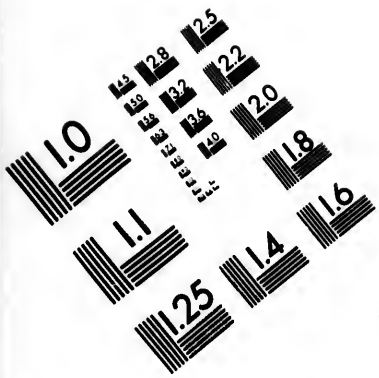


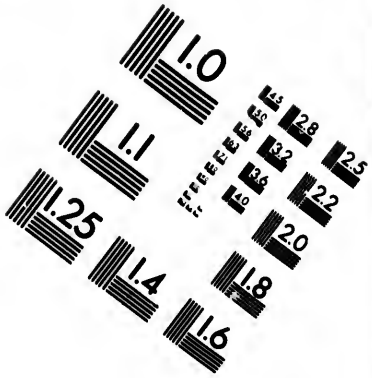
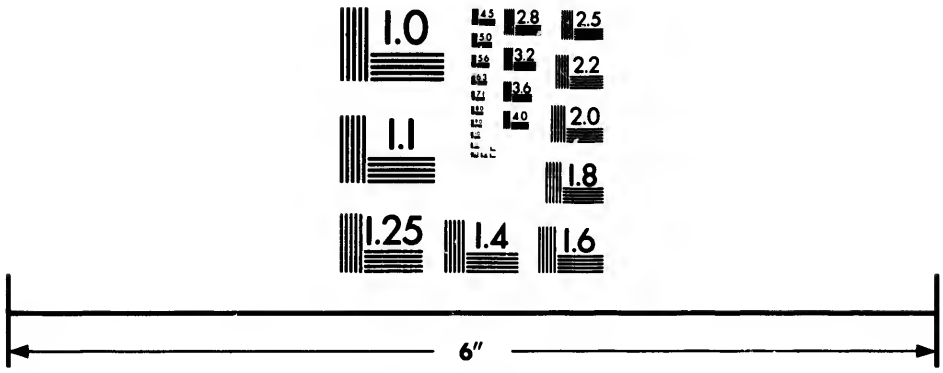
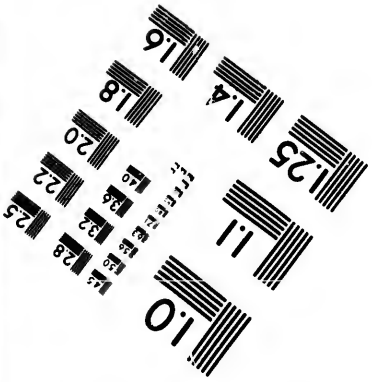
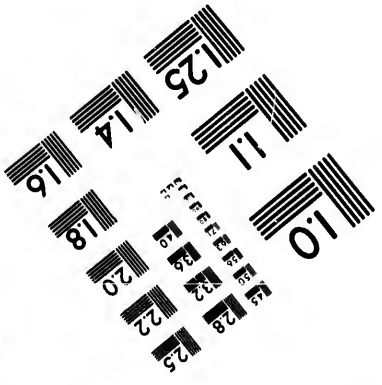


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
					✓						

The copy filmed here has been reproduced thanks to the generosity of:

New Brunswick Museum
St. John

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:

L'exemplaire filmé fut reproduit grâce à la générosité de:

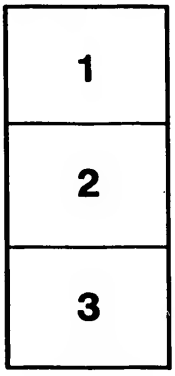
New Brunswick Museum
St. John

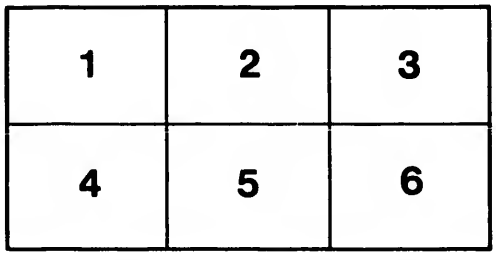
Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.





House of Lords.

NEW BRUNSWICK AND CANADA RAILWAY AND LAND COMPANY (LIMITED),

APPELLANTS;

AND

CONYBEARE, *et al.*,

RESPONDENTS.

(COPY)

JUDGMENT.

Tuesday, 25*th February*, 1862.

WESTMINSTER:
BLANCHARD AND SONS, 62, MILLBANK STREET.
1862.

House of Lords.

Tuesday, 25th February, 1862.

NEW BRUNSWICK AND CANADA RAILWAY AND LAND COMPANY (LIMITED) . . . . . *Appellants,*

AND

CONYBEARE, *et al.* . . . *Respondents.*

JUDGMENT.

Lord Chancellor.—My Lords, this is a case in which an Appeal has been presented to your Lordships from an order made by the Lords Justices, giving relief to the Plaintiff, by setting aside an executed contract, and directing certain conveyances consequent upon that contract to be rescinded, and declaring that the Company is bound to take back the shares which had been sold to the Plaintiff.

The original Decree in this cause was made by Vice-Chancellor Sir John Stuart, dismissing the Bill, but without costs. The Vice-Chancellor was of opinion that no one of the charges contained in the Bill had been substantiated. The case then went by Appeal before the Lords Justices, and was heard at great length, and on new evidence. From the Judgment which was given it would appear as if the Lords Justices concurred in the conclusion of the Vice-Chancellor,

on all points save two; on which two there is certainly no very definite expression of opinion on the part of those learned Judges.

One of those points appears to be this, that they seem to have considered that certain Reports, dated in December, 1857, and in July, 1858, had been handed over by the Secretary of the Company to the Respondent, with a representation, either direct or indirect, that those Reports contained an accurate statement of the then existing condition of the Company; they having been given by the Secretary to the Respondent in, I think, the month of September, 1858, about a twelvemonth after the making of one Report, and three months after the making of the other.

The other point in which the Lords Justices also do not express anything like a decided opinion is an alleged representation made by the Secretary of the Company to the Plaintiff, that the Company had an indefeasible title to certain lands; upon which the Lords Justices, in effect, say that they are unable to tell whether the Company had a defeasible or an indefeasible title, but that they find that the Company have been advised by an eminent counsel that the title was defeasible; and, therefore, giving no opinion on the point, and consequently not deciding whether the representation was true or false, the Lords Justices have mainly founded their decision upon that uncertain expression of opinion.

My Lords, the nature of the case made by the Plaintiff is, that the transaction ought to be rescinded on the ground of misrepresentation. Your Lordships are well aware that whenever an application is made to a Court of Equity to set aside a conveyance that has been made, the jurisdiction of the Court of Equity for the purpose must be founded on something amounting to fraud—and if the ground alleged be mis-

representation, either by the statement of what is false or by the suppression of something that ought to have been disclosed, and so producing a false impression and conclusion, the case so alleged must be shown, according to the language of Lord Eldon, to amount to that which a Court of Equity holds to be fraud.

But it is most essential in the administration of justice in a Court of Equity, that the nature of the case, when it is constituted of fraud, should be most accurately and fully stated in the Bill of the Plaintiff. My Lords, it is impossible to give relief merely upon a general charge that something has been done by a party, or has been obtained from a party, under the influence of fraud. It must be shown in what the fraud consists, and how it has been effected; and if the fraud is alleged to consist in certain representations which were untrue, and other facts are relied on for the purpose of showing that they were untrue, those facts must, undoubtedly, constitute a part of the case made by the Plaintiff.

Now, having generally adverted to these established principles, I will invite your Lordships' attention for a few moments to the nature of the case that is made on the part of the Plaintiff.

The allegations of the Bill are divisible into two parts, so far as they attempt to make out the case of misrepresentation. One part of the allegations substantially amounts to this:— that the misrepresentations on which the Plaintiff relies were contained in the two Reports of December, 1857, and July, 1858, given to him by the Secretary, to which I have already adverted. The other part of the case consists of a narrative of what was said or done by the Secretary, and what passed between the Secretary and himself on the occasion of two distinct interviews which he had with the Secretary at the Office.

Now, in the first place, with regard to the Reports that were produced to the Plaintiff by the Secretary, I certainly am not at all disposed to advise your Lordships to throw any doubt upon this doctrine, that if Reports are made to the Shareholders of a Company by their Directors, and the Reports are adopted by the Shareholders at one of the appointed Meetings of the Company, and those Reports are afterwards industriously circulated, undoubtedly representations contained in those Reports must be taken, after their adoption, to be representations and statements made with the authority of the Company, and therefore binding the Company.

Neither, my Lords, do I think it would be at all expedient to question this conclusion, that if those Reports, having been industriously circulated, shall be clearly shown to have been the proximate and immediate cause of shares having been bought from the Company by any individuals, or subscribed for by any individuals, undoubtedly it will be impossible, consistently with the principles of equity, to permit the Company to retain the benefit of that contract, and to keep the purchase-money that has been so paid.

There may be a very different consideration applied to the same transaction in a Court of Law and in a Court of Equity; because, when an attempt is made in a Court of Law to render a party liable in damages for certain consequences of a misrepresentation, it is necessary to prove that the individual was aware, at the time, of the falsehood of the representation, or ought to have been so aware; but with regard to a claim for the restitution of property acquired through false representations made by an individual acting in the capacity of agent, although the Company were no parties to those representations, and did not distinctly authorise them, it would still appear to be inconsistent with natural justice to permit property acquired by the Company through the medium of those representations to be

retained by them. So far, therefore, as these Reports are concerned, they must be taken, I think, to be representations made by the Company. I will presently invite your Lordships' attention to what are the statements contained in those Reports.

But, passing on to the second head of the Plaintiff's case, I beg your Lordships to observe what great danger would ensue if a concluded transaction of this kind were permitted to be afterwards questioned, upon the ground of some other general conversation passing between the individual and the Secretary of the Company at the Office of the Company. This gentleman appears to have gone to the Office of the Secretary for the purpose of making inquiries. He represents himself to have been received with great courtesy by the Secretary, and a conversation to have taken place between them. But there are no allegations in the Bill which at all tend to show that representations were made by the Secretary to the Plaintiff with a view to any definite statement made by the Plaintiff, that he wanted to purchase shares in the Company, and would be induced to do so, or not, in consequence of what he might be told by the Secretary. It would be exceedingly dangerous to hold the Company liable in consequence of a loose general conversation of that kind.

But, my Lords, it may not be necessary to rest any decision of your Lordships upon such considerations; because I will now beg your attention to the nature of the representations as alleged in the Bill, and I think you will see that it would be impossible, upon the utmost accurate sifting of the allegations in the Bill, and the evidence in support of it, to arrive at the conclusion that there was any material misrepresentation made to the Plaintiff which induced him to enter into the contract in question.

My Lords, these representations are divided, as I have

already said, into those that are contained in the Reports, and those that were involved in conversations with the Secretary. The representations contained in the Reports, as stated by the Respondent, appear to be, first, a conclusion that he derived from one of the Reports, that there were no liabilities of the Company, because they were in the habit of paying for everything with ready money.

Now that is an interpretation which he puts upon a particular passage in one of the Reports—a passage which, it appears to me, he has entirely misconstrued—for, without entering into any very accurate investigation as to the meaning of the word "liquidation," your Lordships will at once see, by referring to the passage in the Report, that it is utterly impossible that any man could have understood it as implying that the accounts were paid in New Brunswick every six weeks. The object of the passage is clearly this, to show to the Shareholders that the amount of the liabilities of the Company for the works in New Brunswick were ascertained every six weeks. And the next line, after speaking of the liquidation, goes on to make this remark, "so that, when the "accounts are sent to England and settled, there will no longer "be any debt." Now it is perfectly clear, from these particular words, in connexion with the passage in the antecedent line, which speaks of the liquidation, that the liquidation of the accounts in New Brunswick was represented as being something different from the settlement of the accounts in England. I think it impossible to impute to the Report any intention of representing to the Shareholders, much less to the public, that all the debts incurred in New Brunswick were duly and regularly paid every six weeks.

I think, therefore, that the first ground which is brought forward by the Plaintiff in his Bill—and which was so brought forward some time after he must have been well aware of the

truth of the facts—is not a ground upon which misrepresentation can be rested.

The other part of the Report which is referred to, is that in which it is represented that the traffic on the portion of the Line which was then opened exceeded the working expenses. Now that is contained in the Report of 1857; and I must say, with all respect, that I cannot concur in the remark of the Lords Justices, that the handing over to the Plaintiff the Report made in 1857, containing that statement, without more, in the month of September, 1858, ought to have been taken by him as amounting to a statement that that was the condition of things at the time when that Report was handed over. There is no such allegation contained in the Bill; and unless there was a definite statement to that effect, no man in his senses would arrive at the conclusion that, because a Report which was made in December, 1857, was given to him in September, 1858, therefore a representation with regard to the traffic on the Line, made in December, 1857, must of necessity, without more, be taken to be a representation repeated in the month of September, 1858. My Lords, I must here particularly beg your Lordships' attention to the fact that there is no charge whatever in this Bill, that when these Reports were given to this gentleman they were accompanied by any definite or certain statement by the Secretary that the representations contained in those Reports were accurate and truthful representations of the then existing state of circumstances.

Now, what the Company says, in answer to that particular charge, appears to be true—namely, that in the month of December, 1857, when the Report was made and issued, the receipts of the Line did in reality exceed the working expenses; therefore, in the absence of any allegation or proof that this gentleman was led distinctly to put faith in that statement, as

a statement repeated again in September, 1858, I cannot advise your Lordships to rest at all upon that particular allegation.

Then, my Lords, there is another statement contained in the Report—a general statement—that there was no probability of any rival Line being carried out. Why, my Lords, that is a matter as to which every individual who hears such a statement would of necessity understand that it was a mere conclusion of general opinion; that is, not a misrepresentation of fact, which must exist before you can found upon it as a title to relief. I dismiss that part of the case, therefore, as something which, whether it be true or false (but it is not shown to be false), would be merely a speculative matter—a matter of opinion—constituting no ground whatever upon which a charge of misrepresentation can be founded.

My Lords, there appears another statement which is partly matter of report and partly rested upon an alleged conversation with the Secretary, namely, the statement which the Respondent brings forward that he was assured by the Secretary, and that he also collected from the Reports, that the Directors had the means, or had no reason to doubt that they would be able, to finish their Line, having capital sufficient for that purpose.

Now, my Lords, in the first place, as far as the Report is concerned, the language of the Report simply states that the Directors have no reason to doubt that they will be able to finish the Line within the capital assigned. That is a representation only that the means afforded to them by the Acts of Parliament, by the Provincial Acts, and by the grants made by the Provincial Legislature, all of which would come within the extent of the expression "capital assigned," would prove sufficient for the portion of the Line that remained to be made.

My Lords, there is nothing at all to bring that representation into any kind of doubt. The Respondent has not in his Bill, nor has he by any evidence in support of his Bill, at all proved to your Lordships' satisfaction that that representation was untrue, and untrue to the knowledge of the Directors, either at the date of the Report or at the date of his conversation with the Secretary. What the Respondent relies upon principally is, that at the time when the conversation with the Secretary took place the Company were in a state of financial embarrassment. My Lords, it might well happen that the Company were in a state of financial embarrassment at a particular time, and yet that when the market was better or an opportunity of enforcing the liabilities arose, they might have ample means to complete the Line. It is quite clear, from the language of this gentleman's own Bill, that at the time when he applied to purchase the shares he was himself well aware of temporary difficulties on the part of the Company; for the allegation contained in his Bill is, that he took the precaution of consulting his broker before he applied to the Secretary, and that he was told by the broker that he understood that some of the Shareholders refused to pay the calls, denying all liability and disputing the Company's power to enforce them. It might be very true, therefore, that the Company at that particular time were under some financial difficulties. But there is no case made by the Bill that there was either concealment from the Plaintiff or misrepresentation made to the Plaintiff, so as to enable him to come here and show that he was thereby induced in that state of circumstances to purchase shares. The allegation in the Bill is limited only to the competency of the capital for the completion of the Line; and the contrary to that is not, as I have already observed, anywhere alleged.

There remains the more important consideration on which the opinion of the Lords Justices (given, nevertheless, in the

indefinite manner I have already described) mainly appears to be rested. The conclusion at which the learned Judges arrived appears to be this, that the Secretary having produced to this gentleman certain grants of land, which were *ex facie* absolute and indefeasible, must be taken by the production of those grants to have represented to the Plaintiff that the Company had an indefeasible title to those lands. My Lords, I think that may be undoubtedly regarded as a strong conclusion, merely from the circumstance of the production of those grants.

The other part of what passed appears to have been this, that there was a certain Act of the Provincial Legislature, passed in the 19th year of Her Majesty's reign, which was in point of fact produced, with other Acts, to the Plaintiff at the time of his first interview with the Secretary at the office of the Company, but which Act was not included in a collection of the Acts made by the former Company, anterior to the time of the passing of that Act of the 19th of Her Majesty, and which collection (to adopt the language of the Plaintiff) the Secretary good-naturedly proposed to him to take away with him.

Now, my Lords, it is necessary, very shortly, to review the state of legislation with respect to this Company, and I believe it may be correctly thus defined:—The grants of lands made to this Company, speaking generally, were grants of lands of a double description—they were made for two separate and independent purposes. First of all, there were grants of lands extending over an area sufficient for the construction of the Line of Railway, and the necessary depôts or stations for the use of the Railway. These were grants of land covering a belt not exceeding, I think, 400 yards in breadth, and they were made under and by virtue of one of the earlier statutes, namely, the 10th of the Queen. It was obviously right and

prudent in the Legislature to reserve to itself a power of re-entering into possession of those lands, supposing the Railway were never constructed; and, accordingly, a power for that purpose is contained in the 10th of the Queen—an Act of the Provincial Legislature.

Subsequently, the Legislature having very great interest in the making of this Railway, two additional benefits were conferred upon the Company—one being a subscription made by the Legislature itself, by virtue of a subsequent Act; and the other being grants of land adjoining the Railway, but including a very extended belt, having a diameter of 10 miles wide, that is, taking the track of the Railway as the medium line, and extending five miles on the one side, and five on the other.

Now these grants of lands were obviously made for the encouragement of the Company, and therefore they are made after the Company had become entitled thereto. The Act of the Legislature proceeds upon this principle—that for every £10,000 expended by the Company in making the Railway, the Company were to have 10,000 acres of this more extended belt of land granted to them, to enable them to go on with further works. It is perfectly clear, therefore, that this grant of land was made for a consideration, which, in the view of the Legislature, must be taken to have been already paid by the Company, when the Company had expended so much money upon the work; and it would be impossible to hold, consistently with any principles of ordinary justice, that, if the Company should have failed ultimately to complete the Line, the Legislature would be entitled to resume the particular lands requisite for the construction of the Line, and that the Legislature would be entitled to resume also the lands that had been previously granted in consideration of the price actually paid by the Company.

Accordingly, my Lords, the subsequent Acts of the Legislature must undoubtedly be construed with reference to this broad principle, and this reasonable rule as to the intention of the Legislature; and, if your Lordships look at them with this view, it is perfectly clear, when we come to the Statute of the 19th of the Queen, that the 19th of the Queen intended to repeat and to preserve the original right given by the 10th of the Queen, to resume the land along the track of the Railway. But by another section, namely the 7th section, it confirms all those grants of land which had been made under and by virtue of the subsequent Acts of the Legislature, which were not contemplated—nor was there any power to make them—at the time when this statute of the 10th of the Queen, containing the original power to resume, was passed. I take it, therefore, to be perfectly clear, that the condition of resumption expressed in the 19th of the Queen, is a condition intended to repeat the original condition, and is applicable only to the same extent as the original proviso or condition contained in the Act of the 10th of the Queen.

Now, my Lords, of course, in dealing with this particular matter we deal with it only upon the materials that are presented to us by these contending parties, and any opinion that is expressed by your Lordships upon this point is an opinion limited to the case before you. I advert to that, because I observe, in the Judgment of the Lords Justices, the Lords Justices state that they will abstain from giving an opinion, because it might prejudice the right of other parties.

My Lords, if it be necessary for this case (as I think it is necessary) to deal with the allegation of the Plaintiff, that the Company have not an indefeasible title, any opinion expressed by your Lordships upon that point will be confined entirely to the issue before you in this case and the relative rights of these parties, and will not, in the smallest degree, affect any

controverted question of right that may be raised between other parties in a different case. But upon this particular point, which has been much insisted upon by the Respondent, I think it is perfectly clear that there was not only no suppression of this Act of the Legislature, but I think it is equally clear that the Act does not warrant the conclusion contended for by the Respondent. Moreover, my Lords, the whole case, so far as it relates to this point, might be rested upon this single observation. When the Respondent took these shares and paid for them—in the eye of the law, and by force of the statute under which this Company was formed—he must be considered to have actually executed the Deed of Association. But the Deed of Association recites fully this very Act of the Legislature, which he alleges to have been suppressed; and, therefore, the case is reduced to this:—A gentleman files a Bill to set aside a transaction, on the ground of something being withheld from him, which is found to be actually recited in the very deed by which the property is conveyed to him. The attempt, therefore, to allege a case of suppression in the face of such facts as these, is an attempt which is altogether futile.

These, my Lords, I believe are all the allegations that are to be found in this Bill; and, what is more, independently of the statements in the Bill, these representations which the Plaintiff has made with reference to this case, appear to me not to be warranted as to any conclusions of fact by the evidence before us. I am obliged, therefore, to say that I cannot, as far as my opinion goes, hesitate with regard to the Decree that ought to have been made in this case. I find here a Company charged with fraud, through the medium of its Directors—for if any fraud has been perpetrated, it must have been perpetrated by its Directors. If the Secretary made false representations, they were either prompted or have been ratified by the Directors; yet the extraordinary character

of the Judgment, which is the subject of this Appeal, is this—that the Lords Justices acquit the Directors altogether, but find an immaterial and metaphysical creature, namely, the Company, guilty of fraud. My Lords, I think the conclusion originally ought to have been that there was no ground for imputing to the Directors fraudulent representation, or fraudulent withholding of any material fact; and I believe it to be essential in the administration of justice, that when a charge is made involving the imputation of fraudulent misrepresentation, or fraudulent concealment, if that charge fails, it ought to fail with the ordinary penalty of the Court directing the party who makes it without ground, to indemnify his antagonist in costs.

I must, therefore, submit to your Lordships that there was no satisfactory reason for the Vice-Chancellor departing from the true principle of the Court, in dismissing this Bill without costs. It is undoubtedly the wiser rule to let the costs follow as an incident to the decree. If there are grounds warranting the refusal of the relief sought by the Bill, it is very difficult to see on what grounds you can assert the arbitrary power of refusing the ordinary indemnity to a party who has been unjustly brought into Court. I therefore, my Lords, hope that your Lordships will concur with me in thinking that if this Decree, made by the Lords Justices, is to be reversed, it must be reversed with all the usual consequences; and that, accordingly, the petition of rehearing before the Lords Justices must be directed to be dismissed with costs. Then, going back to the Decree pronounced by the Vice-Chancellor, that Decree must be varied by directing the Bill to be dismissed with costs.

Lord Cranworth.—My Lords, my noble and learned friend on the Woolsack has gone through this case so fully that, concurring as I do with him in every word of what he has addressed to your Lordships, I should have been well content to have said not one word except to express my concurrence;

and I believe that I should have taken that course, were it not that, in the course of the argument in this case, principles have been adverted to as having been previously decided as to which it was said some doubt existed. As two of the cases which have been so referred to were cases which came before your Lordships' House, when I had the honour of sitting on the Woolsack, I think it fit to state what those cases were, and how far I conceive that the principles decided in them were perfectly correct.

In this case the doctrine upon which the Lords Justices proceeded was this—that there had been such representations made by the Directors of this Company as entitled the Plaintiff to set aside the contract into which he had entered with the Company through the Directors, upon the ground that those representations were fraudulent. I may say in passing, that I confess, considering the very great accuracy of the learned Judge, who mainly pronounced the judgment in the Court below, I am very much surprised at the principle as there promulgated by him, because the charge being (so far as it is correctly stated in the Bill) that the Plaintiff had been induced to enter into this contract by fraudulent representations—that there was a good title to the land, whereas, in fact, there was not a good title. The ground on which the Lords Justices have proceeded is this: not that there was not a good title, but that they were not satisfied upon that subject, and that therefore it was a sort of doubtful title which would warrant their interposition. Now I must take the liberty of saying that, however that doctrine would have applied in an executory contract, it is, to my mind, totally inapplicable where the contract is executed and where the Court is asked to set aside the contract upon the ground of misrepresentation.

But, however, for the purpose of the few observations

which I am about to address to your Lordships, I will assume that this representation had been established to be a fraudulent one on the part of the Directors. The question as to the doctrine of the Courts, which was in some degree discussed—I will not say called in question—in the argument, was this: whether the Directors can be so far considered as the representatives of the Company as that a fraud on their part should for any purposes be deemed the fraud of the Company; and a number of cases were referred to in which that doctrine was adverted to, two of which were in this House. One which came before this House—the case of Ranger *v.* The Great Western Railway Company—was a case of great notoriety: it was heard at great length in the time of Lord Cottenham, and his unfortunate death having rendered all those proceedings abortive, it came afterwards to be heard again, when I had the honour of holding the Great Seal, and it was again argued at very great length. The ground on which Ranger sought relief was this:—He said, amongst other things, "I was induced by the fraudulent representations of the "Company to enter into contracts for making a part of the "Line, which I contracted to make upon terms very dis-"advantageous to myself, and terms upon which I would "not have entered into these contracts if I had not been so "imposed upon." One of the allegations that he set up was this:—He said, "I was induced to enter into the contract "for a part of the Line near Bristol by being told that the "Engineer of the Company would point out to me the Line," and that the Engineer of the Company so directed to point out the Line to him fraudulently led him to suppose that the soil was of a character that would be infinitely less expensive to work than in truth it turned out to be. Upon the evidence as to these facts, it appeared to me, weighing it fully and deliberately, that the case wholly failed to be made out, and that there had been no such fraud at all. I therefore had no necessity to advise your Lordships upon the general question

of law, but I did then express my opinion, and which I confess I still entertain, that if an incorporated Company, acting by an agent, induces a person to enter into a contract for the benefit of the Company, that Company can no more repudiate the fraudulent agent than an individual could repudiate him, and that, consequently, the Company are bound by the misrepresentations of their agent.

The next case that occurred, and which was adverted to in the argument, was a case from Scotland of this nature. The National Exchange Bank of Glasgow raised a summons of this nature, saying that Drew, the defender, was indebted to them in a sum of £600, which he, Drew, had borrowed of them. Drew said, "I am not so indebted to you at all; and "whatever I did, I was induced to do by your fraudulent mis- "representations." Those fraudulent misrepresentations being (if they were fraudulent) misrepresentations of the Directors by whom this National Exchange Company was managed. When the case was heard here, I was assisted by Lord Brougham and Lord St. Leonards; and I came to the conclusion (that was my own opinion only), upon an investigation of the case, that there was no loan at all—that the money had been advanced by the Directors out of the funds of the Company, but not at all upon the terms of a loan; and that, consequently, there was sufficient to show that Drew had never been a borrower. But I added this, that the view of my noble and learned friends who heard the case at the same time with myself, being that that was a refined distinction, not applicable in that case, and that there was a loan, but that it was void on account of the fraudulent mode in which the party had been induced to make that loan, I did not think that I should be doing justice, if I were not to say that I adhered to the opinion that I expressed in the case of Ranger *v.* The Great Western Railway Company—that if Drew had been induced to borrow the money by that which could be

called a fraudulent representation on the part of those through whom the negotiation proceeded—namely, the Directors—that was a fraud that would bind the Company.

My Lords, to that opinion I entirely adhere; and I think it would have been applicable in this case, if it had been proved that there had been a fraudulent representation or concealment by the Directors, in order to induce Mr. Conybeare to purchase—not shares in the market (that is a very different thing), but shares belonging to the Company, namely, forfeited shares. If the Directors, or the Secretary acting for them, had fraudulently represented something to him which was untrue, I then adhere to the opinion which I expressed in the former cases, that the Company would have been bound by that fraud. But the principle cannot be carried to the wild length that I have heard suggested, namely, that you can bring an action against the Company upon the ground of deceit, because the Directors have done an act which might render them liable to such an action. That I take not to be the law of the land, nor do I believe that it would be the law of the land, if the Directors were the agents of some person, not a Company. The fraud must be a fraud that is either personal on the part of the individual making it, or some fraud which another person has impliedly authorised him to be guilty of.

Adhering, therefore, to these opinions, I nevertheless concur entirely with my noble and learned friend, that the facts of this case are not such as to render any such principle applicable at all.

Lord Chelmsford.—My Lords, I should have been contented to leave this case upon the grounds upon which it has been so clearly and fully put by my noble and learned friend on the Woolsack, if I had not felt that the difference of

opinion which has existed between the learned Judges in the Court of Chancery, renders it necessary, out of respect to them, not to arrive at any conclusion upon the case without stating clearly the reasons upon which that conclusion is founded.

My Lords, I must confess that I have felt very considerable embarrassment in the course of this discussion, and especially throughout the very able argument which has been addressed to your Lordships at the Bar by the Counsel for the Respondent, in consequence of the mode in which the case has been presented by his Bill. He seeks to rescind a contract which he has entered into for the purchase of shares in a Company, upon the ground of fraud and misrepresentation. Now, one would think it would not be very difficult to state a case of that description with clearness and precision; but, instead of a simple statement of facts and circumstances, the Bill presents to us a confused mixture of narrative and argument, in the midst of which it is very often extremely difficult to discover what is the exact misrepresentation upon which the Plaintiff means to rely; and he sums up the whole of his statement with this vague representation. The Plaintiff charges—"That the Defendants other than the Company "have, both by letter and by word of mouth, admitted to "each other and to other persons, the truth of the statements "and charges in the Plaintiff's Bill." When he does condescend to a little more particularity of statement, he leaves us in doubt whether he means to ascribe the misrepresentations to the Secretary, or whether they are contained in the Reports of the Directors.

Now, in dealing with these charges as presented, your Lordships must, in the first place, dismiss one which is stated in the Bill, wherein the Plaintiff charges that the Solicitor or Secretary stated that the A Shares were entitled, at all events,

to the £6 per centum preferential dividends out of the profits of the said Company; because that statement, if made at all, was made at a Board Meeting held either in December, 1858, or in January, 1859 (for he does not tell us which), and that was after the time at which he purchased his shares, and therefore, undoubtedly, that must be entirely out of the case.

With respect to the only debateable ground—the question of the title to the lands—I find it extremely difficult to determine whether the Plaintiff means to state that there was a misrepresentation on the part of the Directors, that they had an indefeasible title, or whether he merely means to allege a concealment by them that their title wes defeasible or doubtful. And yet, according to those different modes of presenting the case, very different considerations will arise with respect to the knowledge, or means of knowledge, which the Plaintiff possessed. If a party makes a false representation, it may be no answer to a person complaining of being misled by it, to say to him, "You had the means of ascertaining the untruth of my statement if you had thought proper to use them." The reply to this might probably be, "Your representation put me off "my guard. I was entitled to place faith and reliance upon it. "I did so; and you have no right to complain that I trusted to "your word and looked no further." But where the fact is not misrepresented, but concealed, and there is nothing done to induce the other party not to avail himself of the means of knowledge within his reach—if he neglects to do so, he may have no right to complain, because his ignorance of the fact is attributable to his own negligence.

Now, in considering the different charges made by the Plaintiff in this case, it will not be necessary to dwell more than very slightly upon any of them, except the one with regard to the title to the Crown lands. With respect to the allegation as to its being untrue that the receipts on the forty

miles of railway which had been completed covered the expenditure and left a profit, I find nowhere any allegation in the Bill of the untruth of that statement. It probably is meant to be included in the general allegation of the untruth of the representation of the Directors, that they had sufficient funds to complete the line. But with respect to this particular allegation, so distinctly made, it is perfectly true, that at the time that the Report was issued, which was in December, 1857, the result had been that the receipts had exceeded the expenditure, and had left a profit—a small one—to the Company. Therefore, with regard to that charge it may be dismissed without any further observation. So, again, with respect to the charge that the Directors asserted that there was not the slightest probability that any rival line would be constructed. Now I am not aware where that allegation is made by them. The Respondent does not say, or prove in any way, that there was the slightest probability of any rival line being made, and the Directors positively swear that they had no expectation of such a line being formed; and the result has been, that no such line has been proposed.

Then, with regard to the third charge—the allegation that it was untrue that they had sufficient funds to complete the line. Now that depends upon the statements in the Bill. In paragraphs 47 and 49, the Plaintiff charges, "That the "Directors had good reason to doubt, when they issued their "Report in July, 1858, their being able to finish the Line "within the capital assigned for its construction, and that some "such doubts were actually felt." And then, in paragraph 49, he charges, "That the Company, on the 29th July, 1858, had "not sufficient available funds to complete their Line to "Woodstock, and that the statement that the Company had "sufficient funds to complete their Line to Woodstock, con-"tained in the said Report of July, 1858, and made by the "Secretary as aforesaid, were respectively untrue."

Now it seems that these two paragraphs, taken together, mean to assert, that in the month of July, 1858, the Directors represented that they had available funds to complete the Line, whereas they knew perfectly well that they had not sufficient funds for that purpose. But there is no such assertion made in the Report. The Report is merely that the experience of the Directors leaves them no reason to doubt their being able to finish the Line within the capital sum assigned for its construction. And I must confess that there appears to me to be no reason to say that there was anything to induce a different belief at that time, on the part of the Directors, that the capital assigned—that is, the sum that was set apart as capital for which the Line was to be constructed—would be insufficient, or that the Line would not be completed within the time.

And with regard to the assertion, that the Secretary had alleged that they had sufficient funds to complete the Line to Woodstock, I find that all that is said upon that subject in the Bill is in paragraph 8, that the Secretary said, "That the Com-"pany would have sufficient funds, not only to carry through "their undertaking, but also to pay the stipulated interest." It is a statement, not of a fact, but of an expectation, and therefore does not support the allegation of misrepresentation in the Bill.

Then, with regard to the alleged untruth of the statement as to the system of liquidation of the debts of the Company every six weeks, there is not the slightest allegation in the Bill that that was an untrue statement. The only allusion to it is in paragraph 48, in which it is said, "The Plaintiff "charges that, had the arrears of all kinds been prevented, by "their boasted system of liquidating every claim once in six "weeks, the Directors could not have failed to have ascertained "that their funds were almost exhausted on the 30th of July." The Bill speaks slightingly of that system. It does not say

there was no such system established, but it insinuates that they had not carried out that system, and that from that cause they had not discovered the insufficiency of the funds.

Now, if the Bill means to allege that the representation of the Directors was, that they liquidated their debts every six weeks, and so left no arrears, there is no proof whatever of any such statement having been made, because all that the Report says, is, "To remove any apprehensions of this kind" (as to liabilities accumulating), "your Directors think it right to "state, that the system of payment adopted in the Province "involves the liquidation of every claim once in six weeks; "so that when the certificates of the Engineer and the accounts "forwarded by the Manager are settled, the capital account is "virtually closed up to that time." What is the meaning of that passage in the Report? Why, even supposing you take the term "liquidation" in the sense of payment, all that is asserted in that Report and represented to the Shareholders, is, that by the system that was adopted, and which appears to have been carried out, in the Province, of drawing bills every six weeks, and discounting those bills for the purpose of paying the liabilities that had then accrued due within the Province, the arrears were kept down, and were prevented from accumulating against the Company, and that is strictly and accurately correct.

The only remaining part of the case to be considered, is the question as to the title of the Company to the lands under the Crown grants. Upon this part of the case, I confess that I am perplexed to ascertain whether the Plaintiff means to put his case against the Company upon the ground of misrepresentation, or upon the ground of concealment; whether he means to say, that the Company misrepresented the case, by asserting that they had an indefeasible title, or that they concealed the fact that their title was defeasible or doubtful. If

he means to put it on the ground of misrepresentation, all that he says upon that subject is in paragraph 10 of the Bill— "The said Report of July, 1858, referred to the lands of the "said Company in terms calculated to convey to the mind an "impression that such lands were the absolute and indefeasible "property of the Company"— not a representation, but an inference that was left to be drawn from the expressions used in the Report. If it is put upon the ground of the pamphlet which was given by the Secretary, containing the different Acts of the Legislature, but omitting the 19th of the Queen, then, of course, that cannot amount to misrepresentation, unless it can be said that, by giving that pamphlet to him, the Secretary in effect stated to him that those were all the Acts which referred to the title to the lands.

It appears to me, therefore, that the only possible ground upon which the Plaintiff can put this part of his case, is concealment, and not misrepresentation. He states his case here very imperfectly; for he does not state that there was any intention on the part of the Secretary to withhold from him the requisite information to enable him to decide upon the title of the Company; and even with respect to the opinion of Mr. Bullar, he does not anywhere say that he was not aware of that opinion, or that the knowledge of it was improperly withheld from him by the Company.

If the case is put upon concealment, then it must be upon the ground of the pamphlet not containing that statute of the 19th of the Queen, upon which, as he says, the whole doubt with regard to the validity of the title of the Company to the Crown lands arises, or upon the ground of their withholding from him the opinion of Mr. Bullar.

Now, as to the pamphlet, I think that the observations which have been made at the bar are perfectly conclusive. It

was impossible for the Plaintiff to look at that pamphlet without seeing that those could not be all the Acts which relate to the Company. They were confined to the St. Andrews and Quebec Railway Company. That Company, he would have seen by the Acts which the pamphlet contained, had come to an end in some way or other by some Act of the Legislature, and that the new Company, with which he was dealing, must have come in its place; and therefore he would have been necessarily led to inquire what were the other Acts which related to the title to these lands.

With respect to the opinion of Mr. Bullar, I wish to guard myself against its being supposed that I acquiesce entirely in the view which was presented to your Lordships, that it was not necessary for the Company, having the opinion of their conveyancer that their title was a doubtful one, to communicate that to the Plaintiff. If the Company had withheld intentionally from the Plaintiff the Act of the 19th of the Queen, upon which the doubt as to the title arises, then, I think, it would have been a very undue and improper concealment not to have communicated to him the fact that Mr. Bullar had given an opinion that the title was a doubtful one; and the omission of the 19th of the Queen from the pamphlet given to the Plaintiff, and the concealment of the opinion of Mr. Bullar, might have made out against the Company a case of concealment; but, it is quite clear, that the circumstance of the delivery of that copy of the Acts with the omission of the 19th of the Queen was not an intentional concealment. It is not imputed to the Company, even by the Plaintiff himself in his Bill, that they did intend to conceal that part of their title. It was impossible that they could have intended it. He must have known that there were other Acts; and, therefore, the question really comes to this—whether if the case is put, as it must be put, on the ground of concealment, it can be competent to the Plaintiff to complain that the Company deceived

him, when he had not merely, as it appears to me, the means of knowledge in his power, but he must have had actual knowledge of the very circumstance, to the omission of which he attributes his having been misled into this contract; because, as was observed by my noble and learned friend on the Woolsack, before the shares were given to the Plaintiff he must have read the articles of association, and the articles of association contained a recital of the whole of the title of the Company to these lands, including the omitted Act of the 19th of the Queen. It is impossible, as it appears to me, under these circumstances, that the Plaintiff can properly and justly complain that there has been an undue concealment, which entitles him to come forward and to insist upon rescinding the contract into which he has entered.

But, my Lords, assuming that there has been either misrepresentation or undue concealment, the Plaintiff's case still falls extremely short of what is requisite against the Company, unless he can show that the title to the lands was a defeasible or doubtful title; because, if he asserts that the Company stated that it was an indefeasible title, or if he asserts that they concealed from him the fact that it was a doubtful or a defeasible title, it is clear that he has no case against them, unless he can show that the fact which is alleged to have been concealed existed, and that the title really was doubtful or defeasible.

Now, upon that subject the only possible hesitation which I could feel would arise from the respect which I sincerely entertain for the opinion of Lord Justice Turner. It appears to me, upon an examination of the different Acts to which we have been referred, that there can be no doubt whatever that the title was a good and perfect title to those two Crown grants of March and August, 1858. That may be clearly shown by a very short reference to the Acts themselves.

The grants in question were made under the authority of an Act of the Colonial Legislature of the 12th of the Queen. That Act related to the St. Andrews and Quebec Railway Company. But the undertaking of the St. Andrews and Quebec Railway Company was transferred—by an agreement between the Companies, ratified by an Act of the Imperial Legislature, in the 20th and 21st of the Queen—to the present Company, the Appellants in this case; and all the powers, rights, and privileges of the St. Andrews and Quebec Railway Company are now vested in the Appellants' Company.

Now, the powers and rights and privileges possessed by the St. Andrews and Quebec Railway Company depend upon four Acts of the Colonial Legislature, of the 10th, 11th, 12th and 19th of the Queen. Under the 10th of the Queen certain portions of Crown lands were to be granted for the Railway track and depôts—what is called the belt of land for the construction of the Railroad. And then it is provided, "That if a "part of the Railroad (that is, the part between St. Andrews "and Woodstock) was not completed and in full operation "within the space of ten years, all and every the grants of "land and the rights and privileges conferred by this Act, "shall be utterly null and void, and the land and privileges "shall revert to and revest in Her Majesty, as fully as if no "grant had been made." And then, by the 4th section, for the encouragement of the undertaking, it is enacted, "That on "the completion of the said part of the contemplated Rail-"road" (which means, of course, the part between St. Andrews and Woodstock), "it shall be lawful for the Com-"pany, at their own proper costs and charges" (and so on), to choose and select 20,000 acres of land, which is to be granted to them.

Now, there can be no doubt (and it is necessary to dwell a little upon this) that, under this 10th of the Queen, these grants

of the 20,000 acres of land were to be absolute and indefeasible grants, because they were not to be made until the Railway was completed between St. Andrews and Woodstock; and the other grants, which were to become void, were only to become void in the event of that part of the Railroad not being completed.

Then, under the 11th of the Queen, there are further benefits granted with regard to allotments of land on each side of the Line still to be made, on the completion of the said part of the said contemplated Railway, and which are clearly therefore to be absolute and indefeasible grants.

My Lords, that was the state of things when the 12th of the Queen was passed. The Company were entitled to receive grants of lands, which would be forfeited upon their failure to complete the Line within a specified time, but they were absolute and indefeasible grants upon the completion of the Line. Then the statute of the 12th of the Queen recites, that it is advisable that further encouragement should be given to the St. Andrews and Quebec Railway Company. Now, how was that further encouragement proposed to be given? It was proposed to be given by enabling the Company to receive grants of lands, not upon the completion of the Railway, but upon the expenditure of a certain sum of money upon the Line, namely, £10,000, upon which they were to receive 10,000 acres; and for every additional £10,000 expended they were to have an additional grant of 10,000 acres. Now observe, it was "for the greater encouragement of the undertaking." This grant was to be substituted for the grant which was to have been made under the previous Acts, and which was only to be made upon the completion of the Line, but, when made, was of course to be absolute and indefeasible; and, therefore, one would say at once, that this being substituted as an additional encouragement, at all events it would be as absolute and

as indefeasible as the former grant, for which the Legislature intended to substitute it. It would be no encouragement at all to lay out money upon the Line, if the promoters of the undertaking were told that they should receive upon a certain expenditure conditional grants, of which after all they would be deprived, supposing they failed to complete the Line within the specified time.

Now, that being the state of things, the 19th of the Queen, this Act of the Legislature upon which all the doubt is said to arise, was passed. It recites the Acts of the 10th, 11th and 12th of the Queen. It recites that grants of Crown lands had, under the recited Acts or some of them, been made to the Company; and it enlarges the time for the completion of the Railway to four years from the time of the Act coming into operation, when, if the Line is not completed, "all and every "the grants of land, and the rights and privileges conferred "by" the several facility Acts, are to be "utterly null and "void, and the land and privileges" to revert to the Crown. Then it recites the facility Act (as it is called) of the 12th of the Queen, enlarging the time for the completion of the Railroad; and then, immediately following upon that is the 7th section, upon which the doubt is said to arise—"The several "grants and appropriations of Crown lands respectively made "to or for the benefit of the Company are by this Act con-"firmed, and shall be valid and effectual to all intents and "purposes whatsoever." Now it is quite clear that that section can have no other reference than to the grants that were made under the 12th of the Queen.

But then it may be said, Well, but if those grants were absolute and indefeasible, why should you require any section in this Act of the 19th of the Queen to render them valid and effectual to all intents and purposes? Well, I have no doubt at all that without that section those grants which had been

previously made to the St. Andrews and Quebec Railway Company would have been absolute and indefeasible grants. But it seemed to be thought that the general words of the 2nd section, annulling the grants, if the Line were not completed within four years, were sufficiently large to embrace those grants which had been made as an encouragement to the undertaking; and, therefore, this 7th section was introduced out of abundant caution to render those grants clearly valid and effectual to all intents and purposes; and some stress may be laid upon the expression that we find in the 7th section. The 2nd section has described the grants of land and the rights and privileges conferred, relating to the Company, and here, in the 7th section, the words are, "the several grants and appropriations of Crown lands respectively, made to or for the benefit of the Company"—clearly, as it appears to me, distinguishing between those grants which were made for the construction of the Railway and those grants which were made for the encouragement of the undertaking by the 2nd section of the 12th of the Queen. Now, if that is the proper construction of that Act of the 19th of the Queen (and I entertain no doubt whatever upon the subject), that, of course, would only relate to the grants which had already been made to the St. Andrews and Quebec Railway Company; but then it leaves that section of the 12th of the Queen untouched and unrepealed. The present Company, the Appellants' Company, have become possessed of the undertaking of the St. Andrews and Quebec Railway Company, and are entitled to all their rights and privileges; and, amongst others, they are entitled to the benefit of that clause in the Act of the 12th of the Queen, by which grants may be made to them, and, as I think, without the slightest doubt, absolute and indefeasible grants, from time to time of 10,000 acres, upon the expenditure of £10,000 by the Company.

Therefore, under that power the grants of March and August, 1858, were made of 20,000 acres and 30,000 acres—

there having been an expenditure, as we understand, corresponding with those grants; for hough those grants are expressed as absolute grants, without describing or reciting the consideration for which they were made, there can be no doubt whatever that those grants were made under the powers of the 12th of the Queen, and that the grants are absolute and indefeasible; and therefore, even supposing that the Plaintiff could put his case and could found his case upon any misrepresentation or concealment on the part of the Company, still his case must fail, because he cannot show that there has been any misrepresentation or improper concealment.

Now, I only wish further to say one word with regard to what has fallen from my noble and learned friend near me upon the subject of the decisions which have taken place as to representations made by Directors, or officers of a Company, binding the Company. As to the question, how far the conversations which are said to have taken place at the interview of the Plaintiff with the Secretary before he thought of taking these shares can be considered, under any circumstances, to be binding upon the Company so as to enable the Plaintiff, as against them, to rescind the contract into which he has entered—upon that question I do not think it at all necessary to express any opinion. But, with regard to what my noble and learned friend has said, I think there will be found a very important distinction, which, perhaps, may reconcile all the cases, between contracts which have been entered into with Companies through Directors, for shares belonging to the Company, and transactions which have been entered into by individual Shareholders as between themselves and others. It may be that any fraud or misrepresentation on the part of Directors in dealing with shares belonging to the Company may not make the Company liable for the deceit and fraud of their agents, but may prevent their deriving any benefit from it, by forbidding their holding the party to the purchase of

shares which he has been induced to take by means of fraudulent misrepresentations of their agents; but important considerations still will arise, where the misrepresentations are said to be contained in reports or balance sheets which are intended for the Shareholders only, but which have been published to the world at large. How far any person may come in and say that he was led by these representations, which were not made to him, but which were intended for the Shareholders of the Company, to take shares, and that the statements are untrue, and that therefore he ought to be relieved from his contract—how far that may be the case, is a question worthy of very serious consideration, and it is one upon which I do not feel it at all necessary at present to enter. Other difficulties may be suggested, but it is sufficient to dispose of this case by saying that there is no proof whatever of any misrepresentation—that the only ground upon which the Lords Justices have proceeded, that is, with regard to the title to the lands being doubtful, is entirely removed. There is no doubt whatever that the title is a good and absolute and indefeasible title; and therefore, upon the grounds which I have stated, I agree with my noble and learned friends that the Decree of the Lords Justices ought to be reversed, and that the Decree of the Vice-Chancellor ought to be varied in the way which has been proposed by my noble and learned friend on the Woolsack, because I think that it is always right that where parties charge fraud, and fail upon that charge, their Bill should be dismissed, with costs.

Order appealed from, Reversed.

Petition of Re-hearing before the Lords Justices, to be Dismissed, with Costs.

Decree of the Vice-Chancellor varied, by directing Plaintiff's Bill to be dismissed with Costs.

Blanchard & Sons, Printers, 62, Millbank Street, Westminster.