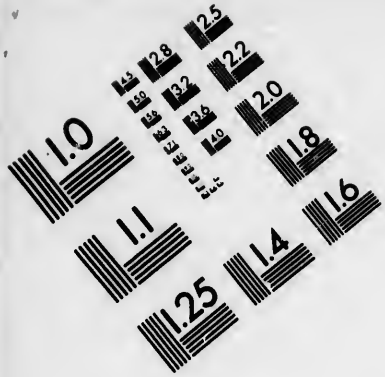

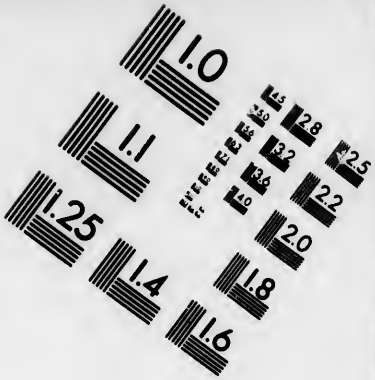

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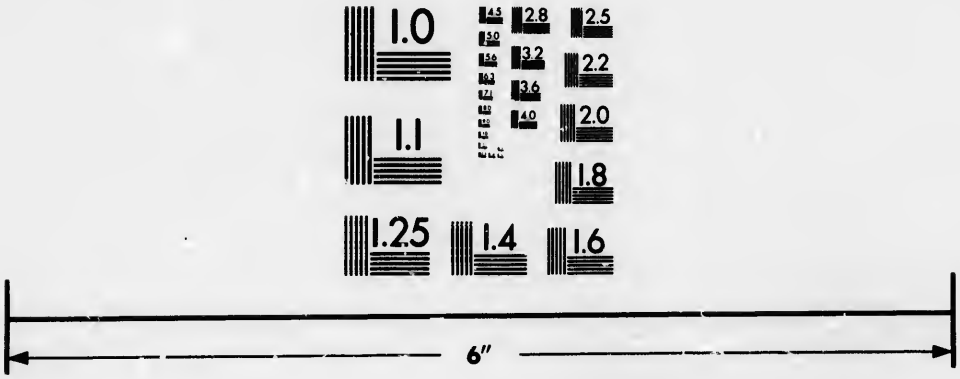

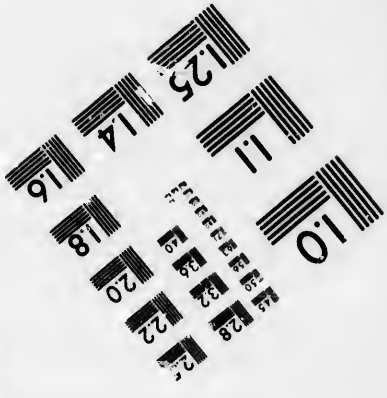

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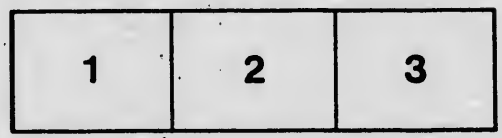

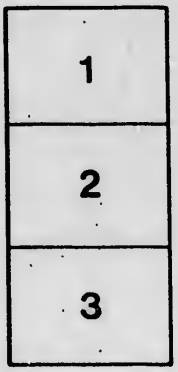

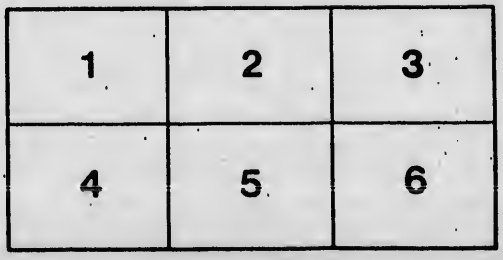

QUEEN'S BENCH,

APPEAL SIDE.

Ex parte RENAUD,

Petr. for confirmation of Title.

and

DAVID DAVIDSON, *et al:*

(*intervening parties*),

APPELLANTS.

and

THE QUEBEC BANK,

(*Opposants*),

RESPONDENTS.

Appellants' Case.

Filed 21 February 1860

HOLT & IRVINE,

For Appellants.

Printed by J. T. Brousseau, Quebec.

PROVINCE OF CANADA,
Lower Canada.

IN THE QUEEN'S BENCH,
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(*Intervening parties,*)

APPELLANTS,

AND

THE QUEBEC BANK,
(*Opposants,*)

RESPONDENTS.

APPELLANTS' CASE.

IN the year 1856, George Benson Hall, of Montmorenci, merchant, found it necessary, in consequence of the then depressed state of trade and of other circumstances beyond his control, to suspend payment, and, as the course which seemed to him most judicious, assigned over the whole of his estate to Trustees for the benefit of creditors, his property being deemed sufficient, if properly managed, to meet all claims in full. This assignment was made by deed passed before Campbell & Col., Notaries, at Quebec, on the 14th February of that year; the construction of this deed is the question now presented before this Honorable Court.

For convenience of reference the deed is given at full length in the appendix.

Messrs Davidson and Pemberton, having had delivery of the estate, sold a portion of it, composed of several lots of land at Beauport, to Jean Baptiste Renaud, for £500; which was to be paid as soon as he should have obtained a ratification of title in the ordinary way.

At the time of the presenting of his petition there appeared of record two oppositions; one on the part of the Quebec Bank for £3076, founded on a judgment obtained by them (in October 1858) upon promissory notes granted or indorsed by George Benson Hall in 1855; the other by George Okill Stuart for £63 12s. 10d. for professional services rendered to G. B. Hall in 1854 and 1855. The prayer of these oppositions was that no sentence of confirmation should be pronounced, except under the charge of the amounts respectively claimed, or of so much thereof as the proportion which the same bore to the total amount of the debts due by the said George Benson Hall.

This was equivalent to a prayer to call in all the creditors of the estate to share in the distribution of the purchase money in question, in Court.

The trustees moved for and obtained leave to intervene in the cause, and by their *demande* in intervention they alleged:

> That by the deed of assignment the said George Benson Hall " for the consideration in the said deed stated, for himself, his heirs " and *ayant cause*, for ever, bargained, sold, assigned, transferred, " and made over to the said David Davidson and George Pemberton " all the real estate of him the said George Benson Hall, as well as " all the personal property, rights, claims, debts, and demands of " him the said George Benson Hall whatsoever; and that at the " City of Quebec aforesaid, on the day and year aforesaid, the several " lots of ground mentioned and described in the petition of the said " Jean Baptiste Renaud in this cause filed, were so bargained, sold, " assigned, transferred and made over to them the said David " Davidson and George Pemberton for the purposes in the said deed " set forth, with power to them the said David Davidson and George " Pemberton to sell and dispose of the said real estate of the said " George Benson Hall, including the said several lots of ground " above referred to, and to apply the proceeds thereof in the manner " provided for by the said deed..... which was duly registered the " 17 Oct. 1856.
>
> " That under and by virtue of the said deed the said several lots " of ground became vested in the said David Davidson and George " Pemberton, the said deed having been executed *bona fide*, and " being a legal, binding, and valid instrument, and by reason thereof " the said George Benson Hall thenceforward ceased to be the " proprietor of the said several lots of ground, and was not in posses- " sion of the same, but the same became and remained the property " of the said David Davidson and George Pemberton and remained " in their possession, for the purposes aforesaid.
>
> " That when the petition for confirmation of title was presented " there were not any claims of record in this cause secured by " privilege or hypothec upon the said several lots of ground acquired " by the said Jean Baptiste Renaud."

And the intervening parties prayed that inasmuch as the purchase money had been deposited, they should be declared entitled to receive it, for the purposes of the assignment.

To the demand in intervention the Quebec Bank pleaded the general issue, and also a perpetual peremptory exception in law, by which they alleged:—

> The indebtedness of George Benson Hall to them in the amounts of various promissory notes made or indorsed by him in 1855, and upon a judgment on the same for £3076, as above stated, rendered in October 1858:
>
> That afterwards, on the 14th February 1856, " the said G. B. " Hall became insolvent and bankrupt and unable to pay his credi- " tors, whereof the said David Davidson and George Pemberton, " on the day and year last aforesaid, at the City of Quebec aforesaid, " had notice."
>
> That from that time the said G. B. Hall had continued to be and was a bankrupt and insolvent trader;
>
> That all his property was at the time of the pretended assignment and continued to be the property of his creditors, who were such at the time of his bankruptcy and insolvency, of whom the said Quebec Bank was one;

That at the time of the bankruptcy and insolvency of the said G. B. Hall, the lots of land in question belonged to and were the property of the said G. B. Hall, and the proceeds of the sale made by the said David Davidson and George Pemberton were then subject to distribution in the said cause in the same manner and way as the proceeds from other bankrupt estates coming into Court, and that the said Quebec Bank had a right to be collocated with the other creditors of the said G. B. Hall, *au marc la livre* upon the sum of $2061 [illegible], the amount of the said proceeds of sale then in the hands of the Prothonotary of the Court: and it was not competent to the said David Davidson and George Pemberton to withdraw the same from the control of the Court, as by their demand in intervention was demanded.

And, for further plea, the said Quebec Bank alleged.

That at the time of the making of the deed of assignment the said G. B. Hall was bankrupt and insolvent and had continued so, and the Quebec Bank was then and continued to be a creditor, as set forth in their opposition.

That by the said deed the said David Davidson and George Pemberton had obtained possession of all the property real and personal of the said George Benson Hall and had used and were then using the same for the purpose of carrying on the lumber trade and business and refused to give any account thereof to the said Quebec Bank, although the said Quebec Bank had impleaded the said David Davidson and George Pemberton for that purpose.

That the said David Davidson was President of the Montreal Bank in the said deed mentioned, and that the said David Davidson and George Pemberton, although named in the said deed as trustees, were in truth persons interposed by the said Montreal Bank to enable them to carry on the lumber trade and business, contrary to an act of the Legislature of this Province (referring to the 19 Vic. Cap. 76, which amends and consolidates the Acts relating to the Bank of Montreal).

That the said Bank of Montreal, in the name of the said David Davidson and George Pemberton, had been carrying on the lumber business, with the property of G. B. Hall in the same way as the said G. B. Hall carried it on before his insolvency: and that the said David Davidson and George Pemberton had fraudulently possessed themselves of the estate debts and effects of the said G. B. Hall, for the purposes aforesaid, with an intent to defraud his creditors and particularly the Quebec Bank, and to enable the said Montreal Bank fraudulently to possess themselves of all the property of the said G. B. Hall, of which the said Montreal Bank was then in possession, except the sum of money demanded in and by the said demand in intervention; and, further, that it was the intention of the said David Davidson, George Pemberton, and the Bank of Montreal, if they could obtain possession of the said last mentioned sum of money, to dispose of the same so as to cheat and defraud the said Quebec Bank of their portion of the same, as one of the creditors of the said George Benson Hall.

That one creditor of a bankrupt and insolvent trader has no right to possess himself of the estate of the bankrupt and dispose of the same as he sees fit, to the exclusion, of the other creditors; and inasmuch as the monies demanded in and by the said demand in intervention belonged to the said George Benson Hall, the said David Davidson and George Pemberton had no right to demand the same to the exclusion of the said Quebec Bank; and that altho' the said demand was made by the said David Davidson and George Pemberton apparently in their own name, the said demand was fraudulently made by the said Montreal Bank for the benefit of the

said Montreal Bank and to enable it to obtain funds and carry on the lumber trade and business as aforesaid, in the name of the said David Davidson and George Pemberton, but for the benefit of the said Montreal Bank; contrary to the provisions of their charter or act of incorporation aforesaid.

Wherefore the Quebec Bank prayed that the said demand in intervention be dismissed with costs.

Issue having been joined upon the above pleas, the parties proceeded to proof; but, the Appellants assert with confidence, the Quebec Bank entirely failed to establish the grave charges so very emphatically brought against Messrs Davidson and Pemberton, and against the Bank of Montreal.

But, basing its decision upon what it conceived to be the legal construction of the deed of assignment in question, the Court below (Mr. Assistant Justice A. Stuart presiding) pronounced the following judgment:

" The Court, having heard the parties by counsel on the merits of the contestation " raised by the Opposants the Quebec Bank to the Intervention by David Davidson and " the Honorable George Pemberton in this cause fyled, and having examined the proceedings and evidence of record, and on the whole maturely deliberated, considering that " the deed made and executed before Campbell and Colleagne, Notaries, bearing date " the fourteenth day of February, one thousand eight hundred and fifty six, particularly " set forth in the intervention of the said David Davidson and George Pemberton in this " cause, contains a contract known to the law by the name of *contrat d'abandonnement*, and " that the said George Benson Hall thereby assigned the enjoyment and control of the " real property therein described, to the said George Pemberton and David Davidson for " the benefit of his creditors, coupled with a power to sell, but that the legal estate of " and in the same by law continued in him the said George Benson Hall, and considering " that the sale, to the said Jean Baptiste Renaud was and is a sale by the said George " Benson Hall by and through the said George Pemberton and David Davidson his " Attorneys legally constituted by the said deed, and that, upon an application for a " ratification of his title by the said Jean-Baptiste Renaud the creditors of the said George " Benson Hall have a right to fyle oppositions as upon a sale by him, and that such creditors have fyled oppositions which are now of record, and considering that the said " Jean Baptiste Renaud hath deposited the price of his purchase in the present cause as " he could legally do under the provisions of the Provincial Statute, 9, Geo. IV, Chap. " 20, which provides for the distribution of the same under such circumstances, and that " the Court is bound thereby; doth dismiss the Intervention of the said David Davidson and " George Pemberton whereby they pray that the said price be paid over to them, with " costs against the said Intervenants and in favor of the Quebec Bank."

It is the above judgment which the Appellants have brought up for revision before this Honorable Court. They consider that, under all the circumstances presented by the case before the Court, the claim of the intervening parties should have been maintained.

The judgment of the Court below pronounces the agreement of the 14th February 1856 to be the contract known under the law of this country, as the " contrat d'abandonnement," declares that the mere possession and enjoyment of the estate was assigned over, and that the sale in the present instance was a sale by G. B. Hall. And that, therefore, the oppositions of creditors of the latter might be filed, and the purchase money distributed in Court as upon a sale direct from him.

The same learned Judge (in *Withall vs. Young*, and *Michon and al. Intervening parties*, decided 2nd May 1859,) had recognized a deed of the same description and maintained the possession of trustees.

The Appellants are aware that, since the institution of the present appeal, an authoritative exposition of the law concerning voluntary assignments has been given by this Honorable Court, and, as they understand the judgments of the Court [in *Cumming and Smith*, and in *Withall and Michon et al.*] that it is

declared that under the law of Lower Canada no insolvent trader can pass his estate to trustees without the consent of *all* his creditors; and that any deed of assignment executed by an insolvent will be annulled and set aside upon the the demand of any one non-consenting creditor. Accepting with respect, as they are bound to do, the doctrine so laid down by the Court, the Appellants abstain from urging various grounds which, when they instituted their appeal, seemed to them not unworthy of consideration and which were based upon what they had conceived to be the legal import of the deed now before the Court. The observations which they have to offer upon the judgment appealed from will not, they are satisfied, be found at variance with the submission they have expressed.

It will be conceded by the Respondents that since the repeal of the last Bankrupt Law which was in force in this Section of the Province, it has been a very general practice among commercial men to administer the estates of insolvents, by trustees appointed under deed, and that very many, it may be said hundreds, of such estates have been wound up in this manner. Upon the faith of these assignments and in reliance upon their validity, large payments of money have been made, onerous obligations have been contracted, important and valuable rights have been abandoned. There are not a few of such estates still in the hands of the assignees to whom the debtors confided them, and there are few, it is believed, where there has not been an unwilling and non-consenting creditor. What the Appellants contend is, that a demand for the upsetting of all that has been done in good faith under such agreements is unreasonable and unjust in the extreme, and the Appellants venture to hope that while the Court adheres to the doctrine proclaimed in the cases cited, it will not overlook the considerations of equity which pending cases, so to speak, may present.

With reference to the judgment now under revision, the Appellants submit that it should not be maintained, principally for the following reasons :

1st. At the time when Mr. Hall executed the assignment in question he was not insolvent, nor was he reputed to be so. The management of a vast and complicated property was at that time beyond his power, but it was believed that the existing and available resources of his estate only required development to suffice for the payment of every creditor in full. The deed provides for his freedom from legal proceedings during the time that the trust may be in operation, and that " in the event of the nett proceeds of the property and effects " assigned being more than sufficient to pay all the claims aforesaid, then the " surplus shall be returned to the said George Benson Hall." The deed shews only a temporary embarassment, and there is no evidence of record establishing insolvency.

2nd. Tho' the Respondents do not appear to have become a party to the deed, they have nevertheless virtually assented to the same. It cannot be presumed that they would remain in ignorance of so important a transaction as the assignment in question was, nor that, if they did not acquiesce in it, they would allow it to continue in operation for upwards of three years. But, as their pleadings in this cause shew, *they have called upon the trustees for an account* of their administration, and this prior to their present indirect attack upon the deed. They are proceeding with their action and can obtain their judgment to account at any time.

3rd. There is a total absence of any evidence to sustain the allegation of *fraud.*

4th. Under the deed of assignment the Appellants had possession and delivery of the estate. By the terms of the deed they were to sell, and to

receive the price, and to make distribution. The Appellants submit that the deed will be held valid and effectual according to the meaning of the terms used in it, for the purposes of all its provisions, *until it has been set aside and annulled.* If, to use the language of the Court in *Cumming and Smith*, " in the state of " the pleadings of the parties the conclusions were such as to enable the Court " to do justice between them as fully as in an action purely in form revocatory " or *actio Pauliana ;* " then (had G. B. Hall been *en déconfiture*, or had fraud been shewn) the assignment in question might have been annulled and made void, and in consequence the intervening parties declared not to be entitled to receive the money deposited in Court ; but no revocatory conclusions whatever have been taken by the Respondents, and therefore, the Appellants humbly submit the assignment remains, for the present, entire and unimpeached.

The Appellants present their case with confidence before this Honorable Court. They do not presume to call in question the motives of the Respondents in adopting the course which they have taken ; but they cannot regard that course as conducive to the interests of the creditors of the estate, or as warranted by any principle or rule of law. While the Appellants are ready to yield obedience to the law, as laid down by this Court, and to cease from the exercise of the powers which have been conferred upon them, at such time and in such manner as they can properly do so, they consider that too many important interests are involved and their responsibility is too great, to permit them to divest themselves of their fiduciary character, upon a demand so informally made as that presented by the opposition of the Respondents.

The Appellants therefore pray that the judgment of the Court below be reversed, and that the conclusions of their demand in intervention be granted.

Quebec, 22nd December 1859.

HOLT & IRVINE,

For Appellants.

DEED OF ASSIGNMENT.

ON this day, the fourteenth of February, in the year of our Lord one thousand eight hundred and fifty-six, before us the undersigned Public Notaries duly admitted and sworn in and for that part of the Province of Canada heretofore called Lower Canada, residing in the City of Quebec, in the said Province, appeared George Benson Hall, of Montmorenci, in the County and District of Quebec, Merchant, party hereto of the first part; the Bank of Montreal acting herein and represented by William Gunn, of the said City of Quebec, the manager of the branch of the said Bank at Quebec aforesaid, and specially authorised to execute these presents by power of Attorney executed by the said Bank of Montreal at the City of Montreal, District of Montreal, on the twenty eighth day of January one thousand eight hundred and fifty-six, and parties hereto of the second part; David Davidson, of the City and District of Montreal, Esquire, acting herein and represented by James Meikiejohn, of the said City of Quebec, Gentleman, his Attorney duly constituted in that behalf by power of Attorney executed at Montreal aforesaid, on the twenty eighth day of January, eighteen hundred and fifty six, and the Honorable George Pemberton, of London, in England, Merchant, presently a resident of the said City and District of Quebec, parties hereto of the third part; Mary Patterson, wife of the said George Benson Hall, duly authorised by her said husband as is shown by his signature to these presents set, party hereto of the fourth part, and the Honorable George Pemberton, of London, in England, Henry Pemberton, of the said City and District of Quebec, and Joseph Bromner Proven, of London aforesaid, merchants and copartners, as such carrying on trade and business at Quebec aforesaid, under the name, style and firm of Pemberton Brothers, acting by the said George Pemberton; and Richard Moorson Harrison, Esquire, of the said City of Quebec, merchant, parties hereto of the fifth part. Which said party hereto of the first part did declare to us the said Notaries, and to the said other parties hereto, that in consequence of the present depressed state of trade and of other circumstances beyond his control, he is unable to make immediate payment to his creditors; that he is indebted to the several parties named in the schedule marked A, hereto annexed as forming part hereof (and which is signed by all the parties hereto and by us the said Notaries *ne varietur*) the debt due to the said Bank of Montreal being set forth in the schedule also hereunto marked A, the said parties hereto of the second part being of the number of such parties in the several amounts in or by the said schedule specified; that divers of the said debts have been wholly or in part incurred in the course of divers commercial dealings and that among the said debts are divers due chiefly to clerks and servants for services performed and wages earned during the past year, and other priviledged claims amounting in the aggregate to four thousand three hundred and sixty three pounds nineteen shillings and nine pence currency, and which are specially stated as priviledged debts in the schedule marked B hereto annexed.

And the said parties hereto further declared to us the said Notaries that the said George Benson Hall had proposed to the said parties hereto of the second part, his creditors, to sell, assign and convey to the said parties hereto of the third part and to the successor, or successors of them or either of them to be appointed as hereinafter is set forth, as trustees, the whole of his estate personal and real, paid and discharged from all claims for dower or any other cause whatever, on the part of his said wife or of his children for the benefit of his creditors, upon the terms and conditions hereinafter set forth, to which terms and conditions the said parties hereto of the second and third part have all agreed.

Now therefore these presents witness that the said George Benson Hall for himself his heirs and *ayant cause* for the considerations aforesaid and further for and in consideration of the sum of five shillings currency, to him in hand paid by the said David Davidson and George Pemberton before the execution of these presents, hath bargained, sold, assigned, transferred and made over, and by these presents doth bargain, sell, assign, transfer and make over to the said David Davidson and George Pemberton, and to the successor or successors of them or of either of them, to be appointed as hereinafter in set forth the said David Davidson and George Pemberton thereof accepting, the following tracts and parcels of real estate, that is to say: *Firstly*,—A lot of ground situate, lying and being in the Town of Three Rivers, in the District of Three Rivers, Platon Street, &c.; *Secondly*,—All those certain lots, tracts and parcels of land situated in the Township of Somerset, in the District of Quebec, &c.; *Thirdly*,—All those certain lots, tracts and parcels of land situated in the townships of Nelson in the said District of Quebec, &c.; *Fourthly*,—All those certain lots, tracts and parcels of land situate in the Township of Stanfold, in the District of Three Rivers, &c.; *Fifthly*,—All those other lots, tracts and parcels of land situate, lying and being in the Township of Somerset, in the said District of Quebec, &c. Also all that tract or parcel of land situate lying and being in the Township of Templeton in the County of Ottawa, &c., also all his the said George Benson Hall's undivided third part or shail, right, title and interest as one of the Partners in the said association of A. Larue & Company, &c. Also the said George Benson Hall's undivided third part or share right title or interest as one of the Partners in the said association of A. Larue & Company of in and to all those certain lots, tracts and parcels of land, etc. And also the said George Benson Hall's undivided third part share or interest or title as one of the Partners of the said association of A. Larue & Company, of in and to all those other lots and parcels of land situated in the Parish of St. Narcisse in the seignory of Champlain in the said District of Three Rivers, &c. Also a lot of land situated in the Parish and Seignory of Beauport, &c., also a lot of land situated at the same place, &c. Also, a lot of land situated at the same place, &c. Also, a lot of land situated in the concession of St. Joseph in the Parish of Beauport, &c. Also, another lot of land situated in the said Seignory of Beauport, &c. Also, a certain lot of land situated

in the Parish of Beauport, &c. Also, the following lots described in the french language, &c. Also, the following nine lots of land situate lying and being in the Township of Nelson, &c. Also, all right title and interest of the said George Benson Hall in and to the following lots of land, &c. It being understood that the said trustees shall in no wise be responsible for the payment of any purchase monies that may now be due or hereafter become due, in respect of such real estate or any part thereof, but shall at all times have power, if they see fit, to pay the same, out of any monies that may come into their hands in virtue of these presents. And the said George Benson Hall for the considerations aforesaid and further for and in consideration of the sum of other five shillings currency to him in hand paid by the said David Davidson and George Pemberton before the execution of the presents doth hereby bargain sell assign transfer and make over to the said David Davidson and George Pemberton, and to the successors or successor of them, or of either of them, to be appointed as hereinafter set forth, the said David Davidson and George Pemberton, hereof accepting, the whole of his other property and effets of every kind and description whatever whether in and about the mills and other premises occupied by him at Montmorenci aforesaid or elsewhere (furniture, plate, farm stock, carriages, horses and all the moveables used by him and his family at his residence and the farm occupied by him excepted) including all live stock, provisions, logs, lumber, sawn and unsawn, and all other moveables of every kind and description, and all leases, licenses and timber limits, and all rights and claims in and to all clearances, buildings and tenements, in any wise connected therewith and all other rights, claims and demands whatsoever of him the said George Benson Hall, without any reservation or exception; the true intent and meaning of these presents being that immediately after the execution of these presents, the said trustees shall be entitled to receive and shall have and receive from the said George Benson Hall actual delivery, and possession of the whole of the estate of the said George Benson Hall with the exception aforesaid, and shall have and hold the same, including as of course the whole of his property and effects (with the exception aforesaid) of every kind and description whatsoever, and wheresoever situate, as well real estate as live stock, provisions, logs, lumber sawn or unsawn, and all other moveables of every kind and all leases, licenses and timber limits and all rights and claims in and to all clearances buildings and betterments in any wise connected therewith and all rights, claims and demands whatsoever of him the said George Benson Hall, both personal and real moveable and immoveable with the reservation and exception aforesaid only and also all right and interest of him the said George Benson Hall in the copartnership firm of A. Larue and Company. whereof he and one Augustin Larue of the town of Three Rivers, merchant, and one Joseph Edward Turcotte, also of Three Rivers, Esquire, have been for some time past and presently are members and co-partners, under a certain deed of co-partnership bearing date the twenty fifth day of June one thousand eight hundred and fifty three, and passed before Mtre. Louis Prevost and Colleague, Notaries Public, under the number four thousand four hundred and ninety two, and all and every the rights claims and demands whatsoever, priviledged and hypothecary and otherwise, of him the said George Benson Hall against the said firm of A. Larue and Company and against the said Augustin Larue and Edward Turcotte and each of them by reason of divers heavy advances under which the said firm presently is to him the said George Benson Hall indebted, and which advances in fact gave occasion to and from a great part of his said indebtedness to the said Bank of Montreal, and by reason of all and every the covenants and undertakings of the said Augustin Larue and Joseph Edouard Turcotte to and with him the said George Benson Hall, made and entered into by a certain deed of obligation bearing date the twenty third day of November one thousand eight hundred and fifty four, and passed before Mtre. Louis Prevost and Colleague, Notaries Public, under the number five thousand three hundred and twenty, and otherwise howsoever, and by reason of all and every his dealings of every kind whether as a member of the said firm, or for or with the said firm or for or with the said Augustin Larue and Joseph Edouard Turcotte or for or with either of them, are hereby sold, assigned transferred and made over to the said trustees, the said Bank of Montreal hereby specially agreeing to such sale, transfer, and assignment thereof, on the terms and conditions specially hereinafter set forth. And it is hereby further agreed and declared that immediately after the execution of these presents, the said George Benson Hall shall deliver over the whole of his estate as aforesaid to the said trustees, or to such person or persons as they may appoint as their agent or agents in the premises, together with all his title deeds, books of account, accounts, receipts and other papers that may by the said trustees he thought necessary for the proper management and winding up of all the said estate. And the said trustees shall and may sell and dispose of all and singular the moveable and immoveable property and effects hereby sold, assigned transferred and made over to them as soon and in such wise and upon such terms and conditions as to them in their own discretion shall appear advantageous to the creditors of the said George Benson Hall, but not sooner, and in the mean time they shall and may, to such extent and for such time, as to the said Bank of Montreal may seem best, but to no greater extent and for no longer time than to the said Bank of Montreal may so seem best, continue the lumbering and other business of the said George Benson Hall or any particular branch or branches or part or parts of such business, and it shall be in their power to lease for any time they may think fit the whole or any part of the property hereby assigned, and the said Trustees, shall and may by all such lawful ways and means as they may think best collect and get in all debts and sums of money due to the said George Benson Hall and hereby assigned, and dispose and convert into money all other the property and effects hereby assigned and made over or intended so to be, and for the facilitating of the getting in and recovery of the debts and other property and effects hereby assigned the said George Benson Hall hath named constituted and appointed and by these presents doth name constitute and appoint the said David Davidson and George Pemberton and the successors or successor of them or either of them to be appointed as hereinafter is set forth, his true and lawful attorneys

irrevocably in the premises to and for the uses or intents herein set forth, in their own name or in his, at their discretion, to ask, demand, and sue for, recover and receive of and from every person and persons who are or shall be indebted to him or who do or shall possess, hold or retain, any part of the property or effects hereby intended to be assigned, or who are or shall be liable to any claim of account or other demand whatever and hereby assigned at his instance and in particular of and from the said firm of A. Larue & Company, and the said Augustin Larue and Joseph Edouard Turcotte or either of them, should they the said Trustees see fit, all debts so due and owing and property so possessed held or retained by, and all accounts and every other matter or thing whatsoever so demandable of, any such party, and on due payment delivery or rendering thereof or of any part thereof proper receipts and discharges for the same, to give, and on refusal or in default of satisfactory payment, delivery or rendering thereof, then in the name of them the said Trustees, or of him the said George Benson Hall at their discretion, to institute and prosecute to judgment and execution all such proceedings in law, bankruptcy, and otherwise, as the said Trustees in their discretion may think advisable.

And the said Trustees are hereby empowered to submit any matter or thing in which the said estate hereby transferred is or may be interested to arbitration and to compound finally for any debt due to the said estate or for any claim thereof for any composition money which they may deem reasonable and to sell for any price that they may think fit and debts due to, or claim of, the said estate hereby assigned for the recovery whereof they may not deem it prudent to institute legal proceedings.

And the said Trustees are hereby empowered at the expense of the said estate from time to time to name all such agents and attorneys under them and to obtain all such professional and other assistance as they in their discretion may consider necessary for the proper execution of the trusts hereby reposed in them, the said Trustees having as of course full power and authority to revoke all such appointments made by them.

And the said Trustees shall be entitled to such reasonable compensation in the premises as the said Bank of Montreal may allow, not exceeding fifteen hundred pounds per annum.

And the said Bank of Montreal in consideration of the premises doth hereby agree to advance to the said Trustees on account of the said estate so much money as may be necessary to enable said Trustees to pay the persons mentioned in the said Schedule marked B, as privileged creditors, the amount of their privileged claims, and also the other persons mentioned in the said Schedule B, hereto annexed as forming part thereof and signed by the said parties hereto, and by us the said Notaries "*ne varietur*" the amount of their claims therein specified and also, from time to time, such other and further sums of money, as may be required for the carrying on of any business of the said estate, in such manner, to such extent, and for such time as aforesaid.

And the said creditors of the said George Benson Hall parties hereto of the second part (or who may at any time hereafter assent to these presents) each for himself and themselves as the case may be, but not the one of them for any other of them, in consideration of the faithful fulfilment of the covenants hereby entered into by the said George Benson Hall, do hereby engage that until such time as the said estate of the said George Benson Hall shall have been wound up under these presents they will not in any way, or by any form of proceeding whatever make or urge any manner of claim or demand upon or against the said George Benson Hall by reason of any cause, matter or thing whatsoever from the beginning of the world until the time of the execution of these presents.

And the said Mary Paterson, duly authorized as aforesaid, in consideration of the premises and of the advantages to result from these presents to her said husband and herself, and further for and in consideration of the sum of five shillings to her in hand paid by the said David Davidson and George Pemberton before the signing of these presents doth hereby for herself and her children acquit, release and discharge the said estate of her said husband from any and every claim which she or they could have or make for any cause matter or thing whatever respecting dower or claim or right to dower from the beginning of the world to the present time, and doth for herself and her children hereby bar and release her dower and claim and right to dower on the real estate hereby conveyed and alienated or intended so to be, the said Mary Paterson hereby covenanting and agreeing that the said real estate shall henceforth and for ever be held by the said trustees and all parties acquiring the same or any part thereof from the said trustees free and clear from any such claim for dower on the part of herself or her children, and the said George Benson Hall doth hereby promise and undertake at the expense of his said estate whenever thereto requested by the said trustees, to make and execute all such deeds and instruments as may be necessary to give effect to these presents according to the true intent and meaning thereof whether for the purposes of transferring the said trust property and effects or any part thereof to purchasers or for the vesting of such trust property and effects or any part thereof in any successors or successor of the said David Davidson or of the said George Pemberton or for any other purpose whatsoever.

And the said George Benson Hall doth hereby specially promise and undertake whenever thereto required by the said trustees, so as aforesaid to make and execute good and sufficient notorial transfers of all leases, licenses, timber limits and other rights, claims, demands so assigned as aforesaid wherein he has any interest, to and in favor of the said trustees.

And the said Mary Paterson authorized as aforesaid, doth hereby covenant and undertake at the expense of the said estate and whenever thereto required by the said trustees to make and sign any further deed or deeds which may by the said trustees at any time hereafter in their discretion be thought necessary for the more perfect release of any claim which she or her children might otherwise be entitled to make against her said husband's estate for the more perfect having of her own and her children's dower and claims to dower as aforesaid on the said real estate so assigned as aforesaid.

And it is hereby agreed and declared that all the monies that shall or may be recovered by the said trustees by reason of the said George Benson Hall's rights or claims against the said firm of A. Larue and Company or the said Augustin Larue and Joseph Edouard Turcotte or either of them or by reason of the sale or other disposal of all or any of the tracts or parcels of land real estate mentioned in and purporting to be hypothecated or in any wise affected by either of two certain deeds severally made and passed by the said George Benson Hall on the twenty fifth day of January one thousand eight hundred and fifty five in favor of the Bank of Montreal before Mr. D. Macpherson and Colleague, Notaries Public the one under the number one thousand five hundred and twenty one, shall be paid over to the said Bank of Montreal (and after deduction of all charges) carried by the said Bank of Montreal to the account of the said George Benson Hall in deduction of its claim in the said Schedule marked A as set forth, and all monies which shall or may be got in and received by the said trustees from any other source whatever under the present assignment after payment first made therefrom of all costs and charges of the continuing and winding up of the said business and all the disbursements of the said trustees including their own remuneration and all the costs incident to the making of the present arrangement and the execution of these presents, shall be applied ;

Firstly.—To the repaying of the said advances to be made as aforesaid by the said Bank of Montreal together with legal interest thereon until paid, such interest to be payable annually to the said Bank ; and, secondly, to the payment of each of the creditors of the said George Benson Hall mentioned in the said Schedule marked A being parties hereto or hereafter ratifying these presents whose claims shall not have been paid out of such advances as aforesaid in proportion to the amounts of their respective claims, and in the event of the nett proceeds of the property and effects hereby assigned being more than sufficient to pay all the claims aforesaid, then the surplus shall be returned to the said George Benson Hall ; and it is hereby further agreed and declared that nothing herein shall be held in any wise to bind the trustees to prosecute any claims against the said firm of "A. Larue and Company," or the said Augustin Larue and Joseph Edouard Turcotte or either of them or to interfere in any wise as touching any business of the said firm of A. Larue and Company otherwise than in so far as they may think it to be to the advantage of the estate hereby vested in them so to do, and it shall be competent to them in their discretion at any time after the other affairs of the said estate so vested in them shall have been wound up to declare the whole estate to be wound up notwithstanding their particular claim or any of them may remain open or not yet finally settled, and in that case such claim so remaining open or not finally settled shall revert to the said George Benson Hall in the state in which the same may be and not otherwise, precisely as if all that the said trustees may have done or not done in respect thereof had been done or not done by the said George Benson Hall himself.

And it is hereby further agreed and declared that in the event of the death, incapacity, or voluntary resignation of either or both of them the said David Davidson and George Pemberton or of any successors or successor to be hereafter appointed to them or either of them as hereby is provided it shall be competent to the said Bank of Montreal by Notarial instrument to be authorized and ordered by vote of the major part of a quorum of the directors hereof, to name and appoint another fit person to be trustee under these presents in the room and stead of each of such trustees so dying, being incapacitated or voluntarily resigning, after having obtained the approval of the said George Benson Hall to the same, and such other person shall thereupon become vested with every power and trust hereby vested in the person whom he shall so be named to replace and shall to all intents and purposes become and be a trustee within the meaning of these presents and as though personally named hereby and upon the death of any trustee or trustees under these presents the property and effects hereby vested in them, shall not nor shall any part or share thereof descend to any heir or testamentary executors or legatees of such trustee or trustees but shall vest in the survivor of them alone until such time as his Colleague shall have been so named and appointed as aforesaid ; and in case of the death of such survivor before such Colleague shall have been so named and appointed shall upon the due naming and appointing of a trustee or trustees afterwards vest in such trustee or trustees as fully and effectually as though such death had not preceded such naming and appointing of him or them.

And it is further agreed and understood that in case of absence from this country of one of the said trustees or their successor or successors in office, the other trustee shall have full power to act alone during his absence aforesaid.

And whereas the said Bank of Montreal now holds sixty four sixty fourth shares in the ship or vessel called the "Aylmer," in virtue of a certain indenture made and executed in the twenty fifth day of January one thousand eight hundred and fifty five by and between the said George Benson Hall and the said Bank of Montreal as collateral security for the due payment of an amount of two thousand pounds currency and interest since the third day of November one thousand eight hundred

and fifty five due and owing by the said George Benson Hall to the said Bank of Montreal for the causes in the said indenture mentioned and it is desirable that the said ship or vessel should be sold for the benefit of those concerned therein, it is hereby covenanted and agreed that the said Bank of Montreal shall and may sell and dispose of the said ship or vessel for such sum of money as can be obtained for the same and to apply the proceeds of such sale to the liquidation of the said debt or sum of two thousand pounds currency and interest in whole or in part according to their sufficiency and in case there be a surplus arising from such sale to pay over the same to the said trustees for the general benefit of all the said creditors.

And the said parties of the fifth part hereby declare that having had and taken communication of these presents, they do hereby consent to the same and do agree that nothing herein contained shall in any wise affect the liability of them the said parties of the fifth part upon any negotiable paper held by any of the said Banks, but they the said parties hereto of the fifth part shall and will remain liable upon all such negotiable paper and otherwise, precisely as though the present arrangement or agreement had never been made and entered into.

And it is hereby agreed that the Managers or Cashiers of the Banks of Upper Canada, of Quebec and of British North America shall either personally or by their agents have access at any time during the continuance of the said trust, to the books of account to be kept by the said trustees with liberty to examine all papers documents and writings connected with the winding up of the said estate by the said trustees.

Thus done and passed at Quebec aforesaid in the office of Archibald Campbell one of us the said Notaries on the day and year first above written, under the number 14,389.

In testimony whereof the said parties have signed, these presents being first duly read according to law.

(Signed), { " GEORGE BENSON HALL,
WM. GUNN, (L. S.),
GEORGE PEMBERTON,

" D. DAVIDSON, by his Atty., J. MEIKLEJOHN, GEORGE PEMBERTON, for self and partners, MARY PATERSON, R. M. HARRISON, F. T. MOFFET, Noty., ARCHD. CAMPBELL, Noty. Pub."

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Schedule A referred to in the Deed annnexed.

LIABILITIES OF GEO. B. HALL.

Bank of Montreal, as per Statement	£ 79907	1	1
Bank of Upper Canada, do	10000	0	0
Bank of British North America, do	3659	17	9
Quebec Bank, do	3434	14	7
John Lambie,	1500	0	0
	£ 98501	13	5

(Signed,) GEORGE BENSON HALL.
(Signed,) WM. GUNN.
(Signed,) D. DAVIDSON, by his Atty. J. MEIKLJOHN.
(Signed,) GEORGE PEMBERTON.
(Signed,) GEORGE PEMBERTON, for self and Partners.
(Signed,) MARY PATTERSON.
(Signed,) R. M. HARRISON.
(Signed,) ARCHD. CAMPBELL, Not. Pub.
(Signed,) F. T. MOFFET, Not.

A true copy,
ARCHD. CAMPBELL, Not. Pub.

Schedule Aa.

STATEMENT of Notes and Acceptances of G. B. Hall, Executor for Estate of Peter Patterson, held by the Bank of Montreal.

John Broster, Agent on George B. Hall, Executor,		20 Mar. '55	£ 300	0	0
Do " "	do "	23 " '55	100	0	0
Do " "	do " Per George Pemberton,	2 Novr. '55.	600	0	0
George B. Hall, executor, per Geo. Pemberton,	Prom. Note to Geo. Pemberton,	3 " '55.	10950	0	0
Pemberton Brothers,	do Geo. B. Hall, execr. per Geo. Pemberton,	3 " '55.	4406	11	11
Do	Prom. Note to Geo. B. Hall, execr. per Geo. Pemberton,	3 " '55.	36975	9	2
B. Fisher,	on Geo. B. Hall, execr. per Geo. Pemberton,	3 " '55.	350	0	0
James Dyke, Agent,	on Geo. B. Hall, execr. per Geo. Pemberton,	4 Novr. '55.	250	0	0
B. Fisher,	on Geo. B. Hall, execr. per Geo. Pemberton,	5 " '55.	400	0	0
James Dyke, Agent,	on Geo. B. Hall, execr per Geo. Pemberton,	6 " '55.	200	0	0
Do "	on Geo. B. Hall, execr. per Geo. Pemberton,	10 " '55.	150	0	0
G. B. Hall, execr. per G. Pemberton,	Pr. Note to G. Pemberton,	16 " '55.	7500	0	0
T. A. Lambert, Agent,	on Geo. B. Hall, execr. per Geo. Pemberton,	19 " '55.	200	0	0
Do "	on Geo. B. Hall, execr. per Geo. Pemberton,	23 " '55.	75	0	0
Geo. B. Hall, execr. per G. Pemberton,	Pr. Note to Geo. Pemberton,	18 " '55.	5250	0	0
Geo. B. Hall, execr. per Geo. Pemberton,	" to Geo. Pemberton,	3 Decr. '55.	5700	0	0
Geo. B. Hall, execr. per [illegible] Pemberton,	" to Geo. Pemberton,	1 Jany. '56.	3300	0	0
B. Fi[illegible],	on George B. Hall, executor,	27 Novr. '55.	300	0	0
			£ 77007	1	1

Statement of Notes held by the Branch Bank of Montreal at Quebec, endorsed by George B. Hall, executor for the estate of Patterson, under protest.

LeMesurier, T. & Co. to Geo. B. Hall, execr. end. by Delisle, J. & D.	21 Octr. '55.	£ 1000 0 0
Do to Geo. B. Hall, execr. end. by Delisle, J. & D.	24 Novr. '55.	1900 0 0
Dividends from Delisle estate to be crd. these Notes . .		£ 2900 0 0

Statement of Notes held by the Branch Bank of Montreal, at Quebec, endorsed by Geo. B. Hall, executor, and for which Deals have been transferred to Wm. Gunn, Esqr., as collateral security—any loss accruing thereon, the Estate is bound to make up the deficit, viz:

LeMesurier, T. & Co. to Geo. B. Hall, execr.	19 Novr. '55.	£ 1000 0 0
Do " do	25 " '55.	381 0 3
Pemberton Brothers " do	21 Jany. '56.	1191 10 3
Do " do	27 " '56.	1191 10 3
Do " do	22 Feby. '56.	1191 10 3
Do " do	28 Mar. '56.	305 5 6
		£ 5260 16 6

There is a special account at the Branch.

Two Notes of LeMesurier, T. & Co., collected. . . .		£ 2800 0 0
Against which have been charged, two Notes of H. & E. Dalkin, end. by Geo. B. Hall, execr., under protest for non payment	£1147 1 3	
Amount paid Three Rivers' Limits	525 12 11	
		1672 14 2
Balance at credit		£ 1127 5 10

Which sum is held to make good any deficiency which may accrue on any of the above notes; should there be no deficiency the balance will go to the credit of the general account.

There is also on collection, lodged with the Branch for account of the Estate.

T. C. Lee's Prom. Note to	29 Mar. '56.	£ 333 6 8
J. Flanagan " "	28 Feby. '56.	71 0 0
J. Tibbits " "	30 Mar. '56.	218 9 4
S. & C. Peters " "	22 April '56.	167 5 8
J. Holmes " "	20 Mar. '56.	51 15 0
Do " "	21 Septr. '56.	51 15 0

These Notes when paid will be passed to credit of general account, and used in reduction of Debt.

There are also the following Notes, held by the Bank, on which Geo. B. Hall, execr., is endorser, not yet matured. It is however supposed that no loss will accrue on these Notes.

C. E. Levey & Co.		13 Feby. '56.	£ 580 0 0
Do		23 " '56.	600 0 0
J. H. Clint,		15 " '56.	600 0 0
T. C. Lee,	Symes & Co.	9 Mar. '56.	441 18 5
J. H. Clint,		15 " '56.	500 0 0
Do		16 " '56.	400 0 0
Do		24 " '56.	250 0 0
Do		29 April '56.	400 0 0
Do		12 " '56.	500 0 0
E. Burstall & Co.		18 July '56.	2240 0 0
Do		" '56.	487 16 0
Do		" '56.	2596 3 9
			£ 9595 18 2

Also the following Notes, on which Geo. B. Hall, execr., is promiser.

G. B. Symes & Co.,	due	27 Mar.	£ 5127 8 6
Do	"	"	3127 8 6
			£ 8254 17 0

(Signed,) GEORGE BENSON HALL.
(Signed,) WM. GUNN.
(Signed,) D. DAVIDSON, by his Atty. J. MEIKLEJOHN.
(Signed,) GEORGE PEMBERTON.
(Signed,) GEORGE PEMBERTON, for self and Partners.
(Signed,) MARY PATTERSON.
(Signed,) R. M. HARRISON.
(Signed,) ARCHD. CAMPBELL, Not. Pub.

(Signed,) F. T. MOFFET, Not.

A true copy,

ARCHD. CAMPBELL, Not. Pub.

Schedule B, referred to in the Deed annexed.

Gibb & Ross	£ 185 12 5
Lake Superior Mining Co.	311 8 11
O. L. Richardson & Son	61 19 2
A. Campbell	55 8 6
Normand & Foisy	345 8 0
J. B. Grenier	38 0 0
R. Mitchell	25 9 0
Gas Co	12 0 0
C. W. Wilson & Co	8 5 6
Anderson & Paradis	21 0 2
J Pratt & Co	37 9 3
J. A. Fay & Co.	52 10 0
Forward	£ 1154 10 11

Schedule B.—(*Continued.*)

Brought forward	£ 1154 10 11
J. Robe	4 14 6
Calvert & McNaugh	3 11 10
W. Hunt & Co	6 7 6
T. Ruston	4 12 6
H. S. Scott	14 7 9
Chinic, Simard & Méthot	400 0 0
J. H. Galbraith	6 4 0
H. Hemming	1 3 9
Mrs. Ponlin	250 0 0
Wm. Price	100 0 0
L. Lebœuf	64 0 0
Aug. Mercier	178 0 0
C. T. Colfer	20 0 0
W. S. Jackson	25 18 6
McDonald & Logan	3 19 3
E. & W. Poston	100 0 0
Supervisor of Cullers	230 0 0
— Beaupré	6 10 0
D. R. Steuart	200 0 0
W. H. Roy	2 0 0
J. W. Henry	3 5 0
N, Carrignant	4 16 0
A. Laplante	17 8 9
F. X. Pratt	4 10 0
Dr. Boswell	11 10 0
Roy & Lamarre	30 0 0
H. Benjamin	6 9 4
J. Anld	3 15 5
J. Lambie	500 0 0
H. P. Patterson	20 0 0
J. Fitzgerald	22 0 0
A. Gendron	70 0 0
J. Johnson	21 14 9
Balance of Salaries and sundries	400 0 0
	£ 3891 9 9
Memo. Claim for rent Etchemin Mills in dispute, £270 0 0	£ 270 0 0
	£ 4161 9 9
The Honorable Henry Black, for professional services	£ 100 0 0
To same, for arrears of Interest	30 0 0
George O'Kill Stuart, Esqnire	22 10 0
To Arch. Campbell, Her Majesty's Notary, for professional services connected with the present arrangements to this day	50 0 0
	£ 4363 19 9

(Signed,) GEORGE BENSON HALL,
(Signed,) WM. GUNN,
(Signed,) D. DAVIDSON, by his Atty. J. MEIKLEJOHN,
(Signed,) GEORGE PEMBERTON,
(Signed,) GEORGE PEMBERTON, for self and Partners,
(Signed,) MARY PATTERSON,
(Signed,) R. M. HARRISON,
(Signed,) ARCHD. CAMPBELL, Not. Pub.
(Signed,) F. T. MOFFET, Not.

A true Copy,
ARCHD. CAMPBELL, Not. Pub.

Geo. B. Hall's Notes held by Upper Canada Bank.

Due January	19	. .	£ 750	0 0
" "	20	. .	750	0 0
" "	22	. .	750	0 0
" "	22	. .	500	0 0
" "	26	. .	500	0 0
" "	29	. .	500	0 0
" February	4	. .	500	0 0
" "	7	. .	250	0 0
" "	10	. .	500	0 0
" "	14	. .	4000	0 0
" "	16	. .	500	0 0
" "	17	. .	500	0 0
			£ 10000	0 0

Notes endorsed by Geo. B. Hall, held by Upper Canada Bank.

Pemberton Brothers, Note secured by Deals.	due February 9	. .	£ 1400 0 0

(Signed,) GEORGE BENSON HALL,
(Signed,) GEORGE PEMBERTON,
(Signed,) GEORGE PEEBERTON, for self and Partners,
(Signed,) MARY PATTERSON,
(Signed,) R. M. HARRISON,
(Signed,) ARCHD. CAMPBELL, Not. Pub.
(Signed,) F. P. MOFFET, Not.

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Geo. B. Hall's held by Quebec Bank.

Due November	20	. .	£ 600	0 0
" October	21	. .	600	0 0
" "	18	. .	600	0 0
			£ 1800	0 0

Notes endorsed by Geo. B. Hall held by Quebec Bank.

H. & E. Dalkin,	due October	27 . .	£ 600	0 0
Do.	" "	26 . .	334	14 7
LeMesurier, Tilstone & Co., guaranteed by Delisle,	" "	23 . .	700	0 0
			£ 1634	14 7

(Signed,) GEORGE BENSON HALL,
(Signed,) GEORGE PEMBERTON,
(Signed,) GEORGE PEMBERTON, for self and Partners,
(Signed,) MARY PATTERSON,
(Signed,) R. M. HARRISON,
(Signed,) ARCHD. CAMPBELL, Not. Pub.
(Signed,) F. P. MOFFET, Not.

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Notes endorsed by Geo. B. Hall held by Bank of British North America.

R. M. Harrison	due February	7	. .	£ 750	0 0
H. & E. Dalkin	" April	1	. .	318	0 0
Do.	" "	1	. .	233	17 6
Do.	" "	1	. .	195	0 0
Pemberton Brothers	" March	14	. .	400	0 0
Do.	" "	13	. .	531	5 0
Do.	" February	20	. .	450	0 0
J. Fitzpatrick	" "	18	. .	198	10 0
L. T. Drummond	" March	27	. .	450	5 3
Hardy & Monier	" February	9	. .	138	0 0
				£ 3659	17 9

(Signed,) GEORGE BENSON HALL,
(Signed,) GEORGE PEMBERTON,
(Signed,) GEORGE PEMBERTON, for self and Partners,
(Signed,) MARY PATTERSON,
(Signed,) R. M. HARRISON,
(Signed,) ARCHD. CAMPBELL, Not. Pub.
(Signed,) F. P. MOFFET, Not.

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