City upon work to the above amount being done.

*Cross-Examined us to say* — the delay referred to: It was to the Company, not to the City that we looked in regard to the £24,000 to which I have referred with respect to the certificate for the 3250 shares; 2000 of those shares had not been previously issued; and 1250 of the shares were by certificates surrendered by the Contractors.

(Signed)

GEORGE BEATTY.

sworn for the Plaintiffs, with:

substitution of £50,000 Stock for £60,000 gift and loan; or upon looking over my evidence before the Committee, I recollect it had reference to the illegality of the By-law of the 25th of June,

This interview was before the passing of this By-law. I reported what passed to the Council, before the passing of the By-law. I reported what Major Lawmond said as to the Debentures being worth par; the same evening, I think the By-law passed. I remember the arrangement afterwards made for changing the gift and loan, to the taking of Stock. I supported the change as decidedly advantageous to the City, and I still think it was.

I don't know what the Stock was then considered worth, but I heard an opinion expressed by a competent judge, that all Stock of a Railway Company is not worth more than 50 cents on the dollar, before the road goes into operation: that was my opinion when the Mayor proposed the change, I considered they were the best terms that the City could make. I supported this proposal on that supposition and to promote the construction of the road.

this was before and after the placards were put

On the day the letter of Mr. Ridout containing the object of the

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£100,000 loan was presented to the Committee, the Mayor stated to me, I think, without hearing of members of the Committee that he was glad the offer had come from parties in England to take those Debentures, because he had had some idea of entering into the transaction himself, but that as he was Mayor of the City he thought it would have been improper for him to do so.

The subject was not then mentioned for some months until after the placards appeared; the Mayor then spoke to me on the subject and appeared willing to communicate the circumstances to me, but I declined to hear them; this was after the election; I said that any information he might give me on the subject I should consider myself bound to make public; on this occasion he led me to believe from what he said that he was in some way interested in the purchase of the Debentures; I did not report this to the Council; it was a mere inference drawn by me from something he said, not an express statement on his part. I supported the By-law for the £100,000 loan; When I supported the resolution for the petition and the By-law for the £100,000 loan, had I known that Mr. Bowes was interested in the Debentures, my conduct and the course I took would have been materially affected. Had I known that the conversion of the £50,000 Debentures from Currency into Sterling was for the benefit of Mr. Bowes and Mr. Hincks, I am sure I should have doubted the correctness of the transaction, and should have ascertained whether more favorable terms could not have been made for the City: in one respect the change was a disadvantage, in another an advantage to the City. It was a disadvantage that the City should pay for exchange so long as it was against Canada, which it has been for many years; it was an advantage to have the Debentures in the London Market at a good rate; it was a decided advantage that a sinking fund should be created, not perhaps in this instance, but generally; but by the law as it stood a sinking fund must have been provided of 5 per cent, but in this case it was arranged that a sinking fund of 2 per cent only should be provided, and thereby it was not a disadvantage in the particular case; it was also a disadvantage because the City would probably be required to provide a sinking fund also for the Stock in the Guilph Road, which was not at first though necessary.

There had been negotiations with Mr. Ridout about the £100,000 loan previously, to his letter. I heard from Mr. Bowes that there had been a negotiation between Mr. Ridout, himself, and parties in England, relating to a loan of £60,000, to consolidate the City debt. There was a proposal from Glen & Company in London before Mr. Ridout's letter to advance the £60,000, for a commission of 1 per cent. I think Mr. Ridout communicated this to the Finance Committee. This was, I think, in the Spring; perhaps two months before Mr. Ridout's letter of the 29th of September. They would have taken the Debentures at par, charging a commission of 1 per cent; Mr. Bowes several times stated during the previous 18 months that City Debentures were intrinsically as valuable, or more so than Provincial Debentures, and if that fact were known in England they would command par if not more. I think he said he had written to English Capitalists on the subject; I think he said had received favourable replies.

Mr. Bowes did not lay before the Finance Committee the offer he received from the Contractors to sell their Debentures, nor any offer; nor did he mention that he had received a letter from them; he mentioned that the Debentures were in the market, I think in the presence of members of the Finance Committee in their room and suggested the propriety of the City endeavouring to make a favourable purchase of them; he suggested no method of doing this, except perhaps, I think he may have suggested that the Banks would advance the money for the purpose; it was not thought practicable by the members who heard it. This was before business commenced, or after it was over. There was no meeting called to consider this matter, and it was never formally brought before the Committee.

I think the Committee had nothing to do with issuing the last £7,000 Debentures. It is the Mayor's duty to issue Debentures unless some condition is attached to the issuing. I think the same conditions were not attached to the £7,000 as to the others. The issue of the £7,000 was, I think, in consequence of the arrangement in pursuance of which the By-law of the 18th of October passed; had the Finance Committee ordered their issuing, it would have appeared in the Minute Book, and I do not recollect any order for their issuing.

*Cross-Examined.*—When it was considered that a Sinking Fund was not required for any stock in any Railways, there was, I believe, no subscription under consideration except the Guelph Railway. There was a Special Act for the gift of £25,000, and it was considered that a Sinking Fund was not required by it. An opinion had been expressed that a Sinking Fund was necessary when the By-law of 28th June was introduced, because the Special Act was over-riden by the General Act, on the passing of this By-law. There was no influence exerted by the Mayor. The question as to the change for the gift and loan to the purchase of Stock, was discussed on its merits in the Council. I believe the Contractors were very anxious to secure the Debentures, notwithstanding the question as to their legality. I understood from the Solicitor of the Contractors, at the interview I have mentioned, that par could be got for the Debentures. Mr. Morrison was present at this interview; nothing was said as to the intended purchase of iron, making the Debentures, under the circumstances, worth par, to the best of my recollection. The letter marked S, I received from Mr. Berezy, the President of the Company, on 28th June, and that evening the By-law was passed. I would not have consented to the £100,000 loan had I known that it was for the benefit of Messrs. Bowes and Bunch; although no better arrangement could have been made for the City, because discreditable to the Finance Committee and the Corporation, as a matter of public morality. I don't think Mr. Bowes having purchased the Debentures at 20 per cent. discount, could have affected the credit of the City. I think, comparatively, the City has been prejudiced by the loan of £100,000. I think a perfect knowledge of the circumstances would have enabled the City to make a better arrangement. I don't think they could have sold the Debentures at par without a commission on the capital, irrespective of any commission on the interest which must also have been paid.

*By Mr. Mowat.*—The Book I have in my hand is the Minute Book of the meetings of the Finance Committee. The minute under date 21st June, 1852, is in my handwriting, and signed by me as Chairman. The Minute of the 2nd July, 1852, and of the 30th July, 1852, and of the 6th September, 1852, and of the 29th September, 1852, and of the 11th and 19th October, 1852, are all

in my handwriting, and signed by me as Chairman; and all the Minutes I have mentioned represent correctly what passed at the several meetings to which they relate; they are read over by me to the meeting before they are signed.

*By Mr. Gwynne.*—I know it was mentioned, and I think by Mr. Ridout, that £60,000 would be advanced by Glyn and Company as I have mentioned. I think it was not an offer to dispose of the Debentures for a commission of one per cent. I am satisfied it was a direct offer by them on behalf of other parties to purchase the Debentures. The 1 per cent commission to Glyn & Company was to be the only deduction from the principal. At that time the Corporation had not power legally to issue Debentures to carry this offer into effect. They were taking steps at the time to obtain a loan. The offer was not considered so favorable as could be obtained, and no steps were taken in consequence of it. The £50,000 loan, which was made afterwards, was, I think, more favorable than this offer: the first proposal was to effect a loan of £50,000, and it was afterwards increased to £100,000. Mr. Ridout communicated, I think, to the Finance Committee verbally before he wrote this letter, that a loan could be effected at par for £50,000 or £60,000. I recollect verbal negotiations before the letter marked T of which that letter was the result. I think the Mayor had negotiations with Mr. Ridout, and it was understood that a loan of £60,000 could be effected at par. How the £60,000 came to be reduced to £50,000 I don't know: this must have been before the act. The loan actually made is better than the offer of Glyn & Company so far as the £50,000 is concerned: as to the remainder it is disadvantageous only as dictating loans to the City what they might otherwise have avoided; I mean as to the occasion of a Sinking Fund: the result is that instead of paying 5 per cent., which would raise too much for the £50,000, the City pays 2 per cent., which is sufficient for the whole £100,000. I retain the opinion I expressed before the Committee as to the reduction of the Sinking Fund for 5 per cent. to 2 per cent: getting the Debentures upon the London market is a great advantage; it has raised the credit of the City Debentures and lessened the discount upon them. I think the regular payment of interest in London will eventually make the City Debentures equal to Provincial Debentures; and it would have had the same effect upon the loan of £50,000 if



it had been made. I think this result is more likely to ensue from the introduction of a large than a small quantity of Debentures, if the City, should obtain power, and should in fact effect a loan at par in England, so as to redeem all the outstanding Debentures. I think this result more likely to follow. In this view the loan of £100,000 might be an advantage to the City; the rate of exchange is sometimes in favor of this Province. I think there is an equal probability of exchange being in favour of the Province when these Debentures become payable. I think the probability is that the average for 20 years would be against this country. I should object to the arrangement on this ground if there were not a corresponding advantage in getting our Debentures upon the London market. I think the loan of £100,000 has contributed to this result. Debentures being payable in London is likely to make them have better credit than if they were payable here. The rate-payers cannot reasonably object to the Debentures being payable in England. I believe the Contractors offered the Debentures in question for sale in Toronto, about the time they were purchased by Mr. Bowes. I did not know it at the time. The Mayor stated they were in the market when he mentioned it in the Finance Committee room that the City might, perhaps, make a favourable arrangement for purchasing them. The members, I think, who heard it, decided at once that it was out of the question for the City to purchase its own Debentures at a discount, and I think the City would not have thought of such a thing. My impression was, until I knew the evidence of Messrs. Sheard and Beard, that they or one of them, were present. The expression used was, that "the City could not shave its own Debentures." Several members of the Finance Committee were present. The meeting of the 21st was held to consider a communication from the Northern Railway Company. The substance of what is contained in the minute of this date, was reported to the Council: it was approved of by them. The Contractors would have been entitled to £25,000 gift as soon as work to the amount of £100,000 had been done, and a certificate to that effect furnished. The first delay was occasioned by some difficulty about the Engineer's certificate—the certificate of the Government Engineer being required. At the meeting of 2nd July the Committee approved, under the circumstances appearing from the Minute, of the £10,000 being issued. The proposition as to the

£14,000 fell to the ground. It had probably been spoken of 3 or 4 days before. The Contractors had reason to expect the £25,000 gift so soon as the requisite amount of work was done, whatever was done as to the £35,000 loan. It was ordered on the 30th July by the Committee that £10,000 Debentures in addition to the £15,000 already issued should be issued on the Contractors transferring £25,000 Stock. The minute of 19th October is on the subject of Mr. Ridout's letter marked U. When in my evidence before the Committee I said the Finance Committee and Council considered the arrangement beneficial, I referred to the arrangement relative to the £100,000 loan; in a pecuniary sense, I still consider the arrangement beneficial. It was opposed by three or four persons. It never came to a vote being given by the Mayor; he may have voted in Committee. I think that during the term of office of the Mayor, the City, in a pecuniary sense, has been benefitted by the financial arrangement of the Mayor. With the exception of the Sinking Fund, he has taken trouble on various occasions to make arrangements with the Banks for the benefit of the City. I retain the opinion expressed by me before the Committee, stated at page 46 of Book marked Y, except as to the Sinking Fund, and on the ground of public morality, in reference to this transaction. The restraints I refer to in that opinion, had relation to the Municipality incurring general debts without providing Sinking Funds. I was aware that a Sinking Fund had been established with respect to this loan at that time, and the knowledge of the fact did not operate to the prejudice of the Mayor, in my opinion. My change of opinion with respect to the Mayor, is not solely attributable to considerations of public morality. I entirely disapprove of the establishment of a Sinking Fund. I think a better arrangement could have been made if a Sinking Fund had not been required. I don't know how City Debentures can be sold on better terms than at par. I think there was no occasion to issue these Debentures, and the City ought to have had the benefit of a Sinking Fund at 2 per cent. on the other £50,000. What I object to, was the introduction of the £50,000 Debentures, held by the Contractors, into the Act. I don't think the benefit of getting £100,000 instead of £50,000 upon the London market, sufficient to counterbalance this disadvantage.

*Re-Examined.*—When I gave my evidence before the Finance Committee I was not aware what the transaction in question really

was, nor was I so aware until the Mayor gave his evidence in this Court. Until he offered to mention the circumstances, as I have mentioned, I was his intimate friend. From that time I had my suspicions. I mentioned to several individual members of the Council, though not to the Council, what he said. I and other members of the Council have taken trouble as well as the Mayor, as much or perhaps more, to improve the financial condition of the City. The Mayor had more weight than any other member of the Council before these transactions came to light. He advocated the resolutions and By-laws relative to the Northern Railroad; he supported them actively.

*Per Cur.*—All I have stated respecting Mr. Ridout, I learned from statements made in the Finance Committee, and, I think, by Mr. Bowes. I cannot say positively that the proposition of Glyn and Company was for any fixed sum, but think it had reference to the £50,000 or £60,000 loan, which it was desired to effect. I think, upon hearing what Mr. Ridout has stated in his evidence, that some months before the receipt of Mr. Ridout's letter respecting the £100,000 loan, there was a proposition from Glyn and Company to take £50,000 or £60,000 loan at par, deducting only a commission of 1 per cent. The offer appears to be as early as April. The proposition for the change from £60,000 gift and loan to £50,000 Stock, came, I think, before the Finance Committee, and was approved by them before it was laid before the Council. I think it was brought before the Committee by Mr. Bowes. I think the Committee merely discussed it and required a written proposal. I don't think there was any formal communication to the Contractors, but having heard from Mr. Courtwright that the Contractors were anxious for it, I communicated this to some of the Committee. I was not instructed, nor any other person that I know of, to communicate with the Contractors on the subject. The Committee discussed it merely on the proposition of the Mayor. It was considerably discussed: there was a large majority in favour of it in the Council. It was considered as a purchase of Stock at less than 80 cents on the dollar. That is more advantageous because the City was relieved from the loan of £35,000; on this view it was generally approved in the Committee; and this view finally prevailed in the Council. The arrangement made with the Contractors was to take £30,000 Stock. Had we had funds we might have given them

£25,000 cash in lieu of £50,000 Debentures. The object of the City was to assist the Railroad, and it did not think of depreciating the Stock. If the City had had funds it would have been considered discreditable for the City to have given £40,000 for the £50,000 Debentures.

*By Mr. Gwynne.*—The Minutes of the 23rd and 28th June represent correctly what passed at the meetings to which they relate. I think there is no minute of proceedings before the Committee relative to the change of the £80,000 gift and loan, to £50,000 Stock. The City would not sell its Railroad Stock at 50 per cent. discount.

(Signed)

SAMUEL THOMPSON.

THOMAS G. RIDOUT, Esquire, recalled :

Since my former examination I have found a letter from Mr. Hincks which refers to an offer from persons in London in reference to a loan to the City. The letter is dated 25th September, 1852: the letter now produced is that letter. I had no communication on the subject of the loan of any kind whatever with Mr. Hincks, or with any person on his behalf previous to this letter.

*Cross-Examined.*—No proposition was ever made by the Bank to the effect that Glyn, Halifax & Co. would negotiate City Debentures at par upon a commission of 1 per cent. At the instance of the Mayor or some other person on behalf of the City, I addressed a private note to Glyn as to the negotiation of City Debentures in London, I think, in the fall of 1851, and received a very discouraging answer; so much so that I think I did not communicate it to the City. I never received authority to make such a proposition as is suggested, and never did to the City Council or any person connected with it, or to any one whatever. He therefore must be mistaken upon that point. It could not have been the case that the Bank was requested to negotiate a loan for £50,000 only, instead of £100,000. I have no recollection of anything of the kind. The letter of the 28th September, 1852, was the first offer of the Bank on the subject to the best of my recollection. I was not authorized to make an offer of £50,000 to the City under the Consolidated Loan Act. I understood that it was doubtful whether the City would choose to avail itself of the provisions of that Act.

(Signed)

THOMAS G. RIDOUT.

GEORGE P. RIDOUT, sworn for the Plaintiffs, saith :

In 1851, I was an Alderman of the City and Chairman of the Finance Committee. The Minute of the 28th April, 1851, is in my handwriting and signed by me as Chairman, and is a correct statement to the best of my belief of what occurred at the meeting to which it relates; the persons there mentioned as present, were present. I am a director of the British America Insurance Company; the City was indebted to them in £19,000; the Company was not anxious for payment; the City made a proposition for paying the debt before it became due. The Company, after some correspondence, determined to accept the proposal, and receive payment from time to time, as they could reinvest the money. I have no reason to think the Company would have required the money before it became due; nor that they would wish it then, as they were amply secured.

*Cross-Examined.*—The Company lent the money for the sake of an investment. I have only expressed my opinion, not a matter of fact. The Company, besides Debentures, had a Mortgage on City property. The City when they made the proposition, I take it for granted wished to get rid of the Mortgage; otherwise they would not have made the proposal. At the time of the meeting of the Finance Committee on the 28th April, 1851, the intention was to issue new Debentures, the interest to be payable in England, and to negotiate them in England. And the Mayor was to ascertain from the Banks how it could best be done. We did not succeed at that time in effecting a loan as proposed. At this time City Debentures were, I think, at 1 per cent. per annum discount.

*Re-Examined.*—I am Governor of the British America Insurance Company. The Company took a second Mortgage on the property mortgaged to Mr. Cawthra, contrary to their usual practice, feeling perfectly secure. I don't think the Mortgage embraced the whole City property. Had it been found necessary to make the principal as well as the interest payable in England, I think the Corporation would have consented to it.

*By Dr. Connor.*—I was member of Parliament when the Act for the £100,000 loan passed. Mr. Bouverie had charge of it. I had no instructions from my constituents relative to

(Signed)

G. P. RIDOUT.

*Depositions taken viva voce in open Court, on Wednesday the 11th day of January, A.D. 1854, in a certain cause pending in the said Court of Chancery, wherein David Paterson and others are Plaintiffs, and John G. Bowes and the City of Toronto, are Defendants.*

On the part of the Defendant Bowes.

MILTON COURTWRIGHT sworn for the Defendant Bowes, saith:

I am one of the firm of Storey & Company, the Contractors for the Northern Road. Storey & Company were to get the £25,000 gift as a bonus beyond the mileage price. This was understood at the time of entering into the contract, and was part of the consideration of taking it.

The £35,000 Loan was in lieu of so much private subscription.— The Company were to get £50,000 private subscription, and only got £15,000, and the £35,000 Loan was to come into the place of the residue. I was here on the 28th June 1852. I was frequently here except after that, and a short time before, but during the progress of the work I have been here more than any other member of the firm, Mr. Lawmond was here sometimes, when I was not.

I was anxious for the passing of the By-law of the 28th of June. I pressed its passing because we had arranged with Mr. Roberts of New York for all our iron, and had undertaken to place a portion of the Debentures in his hands. It was very important to us to get the Debentures at that time. The iron was then being delivered; and we got it at a pretty low rate. It had risen at that time. We got it at a very low rate. We paid 39 dollars at Quebec, and it was worth there, I think, 50 dollars. We got 1,000 tons here at 37 dollars. It was an object to us not to forfeit our Contract. Several ships had, I believe, arrived, or were on their way with it. For these reasons we were anxious to get the Debentures, and to get the By-law passed. We had a legal adviser here from New York.

We were aware that the legality of the By-law was questioned, but we were willing to run the risk, and take the Debentures. Our legal adviser was also agent for Mr. Roberts. I remember writing a letter

to Mr. Bowes, dated, I believe, 30th, had previously endeavoured to sell the Debentures but failed. We had authorised Mr. Roberts to sell a portion if he could at 85 cents on the dollar. He had not succeeded. We never intended to get par for them. Never said so, that I know of. Before writing the letter we had had a conversation with Mr. Bowes two or three days before. He proposed to purchase the Debentures at 80 cents on the dollar. We told him we thought he could have them; and he wanted a written proposition, and in consequence, the letter was written. This was the first proposition that was made between us and the Mayor. I am not sure whether we accepted his offer at once, or said only, we thought he could have them. We thought this was as good an offer as we could get. It was no favour to Mr. Bowes.

We preferred selling the Debentures here after the legality of the By-law was questioned. We should have sold them to any other person on the same terms, as readily as to Mr. Bowes. I supposed it would be difficult to negotiate so large a sale in this City. Mr. Bowes did not attempt to make use of their supposed illegality to get them cheaper. I considered the matter closed after writing the letter, and seeing Mr. Bowes, and understanding from him that it was closed. I never supposed that Mr. Bowes kept back the Debentures, although we thought they were slow in issuing them. We were anxious to get the Debentures. Dr. Beatty attended to the getting them to be issued. The understanding was, that as issued, they were to be deposited in the Bank of Upper Canada.

I was not here when the purchase of Stock was substituted for the gift and loan. In itself I did not consider this an advantageous arrangement for the Contractors, but the reverse, but necessity compelled us to accede to it. I would not have consented to it on any account, had we not been much pressed for funds. I am aware that there was a difficulty between the Company and the City, and between the two we were kept out of the Debentures. We took the Company's bonds in lieu of the £35,000 Debentures which were not then so available. We would have cancelled the gift and sold the Stock for less than par, payable in Debentures. I consider this arrangement very advantageous for the City.

*Cross-Examined.*—We had agreed to deposit the Debentures with





MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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Mr. Roberts, to a certain amount. He was to sell and apply the proceeds to account. He was to sell them when he could. I think he intended to sell them in London, but am not sure. We had limited him to 85 cents on the dollar. He was not to sell them for less.— This arrangement was made in the winter previous. We were entitled to £24,000 Debentures on the 16th May. I supposed the Council hesitated on account of the supposed illegality of issuing them; I heard no other reason: as regards the £10,000 of the gift, or as to the £14,000 they could not agree upon the security—it was part of the loan. We pressed the issuing of the Debentures. I spoke to the Company, and also Mr. Bowes about it. I don't recollect hearing of any difficulty before the 16th of May. I think I mentioned to Mr. Bowes that we intended to place the Debentures with Mr. Roberts, I only recollect one conversation about selling to any other person in Toronto than to Mr. Bowes. We talked, however, about the value of the Debentures several times. I recollect talking with Mr. Bowes generally about the Road and the Debentures, but I cannot say that we talked of the value of the Debentures before the sale to him. We did not suppose we could sell the whole amount here, and thought we could sell them better in London or New York, and that was the reason we did not apply to parties here. We could put an end to the arrangement with Mr. Roberts as to the sale of the Debentures, had we pleased.

We were to pay for the iron as it was delivered, whether the Debentures were sold or not. It was to be delivered as rapidly as possible. It was arranged between Mr. Bowes and ourselves that the Debentures should be placed in the Bank. We did not see Mr. Bowes after the conversation until I wrote the letter, that I recollect. I understood that Mr. Bowes bought the Debentures, but whether for himself or another I did not know, nor did I know it until the facts were disclosed in this Court. I think we told him that we were in the habit of making such transactions confidential. This was at the time of the conversation. I said this because I thought it was new business to Mr. Bowes, and he would not understand it otherwise. It was material to us that this matter should not be divulged. That was the reason I made the remark.

We expected to get the Debentures after the By-law was passed as soon as we were entitled to them. We directed the Chamberlain to deposit them as issued in the Bank. We sold the whole £50,000 on

the same terms, although my letter mentioned only £24,000. The residue of the Debentures was talked about at the original conversation, but no arrangement was made with respect to them. I did not suspect Mr. Bowes to be the cause of the delay in issuing the Debentures—the Chief delay had occurred before this time. We had disposed of £6,000 Debentures otherwise, and did not know whether we could let Mr. Bowes have them. I cannot tell at what rate we sold them. We paid for right of way with them. We repurchased £50,000 of the £80,000 at 80 cents on the dollar. We only got £40,000 in money for the £50,000 Debentures.

We would have given up the gift and loan and sold the Stock for £40,000 money to the City, as well as to Mr. Bowes, had it been proposed to us at the same time. In fact we would have made the same arrangement with anybody so that we got the same amount of money. We were not certain of getting 85 cents on the dollar, and I think we should have sold for 80 cents even had the By-law been unquestionably legal. I don't know whether we could have got 85 cents. I think Debentures were selling for 80 cents then, in the City. We got so much less for our work in consequence of the £25,000 gift being relinquished.

*Re-Examined.*—Captain Strachan offered us for a small amount of Debentures 75 cents on the dollar, provided we gave him the option of an additional amount of 80 cents at a future time. We had not made up our minds on the 28th of June to sell the whole of the Debentures, considering ourselves pledged to Mr. Roberts. I had no idea that Mr. Bowes wished to purchase, before my conversation with him.

I was not aware that the first £8,000 was raised upon the credit of Bowes & Hall. I think Mr. Bowes knew that we had to get back the £6,000 which we had sold. I think we had told him that some of them were beyond our control. I did not know that any other person was concerned with Mr. Bowes. The suggestion as to keeping the matter secret came from me, and was dictated by regard for our own interest. I did not apply to the Council to hasten the Debentures, and I don't know that the Company did.

*By Mr. Mowat.*—I desired the sale to Mr. Bowes to be considered

confidential, because we had not sold all the Debentures, and it might prejudice the sale of the rest. I did not come here long before the 28th June, at that time—only a few days before. For some time previous none of the firm had been here. Previously I had been here, and also Mr. Lawmond. During the spring I was here part of the time, also Mr. Lawmond, part. We were willing to run the risk of the illegality of the bye-law, as we were advised by our legal adviser, and also Mr. Boulton; and it was thought the bye law was not illegal, and at all events, the Debentures would be legalized. We felt sure also that the city would not repudiate them. We repurchased the £5,000 Debentures we had sold, because Mr. Bowes wanted to get the whole £50,000.

(Signed)

M. COURTRIGHT.

CHARLES DALY, called by Defendant Bowes :

I am Clerk of the City Council, and have been so since the beginning of 1835. It is part of my duty to attend all meetings of the Council, and take Minutes of their proceedings. The Minutes taken by me are a correct record of such proceedings. Upon a motion being moved and seconded, and its being entered that the motion was carried or ordered, it imports, that the motion was carried without a division being called for; although members may have expressed differences of opinion. No entry is made of a motion being carried unanimously, unless it is expressed by all the members present rising, in the affirmative on a motion. The books before me contain the Minutes of Council taken by me in the Council at the time, in and since 1850, down to 6th June, 1853. At the request of the Solicitors for the Defendant, I made extracts from the Minutes of all proceedings in the Council relating to the gift and loan by the Council to the Railway Company, and the taking of £50,000 Stock in lieu thereof. The paper now produced to me marked A. 1 contains such extracts; they are true copies from the entries in the Minute Book. I find in the Minute Book no other entries in relation to these matters, except on the 11th June, 1852, and 13th September of the same year. It contains a true copy of the petition set out. The petition was prepared in the office of the City Council's Solicitor, Mr. Gamble. I forwarded the petition to Mr. Boulton, the senior member of the city, in

accordance with the order of the Council; and also communicated with the other member, Mr. Ridout. The Bill for consolidating the city debt, was also prepared by Mr. Gamble. The motion of 23rd August, as to the petition for the law to authorize the issue of £100,000 Debentures, was carried without any division being called for. I do not recollect whether there was any discussion upon it. If Mr. Bowes had been directed by the Council to take any steps in relation to the sale of the Debentures, there would have been a resolution to that effect; or if he had been directed to act for the city in any matter. There is no such resolution in relation to the Debentures in Council. In other matters in which he has acted there have been such resolutions.

*Cross-Examined.*—When the Council is in Committee of the Whole the yeas and nays are never recorded. When in Council they are recorded when desired by two members. The Council did not meet on the 9th June, 1852. I have no copy of Mr. Gamble's Draft of Consolidation of City Debt Bill. It was sent direct to Mr. [redacted]. I find no Minute of any application by the Railway Company for the payment of the first instalment of the £25,000 gift before the 11th June, 1852. That is the only reason I have for saying that they made no such application before that date. I do not know as to applications to the Finance Committee. I do not attend its meetings. The Mayor was a Director of the Northern Railway Company for the City from October, 1851, to February or March, 1852. Mr. Cameron was appointed as such Director on 6th March, 1852, and on 7th June in same year Mr. Armstrong was appointed. No appointment has been made since until the recent appointment of Mr. Capreol. I understand the Company questioned the right of the City Council to appoint a Director after the change from the gift and loan to the taking of Stock. I have with me and produce the opinions referred to in the Minutes in regard to the validity of the By-law. They are marked A. 2 and A. 3: they are all I am aware of having been taken: they were received before the By-law was passed; I think they were mentioned in debate, but not formally laid before the Council. The paper marked A. 4 is the Report first adopted by the Select Committee appointed by the Council to enquire respecting the Debentures now in question: it is in the handwriting of Alderman Denison. It is not the Report which was presented to the Council

by that Committee: another was adopted and presented. A letter was received by the Committee from the Mayor before the adoption of the above-mentioned Report, and the note of receipt of that presented to the Council. I was present at the meetings of the Committee. No document or evidence other than the letter was received by the Committee between the adoption of the first and second Reports. The offer of Messrs. Crawford & Hagarly to take certain Debentures is not in my possession. The Chamberlain is the proper officer to have that document.

*Re-Examined.*—I think that Mr. Cameron did not act as a Director for the City on the Northern Railway. The Chamberlain signs cheques for the City money, not the Mayor.

(Signed)

CHARLES DALY.

CHARLES BERCZY, called for Defendant Bowes:

I have been connected with the Northern Railroad since its commencement, as a Director of the Company. I became Chairman, then Vice-President, and then President of the Company. I succeeded Mr. Walter as President and Mr. Morrison succeeded me. I was President in the summer of 1852. I took an active part in the negotiations between the Company and the City Council. The £25,000 gift was included and formed a part of the tender of the Contractors. As to the loan, the City were to give the Debentures and receive the Company's Bonds. The City wished to have the first lien on the road by way of security for the loan. This the Company objected to as it might prevent their getting the Government Guarantee as that would be granted only on the Government having the first lien. There was a great deal of discussion between the Company and the Council. Some of the Council, and I think among them Alderman Thompson, appeared to be inclined to press the lien, but I cannot speak positively. I had daily interviews with the Contractors on the subject, and have been present at discussions between the Contractors and members of the Council. From what passed, I thought the Contractors might be willing to give up their bonus and take City Debentures, giving Stock for them. I suggested this to Alderman Thompson. He appeared not to understand my suggestion, or not to entertain it. I then made the same suggestion to the Mayor

who thought it a good plan and requested me to communicate with the Contractors. I met Mr. Lawmand and Mr. Orton. After some discussion they agreed to give £50,000 of Stock and receive £50,000 City Debentures and to relinquish the gift of £25,000 and the loan of £35,000. I was anxious to make this arrangement for the sake of the Company, as without it they could not carry out their agreement with the Contractors on account of the difficulty in effecting the loan. I thought it a most advantageous arrangement for the City, and it certainly was so. I believe the assent of the Contractors was communicated immediately to the Mayor, and proposed to the Council shortly afterwards. The Mayor never spoke as if he had authority to make such arrangement himself, but he spoke of recommending it to the Council. I did not wish to appear in the matter, and requested the Mayor not to mention my name in connection with it. Mr. Courtright expressed himself dissatisfied with the arrangement, and spoke of it as a loss to the Contractors of £12,000. I did not expect that so favourable an arrangement for the City could be made, and was surprised that the Contractors, whom I saw on the subject entered into it so readily. The Government required that Mr. Keefer, the Engineer, should examine the road before giving the Guarantee. The Council required that the road should be examined by an Engineer unconnected with the road. That was one of the reasons assigned for the delay in the issue of the Debentures. I think Mr. Keefer had at that time examined the road, and I thought that sufficient. None of the Company's Stock was in the market at this time. I do not think it had then any marketable value. We had agreed with the Contractors that £50,000 of the Company's Bonds should be given to the Contractors provided that private Stock be taken to that amount. Only £15,000 was taken, and we applied for the loan from the City to make up the difference. It was a great object with the Company to get City Debentures for the amount, as we apprehended that without it we might not get the Government Guarantee. In my communication with the Contractors, it was clearly understood that the Stock held by the Contractors was to be given in exchange for the City Debentures, not Stock held by the Company. The Contractors would not have entered into the arrangement upon any other footing. I do not think that the Contractors could have been induced to give the Stock at a discount, besides relinquishing the gift in exchange for

Debentures. They thought they were making a great sacrifice as I was.

*Cross-Examined.*—I thought the City was to have a security on the road besides the Company's Bonds, but not the first security. I believe the chief, if not, the only difficulty, was the City expecting to have the first charge. The Company got the Debentures for the Contractors as fast as they could get them issued. I have no recollection of the City being ever willing to take a second lien on the road; if they were it has completely escaped my recollection. I feel quite sure that at one time the City required a first lien, and that it was at that time that I had all the trouble and anxiety about the Bonds. The difficulty about the legality of issuing Debentures for the Railway occurred about the same time. Alderman Armstrong appeared willing to forego the first lien and the Mayor said he would throw no obstacle in the way. These difficulties were about the Loan Debentures.

*Re-Examined.*—Any application to the City for the issue of Debentures would be in writing, accompanied by our Engineer's Certificate as to the amount of work done. Upon hearing read the minute of Council of the 11th June, 1852, and being told that the entry of application by the Council therein made is the first entry of such application, I say I believe that that application was the first made by the Company to the Council on that subject.

(Signed)

CHARLES BERCY.

JOSEPH CURRAN MORRISON, sworn for the Defendant Bowes, saith :

I am President of the Northern Road, and became so in December, 1852. I am Member of Parliament for Niagara, and took my seat 29th September, 1852. I have been a Director of the Northern Road from the first, and have been Vice-President. I took an active part in the negotiations between the City and Company and Contractors regarding the gift and loan. The Company had undertaken to procure £35,000 Debentures by way of loan for the Contractors. There was a difficulty as to the loan. The Corporation required a mortgage security. I opposed this. They first required a lien on the road: they then required a mortgage, on its being explained that



the lien would interfere with the Government lien. I opposed both plans as prejudicial to the interests of the Company. I had interviews with several members of the Council on the subject, particularly Mr. Thompson, Chairman of the Finance Committee, and who took an active part in the matter for the City. I explained to them the reason of my opposition. The difficulty was how the City were to redeem the Debentures, and I suggested that the Bonds to be given by the Company should be payable in 10 years, which would enable the City to redeem their own Debentures, payable in 20 years. I did not succeed in carrying this suggestion into effect. The Contractors were aware of this. We on several occasions advised them to do the best they could. They said they could not go on unless they got some money. They said they could not raise money on the Company's Bonds, at all events until some part of the road was finished. I was afraid the road would be stopped. They required money at this time to meet the purchase of iron. I was aware of the contract they had made for iron, and of the rise in price of iron, and of the importance of their getting money to complete it. They had entered into contracts for £90,000 worth of iron. It was purchased at £4 10s. sterling per ton, the invoice price. It had risen to £9 sterling per ton. Part of the iron was seized at Quebec as being entered too low a price, viz., £4 10s. The Contractors could have realized a large profit by reselling the iron, and the Company was apprehensive that they would do this, and that the road would fail. A special meeting of the Board was called to ascertain if the Company would accept the proposed arrangement for converting the gift and loan into a purchase of Stock. I did not approve of this arrangement. I thought it very advantageous to the City, but not so advantageous to the Company as if the City had taken £50,000 Stock of the Company. I was not present at the meeting. I thought the City was purchasing the Stock at 50 per cent. discount. I thought it hard upon the Contractors, and that the City were taking advantage of them. The Contractors gave £50,000 Stock for £25,000 Debentures in fact. Mr. Berczy took credit for this arrangement, and it released the Company from their fear about the road, and the Board was well pleased with it. I had repeated communications with Mr. Lawmand about the sale of the Debentures. He wanted me to get them payable in New York. They did not expect to sell them here at all. Mr. Lawmand several times pressed me to sell the Debentures

for them. I advised him to go and see Mr. Cawthra, and told him that I had heard he was purchasing Debentures at 20 per cent. discount. At the time the contract for building the road was entered into, Debentures were set down as worth 20 per cent. discount. The Contractors calculated them at that rate as cash. Mr. Lawmand offered them to me at that rate. He offered me 5 per cent. to negotiate them, and I was to sell them at 20 per cent. discount. I declined to interfere in the matter. I don't think I could have sold them at 25 per cent. discount here. I mean the whole amount. I took an active part at the Board in managing the affairs of the Company. I frequently saw Mr. Lawmand. I don't remember any complaints from the Contractors that the Debentures were delayed. I thought the City originally was to have no security for the £35,000, except the Bonds of the Company. I was consulted about the By-law of 28th June, and asked to give an opinion about it. Mr. Thompson, Chairman of the Finance Committee, attended our Board a short time before the passing of the By-law. I was also consulted about it by a professional gentleman from New York, acting for Mr. Roberts and Mr. Courtwright. I was of opinion, and so stated, that the By-law would be valid without publication, and without providing a Sinking Fund. The gentleman from New York had looked over the Acts and brought them to my house. He was of the same opinion as myself. Publication was the principal point in question. Something was said about getting an Act of Parliament to legalize the Debentures. I said I had no doubt a law would be passed to legalize the Debentures if necessary. I thought so. I was aware that the County of Simcoe were about to apply to get such an Act. I intended to assist in getting it. The Company was anxious then to get the Debentures for the Contractors. The Company was anxious to get the By-law passed. I communicated with Mr. Boulton on the subject. He took an active part in the Council in favour of the Company. I was present on one occasion when Mr. Boulton stated in the Council that the legislature would certainly pass an Act to legalize the Debentures if necessary, and if the Company desired it that he would endeavour to get such an Act passed. I intended to get one Act to legalize the Simcoe Debentures, to amend their Charter, and if necessary to legalize these City Debentures. I spoke also to Mr. Dempsey on the subject, and probably many other members of the Council.

The Contractors were anxious to get the By-law passed: they were most anxious; my anxiety was entirely on their account. Mr. Lawmond repeatedly said he would rather have £500 then than £1,000 six months afterwards. I was instructed afterwards to draw a Bill for all the purposes I have mentioned. I did so, and took the Draft Bill with me to Quebec. Mr. Boulton introduced the Bill I had drawn, into the House. This Bill did not contain the intended provision for legalizing the City Debentures. The City Consolidation Bill was introduced on the same day. The Bill I took to Quebec contained the mere heading. I afterwards drew the Bill in extenso, and I had then abandoned the intention of inserting a provision relating to the City Debentures, because a Petition had been presented, and a separate Bill was to be introduced to take them up. The Petition was presented to the House by Mr. Boulton on 1st September; read 2nd or 3rd. I think I was never in the slightest degree influenced by Mr. Bowes in any of these proceedings. He never spoke to me on the subject that I am aware of. I remember the second reading of the City Consolidation Bill. It was taken out of its order, on 4th October. The reason was we had a discussion that evening about repealing the 5th and 6th clauses of the Consolidation Railway Bill. These clauses required certain conditions precedent to the introduction of Railway Bills, and the Speaker having decided that no Railway Bill could be introduced, it was decided that a Bill should be passed hastily to expedite several Bills. Mr. Boulton asked me on this occasion to speak to several Lower Canada Members to get the City Consolidation Bill taken out of its order. I did so, and Mr. Boulton moved the second reading of the Bill, and it passed through Committee, receiving some amendments, and was ordered to be read next day. It was read on the 6th. Mr. Boulton was anxious to get the Royal assent at once given to it. No such Bill could have been passed at that time without containing a provision for a Sinking Fund. There was no difficulty in getting such a Bill through the Legislature, the Corporation having presented a Petition for it. There was no division upon it. There were similar Bills passed about the same time from other places. Mr. Bowes never spoke to me on the subject that I recollect. He was at Quebec at this time. Mr. Hincks never spoke to me on the subject. I don't think any application relating to the gift of the £25,000 would have passed through the Board, but an applica-

tion relating to the loan of £35,000. It would have been necessary to produce the Engineer's Certificate. Mr. Seymour, the Engineer, was supposed to have been appointed by the Contractors, and it is probable that the City required a Certificate from another Engineer. Mr. Cumberland was appointed and gave all the Certificates 3 months were given by Act of Parliament to Subscribers to take back their Stock. Very few did so. I saw Mr. Cotton in Toronto on Christmas morning. This was the first time I heard of any difficulty about the £10,000. I knew it from the placards that were posted about.

*Cross-Examined.*—I am Solicitor General for Upper Canada, and have been so since last June. Mr. Hucks is the principal member of the Government. His connection with this matter has been the subject of much public discussion. I first learned that the City required the loan of £35,000 to be secured on the Road, from Mr. Gaultie, at the time of the Company's making application for part of the loan.

Mr. Gaultie sent me some instrument to look at. He was Solicitor for the Corporation and the Company. He prepared the instrument as Solicitor to the Corporation. It provided for a first lien after the Government lien in favour of the City. It expressed thus. Until this I was not aware that the City required a security on the Road. I have no doubt that I had then read the Resolution agreeing to give the loan of £35,000 which requires security. I did not read the By-law of the 28th of June, nor did I read it shortly afterwards; my impression is, that I was not aware that the By-law provided for security on the Road. I was present at the discussion of the By-law in the City Council. I don't recollect anything passing on that occasion relative to security on the Road. There was no discussion, I think, about security until the 2d of July. The impression on the minds of the members of the Board of the Company was, that security would not be required by the City. I don't know from what this arose. From the time that the £25,000 gift was resolved upon, I have no recollection of being present with the Mayor except once with Mr. Brezy. I have no doubt I have spoken to him, but I don't recollect any particular conversation. I thought the Corporation hostile to the Railroad. There was never any difficulty about the £25,000 gift.

The first difficulty about the loan of £35000 was the security. I opposed it strongly. I objected to the Company's giving any preferential security to any other bonds the Company might give upon future loans. I think the whole board were of this opinion. The mortgage subject to the Government lien was always spoken of as a first security. My proposal that the Company should give bonds at 10 years was not accepted, I believe. I think it was proposed, I am quite sure I suggested the 10 year Bonds to Mr. Thompson, and probably other members of the Council. The contract for building the Road, when the Contractors estimated the Debentures at 20 per cent discount, was made, I think, in the fall of 1850 and 1851. I suppose Mr. Lawmond applied to me to sell the Debentures immediately after their first issue in June or July 1852. I suppose it was before the 30th June. It was during that summer. Mr. Courtright, was not here then.

Mr. Lawmond offered me the Debentures and 5 per cent if I would sell them, I think, at or about the same time. I am sure the commission offered to me was 5 per cent. I am not quite certain that I was authorised to sell at 20 per cent discount extra the commission. I did not think I could sell them on any terms here. My impression is not altered by hearing that Mr. Roberts was commissioned to sell at 85 cents on the dollar. Mr. Courtright complained frequently of Mr. Lawmond's contracts and arrangements.

I was consulted about the legality of the proposed By-law of the 28th of June, shortly before it was passed. I thought I was consulted as Counsel and not as Director or Vice President of the Company, but I made no charge... I did not give a written opinion.— I don't recollect whether the point of the sinking fund was raised. I did not know that a sinking fund would not be provided. Parliament met on the 19th of August 1852. I received instructions for preparing or drafting a Bill for the purposes I have mentioned, and drew the headings as I have mentioned. This included both the Simcoe and Toronto Debentures. I received my instructions the same week I went to Quebec. I think I returned from Quebec without drawing the extended Bill, and while here I think I drew the Bill. I think this was sometime in October.

I sent the Bill as drawn, to Mr. Boulton, at Quebec. I took charge of the Bill in the House. I drew the Bill here, I think about three weeks after I had given the headings to Mr. Boulton. I was at Quebec about a week when I took down the headings. When I left Quebec this time I had heard of the intended introduction of the City Consolidation Bill. I had heard of the petition for the purpose. I was watching the Bill I had prepared, and had the provision about the City Debentures not been introduced into the Consolidation Bill, I should have introduced it into this Bill. No one spoke to me about not introducing this clause into my Bill, but I omitted the clause when I drew the Bill.

The City Consolidation Bill had been passed. The Consolidation Railway Bill required amendment, and the Governor General was coming down three days afterwards to assent to it; and that was the reason Mr. Boulton spoke to me, as I have mentioned, about the City Consolidation Bill, in order that it might be assented to at the same time.

My statements relative to the passing of this Bill, were taken from the Journals this morning, otherwise I could not have stated all of them with so much accuracy.

*Re-Examined.*—I have no doubt that the Debentures were offered to me at 20 per cent discount, and my impression was, that I was to sell at that rate and receive my commission besides, of 5 per cent.

It was after the Debentures were offered to me at 20 per cent discount that I was requested to dispose of them, and was offered a commission of 5 per cent. The Company would not have sold Stock at a discount at the time of the conversion of the gift and loan to the purchase of Stock. When I left Quebec the first time, I came up to my election. When I returned, I took my seat and remained at Quebec until the 6th of October, and then came to Toronto, and while here, drew up the Bill I have mentioned.

*By Mr. Mowat.*—The Company would gladly have taken £50,000 Debentures from the City for the same amount of Stock.

(Signed)

JOS. C. MORRISON.

GEORGE PLATT, called by Defendant Bowes, saith:

I was a member of the City Council in 1852 and 1853. I was present when a proposition was made for taking £50,000 Stock in lieu of the gift of £25,000 and loan of £35,000. I supported the measure strongly, as greatly advantageous to the City. I was not influenced in the matter by the Mayor—in that or any other matter I have never heard the measure condemned out of the Council. I was intimate with the Mayor at the time. He did not press his views upon me in the matter either in or out of the Council.

The Agent of the Contractors, Mr. De Grassi, spoke to me about getting the By-law of the 28th of June passed. He mentioned the rise of iron and the necessity for paying Sub-Contractors, as reasons for their taking the Debentures, even though their legality might be doubtful.

When the petition for a Bill to consolidate the debt was under discussion, borrowing in England was spoken of. I thought they could be negotiated better there than in Canada, and ought to stand as well as Government Debentures.

I do not recollect that any one in Council opposed the petition for consolidating the debt. I believe the Mayor spoke in Committee, but beyond that I do not know that he interested himself particularly. He took a great interest in Railroads. It was always understood in the Council that the £50,000 Debentures should be legalized.

I know James Cotton, and have known him a long time.

*Cross-Examined.*—I am positive the Mayor never spoke to me in reference to the matters out of which this suit has arisen, while they were before the Council. I have always been a friend and supporter of Mr. Bowes. The City has negotiated Debentures in Canada since then of £100,000. I believe these are the only ones payable in England.

*Re-Examined.*—Delay was caused in the issue of Debentures in consequence of some members objecting that a certificate as to the work done should be by an Engineer not connected with the

Company. Mr. Seymour was spoken of, as an American, appointed by the Contractors.

*Cross-Examined.*—I was not a member of the Finance Committee at the time application was made for the issue of Debentures and the above objection made in Council. The matter stood over and was brought on again. I do not know how it was disposed of. The Council ordered the issue of Debentures upon the Report of the Finance Committee, I believe no Debentures were issued except in that way.

(Signed)

GEO. PLATT.

CHARLES EDWARD ROMAIN, sworn for the Defendant Bowes, saith:

I am an Alderman elect of the City. I was elected as Councillor in January, 1852; I have served in that capacity 2 years. I was present in the Council on 21st June, 1852. I moved an amendment on that occasion: the question came up as to the proposed By-law passed on 23rd January, and it was objected that the proposed By-law would be illegal, and I moved an amendment that it should be referred to a Special Committee to consider of that question and report to the next meeting. My amendment was lost. I was opposed to the gift of £25,000 and loan of £35,000. One of the Contractors urged upon me the desirableness of their getting the Debentures on the gift and loan, and Mr. DeGrassi their Agent wished me to go to the Council in order that a quorum might be secured. I was anxious that the Northern Road should go on, but had no opportunity of taking an active part in promoting it. Before I was elected a Councillor, there had been a good deal of talk about the impropriety of giving away £25,000 and lending £35,000, when the Corporation could assist the road as effectually by taking Stock. I heard many citizens express this opinion, and I heard it expressed at a public meeting, and it was advocated that it would have been better to have taken even a larger amount of Stock than make the gift and loan. This was said in Mr. Bowes' presence. It was matter of complaint against the former Corporation that they had made such an arrangement as the gift and loan. Mr. Bowes said on this occasion that it was the



best arrangement that they could make at that time. This was at a Ward meeting. I frequently urged on Mr. Bows the propriety of the change. I had no interest in the matter except for the good of the City. Mr. Bows never attempted to influence me as to my votes in the Council. I don't know that he ever attempted to influence any other person. I was tolerably intimate with him. I voted for the change from the gift and loan to the purchase of Stock. I considered it very advantageous to the City. I never heard any body object to it; even the division in the Council, I thought, did not turn upon the propriety of the change, but upon other points. There was a feeling that Debentures should not be issued except on the Certificates of disinterested Engineers. There was some dissatisfaction in the minds of some people as to the road, upon this and other points; but as to the propriety of the purchase of Stock, I think there was unanimity. I thought it advantageous for the City that the debt should be consolidated and the £100,000 raised. I voted for it. I frequently, in the Council called upon the Mayor to say what progress was made in obtaining the loan in England. The propriety of borrowing money in England at a long date was frequently urged in and out of Council as advantageous to the City, in order to meet the liabilities of the City, instead of discharging them out of the City property or by taxation. Much of the City property was then low rented, and I thought that if a loan was effected at a long date, the increased rents might enable the Corporation to discharge the interest on the loan. I thought also the loan in England at 20 years might be renewed. I was opposed to a Sinking Fund. My views were popular with my constituents. I urged these views in and out of the Council; I think a majority in the Council were with me on this subject. I think a majority of the Council would have been against a Sinking Fund had it not been urged as necessary to get the law passed. I think a majority of the Council were in favour of borrowing in England, and thought, I believe, that if the City Debentures were known in England, they would acquire credit there, and the discount on them here would be diminished— that it was desirable they should become known in the English market. I think it would have been necessary, under any circumstances, to pay a commission to a party in England to negotiate the loan, and also for payment of the interest. I should still have thought the loan in England desirable. Mr. Bolton was entrusted with the Bill I believe, and Mr.

Ridout requested to co-operate with him in promoting it in the House of Assembly. I should have thought the change from the gift and loan to the purchase of Stock advantageous, whether the Stock was taken from the Company or the Contractors, but I would rather have had it from the Company than the Contractors, because the object of the City was to benefit the road, and it would have been more beneficial to the road to take Stock from the Company; and also it would have been less doubtful that the City in that case would have been entitled to a Director. I doubt whether I knew at that time that the Stock was coming from the Contractors. I think some objection was made in the Council to Mr. Keefer's statement, that £100,000 had been laid out, because it was verbal and not in writing: I am not sure, but I think the Chairman said in the Council, that Mr. Keefer had made the statement to him. In June, 1852, Debentures were selling at 1 per cent. per annum discount: I know this to be the fact.

I remember placards being put up in the City; I think referring to the £10,000 matter, but am not certain. I took little notice of them: I think there was only one sort of placard put up relating to Mr. Bowes. I first saw this placard posted up, I think on the Saturday night before Christmas day, 1852, between 11 and 12 o'clock at night. I live in Richmond Street, 2 or 3 doors from Church-street. I was returning on this night, home from a supper, and as I saw the placard being posted by some parties upon a wall a little south of the house occupied by Mr. Cotton and Mr. Hutchison, I read the placard and found it to be the one I have alluded to. There were two persons posting up the placards and a third was looking on; at least he stood sideways towards the other parties, apparently on the look out, about 10 or 20 feet from the parties who were posting up the placards. I was walking arm in arm with a friend, and wished to pass unobserved by the parties I have mentioned. I thought, and still think, that the parties engaged in posting up the placards were Messrs. Newson and Anderson, Clerks of Messrs. Cotton and Hutchison respectively, and the party on the look out, I thought, was Mr. Cotton. It was not a dark night, and I felt pretty sure as to the identity of the parties. Mr. Cotton had had some business with me during that week. I had frequent interviews with him during that week: and the Monday following the Saturday night on which the placards were put up, being the Monday before Christmas day, as I think I saw him in his own office. Cotton was spoken of as a can-

candidate for several of the Wards at this time, and was in fact a candidate. I have no doubt that Cotton was in Toronto on the night the placards were put up. I saw him several times during the week before Christmas. I saw several copies of the placard in my own house. My friend whom I have mentioned, on the same night pulled down one of the placards and brought it into my house. My friend concurred with me in opinion as to the identity of the persons as I think.

[This was objected to by Mr. Mowat, and the objection overruled and the evidence received de bene esse.]

*Cross-Examined* (as to the parts objected to without prejudice.)

My friend was Edward Hawke, a lawyer resident in Toronto. I don't remember whether it was a moonlight night. There was snow on the ground. I came up from King-street, Mr. Cotton lived then in Church-street at some distance from King-street. I don't recollect seeing any other persons than those I have mentioned. I first saw them when I got within 20 or 30 feet from them. We came upon them by surprise. We were engaged in conversation. I think the light was sufficient to enable us to see them at a greater distance. We were on the same side of the street on the sidewalk. I think the parties had large overcoats. I don't think their faces were blackened, but am not positive. I saw their faces. One party was stooping down picking up placards and the other was taking some paste. We passed hastily, as hastily as possible, but I saw the faces and thought I knew them to be the parties I have named. I caught a glimpse of them as we passed. We turned the corner immediately afterwards and went to my own house. They none of them spoke to us, and I did not hear them say anything as we passed. We passed between the parties who were posting up and the party on the look-out, who stood near the cur's stone. His face was towards the corner, rather from than towards us, but I had a good view of his side face. He was looking about south-east towards St. Lawrence Hall. He seemed to be looking all round. We were going north. I think Hawke and myself spoke on the subject next day, and I think we still agreed as to the identity of the parties. I have never spoken to him upon the subject since. I did not wish to do so. I think I mentioned the matter to Mr. George Platt in confidence, on the Sunday or Monday

morning afterwards. I mentioned to Cotton on the Monday morning that I thought I had seen him on the Saturday night as I have mentioned. I considered a Sinking Fund unnecessary for the reason before mentioned, and because the Sheriff can assess the property in the Court of repudiation by the City. I considered a loan in England advantageous, because money was to be obtained at a lower rate: money is here worth more than 6 per cent.; and even then in England it was and is worth much less. If the Debentures were as well known in England as here, money could have been obtained on much more advantageous terms in England. City Debentures have been sold by the City since the loan, to the amount, I think of £15,000 or thereabouts. The Finance Committee are now advertising the sale of Debentures: £20,000 Debentures or thereabouts were to be sold since the loan of £100,000. I think those that have been sold have been sold here: I have no doubt of it. I am not aware that any attempt has been made to sell them in England. I don't know why some of them were not at 20 years.

*Re-Examined.*—When I mentioned to Cotton that I thought I had seen him on the Saturday night, he denied it and said I must be mistaken. My impression, however, remained unaltered. I still retained the impression strongly. I demanded upon this occasion a letter from Mr. Cotton, which he had previously refused to give me. I thought the placards were connected with some others previously posted up, reflecting upon me, and threatened Mr. Cotton if he did not give me the letter, to disclose what I had observed on the Saturday night. He denied his connection with it, but gave me the letter he had previously refused, and I was confirmed in the impression that he was the person. He might have given me the letter for any other reason.

I shewed Platt one of the placards on the Monday morning, when I mentioned the circumstance to him, as I have said; the one that had been pulled down by Mr. Hawke. It was at my house. It was the large placard. I think it alludes to the placards I have mentioned, reflecting on me. There was a copy of the placard put by a policeman or messenger before the Council, before the Clerk took the Chair for the election of Mayor.

The placard that Hawke pulled down was not the one I saw

posted up. He pulled it off another place.

(Signed)

CHAS. ED. ROMAIN.

GEORGE PLATT, re-called by Mr. Bowes;

*Objected to.*—I saw Mr. Cotton on the Evening of the 14th of December, 1852, and daily for some few days afterwards; for a good many days afterwards, I remember Romain naming Mr. Cotton to me in connection with the posting of some handbills. It was on a Sunday, after the 14th of December, and before Christmas.

*Cross-Examined.*—I know Jonathan Wutson. He has a shop in the City. I do not know whether he resides in it or not. He has a tannery, I believe, out of the City.

I believe the present number of the inhabitants of the City is about 40,000, I think not less. I saw Cotton during the week after the 14th of December. I cannot say us to a good many days. I do not know whether Jonathan still retains his shop in the City.—

(Signed)

GEO. PLATT.

OGLE R. GOWAN, called for Defendant Bowes:

I am an Alderman of the City. I entered the Council in Jan. 1853. I have been rarely absent from meetings of the Council.—

In my opinion the negotiation of the loan in England was advantageous to the City. I have no doubt at all upon the subject. I was a member of the Committee appointed by the Council to enquire into the negotiation of the loan, and became informed of the terms on which it became negotiated. In no other instance have I known or heard of any loan being negotiated by the City at a less discount than 1 per cent per annum. I have known Debentures sold at 30 per cent discount. I believe that in the London Market the larger the amount required, the better are the terms upon which it may be negotiated. I have known Mr. Bowes well since I have entered the Council. I do not recollect his attempting to influence any of them upon any ques-

tion, except that he asked me to speak to another member to vote for him as Mayor. I am not aware of his attempting to influence the votes of other members.

*Cross-Examined.*—The Mayor and I have generally acted together in the Council, though we have sometimes differed, and that warmly. I justified his connection with the matters in question in this Suit, and his conduct in relation thereto, except his concealment of it.

(Signed)

OGLE R. GOWAN.

13th January, Examination Continued.

RICHARD DEMPSEY, sworn for the Defendant Bowes, with :

I was an Alderman of the City in 1842, and for four years previous. I remember the gift of £25,000: I supported it in Council, and also a loan of £35,000. I supported the Northern Road strongly. I remember the Contractors being very anxious to get Debentures in 1852. I was then on the Finance Committee. It was a short time before the By-law passed of the 23rd of June. They required money. I had conversations with some of them and understood that they had contracted for iron and were apprehensive of sustaining a loss if they did not get money. I think there was some difficulty owing to some certificate being required both in the Finance Committee and the Council. What they required was, a certificate of the amount of work done on the Road. I think Mr. Keeler gave a verbal certificate first, and that it was not deemed sufficient. This difficulty was the cause of the delay.

There were communications with the Contractors about the time of passing the By-law. I was present when the By-law passed in the Council. I think I had conversations with some of the Contractors or their Agents. They were very anxious to get the Debentures.

The By-law was referred to in Special Committee, of which I was one. I thought so, but on hearing the minute read, I believe there was no Committee. I supported the change from the gift and loan

to the purchase of Stock, thinking it very advantageous to the City I was not influenced in my conduct or votes in these matters by Mr. Bowes. The chief objection to the By-law was the non-publication. It was formally resolved that the Debentures should be issued, as the Contractors were very anxious to get them, and we were apprehensive that the Road might otherwise be stopped for a time, and the Contractors were ready to run the risk, and we did not see from what quarter difficulty could arise.

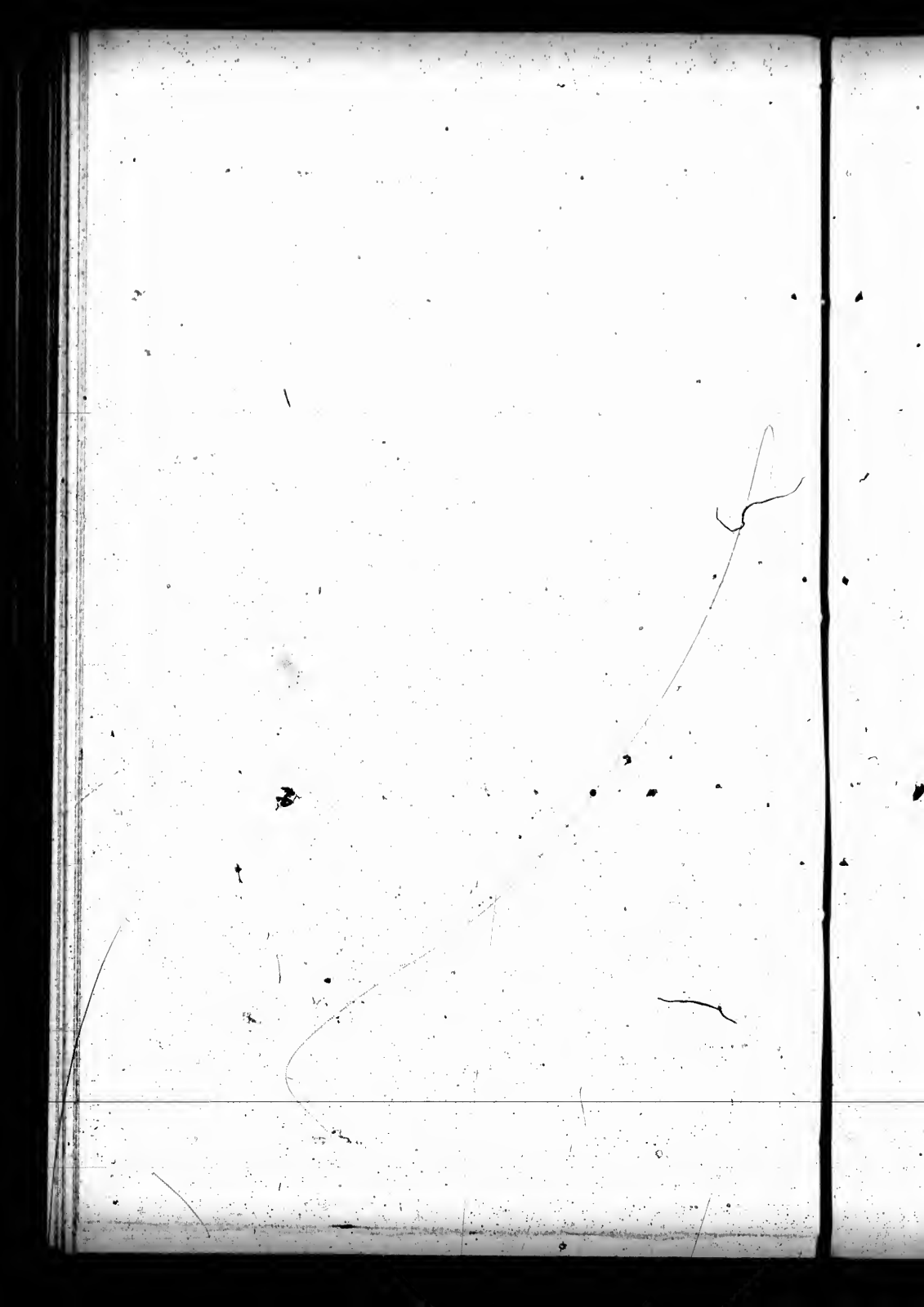
I remember the proposition for consolidating the debt, and raising £100,000. I supported it. It originated, I think, with the Finance Committee, and it was in consequence moved in the Council, and then, I think, unanimously adopted. I think it was the suggestion that the money should be obtained in England. We were to try and get it there, as it was to be had there on more advantageous terms. I was not in the slightest degree influenced in this matter by Mr. Bowes.— He might have had influence at the Finance Committee like any other member, according to the force of his arguments. I thought the proposition advantageous to the City.— I think the Finance Committee were unanimous on the subject. I supported it in the Council. Mr. Gamble prepared the Petition to the Legislature for the Consolidation. It was forwarded to Mr. Boulton, the City Member. If I had then known that Mr. Bowes had purchased the £50,000 Debentures, I do not think it would have influenced my vote, but it is difficult to say. I don't think I should have attached any importance to it.

The loan, I understood, was negotiated in London, without any charge. It was most advantageous to the City. I never heard of a loan at par before.

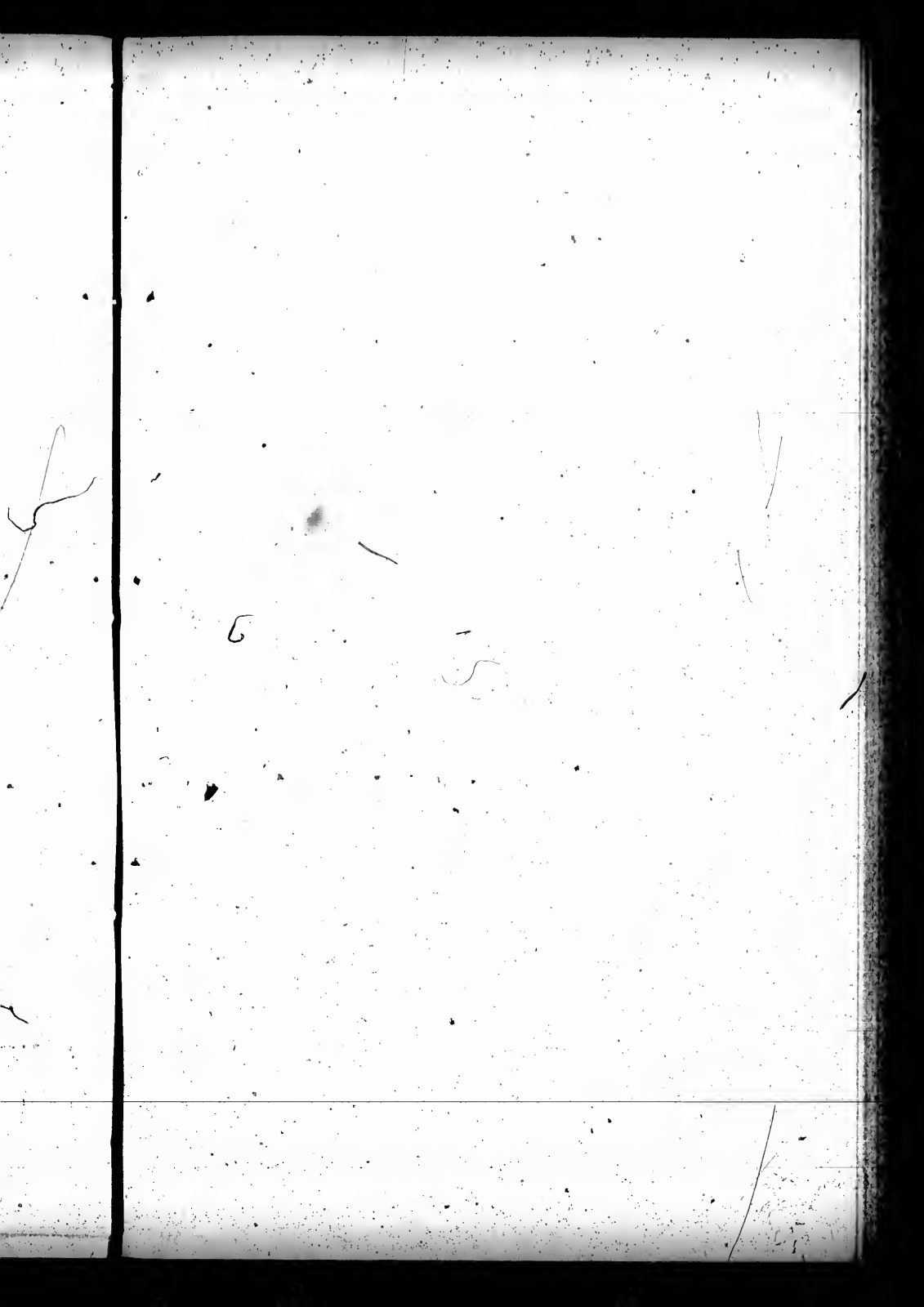
I think City Debentures payable here, were then at 1 per cent per annum discount. Mr. Boulton had charge of the Bill. I have reason to think that Mr. Bowes and Mr. Boulton were not then on good terms. A good deal was said at that time about Mr. Bowes and Mr. Cotton pushing the petition against Mr. Boulton's return. Mr. Boulton was not likely to be influenced by Mr. Bowes.

(Signed)

R. DEMPSEY.







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## THE HONORABLE FRANCIS HINCKS

Examined by Mr. Attorney General on behalf of defendant.

This evidence was taken at Quebec, under Commission; the questions having been put viva voce.

*Question—*

Did or did not the Defendant Bowes ever, and when first, to the best of your recollection and belief, propose to you that you should join him in the purchase of any, and if any to what amount, of debentures of the City of Toronto about to be issued in aid of the Ontario, Simcoe and Huron Union Railroad Company?

*Answer—*

Sometime at the latter end of June, one thousand eight hundred and fifty-two, soon after my return from England, Mr. Bowes proposed to me to join him in purchasing certain debentures of the City of Toronto, then about to be issued; Mr. Bowes told me that the contractors had been trying to sell them, but without success; that they would, he thought, take eighty per cent. for them; the amount about to be issued was about twenty-five thousand pounds. I agreed to join him in the purchase at that price; the highest value of such bonds at the time was eighty-five. I mean that purchases in small sums might be made at that price. Mr. Bowes and I had some conversation as to mode of raising the money to pay for them in case he succeeded in effecting the purchase; he told me that he had sounded the Cashier of one of the Banks who had given him encouragement. I told him that if I were concerned in the operation it would be on the express condition that the money should be raised in England; that I had no doubt of getting it for twelve months at five per cent. per annum, which would give us plenty of time to dispose of the bonds, and that if he could secure the purchase I would undertake the entire management of the transaction. This conversation occurred on the twenty-fourth of June. My reason for being pretty positive as to the exact day is that I examined the registry book at Sword's Hotel, where Mr. Bowes usually stopped, and find by it that he arrived in Quebec on that day and does not appear to have remained in town over night. In this way I am enabled to state the exact day on which the conversation occurred; but, inde-



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pendently of this, I can state from my own recollection that it must have been about that time.

In reference to what I have said as to eighty-five per cent. being obtainable for these debentures when sold in small sums, I wish to add that I do not believe that more than eighty could be got for them when sold in large sums.

*Question—*

According to the best of your knowledge and belief was such proposition made to you with the view of obtaining any advantage to Mr. Bowes or yourself which your position as Inspector General of the Province or as a member of the Legislative Assembly enabled you to obtain?

*Answer—*

Decidedly not. I could have managed the transaction in every way with equal facility, had I been out of the Government and of Parliament. I wish to put in a letter addressed to me on this subject by Messrs. Glyn, Mills & Co., which is in the following words:

LONDON, December 6th, 1853.

DEAR SIR:

Our attention having been called to statements which have appeared in some of the public papers in Canada referring to certain transactions between yourself and our firm, we think it right explicitly to declare, though it really scarcely requires any remark from us, that so far from these transactions having had any reference to or connection with the agency or funds of the Canadian Government, or your position in it; the loans were made by us upon undoubted security at the full market rate of interest, and repaid in a very short period, and that we should be ready again either with you or with any other client of ours, to enter upon a similar transaction so perfectly straight forward and regular were they in all their bearings,

We have the honor to remain,

Dear Sir, yours faithfully,

GLYN, MILLS & COMPANY.

The Hon. F. HINCKS.

[*The Plaintiffs object to the production of this letter as inadmissible testimony.*]

*[The Commissioners without deciding on the admissibility of the evidence, allow the same to be taken, reserving the question for the decision of the Court.]*

*Mr. G. O'Kill Stuart, one of the Commissioners, dissents, being of opinion that the objection should be maintained.]*

This letter is now produced and filed by me, and marked A.

I have had a private banking account with Messrs. Glyn, Mills & Company for some years. I have found it necessary to have one for the deposit of monies sent me for investment in Canada. I hold at this time in my hands a large amount of various securities the property of friends, who have confided them to me, about six thousand pounds of which belong to members of my own family, who have invested it on my advice; a considerable amount of this is in Grand Trunk Railroad Stock, purchased at current market rates, but not a share of which has ever been offered for sale. From my private transactions with Glyn, Mills & Company, as well as from their letter, I am confirmed in my belief that I was treated by them as an ordinary client of the firm, and not in any way in my official character.

*Question—*

At the time of the proposition being made to you by Mr. Bowes, or at any time, to the best of your knowledge, were debentures of the City of Toronto negociable at par in the English market, or elsewhere, as you, for any and what reason know or believe?

*Answer—*

I am convinced that such debentures were not negociable at par in the English market at that time or elsewhere. I had reason to know from a conversation with the Honourable John Henry Dunn, when in England a few weeks before, that he had been applied to to negotiate a loan for the City of Toronto, and that he had failed in doing so. Mr. Dunn must have meant that he could not obtain par subject to the ordinary commission. An offer of ninety-five was made for City of Montreal debentures about the same time, and my belief was that the full value of City of Toronto sterling debentures

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in London at that time would have been ninety-five. At that time no City of Toronto sterling debentures had been issued. But I presume that if there had been any, they would have sold for the same price as those of the City of Montreal.

*Question—*

Did or did not Mr. Bowes, shortly after the thirtieth of June, one thousand eight hundred and fifty-two, and how long after that day, to the best of your recollection, communicate to you by letter as a fact that the contractors of the said railroad company had written to him offering to sell twenty-four thousand pounds, or any other and what amount of debentures of the City of Toronto, which they, the said contractors, were or conceived themselves to be entitled to, at eighty pounds per hundred, or at any other and what rate of discount?

*Answer—*

On or about the thirtieth of June Mr. Bowes wrote me a letter, stating that he had received an offer from the contractors to sell twenty-four thousand pounds City of Toronto debentures at eighty per cent.

*Question—*

At the time of your agreeing to embark in the purchase of such debentures, were you made aware of any illegality being alleged to exist in the issue of such debentures, or did any such alleged illegality affect the price agreed to be paid to the said contractors for the said debentures?

*Answer—*

At the time of my first conversation with Mr. Bowes, when I agreed to join him in the purchase, I was not aware of any such question having been raised; the price was not in any way affected by such a question, or by any supposed illegality. I am not certain whether it was mentioned in Mr. Bowes' letter to me, or that I first learned it in the public papers in the report of the proceedings of the City Council of Toronto on the passing of the by-law. The alleged illegality was of a technical character, having reference to the omission to provide a sinking fund, and also some want of notice. All parties, as I understood, at the passing of the by-law, concurred in

pledging themselves to obtain the necessary legislation to overcome any difficulty should it be found to exist.

*Question—*

Was or not the letter of Mr. Bowes, communicating to you the written proposal of the said contractors to sell the said debentures, received by you at Quebec, or where else, and was it transmitted to you by post, or was it delivered to you by one James Cotton, of Toronto—as you for any and what reason know or believe—and will you produce the said letter?

*Answer—*

I cannot produce the said letter, and my belief is that it has been long since destroyed, and I have no recollection of reading it or seeing it since the time of its reception. It was merely an announcement that the contractors would sell the bonds on the terms previously agreed to in conversation. It may have been accompanied with a copy of a letter from the contractors, and my impression is that it was. My belief is that the said letter came by mail. My reason for so believing is, that although I got a great many letters from Mr. Bowes during that year on a great variety of subjects, I never recollect his sending any by private hand, except one, which I recollect having been brought by Mr. James Cotton, of Toronto. My reason for believing that the letter brought by Mr. Cotton was not the letter in question is, that I have consulted the registry-book at Sword's Hotel, where he usually stopped when in Quebec, and found that he is entered there as having arrived on the twenty-first of July, one thousand eight hundred and fifty-two, and not on any previous day in that month. It is probable that the subject of the debentures was referred to in the letter brought by Mr. Cotton, but my impression is that that letter principally referred to a subject on which Mr. Bowes repeatedly wrote and spoke to me. That subject was the propriety of appointing Mr. Recorder Duggan a Division Court Judge. I think Mr. Cotton was also urging the same point, and that this was the special reason of his bringing the letter in question.

*Question—*

Prior to the receipt by you of that letter had you any, and if any,



what, conversation with James Cotton, of Toronto, relative to the purchase of the said debentures from the contractors of the said railway, and was the said James Cotton in Quebec at or about the time of your receiving such letter, as you for any and what reason know or believe?

*Answer—*

I have no recollection of holding any conversation with Mr. Cotton relative to the purchase of the said debentures, except a passing observation or two when he delivered me the letter from Mr. Bowes, referred to in the last answer, and which I think was delivered on the twenty-first July. The letter of the thirtieth June was, as I have already stated, to the best of my belief, received by mail. The observations which passed between Mr. Cotton and myself when he delivered me the letter of the twenty-first July I cannot now recollect, but I can state positively that they had no reference to the raising of the money for the purchase of the debentures. For the reasons mentioned in my last answer, I do not believe that Mr. Cotton was in Québec in the month of July before the twenty-first.

*Question—*

From anything which passed between you and Mr. Cotton during the month of July, according to the best of your recollection, did you inform Cotton that you would telegraph Mr. Ridout in relation to the debentures, or did you in fact telegraph to Mr. Ridout in relation to them during that month—for any and what reason that you know or believe?

*Answer—*

I have no recollection of telegraphing Mr. Ridout on the subject. I am certain that I would not have communicated a proposition on such a subject by telegraph in the first instance, and that my letter to Mr. Ridout, dated fifth July, and given in evidence by him, was the first communication made to him in consequence of the purchase of the debentures from the contractors. I had thought, when I saw Mr. Cotton's evidence, that it was possible that I might have had to telegraph on some incidental point, in consequence of the letter, which I believe to have been delivered on the twenty-first July, but

having required from the Montreal Telegraph Company the originals of any telegraphs sent by me to Mr. Ridout during the month of July, one thousand eight hundred and fifty-two, I found that I had only sent one, and that on a subject having no reference, whatever to the debenture transaction. I do not recollect telling Mr. Cotton that I would telegraph, and my conviction is, that if I had determined to telegraph with reference to so important a transaction, I would have done so.

*Question—*

Did you or not believe, or from anything that ever took place between you and Mr. Cotton, or between you and Mr. Bowes, had you any reason to think or believe, that Mr. Cotton was, or that he claimed to be, a party to or interested in the purchase of the said debentures?

*Answer—*

I never heard from either party that Mr. Cotton was in any way interested in the transaction, and have no reason to believe that he was.

*Question—*

Did or did not the said James Cotton, or the Defendant Bowes, ever propose to you, or ever treat with you, as if you had agreed, or did you ever agree with the said Bowes, or any other person to act simply as agent, or upon commission, in the disposal of the said debentures?

*Answer—*

No proposition was made to me by any one to negotiate these debentures on commission. The only proposition made to me in this transaction was Mr. Bowes' proposition for the joint purchase of the debentures on account of Mr. Bowes and myself.

*Question—*

In the agreement between you and the said Bowes to purchase the said debentures, was there ever any arrangement made between you and him that he should delay the issue of the said debentures, with

the view of enabling you in the interim to raise the money to pay for them, or with any other view; or had you, or had the said Bowes, to your knowledge, or in your belief, any motive sufficient to induce him to endeavour to delay the issue of the said debentures?

*Answer—*

There was certainly no arrangement in the agreement that Mr. Bowes should delay the issue of the debentures; the issue was rather sooner than I anticipated, and in consequence I wrote to Mr. Ridout, on the fifth of July, one thousand eight hundred and fifty-two, informing him of the transaction, and that I had no doubt of getting a credit from Glyn, Mills & Company, on the deposit of the debentures with the bank. I knew that as the bank would be very speedily reimbursed by exchange on London, the transaction would be a profitable one for them. I am not aware of any motive Mr. Bowes could have to delay the issue of the debentures, as the bank had agreed to advance the money, and as the first advance to the contractors, on account of the purchase of the said debentures was on the personal security of Messrs. Bowes & Hall, and it was therefore not Mr. Bowes' interest to delay the issue of the debentures.

*Question—*

Did you or did you not, and when, through the cashier of the Bank of Upper Canada, cause a proposition to be made to the Corporation of the City of Toronto to negotiate a loan for the City of Toronto at par, on condition that new debentures of the City of Toronto should be substituted for those purchased by you and Mr. Bowes from the contractors of the said railway company; and if you did make such proposition, state what that proposition was, and what was your object in making it?

*Answer—*

I did authorize Mr. Ridout to make such a proposition in a letter dated the twenty-fifth of September, one thousand eight hundred and fifty-two. I had long been aware that the Corporation of Toronto was anxious to obtain a loan at par, to redeem a portion of their debt, for part of which a special mortgage was held by Mr. Cawthra on the City property, which it was in every way the interest of the City to get released. I was aware that several attempts had been made to

obtain it without success. I have already stated that I was informed by Mr. Dunn, when in London in the Spring, that he had been applied to, and had been unable to effect it in that city. It occurred to me, that by getting sterling debentures instead of currency for those held by Mr. Bowes and myself, we should obtain means of selling the whole amount speedily in London, and that it would be for the interest of the City of Toronto to replace the old debentures if we gave them par. The sterling debentures were worth, I thought at the time, about ninety-five to ninety-six per cent. The proposition never would have been made or thought of but for the benefit of the City of Toronto, and had I been dealing with an individual, or merely looking to make as much money as I could, I am convinced that I could have obtained a reduction equivalent to a commission of from one to two per cent. on the price I authorized Mr. Ridout to offer for the fifty thousand pounds which the City desired to raise over and above the amount which it was required to issue to replace the debentures purchased by Mr. Bowes and myself, the legality of which had been questioned. The City of Toronto obtained its loan on more favourable terms than any of the late loans to the Province. Mr. Bowes and I could have made more money by holding our currency debentures. I have not known an instance in which sterling debentures have been refused to parties asking for them in the first instance. In a recent transaction, in which the City of Toronto has made a contract for a large public work, I have been informed and believe that the debentures are to be issued in currency or sterling, and payable in Toronto or London at the option of the parties. It depends entirely upon circumstances which description of debentures is most valuable. I would prefer currency debentures, if I were holding them for investment here; people investing in England would of course prefer sterling. I have no doubt that at this time currency municipal bonds are fully as valuable in Canada as sterling ones are in London.

*Question—*

According to the best of your knowledge, information and belief, could the City of Toronto have in any manner, or by the use of any means, obtained in England or elsewhere a loan of fifty thousand pounds upon so favorable terms as they have effected such loan in the manner in which it has been effected through the proposition caused

to be made by you through the Cashier of the Bank of Upper Canada to the Corporation of the said City?

*Answer—*

My conviction is that they could not have obtained a loan at par at the time. And I think that in every way the transaction was most advantageous to them. We sold the same debentures for which we paid par to the City at a discount equivalent to about four per cent., that is to say, we sold the said debentures, amounting in the whole to eighty-two thousand pounds sterling, or about one hundred thousand pounds currency, for ninety-seven per cent., one half in cash, and one half on a credit of four months without interest. I believe I got the full market value and the highest price that could be obtained. We lost four per cent. on the debentures for fifty thousand pounds for which we paid par to the City, which had to be deducted from our profit on the fifty thousand purchased from the contractors.

*Question—*

In the passing of an Act authorizing the City of Toronto to raise one hundred thousand pounds to consolidate a part of the City debt, did you take any, and if any, what part; or did you exercise any, and if any, what influence upon any other person in procuring that Act to be passed, or had you or the said Bowes any object in procuring such Act because of your interest in the said debentures purchased by you and him from the contractors of the said Railway?

*Answer—*

I was present when the bill passed one of its stages and may have been at all of them. I took no part and used no influence to carry it through the House of Assembly. I am not aware of any influence being used by any one to carry it. It was of a similar character to bills passed for the same object for the Cities of Kingston and Hamilton; and I think Montreal. There was no opposition to any of these bills; the object of all was the same, simply to require a less oppressive sinking fund than that required by the Upper Canada Municipal Act. The City of Toronto would have had to borrow whether the new act passed or not. So far as the act legalized the debentures

issued to the Railroad contractors, or provided for the substitution of other debentures for them, it was in consequence of a distinct understanding before the conclusion of the purchase of the said debentures by us, and at the time of the passing of the by-law under which they issued, that the City would take the necessary steps to remove doubts as to the legality of the issue of the debentures. I have no doubt that the City could have been compelled to do so in some way. After the passing of the act in question and after comments had been made as to the propriety of legalizing debentures which were already in circulation, the legislature on its re-assembling in 1853 confirmed the validity of debentures issued to the same parties by the County of Simcoe and which were objected to as illegal, and this even though a motion to quash the by-law on the ground of illegality was then pending before the courts.

*Question—*

Had you or the said Bowes, to your knowledge or belief, in view the procuring of such act to be passed when you and he agreed to purchase the said debentures from the contractors, or would you have embarked in the purchase of the said debentures at the rate you did purchase them, without regard to such act being passed; or was there any arrangement or understanding between you and Mr. Bowes to the effect that you should use any influence you might have as a member of the Government or of the Legislature, or that Mr. Bowes should exercise any influence he might have as Mayor of the City of Toronto upon the Corporation of that City, in procuring anything to be done which was in any manner necessary to be done to enable you and him to derive a greater profit from and out of the said debentures so purchased by you from the said contractors; or would you have embarked in the purchase of the said debentures if you had not been a member of the Government or of the Legislature; or did the circumstance of your being a member of the Government or of the Legislature enable you to derive or facilitate you in deriving any greater profit from the said debentures than you might otherwise have derived therefrom; or did Mr. Bowes apply to you to take any interest in the purchase of the said debentures because of your being a member of the Government or of the Legislature, as you for any and what reason know or believe?

*Answer—*

When the transaction was entered into, neither I nor Mr. Bowes to my knowledge, had in view the procuring of such act. Neither my embarking in the operation nor the price given for the debentures was influenced by any supposition on my part that an act would be required. There was no understanding between Mr. Bowes and myself that I should use any influence I might have as a member of the Government or of the Legislature with regard to the transaction. I had no understanding that Mr. Bowes should exercise any influence that he might have as Mayor of Toronto upon the Corporation of that City. I would have joined any other merchant in Toronto of the same standing with Mr. Bowes and out of the Corporation as readily as I did him. I understood and believed that the City had long before determined as to the aid to be given to the Railroad Company, and I was not aware that Mr. Bowes would use my official influence either to promote or to obstruct the transaction. I would have embarked in the transaction as readily if I had not been a member of the Government or of the Legislature; and I am not aware that either my official position or that of Mr. Bowes was of the least service to us in carrying out the transaction. I do not believe that Mr. Bowes applied to me in consequence of my official position; there are other members of the government whose official position would have enabled them to render as much aid, had any such been required, as I could do, but they were not applied to, to my knowledge. I believe that Mr. Bowes would have made the same proposition under similar circumstances had I been entirely disconnected with the Government. I know of transactions of a similar character and of even greater magnitude being carried out by parties entirely disconnected with the Government. I have no doubt that I could have obtained from other parties in London the same accommodation which I received from Messrs. Glyn, Mills & Company, upon similar terms. An offer was made through me, not for my own advantage, to advance money on similar securities on the same terms as I negotiated the loan with Glyn, Mills & Company when I was in London in 1852.

*Question—*

According to the best of your knowledge, information and belief could you and Mr. Bowes have made equal profit out of your purchase

of the said debentures from the said contractors if the act to enable the City of Toronto to consolidate a part of the city debt had never been passed; and would you and he have been equally satisfied with your said purchase from the said contractors if no such act had been passed; and had Mr. Bowes any reason to believe that such an act or anything to be done under it, was necessary for the purpose of enhancing the profit to be derived by you and him from the purchase of the said debentures from the said contractors?

*Answer—*

I believe that we could have made an equal, if not a greater profit by holding the currency debentures and selling them in Canada. There was a very considerable increase in price of all Canadian securities, which commenced soon after our purchase, and continued until very recently; and I am not aware of any late sales having been made at the prices which ruled at the time of the purchase. When I entered into the transaction I anticipated that rise, and would have been perfectly satisfied to have taken such price as I could have got in the home market for the currency bonds, always assuming that the understanding that the bonds should be legalised was carried out as in the case of the Simcoe bonds already referred to.

*Question—*

Did you or did you not transmit to Mr. Bowes any part of his share of the proceeds of the sale of the said debentures purchased by you and him in bills of exchange upon England; and did you or not purchase such bills in the ordinary course of business; and where did you purchase the same; and why did you transmit to Mr. Bowes his share or any part of his share in the profits of the said transaction by bills on England?

*Answer—*

I did remit Mr. Bowes a portion of the profit realized by the transaction in bills of exchange on London drawn by the Receiver-General; that exchange was sold without any intervention of mine at the highest price that could be obtained, and in the usual way. It was drawn against balances of special funds by the Receiver-General, and it was only when the bills were brought to me to be countersigned that I became aware of the sale. They were sold to the Bank of



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Upper Canada, and drawn in favour of the manager of the branch of that bank at Quebec. When I saw them it occurred to me that they would be a convenient mode of remitting to Mr. Bowes, as exchange is usually higher in Toronto than at Quebec, and I knew that Mr. Bowes required exchange in his business. I sent to the Bank of Upper Canada to buy the exchange. I had no interest in the matter; I charged Mr. Bowes just what I paid, and gave him either a bank cheque or bank notes for the balance on his next visit to Quebec. The exchange was endorsed by Mr. Bradshaw, the manager of the Quebec Branch of the Bank of Upper Canada in the usual way.

*Question—*

Do you know any other matter or thing tending to show that the transaction, so far as the City of Toronto was concerned, was beneficial to the said City, or that Mr. Bowes did not make use of or require to make use of any influence he may have had as Mayor or Alderman of the said City in advancing his own personal interests, in the transaction referred to in the pleadings in this cause either to the detriment of the interests of the said City or otherwise? Can you explain more fully than you have done the circumstances of the loan from Messrs. Glyn, Mills & Company, and the way in which that firm was secured in the said loan obtained from them for the purchase of the said debentures?

*Answer—*

I believe that I have already fully stated the advantage of the transaction to the City of Toronto. I am not aware that Mr. Bowes employed any influence that he had as Mayor of the said City in advancing his own personal interests, to the detriment of the said City. The transaction with Glyn, Mills & Company was a loan on the special security of the debentures of the City of Toronto purchased by Mr. Bowes and myself, which debentures were deposited for their account in the Bank of Upper Canada, for which Bank they are the London Agent, and receipts were given by the Bank acknowledging that they held such debentures on account of Messrs. Glyn, Mills & Company; and in no instance were drafts drawn by me without being accompanied by such receipts. The transaction must have been an advantageous one to Messrs. Glyn, Mills & Company,

as they got five per cent. for their advances, while the market value of money at the time was only two and a half per cent. The money was repaid to Messrs. Glyn, Mills & Company by drafts of mine on Messrs. Masterman & Company who are bankers for the parties to whom I sold the debentures purchased from the City of Toronto. With that sale Messrs. Glyn, Mills & Company had nothing to do, nor were they ever offered to them by me.

*Cross examined by Mr. Andrew Stuart, as Counsel for the Plaintiff.*

*Question.*

When did you return from England; in eighteen hundred and fifty-two?

*Answer—*

I returned to Quebec on or about the thirteenth of June of that year; I arrived at Quebec, I think, on the twelfth or thirteenth.

*Question—*

Before your departure for England, was it generally understood that some aid would be granted by the City of Toronto to the Ontario, Simcoe and Huron Union Railroad Company?

*Answer—*

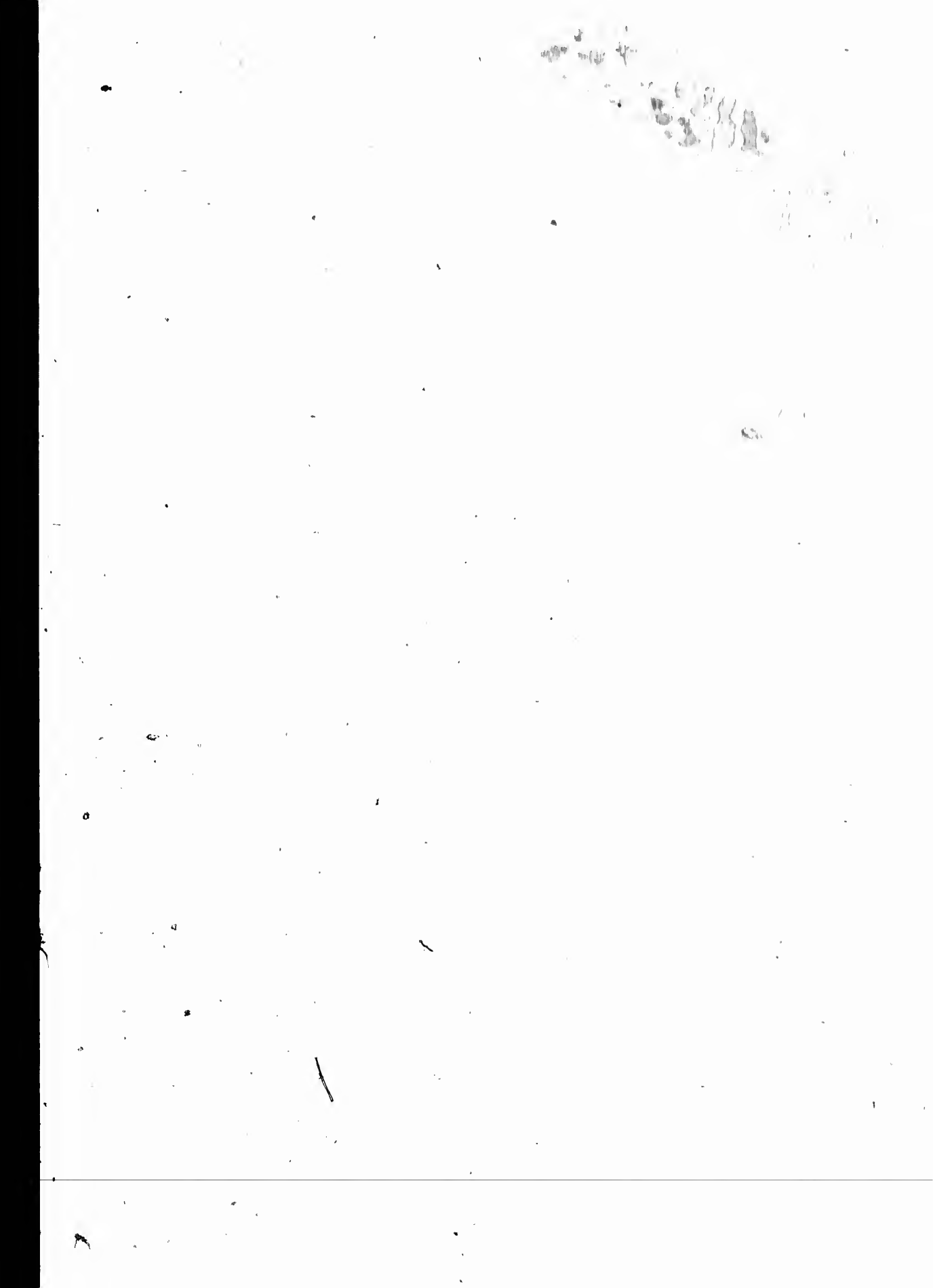
Yes; it was well understood; and I think resolutions of the City Council were passed a considerable time before pledging the City to grant such aid.

*Question—*

Had you any conversation with Mr. Bowes on the subject of the debentures likely to be issued by the City of Toronto in aid of this railroad previous to your departure for England?

*Answer—*

I had no such conversation with Mr. Bowes, or with anybody else, previous to the twenty-fourth of June, one thousand eight hundred and fifty-two.



*Question—*

What amount of debentures did Mr. Bowes first propose to you to purchase; and was such proposal made in writing or verbally, and when and where?

*Answer—*

The proposal was made verbally to me at Quebec. I think the amount spoken of was either twenty-four or twenty-five thousand pounds. I think that we must have had conversation at the time with reference to the remainder of the debentures, as it was expected that the railroad company would get in all sixty thousand pounds which, under the terms of their agreement with the contractors, were to be taken by them in payment. The proposal was made to me on the twenty-fourth of June, one thousand eight hundred and fifty-two.

*Question—*

Had you any other and how many conversations with Mr. Bowes subsequent to the said twenty-fourth of June, on the subject of these debentures, previous to your finally agreeing to purchase them?

*Answer—*

No; I may have had two or more conversations with him on the twenty-fourth of June, but he left Quebec either on that day or the next. I did not see him again for several weeks. I told him then (that is on the twenty-fourth of June), that if the owners of the debentures would sell them at the price which he told me he thought they would that I would join him in the purchase.

*Question—*

After agreeing to the purchase of the debentures in question; did you enjoin secrecy on Mr. Bowes of his or your connection with the purchase, and when, and from what motive, and was it in writing or orally?

*Answer—*

I have no distinct recollection of the time or mode of communicating with Mr. Bowes on the subject of secrecy, but I have no doubt

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that at some time in the early stage of the transaction I did impress upon him the importance of keeping the transaction as a most confidential one. My belief is that any prudent person engaged in such a transaction would adopt such a course; but I am ready to admit that the course pursued towards me by the press did influence me in wishing to prevent their obtaining any knowledge of my private transactions. I was not influenced by any feeling that the transaction was an improper one, either on the part of Mr. Bowes or myself. I mentioned the circumstance confidentially to some of my friends, and I was aware that Mr. Bowes gave the same confidence to at least one of his friends. It is the custom of all persons who engage in transactions of this nature to keep them as secret as possible, and this is one reason why the intervention of brokers is generally sought.

*Question—*

Are you aware that after Mr. Bowes had purchased the debentures in question, he declared in a meeting of the City Council at Toronto, that he was not interested in them, or in their negotiation? Had he your sanction for making such a declaration in his place, as Mayor of the City to the City Council?

*Answer—*

I have seen by the newspapers that Mr. Bowes is reported to have made such a declaration. He had not my sanction for making it. So soon as I became aware that Mr. Cotton and Mr. Bowes had quarrelled, which was about the latter end of November, one thousand eight hundred and fifty-two, I was perfectly aware that the transaction could not be kept secret; and I either directly or through a friend in Toronto, or in both ways, authorised Mr. Bowes, and advised him to state every fact connected with it. My belief is that this must have been some time before the declaration of Mr. Bowes in the City Council alluded to in the question. I should say, in conversations with Mr. Bowes on the subject, he invariable declared that so far as he was concerned he had no objection to the transaction being made public, but that he knew that my enemies would make it a subject of attack on me, and it was for this reason that I was particular in communicating my desire that he should state the whole matter.

*Question—*

How many letters did you receive on the subject of these debentures from Mr. Bowes from first to last of this transaction? Please produce them, or account for not doing so, and if you have destroyed them, state particularly when and why.

*Answer—*

I received a great number of letters from Mr. Bowes during the latter part of the year one thousand eight hundred and fifty-two; they were on a variety of subjects, and Mr. Bowes was in the habit of writing on all such subjects in the same letter. They were principally on the subject of the Toronto Esplanade, the Toronto and Guelph Railway, for which he wanted the Provincial Guarantee, a Separate Division Court for Toronto, and other matters which I do not particularly recollect. I have not, to my knowledge, any of Mr. Bowes' letters in my possession. I cannot recollect the precise time when they were destroyed; but I recollect having some of them in my possession in the autumn of one thousand eight hundred and fifty-two, because Mr. Bowes happened to be at my house where these with other letters were lying in an open desk, and he made a remark upon the loose way in which I kept my letters, and said that he thought they ought to be destroyed, and, I think, said that he was in the habit of destroying mine. I told him then that I would destroy any that I had; and I subsequently destroyed them when destroying other letters. I treated them just as I do all my private correspondence, unless where some special reason requires their retention. Mr. Bowes' letters contained very little on the subject of this transaction, as he took no part whatever in the management of it beyond obtaining the offer of sale from the contractors. It is very probable that Mr. Bowes may have written me on the subject of the bill for the consolidation of the City debt, though I have no recollection that he did so. I think that he principally communicated on that subject with Mr. At. Gen. Richards; and that any communications on that subject with Richards or with me, were verbal. Mr. Bowes seemed anxious that Mr. the City should not be required to provide a sinking fund. The Government had fully considered the subject of a sinking fund with reference to the Consolidated Municipal Loan Fund Act for Upper Canada, and determined to insist on a sinking fund of a similar

amount being provided in all the Corporation Loan Acts, and this course was followed in the cases of Montreal, Toronto, Kingston and Hamilton. Among the letters from Mr. Bowes, which have been destroyed, must have been included any containing references to the transaction in the Toronto debentures. I cannot possibly say how many of these letters had reference to the debentures.

*Question—*

Were the letters having reference to the debentures written to you by Mr. Bowes, or in the name of Bowes & Hall?

*Answer—*

They were all in the name of Mr. Bowes himself; but in the letter acknowledging the receipt of the exchange he told me that the firm had used it.

*Question—*

Was that the first occasion upon which the name of the firm appeared in connection with this transaction?

*Answer—*

Yes.

*Question—*

Did you write to Mr. Bowes on the same subject, and how often, and were your communications addressed to Mr. Bowes, or to Bowes & Hall? Produce copies of all the letters you so wrote on the subject of these debentures.

*Answer—*

I wrote frequently to Mr. Bowes on the subject of this debenture transaction, as well as on other matters, respecting which he addressed me. I always addressed Mr. Bowes, and not the firm of Bowes & Hall. I have no means of judging how many letters I addressed to Mr. Bowes. I was not in the habit of keeping copies of them, and I very seldom keep a copy of any unofficial letters. I have a private

letter-book, which is at present mislaid, but I am certain it contains no letter to Mr. Bowes, and I have asked the gentleman who copied the letters which are in that book, and he also is certain that it contains no such letter. I am therefore convinced that I have no copy of any letter which I have addressed to Mr. Bowes. I have not had any letter copied in that private letter-book for the last twelve months. The book I have no doubt was mislaid when I changed my residence last summer.

*Question—*

How many letters had you written to and received from Bowes on the subject of the debentures previous to your letter of the fifth of July, one thousand eight hundred and fifty-two to Mr. Ridout?

*Answer—*

I had received one, and I think had written none.

*Question—*

Did you write by the same mail to Bowes, that is by the mail of the fifth of July?

*Answer—*

Yes, I have no doubt that I did so. I have no copy of that letter.

*Question—*

In your conversation with Mr. Bowes at Quebec, was it agreed that you should purchase twenty-four thousand or fifty thousand pounds of debentures?

*Answer—*

My recollection is that the sum was twenty-five thousand pounds. I afterwards learned that the amount at the disposal of the contractors was twenty-four thousand.

*Question—*

When were you first informed that instead of twenty-four thousand pounds there were to be issued to the Railway company fifty thousand



pounds of debentures, being the amount subscribed by the City of Toronto, and by whom?

*Answer—*

I have no doubt that I was informed by Mr. Bowes immediately after the arrangement was effected, but I do not recollect the precise time, but it must have been about the beginning of August.

*Question—*

Are you aware whether this change was suggested by Bowes, and strenuously advocated and promoted by him in the City Council of Toronto?

*Answer—*

I am not aware that such is the fact. I have heard that the change was suggested by Mr. Berezy, president of the Railroad Company. The arrangement was most beneficial to the City, and I am convinced that the City will benefit to the extent of twenty thousand pounds by that change.

*Question—*

On what day did you definitely agree with Mr. Bowes to purchase the debentures?

*Answer—*

On the twenty-fourth of June a conditional agreement was made which depended on the contractors being willing to sell on the terms stated, and, on our being able to obtain the necessary funds. The final purchase I consider to have been made when Mr. Bowes accepted the offer which he had received about the thirtieth of June, and which I believe was on the eighth of July one thousand eight hundred and fifty-two, after having heard from me.

*Question—*

Have you any personal knowledge of any of the debentures of the City of Toronto having been negotiated in England and at what rate previous to the proposition made to you to purchase the debentures in question?

*Answer—*

I have not, and I do not believe that any such debentures were sold in England prior to the sale of the eighty-two thousand pounds sterling made by me.

*Question—*

Can you say that at the time of your agreeing with Mr. Bowes to embark in the purchase of these debentures, no illegality was alleged to exist in their issue, of which the contractors were aware, and would not any such alleged illegality operate to induce the contractors to offer them at a lower rate than they otherwise would?

*Answer—*

I was certainly not aware that any such illegality had been alleged, but I had been several months absent from the Province and out of the way of hearing anything on the subject. I do not think that if any well founded objection on the score of illegality existed the debentures could have been sold on any terms. I consider that for a large amount eighty per cent. was at the time the full value. I certainly would not have given any more.

*Question—*

Are you aware that these debentures were offered for sale at New York before being offered to Mr. Bowes, and that their alleged illegality prevented an offer of any kind being made for them?

*Answer—*

I am not aware that such is the case. I know nothing of any offers except from hearsay, but I believe that the contractors had tried in various places and had been unable to get as good an offer as that made by Mr. Bowes. I have heard that Captain Strachan made a conditional offer of seventy-five per cent. for them. I cannot say whether this offer would have been accepted or not.

*Question—*

Were you fully aware of the doubt entertained of the legality of these debentures before finally agreeing for their purchase?

*Answer—*

I must have been.

*Question—*

Can you swear positively that Mr. Bowes' letter to you of the thirtieth of June was not delivered to you by Mr. James Cotton?

*Answer—*

I should not like to swear positively, as Mr. Cotton has sworn the reverse, but I can swear to the best of my knowledge and belief that it was not. Such was and is my impression, irrespective of the evidence furnished to me by the register at Swords' Hotel, where I knew Mr. Cotton was in the habit of stopping, and where I think it very improbable that any error could occur in taking down the name of a person so well known as Mr. Cotton.

*Question—*

Without reference to the register at Swords' Hotel, could you from memory have sworn that Mr. Cotton was in Quebec on the twenty-first of July, or on any other particular day in that month?

*Answer—*

No, I could not, I can only swear to his having been in Quebec on that day on the faith of the said register.

*Question—*

Might not Mr. Cotton have come to Quebec in the beginning of July without his name being inscribed on the register at Swords' Hotel, or without going to that hotel at all, or without going to any hotel at all, in case he returned on the same day that he arrived?

*Answer—*

Certainly he might.

*Question—*

Can you swear positively that you had no conversation with Mr. Cotton in relation to the purchase of these debentures previous to the fifth of July one thousand eight hundred and fifty-two?

*Answer—*

I have no recollection of holding any conversation with Mr. Cotton until the day when he delivered me a sealed letter from Mr. Bowes, to which reference has been already made. I opened and read that letter in his presence. I recollect his making some remark on the subject of the transaction, to which I replied, and he then went on to converse on other matters. Mr. Cotton was in Quebec on the twenty-fourth of June. I am pretty certain that he did not call upon me; certainly he did not with Mr. Bowes. I will not swear positively that I had no other conversation with Mr. Cotton, but I recollect no other.

*Question—*

Did you at any time confide to Mr. Cotton your intention of purchasing these debentures, or did he obtain the information from any one else, and from whom?

*Answer—*

Any information that he had on the subject must have been directly or indirectly from Mr. Bowes, by whom I was informed that Mr. Cotton was in his confidence.

*Question—*

Did not Mr. Cotton in his conversations with you appear to know of the intended purchase of the debentures?

*Answer—*

I have already stated that, to the best of my recollection, I had no conversation with Mr. Cotton until after the purchase had been completed. I now recollect a circumstance which has some bearing on the time when I became aware of Mr. Cotton's knowledge of the transaction. When Mr. Bowes communicated to me Mr. Cotton's knowledge of the transaction he expressed a wish that he (Mr. Bowes) should not be known as concerned in it at the Bank of Upper Canada, and said that he would get Mr. Cotton to transact any business which might have to be done there with regard to the delivery of the bonds. I particularly recollect this circumstance, because I regretted having mentioned Mr. Bowes name in my letter of the fifth of July, and I

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am therefore certain that it must have been after that time when I became aware that Mr. Cotton was in Mr. Bowes' confidence. In a subsequent letter I mentioned to Mr. Ridout that the bonds would be deposited by Mr. Cotton or Mr. Bowes.

*Question—*

Can you say when Mr. Bowes gave his personal guarantee to the Bank in favor of the contractors for eight thousand pounds, or any other amount, in part payment of the price of the debentures, or for any other and what purpose?

*Answer—*

It must have been on or about the eighth of July, one thousand eight hundred and fifty-two, immediately after the receipt by Mr. Ridout of my letter of the fifth of the same month and his determination to make the temporary advance on the debentures in anticipation of Messrs. Glyn, Mills & Company's letter of credit. I have no recollection that I was informed of the advance in question, but it is most probable that I was, either by Mr. Ridout or Mr. Bowes, or both. That advance was for the special accommodation of the contractors and was given because the agreement for purchase having been completed and the issue of the debentures authorised by the Corporation, there could be no doubt of their delivery to the Bank so soon as they could be prepared.

*Question—*

As this advance was made by the Bank upon the security of the Debentures, and with a full knowledge of their purchase, could the Bank, at that date, have been ignorant of the fact of Mr. Bowes being interested in the purchase of these debentures?

*Answer—*

Mr. Ridout ought to have been aware, from my letter of the fifth of July, that such was the case; but the fact seems to have escaped his attention, as I know from his having stated in evidence that he was not aware of it, and that he was himself surprised, on referring to my letter of the fifth of July, to find Mr. Bowes' name mentioned. Mr. Ridout appears to have paid little attention to the ownership of

the debentures, his advance having been made on the security of the debentures, and not on personal security.

*Question—*

How many letters passed between you and Mr. Ridout on the subject of this loan by the Bank? and have you his letters to produce?

*Answer—*

I cannot say how many letters passed between us on this subject. I have frequent correspondence with Mr. Ridout on various matters, demi-official and private, none of which, to my knowledge, I have in my possession, unless it be such as have been received within the last three months, my correspondence during which period I have not yet destroyed.

*Question—*

How long, after having informed Mr. Ridout that Mr. Bowes was interested in the purchase of the debentures in question, was it that you wrote to him that he would receive the debentures either from Mr. Cotton or Mr. Bowes?

*Answer—*

About a month.

*Question—*

For what reason, then, if Mr. Cotton was wholly unconnected with the transaction, did you suppose that he would become possessed of the debentures, and hand them to Mr. Ridout?

*Answer—*

As I have already stated, it was because Mr. Bowes wrote to me informing me that he would get him to do so.

*Question—*

*[The Defendant's Counsel objects to this question, but objection not allowed by the Commissioners.]*

Did you at any time, and when, write to Mr. Cotton on the subject of disposing of Municipal Debentures in England on commission?

Produce a copy of any letter you may have written to him on the subject.

*Answer—*

I had no recollection of having written such a letter until I saw Mr. Cotton's evidence in this case. I kept no copy of the letter, but have, since Mr. Cotton's evidence was given, seen a copy of the said letter. I have mislaid this copy, but am certain that I have it somewhere in my possession; it has no relation whatever to the transaction with Mr. Bowes, to which the present case relates, nor to any other transaction with Mr. Bowes, so far as I know, or reading it. I recollected that, a few days before my departure for England in the early part of one thousand eight hundred and fifty-two, Mr. Cotton wrote me on the subject of selling some debentures which he was likely to get as a contractor, and which certainly were not City of Toronto debentures. I gave an opinion, in my reply, as to the value in England of such debentures as Mr. Cotton referred to, and that opinion was that they were worth about ninety-five per cent. I referred to sterling debentures payable in London. My belief is that the debentures referred to were to be issued in aid of the Toronto and Guelph Railroad by some municipalities on the line of that road, but I am not certain. I told Mr. Cotton in my reply, that if he sent any such debentures to me, I would endeavour to sell them for him, charging the usual commission, which he proposed to allow in his letter to me, to the best of my recollection.

*Question—*

Was it distinctly understood by Mr. Bowes, at the time you agreed to join him in the purchase of the debentures, you afterwards purchased together, that you expected to get the money to pay for them from parties in England, and that you would communicate forthwith with these parties?

*Answer—*

It was so distinctly understood.

*Question—*

You say, in your letter of the fifth of July, one thousand eight hundred and fifty-two, to Mr. Ridout, that you had not expected the

City would issue its bonds so soon. Was your impression as to the time the City would issue its bonds produced by your communications, verbal or written, with Mr. Bowes?

*Answer—*

My impression must have been derived from my conversation with Mr. Bowes, but I had only reference to a short period of time. I was well aware that the debentures were likely to issue before very long.

*Question—*

Though Mr. Bowes may have had an interest in the issuing of the debentures after he gave security to the Bank, may he not, previously to that time, have used his influence to retard the issuing of the debentures?

*Answer—*

I do not see how Mr. Bowes could have exercised any influence in the matter. I had undertaken the entire financial management of the transaction, and I am convinced that I did not suggest to him to delay the issuing of the debentures.

*Question—*

Was not your proposal to the City Council of Toronto, made through the Cashier of the Upper Canada Bank, one to take the one hundred thousand pounds authorized to be issued under the Toronto Loan Act at par?

*Answer—*

Yes; conditionally, on their receiving, in part payment of the same, the fifty thousand pounds of debentures, the legality of which had been questioned, and which it was one of the objects of the Act to legalize.

*Question—*

Is it not true that fifty thousand pounds of the said loan whenever effected, came to be appropriated by the act itself, to the redemption



of the debentures you and Mr. Bowes had purchased from the contractors?

*Answer—*

Yes, such was the case.

*Question—*

Was not Mr. Bowes at Quebec during the passing of the act referred to in the last question, and was he not heard before the Committee of the Legislative Assembly, as Mayor, upon the propriety of the measure?

*Answer—*

Mr. Bowes was in Quebec about that time, and may have been so examined, but I have no knowledge that he was.

*Question—*

Is it not true that Mr. Bowes interested himself in the passing of that act?

*Answer—*

I have no doubt that Mr. Bowes exerted himself to get the act passed, but there was no opposition of any kind to the measure requiring the use of influence of any kind. 11

*Question—*

Is it not true that the act, as first introduced into the Legislative Assembly, did not contain what are now its fifth and sixth clauses; and that they were added in its passage through the house?

*Answer—*

I have no knowledge that such is the case; and I do not believe it to be so, as I have already stated I took no part in the passing of the said bill, and have no knowledge of what may have taken place in the select committee. I have seen the office copy of the bill as printed for the house, and with the exception of some unimportant technical corrections, in Mr. Wicksteed's hand-writing as law clerk, it is in the shape in which it afterwards became law. It seems to me impossible



that the fifth and sixth clauses could have been omitted in the original bill.

*Question—*

Can you say who suggested the two clauses in question, and that it was not Mr. Bowes?

*Answer—*

I cannot say who suggested the clauses in question; but the fifth clause is framed to meet the distinctly expressed wishes of the Corporation of Toronto, which had decided on subscribing for fifty thousand pounds of stock in the Ontario, Simcoe and Huron Railroad Union Company. The sixth clause merely relates to the sinking fund.

*Question—*

If Mr. Bowes did not suggest the two clauses in question, is it not true that they met his and your entire approval?

*Answer—*

There is no doubt that they met our approval, although my belief is that if I had drawn or suggested the fifth clause, I would have worded it differently, although practically the change I would have made would have been of no importance.

*Question—*

Did not Mr. Bowes inform you, about the time the purchase of the debentures was made by you, that there was a distinct understanding that application was to be made to the legislature to legalize them?

*Answer—*

I have already stated that I became aware of such understanding immediately after the discussion on the passing of the by-law in the City Council. I have no doubt that I heard so from Mr. Bowes, and that I also learned it from the public papers.

*Question—*

Without there being any agreement in words that you and Mr.

Bowes should each use his influence to legalise these debentures, was it not matter of course that you should both exert your influences in whatever way your interest in this matter would indicate, to obtain their legalization, and could you in fairness to Mr. Bowes, or with any regard to your interest, have opposed an act legalizing these debentures, or do otherwise than give such an act your support ?

[Objected to by the Defendant's counsel :

1st. Because it is a deduction to be argued from the facts stated on part of the defence, and one to which the witness cannot properly testify from any knowledge of his own, as to what was passing in the mind of Mr. Bowes where no words passed; and because, if the question cannot be properly answered with regard to the Defendant, it cannot be asked with regard to Mr. Hincks, who is no party to the case.

2ndly. Because there was no reason that could suggest itself to the mind of the witness, bearing upon the introductory part of the question, from the fact that the witness was not aware of the illegality of the debentures at the time of his agreement with Mr. Bowes to purchase them. And

3rdly. That this question does not properly follow from any part of the examination in chief, as the exercise of any influence on the part of the witness, either as a member of the Government or the Legislature, is expressly negatived; and as regards the Legislature itself, it is proved there was no opposition to the bill. This is proved by the witness, both in his examination in chief and in his cross-examination.]

[*Objection reserved for the opinion of the Court.*]

*Answer—*

Under the circumstances attending the issue of the debentures in question it would, in my opinion, be a matter of course that every honest man would be bound to support a measure for giving effect to the understanding between all the parties interested at the time of

the passing of the by-law. I consider that opposition to such a measure would be an act of fraud. It never entered into my imagination at any time after I heard of the alleged illegality that opposition would be made to the measure necessary for legalizing the debentures. I, of course, am of opinion that Mr. Bowes must have supposed, if he thought on the matter at all, that I would support such a measure. I am at the same time perfectly certain that Mr. Bowes never apprehended opposition from any quarter to the passing of such an act. And that he did not seek my assistance as a partner in the transaction from any idea that parliamentary influence was necessary to secure the legalization of the debentures.

*Question—*

Was not the opinion of several eminent Counsel in Upper Canada taken by the City Council upon the legality of these debentures, and were not several of those opinions, and, among others, that of the permanent Solicitor of the City Council, that these debentures were illegal?

*Answer—*

I am not aware at whose instance the opinions of Counsel were taken, nor am I aware of the names of the Counsel who were consulted. I have always understood that there were conflicting opinions on the subject. My belief is that Mr. Clarke Gamble is the Solicitor to the Corporation; and I never heard of his having given any opinion on the subject. From what I have seen, I believe that the opinions against the legality of the by-law were given by Mr. Hagarty and Mr. Mowat.

*Question—*

Was there not a discussion in the City Council upon the legality of these debentures, in which reference was made to there being high legal opinions against the validity of the by-law for the issue of the debentures, which discussions were made public?

*Answer—*

Yes; I believe such discussions took place, and were made public.

*Question—*

Is it not true that with such doubts upon the legality of these debentures, it would have been hardly possible for you or Mr. Bowes to have disposed of them without having them legalized; and did not Mr. Bowes come to Quebec as Mayor, at the desire, or, at all events, with the sanction of the City Council, to get an Act passed legalizing them?

*Answer—*

I consider that, under the circumstances, it was necessary that the debentures should be legalized. I would never have engaged in the transaction, had I not been perfectly satisfied that the Corporation of the City of Toronto would be incapable of so gross an act of fraud, as to have omitted taking the proper steps to have the said debentures legalized. I am aware that Mr. Bowes, when in Quebec, interested himself about the passing of the bill, and I have no doubt that he had the sanction of the City Council in so doing; but I believe that he had other business for the City, which more especially required his personal attendance at Quebec. I refer particularly to the Toronto Esplanade.

*Question—*

Had you any correspondence with Masterman & Company, on the subject of City of Toronto debentures; and when first did you write to them?

*Answer—*

I never had any correspondence with Masterman & Company on the subject of City of Toronto debentures.

*Question—*

Had you any understanding, or was any proposal made by you or them, and which, and when, with reference to the negotiation in England, of debentures generally, or of City of Toronto debentures in particular?

*Answer—*

No.

*Question—*

Were Masterman & Company in any and what way mixed up with the sale of the City of Toronto debentures, issued under the City of Toronto Loan Act?

*Answer—*

I am not able to state the position occupied by Masterman & Company in the transaction, as all my correspondence was with other parties.

*Question—*

Had you any correspondence with Glyn, Mills & Company on the subject of City of Toronto debentures; and when did you first address them on the subject?

*Answer—*

I had such a correspondence as I have already stated. I am unable to state the precise day, but I must have first addressed them by the English mail which left Quebec next after I had agreed to join Mr. Bowes in the purchase.

*Question—*

How often did you write them, and hear from them in reply, on this subject, before the final disposal of the debentures by you?

*Answer—*

My impression is that two or three letters from each party may have passed on the subject.

*Question—*

Did you not obtain the money or a credit from Glyn, Mills & Company to enable you to purchase these debentures; and produce the correspondence which passed between you and them on the subject of these debentures?

*Answer—*

I did obtain the money from them. I kept no copy of my letters

to them; and I have no letters of theirs in my possession on the subject. I sent their letter of credit to Mr. Ridout, and it has not to my knowledge been returned to me. Any private letters which I may have had from them on that or any other subject, of an older date than three or four months back, have been destroyed.

*Question—*

Would you have rendered to the City of Toronto the same service you rendered Mr. Bowes, in the sale and negotiation of these debentures, if Mr. Bowes had applied to you for the purpose as Mayor, and had offered you the same interest in the transaction?

*Answer—*

Had Mr. Bowes come to me, and proposed to me to join the City of Toronto in the purchase of a quantity of their debentures at a discount, with a view of making a profit, I do not believe that I would have consented to join in such a transaction with the City of Toronto; or any other municipal corporation.

*Question—*

Had Mr. Bowes, as Mayor, proposed to you to buy, sell and negotiate the debentures in question, which you and Mr. Bowes bought from the contractors, for the benefit of the City, upon a commission, which would have yielded you an equal profit upon the transaction with that you actually made, would you have consented to act for the City?

*Answer—*

I never would have thought, under any circumstances, of acting as a mere agent, and demanding the profit which was the legitimate result of a speculation involving great responsibility and great anxiety. I could not, therefore, if I had acted as an agent, have occupied the position which I did. I think it very probable that if I had been asked to endeavour to negotiate a loan for the City of Toronto, and had been offered the usual commission, that I would have accepted the proposition at that time, provided I could have done so without interference with my public duties. I have always considered that I have the same right to accept compensation for services rendered to



private individuals or corporations, that the Attorney General has to receive fees for his advice, or for services rendered by him to similar parties.

*Question—*

Did you communicate on the subject of the debentures bought by you and Mr. Bowes, with any other person or persons in England besides Glyn, Mills & Company; with whom and when?

*Answer—*

I do not recollect that I did.

*Question—*

Has not five per cent. been fixed by the Legislature as the sinking fund for repayment of municipal debentures, and can you explain why two per cent. was adopted in the Toronto loan Act.

*Answer—*

There was no special rate fixed by the Municipal Act of Upper Canada; that act required a rate sufficient to pay off the debt in a certain term of years, and which I think would have been between three and four per cent. per annum, but that sinking fund was not intended to apply to debentures issued in aid of railways, but to loans of a much more insignificant character. It was obvious that by requiring so large a sinking fund, the intention of the legislature to facilitate the construction of railways would be defeated. The rate of two per cent. per annum was determined on without any reference to the Toronto Loan Act, and was inserted as a provision of the general law for establishing a consolidated municipal loan fund for Upper Canada, which measure was brought in by the Government. The same principle was applied to the cities of Montreal, Kingston, Toronto and Hamilton.

*Question—*

Did you communicate frankly with Mr. Bowes all you knew and thought about these debentures when entering upon the speculation with him?

*Answer—*

Certainly. I gave him my impressions as to the probable rise in the value of Canadian securities, and as to the best mode of raising the money and carrying out the operation.

*Question—*

What reason had you to believe these debentures would sell in England, and what representation did you make of their value to the persons with whom you communicated on the subject in England?

*Answer—*

I did not contemplate selling the debentures in England when I purchased them. My object was to obtain a twelve months loan on their security, and to sell them from time to time in small parcels as opportunity should offer.

*Question—*

Would not your official character of Inspector General have contributed to give confidence in these debentures to the persons with whom you communicated as to their sale, and thus facilitate their sale?

*Answer—*

It is very difficult for me to estimate what influence my official position might give to my statements, but my belief is, that my English correspondents would place the same reliance on any statements of mine, if I were out of office as they would do in my present position.

*Question—*

During the time you were in correspondence with Glyn, Mills & Company on the subject of these debentures, had you occasion to address them likewise in your official capacity of Inspector General?

*Answer—*

I think not. I have not for a considerable time had occasion to write officially to Messrs. Glyn, Mills & Company. The regular

official correspondence with that house and with Messrs. Barings is conducted by the Receiver General, and seldom comes under my notice.

*Question—*

Previous to becoming Inspector General, had you a private account with Messrs. Glyn, Mills & Company, and ordinary private transactions with them?

*Answer—*

No, I had no such account, nor was I acquainted with Messrs. Glyn, Mills & Company until after I became Inspector General.

*Question.*

What was the exact profit made by you and Mr. Bowes upon the purchase of the fifty thousand pounds of debentures from the contractors? And produce the account.

*Answer—*

I have no account to produce, the result of the operation was that I drew a bill of exchange on Messrs. Glyn, Mills & Company for the balance at my credit with them, the proceeds of which amounted to eight thousand two hundred and thirty-seven pounds eight shillings and six pence currency, one-half of which I paid to Mr. Bowes, as already stated.

*Question—*

Is that not the profit upon the sale by you of the one hundred thousand pounds issued by the City of Toronto under the Toronto loan Act?

*Answer—*

I consider that there was a loss on the sale of the one hundred thousand pounds, no portion of such loan having realized par, whereas the City was paid par.

*Question—*

Had you taken fifty thousand pounds only of debentures issued

under the Toronto loan Act in payment of the debentures which you purchased from the contractors, what then would have been your profit upon the purchase of debentures by you and Mr. Bowes?

*Answer—*

Had I received sterling debentures in exchange for the amount of the debentures which were purchased from the contractors by Mr. Bowes and myself, our profit would have been enhanced by the amount of the loss sustained on the debentures for which we gave par to the City; but as we should not have received sterling debentures at all, unless we had purchased from the City at par, our profit would have depended on the price at which we could have sold our currency debentures in Canada; and as there was a rapid advance in the value of such debentures, my belief now is founded on information received from the brokers in Montreal with whom I correspond, and from other sources of information, that our profit would probably have been greater had we never interfered with the purchase of the new City loan of fifty thousand pounds.

*Question—*

You have said that the exchange remitted by you to Mr. Bowes was drawn against particular balances in the hands of Messrs. Glyn, Mills and Company by the Receiver General, and that it was sold in the usual course; will you state in what way exchange of this kind is sold, and against what particular balances these bills were drawn?

*Answer—*

I was informed by the Receiver General that he had sent round to the different Banks to ascertain what they would give for the exchange in question, and that is the usual mode which he adopts in selling small parcels of exchange in the ordinary course of business. I have no personal knowledge as to the funds against which this exchange was drawn, but have no doubt that it was against dividends and securities held on account of the clergy reserve fund, or the sinking fund. I have already stated that I did not know that the Receiver General had exchange to sell, or that he had sold any to Mr. Bradshaw, until the bills were brought me to be countersigned. The exchange was drawn on Messrs. Glyn, Mills & Company, Messrs. Baring Brothers & Company, and Messrs. Coutts & Company.

*Question—*

Had you communication of the questions put to you by the defendant under the present commission before the time of your examination, and did you, for the most part, prepare your answers before coming to be examined, and bring with you a note of such answers?

*Answer—*

I did see the questions, which were shewn to me by Mr. Gwynne, and I prepared notes of my answers. I desired in the course of my answers to these questions to enter into a number of particulars which seemed to me to be pertinent to the subject, instead of confining myself to a simple affirmative or negative to such questions.

*Question—*

You were not in Toronto in the year one thousand eight hundred and fifty-two, previous to close of the month of November, as appears by your testimony, and therefore will you please say whether your knowledge of what took place in reference to the issue of the debentures to the contractors is derived from Mr. Bowes or from any other, and what source?

*Answer—*

I was not in Toronto until the latter end of November, in the year one thousand eight hundred and fifty-two, and my information on the subject was derived from Mr. Bowes, as well as from the public prints.

*Question—*

Had you written to Messrs. Glyn, Mills & Company previous to the sixth of December, one thousand eight hundred and fifty-three, in a manner which might call for their letter to you of that date, which you have produced?

*Answer—*

The correspondence on the subject originated in my getting a letter from Mr. G. C. Glyn, M.P., very much to the same effect, in which he offered, if I desired it, to send a letter explanatory of the transaction, from the firm of which he is a principal member. I replied by

stating that I should be glad to receive such a letter. I had not applied for any letter until it was spontaneously offered.

*Re-examined by Mr. Attorney General Ross.*

*Question—*

Prior to the sale of the Toronto debentures in London as stated by you, are you aware of any similar securities of any other, and what city in Canada, being previously sold there, and of the price for which they were sold?

*[This question is objected to as irrelevant.]*

*Answer—*

I have heard that City of Montreal currency debentures were sold in London at less than eighty per cent., but this is the only transaction that I have heard of in currency debentures in London. The debentures I refer to were issued to the Saint Lawrence and Atlantic Railroad Company, and were sold by Messrs. Black, Wood & Company, contractors for that road.

*Question—*

In your cross-examination, you spoke of a letter received by you from Mr. Bowes, stating his wish that his name should not be known at the Bank of Upper Canada as concerned in the purchase of the debentures in question, and that he would get Mr. Cotton to deliver them at the Bank; did you, from anything in that letter, infer that Mr. Cotton was in any way interested with Bowes & Hall, or either of them, in the purchase of the said debentures?

*Answer—*

No, there was nothing in that letter to lead to such an inference.

*Question—*

In what year were you first appointed Inspector General of the Province of Canada?

*Answer—*

In the year one thousand eight hundred and forty-two. I resigned office in one thousand eight hundred and forty-three, and was again appointed in one thousand eight hundred and forty-eight, and have continued until now to hold the office.

(Signed) F. HINGKS.

*The Affidavit of the Defendant sworn and filed twenty third August, 1853, as to Books and Papers.*

John George Bowes, of the City of Toronto, Esquire, one of the above Defendants, maketh oath and saith, that he has applied to the Clerk and Chamberlain of the Council of the City of Toronto, for certified copies of all papers, writings and documents, in the possession, custody or power of the Common Council of the said City of Toronto, relating to the matters in the said Bill of Complaint, filed in this cause mentioned; and that he has received from the said Clerk copies of the following papers, writings and documents, namely:—

1. Copy of an Act to provide for the issue of Debentures to the extent of £60,000 in aid of the Ontario, Simcoe and Huron Union Railroad. Passed 28th June, 1852.
2. Copy of an Act to authorise the Mayor to subscribe for ten thousand shares in the stock of the Ontario, Simcoe and Huron Union Railroad, on behalf of the City of Toronto. Passed 18th of October, 1852.
3. Copies of Minutes of the Standing Committee on Finance and Assessment of the following dates, namely:—21st November, 1850; June 21st, 1852; June 28th, 1852; July 2nd, 1852; July 30th, 1852; September 29th, 1852.
4. Copy of letter from the President of the Ontario, Simcoe and Huron Union Railroad Company to the Chairman of the Finance Committee, dated June 28th, 1852.
5. Copy of letter of M. Courtwright, acting member of the firm of M. C. Storey & Company, to the Select Committee of the Council of



Toronto, appointed to enquire into certain matters connected with the sale of City Debentures, dated February 17th, 1853.

6. Copy of letter from same to same, dated February 21st, 1853.

7. Copy of Report of Finance Committee of the 18th August, 1851.

8. Copy of resolution of the Common Council of the City of Toronto of 29th July, 1852.

9. Copy of letter and resolution, enclosed, from the Secretary of the Ontario, Simcoe and Huron Union Railroad Company, addressed to the Worshipful the Mayor of Toronto, dated 30th July, 1852.

And this Deponent has received from the Chamberlain of the said City of Toronto, a copy of an original document, in his custody, bearing date 27th September, 1852, being an authority from the said Messrs. Storey & Co. to the said Chamberlain, to deposit certain debentures in the Bank of Upper Canada. And this Deponent says, that the original documents, whereof the said above papers are copies, are in the proper custody of the Common Council of the said City of Toronto, and are not in the custody, power or controul of this deponent. And this Deponent is informed and believes, that the said papers, documents and writings, from which the said above copies have been taken, are all the papers, writings and documents in the custody of the Common Council of the said City of Toronto, relating to the matters in the said Bill mentioned. And this Deponent says, that he has herewith caused to be filed in this honourable Court the said copies of documents, and also a certain book, published by direction of the Common Council of the said City of Toronto, relating to the matters in the said Bill of Complaint mentioned, intituled "Report of the Select Committee appointed to enquire into the issue and sale of City Debentures in 1852, with the evidence." And this Deponent says, that he has not in his possession, custody or power, any deeds, books, papers, writings or documents, relating to the matters in question in this cause, or to any of such matters, other than the said books and copies of documents, so, as aforesaid, filed by this Deponent.

J. G. BOWES.

*Second Affidavit as to same, sworn and filed 1st September, 1853.*

I, John George Bowes, of the City of Toronto, Heir, one of the above named defendants, make oath and say, as follows :

1stly. I say that I have filed certain copies of documents relating to the matters in question in this suit, as set forth in my affidavit made in this cause, and filed with the said copies on the 23rd day of August, which documents are also particularised in the first schedule hereto annexed.

2ndly. I further say, that subsequently to the City Council passing the by-law of the 28th June, 1852, in the said first schedule hereto annexed mentioned, Messrs. M. C. Storey & Co., in the said bill mentioned, addressed a letter to me offering to sell debentures of the City of Toronto to the amount of twenty-four thousand pounds, which letter is now in my possession ; and I submit that it is wholly irrelevant to the matters in question in this suit ; I however say that I have set forth a true copy thereof in the second schedule hereto annexed.

3rdly. I further say that subsequently to the debentures in the said bill mentioned becoming within the power and control of the said Messrs. Storey & Company and to their being publicly offered by them for sale, I have, in the course of my private correspondence, mentioned to my said correspondents the fact of the said Messrs. Storey & Company having such debentures for sale, and I have received letters from my said correspondents relating thereto ; but I say that such my correspondence had relation wholly to the private transaction of the said Messrs. Storey & Company having such debentures for sale, and did not otherwise, in any manner, relate to any of the matters in question in this suit ; and I submit that such my correspondence is irrelevant to the matters in question in this suit. And I further say that I never have kept copies of or extracts from, or a copy of or extract from such my correspondence, nor have I ever kept the letters or any of the letters so received by me, nor any copy of or extract from any part of such correspondence, but the letters so received by me have been, to the best of my belief, destroyed or cast

away among waste papers after having been read; and I say that I have not now any part of such correspondence in my possession, custody or power.

I further say that I have drawn up a statement relating to the matters in question in this suit for the purpose of my defence to this suit, which statement I have placed, and it now is, in the hands of my solicitor, for the purpose of such my defence, which statement, for such reason, I object to produce.

I further say, according to the best of my knowledge, remembrance, information and belief, that I have not now, and save as herein aforesaid, never have had in my own possession, custody, or in the possession, custody or power of my solicitor or agents, or solicitor or agent, or in the possession, custody or power of any other person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the first and second schedules hereto.

(Signed) J. G. BOWES.

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*First Schedule referred to in the accompanying affidavit, filed 1st September, 1853.*

1st. Copy of an act to provide for the issue of debentures to the extent of sixty thousand pounds in aid of the Ontario, Simcoe and Huron Union Railroad, passed the twenty-eighth of June, one thousand eight hundred and fifty-two.

2nd. Copy of an act to authorise the Mayor to subscribe for ten thousand shares in the stock of the Ontario, Simcoe and Huron Union Railroad, on behalf of the City of Toronto, passed the eighteenth of October, one thousand eight hundred and fifty-two.

3rd. Copies of minutes of the standing Committee on Finance and Assessment of the following dates, namely: 21st November, 1850; June 21st, 1852; June 28th, 1852; July 2nd, 1852; July 30th, 1852; September 29th, 1852.

4th. Copy of a letter from the President of the Ontario, Simcoe and Huron Union Railroad Company to the Chairman of the Finance Committee, dated June 28th 1852.

5th. Copy of letter of M. Courtwright, acting member of the firm of M. C. Storey & Company, to the Select Committee of the Council of Toronto, appointed to enquire into certain matters connected with the sale of City debentures, dated February 17th, 1853.

6th. Copy of letter from same to same, dated February 21st, 1853.

7th. Copy of report of the Finance Committee of the 18th August, 1853.

8th. Copy of resolution of the Common Council of the City of Toronto of 29th July, 1852.

9th. Copy of letter and resolution enclosed, from the Secretary of the Ontario, Simcoe and Huron Union Railroad Company, addressed to the worshipful the Mayor of Toronto, dated 30th July, 1852.

This defendant has received from the Chamberlain a copy of an original document, bearing date 27th September, 1852, being an authority from the said Messrs. Storey & Company to the said Chamberlain to deposit certain debentures in the Bank of Upper Canada.

Book published by direction of the Common Council of the said City of Toronto, relating to the matters in the said bill of complaint mentioned, intituled: "Report of the Select Committee appointed to enquire into the issue and sale of City debentures in 1852, with the evidence."

*Second Schedule referred to in the accompanying affidavit.*

TORONTO, June 30, 1852:

J. G. BOWES, Esquire,

SIR:—We propose to sell you the twenty-four thousand pounds of Toronto debentures authorized by the City Council on the 28th instant to be issued in aid of the Ontario, Simcoe and Huron Union Railroad, you to pay us eighty cents on the dollar on the deposit of said debentures in such Bank in the City of Toronto as you may designate, and we to deposit said debentures as soon as we receive the same.

Let us know your acceptance or not of this proposition in writing to-morrow.

Very respectfully,

Your obedient servants,

M. C. STOREY & CO.

*Supplemental Affidavit sworn to and filed 2nd September, 1853.*

I, John George Bowes, of the City of Toronto, Esquire, one of the above Defendants, make oath and say, that since the making of the affidavit by me in this cause yesterday, it has come to my recollection that for some period of time in the year one thousand eight hundred and fifty-two, I had a small memorandum book in which I occasionally made entries relative to my private correspondence; and I say that at the time of my making my said affidavit yesterday, relative to my said private correspondence therein referred to, the fact of my having formerly had such a memorandum book as herein aforesaid, escaped my recollection; and I have since made diligent search therefor, and I say that I cannot find the same; and I say that I have not seen the same for a period of several months last past, and I do not know what has become thereof; but I verily believe that the same has been for a period of several months lost; and I say that I believe that the said memorandum book did contain some entries relating to my said

private correspondence referred to in my said affidavit made yesterday ; but I submit that for the reasons stated in my said affidavit made yesterday, relative to my said private correspondence, the said memorandum book did not contain any entries in it, relative to the matters in question, in this suit.

(Signed) J. G. BOWES.

*Defendant's Affidavit as to Books and Papers, filed 6th Dec., 1853.*

I, John George Bowes, of the City of Toronto, Esq., one of the above-named Defendants, make oath and say as follows :—

*First.* I say, that I have filed certain copies of documents relating to the matters in question in this suit, which were filed by me in this cause on the 23rd day of August last, which documents are particularized in the first Schedule hereto annexed.

*Secondly.* I further say, that subsequently to the City Council passing the By-Law of the 28th day of June, A.D. 1852, in the said first Schedule hereto annexed, mentioned, Messrs. M. C. Storey and Company, in the said Bill mentioned, addressed a letter to me, offering to sell debentures of the City of Toronto to the amount of seventy-four thousand pounds, which letter is now in my possession, and I submit, that it is wholly irrelevant to the matters in question in this cause; however, I say, that I have set forth a true copy thereof in the second Schedule hereto annexed.

*Thirdly.* I further say, that subsequently to the debentures in the said Bill mentioned becoming within the power and control of the said Messrs. Storey and Company, in the said Bill mentioned and to their publicly offering them for sale, I have in the course of my private correspondence mentioned to my said correspondents the fact of the said Messrs. Storey and Company having such debentures for sale, and I have received letters from my said correspondents relating thereto; but I say, that such correspondence had relation

wholly (in so far as relates to matters in the Bill of the said Complainants) to the private transactions of the said Messrs. Storey and Co., having such debentures for sale, and did not otherwise in any manner relate to any of the matters in question in this suit; and I submit that such my correspondence is irrelevant to the matters in question in this suit. And I further say, that I never kept copies of any of my correspondence, nor have I ever kept the letters so referred to me, but I have destroyed or cast them away among the papers found in the ordinary course in such matters. I further say, that when this suit was first instituted against me, I drew a statement relating to the matters in question in this suit, for the purpose of my defence in this suit, which I have placed in the hands of my solicitor for the purpose of such my defence, which statement for such reason I object to produce.

I further say, that for some period of time in the year of our Lord 1852, I had a small memorandum book, in which I occasionally made entries relative to my private correspondence, and I say, that I have not seen the same for a period of several months last past, and I do not know what has become thereof, but I verily believe that the same has been for a period of several months lost, and I say, that I believe that the said memorandum book did contain some entries relating to my said private correspondence, but I cannot say whether any of such entries did or not relate to any of the matters in the said Bill mentioned.

And I further say, that in the books of Bowes & Hall, of which firm I am a partner, there appear entries showing that the sum of four thousand one hundred and twenty-three pounds nine shillings and eleven pence has been received to the credit of that firm; and I say, that it does not appear by the said books out of what transaction such credit arises, but the same is entered in the said books, in the ordinary course of business, as a credit of such sum to the said firm; and I say, that such entries do so far relate to the matters in question in this suit, that they comprise the amount of £4123 9s. 11d., admitted by me in my answer to the Bill of the Complainants to have been realized as therein is mentioned; and I say, that such entries in the said books of the said firm of Bowes & Hall do not exhibit anything in relation to any of the matters in the said Bill of the said

complaints mentioned or in question in this suit; and for the reasons herein appearing, I object to produce the said books contained in such entries.

And I further say, that according to the best of my knowledge, remembrance, information, and belief, I have not now, and, save as herein is aforesaid, I never had in my own possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, or solicitor or agent, or in the possession, custody, or power of any person on my behalf, any deed, account, books of accounts, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document whatsoever, relating to the matters in question in this suit, or to any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the said documents hereinbefore referred to, and the said documents set forth in the said first and second Schedules, hereto annexed. And I further say, that the monies by the said Bill sought to be recovered from me, never were in any manner made by or through the credit of the funds of the City of Toronto, nor have the City of Toronto, or the inhabitants or rate-payers thereof, any interest whatever in such monies, as I am advised and verily believe; and I say, that the transaction, in the said Bill referred to as a sale of such debentures to me and others, was a *bona fide* sale by the contractors in the said Bill mentioned; and I say, that I never have had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, any deed, account, books of account, vouchers, receipts, memorandums, papers, or writing, or any copy of or extract from any such document, or any document whatsoever, which would show or tend to show that the said transaction was any other than a *bona fide* sale by the contractors, who were entitled to the said debentures.

(Signed) J. G. BOWES.



*Admissions.*

In order to save expense in taking evidence in this cause, I consent that the Plaintiff shall be at liberty at the hearing to read the following, as evidence on his behalf:—

1. The copies produced by the Defendant Bowes, or referred to in the schedules annexed to his affidavits, without producing the originals, or giving further evidence thereof.

2. Any reports, letters, documents or proceedings printed in the pamphlet produced by the Defendant, may be read from the pamphlet, without producing or proving the originals, subject to all just exceptions as to admissibility, relevancy, or otherwise, to which the originals, if produced and proved, would have been open.

3. The resolutions and by-laws set forth or referred to in the Bill. Admitting, on production, all copies certified by Daly, without further evidence thereof, or of originals.

4. And I undertake to admit at the hearing that the Plaintiffs were (as they state) before the occurrence of any of the transactions mentioned in the Bill until now, and still are, rate-payers and inhabitants of the City of Toronto; subject to all objections as to the right of such to sue.

5. That the electors of the City have, during all the period, numbered several hundreds, and the rate-payers and inhabitants respectively are more numerous than the electors.

6. That Mr. Hincks resides in Quebec: was and is an M. P. P., Inspector-General of the Province, and a member of the Executive Council, as stated in the Bill.

All these admissions to be subject to all just exception as to the admissibility and relevancy, &c., of the facts upon the issues in the pleadings raised.

JOHN W. GWYNNE,

Solicitor for Defendant Bowes.

Dated 15th Dec., 1853.

*The Resolution of 25th November, 1850, as to the £25,000.*

The Common Council of the City of Toronto, on the 25th of November, 1850, adopted the following resolution:—

*Resolved*, That the sum of £25,000, in debentures, payable twenty years after date, with interest at six per cent. per annum, payable half-yearly, be granted in aid of the Ontario, Simcoe, and Huron Railroad Union Company, on the conditions set forth in the second clause of the Report No. 21 of the Standing Committee on Finance and Assessment; and in order to extend the benefits of the said Railroad to all parts of the City, it be another condition of the above grant that the terminus for passenger trains shall be erected on a portion of the Market block property, now vacant, such portion to be leased to the Company at a nominal rent for 99 years, and that the line of Railroad shall be carried along Palace and Front Streets, to the full extent of the City Water-Lots."

*Resolution as to the £35,000 Loan.*

On the 8th of August, 1851, the Manager of the Ontario, Simcoe, and Huron Railroad Union Company, aided by certain resolutions adopted at a meeting over which John Arnold, Esq., presided, applied for a loan of £35,000, upon certain conditions set forth in the said resolutions, which application and resolutions were referred to a Select Committee. The Select Committee, on the 18th of August, 1851, reported:—

"That upon the most attentive consideration given by your Committee to the propositions signed by Mr. Arnold, as chairman, and after frequent interviews with the manager, as well as with one of the contractors of the Company, your Committee would recommend that in lieu of the propositions (or either of them), the Council loan to the said Company their debentures to an amount not exceeding £35,000, payable in twenty years, with interest on the same payable half-yearly, issuable in the same ratio as the bonus of £25,000,

taking as security for such debentures the bonds of the said Company to the same amount, payable in ten years, with interest half-yearly, secured on the road, to the satisfaction of this Corporation, upon the recommendation of the City Solicitor.

“And further, that it be a condition to this loan, that the road from this city to Lake Simcoe, or the Holland River, be completed in two years from the 1st of January next.

“And further, that as long as the loan of £35,000 continues, the Mayor of this city, for the time being (if he be not a director in any other Company), be a director in the above-mentioned Company; if he be a director in any other Company, then any Alderman of the city, for the time being, to be nominated by this Council to be a director in said Company.”

This report was adopted by the Council on the said 18th of August, 1851.

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*The £60,000 By-Law.*

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*An Act to provide for the issue of Debentures to the extent of £60,000, in aid of the Ontario, Simcoe, and Huron Railroad.*

[Passed June 28th, 1852.]

Whereas, on the 25th day of November, 1850, the Common Council of the City of Toronto resolved that the sum of £25,000 in debentures, payable 20 years after date, with interest at 6 per cent. per annum, payable half-yearly, be granted in aid of the Ontario, Simcoe, and Huron Railroad, in the proportion, as the work progresses, as 1 is to 10—namely, £10,000 to be expended on the road before any advance is made by the Corporation; these debentures to be issued to the contractors for £10,000, and that all future advances be made in the same proportion, to an amount not exceeding in the whole the sum of £25,000, upon the condition that the terminus for passenger trains be erected on a portion of the Market Block property, now

vacant, and that the line of Railroad shall be carried along Palace and Front Streets to the full extent of the City Water-Lots. And whereas the said Common Council, on the 18th day of August, 1851, resolved to loan the Ontario, Simcoe, and Huron Railroad Company City debentures to an amount not exceeding £35,000, payable in 20 years, with interest payable half-yearly, issuable in the same ratio as the bonus of £25,000, taking as security for such debentures the bonds of the said Company to the same amount, payable in 10 years, with interest half-yearly, secured on the road, to the satisfaction of the Council, upon the recommendation of the City Solicitor, on condition that the road from the city to Lake Simcoe, or the Holland River, be completed in two years from the 1st of January next. And further, that as long as the said loan of £35,000 continues, the Mayor of the city, for the time being (if he be not a director in any other Company), be a director in the above-mentioned Company; if he be a director in any other Company, then any Alderman of the city, for the time being, to be nominated by the Council to be a director in said Company. And whereas, by the Act of the Provincial Legislature, 13 and 14 Vic., chap. 81, entitled, "An Act to enable the Municipal Corporation of the City of Toronto to assist in the construction of the Toronto, Simcoe, and Huron Union Railroad," it is enacted, That it shall and may be lawful for the Mayor, Aldermen, and Commonalty of the City of Toronto, in pursuance of any By-Law of the said Municipal Corporation, to issue debentures to an amount not exceeding £10,000, nor in sums less than £5 each, for and towards assisting in the construction of the proposed Railroad of the said Company, and to provide for or secure the payment thereof in such manner and way as to the said Municipal Corporation shall seem proper and desirable.

Be it therefore enacted by the Mayor, Aldermen, and Commonalty of the City of Toronto—

1st.

That it shall and may be lawful for the Mayor of the City of Toronto to cause any number of debentures to be made out, not exceeding in the whole the sum of £60,000, and to cause such debentures to be issued to the Ontario, Simcoe, and Huron Railroad Union Company, in the proportion specified in the before-recited resolution, as the work on the said road progresses.

## 2ndly.

That of the said sum of £60,000, the sum of £25,000 shall be as a gift to aid in the construction of the said road, and the remaining £35,000 shall be as a loan to the Ontario, Simcoe, and Huron Railroad Union Company; and for the securing of the said payment of the said loan in ten years, with interest at the rate of six per cent. per annum, payable half-yearly, the said Company shall give to the City of Toronto their bonds, secured upon the said road, to the amount of such debentures from time to time issued to the said Company on account of the said loan.

## 3rdly.

That all such debentures shall be under the Common Seal of the said City, signed by the Mayor for the time being, and countersigned by the Chamberlain for the time being of the said City of Toronto, and shall bear interest at the rate of six per cent. per annum, payable half-yearly at the Bank of Upper Canada; and all such debentures shall be redeemable at the Bank of Upper Canada—*provided always*, that none of the said debentures shall be for a less sum than £25, nor payable at a more remote period than twenty years from the issuing thereof.

## 4thly.

That the interest on the said Debentures shall be, and the same is hereby charged and chargeable, and shall be paid and borne out of the monies which shall come into the hands of the Chamberlain of the said City for the time being, to and for the uses of the said City.

## 5thly.

That for the payment and redemption of the principal sum secured by the said Debentures, there shall be raised, levied and collected in the year next before such Debentures respectively fall due, an equal rate in the pound upon the assessed value of all rateable property in the said City of Toronto and liberties thereof, over and above all other rates and taxes whatsoever, sufficient to pay the principal sum secured by such Debentures respectively falling due, as aforesaid; unless otherwise provided for the re-payment of the said loan, or any part thereof, by the O. S. & H. U. R. Company, or by act of the

Mayor, Aldermen and Commonalty of the City of Toronto, authorizing the issue of other Debentures in lieu thereof, in that behalf duly made and enacted.

J. G. BOWES,  
Mayor

AN ACT

*To authorise the Mayor to subscribe for Ten Thousand Shares in the Stock of the Ontario, Simcoe, and Huron Union Railroad, on behalf of the City of Toronto.*

[Passed 18th October, 1852.]

WHEREAS, by a certain By-law passed on the 28th day of June, 1852, entitled, "An Act to provide for the issue of debentures to the extent of £60,000 in aid of the Ontario, Simcoe, and Huron Railroad Union Company, after reciting that, Whereas, on the 25th day of November, 1850, the Common Council of the City of Toronto resolved that the sum of £25,000 in debentures, payable twenty years after date, with interest at six per cent. per annum, payable half-yearly, be granted in aid of the Ontario, Simcoe, and Huron Railroad; in the proportion as the work progresses, as one is to ten, namely, £100,000 to be expended on the road before any advance is made by the Corporation, these debentures to be issued to the Contractors for ten thousand pounds, and that all future advances be made in the same proportion to an amount not exceeding in the whole the sum of £25,000 pounds, upon the condition that the terminus for passenger trains be erected on a portion of the market block property now vacant, and that the line of railroad shall be carried along Palace Street and Front Street, to the full extent of the City Water Lots; and whereas the said Common Council on the 18th day of August, 1851, resolved to loan the Ontario, Simcoe, and Huron Railroad Union Company city debentures to an amount not exceeding £35,000, payable in twenty years, with interest payable half-yearly, issuable in the same ratio as the bonus of £25,000, taking as security for such debentures the bonds of the said Company to the same amount payable in ten years, with interest half yearly, secured on the road to the satisfaction of the Council, upon the recommendation of the City

Solicitor, on the condition that the road from this City to Lake Simcoe, on the Holland River, be completed in two years from the 1st of January next; and further, that as long as the said loan of £35,000 continue, the Mayor of City for the time being (if he be not a Director in any other Company) be a Director in the above mentioned Company; if he be a Director in any other Company, then any Alderman of the City for the time being to be nominated by the Council to be a Director in the said Company. And whereas, by the Act of Provincial Legislature, 13 and 14 Vic., Chap. 81, entitled "An Act to enable the Municipal Corporation of the City of Toronto to assist in the construction of the Toronto, Simcoe, and Lake Huron Union Railroad, it is provided always, that it shall and may be lawful for the Mayor, Aldermen, and Commonalty of the City of Toronto, in pursuance of any By-law of the said Municipal Corporation to issue debentures to an amount not exceeding £100,000, nor in sums less than five pounds each, for and towards assisting in the construction of the proposed railroad of the said Company, and to provide for or secure the payment thereof in such manner and way as to the said Municipal Corporation shall seem proper and desirable. It was enacted, that it shall and may be lawful for the Mayor of the City of Toronto to cause any number of debentures to be made out not exceeding in the whole the sum of £60,000, and to cause such debentures to be issued to the Ontario, Simcoe, and Huron Railroad Union Company, in the proportion specified in the before recited resolution, as the work on the said road progresses; that of the said sum of £60,000, the sum of £25,000 shall be as a gift to aid in the construction of the said road, and the remaining £35,000 shall be as a loan to the Ontario, Simcoe, and Huron Railroad Union Company; and for securing the repayment of the said loan in ten years, with interest at the rate of six per cent. per annum, payable half-yearly, the said Company shall give to the City of Toronto their bonds secured upon the said road to the amount of such debentures from time to time issued to the said Company on account of the said loan. That all such debentures shall be under the common seal of the said City, signed by the Mayor for the time being, and countersigned by the Chamberlain for the time being of the said City of Toronto, and shall bear interest at the rate of six per cent. per annum, payable half-yearly at the Bank of Upper Canada, and all such debentures shall be redeemed at the Bank of Upper Canada; and provided

always that none of the said debentures shall be for a less sum than £25, nor payable at a more remote period than twenty years from the issuing thereof. That the interest on the said debentures shall be, and the same is hereby charged and chargeable, and shall be paid and borne out of the moneys which shall come into the hands of the Chamberlain of the said City for the time being, to and for the uses of the said City. That for the payment and redemption of the principal sums secured by the said debentures there shall be raised, levied and collected in the year before such debentures shall respectively fall due, an equal rate in the pound on the assessed value of all rateable property in the said City of Toronto and liberties thereof, over and above all other rates and taxes whatsoever, sufficient to pay the principal sum secured by such debentures, so respectively falling due as aforesaid, unless otherwise provided for by the repayment of the said loan, or any part thereof, by the Ontario Simcoe and Huron Railroad Union Company, or by the Mayor, Aldermen and Commonalty of the City of Toronto authorizing the issue of other debentures in lieu thereof, in that behalf duly made and enacted. And whereas, since the passing of the said by-law the following resolution was, on the twenty-ninth day of July, 1852, adopted by the Common Council of the said City of Toronto :

“ Whereas his worship the Mayor has informed this Council that the contractors of the Ontario, Simcoe and Huron Union Railroad Company have accepted a proposition made by him, subject to the approbation of this Council, in view of the difficulties which have arisen in the execution of a mortgage bond, by way of security for the loan of thirty-five thousand pounds, formerly voted by this Council, to the effect that the contractors shall surrender the grant of twenty-five thousand pounds, made by this Council and transferred to such contractors in part payment of their contract; and also that the directors shall waive the aforesaid loan of £35,000 altogether, on condition that in lieu thereof this Council will take stock to the amount of five thousand pounds, to be paid by the issue of City debentures in the same proportion as the above loan and grant were authorized to be issued: Be it therefore resolved that the standing committee on finance and assessment be authorized to complete such arrangements, provided that no legal difficulties shall occur in carrying out this resolution; and provided also, that no alteration shall



take place in the conditions upon which a portion of the market block was granted to the said company, particularly with regard to carrying the railroad to the eastern limits of the City water lots. And whereas the said contractors have, by an instrument under their hands and seals, dated the 14th day of October, 1852, duly surrendered such grant of Twenty-five thousand pounds and released all right and title thereto; and the said Ontario, Simcoe and Huron Railroad Union Company have, by an instrument under their corporate seal, dated the 14th day of October, 1852, released all right or claim to said grant, and also to said loan of thirty-five thousand pounds.

Be it therefore enacted by the Mayor, Aldermen and Commonalty of the City of Toronto, that it shall and may be lawful for the Mayor of the said City of Toronto to subscribe for, take, receive and hold stock in the said Ontario, Simcoe and Huron Railroad Union Company to the amount of £50,000 for and on behalf of the said City of Toronto; and for the payment of the same it shall and may be lawful and it shall be the duty of the said Mayor for the time being of the said City to appropriate so much and so many of the said debentures authorized to be issued under the provisions of the by-law hereinbefore recited as may be requisite and necessary for that purpose, and that the said debentures shall be issued by him for that purpose at the times, and in the same proportions, as is provided by the by-law hereinbefore recited, subject however to the same conditions relative to the passenger terminus of the said railroad, and the continuance of the said railroad along Front and Palace streets as are contained in the recital of the said by-law and the resolutions of the Common Council of the 29th day of July last.

That the dividends from time to time paid and payable upon the stock so held by the said Mayor, on behalf of the said City of Toronto, in the said Ontario, Simcoe and Huron Railroad Union Company shall be applied by the Chamberlain of the said city in such manner as by resolution of the Common Council of the City of Toronto may from time to time be directed.

(Signed) JOHN G. BOWES,  
Mayor.

Common Council Chamber, }  
Toronto, Oct. 18, 1852. }

[The Bill "to authorise the City of Toronto to negotiate the loan of £100,000 to consolidate a part of the City Debt," of which Mr. McCord produced a copy when giving his evidence in this cause, corresponds with the Act with the exception of a few verbal alterations, and except that the 7th and 8th clauses in the Act as it passed were not in the Bill as introduced and printed.]

[COPY.] By-law as to the £100,000.

An Act to provide for the issue of £100,000 Debentures, to Consolidate a part of the City Debt.

[Passed Nov. 1st, 1852.]

Whereas, by an act passed during the present Session of the Provincial Legislature, 16 Vic. ch. 5, entitled, "An Act to authorize the City of Toronto to negotiate a loan of £100,000 to consolidate a part of the City Debt," it is, amongst other things, enacted, "That it shall and may be lawful to and for the City of Toronto to raise by way of loan upon the credit of Debentures the sum of £100,000, lawful money of Canada: that the sum of £50,000, part of the said loan, shall be applied to the payment of the promissory notes of the said City now current, and redemption of the debentures of the said City issued prior to the passing of the 12th Vic. ch. 81, and falling due within the next ten years: That the sum of £50,000, the remainder of the said loan, shall be applied in payment of the stock purchased by the said City in the O. S. & H. U. Railroad Company, or in the redemption of the Debentures issued on account of the purchase of the said stock, and that for and notwithstanding any clause, matter, or thing, in any Act of the Parliament of the Province to the contrary, it shall and may be lawful for the Common Council of the said City of Toronto to repeal the by-law of the said Council passed on the 28th day of June, 1852, authorizing the levying of a special rate for the purpose of paying and satisfying certain Debentures issued or to be issued in aid of the said O. S. & H. Railroad, or payment of the said stock. And that, for the payment, satisfaction and discharge of the Debentures to be issued by virtue of this Act, it shall and may be lawful for the Common Council of the said City of Toronto in the by-law to be passed authorizing the said loan of £100,000, and the issuing the Debentures therefor, to impose a special rate per annum; over and above and in addition to all other rates to be levied in each

year, to form a sinking fund, of two per cent. per annum, for that purpose. And whereas the whole rateable property of the City of Toronto for the year 1851 was £184,000. And whereas the assessed rate in the pound required as a special rate, for the payment of the interest of a loan of £100,000, and the creation of a sinking fund of two per cent, to pay the principal of a loan of £100,000, is ten pence in the pound :

Be it therefore enacted, by the Mayor, Aldermen and Commonalty of the City of Toronto:—

1st.

That it shall and may be lawful for the Mayor of the City of Toronto to raise by way of loan, from any persons, body or bodies, corporate or politic, who may be willing to advance the same upon the credit of the Debentures hereinafter mentioned, and the special rate hereinafter imposed, a sum of money not exceeding in the whole the sum of £100,000; and to cause the same to be paid and applied in the manner prescribed by the Act of the Provincial Legislature authorising the negotiation of the said loan.

2ndly.

That it shall and may be lawful for the Mayor of the City of Toronto to cause or direct any number of Debentures to be made out, for such sum or sums, not exceeding in the whole the said sum of £100,000, as any person or persons, body or bodies corporate or politic, shall agree to advance upon the credit of such Debentures and the special rate hereinafter imposed; such Debentures to be under the common seal of the said City, signed by the Mayor, and countersigned by the Chamberlain of the City for the time being, and made out in such manner and form as the Mayor shall think fit.

3rdly.

That the interest on such Debentures shall be payable half-yearly, on the 1st of April and 1st of October, in each year, at such banking house or place in London, or elsewhere, as may be agreed upon between the Mayor of the said City and the party or parties who may advance the said loan, or any part thereof.

## 4thly.

That the said principal sum of £100,000 shall be made payable at twenty years from the 1st day of October, 1852, at the banking house or place in London, or elsewhere, as may be agreed upon as aforesaid.

## 5thly.

That a special rate of ten pence in the pound upon the assessed value of all rateable property in the City and liberties, over and above all other rates and taxes, shall be raised, levied and collected annually for the purpose of paying the interest and creating a sinking fund of two per cent., for the payment of the principal of the said loan of £100,000, from the year 1852 until the year 1873, or until the said Debentures shall be fully redeemed or provided for.

## 6thly.

That if in any of the years during which the sum of ten pence in the pound special rate by this Act authorized to be levied, there shall be any surplus, after paying the interest on the said loan, and providing for the sinking fund hereinafter mentioned, the said surplus shall be invested with and added to the said sinking fund, for the purpose of paying the said loan of £100,000 secured by the said hereinbefore mentioned Debentures.

J. G. BOWES.

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*STATEMENT of Monies received and paid by the Bank of Upper Canada, being exhibit N, referred to in Mr. Ridoul's evidence, taken 16th December, 1853.*

Statement of Monies paid by the Bank of Upper Canada to the credit of M. C. Storey & Co., on the security of £50,000 City of Toronto Debentures sold at 20s. per cent. discount.

| 1852,     |                                   |         |  | Currency. |
|-----------|-----------------------------------|---------|--|-----------|
| July 22,  | Cash advanced on Nos. 740 to 779, | £10,000 |  | £8,000    |
| July 30,  | “ “ 782 to 801,                   | 5,000   |  | 4,000     |
| Aug. 3,   | “ “ 802 to 831,                   | 7,500   |  | 6,000     |
| Aug. 7,   | “ “ 832 to 841,                   | 2,500   |  | 2,000     |
| Aug. 31,  | “ “ 847 to 898,                   | 13,000  |  | 10,400    |
| Sept. 30, | “ “ 899 to 918,                   | 5,000   |  | 4,000     |
| Oct. 21,  | “ “ 950 to 971,                   | 5,500   |  | 4,400     |
| Nov. 6,   | “ “ 972 to 977,                   | 1,500   |  | 1,200     |
|           |                                   | £50,000 |  | £40,000   |

Statement of monies received by the Bank to reimburse the above advances:

|          |                                                                                               |         |    |    |
|----------|-----------------------------------------------------------------------------------------------|---------|----|----|
| 1852.    |                                                                                               |         |    |    |
| Aug. 21. | Proceeds of the Hon. F. Hincks' draft on Messrs. Glyn, Mills & Co. for £15,000 sterling ..... | £18416  | 13 | 4  |
| Oct. 23. | Do. do. do. £5000 .....                                                                       | 6152    | 15 | 5  |
|          | By A. T. McCord, for Interest to 1st Oct., 1852 .....                                         | 333     | 7  | 0  |
|          | By proceeds of coupons on £82,000 to 1st April, 1853 .....                                    | 2930    | 0  | 7  |
|          | Glyn & Co. £10,139 10s. 8d. sterling .....                                                    | 12449   | 1  | 11 |
|          |                                                                                               | £40,281 | 18 | 3  |

The difference of £281 18s. 3d. is the balance of Interest due to the Bank on the advances made to Storey & Co.

*Exhibit R, referred to in Dr. Beatty's Evidence.*

Certificate of Engineer for work done under contract given:—

|                     |          |
|---------------------|----------|
| May 15, 1852, ..... | £100,000 |
| June 29, " .....    | 50,000   |
| Aug. 18, " .....    | 15,000   |
| Sep. 1, " .....     | 43,247   |
| Oct. 1, " .....     | 44,923   |
|                     | £253,170 |

Of the £50,000 in Stock, there was deposited with Chamberlain:—

|                                      |              |
|--------------------------------------|--------------|
| July 24, 1852, certificate for ..... | 3250 Shares. |
| Aug. 18, " " .....                   | 1750 " "     |
| " 30, " " .....                      | 4250 " "     |
| Sep. 22, " " .....                   | 750 " "      |

CITY DEBENTURES CREDITED.

|                      |         |
|----------------------|---------|
| July 15, 1852, ..... | £10,000 |
| Aug. 4, " .....      | 12,500  |
| " 9, " .....         | 2,500   |
| " 31, " .....        | 8,000   |
| Sep. 4, " .....      | 5,000   |
| Oct. 5, " .....      | 5,000   |
| 20, " .....          | 5,500   |
| Nov. 10, " .....     | 1,500   |

*Mem.*—The releases to the City of the gift and loan from the Railroad and Storey and Co., were executed on 14th October, 1852.

*Copy Minutes of the Standing Committee on Finance and Assessment.*

*Committee Room, Toronto, 21st Nov., 1850.*

PRESENT: J. G. Bowes, Chairman.

The Mayor.

Alderman Beard.

Councilman Thompson, and

J. M. Smith.

A deputation from the Board of Directors of the Toronto, Simco

and Lake Huron Railroad Company, consisting of Messrs. Boulton, Barrow, Capreol, and Morrison, waited on the Committee with the following proposition, viz., to know if the Corporation would grant the sum of £25,000 to assist in completing the Toronto and Lake Huron Railroad, parties now being found willing to contract for the completion of the same in two years and a half from the present time, provided the Corporation grant the above sum.

The Committee are of opinion that should £25,000 be granted by the Corporation it should be in either of the following proportions:—

1st. That £25,000 be granted to assist in completing the said road, advanced as follows, £12,500 when £75,000 are expended, and the remaining £12,500 when £150,000 are expended.

2nd. In the proportion as the work progresses as one is to ten, viz., £100,000 to be expended on the road before any advance is made by the Corporation; then debentures to be issued to the Contractors for £10,000, and that all future advances be made in the same proportion to the amount of £25,000.

PRESENT: Alderman Thompson, Chairman.

“ J. G. Beard.

“ Dempsey.

“ Armstrong.

June 21, 1852.

The communication of the Secretary of the Ontario, Simcoe, and Huron Railroad was considered. The Committee agreed to report a By-law for the issue of £25,000 grant, and £35,000 loan in favour of the said Company, at the same time recommending the Council to issue the sum of £10,000 now asked for so soon as the certificate of a competent Surveyor unconnected with the Company shall be furnished to the Council, to the effect that the sum of £100,000 has been *bona fide* expended on the said road.

PRESENT: Alderman Thompson, Chairman.

Joshua G. Beard.

Dempsey.

Sheard.

June 28, 1852.

The opinions of Messrs. Hagarty and Mowat in relation to the legality of the By-law for the issue of £60,000-debentures in aid of

the Ontario, Simcoe, and Huron Railroad were considered. The substance of the said opinions being adverse to the legality of the said By-law, unless advertised for three months, and also drawn up in accordance with the provisions of the Municipal Corporation Act of 1849, 1850, and 1851, including the imposition of a special rate for the redemption of the principal and interest within twenty years, the Committee authorised the Chairman to communicate with the Directors of the Ontario, Simcoe, and Huron Railroad Union Company, with a view of ascertaining their wishes on the subject.

PRESENT: Alderman Thompson.

Mayor Bowes.

Joshua G. Beard.

Hutchinson.

July 2, 1852.

A letter of the Secretary of the Ontario, Simcoe and Huron Railroad applying for an issue of £14,000 debentures in accordance with the By-law in favour of said Company, and submitting a draft of a bond to be given in security for £14,000, portion thereof by way of loan was considered, and the Committee resolved to instruct the City Solicitors to draw up an instrument for securing the said £14,000 as a lien on the road, next after the Government Guarantee, and that the Chamberlain do reply to Mr. Sladden's letter, informing him that such an instrument will be required, and that the Committee will require an addition, the ordinary bonds of the Company for the same amounts as those issued by the Corporation, and not in any way restricted with regard to the right of the Council to transfer the same.

The Committee further agreed to recommend, that in consideration of the verbal assurance of Mr. Keefer, the Government Inspector of Railroads, given to the Chairman of this Committee, that the sum of £100,000 is now actually expended on the Railroad, that such verbal assurance, in addition to the certificates received from the contractors, be deemed sufficient; but that the Board of Directors be notified that before any further issue of Debentures be made in their favour, a certificate will be required, in accordance with the Minutes of June 21st.



July 30, 1852.

**PRESENT**—Alderman Thompson.  
 Mayor.  
 Dempsey.  
 Sheard.

The Resolution of the Council of July 29 was considered. The Committee had an interview with C. Berezy, Esq., President of the Northern Railway Company, and Major Lawmond, one of the contractors.

It was then ordered that so soon as his Worship the Mayor shall have received from the Board of Directors of the Northern Railway their sanction in writing to the conditions of the Resolution of the City Council of the 29th July, inst., he be authorised (by the balance of the grant to the said Railroad, viz., £10,000, of which £5,000 having been already issued to the contractors) upon receiving from them paid up stock to the amount of £25,000 in security for the completion of the arrangement contemplated in the Resolution of Council above mentioned.

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 Monday, Sept. 6, 1852.

**PRESENT**—The Chairman.  
 Alderman Armstrong.  
 Dempsey.  
 Hutchison.

The Council having authorised the Committee to issue Debentures to the Northern Railroad Company, in the same proportion as the last advance was made, be it ordered that the sum of £13,000 be issued in Debentures on the contractors depositing a like sum in stock of the Road, in further security for the completion of the arrangement sanctioned by the Council.

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 September 29, 1852.

**PRESENT**—Alderman Thompson.  
 The Mayor.  
 Dempsey.  
 Hutchinson.

A certificate of the Chief Engineer of the Northern Railroad, that up to 1st September inst., work has been done on that Railroad, to

the extent of £208,247, having been considered, the Committee decided on authorising the issue of £50,000 Debentures, on the security of the Company's bonds, for the completion of the arrangement as heretofore provided.

October 11, 1852.

PRESENT—The Chairman.

Mayor.

Alderman Beard.

“ Sheard.

A letter of T. G. Ridout, Esquire, Cashier of the Bank of Upper Canada, offering on behalf of certain parties to take City debentures for £100,000 at par, on certain conditions, was considered. Also a letter from Crawford & Hagarty, offering to take debentures to the amount of £25,000 and payment of legal expenses.

The Mayor communicated the passing of the act authorising the City to issue £100,000 debentures to consolidate the City debt.

The Committee directed the Chamberlain to inform Mr. Ridout of their intention of urging the matter upon the favorable consideration of the Council, and to obtain from him the particulars necessary to be introduced into the By-law.

The Chamberlain was also directed to reply to Messrs. Crawford and Hagarty, informing them that the Finance Committee had received a more favourable offer than that made by them.

October 19.

PRESENT—The Chairman.

The Mayor.

Alderman Beard.

Sheard.

Armstrong.

A letter from T. G. Ridout, Esq., Cashier of the Bank of Upper Canada, stating the particulars necessary to complete the By-law for loan of £100,000 was read, and the Chamberlain instructed to include its provisions in the By-law, and to inform Mr. Ridout to that effect.



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*Extracts from Pamphlet referred to in the Defendant's Affidavits  
as to Books and Papers, and in the Depositions.*

Monday, Feb. 7, 1852.

The petition of David Paterson, Esq., and others, praying for an investigation into the issue and sale of certain City Debentures was presented by Alderman Bell, and read as follows:—

To the Worshipful the Mayor, Alderman, and Commonalty of the  
City of Toronto.

The memorial of the undersigned inhabitants and rate-payers of  
the City of Toronto,

Respectfully sheweth, that it appears from a discussion that took place at the last meeting of your worshipful body, as reported in the public press, that £50,000 of City Debentures, issued for the construction of the Northern Railroad, were disposed of for £40,000, and the last named sum alone received by the contractors. That a profit of £10,000 has been realised on the transaction; and that the matter appears to have been effected through or at the Bank of Upper Canada, and that very shortly afterwards £50,000 City Debentures, actually worth par, were substituted therefor. That great difficulty seems to exist in ascertaining who reaped the benefit of the ten thousand pounds discount, or to whom the first £50,000 of Debentures were disposed of, or by whom the £40,000 paid to the contractors were provided.

That charges of the gravest nature, materially affecting the character, credit, and respectability of the municipality of this City, are publicly made respecting the transaction in question.

That if the sum of £40,000 so paid for the first issue of Debentures, was in any way directly or indirectly advanced by the bank or others, or procured on the faith or credit of the City, or of any engagement by the City, to replace the same by any fresh Debentures to the amount of £50,000; your memorialists conceive that any profit realised by the transaction should be carried to the credit of the City. That your memorialists desire to make no charges against individuals, and are solely actuated in their proceeding by a desire to have the

true facts of this case thoroughly investigated, and the interests of the City duly protected.

Your memorialists, therefore, most respectfully request that your worshipful body will cause the matter in question to be fully investigated, believing that such a proceeding is peremptorily called for, and that if necessary an application be made by the Corporation to the Court of Chancery to enforce discovery, or that such of the rate-payers as may desire so to do, may, at their private cost, be allowed to use the name of the municipality in taking such proceedings as counsel may devise.

And your memorialists, &c.

Toronto, 27th January, 1852.

D. Paterson and 485 others.

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Thursday, Feb. 17, 1853.

His Worship the Mayor having, at a meeting, of the Committee appointed for investigating the issuing of the City Debentures, by direction of the Committee, been asked to attend the Committee, for the purpose of furnishing the Committee with any information he could give on the subject under investigation,

The following reply was read:—

The Mayor presents his compliments to the Chairman of the Select Committee appointed to enquire into the issue to, and sale of Debentures by, the contractors of the Ontario, Simcoe and Huron Railroad, begs to state that he has no information to give the Committee on the subject, but what will be found in the books of the Chamberlain, or got from the Chairman of the Standing Committee on Finance and Assessment, or the contractors of the Ontario, Simcoe and Huron Railroad, or the Cashier of the Bank of Upper Canada.

Mayor's Office, 17th Feb., 1853.

Friday, Feb. 18, 1853.

The Committee met.

Alderman Denison, seconded by Alderman Gowan, moved that the following three questions be submitted to his Worship the Mayor, through the Clerk, respectfully requesting that he will answer the same, either verbally or in writing, to the Committee:—

Q. 1. Have you in any manner taken part, for yourself, or as agent for any other person, in the negotiation or sale of the £50,000 City Debentures, by the contractors of the Ontario, Simcoe and Huron Railroad, which it is said were sold at a discount of 20 per cent, or thereabouts? If so, state how, and in what manner.

Q. 2. Have you, directly or indirectly, received, or are you in expectation of receiving, directly or indirectly, any portion of the profits on the said transaction mentioned in the last question, or any sum of money for aiding and assisting in the promotion of the said negotiation or sale of the said Debentures? If so, state the amount.

This third question not to be put, if the two preceding are answered in the negative.

Q. 3. Did you assist in the promotion of the said negotiation, in your position or capacity as Mayor of Toronto? Or did you exercise the influence of your civic position to aid you in promoting such negotiation? or did you act entirely in your private capacity, as Mr. Bowes, a merchant of Toronto?

Monday, Feb., 21, 1853.

The Committee met.

PRESENT—Alderman Gooderham, Chairman.

Bell.

Denison.

Gowan.

Councillors Ashfield.

Green.

Macdonald.

Alderman Denison submitted the draft of a Report to be adopted by the Committee, which was adopted.

Adjourned.

The Committee having been notified that a letter in reply to the questions put by the Committee had been received from his Worship the Mayor,—

The Committee re-assembled at half-past six o'clock, p.m.

PRESENT,—Alderman Gooderman, Chairman,  
 “ Gowan,  
 Councillors Green,  
 “ Macdonald.

The following letter was read from his worship the Mayor :

To William Gooderham, Esquire,

Sir,—I had the honor, in reply to your communication of the 17th instant, to refer you to the City Chamberlain, the Chairman of the Standing Committee on Finance and Assessment, the Contractors of the Ontario, Simcoe and Huron Union Railroad, and the Cashier of the Bank of Upper Canada, for information on the subject of the debentures issued to the Contractors of the Ontario, Simcoe and Huron Union Railroad, as capable of giving much more satisfactory information than any I might give.

But as the Committee seem anxious that I should answer their questions, I cheerfully do so.

I introduced the Contractors to the Bank of Upper Canada, and rendered them any assistance in my power in the negotiation of the £50,000 Debentures, but received no remuneration present or prospective therefor.

Yours obediently,

(Signed) J. G. BOWES,

Mayor.



Councillor Macdonald, seconded by Councillor Green, moves,—  
That in consequence of the communication just read having been  
received from his Worship the Mayor, the following report be sub-  
stituted for the one previously adopted,—which was carried.

*(See Report, post, firstly printed.)*

The proceedings of the Committee closed here.

Monday, Feb. 21, 1853.

The Select Committee to whom was referred the petition of David  
Paterson, Esq., and others, brought up a report, which was received  
and read, and is as follows:—  
*To the Worshipful the Mayor, Aldermen, and Commonalty of the  
City of Toronto.*

The Select Committee to whom was referred the petition of David  
Paterson and others, beg leave to submit the following report, with  
the accompanying evidence, viz.:—

Your Committee find that the contractors of the Northern Railway  
received £50,000 of debentures from the city for stock in the road,  
which they sold at 20 per cent. discount, which appears to your  
Committee to be the full value of the same, as evinced by the  
evidence of various parties before your Committee.

It is further apparent that the city interests have not in the  
slightest degree suffered by the transaction, and that the contractors  
of the Northern Railroad are perfectly satisfied; and that the Mayor  
or officers of the Corporation had nothing to do with the negotiation  
of the railway debentures. And further, your Committee recommend  
that the whole, or so much of the evidence given before the Com-  
mittee as may be considered necessary for the information of the  
citizens, be published.

All which is respectfully submitted.

WM. GOODERHAM, Chairman.

Committee Room, February 21, 1853.

The report first adopted as above mentioned, and for which that above given was subsequently substituted, was as follows :

*To the Mayor, Aldermen and Commonalty of the City of Toronto, in Common Council assembled.*

The Committee to whom was referred the petition of David Paterson and others, on the subject of the issue and sale of City debentures, beg leave to report,

That your Committee having taken all the evidence in their power to obtain on the subject referred to them, beg leave to submit the same to your worshipful body with no other opinion of your Committee than that they cannot come to any very satisfactory conclusion on the subject, in consequence of your Committee not having power to send for persons and papers and to examine the witnesses upon oath.

Your Committee, however, feel it to be their duty to state, that they are of opinion that the interests of this City have not suffered from the transaction in question, so far as your Committee has been able to discover.

The extracts from the pamphlet close here.

*Cotton's Release, being Exhibit Q., referred to in the evidence of John Hutchinson.*

By an instrument under the hand and seal of James Cotton, dated the 19th December, 1853, he thereby declared that he made no claim to the money in question in this cause as against the City or the Plaintiffs, as representing the City in this cause. If the City is decided to be entitled as against Bowes to the money received by the latter or his firm, then he made no claim to it; and in that case, he released and surrendered all claim thereto, or to the matters in question in this cause, reserving to himself the right of suing Bowes, or Bowes & Hall, in case it is decided that the City has no right to the said money.

*Affidavit of Robert Pilkington Crooks, of the City of Toronto, Esq.*

I, Robert Pilkington Crooks, of the City of Toronto, Esq., make

oath and say, that I know and am acquainted with the handwriting of the said Defendant, having frequently seen him write and sign his name; and I say, that the letter under date of the ninth day of April, one thousand eight hundred and fifty-two, from the said Defendant to Thomas Wilson, in the said letter named, is in the handwriting of the said Defendant, and the signature "J. G. Bowes" to the said letter is the proper handwriting of the said Defendant. This letter is now produced and shown to me at the time of my swearing to this affidavit, and is marked with the letter A. I further say, that the letter under date of the tenth day of June, in the year aforesaid, also from the said Defendant to the said Thomas Wilson, is also in the handwriting of the said Defendant, and the signature "J. G. Bowes" to the said last-mentioned letter is of the proper handwriting of the said Defendant. The said last-mentioned letter is now produced, and shown to me at the time of swearing this affidavit, and is marked with the letter B. And I further say, that the letter under date of the twelfth day of June, in the year aforesaid, also from the said Defendant to the said Thomas Wilson, is also in the handwriting of the said Defendant, and the signature "J. G. Bowes" thereto is the proper handwriting of the said Defendant. The said last-mentioned letter is now shown to me, and is marked with the letter C.

(Signed)

ROBERT P. CROOKS.

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*Exhibit A, referred to in Mr. Crooks' Affidavit.*

TORONTO, 9th April, 1852.

MY DEAR SIR:—

I am in receipt of your favour of the 18th ultimo, and delighted to find that your attention, in connection with the interests of Canada, has been directed to the establishment of an agency in Great Britain. Such an agency, if managed by a competent person—one thoroughly acquainted with the resources of Canada, and at the same time favourably known to the capitalists of England—in fact, one possessing

the confidence of both parties, would be of incalculable advantage to this country. For want of such an agency, our debentures have been sold at a ruinous discount. In the present state of the money-market in England, it is discreditable to our *financiers* to allow our municipal debentures to be sold below par, considering the undoubted security they afford to the capitalist.

Some time since, with a view to the final establishment of an agency of this nature in London, I suggested, through the *Patriot* newspaper, the advantage that must accrue to this country from the labours of a *Popular Lecturer* in England—one well acquainted with the advantages Canada holds out to the well-directed efforts of the industrious *mechanic* and *labourer*, as well as the ample field it opens up for the safe and profitable investment of capital. The suggestion met with general approbation from the local papers, and some able letters were written by other persons on the subject. Yet, as it is a matter in which so many are equally interested, it is likely to be sometime before the suggestion is practically acted on. "*What is the business of every one, is truly said to be the business of no one.*"

I had some idea of going to Europe in May next, as Mr. Hall has told you, but I find it will be out of my power to leave home at that time.

A large amount of municipal debentures will have to be disposed of in England during the ensuing summer, to provide the "needful" for the construction of the "Ontario, Simcoe and Huron" and the "Toronto and Guelph" Railways. Should such an agency as that referred to above not be established, an agent will have to be sent from Canada to negotiate those securities, or some Company in London, wholly unacquainted with the nature of our debentures, will have to be employed. Should an agent be sent to England on behalf of the Toronto and Guelph Company, of which I am President, he will be directed to take advantage of your valuable assistance in the sale of the securities of the Company. You may find an agency of this nature well worth your own attention. Should you think so, you will have my cordial assistance in every possible way. I should like to know from you whether the advantages which I contemplate

would arise to this country from the efforts of an able and judicious Lecturer in Europe are likely to be realized. I forward you some colonial papers. In one of them you will find the subject of an agent for Canada in London referred to. My opinion is that Toronto, Kingston, Montreal, and Hamilton ought to pay the expenses of an agent themselves, and I am satisfied they would be indirectly benefitted to ten times the sum necessary for that purpose.

The parcel you sent to Mrs. Wilson has just arrived, and has been forwarded to her address at Cobourg. Hoping to be favoured with a letter from you as often as convenient,

I am, my dear Sir,

Yours truly,

(Signed) J. G. BOWES.

To THOMAS WILSON, Esq.

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*Exhibit B, referred to in same affidavit.*

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TORONTO, 10th June, 1852.

MY DEAR SIR :

I am favored with your letters of the 7th and 14th of May, and fully concur with you in opinion that it would be a decided advantage were you to pay a visit to this country, after having ascertained the information capitalists in England require regarding the municipal securities of Canada. I should have submitted a proposition on this subject to the directors of the Toronto and Guelph Railroad, had not the Canada Company through their Commissioner, Mr. Widder, who is himself a director of the railroad, volunteered to negotiate the debentures of the company free of charge. I may mention here that the Corporation of Toronto has agreed to aid the Ontario, Simcoe and Huron Railway, to the extent of twenty-five thousand pounds currency; the debentures of the City will be issued to this amount as the work progresses, the issue not to commence until one hundred thousand pounds have first been expended on the road. I propose to make those debentures payable in London, and

have them negotiated by an agent appointed by the Corporation, and hand their value in cash to the Railway Company, and thus prevent the credit of the City being injured by entrusting the sale of its bonds to unskillful hands, or their being forced into the market by needy railway contractors.

The security for the punctual payment of the interest and principal of municipal bonds provided for by the provincial act under which they are issued, is so ample that no doubt can possibly be entertained regarding their validity; their perfect security being once established surely a favorable sale could be effected in the present state of the money market in London.

I applied some time since, through the Bank of Upper Canada, to negotiate a loan for the City of Toronto to the amount of £50,000 sterling, to redeem debentures and small City notes now out, issued under an old provincial act which did not provide a sinking fund for their redemption; the Bank offered to guarantee the principal and interest but nothing has yet been done in the matter, beyond a favorable letter from Messrs. Glyn, Halifax & Co., agents of the Bank of Upper Canada in England.

I will forward as soon as published a statement of the City debt and revenue, and should my views be approved of by the City Council regarding the loan and the manner of negotiating City debentures for railway purposes, you will hear from me on the subject.

Your views of the Quebec and Halifax railroad are those entertained by nine-tenths of the thinking portion of the inhabitants of Upper Canada; indeed there can scarcely be a difference of opinion on the subject—of course I do not now speak of the project as a military work, though even in this light, I look on it as a wild and unnecessary speculation—but as a commercial undertaking I consider it would be quite useless, entailing on a young country an unwarrantable debt, without the most remote probability of a return for the outlay. The country from Quebec to Halifax is, for the most part, a wilderness and the land so bad that it could not at any reasonable expense be rendered productive.

That portion of the proposed line between Quebec and Detroit is

differently situated; here the road would pass through one of the most fertile tracts of country in Canada; the western townships are rapidly increasing in agricultural wealth and in population, and in addition to the trade of this rising country, this railroad will, when constructed, form the main artery through which the products of the Western States must find their way to the Eastern Market.

The return of the crop of 1851 for the Western Townships shows an increase over that of 1850 of nearly 25 per cent., and there is no reason to suppose but this increase will continue for many years to come. The action taken by the different Municipalities between Kingston and Toronto in procuring a survey of this portion of the Toronto line clearly shows the favourable opinion entertained of this road by the parties most interested. Should this portion of the enterprise fail in remunerating the stockholders contrary to the expectations of those best able to form an opinion on the subject, one thing is certain, it cannot fail to be of incalculable advantage to the country.

Should the people or government of Great Britain refuse to grant the aid required for the construction of this Railroad on the ample security we are prepared to offer; they may find when too late that the connection between this country and the United States is becoming too close commercially. The Yankoes know the importance of the trade of Canada, and they are making every effort to secure it; the people of Canada see this, and they see also that British capital is freely advanced to the people of the United States to construct those works designed to alienate the trade of this country from Great Britain; seeing this, the men who volunteered to suppress the rebellion in 1837, cry out for annexation in 1849 as a means of securing from Great Britain that consideration which they were led to believe could not be obtained so long as Canada remained a British Colony; but why do I write thus to you, there is no one better aware of this fact than yourself. This impression I am happy to say is now wearing off, and it will remain with the government of the Earl of Derby to secure a continuance of that loyalty and attachment of the colonies to Great Britain for which they have been long conspicuous, by giving encouragement without reference to party to every Canadian enterprise calculated to promote this desirable result.

It should be constantly pressed on the attention of the members of

the "British Government" that the growing advantage of Canada to Great Britain can hardly be overrated, both as an outlet for her surplus population, and as a customer for her manufactures, as well as the source from which she could get her supply of corn in the event of a difference with other nations.

It should also be borne in mind that every facility is being given by the "United States" to increase the commercial connection between that country and Canada, and that the relations of debtor and creditor are the strongest ties that bind countries together. I should apologise for the unusual length of this epistle, but as I very seldom have to apologise for such an error, I trust you will excuse it, and believe me,

My dear Sir,

Your's truly,

(Signed)

J. G. BOWES.

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*Exhibit C, referred to in same Affidavit.*

Toronto, 12th June, 1852.

My dear Sir—

I am this moment in receipt of your note of the 28th of May. As Mr. Hall leaves Toronto for Europe in a few hours, I hasten to acknowledge it by him, though I wrote you a long letter on the 10th instant.

I had an undefined account of arrangements being about to be made with railway contractors in England named "Brassey and Betts," who are, I understand, connected with Peto, for the construction of the Quebec and Halifax Railway. This wild scheme having been abandoned, I was of opinion that any understanding with the railroad contractors would fall through. The people of Canada will look with suspicion on any arrangements for the construction of a R. R. in Canada, unless it is let out, in the usual way, to the lowest bidder. The Northern R. R. is a *job*, and from what I hear of the "Great Western," it is no better: they are both in the hands of "Yankees."



My opinion is, the present Ministry would not dare to make an arrangement that would injure the credit of Canada, if they were so inclined.

I purpose going to Montreal in a few days, and very likely will go as far as Quebec before I return. If I hear anything of the railroad job on my way, I will make some enquiry at head quarters, and inform you when I next write. Hoping to hear from you as often as you can spare a moment,

I am, my dear Sir,

Yours, &c.,

(Signed) J. G. BOWES.

*Further Extracts from Pamphlet referred to ante.—(202 to 206).*

*Report of Finance Committee of 18th August, 1851.*

On the 8th of August, 1851, the manager of the Ontario, Simcoe and Huron Railroad Union Company, aided by certain resolutions adopted at a meeting over which John Arnold, Esquire, presided, applied for a loan of £35,000 upon certain conditions set forth in the said resolutions; which application and resolutions were referred to a select committee. The select committee, on the 18th of August, 1851, reported: "That upon the most attentive consideration given by your committee to the propositions signed by Mr. Arnold, as chairman, and after frequent interviews with the manager, as well as with one of the contractors of the company, your committee would recommend that in lieu of the propositions, or either of them, the Council loan to the said company their debentures, to an amount not exceeding £35,000, payable in twenty years, with interest on the same, payable half-yearly, issuable on the same ratio as the bonus of £25,000, taking as security for such debentures the bonds of the said company to the same amount, payable in ten years, with interest half-yearly, secured on the road to the satisfaction of this Corporation upon the recommendation of the City Solicitor.

"And further that it be a condition to this loan, that the road from this City to Lake Simcoe, or the Holland River, be completed in two years from the 1st of January next.

"And further, that as long as the loan of £35,000 continues, the Mayor of this City, for the time being (if he be not a director in any other company), be a director in the above mentioned company; if he be a director in any other company, then any Alderman of the City for the time being to be nominated by this Council to be a director in said company."

This report was adopted by the Council on the said 18th of August, 1851.

*Resolution of Common Council of 29th of July, 1852.*

On the 29th of July, 1852, the Mayor communicated to the Council the expediency of confirming an offer which he had made to the contractors of the Ontario, Simcoe and Huron Union Railroad, in consequence of some difficulty which had presented itself in the matter of the Directors giving the city security upon the road for the amount proposed to be advanced to the Directors by way of loan, and which offer the Mayor stated to have been in substance as follows :

"That the contractors should agree to relinquish the grant of £25,000 made by the Council in aid of the railroad, which said grant has been transferred by the directors to the contractors, and that the directors should relieve the Council from the agreement to loan the Company the sum of £35,000, upon certain security, upon condition that the Council should take stock in the said road to the extent of £50,000, paying therefor in Debentures, at the same times, and in the same proportions as the work progresses, as it was agreed the said grant and loan should be advanced—to which said contractors had assented."

Upon this communication, the Council adopted the following resolution:—

Whereas his Worship the Mayor has informed this Council, that the contractors of the Ontario, Simcoe and Huron Railroad Union Co. have accepted a proposition made by him, subject to the appro-

bation of this Council, in view of the difficulties which have existed in the execution of a mortgage bond by way of security for the loan of £35,000 formerly voted by this Council, to the effect that the contractors shall surrender the grant of £25,000 made by the Council and transferred to such contractors in part payment of their contract, and also that the Directors shall waive the aforesaid loan of £35,000 altogether, on condition that in lieu thereof the Council will take stock to the amount of £50,000 to be paid by the issue of City Debentures in the same proportions as the debentures for the above loan and grant were authorised to be issued.

Be it therefore resolved, that the Standing Committee on Finance and Assessment be authorised to complete such arrangement, provided that no legal difficulty shall occur in carrying out this resolution, and provided also, that no alteration shall take place in the conditions upon which a portion of the market block was granted to the said Company, particularly with regard to carrying the railroad to the eastern limits of the City water lots.

This resolution was communicated to the Board of Directors of the Ontario, Simcoe and Huron Railroad Union Company, and to which the following reply was received :

{ Office of the Ontario, Simcoe & Huron Union Railroad Co.,  
Toronto, 30th July, 1852.

To the Worshipful the Mayor of Toronto,

SIR,—The Board of Directors have under consideration a resolution of the Council, passed on the 29th instant, relating to a proposed new arrangement for the issue of debentures to the contractors, a minute of the Finance Committee thereon, and a letter from M. C. Story & Co., stating their willingness to accept the propositions embodied in the resolution of the City Council first mentioned, I now beg to send you a copy of a minute made by the Directors of this Company in relation to the documents referred to :

Resolved—That the Board of Directors agree to the proposed arrangement between the City Council and M. C. Story & Co., submitted in the resolution of the City Council of the 29th instant, with-

out prejudice to the existing agreements between the Council and the Board, and the contractors, in the event of the one proposed not being accomplished. And further, without prejudice to the other parts of the said existing agreements, which are not to be affected in any way by the substitution proposed for certain parts of those agreements.

I have, &c. &c.

(Signed)

WILLIAM SLADDEN,

Secretary.

TORONTO, June 28, 1852.

Mr. Alderman Thompson, Chairman Finance Committee,

Sir,—On the part of the Directors of the Ontario, Simcoe and Huron Railroad Union Company, and the contractors of the said Company, I beg to intimate to you that we are prepared to take the debentures of the Corporation under a by-law, without the form of advertising for three months, and to assume the entire responsibility of so receiving them.

The contractors, acting under legal advice, agree to this course as the best that can be adopted under the peculiar circumstances in which they are placed.

Should the above mode not be adopted, I submit as the next best course, that a resolution should be passed by the Council similar to the draft enclosed.

(Signed)

CHARLES BERCZY,

President.

TORONTO, February 17, 1853.

To The Select Committee of the Council of Toronto, appointed to enquire into certain matters connected with the sale of City Debentures,

GENTLEMEN,—Your note of yesterday's date, requesting me to furnish such information as I may possess on the subject under investigation, is received.

In connection with this subject, and in order to a proper understanding of it by parties not conversant with the whole matter, allow me to state briefly the transaction throughout, so far as the City has been concerned.

The Committee are doubtless aware that the City of Toronto by a resolution of their Council, agreed upon certain conditions to issue to us sixty thousand pounds of their debentures, on account of the Ontario, Simcoe and Huron Railroad Union Company, £35,000 of which were to be in exchange for an equal amount of Company's bonds, and the balance (£25,000) as a bonus, being an inducement offered to take the work. Subsequently, by a mutual arrangement between the City, the Railroad Company and ourselves, the City was released from the above obligation, together with the bonus. The City, through their Council, then purchased of us £50,000 of stock for which we took £50,000 of their debentures.

These debentures, after being issued to us and paid for, were considered entirely at our disposal, we being the only parties having the least interest in them; we therefore disposed of them at what we regarded as a fair price, and no subsequent event has yet satisfied us that the arrangement was injudicious.

It is taken for granted that the Committee do not desire to enquire into our private business transactions, and trust therefore that the above statement will prove satisfactory, as shewing that no undue official interference had any influence with us in the disposition of the debentures alluded to; and to relieve the City from any anxiety on our account, I beg leave to state that we are entirely satisfied with the operation.

(Signed) M. COURTWRIGHT,  
Acting member of the firm of M. C. STORY & Co.

BUFFALO, February 21, 1853.

To The Select Committee appointed by the Council of Toronto to enquire into the sale of certain City debentures.

GENTLEMEN,—Your note of the 19th instant, requesting my answer to certain interrogatories therein contained, is received.

In reply to the first question, I can only say that neither myself or any of our firm ever made arrangements, to my knowledge, for the sale of the debentures alluded to, or any portion of them, at par in the city of New York; and that the disposition that *was* made of them, answered our purpose better, so far as my knowledge goes, than any we could then, or any time previously, have made.

In answer to the second and third enquiry, I say—No.

(Signed) M. COURTWRIGHT,  
Of the firm of M. C. STORY & Co.,

*Note delivered to Mr. McCord on or about the date thereof.*

“The City debentures (except the last £2500, or ten bonds), to be deposited in Bank of Upper Canada.

M. C. STORY & Co.,  
Per GEO. BEATTY.

September 27th, 1852.

*Mr. Ridout's letter to Mr. Bowes, being Exhibit T.*

{ Bank of Upper Canada,  
Toronto, 28th September, 1852.

JOHN G. BOWES, Esquire,

Mayor.

SIR,—I beg to inform you that I am authorized by a friend, on behalf of certain parties in England, to make the following offer to the Corporation of Toronto, in the event of the Bill for the £80,000 sterling loan passing— viz :

It is proposed that debentures for the whole amount shall be issued, payable, principal and interest, at a certain Banker's in London, the latter, semi-annually.

Interest to commence from date either 1st of November or 1st of December, as may be found convenient with reference to passing of the act.

The bonds to be taken at par and paid for, without any deduction, at the par of exchange of £1 4s. 4d. currency to the £1 sterling. This would give £97,333 6s. 8d. currency, of which £47,333 6s. 8d. would be payable in cash and £50,000 in City bonds.

The £80,000 sterling bonds to be delivered to this Bank, for transmission to London.

If the Corporation choose to authorize £2000 more, or £82,000 sterling, to be issued, that amount would be taken on the same terms.

The Bankers in London will charge the Corporation one per cent. for paying the dividends, that being their usual commission.

I respectfully beg leave to solicit an early answer to the foregoing.

I have the honor to be,

Sir,

Your obedient servant,

(Signed) THOS. G. RIDOUT,  
Cashier.

*Exhibit U., being another letter from same to same.*

{ Bank of Upper Canada,  
Toronto, 14th October, 1852.

SIR,—I have the honor to acknowledge the receipt of your letter of the 11th instant, in which you require, for the information of the Standing Committee on Finance and Assessment, a specification from me of certain matters relative to the new loan alluded to in my letter of the 28th ultimo, and to which I beg to reply as follows—viz :

The enclosed paper is the form of the debentures proposed to be issued, bearing, as you will observe, coupons for the half-yearly interest.

The debentures are required to be made payable at twenty years from date, at Messrs. Masterman, Peters & Co., Bankers, London, and to be dated 1st of October, 1852.

The interest at the rate of six per cent. per annum, to be payable half-yearly at the same place—namely, 1st April and 1st October.

The amount of debentures proposed to be purchased in England is £82,000 sterling, to be divided as follows—viz :

|                                     |         |
|-------------------------------------|---------|
| 82 Bonds of £500 sterling each..... | £41,000 |
| 164 " " 200 " " .....               | 32,800  |
| 82 " " 100 " " .....                | 8,200   |

In all.....£82,000 sterling

The above £82,000 sterling will produce, at the par of 109½, the sum of £99,766 13s. 4d. currency, or if £80,000 sterling in same proportion.

I have the honor to be,

Sir,

Your obedient servant,

THOS. G. RIDOUT,

Cashier.



*Further Extracts from the Pamphlet, being Extracts from Statements made by Samuel Thompson before Committee of Council, read when on his cross-examination.*

The Finance Committee, conceiving that the City Finances were in every way benefitted by these arrangements, gladly assented. The offer made through the Cashier of the Bank of Upper Canada was considered and approved in Council on the same evening, and the arrangements closed.

Q. Has the management of the City Finances, during the incumbency of the present Mayor, tended to enhance or depreciate the City credit?

A. That the financial position of the City has immensely improved during the present Mayor's tenure of office is undeniable; how far his Worship has contributed to its improvement is of course a matter of opinion. For the last three years the Finance Committee has been unanimous in their determination to redeem the City credit from the disgraceful condition in which they found it—Debentures overdue, interest unprovided for, credit obtained at 25 or 30 per cent. sacrifice, were matters of weekly occurrence; the Banks would scarcely afford the Council the ordinary accommodation granted to merchants. All this is changed. Doubtless the improved state of our provincial credit, and the prudent restraints imposed upon municipalities, have done much towards this change; but, in my opinion, the City of Toronto owes much of its financial superiority over other municipalities in Canada to his Worship the present Mayor.

For obtaining a recognition of the principle of a reduction of the sinking fund on municipal loans from 5 to 2 per cent.—an inestimable advantage—the whole province is his debtor. The City of Toronto is solely indebted to him for perseveringly drawing the attention of London capitalists to the intrinsic value of our municipal securities. To his personal interference, as I believe, the City was also indebted for large money accommodation from the Bank of Upper Canada on

many important occasions. I might mention numerous instances where, to my own knowledge, the Mayor has laboured for the establishment of our civic credit; and if three years' efficient and zealous exertions for the financial prosperity of the City can be appreciated, then, in my opinion at least, no man is better entitled to claim honour in that behalf than the present Mayor of the City.

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EXHIBIT A. 1.

*Being Extracts referred to in Depositions of Charles Daly, p. 90 ante.*

*Extract from The Report No. 21, of the Standing Committee on Finance and Assessment, dated 25th November, 1850 (referred to in the following Resolution).*

2nd. In the proportion as the work progresses, as one is to ten, viz., one hundred thousand pounds to be expended on the Road before any advance is made by the Corporation, then Debentures to be issued to the Contractors for ten thousand pounds, and that all future advances be made in the same proportion, to an amount not exceeding in the whole the sum of twenty-five thousand pounds.

All of which is respectfully submitted.

(Signed) JOHN G. BOWES,  
Chairman.

Committee Room,  
Toronto, 25th November, 1853.

*Extract from Minutes of Council, November 25, 1850.*

Monday, November 25, 1850.

The Council met. The Mayor took the Chair. Present:—  
Aldermen Beard, Bowes, Campbell, Dempsey and Duggan; Messrs.  
Armstrong, Ashfield, Bugg, Coulter, Davis, Dunn, James, Ritchie,  
Smith and Thompson.

Mr. Thompson, seconded by Alderman Beard, moved That it be resolved that the sum of £25,000 in Debentures, payable twenty

years after date, with interest at six per cent. per annum, payable half-yearly, be granted in aid of the Ontario, Simcoe, and Huron Railroad, on the conditions set forth in the 2nd clause of the Report No. 21, of the Standing Committee on Finances and Assessment; and in order to extend the benefits of the said Railroad to all parts of the City, it be another condition of the above grant, that the terminus for passenger trains shall be erected on a portion of the Market Block property now vacant, such portion to be leased to the Company, at a nominal rent, for ninety-nine years, and that the line of Railroad shall be carried along Palace and Front Streets to the full extent of the City Water Lots. Upon which the yeas and nays were taken as follows: Yeas—Messrs. Armstrong, Beard, Bowes, Coulter, Davis, Dempsey, Smith, Thompson, 8; Nays—Messrs. Ashfield, Bugg, Campbell, Duggan, Dunn, James, and Ritchie, 7. Carried in the affirmative, by a majority of 1.

Monday, August 18, 1851.

The Council met. The Mayor took the chair. Present:—Aldermen J. G. Beard, R. Beard, Cameron, Dempsey, Kneeshaw, Ridout, Robinson, Sheard, Thompson, Wakefield, Whittemore; Messrs. Ashfield, Beaty, Bugg, Carr, Hays, McLean, Platt, Price, Ritchie, and Smith.

The Council went into Committee on the following Report of the Select Committee, to whom the Communication of the Managers of the Ontario, Simcoe, and Huron Railroad was referred.

The Special Committee, to whom was referred the several communications of the President and Manager of the Ontario, Simcoe, and Huron Railroad Union Company, enclosing two propositions, signed by John Arnold, Esquire, as Chairman of a Meeting of a number of citizens, held in this City on the 7th instant, suggesting the manner in which this Council should assist the said Company in making good the deficiency of £35,000 in the subscription allotted to this City, and asking the concurrence of this Council in the same, in order that a work so immediately connected with the best interests of this city might at once advance to completion, beg leave to report:—

That upon the most attentive consideration given by your Committee to the propositions signed by Mr. Arnold as Chairman, and after frequent interviews with the Manager as well as with one of the Contractors of the Company, your Committee would recommend that in lieu of those propositions or either of them, this Council loan to the said Company their Debentures, to an amount not exceeding £35,000, payable in twenty years, with interest on the same, payable half-yearly, *so soon* as the Railroad is completed and ready for operation as far as Lake Simcoe, or *the navigable waters* connected therewith, taking in security for such Debentures the Bonds of the said Company to the same amount, payable in ten years, with interest half-yearly, secured on the Road, to the *satisfaction* of the City Solicitor.

And further, that it be a condition to this loan, that the road from this City to Lake Simcoe or the Holland River be completed in two years from the 1st of January next.

And further, that as long as the loan of £35,000 continues, the Mayor of this City, for the time being (if he be not a Director in any other Company) be a Director in the above-mentioned Company. If a Director in any other Company, then any Alderman of the City for the time being to be nominated by this Council to be a Director in said Company.

All which is respectfully submitted.

(Signed) JOHN BEVERLY ROBINSON, Jun.,  
Chairman.

Committee Room,  
Aug. 18th, 1851.

Upon the question that the Report be adopted,

Alderman Wakefield, seconded by Alderman Whittemore, in amendment moves, that all from the words "so soon," to the words "navigable waters thereof," inclusive, be erased, and the following substituted: "issuable in the same ratio as the Bonus of £25,000." And that between the words "satisfaction" and "of," the following

words be inserted, "of this Corporation, upon the recommendation," which was ordered.

Upon the Question that the Report as amended be adopted, the yeas and nays were taken as follows: Yeas—Messrs. Ashfield, J. G. Beard, R. Beard, Carr, Dempsey, Hayes, Kneeshaw, Ridout, Ritchie, Robinson, Thompson, Wakefield, and Whittemore, 13; Nays—Messrs. Beatty, Bugg, McLean, Platt, Rice, Sheard and Smith, 7. Carried in the affirmative, by a majority of 6.

Friday, June 11th, 1852.

The Council met. The Mayor took the chair. Present:—Aldermen Armstrong, J. G. Beard, Boulton, Brookes, Dempsey, Thompson; Councillors, Ashfield, Beatty, Bugg, Carr, Dunn, McMullen, Platt, Romain, Smith, Tully, and Wright.

A communication of the Secretary of the Ontario, Simcoe and Huron Union Railroad Company, on instalments due on account of work done on the road, was read.

Alderman Thompson, seconded by Councillor Ashfield, moves, that the Communication of the Secretary of the Ontario, Simcoe, and Huron Railroad Union Company be referred to the Standing Committee on Finance and Assessment: which was ordered.

Monday, 21st June

The Council met. The Clerk called the meeting to order. Present, Aldermen Armstrong, J. G. Beard, R. Beard, Brookes, Cameron, Dempsey, Hutcheson, Sheard, Thompson; Councillors Ashfield, Bugg, Carr, Dunn, McMullen, Lee, Platt, Smith, and Wright.

Alderman R. Beard was called to the chair.

The Standing Committee on Finance and Assessment reported the draft of a Bill to authorise the issue of Debentures in aid of the Ontario, Simcoe, and Huron Railroad.

The Bill was read a first time.

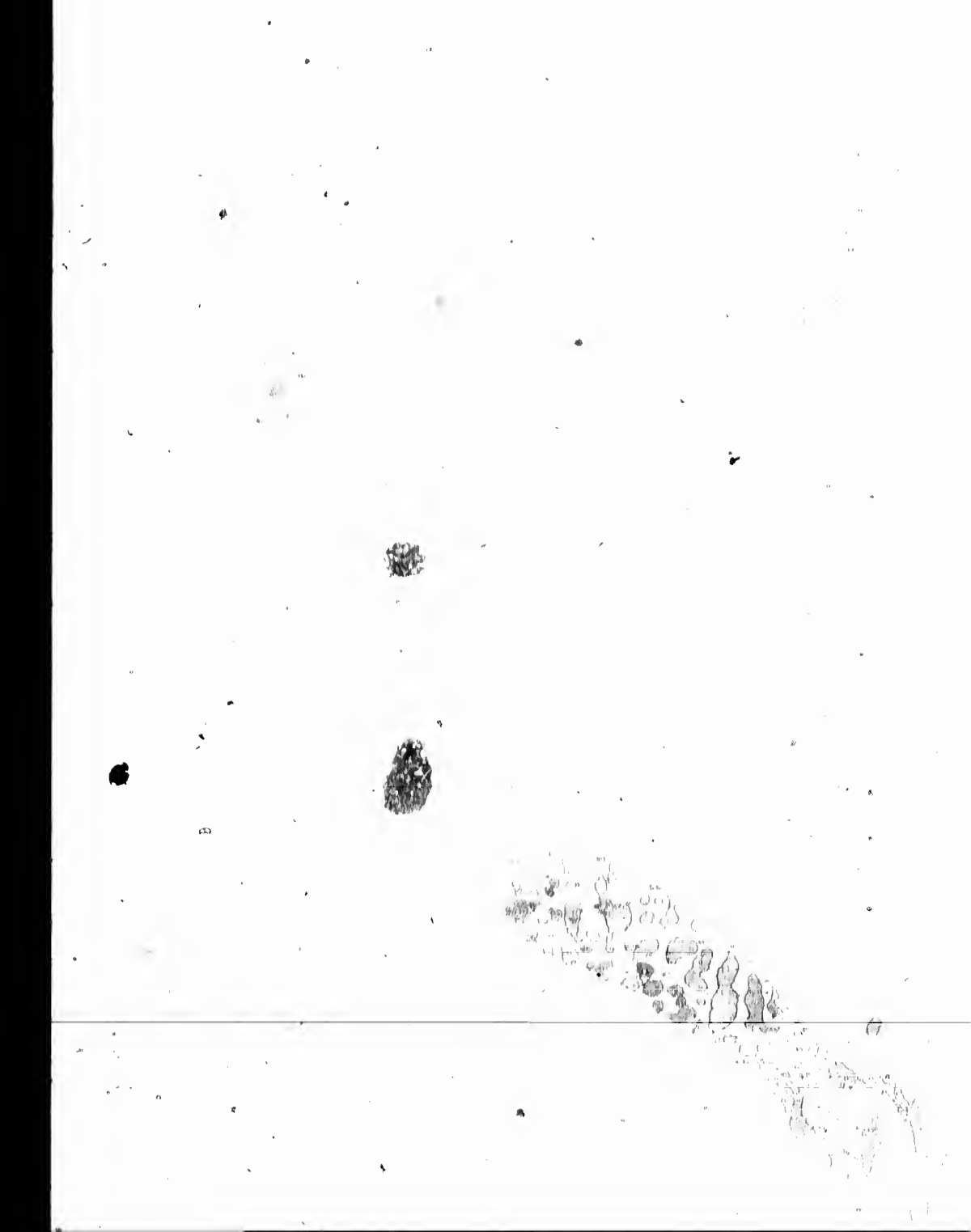
Upon the question that the Bill be read a second time to-morrow, Councillor Romain, seconded by Councillor Carr, in amendment moved that the Bill be not read a second time to-morrow, but that it be referred to a Select Committee, to consist of Aldermen Cameron, Dempsey, and Thompson, to report whether it be legal for this Council to pass such a Bill: upon which the yeas and nays were taken as follows: Yeas—Messrs. Beatty, Brooke, Bugg, Carr, Romain, and Sheard, 7; Nays—Messrs. Armstrong, Ashfield, J. G. Beard, Dempsey, Dunn, Hutcheson, Lee, McMullen, Platt, Smith, Thompson, and Wright, 11. Decided in the negative, by a majority of 4.

Upon the question that the Bill be read a second time to-morrow, the yeas and nays were taken as follows: Yeas—Messrs. Armstrong, Ashfield, J. G. Beard, Brooke, Dempsey, Dunn, Hutcheson, Lee, McMullen, Platt, Smith, Thompson, and Wright, 13; Nays—Messrs. Beatty, Bugg, Cameron, Carr, Romain, and Sheard, 6. Carried in the affirmative, by a majority of 7.

Alderman Dempsey, seconded by Alderman Beard, moves, that it be resolved that the Standing Committee on Finance and Assessment be authorised to take the opinion of such Counsel as they may think proper, in reference to the legality of passing, in its present shape, the Bill to authorise the issue of Debentures in aid of the Ontario, Simcoe, and Huron Railroad: which was ordered.

*Copy Bill.*

Whereas, on the 25th day of November, 1850, the Common Council of the City of Toronto resolved that the sum of £25,000, in Debentures, payable in twenty years after date, with interest at six per cent. per annum, payable half-yearly, be granted in aid of the Ontario, Simcoe, and Huron Railroad, in the proportion as the work progresses, as one is to ten, namely—£100,000 to be expended on the Road before any advance is made by the Corporation, then Debentures to be issued to the Contractors for £10,000, and that all future advances be made in the same proportion, to an amount not exceeding in the whole the sum of 25,000, upon the condition that the terminus for passenger trains be erected on a portion of the Market Block Property now vacant, and that the line of Railroad shall be carried



along Palace Street to the full extent of the City Water Lots. And whereas the said Common Council, on the 18th day of August, 1851, resolved to loan the Ontario, Simcoe, and Huron Railroad Union Company, City Debentures to an amount not exceeding £33,000, payable in twenty years, with interest payable half-yearly, issuable in the same ratio as the bonus of £25,000, taking as security for such Debentures the Bonds of the said Company to the same amount, payable in ten years, with interest half-yearly, secured on the Road to the satisfaction of the Council, upon the recommendation of the City Solicitor, on condition that the Road from this City to Lake Simcoe, or the Holland River, be completed in two years from the first of January next; and further, that as long as the said loan of £35,000 continues, the Mayor of the City for the time being (if he be not a Director in any other Company) be a Director in the above mentioned Company. If a Director in any other Company, then any Alderman of the City for the time being to be a Director in the said Company. And whereas by an Act of the Provincial Legislature, 13 & 14 Victoria, chapter 81, entitled, "An Act to enable the Municipal Corporation of the City of Toronto to assist in the construction of the Toronto, Simcoe and Lake Huron Union Railroad," it is enacted, that it shall and may be lawful for the Mayor, Aldermen, and Commonalty of the City of Toronto, in pursuance of any By-Law of the said Municipal Corporation, to issue Debentures to an amount not exceeding £100,000, nor in sums less than £5 each, for and towards assisting in the construction of the proposed Railroad of the said Company, and to provide for or secure the payment thereof in such manner and way as to the said Municipal Corporation shall seem proper and desirable.

Be it therefore enacted by the Mayor, Aldermen, and Commonalty of the City of Toronto :

1st. That it shall and may be lawful for the Mayor and the City of Toronto to cause any number of Debentures to be made out, not exceeding in the whole the sum of £60,000, and to cause such Debentures to be issued to the Ontario, Simcoe, and Huron Railroad Union Company, in the proportion specified in the before recited Resolution, as the said Road progresses.



2nd. That of the said sum of £60,000, the sum of £25,000 shall be as a gift to aid in the construction of the said Road; and the remaining £35,000 shall be as a loan to the Ontario, Simcoe, and Huron Railroad Union Company. And for the securing the repayment of the said loan in ten years with interest at the rate of six per cent. per annum, payable half-yearly, the said Company shall give to the City of Toronto their Bonds secured upon the said Road to the amount of such Debentures from time to time issued to the said Company on account of the said loan.

3rd. That all such Debentures shall be under the common seal of the said City, signed by the Mayor for the time being, and countersigned by the Chamberlain for the time being of the said City of Toronto, and shall bear interest at the rate of six per cent. per annum, payable half-yearly, at the Bank of Upper Canada, and all such Debentures shall be redeemable at the Bank of Upper Canada. Provided always, that none of the said Debentures shall be for a less sum than £25, nor payable at a more remote period than twenty years from the issue thereof.

4th. That the interest on the said Debentures shall be and the same is hereby charged and chargeable, and shall be paid and borne out of the monies which shall come into the hands of the Chamberlain of the said City for the time being, to and for the uses of the said City.

5th. That for the payment and redemption of the principal sum secured by the said Debentures, there shall be raised, levied and collected in the year next before such Debentures respectively fall due, an equal rate in the pound upon the assessed value of all rateable property in the said City of Toronto and Liberties thereof, over and above all other rates and taxes whatsoever, sufficient to pay the principal sum secured by such Debentures so respectively falling due as aforesaid, unless otherwise provided for by the repayment of the said loan or any part thereof by the Ontario, Simcoe and Huron Railroad Union Company, or by act of the Mayor, Aldermen, and Commonalty of the City of Toronto, authorising the issue of other debentures in lieu thereof, in that behalf duly made and enacted.

Monday, June 28th, 1852.

The Council met. The Mayor took the chair. Present, Aldermen Armstrong, J. G. Beard, R. Beard, Boulton, Brooke, Dempsey, Sheard, Thompson; Councillors Ashfield, Beatty, Bugg, Carr, Dunn, McMullen, Lee, Platt, Romain, Smith, Tully, Wright.

Alderman Thompson, seconded by Councillor McMullen, moves, that the Bill to authorise the issue of Debentures in aid of the Ontario, Simcoe and Huron Railroad be read a second time forthwith, and that the order of the day be dispensed with, so far as relates to this motion; which was ordered. The Bill was read a second time. The Council resolved itself into a Committee of the whole on the Bill, Councillor McMullen in the chair.

The Committee rose. Councillor McMullen reported that the Council had adopted the Bill without amendments.

The Report was read. The report was adopted.

Upon the question that the Bill be engrossed and read a third time to-morrow, Alderman Thompson, seconded by Councillor McMullen, moves that the Bill to authorise the issue of Debentures in aid of the Ontario, Simcoe and Huron Railroad be read a second time forthwith, and that the order of the day be dispensed with, so far as relates to this motion: which was ordered.

The Bill was read a second time.

The Council resolved itself into a Committee of the whole on the Bill: Councillor McMullen in the chair.

The Committee rose. Councillor McMullen reported that the Committee had adopted the Bill without amendments.

The Report was received. The Report was adopted.

Upon the question that the Bill be engrossed, and read a third time to-morrow, Alderman Thompson, seconded by Councillor McMullen, in amendment moves, that the Bill be engrossed, and read

Armstrong, Ashfield, J. G. Beard, R. Beard, Beaton, Brooke, Dempsey, Dunn, Lee, McMullen, Platt, Romain, Smith, Thompson, Tully, and Wright, 16; Nays—Messrs. Bugg, Carr, and Sheard, 3. Carried in the affirmative by a majority of 13.


The Bill did pass, and was signed accordingly.

Alderman Thompson, seconded by Alderman Dempsey, moves that the Bill be entitled; "An Act to provide for the issue of Debentures, to the extent of £60,000, in aid of the Ontario, Simcoe, and Huron Union Railroad; which was ordered.

*Special Meeting.*

Thursday, July 29th, 1852.

The Council met in pursuance to special summons, issued by the order of his Worship the Mayor. The Mayor took the chair. Present, Aldermen Armstrong, J. G. Beard, R. Beard, Brooke, Dempsey, Sheard, Thompson; Councillors Ashfield, Bugg, Dunn, Lee, McMullen, Platt, Romain, Smith, Tully and Wright.



Alderman Thompson, seconded by Alderman J. G. Beard, moves that the Council do now resolve itself into a Committee of the whole, on the communication of his Worship the Mayor, which was ordered.


The Council resolved itself into a Committee of the whole on the communication: Councillor Bugg in the chair.

The Committee rose. Councillor Bugg reported that the Committee had adopted a resolution.

The Report was received.

The Resolution was read as follows:—

“Whereas his Worship the Mayor has informed this Council that the Contractors of the Ontario, Simcoe, and Huron Union Railway Company have accepted a proposition made by him, subject to the approbation of this Council, in view of the difficulties which have arisen in the execution of a Mortgage Bond by way of security for the loan of \$25,000 sanctioned by this Council to the effect that



vided that no legal difficulty shall occur in carrying out this resolution; and provided also that no alteration shall take place in the conditions upon which a portion of the Market Block was granted to the said Company, particularly with regard to carrying the Railroad to the eastern limits of the City Water Lots.

Upon the Question that the Resolution be adopted, the yeas and nays were taken as follows: Yeas—Messrs. Armstrong, Ashfield, J. G. Beard, Bugg, Dempsey, Lee, McMullen, Platt, Romain, Sheard, Smith, Thompson, Tully, and Wright, 14; Nays—Messrs. R. Beard, Brooke, and Dunn, 8. Carried in the affirmative by a majority of 11.

Monday, August 23, 1852.

The Council met. The Mayor took the chair. Present, Aldermen Armstrong, J. G. Beard, Brooke, Dempsey, Hutchison, Sheard, Thompson; Councillors Ashfield, Beatty, Bugg, Dunn, Lee, McMullen, Platt, Romain, Smith, Tully, Wright.

The Clerk read the minutes of the 16th, 17th, and 19th instant.

Alderman Thompson, seconded by Alderman J. G. Beard, moves, that the communication of the Chief Engineer of the Ontario, Simcoe and Huron Union Railway be referred to the Standing Committee on Finance and Assessment, with authority to direct the issue of Debentures, in accordance therewith, on the same security as those last issued on behalf of the said Railroad. Upon which the yeas and nays were taken as follows: Yeas—Messrs. Armstrong, Ashfield, J. G. Beard, Dempsey, Hutchinson, Lee, McMullen, Romain, Smith, Thompson, Tully, and Wright, 12; Nays—Messrs. Beatty, Brooke, Bugg, Dunn, and Sheard, 5. Carried in the affirmative by a majority of 7.

Alderman Thompson, seconded by Alderman Dempsey, moves that the Standing Committee on Finance and Assessment be authorised to prepare and forward to the Legislature a Petition and draft of a Bill to provide for the issue of £100,000 in Debentures, to meet the sum of £50,000, voted for the Ontario, Simcoe, and Huron Union Railroad, as well as £50,000 required to form a fund to consolidate

the outstanding City Debt, and that the 21st rule of this Council and the order of the day be dispensed with, so far as relates to this motion; which was ordered.

*Special Meeting.*

Friday, August 27th, 1852.

The Council met. The Mayor took the chair. Present, Aldermen Armstrong, J. G. Beard, Brooke, Dempsey, Hutchinson, Thompson; Councillors, Ashfield, Bugg, Lee, Platt, Romain, Smith, Tully, and Wright.

His Worship the Mayor stated that he had called this meeting for the purpose of receiving the Report of the Standing Committee on Finance and Assessment, upon the subject of the Petition to the Legislature for an Act to authorise the issue of Debentures for £100,000, to consolidate the debt of the City, and the Report of the Select Committee on Amendments to the Municipal Corporations Act, and the Amendments thereto.

The Standing Committee on Finance and Assessment reported the draft of a Petition to the Legislature, praying for authority to issue Debentures for £100,000, to pay the Debentures issued in favour of the Ontario, Simcoe, and Huron Union Railroad, and to redeem the City Notes and Debentures falling due within the next ten years, which was received and read, and was adopted, and is as follows:—

To His Excellency, &c. :

*The Petition of the City of Toronto.*

Humbly sheweth,—

That your petitioners are desirous of withdrawing at once from circulation certain promissory notes of your petitioners now current throughout the Province, and also to provide for the redemption of certain debentures falling due within the next ten years, which promissory notes and debentures were issued by your petitioners to forward the public improvements of the City of Toronto previous

to the passing of the Municipal Corporation Act, and amount together to the sum of fifty thousand pounds.

That your petitioners being desirous of aiding the Ontario, Simcoe, and Huron Railroad, a work of great importance to the prosperity of the City, agreed to make a grant to the Company, incorporated for the purpose of building the said road, of the sum of £25,000, and to lend to them the further sum of £35,000, in Debentures of the City of Toronto, which latter sum was to be secured upon the said road by mortgage or otherwise. That a By-law was passed by your petitioners authorising the issue of debentures to the extent of £60,000 for the said purposes in proportion to the progress of the work, and under certain restrictions, and an advance of part thereof in the proportion agreed upon was made under the said By-law, when it was suggested that the security required to be given upon the said Rail Road for the said loan of £35,000 would materially interfere with the operations of the Rail Road Company hereafter, and might impede the final completion thereof, and a new arrangement was entered into between your petitioners and the said Company, by which the said grant of £25,000 was surrendered, and the agreement for the said loan of £35,000 cancelled upon condition that your petitioners should become the *bona fide* holders of the stock in the said Rail Road Company to the amount of £50,000, to be paid for by debentures in the same proportion and subject to the same conditions as the said grant and loan.

That for the purpose of effecting the foregoing objects your petitioners are desirous of raising a loan not exceeding the sum of £100,000 upon the debentures of the said City, and providing for the redemption thereof by a sinking fund of two per cent. per annum, and to enable your petitioners more readily to negotiate the said debentures it is desirable that the amount thereof and the interest accruing thereon should be made payable at the place where the same may be negotiated.

Your petitioners would therefore humbly pray your Excellency to grant the Royal assent to a Bill authorising your petitioners to make the said loan of £100,000, and issue debentures for the same, payable

in London or elsewhere as may be deemed advisable, and to provide for the redemption thereof by a sinking fund of two per cent. per annum.

And your petitioners as in duty bound will ever pray.

Alderman Thompson, seconded by Councillor Romain, moves that the petition be engrossed, signed by His Worship the Mayor, and sealed with the seal of the City, and that the Clerk of the City do transmit the same to W. H. Boulton, Esq., M.P.P., with a request that he will lay the same before the Legislature forthwith, and that G. P. Ridout, Esquire, M.P.P., be requested to support the same; which was ordered.

Monday, September 13, 1852.

The Council met.

A communication from Wm. H. Boulton, Esq., M.P.P., acknowledging the receipt of the Petition of the Council was read. A communication from Geo. P. Ridout, Esq., M.P.P., acknowledging the receipt of the Petition of the Council was received and read, &c.

Monday, October 11, 1852.

The Council met. The Mayor took the chair. Present, Aldermen Armstrong, J. G. Beard, Beard, Brooke, Dempsey, Hutchinson, Sheard, Thompson; Councillors Ashfield, Beatty, Bugg, Carr, Dunn, Lee, McMullen, Platt, Romain, Smith, Tully, Wright.

The Standing Committee on Finance and Assessment reported the draft of a Bill to authorise a loan of £100,000. The Bill was read a first time. Upon the question that the Bill be read a second time tomorrow: it was ordered.

*Copy Bill.*

Whereas, by a certain By-law passed on the 28th day of June, 1852, entitled "An Act to provide for the issue of debentures to the extent of £60,000 in aid of the Ontario, Simcoe, and Huron Rail Road Union Company"; after reciting that whereas on the twenty-fifth day of November, 1850, the Common Council of the City of



Toronto resolved that the sum of £25,000, in debentures payable 20 years after date, with interest at 6 per cent. per annum, payable half-yearly, be granted in aid of the Ontario, Simcoe, and Huron, Railroad, in the proportion as the work progresses, as one is to ten, namely—£100,000 to be expended on the Road before any advance is made by the Corporation, then Debentures to be issued to the Contractors for £10,000, and that all future advances be made in the same proportion, to an amount not exceeding in the whole the sum of £25,000, upon the condition that the terminus for passenger trains be erected on a portion of the Market Block Property now vacant, and that the line of Railroad shall be carried along Palace Street and Front Street, to the full extent of the City Water Lots. And whereas the said Common Council, on the 18th day of August, 1851, resolved to loan the Ontario, Simcoe, and Huron Railroad Union Company, City Debentures to an amount not exceeding £35,000, payable in twenty years, with interest, payable half-yearly, issuable in the same ratio as the bonus of £25,000, taking as security for such Debentures the bonds of the said Company to the same amount, payable in ten years, with interest half-yearly, secured on the said Road to the satisfaction of the said Council, upon the recommendation of the City Solicitor, on the condition that the road from this City to Lake Simcoe on the Holland River be completed in two years from the 1st January next; and further, that as long as the said loan of £35,000 continues, the Mayor of the City for the time being (if he be not a Director in any other Company, but if he be a Director in any other Company, then any Alderman of the City for the time being to be nominated by the Council) to be a Director in the said Company. And whereas by the Act of the Provincial Legislature, 13 & 14 Vic. chap. 81, entitled, "An Act to enable the Municipal Corporation of the City of Toronto to assist in the construction of the Toronto, Simcoe, and Lake Huron Union Railroad," it is enacted that it shall and may be lawful for the Mayor, Aldermen, and Commonalty of the City of Toronto, in pursuance of any By-law of the said Municipal Corporation, to issue Debentures to an amount not exceeding £100,000, nor in sums less than £5 each, for and towards assisting in the construction of the proposed Railroad of the said Company, and to provide for or secure the payment thereof, in such manner and way as to the said Municipal Corporation shall seem proper and desirable. It was enacted, That

it shall and may be lawful for the Mayor of the City of Toronto to cause any number of Debentures to be made out, not exceeding in the whole the sum of £60,000, and to cause such debentures to be issued to the Ontario, Simcoe, and Huron Railroad Union Company, in the proportion specified in the before recited resolution, as the work on the said Road progresses. That of the said sum of £60,000, the sum of £25,000 shall be as a gift to aid in the construction of the said Road, and the remaining £35,000 shall be as a loan to the Ontario, Simcoe, and Huron Railroad Union Company: and for the securing the repayment of the said loan in ten years, with interest at the same rate of six per cent. per annum, payable half-yearly, the said Company shall give to the City of Toronto their Bonds, secured upon the said Road, to the amount of such Debentures from time to time issued to the said Company on account of the said loan. That all such Debentures shall be under the Common Seal of the said City, signed by the Mayor for the time being, and countersigned by the Chamberlain for the time being of the said City of Toronto, and shall bear interest at the rate of six per cent. per annum, payable half-yearly, at the Bank of Upper Canada, and all such Debentures shall be redeemable at the Bank of Upper Canada. Provided always, that none of the said Debentures shall be for a less sum than £25, nor payable at a more remote period than twenty years from the issuing thereof. That the interest on the said Debentures shall be, and the same is hereby charged and chargeable, and shall be paid and borne out of the moneys which shall come into the hands of the said Chamberlain of the said City of Toronto for the time being, to and for the uses of the said City. That for the payment and redemption of the principal sums secured by the said Debentures, there shall be raised, levied, and collected, in the year before such Debentures shall respectively fall due, an equal rate in the pound on the assessed value of all rateable property in the said City of Toronto and Liberties thereof, over and above all other rates and taxes whatsoever, sufficient to pay the principal sum secured by such Debentures so respectively falling due as aforesaid, unless otherwise provided for by the repayment of the said loan or any part thereof by the Ontario, Simcoe, and Huron Railroad Union Company, or by the Mayor, Aldermen, and Commonalty of the City of Toronto, authorising the issue of other Debentures in lieu thereof, in that behalf duly made and enacted.

And whereas, since the passing of the said By-law, the following Resolution was on the 20th day of July, 1852, adopted by the Common Council of the said City of Toronto:—

Whereas his Worship the Mayor has informed this Council that the Contractors of the Ontario, Simcoe, and Huron Railroad Union Company have accepted a proposition made by him, subject to the approbation of this Council, in view of the difficulties which have arisen in the execution of a Mortgage Bond, by way of security for the loan of £35,000, formerly voted by this Council, to the effect that the Contractors shall surrender the grant of £25,000, made by this Council, and transferred to such Contractors in part payment of their contracts, and also that the Directors shall waive the aforesaid loan of £35,000 altogether, on condition that in lieu thereof this Council will take Stock to the amount of £50,000, to be paid by the issue of City Debentures, in the same proportion as the above loan and grant were authorized to be issued.

Be it therefore enacted, that the Standing Committee on Finance and Assessment be authorised to complete such arrangements, provided that no legal difficulties shall occur in carrying out this Resolution, and provided also that no alteration shall take place in the conditions upon which a portion of the Market Block was granted to the said Company, particularly with regard to carrying the Railroad to the eastern limits of the City Water Lots.

And whereas the said Contractors have, by an instrument under their hands and seals, dated the 14th day of October, 1852, duly surrendered such grant of £25,000, and released all right and title thereto, and the said Ontario, Simcoe, and Huron Railroad Union Company have by an Instrument under the Corporate seal, dated the 14th day of October, 1852, released all right or claim to the grant, and also to the said loan of £35,000.

Be it therefore enacted by the Mayor, Aldermen, and Commonalty of the City of Toronto—

1st. That it shall and may be lawful for the Mayor of the City of Toronto, and for the payment of the same, it shall and may be

lawful, and it shall be the duty of the said Mayor for the time being of the said City to appropriate so much and so many of the said Debentures authorised to be issued under the provisions of the By-law hereinbefore recited, as may be requisite and necessary for that purpose, and that the said Debentures shall be issued by him for that purpose at the times and in the same proportions as is provided by the By-law herein before recited; subject, however, to the same conditions relative to the passenger terminus of the said Railroad and the continuance of the said Railroad along Front and Palace Street as are contained in the recital of the said By-law, and the Resolutions of the Common Council of the 29th day of July last.

That the Dividends from time to time paid and payable upon the stock so held by the said Mayor on behalf of the said City of Toronto in the said Ontario, Simcoe and Huron Railroad Union Company shall be applied by the Chamberlain of the said City in such manner as by resolution of the Common Council of the said City of Toronto may from time to time be directed.

Monday, October 18th, 1852.

The Council met. The Mayor took the chair. Present, Aldermen Armstrong, J. G. Beard, R. Beard, Brooko, Dempsey, Sheard, Thompson. Councillors Ashfield, Beatty, Bugg, Carr, Dunn, Lee, McMullen, Platt, Romain, Smith, Tully, and Wright.

Alderman Thompson, seconded by Alderman J. G. Beard, moves that the Council do now resolve itself into a Committee of the whole on the Bill to authorise the taking of Stock in the Ontario, Simcoe, and Huron Union Railroad, and that the order of the day be suspended so far as relates to the same; which was ordered.

The Council resolved itself into a Committee of the whole on the Bill, Councillor Dunn in the chair.

The Committee rose. Councillor Dunn reported that the Committee had adopted the Bill, with amendments. The Report was received. The Report was adopted. Upon the question that the Bill be engrossed, and read a third time to-morrow, Alderman

Thompson, seconded by Alderman Dempsey, in amendment moves that the Bill be engrossed, and read a third time this day, and that the 31st rule of this Council be dispensed with, so far as relates to this motion; which was ordered.

The Bill was read a third time.

Upon the question that the Bill do pass, and be signed by the Mayor; it was ordered.

The Bill did pass, and was signed accordingly.

Alderman Thompson, seconded by Councillor Romain, moves that the Bill be entitled "An Act to authorise the Mayor to subscribe for 10,000 shares in the stock of the Ontario Simcoe and Huron Railroad Union Company, on behalf of the City of Toronto;" which was ordered.

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#### EXHIBIT A. 2.

*This is the Exhibit marked A. 2, referred to in the evidence of Charles Daly: being opinion of Mr. Hagarty.*

*City of Toronto Debentures in aid of Toronto, Simcoe, and Huron Railroad Company.*

By the General Municipal Act 12 Vict. ch. 81, sec 177, Corporations are bound to assess their whole rateable property in a sufficient annual sum "to pay all debts incurred, or which shall be incurred, with the interest which shall fall due or become payable within the year, and no By-law thereafter to be passed for the creation of any such debt shall be valid unless a special rate sufficient to pay it off in twenty years be provided," &c.

The Ontario, Simcoe, and Huron Railroad Company are chartered by 12 Victoria, ch. 199, amended by 13 & 14 Victoria chap. 131.

By the 13 & 14 Victoria, chapter 81, the Corporation of Toronto are empowered, "in pursuance of any By-law of said Municipal



Corporation, in the name or on the credit and behalf of said Municipal Corporation, to issue Debentures to an amount not exceeding £100,000, and for and towards assisting in construction of the proposed Railway, and to provide for or to secure the payment thereof in such manner and way as to said Municipal Corporation shall seem proper and desirable," &c.

The 14 & 15 Victoria, ch. 109, section 4, (passed August, 1851,) declares what shall be set forth in every By-law to be thereafter passed for creating a debt or contracting a loan upon the credit of the county, city, &c. Section 16 enacts that no By-law for creating any debt, or contracting any loan under the 177th section of 12 Victoria, ch. 81, shall be passed, except at a meeting of Council, specially called for considering same, and held at least three months after copy of proposed By-law, &c., shall have been published as directed, in newspapers.

I am instructed that it is now proposed to pass a By-law, granting £25,000 of City of Toronto Debentures, or some larger sum, in aid of the Railway Company, pursuant to certain resolutions and proceedings of the Municipality. I am of opinion that the formalities prescribed by the Act of last Session, 14 & 15 Vict., ch. 109, must be duly observed. That the Act authorising the Corporation to advance its funds or lend its credit to the Railway, requires them to do so by a By-law to be thereafter passed, and in no way, according to my judgment, dispenses with any formalities then required to constitute a good By-law.

Before any By-law was actually passed, the Act of last Session specially forbids any By-law to be passed "for creating any debt or contracting any loan," under the 177th section of the 12 Vic. ch. 81, unless at a special meeting, after three months' notice and advertising.

It may be urged, that this issue of Debentures would not be under this 177th section, but under the Act of 13 & 14 Victoria, ch. 81.

In my judgment, all debts created by Municipal Corporations, and for which debentures are issued on time, are governed by this 177th section, as modified by subsequent acts.

The Act enabling the Corporation to aid the Railroad, merely allows them to avail themselves of their corporate power and credit in raising money for this particular object, which without the leave of the Legislature might not possibly have been within their legitimate powers. The Corporation must still, I consider, pass their Bylaws for this object with all the legal formalities now required in ordinary cases.

According to my view of the law as above stated, the proposed By-law would certainly be invalid.

I consider that all debts created by Municipalities must be secured by special rates, and that all By-laws for such purposes should be made in accordance with the provisions of the act of last Session, 14 & 15 Victoria, ch. 109, sec. 4.

This directs, "that in any By-law to be hereafter passed by any Municipal Corporation for creating a debt or contracting a loan upon the credit of such Municipality, there shall be set forth by way of preamble, 1st, the amount of such debt or loan, &c.;" "2ndly, the amount required to be raised annually," &c., and so on, as there directed.

I think this affects and applies to *all* By-laws for creating debts; and the words in the Act empowering the City to assist the Railroad "and to provide for or secure the payment thereof in such manner and way as to the said Corporation shall seem proper and desirable," do not empower the City to create a debt except on the security of special rates, and as controlled by the general Municipal Acts. "In such manner and way," means, I think, "in such amounts, and on such terms of payment and redemption," &c.

The Legislature compels all Corporations not to incur a debt, except on providing a special rate for its sure redemption, and I cannot believe it is lawful to depart from such a condition, on any authority of the Act allowing them to assist the Railroad.

If the By-law be quashed by the Courts of Law for illegality, Debentures issued under its authority would, I presume, fall with it.



"The "consequences" are to be regarded more in a commercial than a legal view.

The Corporation of Toronto would doubtless promptly rectify any error by them committed, and would, by passing a By-law in accordance with the Statute, protect the Debenture holders.

(Signed) JOHN H. HAGARTY.

Church Street,

June 24, 1852.

In forming this opinion I have not overlooked the language of several Acts of last session, bearing on the general question. The 14 & 15 Vic. 73 (the Maine Trunk Line Act) by section 6, after issue of a particular proclamation by the Governor General, allows Municipalities to subscribe for stocks in this line (a line from Quebec to Burlington Bay) without imposing a special rate in the By-law. The Ontario, Huron, and Simcoe Line is declared by that Act as not forming part of the Main Trunk, although entitled to Provincial guarantee. 14 & 15 Victoria, ch. 124, allows Municipalities to contract debts to her Majesty for the purchase of any Public Works, without imposing a special rate, under the 177th Section of 12 Victoria, ch. 81.

Again, the Railway Consolidation Act, 14 & 15 Victoria, ch. 51, sec. 18, allows Municipalities to take stock, lend money, or guarantee Company's Debentures, and to assess and levy from time to time a sufficient sum to discharge the debt so contracted. This is not to be done till assented to by a majority of qualified electors.

I do not think anything in this last Act can over-ride the imperative words of the Act of same session, 14 & 15 Victoria, ch. 109; and it is worthy of note, that this Act, sect. 4, directs that the special rate to pay interest and sinking fund shall be ascertained, "irrespective of any income, whether in the nature of tolls, interest, or dividends, to accrue or be derived from any Public or Corporation work, or any stock, shares, or interest in any such work in or upon which such debt or loan shall or may by such Municipal Corporation be invested or applied."

It may be also remarked, that this last Act re-enacts, in a stringen form the 177th sec. of 12 Vict. ch. 81.

(Signed) JOHN H. HAGARTY.

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EXHIBIT A. 3.

*This is the Exhibit marked A. 3, referred to in the evidence of Charles Daly: being opinion of Mr. Mowat.*

I think that both the publication referred to in the Upper Canada Municipal Council Amendment Act of 1851 (14 & 15 Vic, c. 109, s. 16), and the special rate required by the 177th section of the statute 12 Victoria c. 81, as amended by the subsequent statutes, are absolutely necessary to give validity to any By-law that may be passed by the Corporation of the City, under the Act enabling the Corporation to assist the Northern Railroad (13 & 14 Vic. c. 81.)

The last mentioned statute authorises the Corporation to issue Debentures for the purpose thereof mentioned, "and to provide for or secure the payment thereof in such manner and way as to the said Municipal Council shall seem proper and desirable."

Now this language would certainly seem to vest in the Corporation an unshackled discretion as to the manner of providing for or securing the payment of the Debentures which the statute authorises them to issue: but while the language would admit of that interpretation, I cannot say it is clearly susceptible of no other. The discretion may possibly have reference to the manner of *paying*, and not to the manner of *providing for* or *securing* the payment; or may refer to a providing for or securing the payment by any *additional* means the Corporation should think proper: that is, by any means in addition to those which the 177th section of the Act of 1849 requires to be provided in every By-law; just as, for example, by the Corporations Amendment Act of 1851, s. 4, it is expressly provided that the special rate, &c. should be ascertained, irrespective of any income, whether in the nature of tolls, interest or dividends, to accrue from any public work in or upon which a debt or loan should be invested or applied; and as section 6 of the same statute provides that Cor-

porations may apply any moneys not otherwise appropriated, and also any other moneys which they may think fit by any additional rate to raise, levy and collect, to the payment of any debt or loan. See also section 11.

Now I think, that under the circumstances which I will mention, since the language of the 14 & 15 Vic. c. 81, is susceptible of another meaning than one that would confer an unfettered discretion on the Corporation for the payment of the Debentures, it follows that such a discretion is *not* conferred by that statute.

The meaning of a statute is to be sought for in the language of the statute itself, but with reference to any other statutes that may throw light on the intention of the Legislature. First, then, it is to be observed, that in some other statutes, when the Legislature intended to authorise debts to be contracted under By-laws which should not provide for the payment of them in the manner required by the said 177th section, express provisions to that effect have been introduced (14 & 15 Vic. c. 73, s. 6 and c. 124). Such an intention is thus plainly expressed elsewhere. If it existed in the present case, it is not unreasonable to suppose it would have been plainly expressed here also. Then it is remarkable that there is no provision, in the Act 14 & 15 Vic. c. 81, forbidding the Corporation's repealing any By-law that might be made under that statute to provide for or secure the payment of the Debentures issued under it. Yet the Legislature evidently considers it of essential importance that Municipal Corporations should not have the power of repealing By-laws which provide for the payment of their debts, until such debts are paid or discharged, or in certain cases until a new By-law is substituted for the old one, with the sanction of the Governor in Council, (see 12 Vic. c. 81, sec. 178; 14 and 15 Vic. c. 109, s. 2, 6, 10, 12, 13, 15; and 14 & 15 Vic. c. 124, sec. 2). Yet if the 177th section of the Act of 1849 does not apply to the statute in question now, I think it clear that the 178th would not; and I do not see anything that would prevent the Corporation from at any time repealing their By-law before payment of the debt, and without substituting any other security.

I think that a construction of the statute in question (14 & 15 Vic. c. 81) which would involve this consequence, is only to be received if the language clearly excludes every other interpretation whatever; and I think therefore that the omission to provide against the repeal of the By-Law must be taken to have arisen from the 177th and 178th sections of the Corporations Act, being considered and intended by the Legislature to be applicable to such By-law, and from a special provision in the subsequent Act (14 & 15 Vic. c. 81) against such repeal being therefore unnecessary.

Again, the language of the 177th sec. referred to as contained in the original Act, is very general. After enacting that a sufficient sum should be levied in each year to pay all debts incurred within the year, it proceeds thus: "No By-law hereafter to be passed for the creation of any such debt, or for the negotiation of any loan, shall be valid or effectual to bind any such Municipal Corporation, unless a special rate, &c., shall be settled in such By-law \* \* \* and it shall not be competent to any Municipal Corporation to repeal such By-law, or to discontinue such rate, until the debt so to be incurred and the interest thereon shall be fully paid." The section as amended is no less general than the clause stood originally.

Then, the Municipal Corporations Amendment Act of 1851, sec. 4, enacts thus, "In every By-law hereafter to be passed by any Municipal Corporation \* \* \* for creating a debt or contracting a loan \* \* \* there shall be recited or set forth by way of preamble," amongst other things, "the amount to be raised annually according to the 177th section of the Upper Canada Municipal Corporations Act of 1849, as a special rate for the payment of such debt or loan, and the interest thereof, within the time thereby limited," &c.

This clause evidently, if it does not imply that every By-law for creating a loan or contracting a debt was *already* by law subject to the 177th section, at all events in effect enacts that every By-law for the purposes therein mentioned, should *for the future* be subject to the provisions of the 177th section; and indeed almost every clause of the Amendment Act of 1851, from the 1st to the 22nd, implies that the Legislature considered that every debt or loan by a

Corporation was subject to the provisions of the 177th section. I think the Debentures issued under a By-law passed without the publication, and without the provisions for the special rate referred to, would be wholly void—no better than so much waste paper, and I think they would be so, even though no application were made in time to quash the By-law.

O. MOWAT,

June 28, 1852.

EXHIBIT M.

*This is the Exhibit "M," Referred to in examination of T. G. Ridout, Esq., on the 16th December, 1853, being extracts of Letters from Mr. Hincks to Mr. Ridout.*

Quebec, 5 July, 1852.

Private and confidential.

My dear Cashier,—I am very anxious to obtain a temporary loan from the Bank of U. C. for a pretty large amount, and I must explain fully the circumstance to you in confidence. I am joining Bowes in the purchase of some City of Toronto Debentures, the amount of which is £24,000, and on which we want an advance of 80 per cent. or £19,200. I have every confidence that I shall obtain the amount from Glynn & Co., of London, and have authority to draw in about thirty days. I did not expect that the City would issue its Bonds so soon. \* \* \* "He would give Bowes the money. Now I have such a lot of enemies, that if ever it came out that I had an interest in the loan, nothing would persuade the public that there was not some secret condition for my personal advantage. I think you advanced to the Great Western with no greater margin, and you may rely on this being a very short loan under any circumstances. It will be an advantage to you to get the exchange. \* \* \* I need not say another word, for I am sure you will manage this for me if you can. \* \* \* I shall tell Bowes to see you in confidence.

Private.

Quebec, 6th July, 1852. [Should be 6th Aug.]

My dear Sir,—I find that I am likely to be interested in the £50,000 of City Bonds issued for the Railway Company, as under the new arrangement only £50,000 instead of 60,000 are to be issued, which at 80 per cent. would give £40,000. I therefore want £20,800 more than you have already agreed to. I have, however, written to say that I will wait *the mail* due to-morrow before writing to you, because I expect a letter from Glynn on the subject of the advances, and I feel very sanguine I shall get it; if so, all will be straight. If they refuse, I will try and stave off till next Saturday's mail (over mail arrives on Saturday) when I shall have other letters on the subject."

Private.

Quebec, 9th August, 1852.

My dear Sir,—I enclose Messrs. Glynn's letter, by which you will see I am authorised to draw for £15,000 sterling. I leave it to yourself to say what premium you will give. I am sure you will do what is fair. I have also authority to draw on Peter Buchanan for £500, at 60 d's, the other may be 30—I presume. I do not think it necessary to write further. Their object of course was to give me a credit in your Bank, which is not necessary. I must get you to advance the remainder of the £50,000, which at 80 will be £40,000 in all.

The draft for £15,000 will nearly pay your present advance; and I have every confidence that if you wish it, I can get another £15,000, especially if you recommend the operation. I will wait your advice by telegraph whether to press for the other £15,000 or be satisfied with what they propose; perhaps it is better to try them. I have every confidence that I shall not want the advance for more than two or three months, perhaps not so long; meantime I must get the balance of the £40,000, so as to secure the £50,000 of Bonds which have been or will be deposited with you, by Mr. Cotton or Mr. Bowes. Will you telegraph me on receipt what you will allow for the exchange; what I am to do with it, whether to give it to Bradshaw,

or send it to you? It will be necessary for you to advise having received Debentures to the extent of 80 per cent. on the amount advanced, and I will take the responsibility of drawing for more than £15,000, so as to make the currency in an even sum. You have already I think £24,000 of Bonds; this at 80 per cent. would be £19,200, and the draft may be for what will produce that sum. I am sure there will be no objection.

*Postscript to Letter of 27th of September, 1852, addressed by Mr. Hincks to Mr. Ridout.*

I have authority to draw on Glynn for £5,000 more, same way as before.

F. H.

COPY.

*Mr. Hincks to Mr. Ridout.*

Quebec, 22nd October, 1852.

My dear Sir,—I believe I did not answer your last letter, which I ought to have done, to explain that it is on the 1st of coming December that the first half is payable at Masterman's, and the second on 1st of April following. The whole issue may I presume be sent to Glynn & Co. I shall know in a post or two whether Masterman will accept, payable on 1st April: but after all it is of little importance.

Believe yours very truly,

F. HINCKS!

T. G. Ridout.

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It is not thought necessary to print the Bills of Exchange, being the Exhibits referred to in that behalf in the defendant's depositions, p. 42. They are all payable to the defendant individually.

## IN CHANCERY.

CITY OF TORONTO v. BOWES.

1853.

|            |   |   |   |   |   |       |              |    |   |
|------------|---|---|---|---|---|-------|--------------|----|---|
| February 5 | - | - | - | - | - | £3372 | 9            | 11 |   |
| April 4    | - | - | - | - | - | 743   | 7            | 4  |   |
|            |   |   |   |   |   |       | <u>£1115</u> | 17 | 5 |

The above are the principal sums and dates of receipt in question in this cause, taken from the books of Bowes & Hall, which are taken to be correct as above, for the purposes of the Decree, without further evidence. This is not to be considered as a consent Decree.

(Signed) JOHN W. GWYNNE, *for Defendant.*  
O. MOWAT, *for Plaintiffs.*

Oct. 12, 1854.

## IN CHANCERY.

Monday, the Ninth Day of October, in the Eighteenth Year of the Reign of Her Majesty Queen Victoria, and in the year of our Lord 1854.

Between—THE CITY OF TORONTO, *Plaintiffs,*  
and  
JOHN G. BOWES, *Defendant.*

This cause coming on to be heard and debated before this Court, on the 27th and 28th days of June last, in the presence of Counsel learned on both sides, and the pleadings in this cause being opened; upon debate of the matter, and upon hearing read the evidence and documents in that behalf mentioned in the minute entered in the Registrar's Book at the time of the hearing, and upon hearing what was alleged by Counsel aforesaid, this Court did order that this cause should stand for judgment: and this cause standing for judgment this day in the paper of causes, this Court doth declare the said John G. Bowes to have been and to be a Trustee for the City of Toronto of the profit received by him from the sale of the Debentures in question in this cause.



And this Court doth further declare that the said John G. Bowes, being such Trustee as aforesaid, was incapable of acquiring, and did not in fact acquire, any personal interest in the said Debentures.

And this Court doth find and declare that the amount of profit derived by the said John G. Bowes as aforesaid consists of the following particulars: that is to say, of certain sums of money amounting together to the sum of £4,115 17s. 3d., together with interest on the same sums from the respective times which they were received by the said John G. Bowes, until the day of payment, and which interest up to the day of the date of this Decree amounts to the sum of £406 6s. 7d., such profit altogether to the day of the date hereof being the sum of £4522 3s. 10d. And this Court doth order that the said John G. Bowes do within ten days after service upon him of this Decree, pay to the said Plaintiffs, or as they shall appoint, the said sum of £4522 3s. 10d., together with interest on the said sum of £4115 17s. 3d. from the day of the date hereof until the day of payment.

And this Court doth further order that the said John G. Bowes do pay to the Plaintiffs or the bearer hereof their costs of this suit, immediately after service upon him of this Decree, and the Master's Certificate of taxation of the said costs. And it is hereby referred to the said Master to tax the said costs, in case the parties differ about the same.

(Signed)

A. GRANT,

Registrar.

Ent'd.—A. G.

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*Copy of Minute in Registrar's Book, shewing Evidence and Documents read upon the hearing of the Cause.*

CITY v. BOWES.

Plaintiff reads—

Defendant's depositions on both examinations, and all Plaintiff's depositions.

**Affidavits on bringing in books, &c.**

All printed Exhibits, except extract from printed pamphlet filed, from page 202 to 206, and 210 and 211, and except note from Story & Co., p. 207.

Also opinions on By-law, and Hincks' Letters to Ridout.

**Defendant reads—**

All his evidence, and all the printed matter not read by Plaintiffs. Also Exhibit "A. 1," Minutes in Council.

Each party objects to all evidence that is inadmissible.

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**NOTE.**—From page 1 to 211 (both inclusive) hereof was printed before the hearing of the cause in the Court below, and was used on the hearing. All the printing subsequent to page 211 has been printed since the hearing.

## APPELLANT'S REASONS FOR APPEAL.

The Appellant submits that the said Decree is erroneous, and ought to be reversed, for the following among other reasons:—

1st. Because the said Decree is contrary to law and equity and is not warranted by the Pleadings, and the evidence properly admissible and received in the cause in the said Court of Chancery.

2nd. Because the said Decree is based upon an assumption that the Appellant as a member of the Common Council of the City of Toronto was incapacitated thereby from purchasing from Messrs. Storey and Company in the pleadings mentioned the Debentures of the City of Toronto, which were issued to the said Messrs. Storey and Company; whereas there is no rule of law or equity which involved any incapacity to the Appellant purchasing the said Debentures from the said Messrs. Storey and Company.

3rd. Because the said Decree is based upon an assumption which is contrary to fact, namely, that the transactions in respect of which the Debentures, of the City of Toronto issued to the Messrs. Storey and Company, were so issued to them: were merely illusory and collusive to cover a supposed sale by the Common Council of Debentures of the City of Toronto to the Appellant, being one of the members of the said Common Council.

4th. Because the said Debentures so issued to the said Messrs. Storey and Company were their absolute property, and they had full authority and power to sell the same to the Appellant or to any other person, without any interference upon behalf of the City of Toronto.

5th. Because the said Decree is based upon an assumption not warranted by any rule of law or equity, or by any statute, namely, that a member of the Common Council of a Municipal Institution cannot acquire any interest by purchasing with his own monies Debentures of the Corporation of the Common Council of which he is a

member, for his own use, but what every one such purchase must be regarded as a purchase for the benefit of the Corporation.

6th. Because the resolutions of the Common Council of the City of Toronto in the Pleadings mentioned of the date of the 25th day of November, A.D. 1850, and the 18th of August, 1851, imposed a duty upon the Common Council of the City of Toronto of 1852 to give full legal effect by a good and valid By-law to the objects of those resolutions, and no alleged informality or defect in passing the By-law of the 28th of June, 1852, can, under the circumstances appearing on the pleadings and evidence in relation thereto, operate to invalidate the purchase made by the Appellant and the other persons, who by the evidence appear to have been the purchasers from the Messrs. Storey and Company of the Debentures of the City of Toronto, authorised to be issued to them in the manner on the pleadings and evidence in that behalf appearing.

7th. Because any informality in the original issuing of the Debentures to the Messrs. Storey has been removed by the Act of the Legislature in the pleadings in that behalf referred to, whereby the transactions in respect of which the said Debentures were, by the Common Council of the City of Toronto, ordered to be issued to the said Messrs. Storey and Company are confirmed by the Legislature, and the transaction forming the consideration for the issuing of the said Debentures to the said Messrs. Storey and Company, not being impugned or capable of being impugned, the City of Toronto could make no claim to the said Debentures for the reason of the Appellant having been a party to the purchase of the same from the Messrs. Storey and Company.

8th. Because the purchase made by the Appellant and others from the Messrs. Storey and Company of the Debentures of the City of Toronto, so as aforesaid to be issued to them was a legitimate *bona fide* purchase, in which the City of Toronto have no interest.

9th. Because the said Decree effects the interests of one John Hall, one of the parties to the purchase of the said Debentures from the Messrs. Storey and Company, although the said Hall was not made



a party to the suit in the Court of Chancery, and the Decree orders the Appellant to pay a sum of money, a portion of which was in fact received by, and became the property of, the said Hall.

10th. Because it appears by the pleadings and evidence that if any persons other than the purchasers of the said Debentures from the Messrs. Storey and Company are entitled to the proceeds of the sale of the Debentures which appear to have been substituted for the Debentures so issued to the Messrs. Storey and Company, such persons are the Messrs. Storey and Company themselves, and not the City of Toronto.

11th. Because the said Decree is based upon an assumption contrary to law that the position of the Appellant in purchasing the said Debentures from the Messrs. Storey and Company was that of a common trustee or agent appointed to sell, purchasing for his own use a portion of a trust estate which it was his duty to sell. For which and for divers other reasons the Appellant doth appeal from the said Decree.

**THE RESPONDENTS**

Submit that the Decree of the Court of Chancery in this cause, from which the Appellant has appealed, ought not to be altered, varied or reversed, for the following (among other)

**REASONS :**

Because the Defendant was the trustee and agent of and for the plaintiffs, and must be regarded and treated as such in regard to the transactions out of which the profit in question arose ; and because his official character, the obligations thereby imposed on him, his actual conduct in the proceedings and transactions mentioned in the pleadings and evidence, and the circumstances of the case generally, were alike such as disentitled him to make any other disposition of the said profit except paying it over to the plaintiffs.

P. M. VANKOUGHNET.  
O. MOWAT.

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