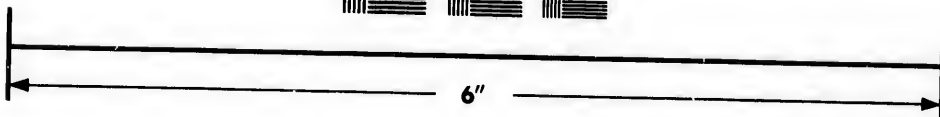
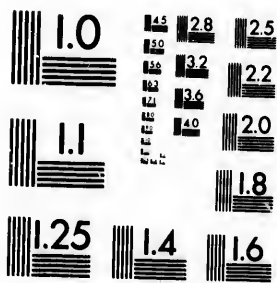


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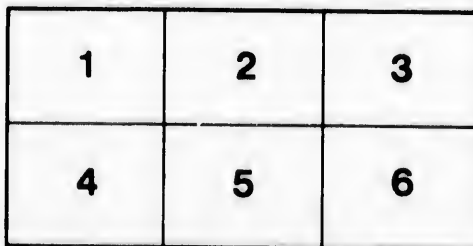
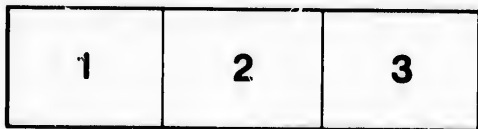
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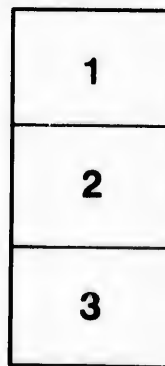
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IN THE SUPREME COURT  
OF THE  
NORTH-WEST TERRITORIES

Appeal from the Supreme Court of the North-West Territories,  
Northern Alberta Judicial District.

CHARLES WILLIAM MARTIN, (Defendant.) Appellant.  
AND  
JAMES STEWART MOORE, (Plaintiff.) Respondent.

APPEAL BOOK.

LOUGHEED, MCCARTHY & BECK,  
ADVOCATES FOR APPELLANT.

T. B. LAFFERTY,  
ADVOCATE FOR RESPONDENT.

1890:  
—  
TRIBUNE BOOK AND JOB PRINT,  
CALGARY.

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OF THE  
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Appeal from the Supreme Court of the North-West Territories,  
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AND  
JAMES STEWART MOORE, (Plaintiff.) Respondent.

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APPEAL BOOK.

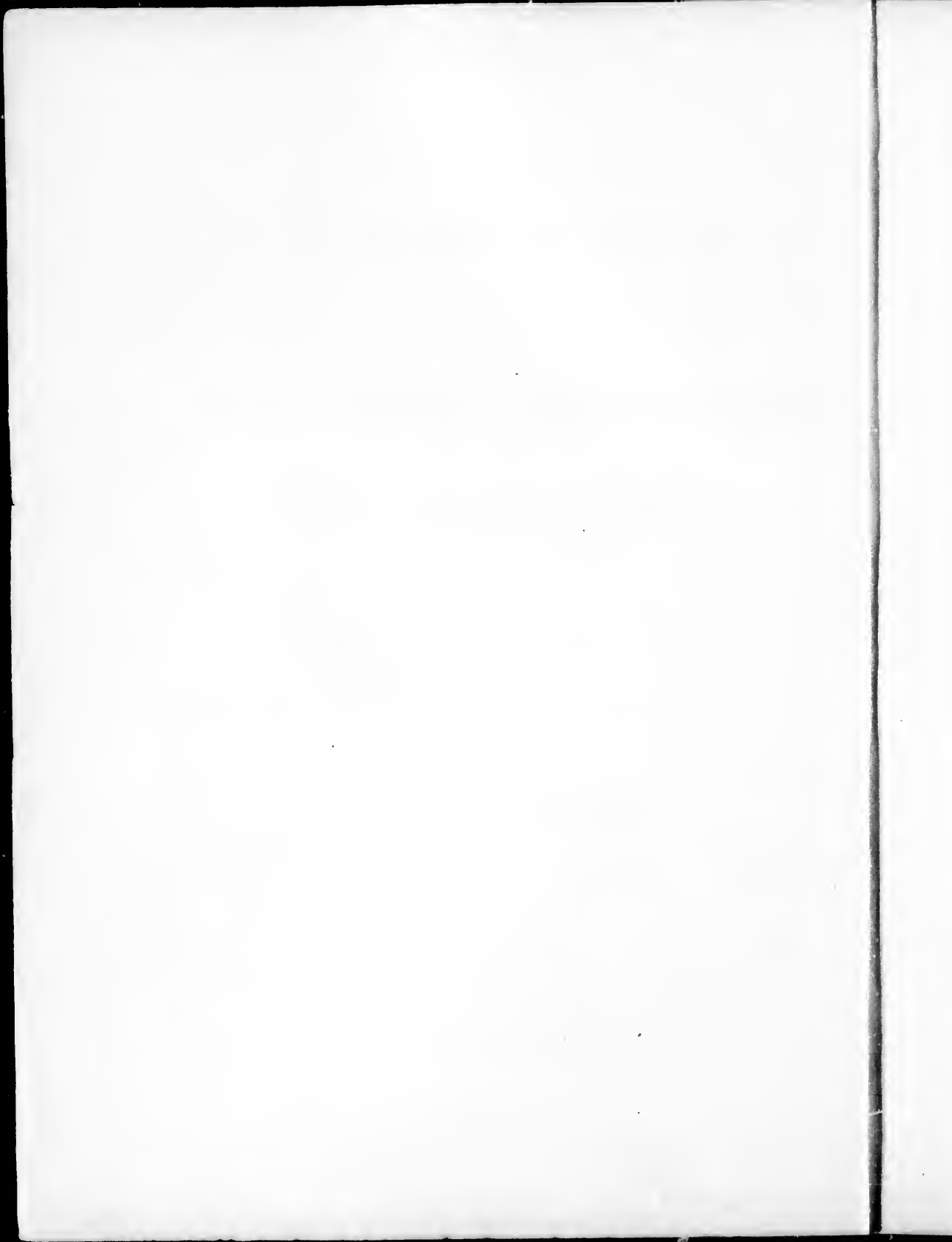
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LOUGHEED, MCCARTHY & BECK,  
ADVOCATES FOR APPELLANT.

T. B. LAFFERTY,  
ADVOCATE FOR RESPONDENT.

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1890:  
—  
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IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES NORTH-  
ERN ALBERTA JUDICIAL DISTRICT.

BETWEEN:

JAMES STEWART MOORE, Plaintiff.

AND

CHARLES WILLIAM MARTIN, Defendant.

TAKE NOTICE that motion will be made before the Honorable Charles B. Roulcau, a Judge of this Court, at his chambers in the Court House, in the town of Calgary, on the 16th day of April, instant, at the hour of 10 o'clock in the forenoon or so soon thereafter as the motion can be made for an order setting aside the Writ of Summons issued herein and all subsequent proceedings thereon on the grounds, (1) Because the said writ although served out of the jurisdiction was issued without the leave of the Judge of this Court first had and obtained. (2) Because the writ although served out of the jurisdiction is irregular in form (*a*) in not stating the proper time within which the same is returnable, (*b*) not being issued as a concurrent writ, or otherwise, for service out of the jurisdiction and (*c*) is otherwise irregular in not conforming to the Judicature Ordinance of 1886 and amendments thereto.

Or for an order setting aside the order herein dated the 18th day of January 1889, allowing service of the said writ to be made out of the jurisdiction and the service made thereunder on the following grounds, (1) on the grounds aforesaid, (2) because the affidavit and other material on which the said order issued is insufficient in that the same does not set forth facts and circumstances sufficiently to enable the Judge to determine whether or not the said order should have been made, (3) because the said affidavit is not candid and is misleading, (4) because the said affidavit and said other material do not bring this case within any of the provisions of the law authorizing the Judge to allow service to be made out of the jurisdiction, (5) because this case is not in truth and in fact within any such provisions, (6) and because in view of all the circumstances of the case the Judge in the exercise of his discretion ought not and had he been more fully informed would not have made the said order.

AND TAKE NOTICE that in support of said application will be read the affidavit of the defendant and the several exhibits therein referred to, the affidavits of J. A. Lougher, John J. Barter and Peter McCarthy and the exhibits therein referred to, all this day filed, the

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affidavit of T. B. Lafferty on which said order issued and the said order and the other pleadings and proceedings herein.

Dated at Calgary this 12th day of April, 1889.

To T. B. LAFFERTY,  
Plaintiff's Advocate.

LOUGHEED, MCCARTHY & BECK,  
Defendant's Advocates.

This notice is given by Messrs. Lougheed, McCarthy & Beck, of the town of Calgary, in the District of Alberta, Advocates for the above named Defendant.

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ECK,  
Advocates.

Calgary, in

## WRIT OF SUMMONS.

CANADA: In the Supreme Court of the Northwest Territories, Northern Alberta Judicial District.

BETWEEN:

JAMES STEWART MOORE, Plaintiff.

AND

CHARLES WILLIAM MARTIN, Defendant.

*VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.*

10 TO THE ABOVE NAMED DEFENDANT:

You are notified that the plaintiff has entered an action against you, in the above named Court, for the recovery of the claim or demand, a statement of which is filed in Court and annexed to this summons.

And you are commanded that if you dispute the said claim, either in whole or part, you do within ten days from the date of the service of this writ on you, exclusive of the day of such service, cause to be entered for you, in the office of the clerk of this Court, an appearance together with a statement of the grounds on which such dispute is based.

And take notice that in default of your so doing, the plaintiff may proceed in his said action, and Judgment may be given in your absence and without further notice to you.

20 Issued at Calgary, in the Northwest Territories of Canada, the 26th day of December  
A. D. 1888.

[L. s.]

[Sgd.] H. A. L. DUNDAS,  
Clerk of Court



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UNDAS,  
Clerk of Court

## STATEMENT OF CLAIM.

The Plaintiff resides near the town of Calgary in the Northern Alberta Judicial District.

The Defendant resides at Sheep Creek, in the said Judicial District.

1. The Plaintiff's claim is against the Defendant as maker of two promissory notes for £2500 each dated June 9th 1888, payable to the Plaintiff three and six months after date, respectively with interest at five per cent. per annum until paid.

## PARTICULARS.

Principal of Notes £5000, or.....	\$ 24,333.33
Interest at 5% to date.....	666.66
Total amount due on notes....	24,999.99

10

2. The Plaintiff also claims from the Defendant the sum of £5000, or \$24,333.33, being balance due from the Defendant to the Plaintiff for goods sold and delivered by the Plaintiff to the Defendant on or about the 20th day of November, 1886, also \$666.66 interest on \$24,333.33 from the 9th day of June, 1888 as agreed between Plaintiff and Defendant which together amounted to \$24,999.99.

3. The Plaintiff also claims from the Defendant the sum of \$48,666.66 for goods sold and delivered by the Plaintiff to the Defendant on or about the 20th day of November, 1886, also \$1333.33 interest on \$48,666.66 from the 9th day of June, 1888 as agreed between Plaintiff and Defendant, which, together amount to the sum of \$49,999.99.

20 The Plaintiff also claims interest at 5 per cent. per annum until payment, and his costs of suit.

Delivered this 26th day of December, 1888 by Thomas B. Lafferty, of Stephen Avenue, in the town of Calgary, Northwest Territories of Canada, Advocate for the Plaintiff.

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## AFFIDAVIT OF T. B. LAFFERTY.

1. I am Advocate herein for the above named Plaintiff.
2. That a writ of summons was issued herein on the 26th day of December, 1887.
3. That I am informed and believe that the Plaintiff has a good cause of action herein.
4. That the above named Defendant is at Quorndon, Loughborough, Leicestershire, England, and is a British Subject.
5. That the defendant, as I am informed and believe, does not intend to return to the Northwest Territories until the month of May next.
6. That the debt for which this action is brought was contracted in the above Judicial District, and that unless the Plaintiff is allowed to serve the Defendant out of the jurisdiction of the above Court and proceed with his said action that he the Plaintiff will be greatly prejudiced in his just rights.

SWORN before me at Calgary in the  
District of Alberta, this 18th day of  
January, 1889.

[Sgd.] E. P. DAVIS.

A Commissioner, &c., in and for the  
Northwest Territories.

[Sgd.] T. B. LAFFERTY.

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## O R D E R.

Upon hearing counsel for the Plaintiff, and upon reading the affidavit of Thomas B. Lafferty, Plaintiff's Advocate, filed the 18th day of January, 1889, and upon reading the writ of summons and the statement of claim annexed thereto;

It is ordered that the Plaintiff be at liberty to serve the writ of summons herein upon the above named Defendant out of the jurisdiction of the above Court.

And it is further ordered that the time for appearance to the said writ be within 60 days after the service thereof, instead of 10 days as mentioned in said writ, and that the costs of this application be costs in the cause.

10 Dated at Chambers the 18th day of January, A. D. 1889.

[Sgd.] CHAS. B. ROULEAU,  
Judge of the Supreme Court of the  
Northwest Territories.

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## AFFIDAVIT OF C. W. MARTIN.

I Charles William Martin of Quorn Place, Quorndon, in the County of Leicester, Ranchman, make oath and say:—

1. I am the Defendant in this action: On or about the 1st November, 1886, the Plaintiff and I were carrying on business in partnership as Ranchemen, and the Plaintiff asked me to buy out his share in the business as he had need for the money to pay off mortgages on his estate in Antrim, in the Kingdom of Ireland, of which County he had just been High Sheriff.

2. Accordingly an agreement for dissolution of partnership was drawn up, a copy of which is now produced to me and marked "A."

10 3. Both parties were sincerely anxious to meet the wishes of the other in a friendly manner, the Plaintiff agreeing to assist me this deponent in every way in the formation of the Quorn Ranche Company, Limited, hereinafter referred to as "the said Company."

4. This agreement for dissolution of partnership (with the avowed intention of avoiding any unknown complications and delays which might arise under international or intercolonial laws) was expressly stated to be, and was intended to be, construed as a purely English agreement between two English subjects, each having their residence and the bulk of their property in Great Britain or Ireland.

5. It was further expressly stipulated and agreed that the formal completion of the said agreement for dissolution of partnership should be effected in England, between me this deponent and a duly authorized agent of the plaintiff who had executed a power of Attorney 20 favor of his agent, Stewart, under which it was intended the plaintiff should carry out the dissolution.

6. In further compliance with this arrangement the business was forthwith put into the hands of my Solicitors, Messrs. Berridge & Miles, of Leicester, and into the hands of Messrs. Crookshank & Leech of Coleraine in the Kingdom of Ireland, the Plaintiff's Solicitors, but owing to legal difficulties raised by the Plaintiff's advisers and the insufficiency of the Power of Attorney executed by him as aforesaid, the completion of the business was postponed at the written request of the Plaintiff until a personal interview between me this deponent and the Plaintiff could take place at Calgary.

30 7. Accordingly an interview was effected between the Plaintiff and me this deponent or about the month of July, 1887, and the Plaintiff then and there admitted that I had suffered considerable loss and inconvenience in the profitable formation of the said Company owing to the unconfirmed condition of my agreement for dissolution of partnership with the Plaintiff.



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8. Furthermore the value of our late partnership assets had in the meantime greatly depreciated and the Plaintiff admitted that such loss ought to fall equally upon the shoulders of himself and me this deponent.

9. Accordingly a modification of our original agreement for dissolution was then agreed upon and entered into and such modification is mainly set forth in the documents and letters signed by me this deponent and the Plaintiff respectively, copies whereof are now produced to me and marked "B." "C." "D." "E." "F." "G." and "H." respectively.

10. Under these fresh arrangements time was to be allowed to me this deponent for the fulfilment of my part of the contract so long as the Plaintiff was satisfied that the value of the property was increased and not diminished by the formation of the said Company and this understanding was in existence between the Plaintiff and me this deponent up to the month of December 1888 or thereabouts.

11. At the time I this deponent tendered to the Plaintiff Mortgage Debentures (in the said Company) for the amount of his claim against me which were further secured by Chattel Mortgage duly registered at Calgary by the Plaintiff who was duly appointed as agent by the said Company for that purpose, and acted himself under such authority in registration of the said Chattel Mortgage and such registration by the Plaintiff has been since confirmed by the said Company in general meeting.

12. In or about the month of December last, the Plaintiff cabled to the Solicitors of the said Company asking them at what date registration of assignment of shares in his favour had been made and the said Solicitors cabled reply that no assignment had been registered but that shares had been deposited to the extent of £5000, and that the amounts could be increased if desired—copies of the said cables respectively are now shewn to me and marked "I." and "J." respectively.

13. On the 15th February 1889 the writ in this action was served on me this deponent at Quorndon, Leicestershire, England.

14. I am willing to discharge my obligations to the Plaintiff through his duly appointed agent in England whenever they have been established and I am called upon to do so by an English tribunal, but I protest against the Jurisdiction of the Court in Alberta, a District in which I do not reside as stated in the proceedings herein and in which I own no property apart from shares in a Joint Stock Company.

15. Under the circumstances above deposed I am advised and believe that no contract was made between me and the Plaintiff nor has any cause of action arisen within the jurisdiction of this Honorable Court; there has been no sale and delivery of goods as alleged by the Plaintiff in the second and third paragraphs of his statement of claim and the sum sued for in this action and the agreed interest in the said statement of claim referred to are due (if at all) under an agreement for dissolution of partnership and are payable solely under that agreement.

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the terms of which can only be enforced by a suit for specific performance issuing out of some Court of competent jurisdiction in the county in which the agreement was virtually made.

SWORN at Leicester in the County of  
Leicester, in England, this 23rd  
day of March 1889., before me,

[Sgd.] EDMUND DUTTON,  
Notary Public, Leicester.

[Sgd.] CHARLES WM. MARTIN.

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MARTIN.

## EXHIBIT "A."

MEMORANDUM OF AGREEMENT made November 20th, 1886.

BETWEEN:

CHARLES WILLIAM MARTIN AND JAMES STEWART MOORE.

WHEREBY it is agreed that the said James Stewart Moore being unable to come to terms with his partner, the said Charles William Martin, offers either to sell to the said Charles Wm. Martin all share and interest in the Sheep Creek Rancho Co., or to purchase the said Charles Wm. Martin's share at his option.

AND it is hereby agreed and declared between them that whichever course the said  
10 Charles Wm. Martin may elect to take shall be hereon recorded in writing and shall be binding on both parties. And shall take effect as on November 1st 1886, being the end of the said Company's financial year. And the party going out of the concern shall have no further claims or liabilities in connection therewith.

AND that the valuation hereto annexed which has been made by agreement between the said two parties shall be taken to correctly set forth their respective shares. And that the values therein assigned to each shall be signed by both parties. And shall not hereafter be subject either to correction or amendment.

AND IT IS FURTHER AGREED that the manner of payment shall be as follows:—  
That 30 days shall be allowed for the party having payment to make, to communicate with his  
20 man of business in Great Britain. And that he shall then on January 1st, 1887 give a 3 months bill for one fourth ( $\frac{1}{4}$ ) of the amount, a six months bill for another fourth and the remaining half by instalments of not less than £1,000 at one time till the total sum be completed; and shall further pay the interest at the rate of 5% per annum upon all sums unpaid as from the 1st of January 1887.

AND IT IS FURTHER PROVIDED that the total amount of the purchase money with interest in full as hereinbefore provided shall be paid up by the 1st day of November 1887 at latest. But that if any portion of the said sum be unpaid at that date the Vendor shall be entitled to demand that security shall be given him for the balance and interest as hereinbefore provided such security being a registered lien or mortgage upon one half s<sup>1</sup> 2 of the Sheep  
30 Creek Rancho as security for the capital, and a prior claim on the annual dividends declared thereon as security for interest.

AND IT IS FURTHER understood that 30 days grace is to be allowed on all obligations as one party may be in Canada and the other in Europe.

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ALSO that in the event of any part of the payments due being in arrear the other party is entitled to claim as security his personal bond made in Great Britain either by himself or his Attorney, which bond would then include in its scope as security all property which the said party owns in Great Britain. And the registration of the lien on the Rancho be demanded if desired, as provided as collateral security and as relating to property in Canada.

AND IT IS FURTHER AGREED between the parties hereto that they will faithfully perform their respective parts of this agreement and will duly make all the payments and execute all necessary documents, releases, receipts, bonds and indentures and carry out the spirit of this agreement which they have this day as partners drawn up for their mutual protection.

SIGNED this 20th day of November,  
1887, in the presence of CHARLES  
L. DOUGLAS, Cow-Boy, Sheep  
Creek Rancho, Alberta.

CHARLES WM. MARTIN.  
JAMES STEWART MOORE.

In pursuance of the conditions laid down in the annexed agreement the two parties have decided and agreed that the vendor is James Stewart Moore and the purchaser is Charles William Martin and that the purchase money is \$44,500.00, forty-four thousand five hundred dollars, and after careful consideration of the terms of this agreement desire to record that their partnership was amicably dissolved by mutual consent, solely because Charles Wm. Martin refused to consent to a scheme proposed by James S. Moore for reducing the extent and scope of the business, which scheme Charles W. Martin considered fatal to the interests of the concern and opposed to recognised canons of sound ranching; that this course was taken with mutual regret by both parties, and the hope is entertained that the party bought out may see his way to re-enter the business as owner of a smaller share, that Mr. Robert Crookshank, New River, Coleraine, and Edward Miles, Solicitor, Friar Lane, Leicester, be instructed to draw up proper deed embodying the spirit of this agreement, bearing in mind the relation of the parties thereto, and how they do not stand related to each other nor do they desire to be treated with the stringency of ordinary debtor and creditor, satisfied as they are, of the bona fides and familiar as they are with the position and responsibilities of each other.

#### MEMORANDUM IN ELUCIDATION of page 2.

This agreement to be executed by the parties or their lawful attorneys in England and registered as an English Deed between two British subjects as soon as possible after reaching their hands.

On due execution of agreement the purchaser is to give the vendor his note of hand for one-half of the purchase money at 3 and 6 months.

AND also as collateral security to give a lien or mortgage on one-half of the property of the Sheep Creek Rancho Co. which will then be surrendered to him absolutely by deed bearing same date.



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The portion not exceeding one-half of the whole purchase money to carry interest at 5% per annum and to be paid off by instalments of not less than £1000 at a time at the convenience of the purchaser. The usual provisions to be inserted for 12 months notice to call in the money, if not all repaid during the first year, with the usual remedies for summary treatment in the event of the interest being in arrear, or the purchaser depreciating the security by selling off breeding stock, etc. And this after careful consideration is considered by the two parties to be the true meaning and intent of page 2.

C. W. Martin having announced to J. S. Moore that he is depending on the sale of £3000 Mid. Ry. Preference Stock to meet his first bill and believing that the books of that company are closed about that date for declaring the half yearly dividend, J. S. Moore desires his agent to arrange that C. W. Martin shall not be forced to sell those particular shares prematurely to meet this bill but shall be allowed, say a week, after receiving the dividend due to sell those shares and remit the cash to J. S. Moore's agent in Ireland, as such action would be considered by both parties as against the spirit of this agreement.

AND IT IS FURTHER AGREED that if J. S. Moore does not elect to carry out a proposal now made to him for re-investing some part of the purchase money in the business, and if such money should remain on security of the Ranche, J. S. Moore will not arbitrarily foreclose but will meet Charles Martin's convenience for re-payment, but that should Charles Martin give him any trouble about the punctuality of the payments of interest or should he sell off any quantity of breeding cattle or do any action calculated seriously to depreciate the value of the security he shall then be entitled to do so.

IT IS FURTHER understood that 50. or 60. thousand dollars worth of stock is to be considered adequate for the collateral security required.

AND that C. W. Martin is not to be considered to have depreciated the security in any way if he should mortgage to the full value in addition to this, the whole of the freehold and leasehold land, houses and buildings.

THAT as this dissolution by arrangement was made in the interests of both parties it is agreed that all the costs shall be equally divided.

ALSO in the event of the second bill becoming due in June or July 1887 and C. W. Martin having a balance to his credit at the Imperial Bank at Calgary, such sum to be paid by cheque in dollars direct to Moore at Calgary.

The property may be described as all those lands in Alberta leased to C. W. Martin Moore and Martin, formerly Wilson and Stimson, and all stock branded with the registered brand of the Sheep Creek Ranche Co. and all buildings, dead stock, horses, &c.

The above arrangements agreed to.

C. W. MARTIN.  
JAS. ST. MOORE.

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## EXHIBIT "B."

THIS INDENTURE made the 20th day of September, 1887.

## BETWEEN:

JAMES STEWART MOORE, of Bally-divitty, in the County of Antrim, Esquire, of one part and CHARLES WILLIAM MARTIN, of Quorn Place, Loughborough, in the County of Leicester, Esquire, of the other part:

WHEREAS the said Charles William Martin and James Stewart Moore have for some years been carrying on in partnership the business or occupation of cattle ranching on the Sheep Creek Ranche at Alberta, in Canada, under the name and style of "The Sheep Creek Ranche Company" but the said partnership is not regulated by any articles or agreement in writing.

AND WHEREAS a statement and account of the partnership assets or estate including all the property estate or interest of the said partners in the said ranche and in all horse and in all live or dead stock of all descriptions thereon and all the stock in trade, money credits and effects of the said partnership (all of which are hereinafter referred to as "the partnership assets or estate") and also all the debts and liabilities of the said partnership were on the 20th day of November, 1886 stated and agreed upon between the parties hereto and their respective shares of the said partners after taking into consideration the said debts and liabilities were ascertained and the share of the said James Stewart Moore was valued at the sum of \$44,500.00.

AND WHEREAS it has been agreed that the said James Stewart Moore should retire from the said partnership as from the 1st day of November, 1886 and shall, accept the sum of \$44,500. in full satisfaction of his share and interest in the partnership assets or estate and that the said Charles William Martin (who intends carrying on the said business or occupation of ranching) should purchase all the share of him the said James Stewart Moore in the partnership assets or estate and that such share should be assigned and made over to the said Charles William Martin accordingly upon his taking upon himself all the debts and liabilities of the partnership which were outstanding on the 1st day of November 1886, or such of the same as are still outstanding so far as the same in any way now or may at any time effect the said James Stewart Moore or his estate or effects and paying to the said James Stewart Moore the said sum of \$44,500. and interest thereon at 5% per annum from the first day of January 1887.

AND WHEREAS it was agreed that the said Charles William Martin should pay to the said James Stewart Moore in the following manner:—the sum of \$11,125. being one-fourth of the said sum of \$44,500. to be secured by a three months bill of exchange in favor of the said James Stewart Moore to run from the date of this Indenture and a further

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sum of \$11,125. to be secured by a six months bill or note in favor of the said James Stewart Moore, also to run from the date of this Indenture together with interest on both the said sums or on so much thereof as should for the time being remain owing, at the rate of 5% per annum, to be computed from the 1st day of January 1887 and that the said Charles William Martin should pay to the said James Stewart Moore a further sum of \$22,250. (being the remainder of the sum of \$44,500. after such payments as aforesaid) by instalments, none of which except the last thereof should be less than £1000, such instalments to be paid by the said Charles William Martin at such times as might suit his convenience together with interest thereon or on so much thereof as should for the time being remain owing and unpaid after the rate of 5% per annum to be computed from the 1st day of January 1887 and that if the whole of the said sum of \$44,500. and interest thereon should not be paid within 12 months from the date of these presents the said James Stewart Moore should be at liberty to give to the said Charles William Martin 12 months notice in writing calling in the said sum or sums as might be then due.

AND WHEREAS it has also been agreed that the necessary steps shall be forthwith taken (1) for vesting the interest of the said James Stewart Moore in the partnership assets or estate in the said Charles William Martin and (2) for effecting the security affected or purported so to be by an indenture already engrossed and bearing even date with and intended to be executed immediately after these presents and made between the said Charles William Martin of the one part and the said James Stewart Moore of the other part, whereby the said  
20 sum of \$44,500. and interest are secured in manner therein mentioned.

AND WHEREAS in pursuance and part performance of the said agreement the said Charles William Martin has on or before the date of these presents given to the said James Stewart Moore 2 bills for \$11,125. each, payable at three and six months respectively from the date of this Indenture and bearing interest as aforesaid.

NOW THIS INDENTURE WITNESSETH that in pursuance and part performance of the said agreement in this behalf it is hereby agreed and declared that the said partnership shall be determined and stand dissolved as from the 1st day of Nov. 1886, and that the same shall henceforth be carried on by the said Charles William Martin as aforesaid.

AND THIS INDENTURE ALSO WITNESSETH that in pursuance and for the  
30 performance of the said agreement and in consideration of the premises he the said James Stewart Moore conveys, grants, assigns, releases and transfers unto the said Charles William Martin, his heirs, executors, administrators and assigns all the part share or interest of the said James Stewart Moore of and in all those lands in the province of Alberta, in the Dominion of Canada, leased to the said Charles William Martin or the said Charles William Martin and James Stewart Moore or formerly to Wilson and Stimson, and all other lands formerly part of the ranche belonging to the partnership and of and in all horses and cattle and of and in all live or dead stock of all descriptions thereon and the goodwill thereof and all the stock in trade, moneys, contracts, profits, effects, property, matters and things of the said partnership and all the estate, right, title, interest, claim and demand whatsoever of the said James Stewart Moore  
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TO HAVE AND TO HOLD, RECEIVE AND TAKE the said premises here conveyed or assigned unto the said Charles William Martin, his heirs, executors, administrators or assigns according to the nature and tenure thereof for all the estate and interest of the said James Stewart Moore therein for his absolute use and benefit and for the consideration aforesaid and for the more effectually enabling the said Charles William Martin, his executors, administrators and assigns to receive and recover the said several credits and effects of the said partnership, he, the said James Stewart Moore, hereby irrevocably appoints the said Charles William Martin, his executors or administrators, his lawful attorney and attorneys in the name of the said James Stewart Moore, either jointly with the said Charles William Martin or otherwise but for the exclusive benefit and at the costs and risks of the said Charles William Martin, his executors or administrators, to demand, sue for, call in and receive from all persons whom it may concern all and singular, the debts, moneys and effects of the said partnership and to give effectual receipts and discharges for the same respectively and to use all such remedies or proceedings for the recovery and getting in the said credits and effects respectively as may be deemed expedient and generally to do whatsoever shall be requisite for giving to the said Charles William Martin, his executors or administrators, the full benefit of the conveyance or assignment hereby made. And the said James Stewart Moore doth hereby himself, his heirs, executors and administrators, covenant with the said Charles William Martin, his heirs, executors, administrators and assigns respectively that he the said James Stewart Moore has not at any time heretofore contracted any debt or obligation which can or may charge or effect the said Charles William Martin, his executors or administrators or the said partnership assets or estate or any part thereof, nor received, nor discharged any of the credits of the said partnership, except as appears by the books of the same, nor done any act whereby the share and premises hereby conveyed or assigned or any part thereof may be charged or encumbered in any manner howsoever.

AND that he the said James Stewart Moore, his executors or administrators and persons having or lawfully or equitable claiming any estate or interest in the said premises through him, them or any of them will at all times hereafter on the request and at the costs of the said Charles William Martin, his executors, administrators or assigns, make, do and execute every such further assurance, act or thing whatsoever, for the more effectually vesting the said premises hereby conveyed or assigned and every part thereof and enabling him and them to receive the same as shall be reasonably required and that he the said James Stewart Moore, his executors or administrators will not at any time hereafter receive, compound or discharge any of the goods, credits or effects, the share whereof is intended to be hereby conveyed or assigned and will not release, disavow or become non-suit in any action or proceeding which may be brought by the said Charles William Martin, his executors or administrators by virtue of the said power or do any other act or thing in derogation of the assignment hereby made and the powers or authorities hereby given.

AND in further pursuance and performance of the hereinbefore recited agreement in consideration of the premises he the said Charles William Martin doth hereby for himself, his heirs, executors or administrators covenant with the said James Stewart Moore, his heirs, executors, administrators or assigns respectively that he the said Charles William Martin, his heirs, executors or administrators will pay and discharge or procure the payment and discharge of all the debts and liabilities of the said partnership including the rents and covenants to



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administrators and in the said premises and at the costs make, do and execute, effectually vesting him and them James Stewart Moore compound or discharge hereby conveyed or proceeding with administrators by virtue hereby made

agreed agreement hereby for himself and his heirs, William Martin, payment and discharge and covenants to

paid, observed and performed respectively in respect of such of the said premises as may be of leasehold tenure and will at all times hereafter effectually keep indemnified the said James Stewart Moore, his heirs, executors or administrators and his and their estate and effects against all actions, proceedings, costs and damages, expenses, claims and demands in respect thereof and also against all costs, damages and expenses by reason of any action or proceeding which may be brought or instituted by the said Charles William Martin, his executors or administrators in the name or names of the said James Stewart Moore, his executors or administrators by virtue of the power or authority hereinbefore contained or of any act, matter or thing in relation thereto.

10        AND THIS INDENTURE LASTLY WITNESSETH that in further pursuance and performance of the hereinbefore recited agreement and in consideration of the premises the said James Stewart Moore hereby releases and discharges the said Charles William Martin, his heirs, executors, administrators and assigns and the said Charles William Martin hereby releases and discharges the said James Stewart Moore and his heirs, executors, administrators and assigns (but subject and without prejudice to the covenants contained in these presents and to the provisions of the hereinbefore mentioned indenture bearing even date herewith) from all actions, proceedings, claims and demands which they the said releasing parties or either of them or his executors or administrators now has or hereafter have against the other of them or his executors or administrators by reason of the above mentioned partnership or any other  
20 matter relating thereto, IN WITNESS

This draft for dissolution of partnership revised and corrected by James Stewart Moore and Charles William Martin, and accepted subject to completion of annexed memorandum of agreement for security for unpaid balance.

CHARLES WILLIAM MARTIN.  
JAS. STEWART MOORE.

September 20th, 1887.

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## EXHIBIT "C."

THIS INDENTURE made the 19th day of May, one thousand eight hundred and eighty-eight.

## BETWEEN :

Charles William Martin, of Quorn Place, Loughborough, in the County of Leicester, Esquire, of the one part, and James Stewart Moore, of Bally-divitty, in the County of Antrim, Esquire, of the other part.

WHEREAS the parties hereto have for some years been carrying on in partnership the business or occupation of cattle ranching on the Sheep Creek Ranche, at Alberta, in Canada, under the name or style of "The Sheep Creek Ranche Company," but the said partnership was not regulated by any articles of agreement in writing.

AND WHEREAS a statement and account of the partnership assets or estate including all the property estate or interest of the said partners in the said ranche and in all horses and in all live or dead stock of all descriptions thereon and all the stock in trade, moneys, credits and effects of the said partnership, all of which are hereinafter referred to as "the partnership assets or estate" and also all the debts and liabilities of the said partnership were on the 20th day of November, one thousand eight hundred and eighty-six, stated and agreed upon between the parties hereto and the respective shares of the said partners after taking into consideration the said debts and liabilities, were ascertained, and the share of the said James Stewart Moore was valued at the sum of forty-four thousand five hundred dollars.

AND WHEREAS it has been agreed that the said James Stewart Moore should retire from the said partnership as and from the First day of November, one thousand eight hundred and eighty-six, upon the terms and subject to the conditions, agreements and stipulations contained and set forth in a certain indenture of dissolution of partnership bearing date the 20th day of September, 1887, and made between the same parties as the said parties hereto.

AND WHEREAS in pursuance and part performance of the said agreement in the said indenture of the 20th day of September, 1887, set forth and contained the said Charles William Martin has on or before the date of these presents given to the said James Stewart Moore two bills for \$11,125, each, payable at three and six months respectively from the date of the said indenture and bearing interest as thereby provided.

AND in further pursuance and performance of the said agreement in the said indenture set forth and contained the said James Stewart Moore has conveyed and assigned all his share and interest in the partnership assets and estate to the said Charles William Martin.

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AND WHEREAS the said Charles William Martin is possessed of one hundred and ninety shares of one hundred pounds each in a company called The Quorn Ranche Company, Limited, which is a company duly incorporated under the Companies Acts, 1862 to 1886, and he has agreed with the said James Stewart Moore to charge fifty such shares as hereinafter set forth, as security with the payment of the sum of five thousand pounds, £5000, to the said James Stewart Moore as in the said indenture of the 20th September, 1887, is provided and contained.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement the said Charles William Martin hereby charges all those, his fifty shares of one hundred 10 pounds each, of and in the undertaking called The Quorn Ranche Company, Limited, numbered in the books of the said Company from 1 to 50 inclusive and now registered in the books of the said Company in the name of the said Charles William Martin with the repayment to the said James Stewart Moore, his executors, administrators or assigns, of the sum of £5000. and interest at the times and in manner specified and contained in the said indenture of the 20th day of September, 1887.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance and performance of the said agreement and in consideration of the premises, the said Charles William Martin doth hereby, for himself, his heirs, executors and administrators, covenant with the said James Stewart Moore, that he, the said Charles William Martin, has not at any time 20 heretofore contracted any debts or obligation which can or may charge or effect the said James Stewart Moore, his executors or administrators or the said shares or any part thereof, or done any act whereby the shares hereby charged or any part thereof may be charged or encumbered in any manner howsoever, and that he, the said Charles William Martin, his executors and administrators and all persons having or lawfully or equitably claiming any estate or interest in the said premises, will, at all times hereafter, at the request of the said James Stewart Moore, his heirs, executors, administrators and assigns, and at the costs of the said Charles William Martin, his heirs, executors, administrators and assigns, make, do and execute every such further assurance, act or thing whatsoever, for the more effectually carrying out the intention of these presents and effecting the security hereby intended to be effected, as shall be reasonably 30 required, and that he, the said Charles William Martin, will not do or suffer anything whereby the said shares hereby charged, or any of them may be encumbered or alienated or otherwise prejudicially affected, IN WITNESS :

AS WITNESS the hands of the said parties, the days and year first above written.

WITNESS :

T. FLORENCE MARTIN,  
Quorn Place, Loughborough.

CHARLES WILLIAM MARTIN.

WITNESS :

40 T. B. LAFFERTY,  
of Calgary, N. W. T., Canada.

JAMES STEWART MOORE.

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## EXHIBIT "D."

Memo referred to in note appended to deed for dissolution of partnership, Sept. 20, 1887.

C. W. M.

J. S. M.

September 20, '87,

Quorn Place, Loughborough.

Memo of agreement securing Moore for unpaid balance.

Martin concedes that Moore is entitled to a lien on £10,000 worth of live stock, as provided in agreement of Nov. 20, 1886.

10 Moore concedes that he would insist on no security that would hamper Martin in dealings with his company, provided that he produces one, which would be equally valuable.

If Martin cannot produce a security which is equally valuable in the estimation of J. Moore and his legal adviser (calling in the arbitration of some eminent counsel, if necessary).

The security laid down by original agreement for dissolution of partnership, dated November 20, 1887, stands in the event of any dispute arising between James Stewart Moore and Charles William Martin as to what security the said James Stewart Moore is entitled under the original agreement, dated November 20, 1886. The same shall be referred to arbitration in the manner prescribed by the Common Law Procedure Act.

C. W. MARTIN.

JAS. STEWART MOORE.



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MEMORANDUM OF TERMS agreed on between C. W. Martin and J. S. Moore at Sheep Creek Ranch, July 27th, 1887.

C. W. Martin owes Moore, say £10,000 (exact amount in dollars to be calculated).

CR.	DR.
C. W. M., Cash as arranged . . . . .£ 5 000	Dr. to Moore . . . . .£10 000
By Shares Q. R. Company . . . . .£ 5 000	
<u>£10 000</u>	<u>£10 000</u>

Moore reserves by agreement, right to give notice (as provided)

- 10      1. To register shares in his name (with C. W. Martin's consent)  
 2. Or to demand cash.

C. W. Martin states that the Quorn Ranch Co., Limited, are bound to pay this latter sum to J. S. Moore, if C. W. Martin should make default either in principal or interest.

The above general principals, accepted by both parties, subject to legal opinion, applied for in letter jointly drafted to-day to Crookshank, copy of which is initialed by both parties.

C. W. MARTIN.  
 J. S. MOORE.

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pay this latter sum  
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both parties.

. MARTIN.  
MOORE.

## EXHIBIT "E."

Calgary, July 30th, 1887.

DEAR CROOKSHANK,

Mr. Martin applied to me some time ago with reference to the completion of the contract existing between us and I desired him to allow the matter to stand over until I could discuss the matter fully with him personally here. This I have now done and have taken time to investigate the matter.

I now enclose you the articles of association of a company he has formed to carry on business. It was understood between us that some such course was contemplated by him in the dissolution of our partnership, and our agreement was framed accordingly in certain clauses so as not to hamper him in this proceeding, while duly protecting my interests.

Mr. Martin's proposition to me amounts to this ; that I shall accept 50 fully paid shares in his company, worth say £5,000, as security for unpaid balance, instead of the security provided in the agreement, dated Nov. 20th, 1886, of which you have a copy. On my objection that this did not appear on the face of it as good a security as the former, he called my attention to Section six (6), clause three, page 1, of the memorandum of association and assures me that this was drawn up under the advice of eminent counsel, especially to meet my case, and that he is prepared to stand or fall on the following statement :—" That the security proposed to be substituted is in every way a better one for me because it substitutes for the personal bond of 20 individual, with collateral security on say some 1,000 head of cattle, a legal first charge on buildings, 'live and dead stock'—worth some £50,000 more or less, and with personal liability shifted from the shoulders of one person to those of seven persons, whom I know to be at 'equally solvent.'"

I have therefore to ask you to put yourself at once into communication with the Solicitor of the Company, and after having taken counsel's opinion (if necessary), to inform me in such manner that I can confidently act upon without further delay or correspondence.

1. Is the Company properly formed and registered with due regard to all the requirements of the law ?
2. Is counsel of opinion that the memorandum of association referred to gives a 30 first charge on the property on the Company and a remedy against the individuals composing it in case of default ?
3. In the event of my having, hereafter, to sue for the recovery of either principal or interest, what would be the procedure ? Whether,

July 30th, 1887.

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(A) To obtain a judgment decree in the Local Court of Calgary and have the stock seized and sold by the Sheriff.

(B) Or to sue the seven persons individually constituting the Company, in England.

Please understand that Mr. Martin is ready with one half of the purchase money. The I am quite satisfied with value and bona fide nature of the business and the solvency of the company who are all known to me personally, and in which Company I may not improbably hereafter, acquire an interest in myself.

Yours very truly,

[Sgd] JAMES S. MOORE.

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C. W. MARTIN.  
J. S. MOORE.

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S. MOORE.

## EXHIBIT "F."

September 19, 1887.

J. S. MOORE'S proposals :

1. J. S. Moore to sign deed of dissolution of partnership and assignment of share Sheep Creek Cattle Ranch Company.

2. C. W. Martin to pay cash or give bills for one half the amount of the purchase money mentioned in aforesaid deed.

3. C. W. Martin to sign mortgage of a share in the Sheep Creek Cattle Ranch Company securing to J. S. Moore the remaining half of the purchase money.

10 (A) Reference to J. J. Barter, as being a shareholder in said Company, being first struck out from the copy of mortgage, supplied by Messrs. Crookshank & Leech.

(B) And the following agreement to be appended to the said mortgage, viz. :

That as Mr. C. W. Martin has formed or is about to form a Company, to be called Quorn Ranch Company, with the object of carrying on the business of horse and cattle raising, at Sheep Creek, Alberta, in Northwest of Canada, if it be found that the circumstance Martin's having given a mortgage to J. S. Moore, of a share in the Sheep Creek Cattle Ranch Company, does in any way impede C. W. Martin in the formation of or in his dealings with said Quorn Ranch Company, J. S. Moore hereby agrees to surrender to C. W. Martin, at any time within 12 months of the signature of this agreement, the above mortgage of a share in the Sheep Creek Cattle Ranch Company, conditionally that J. S. Moore, on surrender of the said mortgage to C. W. Martin, receives in lieu of it a first charge or mortgage on the property of Quorn Ranch Company, which shall afford to J. S. Moore a security equally good to the one which is called on to surrender. If Moore's legal adviser says it is not as good a security, question be left to arbitration of any eminent lawyer, selected by Messrs. Miles & Crookshank.

James Stewart Moore being conversant with the principles of the business now being carried on by C. W. Martin or his Company, would have had no objection to have taken scrip instead of stock as his security, had not Mr. Leech advised that scrip was legally valueless and no security at all. It is further agreed that in consideration of events that have taken place since the agreement for dissolution of partnership, on Nov. 20, 1887, Mr. J. S. Moore and C. W. Martin jointly will ascertain the value \$44,500.00 in pounds sterling, and that C. W. Martin pay to James S. Moore's agent in Ireland the sum of £4,000 as provided, and the remainder remain on at five per cent. interest on security, as provided, or such substituted security as J. S. Moore may accept, so long as the interest is paid when demanded, until it suits the convenience of C. W. Martin to tender J. S. Moore the unpaid balance in cash or shares as is privately understood between them.

CHARLES WM. MARTIN



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WM. MARTIN

## EXHIBIT "G."

Sheep Creek Ranch, Sept. 20th, 1887.

DEAR MOORE,

With reference to the first four lines of page 4 of draft for agreement of dissolution of partnership, now about to be signed by us, I have to note that it somewhat conflicts with the understanding existing between us, and in the case of your death might be taken advantage of to my prejudice. I will, however, sign it, if you will give me a memorandum that in consideration of events that have taken place, since Nov. 20th, 1886, you will allow me to pay the balance at my convenience, so long as the interest is duly paid.

10

Yours truly,

CHARLES WM. MARTIN.

## EXHIBIT "H."

Sheep Creek Ranch, Sept. 20th, 1887.

DEAR MARTIN,

I have much pleasure in conceding to the request in your letter of Sept. 20th, 1887, in reference to the re-payment of balance due to me.

Yours truly,

JAS. STEWART MOORE.

P. S.—I have further to note that if you will give bills as provided, the agreement of  
20 dissolution of partnership, notwithstanding that two bills of £2,000 each is accepted between  
us a fair equivalent

JAS. STEWART MOORE.

20th, 1887.

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M. MARTIN.

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ART MOORE.

EXHIBIT "I."

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December 19, 1888.

To MILES & BERRIDGE, Leicester,

Cable date on Quorn Company books assignment Martin's fifty shares to me.

STEWART MOORE.

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EXHIBIT "J."

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To STEWART MOORE, Calgary,

Fifty shares deposited about a year ago with Company's Solicitor in trust for you; and further shares may be assigned and registered on company's books in your name, as directed.

BERRIDGE & MILES.

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umber 19, 1888.

ares to me.

WART MOORE.

n trust for you;  
in your name,

IDGE & MILES.

## AFFIDAVIT OF P. MCCARTHY.

I PETER MCCARTHY, of the town of Calgary, in the District of Alberta, Advocate, make oath and say:—

1. I have been informed by S. Barber, Esquire, Manager of the Imperial Bank of Canada at Calgary, that in the year 1888, F. G. Smith, Esquire, Banker, formerly of the firm of Laffer & Smith, had presented to him, Barber, at said Bank, two promissory notes made by the defendant to the plaintiff, for payment, but he, Barber, refused to pay same as they were made payable at the said Imperial Bank of Canada, and he, Barber, informed me that he believed such promissory notes were made and dated in England, and not made payable at any particular place and from these facts and from papers and documents which have come into the possession of my firm from the defendant's solicitors in England, I verily believe the promissory notes sued on herein, were made and dated in England and were not made payable at any particular place.

2. I have on two occasions applied to the plaintiff's advocates in this action for an inspection of the promissory notes sued on herein, and on the first occasion he said he had one of them, but that he would get the other and show them to me the next day and on the following day when I applied to him again for such inspection he informed me the plaintiff had taken the one he, the said Advocate, had away from him and he could not show the same to me.

3. That I have searched in the office of the Clerk of this Court to ascertain if leave was given or order made herein by the Honorable Judge for the issue of the writ in this action for service out of the jurisdiction, and could not find that any such leave was given or order made, and I verily believe none such was given or made.

4. No appearance has been entered in this action.

SWORN before me at Calgary, in the  
District of Alberta, this 12th day of  
April, A. D. 1889.

[Sgd.] P. MCCARTHY.

[Sgd.] J. C. F. BOWN.

A Notary Public in and for the Northwest Territories.

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AFFIDAVIT OF J. J. BARTER.

I, JOHN JOSEPH BARTER, of Sheep Creek, in the District of Alberta, make oath and say

1. I am well acquainted with the above named defendant and have been so acquainted with him for six years.

2. The said defendant is not now and never was, during said six years, a resident of the Northwest Territories of Canada, but has always resided in England.

3. The said defendant has for a few years visited the said District of Alberta, in the summer time for a few months, but such visits were only temporary, and not for the purpose of making the said Territories his home, and he would each year return to his permanent home in England, where his family remained during such visits of the defendant.

SWORN before me at the town of  
Calgary in the District of Alberta,  
this 10th day of April, 1889.

[Sgd.] J. J. BARTER.

[Sgd.] J. P. J. JEPHSON,

A Notary Public in and for the N. W. T.



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## AFFIDAVIT OF J. A. LOUGHEED.

I, JAMES ALEXANDER LOUGHEED, of the town of Calgary, in the District of Alberta Advocate, make oath and say:—

1. I am one of the Advocates for the defendant in this action, and my partner, Peter McCarthy, and I have for nearly two years been the Solicitors for the defendant at the town of Calgary, and as such solicitors have, during that time, had much correspondence with the firm of Berridge & Miles, Solicitors, Leicester, England, who were then acting as solicitors for the defendant, in our said correspondence.

2. That on the 8th day of April instant, my partner and I received a letter from the said Berridge & Miles, and along with the said letter was enclosed the copy of writ, statement of claim and order now shewn to me and marked as exhibits "A.," "B." and "C.," and the said Berridge & Miles in said letter stated that said exhibits had been served on the defendant on the 15th day of February last.

3. That along with said letter was also enclosed the affidavit of the defendant, now shewn to me and marked exhibit "D.," and from the facts aforesaid, I verily believe the said exhibits are the copies of the writ, statement of claim and order in this action, served on the defendant in England, 15th day of February last.

4. Since receiving such letters and papers as aforesaid, I have been making enquiries from various persons who would be likely to have a knowledge of the facts as to the promissory notes sued on, and I have been informed by one F. G. Smith, banker, of Calgary, that he has seen at least one of the promissory notes which had been given by the defendant to the plaintiff and which I believe was one of the notes sued on, and the said Smith informed me that the said note which he had seen he believed and understood was drawn and dated in England and was not made payable at any particular place, and I have been also so informed by A. D. Braithwaite, Esquire, of Calgary, that he had seen the said notes and that they were drawn and made as aforesaid, and from these facts and from the papers and documents received along with the said letter, I verily believe the promissory notes, sued on herein, were made and dated in England, and were not made payable at any particular place.

SWORN before me, at the town of  
30 Calgary, in the District of Alberta,  
this 18th day of April, 1889.

[Sgd.] John C. F. Bown.

A. Notary Public in and for the Northwest Territories.

[Sgd.] JAMES A. LOUGHEED.

District of Alberta

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TOUGHEED.

## AFFIDAVIT OF DEFENDANT.

I, CHARLES WILLIAM MARTIN, late of Quorn Place, Quorn, in the County of Leicester, Rapchman, but now of Barrow House, Barrow upon Soar, in the said County, make oath and say as follows :

1. I have read copy deposition of the plaintiff, upon his examination herein, taken on the 24th day of April, 1889, the 16th day of May, 1889, and the 18th day of May, 1889, respectively.
2. I have also read copy affidavit of the plaintiff, sworn in these proceedings, on the 10th day of April, 1889.
3. I crave leave to refer to the affidavit sworn by me in these proceedings, on the 10th day of March, 1889, and to repeat herein the statements therein, to which I depose in the said affidavit.
4. The statements to which I depose in my affidavit, sworn on the 23rd day of March, 1889, are not challenged but are confirmed by the statements made by the plaintiff in his examination and affidavit, above referred to.
5. It is true that my Solicitors objected to the Power of Attorney originally given by the plaintiff to his agent,—this objection was admitted to be valid by the plaintiff, who subsequently executed another Power of Attorney. This second Power of Attorney was not acted upon in England, solely because a fresh agreement was entered into between the plaintiff and me as deponent, which superceded the previous agreement.
- 20 6. No unnecessary delays were caused by me with reference to the completion of the first agreement in England. I was always ready and willing to complete it, but the plaintiff appointed two agents in England to complete the agreement on his behalf, one to sign and the other to advise, but the signer could not sign and the adviser would not advise.
7. With regard to the second agreement entered into between me and the plaintiff, I depose that it was an agreement with regard to which the cause of action (if any) did not arise within the jurisdiction of this Honorable Court and that all the plaintiff can be legally entitled to is a decree for specific performance of the true and equitable intent of the said agreement, in the county where the agreement was entered into, and where the breach of it (if any, which I do not admit) has occurred.
- 30 8. The two notes of hand, referred to in the plaintiff's affidavit, were made by me as deponent, in England, and were delivered and appropriated through the post to the plaintiff in England, and the plaintiff has adopted this view by presenting one of the notes for payment in England.

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9. With regard to the bond, I positively say, that it is untrue that when I saw the plaintiff I refused to put dates in, as requested by him ; on the contrary, I told the plaintiff that he might fill in the dates as he liked, and I further say that if in any point whatever, anything remains to be done in order to comply specifically with the terms of the agreement entered into between me and the plaintiff, I am ready and willing to do what he may reasonably require of me, to perfect the same, and if there be any imperfection in the said bond (which I do not admit) it arises under the mutual consent of the plaintiff and me, this deponent, or by our mutual mistake, which I am ready to rectify.

10. No request has ever been made to me to do anything further, with regard to the bond nor has it ever been suggested to me that it was invalid ; on the contrary, it was distinctly accepted by the plaintiff, and the statement that he considers it invalid, is an afterthought, and has been made to assist the plaintiff in his attempt to prosecute these proceedings in the Honorable Court.

11. In conclusion, I say that it was, all through, distinctly understood between me and the plaintiff that our agreement was to be performed in England, and the plaintiff has by his conduct and in his examination and affidavit, fully admitted that he was aware of this understanding, and it is misleading this Honorable Court for the plaintiff to assert that this is merely a case of goods sold and delivered within the jurisdiction of the Court, when the plaintiff is well aware that the whole of his agreement with me was to enable and to assist me in forming the Quorn Ranch Company, Limited, under well defined arrangements, to which the plaintiff assented, and whereby he will eventually receive the money which he is entitled to receive in England, with remunerative rates of interest.

SWORN at Leicester, in the County of

Leicester, in England, this 25th  
day of June, 1889. Before me

[Sgd.] EDMUND DUTTON,  
Notary Public, Leicester.

[Sgd.] CHARLES WM. MARTIN.

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EXAMINATION OF C. W. MARTIN, THE DEFENDANT.

The examination of Charles William Martin, above named defendant, taken before the undersigned Examiner this 20th day of August 1889, pursuant to the order of Mr. J. Rouleau, herein, dated the 26th day of July, A. D. 1889.

CHARLES WILLIAM MARTIN, sworn and examined by Mr. Davis:—

I am the defendant in this action. In the 4th clause of my affidavit sworn on March, '89, I mention that the agreement of the 20th November, '86, was to be a purely English agreement. This statement is based on the fact that it was agreed upon between myself and Mr. Moore both verbally and in writing. The writing showing this is contained in the 10 ment itself. The conversation between myself and Mr. Moore in which this was verbally agreed, took place both before and after the signing of the agreement of 20th November. These conversations took place at various places, principally at the Sheep Creek Ranch known as the Quorn Rancho. The purport of these conversations is set out in my affidavit filed in this case, to which I have nothing to add. With time and reference, I have nothing I could, if necessary, amplify the statements there made, as to the conversations referred to.

Q. Can you, at the present time, give the conversations you refer to any more fully set out in your affidavits, filed herein?

A. No.

Q. Is it correct, that a formal agreement was to be entered into in England, between 20 and Mr. Moore or his agents, carrying out fully the arrangement made between you at Sheep Creek?

A. Yes.

Q. Was this done?

A. Yes.

Q. What agreement contains the full agreement you refer to?

A. The Indenture of the 20th September, 1887, and a further agreement, dated the 10th of May, 1888.

Q. Was this agreement of the 20th September, 1887, ever executed by yourself and Mr. Moore?



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WARRANT.

Warrant, taken before  
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A. It was signed by both of us.

Q. Was the agreement of the 20th September, 1887, signed and accepted, subject to completion of a certain memorandum for security of unpaid balance of purchase money, mentioned in said agreement?

A. Yes.

Q. Is that the signature of this agreement, mentioned above?

A. Yes.

Q. Was that memorandum for security of unpaid balance ever completed?

A. Yes.

10 Q. Is exhibit "D" the memorandum you refer to?

A. Yes.

Q. Did you produce to Mr. Moore a security equally valuable in the estimation of him and his legal adviser (calling the arbitration of some eminent counsel, if necessary), to a lien £10000 worth of live stock, as provided in the agreement of November 20th, 1886?

A. As regards Moore,—Yes,—as provided by Indenture of the 19th day of May, 1888

Q. What about Moore's legal adviser? Did you produce security satisfactory to him?

A. My answer to that is, that I dealt with the principal, and not with the repudiated agent.

Q. Did you or did you not produce security satisfactory to Moore's legal adviser?

20 A. I have already answered that question.

Q. What do you mean by repudiated?

A. I mean that I dealt directly with the principal and not with the agent, at the request of the principal, both written and verbal.

Q. Where is the written request?

A. To the best of my knowledge and belief, in the hands of my solicitors.

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Q. In what writings was it contained ?

A. In a letter from Moore to Martin.

Q. Of about what date ?

A. Sometime in the year 1887, previous to the month of July.

Q. What are the legal difficulties referred to by you in clause 6 or your affidavit of 23rd March, 1889 ?

A. Cannot say, not being a lawyer. They are contained and fully set forth in a voluminous correspondence between the solicitors of Mr. Moore and myself. My solicitor informed me that the nature of these difficulties was that they were trumped up by Moore's solicitors intentionally, to delay completion of proceedings.

Q. Were these difficulties with reference to the security to be given by you to Moore ?

A. In part.

Q. The security offered by you was unsatisfactory to Moore's solicitors ?

A. Bearing in mind my reply to the last question but one and the security being unsatisfactory to Moore, I was not at the pains to investigate this matter personally.

Q. Did you understand from your solicitor that the security offered by you was unsatisfactory to Moore's solicitors ?

A. I understood, as stated in my previous replies, that this formed part of the five objections taken by Moore's solicitors.

20 Q. When and where did the plaintiff make the admission mentioned in clause 8, of your affidavit of 23rd March, '89 ?

A. In or about Calgary, in or about July '87.

Q. Was anybody present at the time except yourselves ?

A. No, for obvious reasons. It is not likely that two persons, discussing confidential matters, would do so in the presence and hearing of other parties.

Q. What was the gist of the conversation, in that respect, as nearly as you can remember ?

A. The tenor of the conversations was the notorious winter losses of '86 and '87.

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Q. Is that all you can remember of the conversation mentioned in said clause 8 ?

A. I consider that covers what you call the gist of the conversation.

Q. Give the words of that conversation as nearly as you can.

A. That is impossible, after an interval of more than two years.

Q. Can you give no further account of this conversation than what you have already given ?

A. I can only tax my memory with the results, not with the minutie of the conversation.

Q. Last question repeated.

A. No—not off-hand.

10 Q. Do you mean off-hand at present ?

A. Yes.

Q. Did you tender the plaintiff mortgage debentures in the Quorn Ranche Company the full amount of the plaintiff's claim against you, as stated in clause 11 of your affidavit of 23rd March, '89 ?

A. Yes, for the only claim I was advised Moore had against me, namely, £5000.

Q. Had he no further claim against you than £5000, at that time ?

A. None, absolutely none.

Q. What was the purchase price that you were to pay Mr. Moore for his interest in Shee Creek Ranche Company ?

20 A. \$44,500.

Q. What do you mean then by saying that at the time you tendered these debentures the only claim he had against you was £5000 ?

A. I mean that £5000 was all the money then due to Moore, for principal and interest the remainder being provided for by security, repayable at my convenience, under the Indenture, dated 19th May, 1888, or as further effected by correspondence between Moore and myself, dated September 20th, '87, and marked "G" and "H" in the exhibits to my affidavit. I gave two promissory notes to plaintiff.

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Q. Were these notes for the £5000 mentioned by you as due Moore, or for the balance which you say was not due?

A. Obviously for that half which might be due.

Q. And it was for the same £5000 for which you tendered the mortgage debentures?

A. Yes.

Q. Those promissory notes were, I believe, for £2500 each?

A. Yes, at 3 and 6 months.

Q. They are unpaid, I believe?

A. Yes.

10 Q. For what reason have you not paid them?

A. Because I was advised that to do so would be compromising to me, in view of an action pending for £10,000, which I claim is not owing.

Q. Were these notes not long overdue before this action was instituted?

A. The dates speak for themselves.

Q. Was an action pending when these notes fell due?

A. No. The first note was due September 12th, '88, and the second December 12th, and the writ was issued in Calgary, on the 26th December, 1888.

Q. The fear of compromising a pending suit could not have been your reason for not paying these notes prior to December 26th, 1888?

20 A. It was the reason for not paying subsequently to that date. I had other reasons for not paying previous to that date.

Q. What were the reasons for not paying prior to that date?

A. Because I required the money for other purposes, and Moore, in accordance with the true spirit of our agreement, did not press me to do so.

Q. What documents contain the final and binding agreement in this matter between yourself and the plaintiff?



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A. I am advised that all the documents set forth as exhibits to my affidavit would have to be read together, before a Court of Equity could authoritatively determine the true nature of the agreement existing between us.

Q. What is the property which was sold to you by the plaintiff?

A. All his interest in the Sheep Creek Ranche.

Q. That property I believe you have since sold to the Quorn Ranche Company?

A. More accurately, that property is now represented by a part of my share capital of that Company.

Q. What do you mean by that?

10 A. I mean I never sold; it represents part of my interest in the Company; my share in the Quorn Ranche Company consists in the whole of the old Sheep Creek Ranche Company with additions.

Q. Who owns that property at the present time?

A. The Quorn Ranche Company.

Q. And for this property you have received from the Quorn Ranch Company a certain number of shares in that Company?

A. Yes.

Q. Have you ever paid the plaintiff anything on account of the purchase price of that property, or interest thereon?

20 A. No, but I have several times offered to do so, which has been declined.

Q. When did you offer to do so?

A. I have offered him the interest due, cash on account and debentures, which was equivalent to cash for the full amount.

Q. When and where did you offer him any interest, and how much?

A. On August 20th or 21st, 1889; all interest due, in Calgary, without prejudice to pending suits.

Q. At any other time?

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A. No interest was due previous to commencement of this suit.

Q. Did you ever agree, prior to commencement of this suit, to pay any interest previous to the commencement of this suit?

A. No; all interest up to January 1st, 1889, was included, by agreement, in the lump sum of £10,000, and five per cent interest, on the sum of £10,000, was due, by agreement, on January 1st, 1889.

Q. Where is that agreement contained?

A. That agreement was a verbal one, but was also contained in a correspondence between myself and Moore, when I sent him the bills, which correspondence is in the hands of my solicitor in England.

Q. Where did this verbal conversation about interest take place, and when?

A. I cannot fix the date more closely than shortly after my arrival in Calgary, in the year 1888, when the matters dealt with in the Indenture of May 19th, 1888, were discussed between us. This was at Calgary, or in the neighborhood,—possibly at Moore's house. There was no one else present.

Q. Where did you make the plaintiff the offer of cash, that you speak of?

A. In the autumn of 1888 and in August, 1889.

Q. What cash did you offer him in the autumn of 1888?

A. I don't recollect the precise amount. It was probably all I had at my deposit at my 20 bankers. If pressed for an approximate sum, probably about £2000.

Q. Did Mr. Moore refuse to accept this?

A. Yes. He wanted the £5000 in a lump, and I left Calgary in the autumn of 1888, with the understanding that I was to get him this sum as soon as I could.

Q. What sum did you offer him the other time you speak of?

A. I suggested interest and cash (no sum mentioned) on account, without prejudice, and was told that the proposition thus informally made, could not be entertained.

Q. Do you mean by saying the mortgage debentures you tendered were the same as cash, that they could be readily turned into cash at par?

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A. I mean that I had such confidence in Mr. Moore's loyal adhesion to the spirit of the agreement existing between us, that I tendered him documents which would have enabled him, had he thought fit, by this time, without notice, to have put the sheriff into the Quorn Ranche, to sell out so much of the £60,000 now thereon, as would have satisfied his claim for £5000, interest and costs; and this he clearly understood and distinctly refused. I know he understood this, because he was the specially appointed agent of the Company for their due registration as chattel mortgage, in accordance with the law of the country.

Q. Did you yourself attempt to cash these very debentures, at the Imperial Bank, in Calgary, without success?

10 A. No.

Q. Did you attempt to negotiate these debentures at all, with a view to turning the cash proceeds over to the plaintiff?

WITNESS REFUSES TO ANSWER, ON ADVICE OF COUNSEL, AS IRRELEVANT.

Q. Are the debentures under discussion now, the ones you speak of tendering to the plaintiff, in your affidavit of March 23, '89?

A. Yes.

Q. Referring to the 6th paragraph of your affidavit of the 25th June, 1889, how do you know the "adviser would not advise," and what do you mean by it?

20 A. I know Crookshank would not assist Moore in any way to carry out the agreement, as he, Moore, has since done, and advised him not to do so, because Moore sent me a letter from Crookshank to him, Moore, saying so and so many words, and in order to show me that it was not his fault that the deeds were not completed in England, as contemplated by us both, and this letter is in the hands of my English Solicitor.

Q. In paragraph 8, of your last mentioned affidavit, what did you, at the time you swore to that affidavit, mean by saying "the two notes of hand were delivered and appropriated through the post to the plaintiff, in England"?

A. I understood these words to mean that the notes of hand, as well as all the other documents relied in this case, were to be drawn, interpreted and negotiated in England, and in accordance with the law of that country, to avoid complications which might arise from the dif-  
30 ferent practice of law in Canada.

Q. Is it true that the plaintiff requested you to fill in the dates, which were left blank, in the bond given by you to him, herem?

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A. Yes, he first called my attention to these blanks, and suggested remedying the incomplete appearance of the document.

Q. Did you ever do so?

A. Not with my own hand, but I told him he might put in anything he liked, as I considered it quite immaterial, the nature of the bond being defined by signed documents and its period regulated by two letters, marked "G" and "H," in the exhibits to the first affidavit, which constitute a supplementary agreement made for that purpose.

Q. What are the signed documents, referred to in your last answer, other than the letters "G" and "H"?

10 A. I am unable, at present, to lay my hand on these documents, but know that some such exist, showing that this bond was as collateral security to the shares deposited, and was probably given spontaneously by me to Moore, after the signature of the Indenture of May 19th, 1888, as additional security, and the documents recording the transaction, are in the hands of my English Solicitor, and will probably be found to be of the nature of a written request from Moore and a written consent from me.

[Sgd.] CHARLES WM. MARTIN.

[Sgd.] JOHN R. COSTIGAN, Examiner.

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## AFFIDAVIT OF PLAINTIFF.

I, JAMES STEWART MOORE, of the District of Alberta, in the Northwest Territories of Canada, Gentleman, make oath and say:—

1. I am the above named plaintiff.

2. I am advised and believe that I have a good cause of action herein against the above named defendant.

3. This action was brought by me against the above defendant for the recovery of \$44,500.00 together with interest thereon at the rate of five per cent per annum, from the 1st day of January, 1887, being the agreed price of my interest in the Sheep Creek Ranche, which interest I sold and delivered to the defendant, at Sheep Creek, in the District of Alberta, on the 20 day of November, 1886; such interest consisting of all my interest in all those lands in Alberta, leased to C. W. Martin, or Moore & Martin, formerly Wilson & Stimson, and all stock branded with the registered brand of the Sheep Creek Ranch Co., and all buildings, dead stock, horses, &c., said brands being as follows:—  $\div$   $\nabla$  on right shoulder, for horses, and "Z" on right rib, for cattle.

4. The said Sheep Creek Ranch was carried on by myself and the defendant at Sheep Creek aforesaid, and all the property above described was situated, at the time of said sale, at Sheep Creek, aforesaid.

5. Nothing, however, has been paid to me by the said defendant on account of the said purchase price or interest.

6. At the time of the said sale, I was, and ever since have been, residing in the above named Judicial District, and all arrangements and agreements, whatsoever, between me and the defendant, in reference to the matters in dispute herein, were made by me within the said Judicial District, either personally with defendant, or by letter.

7. The defendant is now, and for sometime has been, the Managing Director of the Quorn Ranche Company (Limited), which Company carries on business on the lease formerly owned by me and the defendant (along with other land), my interest in which was transferred to defendant by me, as above mentioned.

8. I have now the copy of the defendant's affidavit, filed herein, which was served upon my Advocate.

9. That the statement in clause 8, of said affidavit, that the loss therein mentioned should fall equally upon me and the defendant is incorrect, and as a matter of fact, the valuation of my interest in said ranche property was never varied from the sum at which it was fixed between me and the defendant, in our agreement of November 20th, 1886, to wit: \$44,500.

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10. As to clauses 9 and 10, in said affidavit, I state that the only variations to our agreement of November 20th, 1886, were as to time of payment and the nature of the security to be given for unpaid balance of purchase money, not covered by notes.

11. Said variations were made in conformity with offers, contained in a letter from defendant to me, dated 20th March, 1888, which letter is now shown to me and marked exhibit "A," which variation consisted in my extending the time for payment of first-half of said purchase money, and in my accepting the personal bond of the defendant for £5000, and 50 shares of £100 each in the Quorn Ranche Company, as security for the last half.


12. Said offers were accepted by me in a letter mailed by me to defendant, in which I enclosed signed agreement of May 19th, 1888, marked as exhibit "C." to said affidavit of defendant, and which is referred to as mortgage, in said letter of defendant, on the 4th page thereof.

13. The said letter and agreement were sent by me, direct to defendant, and not through the hands of my brother, as suggested in said letter from defendant.

14. In due course I received from the defendant two promissory notes, mentioned in his said letter, also bond now shown to me and marked as exhibit "B."

15. As to paragraph 11, of said affidavit, I say that it is incorrect, inasmuch as the mortgage debentures, therein referred to, were not offered to me by defendant for the amount of my whole claim, but only for one-half of same, in lieu of defendant's promissory notes, which were then overdue.

16. As to the 15th paragraph, of defendant's said affidavit, I say that at the date of my said agreement with defendant, of November 20th, 1886, I turned over to the defendant all my said interest in the said Sheep Creek Ranche and the stock belonging to the same, and have never had any possession of or control over same since said date, in any matter whatever, but since said date defendant has had absolute possession and control of said property, until he transferred same to the Quorn Ranche Company (Limited), which he did some time prior to December 13th, 1888.

17. On December 13th, 1888, the said Quorn Ranch Company, gave a Bill of Sale, by way of mortgage to defendant, as Trustee, on 3000 head of cattle branded "Z" on right rib, and 1000 head of horses branded  on right shoulder, all of which said cattle (except increase) and part of said horses were, from the 20th day of November, 1886, the property of the Sheep Creek Ranche Company, and formed a large part of the property in which I transferred my interest, as aforesaid, to the defendant, on said 20th November.

18. I have searched and found the said chattel mortgage duly filed with the clerk of the Calgary Registration District.

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19. The agreement of September 28th, 1887, marked as exhibit "B" to said affidavit of defendant, was to have been signed by me on the fulfilment of the terms of a certain memorandum, referred to and marked as exhibit "D" in said affidavit of defendant, but the terms of said memorandum were not fulfilled by defendant, and the said agreement was, therefore, never signed by me.

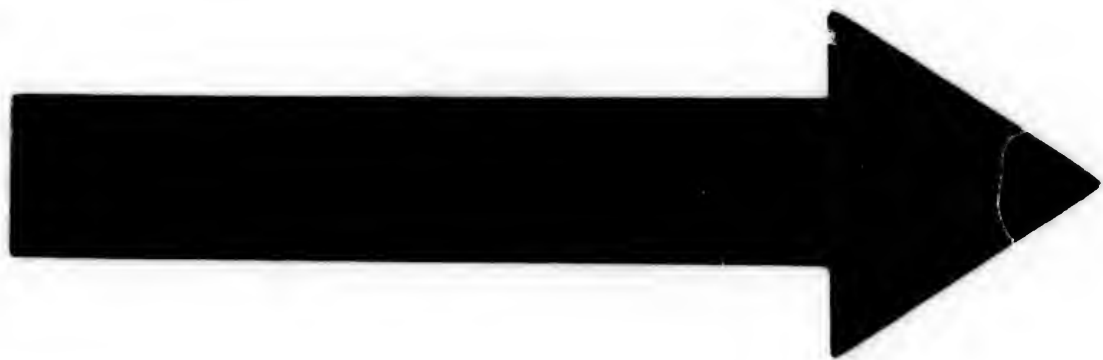
20. The paper writing now shown to me, and marked as exhibit "C," was signed and delivered to me by the defendant, personally, at Sheep Creek aforesaid, in or about the month of September, 1887.

SWORN before me, at Calgary, in the  
10 District of Alberta, this 23rd day  
of April, 1889.  
[Sgd.] John C. F. Bown.  
A Commissioner, &c.

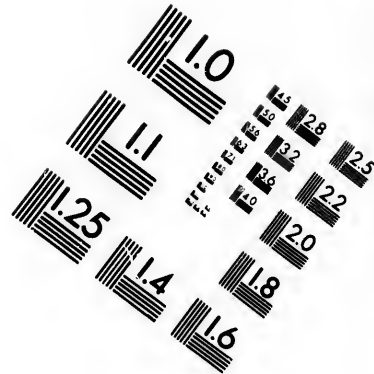
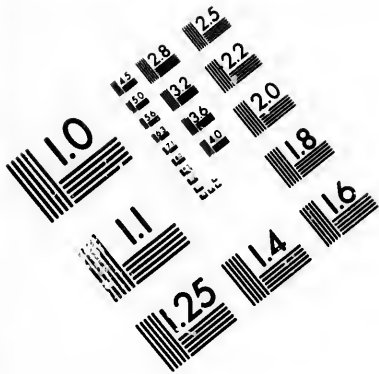
[Sgd.] JAMES STEWART MOORE.

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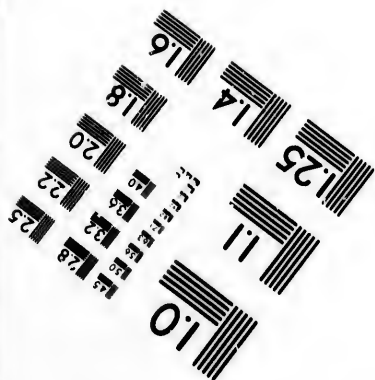
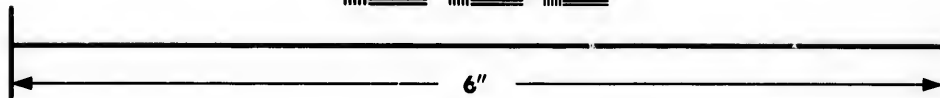
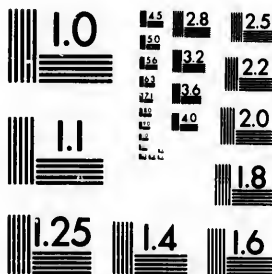
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## EXHIBIT "A," REFERRED TO IN PLAINTIFF'S AFFIDAVIT.

Quorn, March 20, 1888.

DEAR MOORE,

There is no difference of opinion between us as to the nature of our agreement.

"Sept, 20, 1887," "If Martin cannot produce a security which is equally valuable in the estimation of Moore, his Legal Adviser (calling in the arbitration of some eminent counsel, if necessary), The———original security———stands." (Here follows the usual arbitration clause.)

Now read enclosed letters. (Enclosure "A.")

10 This means there may be no disagreement between Moore & Martin, but we will make such difficulty and you may go on (to arbitration or elsewhere).

Here I stopped it——There have been enough lawyers' costs already——An arbitration would take another three months and cost £100.

I shall not go back on one single point in our agreement, but as you know, my part of Moore & Martin has not turned out for me as I had a right to expect, and I think you ought to consider this, not as affecting principals, but ways and means.

1. Your brother, the 3rd partner, failed us and left us short of capital at starting.
2. You sprung upon me unexpectedly by your wish to go out of the business, and I did not insist on the 6 months notice, to which I was entitled.
- 20 3. Within that six months, as you know, we lost 25 per cent. (say £5000), and the price of beef fell 20 per cent.

4. The difficulties and delays have been made, not by me, but by your advisors. In spite of all this I say "have patience with me and I will pay thee all." You will get £10,000 for the £5000 you invested 4 years ago, with interium interest at 5 per cent. I cabled yesterday that I thought I could promise you £5000 this year and £5000 next. And as I have come in for an extra £1000 per an. of income, you are probably as safe of your 5 per cent. as you were before.

The whole question is therefore narrowed down to "what security ought Moore to ask and Martin to give for the £5,000 temporarily left on mortgage at 5 per cent. interest."

The original idea was a lien on 1000 cattle; this, however, is now open to objections on  
30 both sides. Now that a company is registered, it is one thing for them to sanction the

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deposit of their Scrip, which they reserve the right to redeem at par, whenever necessary, but quite another thing to give an outsider the right (without notice) of seizing, say all their thoroughbred bulls, at bulling time.

There is no real objection to depositing scrip, it is done every day with English Bankers. The real lawyers objection is "That presumedly all companies are swindles, and that £100 scrip does not represent £1000 worth of stock and buildings, &c." This, you know, is not the case here. Your real security (which they cannot understand) is this, viz.: That you know the business to be genuine, and that your £100 investment in it became £200 in 4 years. Therefore, if you had to destrain on my £1000, on May first, next year (i. e., two years after registration of Company), that each share would be worth 150 by increase. And it is not likely that any one would let you have 7500 for 5000, or sacrifice £2500 capital, sooner than pay 250 interest. If you really want anything further, in addition to the 5000 on Canadian property, I will, whenever you ask me, give you also my English bond for another £5000, so you can have it both ways. And I will further promise you, between man and man, (without prejudice and without lawyers) that if anything occurs in the course of the next 12 months, to depreciate the value of the concern, such as unexpected losses, improper sales, mismanagement or revolution, I will, on demand, give you whatever further security you may demand, that is reasonable and in my power to do.

20 A further consignment of breeding horses (of a better class) was voted at our last general meeting, I wanted them this May but my friends wished it to stand over till next May, to see the results of this foaling season. This again will add some 20 per cent. to the value of the £100 share.

If this is satisfactory to you (as I hope it is), all you will have to do is sign enclosed mortgage, which will close the business, then post it by return mail to (say) your brother Harry (whom I can trust and will do as you tell him) and tell him to post enclosed sealed packet to me, whenever he has received from me

- 1 Counterpart (or copy) of an agreement for dissolution of partnership.
2. Two notes of hand. C. W. Martin to J. S. Moore, for £2500 each, at 3 and 6 months, 30 respectively, from date of his giving me your agreement.
3. C. W. Martin's bond for £5000 (?)
4. 50 £100 shares in the Quorn Ranch Co., numbered Nos. 1 to 50 inclusive.

I have only to add if English make difficulties out of our simple and straightforward business, Canadian Lawyers would make annuities, and we are well quit of both.

Sincerely yours,

[Sgd.] CHARLES WM. MARTIN.

P. S.—Will you please enclose, with the document to Harry, a formal letter from you to the Department of Interior, instructing them to register all Leasehold grazing lands now standing in the names of Moore & Martin, to that of C. W. Martin alone, and oblige.

[Sgd.] C. W. M.

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## EXHIBIT "B." REFERRED TO IN PLAINTIFF'S AFFIDAVIT.

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KNOW ALL MEN BY THESE PRESENTS that I Charles William Martin, of Quorn Place, Loughborough, in the County of Leicester, Rancher, am firmly bound to James Stewart Moore, of Bally-divitty, County of Antrim, Ireland, Esquire, in the sum of ten thousand pounds, to be paid to the said James Stewart Moore. Sealed with my seal; Dated this seventeenth day of May, in the year one thousand eight hundred and eighty-eight.

WHEREAS by an Indenture dated the \_\_\_\_\_ day of \_\_\_\_\_  
10 one thousand eight hundred and eighty-eight, and made between the said Charles William Martin of the one part and the said James Stewart Moore of the other part; certain shares and hereditaments therein particularly described have been assigned and charged by the said Charles William Martin to and in favour of the said James Stewart Moore by way of mortgage to secure the payment on the \_\_\_\_\_ day of \_\_\_\_\_ to the said James Stewart Moore, of the sum of five thousand pounds with interest for the same at the rate of five pounds per centum per annum.

AND WHEREAS the said Charles William Martin by way of further securing the payment of the said sum of five thousand pounds has agreed with the said James Stewart Moore to execute the above written bond.

20 NOW THE CONDITION OF THE ABOVE WRITTEN BOND is such that if the above bounden Charles William Martin shall pay to the said James Stewart Moore the sum of five thousand pounds on the \_\_\_\_\_ day of \_\_\_\_\_ with interest thereon after the rate of five pounds per centum, per annum, then the above written bond shall be void, otherwise the same shall remain in full force and virtue.

SIGNED, SEALED AND DELIVERED

ED by the before named CHARLES  
WILLIAM MARTIN in the presence  
of

EDWARD MILES,

Solicitor, Leicester.

[Sgd.] CHARLES WM. MARTIN. [seal]

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EXHIBIT "C." REFERRED TO IN PLAINTIFF'S AFFIDAVIT.

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Moore to receive from C. W. Martin on or before Nov. 1st, 1887, cheque for £350 on a/c of interest due Jan'y. 1st, 1888, on purchase money of Ranch \$44,500.

AGREED TO.

[Sgd.] CHARLES WM. MARTIN.  
[Sgd.] JAMES STEWART MOORE.

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ENCLOSURES REFERRED TO IN PLAINTIFF'S AFFIDAVIT.

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BERRIDGE & MILES,  
Solicitors.

10

LEICESTER, 30TH JAN'Y. 1888.

DEAR MARTIN :

RE MOORE.

On the other side I forward copy of a letter which has come from Messrs. Crookshank & Leech.

This puts it beyond all doubt that they (i. e. Crookshank & Leech) make the difficulty. There is no dispute with Moore, that I know of. You will know best how to deal with the letter.

Believe me

Yours truly,

[Sgd.] EDWARD MILES.

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20 To QUORN PLACE.

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COLERAINE, 27TH JAN'Y. 1888.

MOORE & MARTIN.

DEAR SIRS:

In reply to yours of the 26th, inst., we refer you to the mem. signed by these gentlemen on 20th September, 1887, which no doubt you have. By it, the original agreement stands in the event of dispute.

There may be no dispute, but we cannot alter our drafts without Mr. Moore's concurrence.

Yours faithfully,  
[Sgd.] CROOKSHANK & LEECH.

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MESSRS. BERRIDGE & MILES.  
Leicester.

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## DEPOSITIONS OF PLAINTIFF.

JAMES STEWART MOORE, being sworn, deposeth :

To Mr. McCarthy,

I am the plaintiff in this suit. I have been residing in Alberta continuously since June, '86. I was backward and forward on visits, before that time. Prior to coming to Alberta to live I was residing in Ireland. When I came in '86 I brought my family with me. Prior to that time I and defendant had been carrying on business together, under the name of Moore and Martin. When I left Ireland I did not leave Mr. Crookshank my agent. I did not appoint any one in connection with this matter, as my agent in Ireland. Mr. Crookshank was the Solicitor I generally employed when I had any legal business to transact. That is Mr. Crookshank, of Crookshank & Leech, Solicitors. He has acted for me in certain arrangements between myself and Martin. I have had nobody else besides Crookshank & Leech act as legal advisers for me, in this matter with Martin. Crookshank & Leech were the only persons who acted for me in this matter with Martin, except my agent whom I sent a Power of Attorney to. His name was Charles Stewart. I sent it him, I think, in March '87, or thereabouts. I have not a copy of that Power of Attorney. I sent him that Power of Attorney to enable him to act for me in the matter between Mr. Martin and myself. An agreement had been made between Mr. Martin and myself, at Sheep Creek, which was to be put into legal form in England, and upon its being properly drawn up to the satisfaction of my Solicitors, Mr. Stewart was to sign on my behalf, the paper into which that Agreement was to be put into legal form. He was to receive two bills, at three and six months, and security for payment of balance of purchase money, and remit them to me. The bills were bills to me. The first bill was to be for one fourth purchase money, and the second bill was also to be for one fourth the purchase money. I kept a copy of the Agreement, made at Sheep Creek. Exhibit "A"—that was filed with defendant's affidavit—is a copy, unless there are some clerical errors, made in copying. (Mr. Davis, for Plaintiff, agrees to produce the original.) It is the agreement referred to in clause 10, of my affidavit, sworn herein, 23rd of April, '89. It was signed on the day of its date, about 20th November, '86. There were certain conditions annexed to this Agreement, and which conditions were also signed by both parties. I had left a general Power of Attorney with my agent, and I had thought that that Power of Attorney would be sufficient to enable him to carry out this Agreement, but Mr. Martin's Solicitors objected to that Power of Attorney, as insufficient, and I sent Mr. Stewart a special Power enabling him to deal with that matter. I have not a copy of that special Power of Attorney. My agent there did not get the two bills he was to have received. He did not get anything of any kind. He never, to my knowledge, signed any final Agreement, as my agent under that Power of Attorney. He never got any notes or securities, so he never signed any Agreement. There was nothing agreed upon between my and Martin's Solicitors in England. I was notified by my Solicitors that they could not agree with Mr. Martin's Solicitors, as to this agreement. They notified me that Mr. Martin's Solicitors wanted to substitute a different security from that agreed upon, and they would not accept it without my sanction. I suppose my agent there would have signed an agreement there, if the Solicitors of both parties had

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agreed upon the terms of one. I do not see why he should not have done so. I presume that if the Solicitors had agreed upon the terms, he would have got the notes and security and signed the Agreement. I do not think he would have signed without getting the notes and security, as that would have been signing away my property, without getting any equivalent.

Q. Was the sole reason for your agent not signing an Agreement in England, what you gave us, namely, that he never got the notes and securities and so he never signed the Agreement?

Mr. Davis objects to the question on the ground that the question implies that only one reason was given, namely, not having received the notes and securities, for not signing the  
10 Agreement, which he claims to be incorrect.

On advice of Counsel, Mr. Moore refuses to answer the question.

Q. Give me the reasons why your agent in Great Britain did not execute the Agreement, as he had power to do?

A. I don't know that I can as I never saw my agent or had any conversation with him about it. I had a letter from him. He acted upon his judgment for my interests.

Q. Do you know of any reason why your agent did not sign the agreement, as he had power to do, other than the reasons that he did not get the notes and securities?

Mr. Davis objects to the question on the ground that it implies that he knows that not giving the notes and securities was the reason for not signing, which is incorrect, according to  
20 his last answer.

On advice of Counsel, witness refuses to answer. Witness desires to state that in answer to the question "Give me the reasons why your agent in Great Britain did not execute the Agreement, as he had power to do?" that he does not remember the contents of the letter or letters received from his agent, mentioned in his answer to the question.

I do not know where that letter is. I believe I received several letters on the subject. I am not certain whether I have any of those letters now, as I have not searched.

Q. Having now refreshed your memory from a letter, are you able to say why you believe your agent did not sign the Agreement?

A. Mr. Crookshank wrote Mr. Martin's Solicitors, on 5th April, '87, enclosing the special  
30 Power of Attorney I had sent. He had got no answer from them at the date of the letter I now look at, dated 20th April, '87, and written by Charles Stewart to me.

Adjourned sine die to be taken up on one day's notice, after examination lasting two hours.

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May 16th, '89. Examination continued in presence of Messrs. Davis and Lafferty for Plaintiff, and Mr. McCarthy for Defendant, at 2 p. m.

I have not been able to find any letters bearing on the question why the Agreement was not signed in England, except those already mentioned. I learned that the reason why the Agreement was not signed in England was because Mr. Martin wished to substitute a different security than that agreed upon. I learned this partly from Mr. Crookshank, and partly from Mr. Martin himself. Negotiations were carried on between me and Mr. Martin, for substituting some other security for that agreed upon in Agreement, Exhibit "A," mentioned.

Q. Do the bond and the two notes show the variation ?

10 A. Mr. Martin first proposed to give bills for one half and Mortgage for other half, on the stock of which we were joint owners before the sale took place. Then he proposed, owing to his dealings with the Ranche Co., and finding it inconvenient to give Mortgage on stock, to substitute some other security. I agreed to this, provided I got as good security as that originally provided. Finally he offered, by letter, to give me short dated bills for one half the money, 50 shares in the Quorn Ranch Co., and his bond for £5000, as security for the other half. I have not a copy of letter mentioned in paragraph 12 of my affidavit. I received bond, marked Exhibit "B" in my affidavit, early in June, '88. I also received promissory notes, viz., the ones  
20 sued on. I then retained them one being sent to England when due. I never returned them to Martin. This note was returned to me from England. It was returned to me as my property. I never discounted it. The notes provided for the first half of the purchase money, and the bond and the shares were for security for the other half. I sent the note to England to be presented for payment. The notes are as follows :

Quorn Place, Loughborough, June 9th, 1888.

B. S. Canceled. £1-5-

£2500

Three months after date I promise to pay to James Stewart Moore, or order, two thousand five hundred pounds, together with interest thereon, after the rate of £5 per centum, per annum, for value received,

[Sgd.] CHARLES WM. MARTIN.

Quorn Place, Loughborough, June 9, 1888.

B. S. Canceled. £1-5-

£2500

30 Six months after date I promise to pay to James Stewart Moore, or order, two thousand five hundred pounds, together with interest thereon, after the rate of £5 per centum, per annum, for value received.

[Sgd.] CHARLES WM. MARTIN.

and are now produced and marked as Exhibits "B" and "C."

I presume that the shares mentioned in Exhibit "B," to my said affidavit, are those of the Quorn Ranch Co., but do not know. I sent a cable to Messrs Berridge & Miles. I got an answer. Exhibit "J," to defendant's affidavit, is substantially the correct answer I received. I

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sent no answer to that cable. Martin at that time promised to send out the share certificates, but did not do so.

Q. When you received this bond of Martin's Exhibit "B" to your affidavit, and the notes produced, did you receive those as the obligations Martin was to give you in payment of your sale to him?

A. Of course I thought the notes would be paid when they became due. I noticed the dates had been left out of the bond, and considering it as an oversight I called his attention to it, and he refused to put the dates in. I did not hand back the bond and notes because I did not think to do so, or did not think there was any object in doing so, as he was all the time  
 10 saying he was just on the point of paying.

Q. Then do you or do you not look to Martin as liable on this bond?

A. I am not competent to decide a legal point. I should like to make him liable, if I could.

Q. Do you intend to hold him liable upon that bond, if you can do so?

Upon advice of Counsel, witness declines to answer.

Q. Are you willing to surrender that bond to Mr. Martin or to his duly authorized agent to receive the same?

This question is objected to by Mr. Davis.

A. I would do so or not, as I may be advised by my legal adviser.

20 Q. Why did you send that note for payment to England, as mentioned?

A. I thought Mr. Martin was in England at the time and I wished to remind him of his obligations.

Q. According to your preliminary Agreement, Exhibit "A", the final Agreement with Martin was to have been signed in England by Martin and your agent, was it not?

Mr. Davis objects, on the ground that, being an agreement in writing, it speaks for itself.

Acting on advice of Council, witness refuses to answer.

Q. The notes or bills for the first half were to have been delivered to your agent in England, were they not?

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A. There was nothing more than what was in the various written agreements, and therefore, on advice of Counsel, I decline to answer.

I never received any promissory notes or bills of exchange, except those produced, from Mr. Martin on account of this purchase.

Q. Were your negotiations with Martin contained finally in the Agreement, dated 19th May, 1888?

A. That is a copy of the Agreement he sent me along with the letter that has been filed. The letter stated that if I accepted that proposal, I should sign the Agreement and return it, which I accordingly did, upon receiving a cable that he had mailed bond and notes. And I subsequently received the bond and notes. The notes produced on this examination are the notes sued on, which represent about one half of the purchase money. The other half is secured, I suppose, by the bond and shares.

Saturday, May 18th, 1889.

Examination continued in presence of Mr. Davis for Plaintiff, and Mr. McCarthy for Defendant.

To Mr. Davis :—I received the cablegram about the shares above referred to, from Berridge & Miles, about the 11th January, 1889.

Q. When speaking, in your examination, why Stewart, your agent, did not sign the formal Agreement, you say :—"I do not think he would have signed without getting the notes and security, as that would have been signing away my property, without getting any equivalent." What do you mean by that?

A. I should perhaps not have used the word property. I suppose he would not have signed any document, unless the conditions with Martin were carried out.

It was certainly agreed and understood that after the date the Agreement of 20th November, '86, the property had passed to Martin. He immediately, after that date, proceeded to exercise all the rights of ownership. I exercised no controlership over that property, whatever, after 20th November, '86, and in September '87, he made changes in the Ranch, by putting up a variety of buildings, viz. : stables, sheds, &c. I was not consulted at all, nor did I have anything to do at all with the erection of these buildings. Between the 20th November, '86, 30 September, '87, Martin made all the arrangement as to the management of the place. Immediately after 20th November, '86, he employed John Barter as manager of the place. I was not consulted at all, in reference to that arrangement by Martin. John Barter was, previous to November '86, the manager for Moore and Martin. His Agreement with Moore and Martin, as manager, expired sometime in October, '86. Moore and Martin never made any new arrangement with Barter, as manager. Between 20th November, '86, and the following summer, Martin sold of the stock, alleged by me to have been transferred to Martin, he sold by his agent, Barter, to my

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knowledge, 1 stallion to Billy Sharples. That stallion was part of the property turned over by me to Martin, on 20th November, '86. In summer of '87, Martin delivered to me memo, marked as Exhibit "C" in my affidavit, filed herein, shewing that the stock was delivered to him, being a memo promising to pay £350 on account of interest on purchase money of Ranch, to me. There was no subsequent arrangement whereby Martin and I agreed to do away with this £350 to be paid as such interest. This memo was given about 13th September, '87, or some time later, at least he agreed to give it then and gave it to me before he left for England that year. He left that year for England, in October. I understood that £350 was to be paid me at Calgary. I understood it was to be sent to me by check, at Calgary. It was to be sent to me personally. Martin knew I was going to remain living here. The Agreement of May '88, was signed by me conditionally, i. e., to come into force upon my receiving the four things mentioned in Martin's letter of March, '88, viz.:

1. Counterpart or copy of an Agreement for dissolution of partnership.
2. Two notes of hand, C. W. Martin to J. S. Moore, for £2500 each, at 3 and 6 months, respectively from date of his giving me Martin's Agreement.
3. C. W. Martin's bond for £5000.
4. £100 shares in the Quorn Rancho Co., Nos. 1 to 50, inclusive.

He did not send all these things. He never sent a valid bond. He never sent the shares. After receiving this bond I asked him to make it a proper bond, by filling in dates, He did not do so. He promised last time on December 13th last, to send the certificates of shares. He has not done so, so far as I am advised. The bond, in its present shape, is no use to me. I am willing to give it up.

Q. The last words in your examination in chief, are "the other half" (of the purchase money) "is secured, I suppose, by the bond and shares.

What do you mean by that?

A. I mean they were to have been, under our agreement, secured by the bond and shares. As a matter of fact they have never been secured by them, as they never have been received.

To Mr. McCarthy:—Exhibit "C," contains the whole of the writing on the paper of which the exhibit formed the whole or part, unless the paper now shewn to me, and marked as Exhibit "D," was torn off the same.

I received said Exhibit "C," either at Sheep Creek, or from Martin by letter.

Martin said he would send me a check for the money mentioned in said Exhibit "C." He did not say where that cheque would be paid. He would send me a cheque for it, was all he said.

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To Mr. Davis:—The letter now shown to me and marked as Exhibit "E," is in the handwriting of and signed by the defendant, Martin, and was written to me by him, from the Quorn Ranch, Alberta, and he remained here for about two months after the day of the date of said letter.

[Sgd.] JAMES STEWART MOORE.

[Sgd.] JOHN C. F. BOWN, Examiner.

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EXHIBIT "D." IN PLAINTIFF'S DEPOSITIONS.

There is a further sum of \$490, which Moore thinks Martin has got and which Martin thinks he has not got. If Martin obtains it, he is of opinion that a clause in original agreement of Nov. 20, '86, give Moore a claim on him for this sum, in addition to principal and interest as above stated.

[Signed.] CHARLES WM. MARTIN.

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## EXHIBIT "E." IN PLAINTIFF'S DEPOSITIONS.

You will see Barber has not  
 refused to advance on my  
 security it is merely a  
 question of interest.  
 (i.e. rate of discount.)

THE RANCH, TUESDAY OCT. 14, '88

MY DEAR MOORE.

Your messenger has just arrived and is refreshing himself and his horse.

10 Your letter hits the nail on the head, with the exception of one or two details, which I  
 now correct.

I can get my cheque for £6,000 honoured by the Imperial Bank, if necessary, within  
 six days.

I can place an absolute security for the money I owe you, in your hands at 6 hours notice.

20 Furthermore if you ask me to do so, I consider I am bound to. I knew nothing about  
 my 1st bill and its recovery until I got your letter to-day. Barber spoke to me about it last  
 Sunday, when he was out here, I told him that when you got it, I was prepared to meet it with  
 a check. I further heard from my wife that she had a personal interview and also letters from  
 the representative of the Bank of Montreal, in England, and had referred them to Miles who  
 was in Switzerland for his holidays. A fellow came from somewhere, down to Quorn and  
 dunned her. Now, I think this incident with my Bankers in England and Calgary was un-  
 necessary, and not tending in any way to strengthen my credit. I believe I shall be able to  
 see you and settle our business within 7 days. (Read enclosed to Barber before sticking up  
 and posting,) it will explain itself, and from Gordon Cummings, he wants to put £5,000 into  
 the Ranch.

I am obliged by your offer to extend the time of my bill for 3 months. It is just what  
 I should have expected from you, but I assure you I have not the least idea it is necessary, and  
 would have asked you for it if I thought it had been. I did not know where the note was or  
 what had been done about it in England.

30 Of course next mail may bring word that my wife's money is all right, (last advices  
 looked healthy, the opposing counsel asking for further delays and an interview with our man)  
 but you are wrong in supposing I am relying on this to fulfil my obligations to you. I have

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provided other means—write to me by the Thursday's, mail to Okotoks—and say exactly when you must have money—and how much and I will be there—only don't make me make financial sacrifices unnecessarily, that is all I ask.

Please send in these letters to the post as soon as you can, one of them is most important. We are all worn out fighting fires—and the night chills have given Baker and me Montana fever. I am dazed with opium and quinine, but I think you will understand me—anyhow I will see you are not left, or even inconvenienced.

Yrs.

[Signed.] C. W. MARTIN.

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AFFIDAVIT OF J. S. MOORE.

I. JAMES STEWART MOORE, of the District of Alberta, the above named plaintiff, make oath and say :—

1. That the dates which appear in pencil in the Bond, filed as an exhibit to my affidavit, herein, were pencilled in by me, before I spoke to the defendant about same, and were the dates which I thought should have been filled in, before Bond was executed by defendant.

2. When I received said Bond from defendant none of the said dates, which now appear in pencil, were filled in.

SWORN before me, at Calgary, in the  
10 District of Alberta, this 27th day  
of September, 1889.

[Sgd.] Edwin R. Rogers,  
Clerk of the Court.

[Sgd.] JAMES STEWART MOORE.

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JUDGMENT.

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Motion to set aside writ and order for service and all proceedings thereon :

This action was instituted on two notes as well as for goods sold and delivered in the N. W. T.

The material produced shows that the cause of action arose in the N. W. T., and Sec, 28, of Civil Justice, ord. of 1886, gives me the power to grant an order for service out of jurisdiction, under the conditions therein specified. According to the Civ. Just. Ord. of 1886, there is no necessity of applying to a Judge for an order for the issuing of a writ to be served out of jurisdiction, and moreover, if it were the law, I would consider that my order has the effect of amending the writ : therefore. the application is dismissed with costs, and deft. to have ten days to file his defence, if he sees fit, after which period, no such defence being filed, plff. be at liberty to final judgment against the defendant.

[Sgd.] CHAS. B. ROULEAU.

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ORDER DISMISSING MOTION TO SET ASIDE WRIT, &c.

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Upon reading the defendant's notice of Motion, herein, dated the 12th day of April, A.D. 1889, and upon reading the affidavits, depositions and other material, fyled by both parties hereto, herein, and upon hearing Counsel for both parties, aforesaid ;

I do order that the said motion be and the same hereby is dismissed, the defendant to have fifteen days from the date of this order, to fyle his defence, if he sees fit so to do, after which period, if no defence is fyled, the Plaintiff to have liberty to enter final Judgment against the defendant, for the amount of his claim, and costs. And I do further order that all costs of and incidental to the said motion, be costs in the cause to the Plaintiff, in any event.

10 Dated at Chambers, this 25th day of November, A. D. 1889.

[Sgd.] CHAS. B. ROULEAU,  
J. S. C.

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NOTICE OF APPEAL

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TAKE NOTICE that the defendant appeals from the order of The Honorable Mr. Justice Rouleau, made in this cause, dated the 25th day of November, A. D. 1889, and that at the sittings of this Honorable Court, in banc, to be held at Regina, at 10 o'clock in the forenoon, on the 2nd day of June, A. D. 1890, or so soon thereafter as the said Court shall sit in banc, and as Counsel can be heard, a motion will be made on behalf of the defendant, to the Court in banc, by way of appeal from the said order, and re-hearing of the matters in question in the application in chambers, wherein the said order was made, for an order setting aside or modifying the said order, and setting aside the writ of summons herein, and all subsequent proceedings, on the  
 10 ground that the learned Judge ought to have made an order setting aside the said writ and all subsequent proceedings, because (1) the said writ, being intended for service out of the jurisdiction, and having been actually served out of the jurisdiction, and the defendant, at the time of the issue thereof, being known by the plaintiff to be out of the jurisdiction, ought not to have issued, without leave of a Judge or the Court, and was irregularly issued, without such leave; (2) The said writ, having been issued and served under the circumstances aforesaid, is irregular in form as a writ for service out of the jurisdiction, (a) in not stating the proper time in which the same was returnable, (b) in not being issued as a concurrent writ, or otherwise, for service out of jurisdiction, and (c) is otherwise irregular in not conforming to the Judicature Ordinance of 1886, and amendments thereto.

20 And for an order setting aside or modifying the said order and setting aside the order made herein, dated the 18th day of January, 1889, authorizing service of the said writ to be made out of the jurisdiction of this Court, and the service of the said writ made thereunder, and all subsequent proceedings, on the ground that the learned Judge ought to have made an order setting aside the said order for service, and the said service and all subsequent proceedings; (1) for the reasons set forth as above, as objections to the said writ and the issue thereof; (2) because the affidavit and other material, on which the said order issued, was insufficient, in that the same does not set forth facts and circumstances sufficiently to enable the Judge to determine whether or not the said order should have been made; (3) because the said affidavit is not candid, and is misleading; (4) because the said affidavit and the said other material do not bring  
 30 the present case within any of the provisions of the law authorizing the Judge to allow service of a writ out of the jurisdiction; (5) because this case is not, in truth and in fact, within any such provisions; (6) because in view of all the circumstances of the case, the Judge, in the exercise of his discretion, ought not, and had he been more fully informed, would not, have made the said order; and (7) because this Court has no jurisdiction, or no jurisdiction which the Court will exercise, over the causes of action, sought to be enforced herein.

Or for an order modifying the said order, by the insertion therein of a provision making it a term or condition of the said order, that the plaintiff should be bound, and undertake to

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prove at the trial of this action, that the alleged causes of action, set up in the statement of claim, arose within the jurisdiction of this Court, or are otherwise such that this Court has, properly, jurisdiction in respect thereof, which it will exercise on the grounds, or in view of the facts that the defendant did not reside or carry on business within the jurisdiction of this Court, at the time this action was brought, and that the defendant was served with the writ of summons herein, out of the jurisdiction.

Dated this 30th day of November, A. D. 1889.

LOUGHEED, MCCARTHY & BECK,  
Advocates for the Defendant.

10 To T. B. LAFFERTY, Esquire.  
Advocate for the Plaintiff.

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