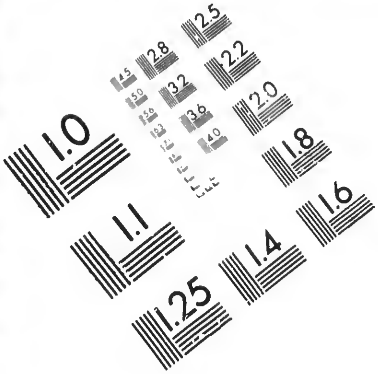

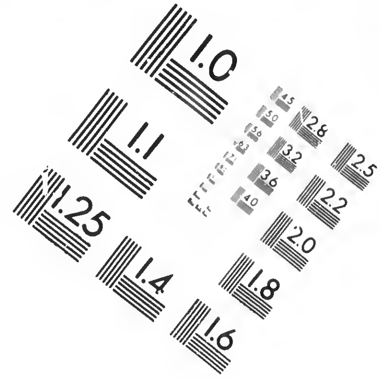

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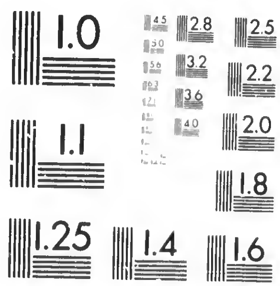

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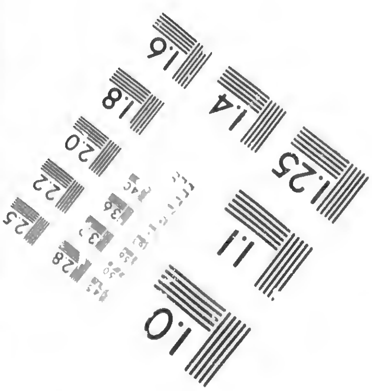

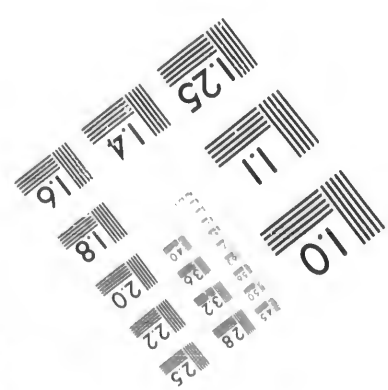

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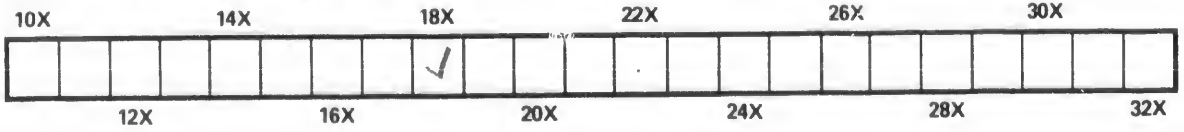

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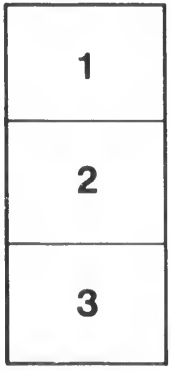

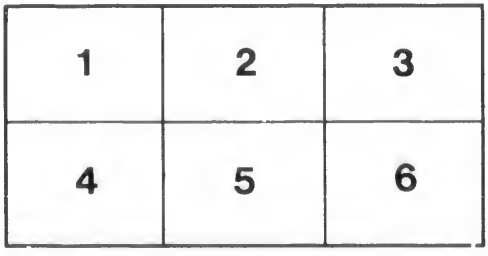

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IN CHANCERY.

CAMPBELL

VS.

THE NORTHERN RAILWAY COMPANY OF CANADA,

AND

THE HAMILTON & NORTH-WESTERN RAILWAY COMPANY.

HEARD BEFORE THE HON. V. C. BLAKE AT TORONTO, ON FRIDAY, 19th SEPTEMBER, 1879.

JAMES MACLENNAN, Q. C.,
Counsel for Plaintiff.

E. BLAKE, Q.C., HECTOR CAMERON, Q.C. AND G. D. BOULTON,
Counsel for Defendants.

1880.
A. S. WOODBURN, PRINTER, ELGIN STREET,
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CAMPBELL VS. NORTHERN RAILWAY COMPANY,

AND

HAMILTON & NORTH-WESTERN RAILWAY COMPANY.

Heard before the Hon. V. C. BLAKE at Toronto, on Friday, 19th September, 1879.

Counsel for Plaintiff—JAMES MACLENNAN, Q.C.

Counsel for Defendants—Messrs. E. BLAKE, Q.C., HECTOR CAMERON, Q.C., and G. D. BOULTON.

BILL OF COMPLAINT OF CHARLES JAMES CAMPBELL.

BETWEEN CHARLES JAMES CAMPBELL, on behalf of himself and all the other Shareholders of the Northern Railway Company of Canada.

PLAINTIFF,

AND

THE NORTHERN RAILWAY COMPANY OF CANADA AND THE HAMILTON & NORTH-WESTERN RAILWAY COMPANY.

DEFENDANTS.

CITY OF TORONTO, } To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of Charles James Campbell, of the City of Toronto, in the County of York, Esquire, who sues as well on his own behalf as on behalf of all the Shareholders of the Northern Railway Company of Canada, Sheweth as follows:

1. The defendants, the Northern Railway Company of Canada, are a Railway Company, incorporated by the Legislature of the late Province of Canada, with power to construct, maintain, use and operate a

railway extending from the City of Toronto to the Towns of Barrie and Collingwood, and also certain branch lines of railway.

2. In the exercise of their corporate powers and franchise, the defendants the Northern Railway Company constructed their said railway, and for many years they have been running and operating the same and for that purpose have acquired, and now possess and are using, a large quantity of rolling stock.

3. The defendants, the Hamilton & North-Western Railway Company are a railway company incorporated by the Legislature of the Province of Ontario, with power to construct, use, maintain and operate another and a different railway, extending from the city of Hamilton to the same towns of Barrie and Collingwood, and also certain branch railways.

4. In the exercise of their corporate powers and franchises, the defendants the Hamilton & North-Western Railway Company have constructed their said railway, and have for some time been running and operating the same, and have for that purpose acquired, and now possess and are using a large quantity of rolling stock.

5. The said two railway lines are rival and competing lines, the chief part of the traffic of both lines being derived from the same localities.

6. The plaintiff is a shareholder in the said Northern Railway Company, and he is the owner, in his own right and as trustee for other persons, of about one-fourth of all the shares of the capital stock of the said Company, and the plaintiff is also a Director of the said Company.

7. The corporators of the said Northern Railway Company consist of holders of shares of the capital stock of the said Company, and the shareholders are very numerous, and it would be impossible to make them parties to this suit.

8. The affairs of the said Northern Railway Company are managed by a Board of Directors, elected annually.

9. The corporators of the said the Hamilton & North-Western Railway Company consist of the holders of shares of the capital stock of the last mentioned Company, and its affairs are managed by a Board of Directors.

10. Negotiations have lately taken place between the said two companies for the purpose of combining the rolling stock, plant and

material of the said two companies, and of working and operating both the said railway lines, and exercising the franchises thereof, under the joint management of both companies, for a period of twenty-one years, and the defendants intend immediately to enter into an agreement for that purpose, and will, unless restrained by the order and injunction of this Honorable Court, carry the said intended agreement into effect.

11. The said Company have no power to enter into the said intended agreement, and such an agreement would be illegal and *ultra vires* of both the said Companies.

12. The plaintiff is opposed to the said intended agreement, and has resisted the same in every way in his power, but the defendants intend to proceed to carry the same into effect.

THE PLAINTIFF THEREFORE PRAYS AS FOLLOWS:

1. That it may be declared that the said intended agreement between the said Companies is illegal and *ultra vires.*

2. That the Defendants may be restrained by the order and injunction of this Honorable Court from entering into said intended agreement, or any other like agreement, and from carrying the same into effect.

3. That for the purposes aforesaid all proper directions may be given and accounts taken.

4. And that the plaintiff may have such further and other relief as to your Lordships may seem meet.

And the plaintiff will ever pray.

JAMES MACLENNAN.

Examined,

N. HOLMSTEAD,
Clerk of Record and Writs.

EVIDENCE FOR PLAINTIFF.

C. J. CAMPBELL, Plaintiff, having been duly sworn and examined, testified as follows:

By Mr. Maclennan.

Q. You have been the holder of a quantity of stock of the Northern Railway for a number of years, I believe? A. I have.

Q. And you obained that from two persons—Mr. Roberts and Mr. Beatty? A. Yes.

Q. Sometime in what years? A. 1874.

Q. What was the arrangement at the first with regard to the shares? A. The arrangement was that I should have half the stock.

Q. Was that subject to any condition? A. Subject to the condition that within a certain time the stock had been——

Q. Well, at the present time, Mr. Campbell, these shares are still standing in your own name, partly as trustee and partly in your own private right? A. Yes.

Q. What proportion of these shares is still your own private property? A. With regard to Mr. Roberts' stock, I hold one-half of it subject to an arrangement with another party, who has a right to the one-half of my half; and with regard to Mr. Beatty's stock, I have entered into an arrangement with him by which, at the expiration of a certain time, I am still entitled to one-half of the whole of that stock.

Q. Is letter marked "F" the letter by which that appears, dated 3rd March, 1879? A. Yes.

Q. And did you assent to that? A. I assented to that.

Q. Is that the arrangement between you at the present moment? A. Yes, that is the arrangement.

Q. I think you have also been a Director in the Northern Railway for some time? A. I have.

Q. And in June last did anything take place with reference to some proposed agreement with any other company? A. Yes, an agreement was brought before the Board meeting.

Q. Was that in May or June ? A. That was in June.

Q. Do you recollect the date ? A. I think the 7th of June ; I am not positive.

Q. The 22nd of May appears to be the first time ? A. I thought it was in June ; I presume it was the of 22nd May ; by referring to the books.

Q. Were you present at that meeting ? A. Yes, I was present at the meeting.

Q. And what was brought before the meeting with reference to that agreement ? A. It was read ; I don't know that it was read in full, but the most of it was read by the General Manager.

Q. Is exhibit "G" a copy of it ? A. I presume so.

Q. Where did you get that ? A. I received it from the Secretary, I think ; that is the one I received from the Secretary.

Q. At that meeting it was read, and by whom was it brought before the Board ? A. It was brought before the Board by the Managing Director.

Q. Who was that ? A. Mr. Cumberland.

Q. For what purpose ? What did he propose to do with reference to it ? A. For the purpose of getting authority to bring it before a meeting to be called—a meeting of the Company to be called to have it ratified.

Q. What was intended to be done with that document at the time ? What was the purpose for which it was brought before the Board ? A. To confirm it, I presume.

Q. You mean to be carried into effect by the Company, as an agreement which it was desired the Company should enter into ? A. I fancy so.

Q. What was done at thatmeeting with reference to it ? Was the document adopted at that meeting ? A. I am not certain whether it was ; I don't think it was.

Q. It was understood each member should have a copy to read over ? A. I didn't receive my copy at the time, but it was mailed to me.

Q. And you got a copy of it subsequently ? A. Yes.

Q. Well, when was the next meeting ? A. Monday, the 26th of May.

Q. Were you present at that meeting ? A. No.

Q. There is a memorandum in the minute of the meeting, saying : At this meeting the Managing Director further explained the object of the agreement with the Hamilton and North-Western Railway, and the Board discussed it fully ; and the President read a letter from C. J. Campbell, objecting to the Board meeting without further consideration and without wider publicity being given to the arrangement. Had you written such a letter as that ? A I wrote a letter to the President to that affect.

Q. But you were yourself not present ? A. No.

Q. And at that meeting a resolution was passed adopting the agreement, as appears by the minute of the Board signed by the Chairman ? A. Yes.

Q. You recognize the Chairman's signature ? A. Yes.

MR. MACLENNAN here reads a number of resolutions from the minute book.

Q. Were you acquainted with this buying of the Hamilton and North-Western Railway ? And are you with the line of it ? A. I have never been over it ; I have a general idea of it.

Q. You know the points to which it runs ? The line of communication, and so on ? A. Some of them, yes.

Q. How does that railway stand with reference to the Northern Railway in point of competition ? A. I suppose it competes with the Northern from Barrie.

Q. Any other points ? A. From Collingwood.

Q. Those are the two common points then, of the railway from which they derive their traffic ? A. Yes.

Q. When the Hamilton and North-Western was projected, did the Northern take any steps with reference to it ? A. Yes ; I believe they opposed the by-laws in the several municipalities.

Q. For what purpose ? A. For the purpose of preventing the Hamilton and North-Western getting those bonuses to build their road.

Q. For the purpose of preventing its being constructed ? A. I presume so.

Q. Since the time you have been a Director, how has the Hamilton and North-Western been looked upon by your Company ? A. As an opponent to the Northern.

Q. And has it been so in your opinion ? A. Undoubtedly it was an opponent to the Northern.

Cross-Examined by Mr. Blake.

Q. Did you mention this stock as a portion of your assets, Mr. Campbell, in your statement of assets when you went into insolvency? A. I didn't.

Q. Nor at any of the proceedings in insolvency? A. No.

Q. Was the fact of your holding that at all communicated to your creditors, or to your assignee? A. It was not.

Q. Have you got the deed of composition and discharge referred to in one of the deeds? A. I haven't it in my possession at the moment; I haven't it with me.

Q. But are they in your power or possession? A. I presume they are.

Q. Down at your office, I suppose? A. I am not certain.

Q. Where then? I am asking about the deed of composition and discharge in the first place? A. I either sent the original or a copy of it to New York to the assignee of the estate of Duncan & Co., to enable me to get a dividend from that estate; I think I sent the original.

Q. Well, did you pay anything for the stock? A. No.

Q. Did you give anything for any of this stock? A. Nothing.

Q. You got it for nothing, then? A. I got it for nothing.

Q. Which was about what it was worth at the time, I believe? A. That is a matter of opinion; it depends on circumstances what the value of the stock was.

Q. At the time that you made that arrangement—I am not now enquiring into the details of it, for they are provable by instrument in writing?—but at the time you made that arrangement, had the stock any value? A. It was treated by the Company as of no value, but the shareholders thought that it might have some value.

Q. The shareholders with whom you dealt thought it had some value? A. Yes, it might have; up to that period certainly it had not resulted in any value to them.

Q. But did they think it had some value when they dealt with you? A. Perhaps not.

Q. Perhaps yes. Did they think it had some value when they dealt with you? You negotiated with them, and bargained with them

and you know pretty well what their notions were. Now did they think it had any value? A. They thought that up to that time they had been improperly treated by the Railway Company, and that if the road had been properly and economically managed, the stock would have been of value, and they hoped that through my instrumentality it might be made valuable.

Q. Well, there was a line of operations to be undertaken by you then as a condition of getting this stock? A. No, there was no line of operations.

Q. But you probably had some conversations as well as the letters? A. Yes, with Mr. Roberts.

Q. And you probably represented that you would make an effort to make the stock valuable? A. Very likely.

Q. How, pray? A. Well, I can't remember that I expressed any opinion as to how it was to be done.

Q. Was it by firing a shot in Chancery or Parliament, or by making yourself generally uncomfortable and embarrassing to the bondholders? Let us get to the bottom of it? A. By legislation, probably.

Q. What kind of legislation? A. In a legitimate way.

Q. What kind of legislation? A. I cannot express any kind.

Q. Legislation putting up the stock, and putting down the bonds? or legislation under which you might become a director? A. No I never adopted that line of———

Q. Well, what kind of legislation then? A. Well the most recent legislation.

Q. No, but what kind of legislation was spoken of between your despondent stockholders by which this stock, which had no value at that time, might become a sort of gold mine all at once? A. I don't know that any particular line of legislation was spoken of.

Q. Well, what line of legislation was thought of? What did you think you could do in order to make this stock valuable? A. What they thought I cannot say.

Q. Why—you? A. What I thought was that it was placed in my hands, and I was allowed to adopt such a policy as I thought was best.

Q. And when you got hold of it in this way—partly in trust, and partly for your own benefit, not paying anything, and not undertaking

to do anything in particular—you still had some vague notion that you would do something to make it worth something? A. Yes.

Q. And what was it you were going to do? A. Sometime after I got possession of the stock, Mr. Roberts thought it would be an advantage to him, and probably to myself if I got a seat upon the Board.

Q. I am speaking of ——— at the time? A. I don't know that Mr. Roberts———

Q. I am not talking about what Mr. Roberts said. I am asking about yourself, and what you thought? A. I had no particular———

Q. No scheme or plan of operation in view, but you thought if you got hold of forty-two thousand odd pounds sterling of stock something or other could be done to give it a value? A. Certainly.

Q. But what that was, you didn't know ——. You were in point of fact waiting for something to turn up? A. Not at that particlar time.

Q. Well did something turn up pretty soon afterwards,—was there a bill in chancery filed, or had it been filed before? You recollect the bill against Mr. Cumberland, charging him with all sorts of enormities —— Him and the Board, and everybody else? A. I was not a party to that bill

Q. You recollect that then? A. Yes.

Q. Was that one of the modes by which you thought something could be accomplished giving the stock a value? A. Probably. I cannot say.

Q. But you think it might have been one of the modes? A. It might have been.

Q. To fire a shot in Chancery? A. Yes.

Q. Well then, what kind of legislation had you thought of? A. The legislation that we attempted, was to get greater strength at the Board.

Q. That was the only legislation you ever attempted? A. Well, that was the principal legislation.

Q. There was some other then, was there? A. I can't remember at the moment what the legislation was that we were seeking for, but I believe there was some other.

Q. But what you can't remember? A. No.

Q. But there was not any very definite and accurate plan of operations then at this time? A. Perhaps not.

Q. I know "perhaps not," but it is so, isn't it? A. It may be so, yes.

Q. It is so? A. Yes.

Q. Was it more to legislation or to the Court of Chancery that you were trusting to give it value when you brought over this forty-two thousand pounds of property? A. Can't say which it was; I took no action in Chancery.

Q. I didn't say you did.——Was it legislation more than the Court of Chancery then? A. If the action of those parties who filed the bill in Chancery had been successful, we might have been benefited by it.

Q. You thought you might have at the time? A. Yes.

Q. In fact, you were not opposing that proceeding very strongly? A. No; I don't know that I did oppose it very strongly.

Q. Or at all? A. Yes, I did; I opposed the filing the bill.

Q. You thought legislation, then, was the proper mode? A. I didn't; I don't know that I did at that time, but I opposed the filing the bill; at all events, I didn't concur in the filing the bill; I was a party to the preparation of a bill, but I never finally gave my consent.

Q. You were a party to the preparation of a bill in Chancery, but you never finally gave your consent to the filing of it? A. No.

Q. Possibly you thought it was too strong, or perhaps too weak? A. Perhaps.

Q. Which was it? Did you think the bill too strong or too weak? A. I may have thought it was too strong.

Q. So you would not go quite that far? A. Yes.

Q. And then you placed your dependence in Parliament? A. Yes, that was the result.

Q. So that without the Parliamentary action which should give you greater strength at the Board or enable you to control the road, you thought yourself the stock would be of no value? A. Well, I may say that a bill was agreed on between myself and other parties, and opposed by the Northern Railway represented by Mr. Cumberland, and we went to Ottawa with that bill, and if that bill had been carried, as we hoped it would have been, our position would have been benefited.

Q. You say that without legislation you thought the stock would be of no value? A. That is the inference to be drawn from our action.

Q. You draw that inference? A. Yes.

Q. Have you changed your mind? A. I believe now that if a bill were filed——

Q. Have you changed your mind? A. Have I changed my mind?

Q. Yes? A. I believe that without ——

Q. Have you changed your mind? A. I will answer the question if you will allow me.

Q. At the time this arrangement was made you thought that without legislation the stock would be of no value, and now I ask you if you have changed your mind in that particular? A. I will answer it if you will allow me—without some legislation or the filing of some bill in Chancery I don't think the stock ever will be of any value.

Q. What kind of a bill is wanted to make it valuable? A. A bill to show that the management of the road is extravagant, and that it can be managed more economically than it is.

Q. The same old bill? A. No.

Q. Not quite so strong? A. No, not in the same direction.

Q. You are going to hit the same man? A. Yes.

Q. But not in the same place? A. Yes.

Q. You think, without proof, by hitting him in another place, that the management of the board is extravagant and not economical, and not as good as C. J. Campbell could do it?—that the stock won't be of any value? A. It is very doubtful.

Q. There never has been a period during the whole time of this holding in trust, and for years, that you have thought the stock would be of value without legislation, or without a bill either in this Court or in the High Court? A. I have been led to suppose it would be of value.

Q. Without legislation? A. But I had not much hope in it.

Q. You recollect, after you secured this arrangement by which you possessed yourself of this valuable property for nothing you proceeded to carry on a sort of war, as far as I can understand? A. Yes.

Q. What war is this that is referred to in the letters?—the Seven Years' war? A. There was a constant contention going on about the prospects of the stock and the making it valuable.

Q. Who was contending about the prospects of the stock. A. I was.

Q. With whom were you contending, because I hope you don't fight with yourself? A. With the Manager of the road.

Q. Who is he? A. Mr. Cumberland.

Q You were contending with Mr. Cumberland about the prospects of the stock? A. The prospects of the Company.

Q. Was this the only war you had? A. No there was a Legislative war.

Q. Any other kind? A. A Chancery war.

Q. Anything else? A. No I don't know that there was anything else.

Q. The first war with Mr. Cumberland was more in the nature of a duel than a public war, and then there is the war through the Courts, outside of the war in Parliament? A. Yes.

Q. Now, in the course of this war you have been obliged to part with a portion of your own interest in the stock, I understand? A. I agreed to transfer a portion of it, yes.

Q. To many persons? A. To one person I agreed to transfer it.

Q. To one only? A. I agreed to transfer it to him.

Q. You never agreed to transfer it to any one else? A. No.

Q. Or to more than one person? A. No.

Q. You say in your letter of 26th February, 1879—and in addition to the fact that in carrying on the war I have been obliged to promise a share of my moiety to other parties? That is in your letter to Dr. Beatty? A. I was pressed.

Q. I will read the letter to you. "I have been re-considering your letter and proposition, and I think that considering the labor and trouble I have been put to, and in addition to the fact that in carrying on the war, I have been obliged to promise a share of my moiety to other parties——." Is this the person and the transfer you have just spoken of? A. No; that is the person referred to; I actually agreed to give him a moiety of Mr. Roberts' stock only, but he endeavored to get a portion of this also, which I declined to give, although I thought when I wrote that letter, that I would be obliged to give it to him if I didn't part with it.

Q. Your arrangement with the person was an arrangement for the moiety of Roberts' stock? A. As I understood it.

Q. But the person afterwards preferred a claim to a moiety of the Beatty stock. A. Yes, Beatty's stock.

Q. And all the rest, —any other stock or only Beatty's stock? A. No there was no other stock.

Q. I thought there was some Patterson stock? Do you call all that Roberts'? A. All Roberts.

Q. The Beatty stock? It was the other stock? A. Yes.

Q. And he afterwards preferred a claim? A. He did.

Q. And you resisted that claim? A. I resisted it.

Q. At the time of writing that letter you announced to Beatty you had promised a share of the moiety to other parties? A. Yes.

Q. You told us it was only to one person? John Robinson is a very great man but not more than one man? A. I haven't mentioned his name.

Q. No, but I have. You say you promised it to other parties? A. No. I say I promised it to one party only. I used the expression with reference to one individual.

Q. What was this legislative war or Chancery war or private duel with Cumberland? A. In carrying on and doing anything that I thought would make the stock valuable.

Q. But it was in the course of the general strain that you were obliged to make this transfer to the party? A. Yes.

Q. Have you completed the transfer? A. I have not.

Q. Is there a writing betwixt you? A. Yes.

Q. When signed? A. I think in March; I think it must have been March last.

Q. But the original arrangement must have been earlier? A. I forget now the date; there is a letter from Mr. Beatty, and a memorandum on the back of the envelope in which I answered his letter, but I haven't a copy of it.

Q. I am speaking of your arrangement with the party unknown. A. The original agreement with him was at the time I received the stock from Mr. Roberts——

Q. It was shortly after you got the stock? A. Yes.

Q. And your party was interested during the whole of the subsequent proceedings? A. In the Roberts' stock.

Q. Well, when did this latter question arise between you and the party about the Beatty stock? A. Oh, it was in several cases.

Q. He pressed often and for long? A. Yes.

Q. And when did it end? A. I can't say exactly.

Q. Lately? A. Not very lately.

Q. A good while ago? A. Several times—on several occasions.

Q. And the differences between you and the party are now composed, and there is now a pleasant understanding between you? A. Yes.

Q. And you are ready to carry on the war together? A. Yes.

Q. Is the party concurring in this suit? A. He is aware of the suit.

Q. He may know it and dissent from it. A. He does not dissent from it.

Q. Does he assent to it? A. I presume he does.

Q. Does he bear a portion of the costs? A. He does not.

Q. Is it under any arrangement? Is it on his behalf that it is being brought? A. I can't say that.

Q. Is it on behalf of Roberts it is being brought? A. Yes, Mr. Roberts is aware of it.

Q. But that is not enough. I see a letter from Patterson, a very late letter, saying he does not know at all that Mr. Roberts will approve of all your late proceedings. A. I have seen Mr. Roberts since, and he is aware of these suits going on.

Q. He was not aware of it then? A. He does not object to it, and agrees to any such proceedings as I think advisable.

Q. Providing you don't charge him with any costs? A. That is it.

Q. And he is to get the profit, if any, from it, but not to be liable on any of the loss? A. Yes.

Q. You asked him, I think to agree to become responsible? A. Yes.

Q. And he declined, didn't he? A. In that way he did.

Q. In which way? A. By that letter of Patterson's.

Q. You saw him since? A. Yes.

Q. Did you renew the proposal that he should share the costs? A. No.

Q. There was no more said about that? A. No, I felt it was useless.

Q. Well is Beatty bearing a share? A. He is to bear a proportion of it.

Q. When was that arranged? A. It was arranged, I can't say when, but at all events he is agreeable to it.

Q. Now I observe by these letters that the gentlemen with whom you had been dealing were of opinion that the position of the stock had not been improved during your holding it? A. They thought there had been no results.

Q. They happened at that? A. Yes.

Q. And you admit the position that the stock has not improved with the exception that you have got one Director on the Board —— that is the general tenor of your letter and answer? A. He didn't consider it any improvement.

Q. But that is the only exception that you are able to tell him in your answer? A. Yes.

Q. When he says the condition of things has not improved, you respond that we have got a Director on the Board, which he says he does not think of much consequence? A. Yes.

Q. There is an emolument attached to the office of Director, I believe? A. Yes.

Q. Which of course is not shared? A. No.

Q. Even the party unknown does not get a part of that, does he? A. No.

Q. Well, then, what is the stock quoted at? A. It is not quoted.

Q. Because there are no sellers? A. Well, I don't know whether there are any sellers or not; certainly there are no buyers.

Q. Has a dividend ever been paid on the stock? A. Not since I have been with the Company.

Q. Or since the memory of man? A. I can't say.

Q. You never heard of such a thing as a dividend on the stock? A. I didn't.

Q. By the arrangement that was made by legislation you know there was a first claim which goes before the stock, a very large claim of the public, was there not? A very large claim of the Dominion of Canada on the road? A. There was.

Q. And that claim was enormously reduced, wasn't it? A. It was.

Q. And until there were assets to meet that claim in full, I mean

at its original face—not at its original face before its reduction, but at its reduced amount now—it is a liability which comes before the stock, isn't it? A. Yes.

Q. It was a liability how much greater? 10 fold or 20 fold? what is it now? A. It was I think £475,000.

Q. But then, interest, my dear sir? A. I don't count interest.

Q. Imterest on the prior claim had not been paid since the memory of man either? A. No, probably it might have been.

Q. Then there were preference bonds above the Government stock? A. Yes.

Q. In various ranks and orders? A. Yes.

Q. And the last of these ranks, what is it quoted at, at the present time? A. The last of these ranks, 3rd preference bonds B. They are not quoted.

Q. Why? A. I don't know.

Q. They have never been quoted at any thing like par, the B's? A. I think not.

Q. At 70 and 65? A. I haven't seen them for some time.

Q. Well, when did you see it? A. I don't remember.

Q. Do you think it was about what I have mentioned? A. I can't say. I don't remember.

Q. At any rate it was away down below par? A. Yes.

Q. It is stock which is in this condition which you think is going to be damnified by this junction—this arrangement betwen these two railways? A. Not to be benefited.

Q. Do you think it will be damnified? A. I think it will be made worse.

Q. Why? A. Because it will add to the expense of the management in my opinion.

Q. And? A. And therefore make the chances of getting the stock valuable more remote than ever.

Q. You think it will add to the expense of the management? A. I think it would increase the expense of the management.

Q. And thus reduce the net returns? A. I have no doubt that if the road were economically managed, probably the agreement might result in advantage.

Q. But you think that the road in its present hands will not be economically managed? A. I do.

Q. And would be still more extravagantly managed under the new than under the old arrangement? A. I do.

Q. And it is not the agreement itself, but the men who are to work it, that are at fault? A. Some part of the agreement probably might be objected to.

Q. I am taking the agreement as a whole. And you think it would be probably advantageous if it was properly, judiciously, and prudently worked? A. Very likely it would be.

Q. But you think no good thing can come out of Cumberland? A. I have said that if the road were economically managed there might be some chances of getting something for the stock.

Q. Even under this agreement, or perhaps by means of this agreement, if it were properly worked? A. I can't tell.

Q. Do you think in was a bad thing to stop competition and strife between these two companies, and that those who were interested in the two roads should strive to get as much profit from the public as they could, instead of cutting down rates themselves and running their roads at a loss? A. On the face of it, it appears to be advantageous.

Q. But when you look down through the surface, what is there wrong? The face is all right, and what is there wrong? Where is the nigger in the fence? A. It gives facilities for increasing the expenses.

Q. Which a corrupt and extravagant Board will use? A. I won't say that.

Q. I am asking you. A. It is not the Board so much as the General Manager.

Q. But you think the General Manager has greater facilities for improvident and extravagant expenditure that he can avail himself of, and that is your difficulty? A. Yes.

Q. Why should the agreement be cancelled, if, on the face of it, it is rather good? A. Because it will not be honestly and economically carried out, and that is a good reason.

Q. By that is the manager? A. The manager has a great deal to do with it.

Q. But supposing there were a good manager? A. I think it might

turn out differently. I am not positive. I don't think so. I say that it might.

Q. Your impression is that it would? A. It might.

Q. If you had a manager, that is, if you could put in a manager yourself, you would think this was a very prudent arrangement between the Hamilton and North-Western and the Northern, circumstanced as they are, and rivals as you say they are, to conduct their two roads on the principles of this agreement as a whole? A. I don't say that any manager that I would select would manage the road economically, but I say that a manager could be selected who would in my judgment manage the road more economically than it is managed now.

Q. And under such a manager selected by whomsoever you please —I don't care by whom—under such an arrangement, at any rate you think the road would prosper more under this agreement than without the agreement? A. I don't know that. I can't say as to that. I haven't had an opportunity of judging that.

Q. I am speaking of your impression without being able to speak positively? A. My impression is, that if the road were economically managed, this agreement might enure to the benefit of both companies.

Q. Although when you came as a Director to consider this agreement—because I believe you have got a copy of it through the mail—I think you mentioned to Mr. Maclennan that was the impression you had formed of it, that you have now stated to me? A. I don't say that I formed that impression at that time.

Q. I am asking? A. I can't say whether I did or not.

Q. Did you form an impression at all about the agreement? Did you read it over? A. I read it over.

Q. And did you form an opinion about the agreement? A. I did.

Q. Well, what opinion did you form about it? A. The opinion I formed about it was this, that it gave increased power to the Managing Director, that the expenses could be very largely increased under that agreement.

Q. Seeing who was Managing Director, they would be increased? A. Yes.

Q. And in that point of view you are now opposing it? A. Yes; that is one of the points of view in which I oppose it.

Q. Is there any other point of view? A. That is the principal objection I have to it.

Q. Is there any other? A. That is sufficient, I think.

Q. Well, is there any other, Mr. Campbell? If you can't mention any, that is enough. A. I can't mention any other.

Q. Except Cumberland? A. Except the management.

Q. Cumberland's management? A. I say "management;" the expense of management.

Q. Did you attend the Board meeting in which the agreement was considered? A. The first Board meeting I was present at, when it was read.

Q. But then it was not considered then? A. No.

Q. Read over? A. Yes.

Q. Did you attend the next? A. No.

Q. Why not? A. I wrote a letter objecting.

Q. Why didn't you attend a meeting of the Board? A. Well, because I didn't choose to attend it.

Q. Why didn't you choose? A. I was not bound to.

Q. But you were a Director? A. But not bound to attend the meetings.

Q. I want to know what your motive was in not attending a meeting of the Board at which this was coming up for discussion? A. I preferred writing a letter objecting to it, and stating my objections.

Q. We can't get the contents of that letter, because it is not here; but you wrote a letter, did you? A. I did; I have searched for it but can't find it.

Q. You wrote some letter or other to whom? A. The President.

Q. And you abstained from attending the meeting? A. Yes.

Q. You are aware that the bondholders of the Northern are in favor of this agreement? A. Yes.

Q. And you are aware that the Hamilton and North-Western people are in favor of it? A. Yes.

Q. They both appear to think that it would be for the advantage of the roads? A. I presume they do.

Q. And they probably think it would be very much to their disadvantage that the agreement should be broken up? A. It appears so.

Q. Did it occur to you that they might form an opinion; did it ever occur to your own mind, Mr. Campbell, that they might form an

opinion that it would be very disadvantageous that this suit should succeed? A. I have no doubt that they considered it would be disadvantageous to them.

Q. Did it ever occur to you that they might be disposed to conciliate matters by buying off a shareholder who was making himself uncomfortable, and so on? A. I consider, in all the proceedings I have taken against the Company, that it would be in their interest to buy——

Q. Buy you out? A. Not to buy us off, but to make some provision by which the interest would be paid on the stock—not to buy us out.

Q. Did you never suggest the buying out of the stock? A. I suggested it to the Company.

Q. At what rate? A. 90.

Q. 90 cents on $1? A. Yes.

Q. You proposed that they should buy the stock at 90 cents in the $1, and you were willing to sacrifice 10 cents on the $1. A. Yes.

Q. What did they think at one time that they would pay? A. I have been told that they offered to pay 40 cents for it; not to me.

Q. And what about the County of Simcoe? A. That was 35 cents.

Q. Wasn't it 5? A. No. 25.

Q. And what were the Railway Company willing to give? A. I don't know.

Q. Did you never hear of 5 per cent? A. I have heard of people offering to sell their stock at 5 cents; but I don't know whether the Company would buy it or not.

Q. You have heard of people offering to sell for 5, without finding purchasers? A. Yes.

Q. Well, in considering this matter in every light, as it was your duty to do, being so largely interested personally, and for others, did it ever occur to you that obstructive attempt at legislation and bills in Chancery, and so forth, might render it worth their while——you understand? A. I understand perfectly well, yes.

Q. Well, answer it? A. I thought, and have always thought, that it would be no difficult matter for the Northern Railway to make such an arrangement with the shareholders as would bring their stock into some of the classes, or give some sort of security, which in the end would

pay some interest upon it, and make it of some value; I didn't expect that they would put us on the same rank with the first preference bonds, but that we might be placed in such a position that after a while the road would be able to pay interest upon a certain kind of security.

Q. That was your thought as to why the war was being carried on? A. Certainly, to make the stock valuable.

Q. By the Northern Railway agreeing to put it up? You didn't want to be put up in the top story, but a reasonable distance above ground? A. To give what I really believe they could do if they chose to make the security bear interest in some shape, or in some position.

Q. And that is what you want? A. Yes.

Q. And that is the real meaning of all these bills and legislation? A. Certainly.

Q. They are levers to that end? A. Yes, certainly.

Q. They are the means by which you hope to persuade the Company into recognizing the stock, more than they do now? A. Certainly, and I would like to say that Mr. Roberts felt himself very much aggrieved for many years with regard to his position in the stock. That he paid dollar for dollar for it, and that he had always been treated unfairly.

By Mr. Cameron.

Q. Did you ever object, Mr. Campbell, while you have been on the Board, in any formal way, to the extravagance you complained of so much? A. I didn't.

Q. How long have you been on the Board? A. I can't say how long exactly.

Q. Four or five years? A. About that time.

Q. Have you attended pretty regularly? A. Yes, pretty regularly.

Q. And without ever entering any protest or objection to the extravagance you complained of? A. I never made any protest.

Q. Have you used or attempted to use legislation as one of the levers Mr. Blake has referred to? A. I attempted last session to get a bill passed.

Q. For the same purpose? A. For the purpose of getting increased strength on the Board.

Q. To purchase your stock? A. I don't say that.

Q. Well, for what purpose was it done? A. For the purpose of get-

ting such assistance on the Board as we could to get more economical management, and make the stock valuable.

Q. Did the other party to whom you had given a half of this Roberts stock co-operate with you in that attempted legislation? A. He did.

Q. And in the same way is he co-operating in this litigation? A. He took an active part in the other.

Q. He has taken a more active part in the legislation than he has in this litigation? A. He took an active part.

Q. Was there any offer made at that time to withdraw the attempted legislation for certain pecuniary considerations? A. Not that I am aware of.

Q. Not made by you? A. No.

Q. Nor with your knowledge or authority? A. No.

Q. Did you take part in the former litigation in this Court with reference to the affairs of the Company? A. No.

Q. Did your colleague do so? A. Not that I am aware of.

Q. I suppose you are aware with reference to the increase of expenses, the General Manager has no power to expend any money without the consent of the joint committee? A. Yes.

Q. Why did you think there would be such an increase in the expense of the management?—an increase under the new arrangement? A. Because they have power under that arrangement to do so.

Q. You meant that the joint committee have? A. Yes.

Q. You mean the joint committee will be weaker to restrain the supposed extravagance of the General Manager than the Northern Railway Board now is? A. No, I don't think it would be any weaker.

Q. If not so, why would the expense be increased? A. Cumberland appoints the Executive Committee which controls the Board, and I suppose he does as he pleases.

Q. I thought it was the two Boards who appointed the Executive Committee? A. Each Board appoints its own Executive Committee.

Q. How does Mr. Cumberland appoint them? A. He appoints every time his own Executive Committee.

Q. Do the two Boards mean Mr. Cumberland? A. The two Boards, I fancy, in reality mean Mr. Cumberland.

Q. It is your fancy that the two Boards mean Mr. Cumberland that leads you to object to this new arrangement ? A. No, it is not my fancy, it is the power that is conferred upon this committee by this instrument—this agreement and my fear that under that in some way or other, the expenses will be increased, and it is to be seen whether they will or will not be.

Q. With prudent management they would be diminished by this joint arrangement ? A. They would be diminished.

Q. But *prima facie*, one would suppose that the expenses would be diminished ? A. They should be.

By Mr. Maclennan.

Q. Did I understand you to say that the shareholders have only one Director on the Board ? A. Only one Director on the Board.

Q. Since when ? A. I can't say since when ; there is an Act of Parliament passed.

Q. And then many years ago Parliament gave the bondholders voting powers ? A. Voting powers.

Q. As they exceeded the shareholders in number they swamped them ? A. Of course.

Q. So that the management has been in the hands of the bondholders ? A. Entirely.

Q. And this war that you speak of was that between the shareholders and the bondholders ? A. Between the shareholders and the bondholders.

Q. The interest of the bondholders is just that of creditors ? A. Yes.

Q. Do you know if their interest has been paid regularly ? A. I believe it has. Although I am told that the interest has not been paid on the third class bonds. I think Mr. Cameron made that statement in Parliament before the railway committee.

Q. But you understood differently, did you ? A. I don't understand differently. I understood that there had been some difficulty in raising the money to pay it, and that they had to finance to do so.

Q. But the interest has been paid all along, hasn't it, upon all the bonds ? A. The interest has been paid all along upon the bonds.

Q. Until a late period ? A. I think till lately.

Q. And yet these same bondholders have been managing the company ? A. Yes.

Q. And what view did the shareholders take of the management, the management appointed, in fact, by the bondholders? For whose interest was it managed? A. In the interest of bondholders.

Q. To the detriment of the shareholders? A. Yes.

Q. And as the holder of these shares, what attitude have you taken with reference to that question? A. I have tried to get increased influence at the Board.

Q. You have endeavored to get increased influence at the Board in order to give the shareholders a greater share in the management? A. Yes.

Q. As matters stand, the bondholders and directors elected by them have had no interest whatever, except as to payment of their interest in the management of the road? A. It is their interest——

Q. They have no interest whatever in endeavoring to make a dividend for the shares? A. None whatever.

The above and the preceding pages contain the evidence of the Plaintiff herein, as it purports to:

(Signed,) JAMES I. PARKES,
Official Short-hand Reporter.

TORONTO, September 22nd, 1879.

JUDGMENT OF THE COURT.

DELIVERED BY VICE-CHANCELLOR BLAKE.

It was urged by Mr. Maclennan, that the power of the Northern Railway Company to deal with other lines of Railways was controlled by the second section of 41 Vic., c. 26, which he contended should be read as restricting the rights of the defendants not only as to the arrangements dealt with by this Act, but as to all matters passed upon by earlier enactments. This argument is based on the clause "Provided also that the power hereby granted shall not extend to the right of making such agreements with respect to any competing lines of railways." I think, however, it is perfectly clear that the restriction here found cannot be extended beyond the power granted by the Act, and if outside of this statute the railway has the power which it is contended has been given to it, this clause does not deprive it of the right to exercise it. This is made the more apparent when we consider that certain powers are awarded to the Company by this clause, not theretofore possessed by it, as to tramways and as to purchase, in respect of which the restriction may be intended, and thus force may be given to this limitation of power without depriving the Company of powers which it enjoyed when this Act was passed. It is only by implication that this clause could be held to operate as contended for by the plaintiff, and it is plain upon the authorities that the language of the Act is not wide enough to operate as a repeal of the statutes on which the defendants depend as a warrant for the agreement which the bill attacks.—Maxwell on statutes, p. 143, et seq; Birkenhead v. Laird, 4 Def. M. & G., 742. An argument may, however, be based on this enactment, that, as here, the power granted shall not extend to any competing lines of railway, is especially mentioned in these enactments, where this restriction as to competing lines is not found, it was not there intended to prevent arrangements in respect to such railways being made.

By s. 48 of the Railway Act, 1868, 31 V. c. 68 D, it is enacted, that "The Directors of any railway company may, at any time, make agreements or arrangements with any other company, either in Canada

or elsewhere, for the regulation and interchange of traffic passing to and from their railways, and for the working of the traffic over the said railways respectively, or for either of these objects separately, and for the division and apportionment of tolls, rates and charges in respect of such traffic, and generally in relation to the management and working of the railways or any of them, or any part thereof, and of any railway or railways in connection therewith, for any term not exceeding twenty-one years, and to provide, either by proxy or otherwise, for the appointment of a joint committee or committees for the better carrying into effect of any such arrangement or arrangements, with such powers and functions as may be considered necessary or expedient, subject to the consent of two-thirds of the stockholders voting in person or by proxy." By sub-section 5 of that clause, the word "traffic" is interpreted as meaning "not only passengers and their baggage, goods, animals and things conveyed by railway, but also cars, trucks and vehicles of any description adopted for running over any railway, and the word "railway" includes all stations and depots of the railway." The power of the Northern Railway Company to make arrangements with other companies is defined in s. 61 of 38 V. c. 65 D., "The Company may enter into any arrangements with any other railway company or companies for the working of their railways on such terms and conditions as the Directors of the several railways may agree on, or for leasing or hiring from such other company or companies any portion of their railway, or the use thereof, or for leasing or hiring any locomotives or other movable property from such companies or persons, and generally to make any other agreement or agreements with any other company touching the use, by one or the other or by both companies, of the railway or rolling stock of either or both or any part thereof, or touching any service to be rendered by the one company to the other, and the compensation therefor, and any such agreement shall be valid and binding according to the tenor and terms thereof. Provided that the assent of at least two-thirds of the shareholders present at a general special meeting of the respective companies to be called for the purpose shall be first obtained." The power of the Hamilton and North-Western Railway in this respect is found in S. 32 of 35 V. c. 55 O.: "The Company incorporated by this Act may enter into any arrangement with any other railway company or companies for the working of the said railway on such terms and conditions as the directors of the several companies may agree on, or for the leasing or hiring any locomotives,

or other moveable property from such companies or persons and generally to make any agreement or agreements with any other company touching the use by one or the other or by both companies of the railway or rolling stock of either or both, or any part thereof, or touching any service to be rendered by the one company to the other, and the compensation therefor, and any such agreement shall be valid and binding according to the terms and tenor thereof, provided that the assent of at least two-thirds of the shareholders shall be first obtained at a general special meeting to be called for the purpose, according to the by-laws of the company and the provisions of this Act, and the company or companies leasing or entering into agreement for using the said line may and are hereby authorized to work the said railway in the same manner and in all respects as if incorporated with its own line."

I have set out these clauses in these Acts in full, as it is on them that the defendants rely to sustain the agreement which is attacked by the plaintiff. It is said, on the part of the plaintiff, that the agreement is invalid, (1) as it creates a monopoly, (2) as it makes an unauthorized amalgamation between these companies, (3) as it forms a partnership between them, (4) as it casts upon a company all the powers and functions of the railways and their Boards, (5) as it makes the companies jointly responsible for the acts of each, (6) as the powers, under which it is claimed the agreement is made, do not apply to competing lines, as are those in question. These grounds, adduced on the argument of the case, form a wider cause of attack than is presented by the bill, which simply alleges that "negotiations have lately taken place between the two companies for the purposes of combining the rolling stock, plant and material of the said two companies, and of working and operating both the said railway lines, and exercising the franchises thereof under the joint management of both companies for a period of twenty-one years; and the defendants intend immediately to enter into an agreement for that purpose, and will, unless restrained by the order and injunction of the Honorable Court, carry the said intended agreement into effect." The objection here taken is to the "combining the rolling stock, plant, &c," and to the "working and operating both the said railway lines and exercising the functions thereof, under the joint management of both companies." By clause one of this agreement it is agreed that "the working of the railways shall be carried on upon the terms and conditions, and according to the tenor of this agreement,

under the direction and superintendence of the joint Executive Committee, for the appointment of which provision is hereinafter made, and according to such rules, regulations and resolutions as shall from time to time be made by the Executive Committee, and shall be confirmed by the Board of Directors of both Companies, or not disallowed by the Board of Directors of either company, or in case of disallowance by the Board of Directors of one only of the companies shall be confirmed on reference to a referee as hereinafter provided." By clause two it is further agreed that " for the purposes of such working as aforesaid, all the locomotives and other rolling stock, vessels, equipment, and plant, and all the stoves, tools and other moveable property of the Northern Company, and of the North-Western Company, shall throughout the said term be used by both companies, and shall accordingly on the date hereinafter fixed for the coming into operation of this agreement be placed, and throughout the said term shall remain at the disposition of the two companies and subject to the control of the Executive Committee as hereinafter provided." The agreement then proceeds to provide for an inventory being made of the rolling stock, etc., and as to the dealing with the same, and as to the stations, sidings, etc., and as to the payment of working expenses, etc., and that working expenses shall include (a) all rates, taxes, insurance and compensation for accidents, losses and damages. It provides further for the percentage of net earnings to be received by each company, and for the appointment of the Executive Committee by the Board of each of the railways.

Clause 13 thus defines the power of the Executive Committee, " The Executive Committee for the time being shall have power to make by-laws, not inconsistent with the provisions of this agreement for the regulation of their meetings and business, including the appointment of sub-committees, the fixing the quorum necessary for the transaction of business, the mode of giving notices, and all other matters which may be necessary or expedient for the due and convenient conduct of their business; but all such business shall, before becoming operative, require to be confirmed by the Board of Directors of the companies respectively, or in case of difference between the Boards by the referee, as herein provided, with reference to rules, regulations or resolutions of the Executive Committee."

Clause 19 further provides that " The Executive Commlttee shall have and exercise all powers and functions which shall be required for

enabling them effectually to work in accordance with rules, regulations and resolutions to be from time to time made by them, the railways and properties submitted under the provisions of this agreement to their control, and for the purposes aforesaid, shall be entitled and are authorized to act as agents for and in the name of the companies respectively, and may as occasion requires, or as may be expedient, treat the said railways and properties as being worked or used by either or both of the said companies. Provided always, that no rule, regulation, or resolution of the Executive Committee shall be deemed to be of any validity, or shall be acted upon unless and until the same shall be confirmed by the Board of Directors of each of the companies, or unless or until with reference to each of the companies a minute of such rule, regulation or resolution shall have been given or forwarded to the Secretary or other proper officer, and ten days shall have elapsed from the day on which the same was so given or forwarded without such rule, regulation or resolution being disallowed by the Board of Directors of such company, in which case the rule, regulation or resolution shall have been received and have been confirmed by such Board of Directors, or, unless and until in case of disallowance by the Board of Directors of one only of the companies the rule, regulation or resolution disallowed, shall have been referred to and confirmed by the Referee hereinafter provided for * * * * Provided also that all engagements and liabilities entered into or incurred by the Executive Committee in the performance of the powers and functions hereby intrusted to them, or by reason of the working shall, as between the Northern Company and the North-Western Company and without prejudice to their being provided for out of the gross earnings be deemed and taken to be joint engagements and liabilities of both companies for the performance and satisfaction of which both companies shall be equally answerable, but save as aforesaid nothing in this agreement shall extend to make either of the companies responsible or liable for any of the present ar future debts or liabilities of the other of them." By clause 20 the Executive Committee shall direct and control all receipts and disbursements in respect of the working arranged for by this agreement. Provision is made for the appointment of a referee to decide any matters referred by the Board of Directors of either of the companies, or other differences or disputes which may arise, whose decision is to be final and conclusive. The last clause provides the

calling of meetings to ratify the agreement in pursuance of the statutes in that behalf, failing which the agreement was to be of no effect.

The "traffic arrangements" clause of the railway act is very wide. It applies to "any railway company," it permits the railway companies to make agreements and arrangements for the regulation and interchange of traffic passing to and from the railways and for the working of the traffic over the said railways respectively, or for either of these objects separately, and for the division and appointment of tolls, rates and charges in respect of such traffic and generally in relation to the management and working of the railways. "and appoint" a joint committee or committees for the better carrying into effect any such agreement or arrangement with such powers and functions as may be considered necessary or expedient. The clauses in the Act incorporating the debentures and the amendments thereto enable them to enter into any arrangement with any other railway company or companies for the working of their railways and for the leasing and hiring any locomotives and generally to make any agreement or agreements with any other company touching the use of the railway and rolling stock of another railway, and touching any other service to be rendered, and the compensation therefor.

It was argued by the learned counsel for the plaintiff that these clauses did not in so many words sanction in all its details the arrangement made between the companies, and that on this ground it was invalid.

In Winch v. Birkenhead, 5 D. & G. and v. 579, much relied on by the plaintiffs, the Vice-Chancellor granted the injunction on the following conclusion at which he had arrived. "It appears to me, although the Birkenhead Company are not at all bound to be carriers, that what is called working the line is a duty that is imposed by the Act of Parliament upon them; and it appears to me, therefore, that the agreement is that they shall part with certain statutory powers which they have no authority to part with, and moreover, that they are to part with them to a body, who by their constitution cannot accept them."

The case of Hare v. The London & N. W. Railway Company, 2 I. & W. 80, in some respects closely resembles the present. Then there was an arrangement between two main lines of railway, the one called the West Coast, the other the East Coast, both starting at Lon-

don and terminating at Edinburgh. There, as here, on the argument, it was urged that "it is impossible to read the agreement without seeing that it constitutes a quasi partnership, and is not a mere arrangement for through traffic, such as is authorized by the Railway Act." "Through traffic means only traffic carried along a series of lines in continuation of one another; it follows, therefore, that the agreement is *ultra vires* and illegal. The East route and the West route have not a mile of railway in common . . . . . It is the same thing to buy off a competing railway: and that is what this agreement is designed to do." For the defence it was there as here argued: "Railway companies are carriers, and are at liberty to conduct their business as other carriers may, except so far as they are subjected to express prohibition by the Legislature. There is nothing in any of the Acts to say that a Railway Company may not make such arrangements as they consider most advantageous, to enable them to make profits in their own proper business as carriers, and this is all that has been done. . . . . . The true principle is, that a Company may conduct its business as it pleases, subject only to any prohibition imposed by the Legislature."

In that case, as here, the railways entering into the agreement were not lines in continuation the one of the other, but they ran side by side, and the Vice-Chancellor first disposes of this point, using the following language:—"With regard to the argument against the validity of the agreement, I may clear the ground of one objection by saying that I see nothing in the alleged injury to the public arising from the prevention of competition. I find no indication in the course taken by the Legislature of an intention to make competition by authorizing various lines. . . . . It is a mistaken notion that the public is benefited by pitting two railway companies against each other till one is ruined, the result being at last to raise the fares to the highest possible standard. . . . . I must, therefore, dismiss from consideration the arguments founded on the notion that the Companies were under any obligation to carry on their traffic with a view to keep up competition, and proceed to the real question on which the legality of this agreement depends. It may be briefly stated thus:—There are two lines of connected railways, one forming the West coast route, the other the East coast route; and the question is, how far the Companies owning these distinct groups of lines are justified in coming to an arrangement by which, having calculated the probable amount of traffic

which would, in the ordinary course, flow over one or the other route, they agree for a certain period of years to take this calculated proportion as the basis of their arrangement, and provide that accounts shall be kept on this footing, and that if the actual earnings of either set of lines shall differ from the estimate the difference shall be made good, after allowing for working expenses, by payments from one set of Companies to the other." The Vice-Chancellor proceeds to quote, with approval, the following passage from the judgment of Lord Justice Turner in the Shrewsbury case: "In determining questions of this nature, Courts of Justice, as I apprehend, are bound to consider not what in their judgment may be best for the interest of the public, but what was the scope and object of the law which was said to be infringed or attempted to be infringed." He proceeded further: "A good understanding between the different Companies conducting this traffic, though it may not in one sense be for the immediate advantage of the public, inasmuch as it may tend to raise fares, is, nevertheless, in the end beneficial, by preventing the ultimate raising of fares as the consequence of ruinous competition, and also by promoting the convenience of travellers. . .

. If one Company agree with another not to carry between particular places in consideration of having the forwarding of all the traffic beyond these limits, I see nothing objectionable in that. . . . . In the first place let me consider what the shareholder's position is. His interest is to gain the largest possible amount of profit as between him and the Directors. If the Directors find that (without entering into any foreign speculation) the largest amount of profit is to be made by granting to other Companies a certain proportion of their traffic, and securing corresponding advantages to their own Company, it is not very obvious that the shareholder is injured. It would be difficult, no doubt, to find in the letter of the law any express authority for such an arrangement, because the Company is only authorized to construct its own line, to carry upon it, and to enter into contracts for through booking. There is no specific enactment to enable such an arrangement as I have mentioned to be carried out. Still, the question is whether the general powers of doing what may be necessary to carry on the traffic of the line do not cover the case, and I confess that but for the authorities on the subject I should feel much difficulty in saying that there is in such a course anything which a shareholder is entitled to treat as a wrong to himself." The Vice-Chancellor then considers the authorities, as to which he says there is in them "an unfortunate amount of conflicting

opinion," and following the decision of the four judges of the Court of Queen's Bench, who decided that the contract in the Shrewsbury case was legal, he upholds the arrangement made in the case before him,—The Midland Railway Company v. The Great Western Railway Company, 8 ch. Ap. 411. The Master of the Rolls, relying upon Winch v. Birkenhead Railway Company, and Beman v. Bufford, concluded the agreement was illegal. As stated by the Master of the Rolls, the position of the Railways there was, "The Hertford Company having given up the entire control of their railways, the plaintiffs are to have the stations, to fix the fares, to have their own clerks, their own officers; nay, more, under the provisions of this agreement it is clear that the Hereford Company, though it may reserve the power, will not in truth reserve to themselves the real working of the line, or any part of it, or anything upon it. They will have no carriages, receieve no fares, retain no stations, hire no servants." In appeal in Chancery this decree was reversed. In that case the arrangement as to fares and the compensation to be awarded to each Company was much more open to objection than in the present case. It is thus dealt with by the Court:—"It is said that this agreement enables the Midland Company to fix their fares, that is to say, the remuneration of the Hereford Company is to be dependent upon what the Midland themselves will get for the use of the line. I cannot find anything in the Act of Parliament which is to prevent a Company from fixing its remuneration in that way. I can see nothing that amounts to a delegation of authority. . . . It seems to me the only mode in which it can be done conveniently for both Companies is that there should be a division, one of the Companies having the carriage of the through traffic, that one of them should fix the whole price from terminus to terminus, and then that the Company on whose line the train is going should receive a certain proportion of the whole in accordance with the mileage. It is said that is not a toll. I do not know why it is not a toll. I do not know why a sum, fixed with reference to the gross receipts is not as much a toll as if it were fixed in any other way." In the following language Sir William James shews that an arrangement can be made as to the discharge of claims for compensation made against the companies, or either of them. "Then again it is said there is something in the clause with reference to the claims for compensation which is in some way against the policy of the law. I am unable to see anything objectionable in that. It provides that the claims for com

pensation shall be satisfied by the company deriving the profit from the traffic, that is the Midland Company with regard to the through traffic and the claims for compensation arising from the local traffic, which belongs to the Hereford are to be settled by arbitration between them, having regard to the respective profits they were getting from it. I cannot conceive how it can be in any way against any principle or policy of the law that there should be that mode of arrangement for the payment of persons who have claims for compensation between two companies who are jointly interested and who are in some way or other mixed up in the cause of the injury."

There are some passages in the case of A. G. v. Great Eastern Railway Company, L. R. ch : Div. 11,449, which show the inclination of the Courts is not to extend the doctrine of *ultra vires* in cases such as the present. In that case the Master of the Rolls says, 457, "of course you may take a lump sum, even if it is a contract with reference to the payment of toll, because it still would be a toll, a lump sum would be as much a toll as a separate sum taken on the passing of every carriage." In reference to a section of the Act which it was sought to limit, as it has been sought to limit the section here, Sir William James says, p. 463 : "My impression at present is, that I cannot see any limit to the 14th section." On the question of *ultra vires*, the same judge continues, p. 480 : "It appears to me, that whether as regards a private partnership, a joint stock company, or an incorporated company, in the absence of fraud or deliberate perversion, the majority of managing partners may be trusted, in determining for themselves what they may do, and to what extent they may go in matters indirectly connected with, or arising out of their business relations with others. . . . I recollect a case of an attempt being made to restrain an insurance company from paying or contributing to losses which were not technically covered by the terms of their insurances, but it was answered by the Court that such liberality was a legitimate mode of preserving and increasing their customers, Taunton v. Royal Insurance Company, 2 H & N. 135. Where is this motion of *ultra vires* to extend to? Is it *ultra vires* for a railway company to make a profit from the sale of meat and drink at its refreshment rooms? would it be *ultra vires* for two companies whose lines are connected, to have joint workshops for the construction or repairs of the rolling stock, or joint depots of coal and other stores; or to enter into a joint contract with such persons as the relators for the hire of rolling stock, and to apportion the costs and expenses be-

tween themselves, according to the respective train miles run over their several lines? would it be *ultra vires* for one company to let another company have the use of part of its offices, warehouses or ground?"

Lord Justice Bramwell thus deals with the question (page 150) "It is said that because they are not empowered or permitted, they are prohibited, and that they are therefore disobeying an Act of Parliament and are breaking the law. This is undoubtedly contrary to one's general idea that, unlike some countries, where it seems as though nothing is lawful save what is permitted, here in England everything is lawful save what is prohibited. It is opposed to those free trade and *laissez faire* notions which we commonly supposed to have something in them, and under the influence of which some people think that England has thriven considerably, (p. 505)." But the decisions have not gone to the extent of saying that nothing can be done but what is expressly mentioned in the act incorporating the Company. There may be a ferry boat to aid railway traffic, book stalls may be let, refreshment rooms kept, and other things done which may be called auxiliary or subordinate to the main purpose of the railway company, or arising out of or consequent on its existence.

It is now abundantly evident that while contracts for objects and purposes foreign to or inconsistent with the Act of Incorporation are *ultra vires* of the Company, and will not be allowed to stand, the Court will not be astute to find that the Company has been exceeding its powers, but will allow it a very considerable latitude as to the mode in which its Directors may think it best to carry out the purposes of the Act of Incorporation. I am unable to conclude that this agreement is illegal (1) "as it creates a monopoly, or because (6) the powers under which it is claimed the agreement was made, do not apply to competing lines, as are these in question" The Acts in question permit an arrangement to be made. Such an arrangement is not limited to lines that are not competing lines. I cannot, therefore, add to the statutes on which the defendants rely a clause which would virtually place there a restriction which the Legislature has not thought fit to insert, nor can I hold the agreement illegal (2) as it works an unauthorized amalgamation between the Companies, (3) forms a partnership between them,(4) casts upon a company all the powers and functions of the railways and of their Boards, and(5) makes the companies partly responsible for the acts of each" The Board of each company is preserved, and it has duties to perform, which will enable each company to subject, in case

of a difference between the Boards, to the finding of a referee to control the joint committee. There has not been an amalgamation of the Boards but a joint committee having been formed, as prescribed by the Act, and without which it would be almost impossible to carry out the joint arrangement, each Board preserving its separate existence, passes upon what the joint committee lays before it. If there was not the limited joint liability settled by the agreement, there might be sudden disputes between each railway and their officers in case of accident or wrong being done to those using the railway. It was, therefore, reasonable to arrange that claims thus arising should be borne as defined by the agreement. The authority to which I have referred shows that although there may result a quasi partnership from the arrangement, yet this does not vitiate the agreement. It was necessary to agree as to the cars, &c., and the agreement being otherwise legal, it cannot be said to be illegal because of the plan hit upon for interchanging the cars, keeping up the rolling stock, and returning and dividing the rolling stock when the twenty one years expire. It is not the handing over by the one company of its line to the other, but each company preserves a controlling power, and by the arrangement, seeks for itself to decrease the expense of running, diminish competition, and so increase the profits to be received. I am of opinion that the agreement made is not prohibited by any of the enactments referred to, that it is not illegal on any of the grounds referred to, and is but the exercise in a reasonable manner of those powers given by the Legislature to those companies who have entered into the arrangement impeached by the bill.

It was urged by the counsel for the defendants that the plaintiff had no locus standi, that he was a transferee without consideration of the stock he held, that he was merely taking these proceedings as he had taken steps before the Legislature, to harass the defendants, and to compel them to buy him off, and not merely to terminate the agreement which he attacked by the present bill. It is true that the plaintiff admits he " got the stock for nothing, that he at the time thought it was valueless, but thought it probable he could make it valuable by legislation or otherwise, that he then commenced a war with Mr. Cumberland, the Managing Director, in the Court of Chancery and before the Legislature, that to aid in the war he transferred a part of his interest in the stock to a member of Parliament, who was to aid him in the Parliamentary war," whose name for obvious reasons he did not desire to mention, and I did not therefore call upon him to disclose it, " that the agreement

on the face of it appears advantageous, that if it is economically carried out it might be for the advantage of both railways, that his real ground of complaint is the extravagance of the manager, as to which, however he made no complaint during the years he was a Director on the Road, and that the present bill should be for the removal of the Manager, that the real meaning of the present bill and all the proceedings taken was to make the company give something for this stock." Notwithstanding the admissions made by plaintiff of his true position, I yet think that under the authorities as holder of the stock he holds in the Northern Railway Company if the steps taken by the Railway Company were *ultra vires* he has the power to demand the intervention of the Court to restrain such steps. I cannot, therefore, find that the plaintiff has no locus standi, but on the grounds set forth, finding he is not entitled to the relief demanded, I dismiss the bill with costs.