

thing in the company's charter giving the company power to borrow which would lead the lender to think the security was more than what the company could claim under the contract? What does the Judge say? The case is reported in Law Journals P.C.C. Vol. lvii., page 40: "The assignees, indeed, contend that the Act of 1881 and the company's charter contain certain provisions which in any controversy with the Government place them in a better position than the company. The charter contemplated that the company will borrow money, and says that it may do so and may issue bonds upon the faith of the corporate property. But their Lordships cannot find any indication throughout the whole of the documents which should lead a lender to think that the 'corporate property' is anything more than what the company may justly claim, or that he is in any other way to stand on higher ground than the borrower. That is the crux of the whole thing: Was there in our Act of 1884 anything which reasonably led us to believe that we were in a higher position than the borrower? What would the lender assume from the statutory power of borrowing given to the company? In the Newfoundland case the assignment was of part of their undertaking and interest in subsidy. Here the statute says a 'first charge on the railway and everything pertaining thereto.' To business-men, and evidently to eminent lawyers, the two cases were wholly different. The debenture-holders did find 'what should lead a lender to think that the "corporate property" was more than what the company could claim and that the debenture-holders did stand on higher ground than the borrowing company.' Hence it is idle to say that the Newfoundland case was a warning to us, or that the existence of that case shows we must have anticipated that our claim to the constructed line could be swamped by a counter-claim against the company. We are not in a Court of law, and, it is needless to remind us, as Mr. Bell seemed, in effect, to be continually doing, that we had no enforceable legal rights. I am not concerned, therefore, with the strictly legal aspect of this counter-claim; but on fair and equitable grounds I say: We, as debenture-holders, broke no contract with you, are not responsible in any way for the company's failure, and should not be punished for their default."

*The Heads and Principle of Damages set up by the Counter-claim.*

Now, I proceed to examine the heads of damage claimed. 1. What is the general principle upon which every Court limits the extent of the damages a man may recover for breach of contract? The party in default shall be held liable for all losses that may be fairly considered as having been in contemplation of the parties at the time the agreement was entered into. You cannot claim upon a contractor for losses which were never dreamed of when the contract was entered into. I need scarcely refer you to the leading case of *Hadley v. Baxendale* as ample authority for this. Another principle is this: the measure of your damages for breach of contract is what would it take you as plaintiff to complete the contract at the time the contract is first broken. I tell a man that I cannot or will not carry out my contract with him; or a plain breach arises in some other way. He cannot wait five or ten years and then come into Court and say, "See what I have suffered by this delay." The answer is, "The delay was yours. You are entitled only to such damages as would have arisen had you promptly, at the first intimation of breach, carried out the contract yourself, or had somebody else to carry it out for you." That is the rule of the law, and it is the rule of common-sense and justice.

*Mr. Guinness*: When was the first breach?

*Dr. Findlay*: The first breach or intimation of breach on which the Crown could act was in 1892. Now, let us see what kind of figure this counter-claim cuts in the light of these rules. 1. What was fairly in contemplation of the parties as to damages, at the time this contract was signed by the company and Crown? It is, in effect, contended that if this company had finished the railway—but had been ten years late in finishing it—that the Crown would have had a claim to £3,000,000 for damages for delay. Now, let us see where the company and the debenture-holders would have been if they had gone on till the railway was completed finding the money the Government demanded for its construction of this line. The Governor seized the line in 1895. We will suppose the work was pushed on and the line finished in five years.—(As a matter of fact, the Crown has constructed about four miles and a half a year since it took possession—that is, in five years.) All the demands of the Government for construction-moneys have been satisfied by the company or by the debenture-holders. The line is completed. Then the company or the debenture-holders come forward and say, "Will you give us our completed line back again?" "No," says the Crown. "Through your default the completion has been delayed for ten years. We have lost Customs duties, population, settlement, comfort, and convenience. We have a counter-claim for £3,000,000. The whole line is only worth, we say, £2,500,000. We will thank you to hand over to us the balance of £500,000, and we will cry quits." Can any one suggest that that kind of thing was in the contemplation of the parties when the contract was entered into? The claim would be laughed out of a Court of law even as against the company, and yet here—here it is urged against us as mortgagees in order to smother, so to speak, the equitable claim we have to this line. What would be the case between private individuals? I undertake to build a house for a man, and before the house is half finished the contractor abandons it, and I put on men and finish the job. I am entitled to claim all the extra expense I am put to, no doubt, in finishing the contract; but can I set up a further claim for deferred settlement, on the ground that my marrying and settling down has been delayed for want of a house, or that the girl has left the colony. I will not carry the analogy into the further head of loss of population, comfort, or convenience. But take a perfect analogy: A contractor undertakes to make a great main road through a rich district for £10,000, and breaks his contract after completing a third of it. Could the local body wait five or ten years, and then sue him for all the direct, remote, conjectural, and fancied damage the whole community thought it had suffered? Surely any reasonable tribunal would say, "What would it have cost you to construct this road promptly? What has it cost you to construct it more than