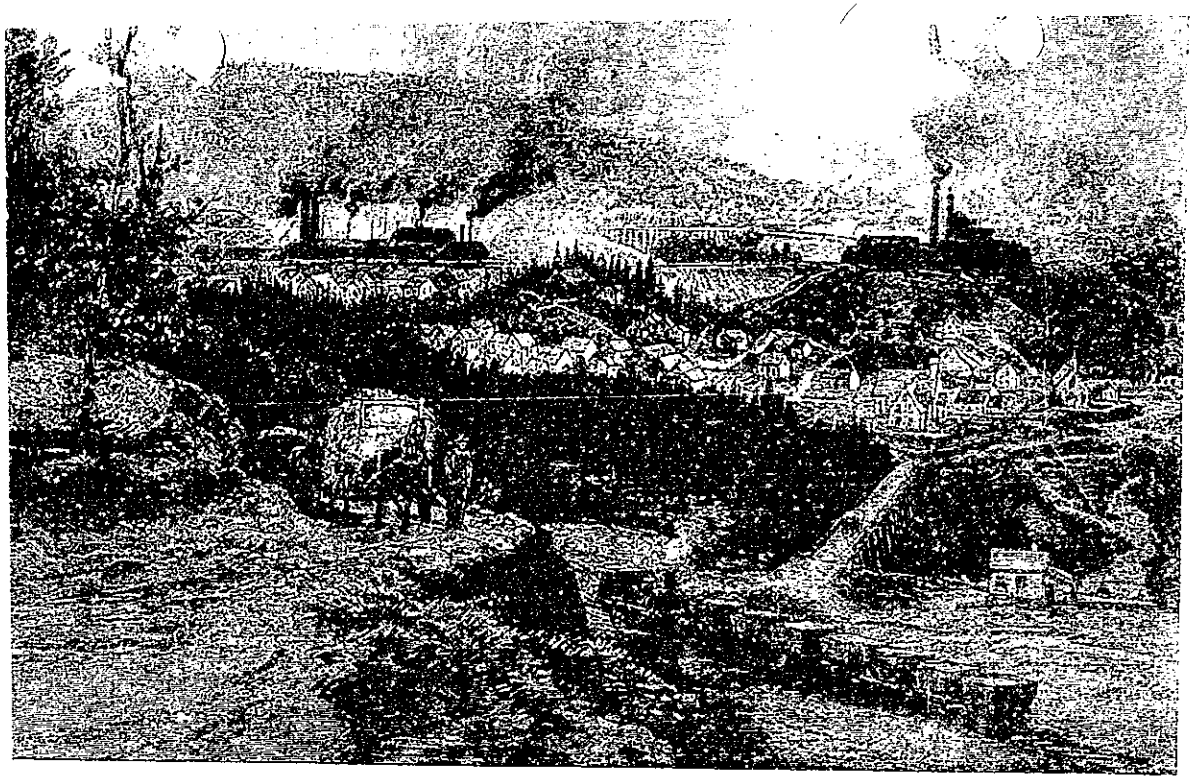
THE SYDNEY AND LOUISBURG RAILWAY

I

THE NARROW GUAGE

C H RIFF



Mining scene in Nova Scotia.

Omer Lavallee
Narrow Guage in Canada

4

Glasgow & Cape Breton Coal & Railway Company

Thus far, the three lines referred to were all built to the 42-inch gauge, which was rather more popular in Canada than the 3-foot width that could be seen throughout the United States. Almost at the same moment as the Toronto, Grey & Bruce completed the railway to Orangeville, in May 1871, the Glasgow & Cape Breton Coal & Railway Company was completing its coal-carrying 36-inch-gauge railway from the old pier at Sydney, Cape Breton, to its mine at Reserve, a distance of some ten miles. In the following year, a nine-mile branch was built from Reserve to the Acadia Mine at Schooner Pond, but this lasted only for one or two years. The G & CBC & R Co. had been incorporated in 1870 to work the mine at Reserve and to build a railway to Sydney and to Louisburg with branches to other mines. Exercising the powers in its charter, the Glasgow & Cape Breton later extended its railway to Louisburg, reaching the old French Regime fortress town in 1877. In 1881, the properties of the G & CBC & R Co. were taken over by a new company, the Sydney & Louisburg Coal & Railway Company, but in 1883, the narrow-gauge line from Reserve to Louisburg was abandoned; in 1893, the Sydney-Reserve portion and the mines were acquired by the Dominion Coal Company and the railway abandoned completely. It should be noted here that this system had no corporate relationship to the later Sydney & Louisburg Railway Company, and the route followed to Louisburg was farther inland than the standard gauge line (see map). The Sydney-Reserve Junction roadbed was built [illegible]

Glace Bay Electric Railway, later Cape Bre Tramways Ltd.

As a 3-foot-gauge railway, however, the Glasgow Cape Breton was a little premature. No other railw of this gauge would be built in Canada until 18 leaving the field clear for the 42-inch-gauge syste which were largely commenced before that date.

While all this activity was going on in Ontario anc Nova Scotia, the two Maritime provinces of N Brunswick and Prince Edward Island w undertaking small-gauge projects of their own. shall take the New Brunswick [illegible]

● GLASGOW & CAPE BRETON COAL & RAILWAY COMPANY (1870-74)
CAPE BRETON COMPANY (1874-1881)
SYDNEY & LOUISBURG COAL & RAILWAY COMPANY (1881-1895)

Sydney Pier to Reserve Mine, N.S. ..... 10.0 miles aban.
Reserve Jc. to Schooner Pond, N.S. ..... 9.0 " "
Reserve Jc. to Louisburg, N.S. ..... 22.0 " "

GAUGE: 5 feet, 0 inches.

Chronology:

1870- Incorporation of the Glasgow & Cape Breton Coal & Railway Company to work a mine at Reserve, N.S. and to build railways from the mine to piers at Sydney and at Louisburg, also branches to other mines.
1871, May- Railway completed from Reserve Mine to Sydney Pier and opened for traffic.
1872- Railway built from Reserve Jc. to the Acadia Mine at Schooner Pond, but abandoned after one or two years.
1874- Cape Breton Company formed to succeed G.& C.B.C.& Ry.Co.
1877- Railway built from Reserve Jc. to Louisburg.
1881, Apl.15- Incorporation of Sydney & Louisburg Coal & Railway Company to take over properties of the Cape Breton Company. It should be noted that this company was no relation to later Sydney & Louisburg Railway Co.
1883- Railway from Reserve Jc. to Louisburg abandoned.
1895- Company acquired by Dominion Coal Company and entire railway abandoned.

Motive Power: Steam Locomotives

No.	Builder	Year	C/N	Type	Cyls.	Dri.	From	To	Notes
1/1	Fox Walker	1871		0-4-0T	10x18"	43"	New	x 1890.	
2/1	Canadian	1890	394	2-6-0	12x16"	37"	"	1895 re std.gauge and to DISCo. #155	
2	Avonside	1871	907/908*	0-4-4-0	11x19"	39"	"	x1894 1903	
3	"	"	909/910*	"	"	"	"	" "	
4	"	"	911/912*	"	"	"	"	" "	

Notes: DISCo- Dominion Iron & Steel Company.
*Fairlie Patent double-end locomotives, hence two boiler numbers.

Two Early Cape Breton Mining Railways:

The Glasgow & Cape Breton and The International Company Railway

Edited and Annotated by Herb MacDonald

From *Engineering*, issues of 29 October and 12 November, 1880

Editor's Introduction

This article is offered to provide background on two neglected early Cape Breton railways and to illustrate the rich body of content in the 49-part series on Canadian railway in the British journal *Engineering* over the period 1878-81 (see my outline of this series in *Canadian Rail*, # 494, July-August, 2002).

While these objectives could be met at any time, the timing is particularly appropriate. As at the time of writing, 5 April 2003 is scheduled to be "Discontinuance Day" for the Cape Breton and Central Nova Scotia Railway's service east of St. Peter's Jct. On that date, the last train will likely depart from Sydney and end the century-plus association between eastern Cape Breton and the railway. An end to railway operations is a sadly appropriate final symbol for the passing of Cape Breton's era of coal and steel, a process which had been under way since the end of the period of the steam locomotive. In its small way, this article is a personal tribute to that time and place and to the men who mined the coal, made the steel, and ran the trains that linked the economy of industrial Cape Breton to the rest of the country.

The excerpts presented here constitute the core of the railway-related material but they account for only about half of the total content of the two original *Engineering* articles. The additional historical, geographic, and economic background has been edited out. Though *Engineering* did not provide any illustrations for its "Canadian Railways" series, the *Canadian Illustrated News* offers some good contemporary Canadian-published substitutes.

The extensive notes serve several purposes. Some help clarify original content and/or direct the reader to primary source material. Others provide documented indications of some problems within the original text (or other sources dealing with these two lines) and serve as reminders that one should never assume total reliability of secondary sources (these notes included).

[ ]s indicates an editor's insert and .... an editor's deletion.

The Glasgow & Cape Breton Railway

The Glasgow & Cape Breton Railway (a title the meaning of which is not very obvious, as there is no Glasgow on the island [of Cape Breton] and New Glasgow in the Pictou coal district is 200 miles distant), was originally constructed by the late firm of Clark, Punchard & Co., and the history of the company has not been a happy one. It was organized in England, and on the 21st of September, 1868, an Act of Incorporation[1] was obtained from the Nova Scotia Legislature to construct a railway from Sydney Harbour to Cow Bay via Bridgeport, and for making the necessary docks, wharves, and branches for the purpose of transporting and shipping the coal from the different collieries.

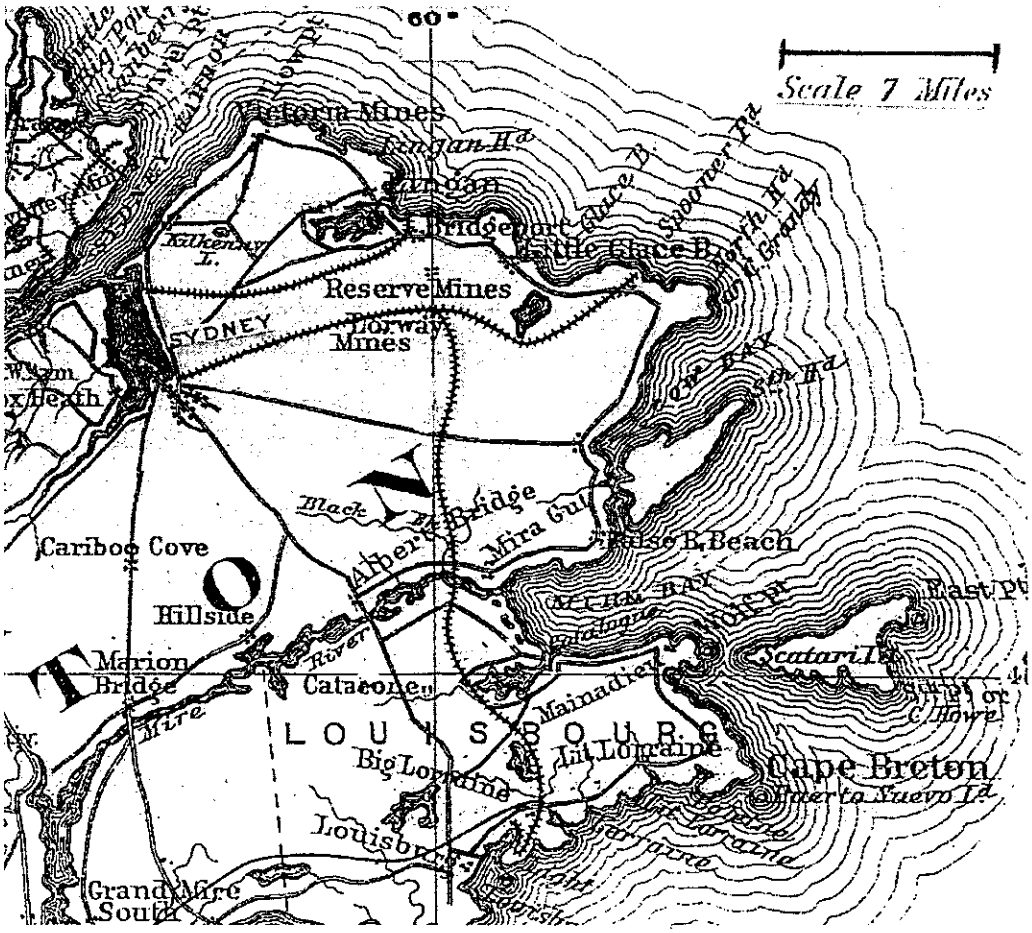
The length of line as proposed was about 21 miles and the capital was £100,000. The entire cost of the construction and equipment of the line, including purchase of land and maintenance of way and works for six months after the line was opened for traffic, was estimated at £82,000, and responsible contractors, said the prospectus, had guaranteed to complete the railway and pier by the end of October, 1871, within the price estimated by the company's engineer. The estimated receipts from the carriage of coal and profit on the working of the Reserve colliery[2] were modestly estimated at £43,750 per annum. Deducting the cost of operating the road, the net revenue was to be £34,167, or a trifle over 34 per cent on the capital.

As stated in the prospectus, the line passed through some of the most valuable coalfields in Cape Breton, in which there were then nine collieries in full work raising annually 376,000 tons of coal, and at the present time most of these collieries can only ship their coal in the summer.[3] ..... But the prospectus did not state that during the winter Sydney Harbour was just as fast and as long frozen up as any other point, and it left out also the important fact that another and better railway on the 4 ft. 8 1/2 in. gauge ran from the principal colliery in the district to Sydney, for 12 miles almost in sight of the proposed railway, and that the greater portion of the coal raised in the district was already in connection with the older road[4].

The line as built was somewhat different from that proposed, and was shorter, but the 3 ft. gauge was retained, and by September, 1871, [10 miles were] completed. But from the connections with the collieries not being made, as well as from the freezing up of the harbour, the six months for which the line had to be maintained by the contractors coincided with the period when its services were not required. The road was ... completed to Schooner Pond Colliery, 18 miles from Sydney, during the following summer together with three miles of sidings and branches.

In 1876[5] an extension of the railway was commenced from Lorway Junction [close to modern-day Reserve], 10 miles from Sydney, to Louisburg, 20 miles in length and running south, and was ready for work in 1878[6] ...; although the pier and shipping facilities at Louisburg are now nearly as complete as those at Sydney, they have been so far but little used. The main line is therefore now from Sydney to Louisburg 30 miles in length, with different colliery branches 10 miles more, making 40 miles altogether; the gauge is 3 ft and the rails are 54 lb to the yard of iron.

The whole thing soon came to grief. There was no coal to carry excepting from the sister company's own areas which were not opened, and the company's own colliery, the Reserve, has even yet little results to show for ten years' nominal working. An amalgamation[7] now took place between the company got up to work the collieries, and the railway company, which enabled additional capital to be raised for both, and a second amalgamation with the Louisbourg Railway resulted

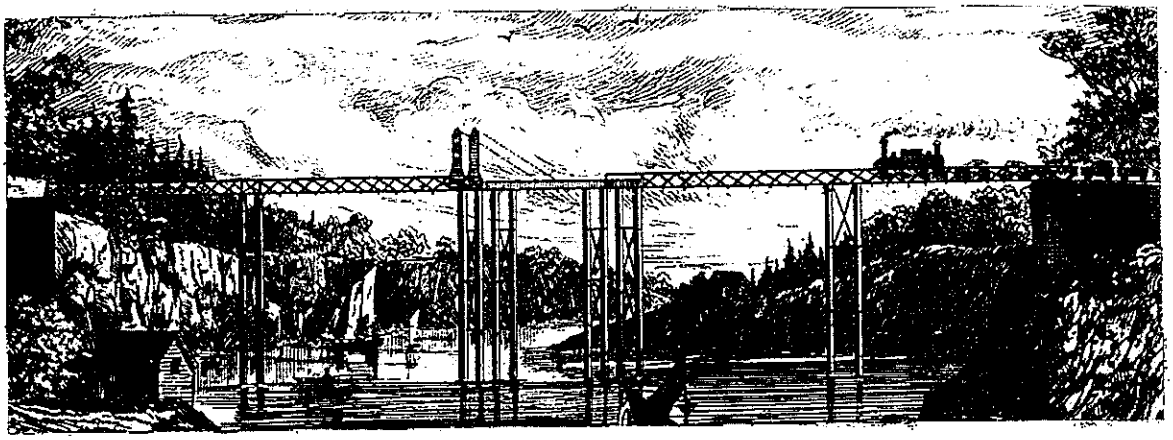


This segment of the "Maritime Atlas" map of Cape Breton County illustrates the heart of the Sydney coalfield at virtually the same time as the publication of the "Engineering" articles and is a perfect match for the text from that journal. It shows the location of the International Co Railway running from Bridgeport to Sydney and, to the south of that line, the G&CB routes from Sydney eastward through Lorway Mines to Schooner Pond ("Spooner Pd" on the map) and south from Lorway Jct. to Louisburg.

Source: Detail from Atlas of the Maritime Provinces, Saint John: Roe Brothers, 1879, p 77

RIGHT: Frederick N. Gisborne: Best known as a result of his activities related to the development of telegraph companies in Canada, Gisborne also had ongoing interests in mining. After a period as a mines and minerals agent in London on behalf of the Nova Scotia government, Gisborne came to Cape Breton at the end of the 1860s, acquired a number of coal leases and established both the Lorway Coal Co and the Schooner Pond Coal Company. He became involved with the G&CB and appears to have been the key figure in the line's reorganizations during 1872-74 (see footnotes 7 and 8) as well as the driving force behind the construction of the G&CB branch to Louisburg. Following the collapse of the G&CB, Gisborne went back to the field of telegraphy as Superintendent of the federal government's new Telegraph & Signal Service. An account of Gisborne's career is found in the Dictionary of Canadian Biography, University of Toronto Press, 1990, vol XII, pp 373-76.

Source: Canadian Illustrated News, 16 August 1873



The Mira River Bridge on the G&CB: The CIN described the bridge as a "light elegant though exceedingly strong lattice girder iron bridge" and recorded passage by a Fairlie locomotive early in 1875 "without producing any visible deflection or movement in the structure." Close examination of the sketch reveals the "double-ended" Fairlie design ofthe locomotive on the bridge. (See footnote # 12 for additional detail about these locomotives.)

Source: Canadian Illustrated News, 5 June 1875

in the doubly amalgamated company[8] now in liquidation[9]. Each of the companies in their state of single blessedness issued debentures, some of which were transferred to the different amalgamated companies, but the whole and each part were so covered in different ways by mortgages and loans and other devices to raise the means, that this complicated financing has overloaded and ultimately crushed one of the most promising speculations in all America or perhaps any country.

The construction of the original portion of the Glasgow and Cape Breton side by side with an existing railway, and dividing up a limited business, the whole of which was within the capacity of either railway to have undertaken, was one of those wanton wastes of capital that disgrace the whole Canadian railway system. In the coal districts alone nothing has been more detrimental to the interest of the mining speculations than the want of concert, which has generally produced two non-paying and inefficient plants where one good one would have answered every purpose, and been probably more complete and serviceable for both.

At Sydney Harbour, two expensive wharves belonging to the two rival railways to Bridgeport[10], each large enough for all the work there is to do by both, have been built side by side. There are two artificial harbours at Glace Bay, neither of them large enough, where one, if the two could have been put together, would have made the roadstead very much safer, and enhanced the convenience for both, and there are two breakwaters at Cow Bay[11], neither of them quite sufficient for the purpose. Altogether over 2,000,000 dollars have been uselessly squandered in the two coal districts in unnecessary duplicates where the market

The Emery Colliery: This small colliery was located near modern-day Reserve. According to some sources, it was opened by Gisborne. The colliery name, however, seems to point to J. W. Emery who participated in several mining ventures in the 1860s with investors also involved with International Coal. My speculation is that the mine was started by Emery and associates and then sold to Gisborne. While its origin is uncertain, this mine was identified in the Dept of Mines 1873 Annual Report as belonging to Gisborne's Lorway Coal Company which in turn was part of the G&CB amalgamation of 1873.

Source: Canadian Illustrated News, 20 December 1873

has always been much less than the means of supplying it, and the capital expended in necessary works most inadequately rewarded.

In the prospectus of [the Glasgow and Cape Breton] great stress was laid upon the supposed economy of the narrow gauge, and the better apportionment of the dead weight of the rolling stock to the load carried, and as the two roads run through the same district, have practically the same products, carry the same description of freight, deliver their coals at contiguous wharves in Sydney harbour, and work under precisely similar conditions, no comparison can possibly be much fairer than that between the old portion of the Glasgow and Cape Breton and the [standard gauge] International Company Railway.

Neither road on this portion of its route has any important bridge[12]. The culverts on the 3 ft. gauge road are all wood; those of the 4 ft. 8 1/2 in. are stone, and the works generally of the latter are more substantial, the ballasting deeper, and the work generally better finished. Both were cash contracts. The narrow gauge road cost a trifle over 20,000 dollars per mile; the 4 ft. 8 1/2 in. road was finished and equipped for 16,000 dollars [per mile] exactly, no extras being asked or allowed. The rails on the [International] are 56 lb. per yard, on the other 54 lb., both of iron. The wharf of the International Company is 1000 ft. long, 35 ft. wide, and runs out into 30 ft. of water in Sydney Harbour, with a capacity for loading seven vessels at a time, a very much larger and more expensive structure than the similar wharf for the [Glasgow &] Cape Breton Company. [The G&CB wharf has] four railway tracks with two turntables at the end, and five shoots for loading the vessels[13], all well arranged for carrying on an extensive coal shipping business.

The rolling stock on the narrow gauge Glasgow and Cape Breton line consists of three Fairlie engines by Fox, Walker & Co of Bristol and a tank engine by Black, Hawthorn and Co of Gateshead, the last used principally in shunting[14]. The Fairlie engines run in working order about 50 tons each, and have proved too large for the work demanded from them. Their weight also renders them anything but desirable for working over the long trestles[15] on that part of the road. The engines on the International Company's road are saddle tank engines with cylinders 13 in. in diameter and 18 in. stroke, with 3 ft. 6 in. wheels and weighing about 24 tons in working order[16]. Each road was stocked originally with 200 coal wagons. The national gauge wagons are hoppers carrying 5 tons each, the coals falling though an opening between the rails on the wharf into a fixed shoot in the pier, from which a movable one extends to the hatchway of the ship. The narrow gauge wagons, 2 ft. longer in the body, are 4-ton wagons which have sloping floors[17] to shoot the coal out laterally through a swing door at one side of the wagon.

The ordinary train on the narrow gauge is thirty-seven or thirty-eight wagons, bringing down 150 tons, and being 450 ft. in length. On the wider gauge, the ordinary train is twenty wagons, bringing down 100 tons, and running under 200 ft. in length. The tank engines in use on the 4 ft. 8 1/2 in. gauge can handle with ease a larger train than they are called upon to drag. As the Fairlie engines have 4 cylinders 11 in. in diameter with 19 in stroke, and 3 ft. 3 in. wheels, their power is to the others as 118 to 73, but this tremendous power is lost when applied to roads that can only with advantage handle trains of a certain length at their wharves and colliery sidings, and where the shunting occupies more time and costs more than the main line haulage.

Besides the Glasgow and Cape Breton Railway and the International Railway, there are eight or ten other short railways in Cape Breton, all connected with the different collieries, and most of them worked by locomotives[18]. They are of all gauges[19], 2 ft. 9 in., 3 ft. 6 in., 3 ft. 6 1/2 in and one, the Gowrie Company, has the unique gauge of 3 ft. 7 1/2 in, besides the ordinary 4 ft. 8 1/2 in. gauge of the Sydney[20] and International roads.

FIRST NOTIFICATION OF ABANDONMENT & SALE

Cape Breton & Central Nova Scotia Railway
Mile 17.02 to Mile 113.9 Sydney Subdivision

On November 5, 2002 the Nova Scotia Utility & Review Board granted permission to the Cape Breton and Central Nova Scotia Railway to Discontinue Service and to Abandon the rail line from St. Peter's Junction to Sydney.

As part of the Abandonment process, Cape Breton & Central Nova Scotia Railway is offering to sell this portion of their rail line to a railway operator with the demonstrated ability to operate and finance this undertaking. Qualified parties interested in purchasing this section of our rail line should contact.

Mr. Jan F. Polley
Regional Vice President, Northeast Region
RailAmerica, Inc.
126 Weber Street, West Building No. 2
Kitchener, Ontario, N2H 3Z9
Telephone: (519) 749-8000 ext. 5
Facsimile: (519) 749-8088
Or via e-mail at jan.polley@railamerica.com

Discontinuance plan
Railway Line: Sydney Subdivision, mp 17.02 to mp 113.9

Procedure	Date
1. Application for Discontinuance of Service submitted to Utility and Review Board	April 10, 2002
2. Approval of application and plan received from Board	November 5, 2002
3. Approved Discontinuance of Service Plan filed with the Board	November 8, 2002
4. Send letter of notice to all affected customers, advising them of reduction in service and ultimate discontinuance of service	November 12, 2002
5. Publish 1st Notice in newspapers as required in Section 4 of the Railway Discontinuance of Services and Abandonment Regulations and as outlined by the Board in their November 5, 2002 decision. • Cape Breton Post (Sydney, NS) • Chronicle-Herald (provincial edition) • Halifax Daily News	November 20, 2002
6. Implement reduced service schedule to one freight train per week between Point Tupper & Sydney and two days of local service or greater as volumes require.	December 2, 2002
7. Publish 2nd Notice in newspapers as required in Section 4 of the Railway Discontinuance of Services and Abandonment Regulations and as outlined by the Board in their November 5, 2002 decision. • Cape Breton Post (Sydney, NS)	January 18, 2003
8. Publish 3rd Notice in newspapers as required in Section 4 of the Railway Discontinuance of Services and Abandonment Regulations and as outlined by the Board in their November 5, 2002 decision. • Cape Breton Post (Sydney, NS) • Chronicle-Herald (provincial edition) • Halifax Daily News	February 28, 2003
9. Discontinuance Day - Discontinue service on the railway line east of St. Peter's Junction, Richmond County, Sydney Subdivision mp 17.02 to mp 113.9	April 5, 2003

Notice of abandonment as published in the Halifax Chronicle-Herald, November 20, 2002.

LUSH *and a Special Jury.)*

ROONEY V. FENN AND OTHERS.

This was an action for alleged fraudulent representations and concealments in prospectuses relating to companies issued by, or with the sanction of, the defendants. A large number of counsel represented the various defendants.

Mr. Charles Russell, Q.C., Mr. Gully, Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. M'Intyre, Q.C., and Mr. Morton Smith were for Messrs. Fenn and Crosthwaite; Mr. Webster, Q.C., and Mr. Moulton for Messrs. Satterthwaite and Twycross; Sir Henry James, Q.C., and Mr. M'Leod for Mr. Underhill; Mr. Meadows White and Mr. Horne Payne for Mr. Lewis Paine; Mr. Philbrick, Q.C., and Mr. Moulton for Messrs. Wegg, Durnford, Smith, Rawlinson, Tallant, and Dollman. The only other defendant remaining on the record was Mr. Jacob L. Elkin, who was unrepresented.

Before the pleadings were opened Mr. CHARLES RUSSELL, Q.C., stated to the Court that the names of Mr. Lewis Paine and certain other defendants were struck out, and that as regards Mr. Paine, he desired to say that it did not appear that any part of the profits had reached his hands; that he had a large stake in one of the companies; and that no imputation whatever was made against him. Mr. Russell, in the course of the day, further said it was clear that Mr. Underhill also had not participated in the profits, and was, as he understood, only anxious to go into the witness-box and declare that he had taken no part in the promotion of any of the companies in question.

Mr. RUSSELL, in his opening address, said it was not disputed that large coal fields existed in the neighbourhood of Cape Breton, but that at the same time this part of Nova Scotia was so sparsely populated, and that the coal there was, much of it, of so inferior a description, as to render it impossible for coal-mines there to be a source of profit; moreover, that, owing to there being no freights "out" there, it would not be practicable to export it. He stated that this action was brought by Mr. Rooney, a retired merchant, living at Croydon, to recover damages against Messrs. Fenn, Crosthwaite, Satterthwaite, and Twycross, for inducing him to take shares in certain companies, called respectively the Lorway Coal Company (Limited), the Schooner Pond Company (Limited), the Emery Coal Company (Limited), and the Cape Breton Company (Limited), and against the other defendants for aiding and abetting the said principal defendants in the execution of the alleged frauds. Mr. Russell said he should prove that Messrs. Fenn, Crosthwaite, Satterthwaite, Twycross, and Gisborne, were members of a syndicate at the date of the formation of these companies, in 1871, 1873, and 1874, and that they had acted as vendors for the syndicate, and as purchasers in their character of directors of the companies. He stated that he should prove that while some contracts had been disclosed in the prospectuses, others, which were material, had been concealed; that in consequence of such concealments the plaintiff had been induced to become an original allottee of some 50 shares in the first-named company, and a shareholder in the others. Mr. Russell alleged that section 38 of the Companies Act of 1867 had not been complied with, and that a Mr. F. N. Gisborne had been falsely represented as the vendor to the companies, whereas in fact the syndicate had sold the properties to the several companies. As to the Lorway Coal Company the property, for which they had paid £15,000, had at that time only just been sold by Captain Lorway to the syndicate for about £4,000, and he alleged that the difference between the prices had been divided between the members of the syndicate and some of the other defendants. He should prove that while the vendors of the Schooner Pond property had only received £8,200 for it from the syndicate, the Schooner Pond Company had paid £30,000 to the syndicate for it, and that the difference between the two prices had also been divided between the members of the syndicate and the other defendants, or some of them. He should also show that whereas only £6,000 in cash and £4,000 in fully paid-up shares were paid to Messrs. Emery and Hubbard for the Emery Mining property, it was sold by the syndicate to the Emery Coal Company for £20,000; and that in the case of the Cape Breton property he should prove that there had been a still more extraordinary difference between the price paid by the syndicate and that at which they sold it to the Cape Breton Company, and that in these as in the former cases the difference had been divided among the members of the syndicate, and some of the other defendants.

The learned counsel's opening address occupied the whole of the day, and the case seems likely to last a considerable time.

COMMON PLEAS DIVISION.

(Sittings in Banco, before Lord Chief Justice COLERIDGE *and Mr. Justice* LOPES.)

MAY 28
1878
p 4 b.

LONDON Times

(*Sittings at Nisi Prius, at Guildhall, before Mr. Justice* LUSH *and a Special Jury.*)

ROONEY V. FENN AND OTHERS.

The hearing of this case was resumed this morning. The whole day was occupied in the examination of the plaintiff, and his cross-examination was not completed.

Mr. Charles Russell, Q.C., Mr. GULLY, Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. M'Intyre, Q.C., and Mr. Morten Smith were for Messrs. Fenn and Crosthwaite; Mr. Webster, Q.C., and Mr. Moulton for Messrs. Satterthwaite and Twycross; Mr. Philbrick, Q.C., and Mr. Moulton for Messrs. Wegg, Durnford, Smith, Rawlinson, Tallant, and Dollman. The only other defendant remaining on the record was Mr. Jacob L. Elkin, who was unrepresented.

The plaintiff, who was examined by Mr. Gully, Q.C., stated that he first heard of the Lorway property from Mr. Fenn, shortly before the latter went to Cape Breton to inspect it. On returning to England, he showed the plaintiff a sample of coals brought from Nova Scotia. At the end of July, the plaintiff saw the draft of the prospectus of the Lorway Company, in Mr. Fenn's handwriting, and this was identical with that which was afterwards printed and sent to him. Believing it to contain the full and true facts as to the Lorway property, he applied for 10 shares of £100. The capital of this company was £30,000 in 300 shares of £100, and it was at once raised. Mr. T. P. Baker, C.B., Chief Inspector of Machinery at Chatham Dockyard (who is since deceased), and Mr. Thomas Fenn, of the Stock Exchange, were directors. It was established for the purpose of purchasing and working coal areas at Cape Breton. The plaintiff subsequently bought further shares, investing altogether over £4,300 in the company; he had never received any dividend whatever on the ordinary shares, but some had been paid on the debentures, towards which he had advanced £1,800. He stated that he believed Gisborne to be the *bond-fide* vendor of the property and was not aware that he was a co-adventurer with the other members of the syndicate. In August, 1871, he received the prospectus of the Schooner Pond Company, and took it to Mr. Fenn, who expressed his opinion that it would be a profitable undertaking. He applied for 50 shares in the company, but was not clear as to whether he did so before or after the receipt of the prospectus. This company had a capital of £50,000 in 5,000 shares of £10, and Mr. T. P. Baker, C.B., and Mr. Satterthwaite, of the Stock Exchange, were directors. He read the prospectus, including the following paragraph:—"The only contract entered into is one by which the vendor agrees to transfer to this company the property, with all the buildings, &c., for the sum of £30,000, of which £20,000 is to be paid in cash, and £10,000 in fully paid-up shares, or cash, at the option of the company. The vendor is also to receive one-fourth of all profits after a dividend of 15 per cent. has been given to the shareholders. The agreement is dated the 3d of July, 1871, and made between Frederick Newton Gisborne of the one part, and Jacob Levi Elkin, and Edward Ludwig Geetz on behalf of this company, of the other part, and can be seen at the company's offices together with Mr. Rutherford's original report." He believed Gisborne to be the sole vendor, and was unaware that any of the defendants had any interest in the sale of the property to the company. He first heard of the Emery Company, in March, 1872, when he saw Mr. Fenn correcting his draft of the prospectus, a printed copy of which was afterwards sent to him. He took shares to the extent of £1,000, and afterwards applied for more; in August, he became a director. The capital of this company was £40,000 in 4,000 shares of £10, and Mr. T. P. Baker, C.B., and Mr. William Wegg, M.D., were directors. The Lorway and Emery Companies were afterwards amalgamated in pursuance of an arrangement made prior to the time at which he (the plaintiff) became a director, though this only actually occurred in February, 1873. In May, of the same year all the companies were amalgamated, under the name of the Cape Breton,

MAY 28
1876
LONDON TIMES

Company. It appeared there had been some danger of the registration of another company under this name, and when it was afterwards discovered that the articles of association were not sufficiently comprehensive, there was a formal winding-up and the company was re-registered. This new company had a nominal capital of £390,000, but all the new money was, in fact, raised by means of preferences. Mr. T. F. Baker, C.B., and Mr. Thomas Fenn were directors. With it were incorporated some new properties in Nova Scotia, and a company called the Glasgow and New Breton Railway, in which the plaintiff had shares. These were at the time officially quoted on the Stock Exchange as being worth from £8 to £9. The prospectus of the Cape Breton Company was issued in January, 1874, and the plaintiff was led to believe by Mr. Fenn that it would have the great advantage of doing away with the jealousy existing between the different companies at Cape Breton. The plaintiff first suspected something wrong as to the contracts alleged to have been fraudulently concealed, some time after the amalgamation. He subsequently went himself to Cape Breton. Mr. Fenn had brought an action against him, and recovered £2,500, but execution had been stayed until the present case had been heard.

Cross-examined by the ATTORNEY-GENERAL, he said this action by Mr. Fenn was for balance of account. He denied that he knew that prior to the construction of the Glasgow and Cape Breton Railway large tracts of land had been "bonded" to Mr. Gisborne, or that Mr. Fenn had told him that they had, before 1871, made advances in payment of deposits for the coal areas. He knew in 1872 of the existence of the Coal Area Company, but not of Fenn's connexion with it, and he denied that Fenn had read out to him in the draft of the prospectus of the Emery Company anything about the Coal Area Company. He did not know that Mr. Baker had anything to do with it. He denied that the "confidential" prospectus at the time of the amalgamation was submitted to him, though he was at the time a director of the Lorway, and a considerable shareholder in the Glasgow and Cape Breton Railway. With the statements in the public prospectus he agreed. He did not think that if the duty of 5s. per ton were taken off, the coal would be exported from Cape Breton to the United States and the coal-fields in Nova Scotia rapidly developed, because in American houses anthracite was burnt.

Cross-examined by Mr. PHILLIMORE, Q.C., the plaintiff said the action against him by Mr. Fenn was for "differences" on the Stock Exchange, on which he had been both a "bull" and a "bear." He had been originally a merchant in the island of Formosa. He had made Mr. Dollman a defendant in this action because he had been a director of the Coal Area Company; Mr. Durnford because he had acted as trustee for £1,500 worth of shares in the Schooner Pond Company for two of the other defendants, and because in his (the plaintiff's) opinion he must have known the real facts as to the other companies. The plaintiff did not allege that Mr. Durnford, Mr. Dollman, Mr. Jonathan Smith, a clerk to Messrs. Penn and Crosthwaite, Mr. Rawlinson, or Mr. Tallant, clerk to Messrs. Satterthwaite and Twycross, had received any of the profits out of the companies, but they had all aided and abetted in the execution of the alleged frauds. Dr. Wegg was made a defendant only because his name appeared in the prospectus of the Emery as a director. He did not allege he had shared in the profits made. The plaintiff denied that he told Dr. Wegg in September, 1874, about the Coal Area Association.

Cross-examined by Mr. WEBSTER, Q.C., he said this action was brought against Mr. Satterthwaite on account of his share in the Coal Area Association, and against Mr. Twycross on account of his connexion with the same matters, but not on account of any of the prospectuses. Mr. Satterthwaite, on the other hand, was a director of the Schooner Pond Company. He did not deny that Mr. Satterthwaite might have paid in hard cash £12,000 in respect of these companies and Mr. Twycross £4,000. He believed neither of them had parted with the shares they had bought.

The cross-examination of the plaintiff was not finished at the rising of the Court.

MAY 29
1878
P 5
P 6a

(Sittings at Nisi Prius, at Guildhall, before Mr. Justice LUSH and a Special Jury.)

ROONEY V. FENN AND OTHERS.

This was the third day of the hearing of the case.

Mr Charles Russell, Q.C., Mr. Gully Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. M'Intyre, Q.C., and Mr. Morton Smith were for Messrs. Fenn and Crosthwaite; Mr. Webster, Q.C., and Mr. Moulton for Messrs Satterthwaite and Twycross; Mr. Philbrick, Q.C., and Mr. Moulton for Messrs Wegg, Durnford, Smith, Rawlinson, Tallant, and Dolman. The only other defendant remaining on the record was Mr Jacob L Elkin, who was unrepresented.

The plaintiff, in his further cross-examination by Mr WEBSTER, Q.C., admitted he had never made any inquiry as to the terms on which Mr. Gisborne, the alleged sole vendor, had acquired any of the properties afterwards purchased by the companies; he did not deny that the output at the Lorway and Emery Mines was in 1873 as much as 28,000 tons, and in 1874 over 22,000. Mr. Fenn offered him an opportunity of going with Mr. Baker in 1873 to see the mining properties. He did not deny that Mr. Satterthwaite paid for his shares in the Schooner Pond Company.

Re-examined by Mr. RUSSELL, he said that he estimated at £76,000 the total value of all the companies amalgamated under the name of the Cape Breton Company, the debentures and preferences of which alone amounted to £30,000. He had from the examination of the books found that Mr. Baker's qualification shares in the companies were paid for by the Coal Area Association; that company had never been registered. Had he known that the members on the syndicate had any interest in the properties sold to the companies, he would not have taken a single share in them.

The remainder of the day was taken up in reading the correspondence, agreements, and other documents relating to the several companies, and in taking the evidence of Mr. Brighton of the London and County Bank. Payments of moneys payable to Mr Gisborne alleged on the one hand to be a co-vendor with the principal defendants, and on the other to be the sole vendor into the account of Mr Baker one of the syndicate, were traced, and there was evidence that large sums out of the purchase moneys paid by the several companies went to the Coal Area Association, but whether or not under an assignment by Mr. Gisborne did not appear. The directors of this association are the principal defendants in this case.

MAY 30
1878
LONDON
Times

(LUSH and a Special Jury.)

ROONEY V. FENN AND OTHERS.

This was the fourth day of the hearing of this case.

Mr. Charles Russell, Q.C., Mr. Gully, Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. M'Intyre, Q.C., and Mr. Morton Smith were for Messrs. Fenn and Crosthwaite; Mr. Webster, Q.C., and Mr. Moulton for Messrs. Satterthwaite and Twycross; Mr. Philbrick, Q.C., and Mr. Moulton for Messrs. Wegg, Durnford, Smith, Rawlinson, Tallant, and Dollman.

The plaintiff's case was concluded this morning, and Mr. MOULTON then submitted that there was no case against Messrs. Wegg, Durnford, Smith, Rawlinson, Tallant, and Dollman. After a few remarks from Mr. CHARLES RUSSELL, on the part of the plaintiff,

The learned JUDGE directed a verdict to be entered for these defendants, adding that, not only were they not guilty of any misrepresentation, but there was no ground for imputing to them any impropriety whatever.

The ATTORNEY-GENERAL, in addressing the jury on behalf of two of the defendants, Messrs. Fenn and Crosthwaite, said it was not alleged in this case either that the companies in respect of which this action was brought were not substantial undertakings or that the property taken over by them was not at the time really valuable. The accusations made against Messrs. Fenn and Crosthwaite were—first, that in the prospectuses of four companies they had made false representations upon the faith of which the plaintiff had taken shares which had proved to be worthless; secondly, that they were the promoters of these companies, and knew of agreements relating to the property purchased by them, which, though material, were not disclosed. It was admitted that prior to 1871 valuable seams of coal had been discovered at Cape Breton. Mr. Gisborne, knowing this, had made bargains with the owners of the land, and various areas were "bonded" to him—that is, by the payment of a small sum of money he had secured the option of purchasing them within a certain time at a specific price. He was the principal person connected with the Glasgow and Cape Breton Railway, for which Messrs. Fenn and Crosthwaite acted as brokers, and they made advances to him to pay the deposits due on these "bondings." To them he proposed that a company should be formed, to which one or more of these coal areas should be sold. Mr. Fenn originally sketched out a prospectus of a company to work them, but not for the purchase or working of any single area. The plaintiff, it was contended, agreed to take the shares before any prospectus of the Lowray Company was printed, and before Mr. Fenn went to Cape Breton. The report of Mr. Rutherford, Government Inspector of Mines, which was attached to the prospectus, was not impugned. It was denied that Messrs. Fenn and Crosthwaite were in any sense the promoters or the vendors. The mere concealment of the fact that they were interested in the property sold to the company was no misrepresentation. If a promoter, director, or officer of a company—any one holding a fiduciary position—receives any profit or commission for himself from the vendor, he is a trustee of the company of such money, but not liable to any shareholder in respect of it. As to the Schooner Pond Company, the areas of which Mr. Gisborne had "bonded" a second time in 1871, Messrs. Fenn and Crosthwaite were not promoters, and in the prospectus there was no misrepresentation of any fact known to them. They knew nothing as to the terms on which the property had been placed in the hands of Messrs. Elkin and Goux by Mr. Gisborne; they might have had an interest in the property sold to the company, but no knowledge of the documents alleged to have been concealed. The plaintiff, it was contended, took his shares in this company on the faith of a circular by Mr. Nicholls inviting subscriptions, and not of any prospectus. A good many insinuations had been made, as the Attorney-General said, against the Coal Area Company, the formation of which was a very simple act on the part of certain persons owning a property in Nova Scotia, and wishing to adjust their rights in it among themselves; he denied that it was merely a machinery for dividing the profits made out of the companies. As to any syndicate, no such thing existed. Referring to the Emery Company, he contended that the plaintiff did not take his shares on the faith of any prospectus issued by Messrs. Fenn and Crosthwaite, who concealed nothing they were bound to disclose. The prospectus as prepared by Mr. Fenn distinctly said that the property sold to that company belonged to the Coal Area Company, and the plaintiff took his shares on reading over this draft prospectus. Mr. Blunt, the solicitor to the company, struck out the words Coal Area Company. As to the Cape Breton Company, formed on the union of all the other companies, the plaintiff had sent in his shares to be exchanged for those in the new company before any prospectus was issued, and, so far from his disputing its truth, he was actually a party to it; he had bought no new shares. In conclusion, he submitted that they could not entirely trust the plaintiff when he stated he bought everything on the faith of the prospectuses, for it was clear that he was fond of speculating, and thinking, no doubt, that the speculations in which Messrs. Fenn and Crosthwaite were embarking their capital would be profitable, he was anxious to share in them; it was not to be supposed that because they had proved the reverse, the plaintiff could saddle those gentlemen with a large sum in damages.

In the course of the day Mr. WEBSTER, Q.C., stated, in answer to an inquiry by the learned Judge as to the case of "Twycross v. Grant," in the House of Lords, that the appellant's case had been lodged some time ago, but that Mr. Twycross (the respondent) had since died, and no steps had been taken by his executors or any suggestion of his death entered for the case to go on.

COMMON PLEAS DIVISION.

(*Sittings in Banco, before Lord Chief Justice* COLERIDGE,

MAY 31
1878
P 10 f.
LONDON Times

(*Sittings at Nisi Prius, at Guildhall, before Mr. Justice* LUSH *and a Special Jury.*)

ROONEY V. FENN AND OTHERS.

This was the fifth day of the hearing of this case.

Mr. Charles Russell, Q.C., Mr. Gully, Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. M'Intyre, Q.C., and Mr. Morton Smith were for Messrs. Fenn and Crosthwaite; Sir Henry James, Q.C., and Mr. Macleod for Mr. Underhill; Mr. Webster, Q.C., and Mr. Moulton for Messrs. Satterthwaite and Twycross.

Mr. WEBSTER, Q.C., in addressing the jury on behalf of Messrs. Satterthwaite and Twycross, said that the plaintiff had brought the most serious accusations against them, alleging, in fact, that they had joined in a conspiracy to defraud him and other shareholders in the companies. It would be proved that there was on their part no fraudulent concealment of material contracts. As to the Lorway Company, they really were anxious to have themselves more shares than were allotted to them—that would be proved most clearly; and then it would be impossible for the jury to believe they could have wished to get Mr. Rooney's money for that. They believed Mr. Gisborne to be the vendor of both the properties sold to the Lorway and Schooner Pond Companies. The directors of the Glasgow and Cape Breton Railway were deeply interested in the development of these mining properties, equally with Mr. Satterthwaite, who was one of them. They all at the time believed the mines would be profitable. Much had been said of a syndicate composed of Messrs. Fenn, Crosthwaite, Satterthwaite, Twycross, Baker, and Gisborne; nothing of the kind had ever existed; and it was equally incorrect—and this, he contended, would show how small an incident had been imported into this case to suggest fraud—to say that the name of the Coal Area Association had not been put up at 445, West Strand. It was up there from March, 1872, until the liquidation. It was said that Mr. Baker's qualification shares had been paid for by this association; but he should prove that this was not even literally true. As to the Emery Company, he would show that there had been no sort of fraudulent concealment. As a director the plaintiff had full opportunities of learning the true facts, and he was not entitled to charge the defendants in respect of shares bought in the market years after the formation of the companies. Over £400,000 in actual money had been spent on the machinery and works to develope the properties of the companies, and how could it, then, be maintained that they were bogus? Messrs. Satterthwaite and Twycross had put over £16,000 in the companies, and never sold or trafficked with a single share. He admitted that out of the £17,000, the total profits of the Coal Area Association, they had received £5,000; but if they were not entitled to that money, the liquidator, and not the plaintiff, could make them refund it. Beyond this sum they unquestionably received a large number of shares in the companies.

The examination of Mr. Thomas Fenn was then commenced, but little progress was made in it before the adjournment of the Court at 3 o'clock. The case would appear likely to last the greater part of next week.

June 1 1878 p 6. London Times

COMMON PLEAS DIVISION.

(*Sittings in Banco, before Mr. Justice* GROVE *and Mr.*

quiring the coal areas in question, had a concession from the Government to make a railway, without which the coal areas were valueless, and he came over to this country to get up a company to construct the railway. He became acquainted with Mr. Fenn, a civil engineer, and described the coal areas as of no commercial value without the railway, but of great prospective value when the railway should be made, and he got Mr. Fenn and others of the defendants to sign a paper in which he agreed that if they would advance him £2,500, they should be entitled to 20-100ths of the coal areas, that their advances should be a first charge upon them, and that all arrangements should be made to secure their interest, and that he would place at their disposal some of the coal areas, that they might transfer them to a company to be brought out by them, and thus obtain the capital necessary to discharge the amount. And then there were similar stipulations as to other companies to be brought out for the working of other parts of the coal areas, the remaining areas to be disposed of by him or by them as they might mutually agree. The company was accordingly formed to work a portion of the coal areas, with a prospectus stating that the property had been purchased by Gisborne, and was offered by him to the company for £15,000, and other companies were formed with similar prospectuses as to other portions of the coal areas in question, the interest of the defendants not being disclosed. Gisborne, however conveyed each portion to each of the companies respectively, and the case for the plaintiff was that in this way the public were induced to take shares to an enormous amount, he among others, and that the defendants divided among themselves, with Gisborne, the sum of £107,000, the profit upon the transaction. After a lengthened trial, however, before Mr. Justice Lush and a special jury, at Guildhall, the trial lasting 11 days, the learned Judge was of opinion that the defendants were not co-owners of the mines in the sense of selling them to the companies, that they were not, in truth, "selling parties," but that one Gisborne was the real owner and vendor. The learned Judge left to the jury three questions:—1. Did the defendants wilfully misrepresent any fact relating to the ownership of the mines material to be known by the plaintiff, with a view to induce the plaintiff to take shares? In answer to which the jury said none of the defendants wilfully misrepresented any fact relating to the ownership of the mines, Gisborne being the sole owner of the mines; but we express our disapproval of the conduct of the defendants in acting as promoters of the companies without disclosing their interest in the transaction. 2. Was the plaintiff induced by any such misrepresentation to take shares? 3. Was he induced by the omission from the prospectus of the undisclosed documents to take shares he otherwise would not have taken? To both which questions the jury answered in the negative, and so the verdict went in favour of the defendants.

Mr. C. RUSSELL, Q.C. (with Mr. Gully, Q.C., and Mr. R. V. Williams), now moved, on the part of the plaintiff, for a new trial, on the ground that the learned Judge had mistaken the nature of the case, and also that the verdict was against the evidence. The case for the plaintiff, he said, was not that the companies were sham companies, or that the mines were of no value, but that the defendants had concealed the fact that they were the real owners and sellers of the mines to the companies, and were selling them at a price at which it was impossible that they could be worked at a profit. The learned Judge had, as he submitted, erroneously taken the view that the defendants were not selling parties, and the verdict had really gone on that ground. The defendants had no doubt put forward one Gisborne as the owner and vendor; but, as the plaintiff contended, the defendants themselves had really purchased the mines and really sold them to the companies, and the learned Judge had erred in supposing that Gisborne was the real owner and seller, whereas, in truth, the defendants were owners and sellers. The jury had based their finding on the material question in favour of the defendants on the opinion of the learned Judge that Gisborne was sole owner (Mr. Justice Lush admitted that this was so), and that opinion was, he submitted, erroneous. He

June 2
1878
p11c

the party complaining was not interested, &c.

The COURT granted a rule *nisi*.

(*Sittings at Nisi Prius, at Guildhall, before Mr. Justice* LUSH *and a Special Jury.*)

ROONEY V. FENN AND OTHERS.

This was the seventh day of the hearing of this case.

Mr. Charles Russell, Q.C., Mr. Gully, Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. M'Intyre, Q.C., and Mr. Morton Smith were for Messrs. Fenn and Crosthwaite; Sir Henry James, Q.C., and Mr. M'Leod for Mr. Underhill; Mr. Webster, Q.C., and Mr. Moulton for Messrs. Satterthwaite and Twycross.

The examination of Mr. Thomas Fenn was resumed, in the course of which he stated that he had been a stock-broker for 26 years, and had so acted from 1861 to 1875 for the plaintiff, who then owed his firm £2,000. They asked him to settle, and he then ceased to be on friendly terms with them. Mr. Gisborne was an engineer and electrician in partnership with Mr. Baker, at 445, West Strand, and witness knew him first in 1871, when he wished to borrow from the firm money to secure coal areas "bonded" to him. His firm advanced money for that purpose, though he did not know the exact nature of these bondings. These advances were to be repaid on the formation of the first company, but the balance of the purchase-money paid by it—the Lorway—was to be used in securing the other areas. He and the defendant Satterthwaite were the largest shareholders in it; they invested £2,000 each. He became director and chairman from its formation until it was united to the Cape Breton Company. He was a promoter of this, but not of the Schooner Pond Company. In the drawing up of that prospectus he took no part; he simply gave the information he had gained from his visit to Cape Breton, and any other in his power, and he knew nothing as to any agreement between Messrs. Elkin and Goëtz, the promoters, and Mr. Gisborne. The Coal Area Association was the next company formed. As to the Emery Company, unquestionably in the draft of the prospectus it was mentioned that the Coal Area Association were the vendors of the property; it was afterwards struck out, but not by him. One great reason for the amalgamation of all the companies was that the port of Louisburg was not closed in winter, and new capital was required to complete the line to it. The only members of the Coal Area Association present at the meeting of the directors of the various companies, on the subject of the amalgamation, were Mr. Twycross and himself. They certainly told this committee they were interested in the additional coal areas to be taken by the proposed company. The Coal Area Association became the largest shareholders in the new company, the Cape Breton. Its stoppage was primarily caused by the failure of the contractor to finish the Louisburg line. The company then filed a petition in liquidation. He had shares to the amount of £4,200 in the several companies, but took no new shares on the amalgamation. He, however, advanced £3,500 on debentures. As to the Coal Area Association, until its formation into a company no accounts were kept to adjust the several interests. Its members did not wish to sell the new areas to the Cape Breton Company, but rather to wait until the completion of the Louisburg line.

Cross-examined by Mr. RUSSELL, Q.C., he admitted he had received £500, a lump sum, as commission for placing the Glasgow and Cape Breton prospectus before his clients; also 2s. per share for 2,990 afterwards taken through him. As to the Coal Area Association, the entire prices paid by them for the properties sold to the different companies were £20,000 in cash and £4,000 in shares. The gross prices receivable by them were £102,000. In the accounts of this association payments in respect of areas bonded to Gisborne, but subsequently abandoned, did appear. The profits on the Lorway property, of which company he was a promoter, were taken into consideration in distributing the profits of the Coal Area Association, and its success was of great importance to the Glasgow and Cape Breton Railway, in which he was interested. He never doubted the success of this mine or that of the Emery. As to Mr. Baker's qualification shares for the Lorway, Baboomer Pond, Emery, and Cape Breton companies, he admitted they were afterwards charged in the accounts of the Coal Area Association. There was nothing unusual in the fact that the persons who signed the memorandum of association of the Coal Area Association were mere dummies. Solicitors when drawing them up asked

June 4
1878
p 4b
LONDON
TIMES

This was the eighth day of the hearing of this case.

Mr. Charles Russell, Q.C., Mr. Gully, Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. M'Intyre, Q.C., and Mr. Morton Smith were for Messrs. Fenn and Crosthwaite; Sir Henry James, Q.C. (with whom was Mr. M'Leod), for Mr. Underhill; Mr. Webster, Q.C., and Mr. Moulton for Messrs. Satterthwaite and Twycross.

Mr. Herbert Crosthwaite was the first witness, and stated that he had left all matters connected with these companies to his partner, Mr. Fenn. He knew of all the prospectuses. He was a director of the Coal Area Association, and attended some of the Board meetings.

Mr. E. F. Satterthwaite, examined by Mr. WEBSTER, Q.C., said he was in partnership with Mr. Twycross as a stockbroker until 1873. He was a director of the Glasgow and Cape Breton Railway for a few months in 1871, and resigned, as he could not give it his personal attention. He remembered the drawing up of the memorandum on which the Coal Area Association was ultimately based. Under it, as he understood, they were advancing money to Mr. Gisborne to pay for and secure the coal areas. He was merely a shareholder in the Lorway, and had nothing to do with its promotion or prospectus. Of the Schooner Pond Company he was one of the first directors. He had nothing to do with the Emery prospectus; he had 50 shares in the company. At the time of the amalgamation some shareholders in the companies absorbed made it a *sine qud non* that the three new areas should be acquired; they were sold to the Cape Breton Company for £12,000 in cash and £30,000 in shares. They could have been sold to others for £24,000 in cash. He thought so well of the mining properties that he was quite willing to take his interest in them in shares.

Cross-examined by Mr. GULLY, Q.C.—If the Cape Breton Company had proved a success and its shares been at par, the profit made by the Coal Area Association would have amounted to £80,000. He had honoured a draft drawn on him by Mr. Gisborne in respect of the Emery Company.

Mr. Underhill, deputy chairman of the Stock-Exchange, stated, in answer to Sir HENRY JAMES, Q.C., that, except as a shareholder he had never had any interest in the companies; in them he had invested nearly £10,000. He was aware that Mr. Fenn knew Mr. Gisborne, but not of the relations between them.

Examined by the ATTORNEY-GENERAL.—He agreed to take shares in the Lorway before the prospectus was issued. He then thought the coal areas at Cape Breton would prove profitable. At the time of the amalgamation he acted on the committee, and represented the Lorway Company, of which he was a director. He knew the price fixed for the three new areas, and, from what then passed, thought Messrs. Fenn and Twycross interested in them.

Cross-examined by Mr. RUSSELL, Q.C.—Until the collapse of the new company, in 1873, he never knew that Mr. Fenn had any interest as one of the vendors, or that a large proportion of the purchase money paid by the companies would go to Messrs. Fenn, Crosthwaite, Twycross, Baker, and Gisborne. If he had known that the same persons were virtually vendors and vendees, he would, as a director of the Lorway, have exercised more care.

Sir George Elliot, M.P., examined by the ATTORNEY-GENERAL, said he believed Mr. Rutherford was thoroughly competent to report on the coal seams in Nova Scotia. He himself was of opinion that if the Americans would only reduce the duty from 3s. to 1s. 6d. the coal areas there would be as valuable as ever.

Mr. T. E. Twycross said he had had throughout a *bonâ fide* belief in the coal areas. He thought the meaning of the memorandum of March, 1871, was that they were to accept bills drawn upon them by Mr. Gisborne in consideration of a future interest in the coal areas acquired other than the Lorway. His firm agreed to take shares before the issue of any Lorway prospectus, in the preparation of which he was not concerned. He became a director of it in 1872. He had nothing to do with the Schooner Pond prospectus. He had been consulted as to that for the Emery Company. At the time of the amalgamation there was a very animated discussion as to the purchase of the three areas still belonging to the Coal Area Association. There was no concealment as to the interests Fenn and he had in them. He was personally anxious to hold them, as on the completion of the Louisburg line they would become more valuable.

Cross-examined by Mr. GULLY, Q.C.—He thought it consistent with his position as director of the Lorway to urge the interests of the Coal Area Association at the time of the amalgamation. He did not think it necessary to suggest the disclosure of the memorandum of agreement between the members of the Coal Area Association.

Mr. Lewis Paine stated that he was a director of the Schooner Pond, and one of the committee to arrange the terms of amalgamation. It was quite understood that Messrs. Fenn and Twycross, who were also members, had an interest in the three areas then proposed to be sold to the new company. He thought the price asked for these fair. He had himself put £25,000 into these companies, and holds all his shares still. If they had only had sufficient capital to carry out the original plan, in his opinion the Cape Breton Company would have been a success.

Mr. Rutherford, examined by Mr. M'INTYRE, Q.C., stated he was the Government Inspector of Mines in Nova Scotia from 1868 to 1871. He made a thorough investigation of the coal properties sold to the Lorway, Schooner Pond, and Emery Companies, and thought the prices paid by them for the several areas reasonable. Since 1873 their value had very greatly decreased. The chief want at Cape Breton was a market for the coal.

The Court then adjourned.

It was mentioned during the day that the case would probably be concluded on Thursday.

High Court of Justice

June 5 1878

file London Times

(*Sittings at Nisi Prius, at Guildhall, before Mr. Justice* LUSH *and a Special Jury.*)

ROONEY V. FENN AND OTHERS.

This was the ninth day of the hearing of this case.

Mr. Charles Russell, Q.C., Mr. Gully, Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. M'Intyre, Q.C., and Mr. Morton Smith were for Messrs. Fenn and Crosthwaite; Sir Henry James, Q.C. (with whom was Mr. Macleod), for Mr. Underhill; Mr. Webster, Q.C., and Mr. Moulton for Messrs. Satterthwaite and Twycross.

Two more witnesses were first examined for the defence as to the accounts of the companies, one of whom stated that the properties, if sold by the liquidator would, in his opini n, not do more than pay the debenture-holders, and that there would be nothing at all left for the holders of the preference and other shares.

The ATTORNEY-GENERAL then addressed the jury on behalf of Messrs. Fenn and Crosthwaite, and urged that so far as Mr. Crosthwaite was concerned, nothing whatever, even out of the mountain of evidence adduced in this case, could be found against him. As to the Lorway Company, there was also no misrepresentation on the part of Mr. Fenn, at any rate none that was fraudulent. Mr. Gisborne, the sole registered owner, was the sole vendor, and the defendants were not co-vendors with him. It was proved beyond a doubt that Mr. Fenn had done everything to beat down the price that was to be paid by the Lorway Company. Was this consistent with the contention that he was interested as a co-vendor? Some of the defendants might, on an investigation, be found liable to the companies, but not to the plaintiff, for moneys which have come into their hands, or have been used for their benefit. But for any one to be so made responsible it must be shown that he had acted with a fraudulent intention, not from any error of judgment or carelessness, or from following bad advice. The Lord Chancellor had distinctly laid this down in "Peek v. Gurney," L. R. 6, H. L., p. 403. If a man has committed a fraud, he must have done so intentionally. Neither Mr. Fenn nor Mr. Crosthwaite had really been guilty of the slightest fraud, nor had they done any act to make them responsible to the plaintiff for any loss he had

June 6 1878

p11 b

sustained. Touching on the point of damages, he referred to "Davidson v. Tulloch," 4 Macq. H. L. Cas., p. 441, where Lord Campbell had said that the proper mode of measuring the damages clearly was to ascertain the difference between the purchase-money and what would have been a fair price to pay for the shares according to the circumstances of the company at the time of the purchase. After reviewing the evidence as to the different companies and prospectuses, the Attorney-General pointed out that the undertakings were substantial and thoroughly genuine; the fact that Sir George Elliot had purchased a coal area in Nova Scotia proved that he, who was capable of forming the best opinion on such matters, thoroughly believed in their success there. He concluded with an appeal to the jury to take the whole matter into their most earnest consideration, trusting that they would then become satisfied that neither Mr. Penn nor Mr. Crosthwaite had ever made any false representations, or been guilty of any fraudulent concealments.

The Court then adjourned.

June 6 1878

p11 b.

London Times

(*Sittings at Nisi Prius, at Guildhall, before Mr. Justice* LUSH *and a Special Jury.*)

ROONEY V. FENN AND OTHERS.

This was the tenth day of the hearing of this case.

Mr. Charles Russell, Q.C., Mr. Gully, Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. M'Intyre, Q.C., and Mr. Morton Smith were for Messrs. Fenn and Crosthwaite; Mr. Webster, Q.C., and Mr. Moulton for Messrs. Satterthwaite and Twyeross.

Mr. WEBSTER, Q.C., in summing up the case for the defendants Messrs. Satterthwaite and Twyeross contended that it had been clearly proved how groundless were the assertions that the shares in these companies had never had any real value, and that the defendants had never invested in them moneys other than those they had received from the Coal Area Association. So far from their "operating on velvet," Messrs. Satterthwaite and Twyeross had invested £11,000 in them before receiving anything through that association, which had been stigmatised as a company without property or capital, merely formed to give a machinery for dividing the plunder made out of the several companies, in respect of which this action was brought. He denied there was any wish to keep the whole matter

June 7
1878
p 11 c
London Times

secret; the association was a purely formal machinery, and one that they defendants had a perfect right to use. The learned counsel then proceeded to trace the connection which Messrs. Satterthwaite and Twycross had had with the several companies, and contended that no sort of proof had been adduced to show that either of them had been guilty of any impropriety in respect to any single one of the companies. It was necessary for the plaintiff to have proved that there had been a conspiracy to defraud, and fraud must be not inferred. He contended that the only reason that the plaintiff had for this action was that he had hoped by dragging the defendants into court to get back out of them moneys he had unfortunately lost in speculation.

Mr. CHARLES RUSSELL, Q.C., then replying on the whole case, stated that, beyond any question of money, this case was of great importance, both to the plaintiff and the defendants. It had been stated that the plaintiff had said that on his oath which he knew not to be true, and his character was, therefore, at stake too. Shortly put, the case was that by the false and fraudulent representations of the defendants in putting before the public, and before the plaintiff as one of the public, certain companies, and by their concealment of the facts which were material to be known to the public, and the concealment of which facts made that which was represented false, he, and a great many others were induced to embark their money to a very considerable amount in various companies, and they had lost that money, and the plaintiff sought in this action to recover the damage which had accrued to him from that state of things. Doubtless the defendants at one time believed in the success of these companies—probably not that they would, if well managed, be profitable to their shareholders, but as likely to succeed on the Stock Exchange. No evidence had been given to show that there could have been a sufficient market for the coals, and as to the Cape Breton Company, it never at any time had in it the elements of success. Out of the £606,000 spent by it, no less than 116,000 must have gone in losses by trading, if not spent in management. The companies were not bogus companies; but all who came to the public for subscriptions to such undertakings were bound to put before it the same *data* on which to form a judgment, as were present to their own minds. It was enough to prove that the plaintiff in taking shares was influenced by the statements in the prospectuses. As to the Coal Area Association, its sole object was to divide the spoils between its members under the terms of the agreement of March, 1871. This was, in effect, that if Messrs. Fenn and Crosthwaite and Messrs. Satterthwaite and Twycross, honoured Mr. Gisborne's drafts on them for £2,500 in all, they should be entitled to 4-10ths if one company were brought out, and 6-10ths in the case of two, of all profits realized by the sale to these companies of coal areas in Nova Scotia then bonded or to be bonded to Mr. Gisborne. He was never the real owner of these areas, but had only the right of pre-emption. When the Lorway was bought out the profits were £4,184, and this money was shared according to the terms of that agreement. They did not get the money then, it was true, but it was used to "bond" other areas, and when those were sold to companies, the profits were divided in the proportions named in that memorandum between Messrs. Fenn and Crosthwaite, Messrs. Satterthwaite and Twycross, Mr. Baker and Mr. Gisborne. In the payments advanced to secure or bond the further areas, the drafts were ear-marked so as to identify them with specific areas. Mr. Gisborne had never been, as was stated in the prospectuses, the owner and sole vendor of the properties. The learned counsel then proceeded to trace in the accounts of the Coal Area Association the payments for Mr. Baker's qualification shares in the different companies, pointing out that they were there charged against the association and not against Mr. Baker only. After going into details as to the non-disclosures and alleged misrepresentations in the different prospectuses, and particularizing the shares in respect of which the plaintiff in this action seeks to recover damages, the learned counsel concluded an address of more than four hours by an appeal to the jury not to shrink from putting the real stamp on the actions of the defendants with reference to these companies, and to refuse to say that they could only see in their conduct that which was honest and right.

The Court then adjourned till to-morrow at 12.

It should be mentioned that in accordance with an arrangement made at the commencement of the case, Mr. Underhill, against whom there was no imputation whatever, was struck off the record as a defendant, after he had given his evidence on Tuesday.

June 7
1878
London
Times

it if he thought proper; but, on the other hand, he might think proper to answer it. It was urged, moreover, that the Master of the Rolls, in giving judgment in the Court of Appeal, had said that a man might be asked whether or not he had committed a murder and tha it was for him to object to answer it if he pleased; and it was further urged that this had been repeatedly laid down in courts of law.

The COURT, however, said that a Judge would not allow the question to be put. There was no case, they said, in which it had been held in equity that a party could be asked a question tending to criminate and now, under the Judicature Act, it was declared that the rules of equity should prevail. They therefore must, on general principles, refuse the application; but they added that as this was a case of a newspaper, and newspaper publishers were by statute required to disclose their names, that made a difference, and interrogatories would be allowed as against the publisher—directed to the point of publication—whether he is the publisher of the paper.

ROONEY V. FENN AND OTHERS.

This was the action by a shareholder in certain companies against some of the directors for false representation in the prospectus, and also for omission of certain contracts with the promoters. The substance of the case was that the defendants had purchased some coal mines in Cape Breton for about £24,000, and re-sold them to the companies for £107,000, thus making a profit of £83,000, which, it was alleged, had been concealed from the subscribers. In 1871-3 four companies were formed to work the mines the prospectus not stating the alleged transaction, but stating that one Gisborne had contracted to sell the mines to the companies, and the plaintiff was induced to take shares to the amount of £8,000, all of which he lost. The companies were wound up in 1875, after a sum of between £600,000 and £700,000 had been obtained from the public. In the result, the plaintiff lost the money he had invested, the companies not being able to work the mines at such a cost, and hence this action. Such was the substance of the plaintiff's case. In point of fact, Gisborne, in 1871, having the means of ac

June 8
1878

Fenn and Mr. T. P. Baker, C.B. (since deceased), were two of the first directors. In this company the plaintiff took shares, on which he has had no interest at any time. In the same year the Schooner Pond was brought out by Messrs. Elkin and Goetz, with a capital of £30,000, and Mr. Satterthwaite and Mr. T. P. Baker were two of the first directors. In 1872 a third company, called the Emery, was brought out, with a capital of £20,000, and Mr. Baker was one of the directors. In both these latter companies the plaintiff also took shares. The plaintiff in this case contended that in the prospectus Mr. Gisborne was put forward as the sole vendor, whereas, in fact, he was only a co-adventurer with the other parties —Messrs. Fenn, Crosthwaite, Satterthwaite, Twycross, and Baker—to the agreement of the 18th of March, 1871. He sought to recover £8,000 which he had lost in the several companies, charging the defendants with fraudulent misrepresentations as to the vendors in the different prospectuses, and so with a fraud at common law, and further, with a statutory fraud under section 38 of the Companies Act of 1867, in the non-disclosure of material contracts.

Mr. Charles Russell, Q.C., Mr. Guily, Q.C., and Mr. R. Vaughan Williams appeared for the plaintiff; the Attorney-General, Mr. McIntyre, Q.C., and Mr. Morton Smith were for Messrs. Fenn and Crosthwaite; Mr. Webster, Q.C., and Mr. Moulton were for Satterthwaite and Twycross. The only other defendant remaining on the record was Mr. Elkin, who was unrepresented; there had originally been over 20.

The learned JUDGE, on summing up, said that no evidence had been given to show that the properties acquired by the companies were not worth in the market at the time the prices paid for them, and it was not necessary for the jury to consider the question as to whether or not they could have been commercial successes. The plaintiff made his claim in two ways; he said the defendants had made false and fraudulent statements in the prospectuses, and had, therefore, committed a fraud at common law; and then, secondly, he claimed against the defendants under section 38 of the Companies Act of 1867, charging them thus with a statutory fraud consisting of the non-disclosure of material contracts. These two charges were quite distinct. Was there, then, any false statement, and false to the knowledge of those who made it, in any of the prospectuses? In the language of the Lord Chancellor in the judgment in the case of "Peek v. Gurney" ("L. R." 6, "H. L." p. 403),—"Mere non-disclosure of material facts, however morally censurable, however that non-disclosure might be a ground in a proper proceeding at a proper time for setting aside an allotment or a purchase of shares, would, in my opinion, form no ground for an action in the nature of an action for misrepresentation. There must, in my opinion, be some active misstatements of fact; or, at all events, such a partial and fragmentary statement of fact as that the withholding of that which is not stated makes that which is stated absolutely false." But was there any evidence of any misrepresentation in these prospectuses? It was alleged in the statement of claim that the defendants formed themselves into a syndicate, but there had been no evidence to support such an allegation. There was also none at all to show that Mr. Gisborne acquired the properties subsequently sold to the companies in conjunction with the defendants. The plaintiff alleged that the Lorway coal area had been offered to the company by the defendants and not by Mr. Gisborne, with whom they were joint owners under the agreement in the letter of March 31, 1871. That was all that was complained of in the Lorway prospectus, and the evidence had established the two facts—that Mr. Fenn had done all in his power to buy the area cheaply, and that it was the property of Mr. Gisborne. Before the agreement of March, 1871, this and other areas had been bonded to the latter, the owners binding themselves to sell them to him at a certain price at any time within a specified period, while he did not bind himself to purchase them. In the Lorway area the defendants had certainly an interest, but not as co-owners. As to the Schooner Pond the allegation of the plaintiff was of the same kind—viz., that if the property sold to the company had ever been acquired by Mr. Gisborne, this had been done on behalf of the so-called syndicate. Under the letter of March 18, 1871, the defendants had, doubtless, an interest in the ultimate profits on the area, but he had had a clear right to fix the price; and he himself had stipulated to pay Messrs. Elkin and Goetz £5,000 for promotion. The plaintiff further alleged that in the prospectus of this company the conveyance from Messrs. Kay and Symonds and the letter of March 18, 1871, had not been mentioned in the prospectus; but as to these there would be a question of statutory fraud. With respect to the Emery Company, the plaintiff alleged, but there was no evidence to show, that Mr. Gisborne was not the sole vendor. As to the Cape Breton Company, which was formed with the legitimate object of putting an end to the competition between the different companies, in addition to dividing those areas already sold to the Lorway, Schooner Pond, and Emery Companies, it had further acquired three new areas—the Haven, the Lake, and the Balmoral—and it had not been alleged that they had been sold to it at an exorbitant price. As to these, the plaintiff alleged again that Mr. Gisborne had acquired them only on behalf of all the parties to the agreement of March, 1871, and was not, as stated in the prospectus, the vendor. There did not seem to be any evidence to support this. The jury must be careful not to infer fraud from the detached passages of the correspondence which had been read to them, but any evidence of it must be clear. But supposing there had been misrepresentations, the question would be, had the plaintiff been thereby induced to purchase his shares? It was for the jury to say whether they believed or not that if the plaintiff had known of the actual price paid to Captain Lorway and the engagement of

June 8 1878

Mr. Justice [illegible] gone upon the view he had taken of the effect of the transaction with Gisborne that he was the owner, and that the defendants were not co-owners with him; and, therefore, if he was wrong in that view the verdict should be set aside.

The LORD CHIEF JUSTICE said it appeared to him that the defendants were mere mortgagees.

Mr. Justice LUSH said that was the view he took at the trial.

The LORD CHIEF JUSTICE said it certainly struck him so. It was entirely in their option, and only by way of security. They were not to acquire a given portion of the coal areas for £2,500, but to have a security on the coal areas to that amount. It was intended that the money should be repaid. It was an advance of £2,500 on the security of the property with liberty to make it over to a company. It was never intended by Gisborne that they should be the purchasers. It did not appear to him that they were purchasers and vendors, though it might be that their interest ought to have been disclosed.

Mr. Justice LUSH said the association of the defendants was merely as machinery for the distribution of the profits made.

Mr. RUSSELL.—That is, to divide the plunder.

Mr. Justice LUSH.—The profits. Your calling it "plunder" does not make it so. No actual fraud was charged. No other fraud was charged than the non-disclosure of these contracts; and the House of Lords in Gurney's case held that such mere omission to disclose was not positive fraud and did not amount to false representation.

Mr. RUSSELL then urged the 38th section of the Companies Act (30 and 31 Vic.), which requires contracts to be disclosed. The learned Judge had hardly made up his mind whether these were "contracts" within the enactment, and he had reserved the point.

Mr. Justice LUSH.—I thought it rather a difficult question after the difference of opinion in the Court of Appeal.

Mr. RUSSELL.—Assuming the contracts to be within the enactment; then the learned Judge left the wrong question to the jury. The right question would be whether the plaintiff took shares on the faith of the prospectus; whereas the question put was, whether he was thereby induced to take shares.

The LORD CHIEF JUSTICE.—A distinction without a difference, surely.

Mr. Justice LUSH.—It would be necessary to show that the plaintiff had been induced by the omission to mention the contracts to take shares which he would not otherwise have taken, and that was left to the jury and expressly negatived. The jury were of opinion that if the plaintiff had known of the omitted contracts he would have taken the shares. The enactment is a great extension of the common law ground of action, which requires false representation, for the enactment applies even although the omission was perfectly honest. But on that very account it is surely necessary to show that the plaintiff was damnified by the omission.

Mr. RUSSELL cited and relied upon some expressions in the judgment of the Court of Appeal,—"Nobody can tell what effect would have been produced upon his mind if he had known that the parties were not so disinterested as they pretended to be."

The LORD CHIEF JUSTICE.—Suppose the plaintiff had said, "In truth—though assumed the prospectus to be true—I did not take the shares on the faith of the prospectus, but because my broker told me it was a good thing;" would the enactment ground an action?

Mr. RUSSELL.—I should think not; but then the party would not have taken shares on the faith of the prospectus; but that question ought to have been left to the jury, otherwise the enactment would be nugatory. It is not necessary that the shares should have been taken only on the faith of the prospectus; and probably, in fact, they hardly ever are so.

Mr. Justice MELLOR—Certainly, if the enactment is only to apply where the omission to mention the contracts is shown to have had an effect on the mind of the party, its operation will be very much narrowed.

In the result, after a protracted discussion which took up a great part of the day, the learned Judges consulted together for some time; and then

The LORD CHIEF JUSTICE said that the learned counsel might take a rule for a new trial on all the points he had raised.

(Sittings at Nisi Prius, before Mr. Justice FIELD *and a Special Jury.)*

YOUNG V. THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

This was an action for a *mandamus* to direct the defendants to transfer about £7,000-worth of stock into the name of the plaintiff. The plaintiff was the son-in-law and executor of the late Mr. Baldwin. Among the effects left by Mr. Baldwin was stock in various railway companies, including about £7,000 in the defendant company. One of the trustees of the will was a Mr. Dobson. In 1873 Mr. Dobson transferred this stock, and the names of the transferees were entered in the company's register. The case for the plaintiff was that these transfers were procured by means of forgery. This part of the plaintiff's property was more looked after by Mrs. Young, the daughter of the late Mr. Baldwin and the wife of the plaintiff, than by the plaintiff. At the close of Mrs. Young's examination,

Mr. WATKIN WILLIAMS said that, though he could add other evidence, the whole of his case was substantially before the Court and that he could not make it stronger; that his clients had left themselves entirely in his hands, and that he felt that he had failed in making out a case against the company, and therefore ought not to keep it up any longer. He only wished to say, in justice to Mr. Dobson, that upon hearing all the facts he did not think what he had done amounted to forgery; but, on the contrary, he believed that, though he had committed a breach of trust, he had authority to do what he had done.

His LORDSHIP said that Mr. Williams had taken a very proper course, and that it was impossible for him to make out a case against the company. He also concurred entirely in what he had said about Mr. Dobson, and if it was any satisfaction to him (Mr. Williams), he might say that he and the jury had for some time been satisfied that the plaintiff could not make out a case.

Judgment was accordingly entered for the defendants.

Mr. Watkin Williams, Q.C., Mr. Cohen, Q.C., Mr. G. Wood Hill, and Mr. Hugo Young appeared for the plaintiffs; the Solicitor-General (Sir H. Giffard, Q.C.), Mr. Edwards, and Mr. Graham for the defendants.

COMMON PLEAS DIVISION.

(Before Lord COLERIDGE *and a Special Jury.)*

MARIMON V. OYE.

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June 21
1878
p11c
London Times

☞ The *Mining Gazette* for July, contains the following: "Nova Scotia has long felt the want of a good commercial agent in Europe, and we have much pleasure in being able to announce that Mr. Frederick Newton Gisborne has been appointed representative of the Mines Department at London. Mr. Gisborne's fame as an electrician and inventor is almost universal, and his popularity in British North America will render the news of his nomination as welcome to his personal friends as by the public it will be admitted to have been opportune and necessary."