

THE ESPLANADE CONTRACT.

LETTER

FROM C. S. GZOWSKI & CO.,

TO THE

CITIZENS OF TORONTO.

GENTLEMEN,—Your City Council having last night decided to adopt the report of their Committee on the Esplanade, and to discharge us from our duties as contractors for that work, we desire to address to you those remarks and explanations, which would have been made to your Council, had their conduct towards us not been characterized by such a want of good faith and common justice, that self-respect prevented our holding any communications with that body—except such as, up to this time, we have been obliged to take, in defence of our legal rights. Our relations to your city, as contractors, being now terminated, by the act of your own representatives, we have no longer any hesitation in putting before you such a statement of facts, as must be conclusive as well of our own good faith as of the reckless indifference to the sacred obligations of honor and honesty, and of the best interests of the city, which have characterized the proceedings of a majority of your Council.

We felt it our duty, on a previous occasion, to state to the Mayor the facts connected with our contract, up to a certain point. We did so in hopes that that statement would have induced the City to pause, before consummating an act of wrong and of bad faith. But we speedily found that our anticipations were erroneous, and we have therefore waited the final action, foreseeing that the conclusion was decided and foregone, and that, if we acted prematurely, we might only succeed in pointing out a better way for our opponents to injure us, without the slightest hope that we should receive justice.

Our position towards the city of Toronto has been that of parties who have entered into a solemn contract and agreement, and who have, in reliance on the faith of the city pledged to them,

expended a very large sum of money, and incurred most serious liabilities. Under such circumstances, it will not be denied that it was the duty of the Council, before perpetrating an act fraught possibly with the most ruinous consequences to us—and, also, impugning most seriously the fair fame and integrity of the city—to determine, by a most careful and impartial investigation, whether any sufficient grounds existed for breaking their engagement with us; and if such grounds did exist, whether they also justified a breach of covenant towards the Grand Trunk Railway, for the right of way through Toronto.

Now, in the first place, we put the question to every candid citizen here—Have the Council secured a careful and impartial investigation? It must, in the first place, be borne in mind that the Council were one party to the contract—we were the other. The Committee appointed by them, had as its chairman a person (Mr. Adam Wilson) committed, in the most decided way, to prove, *aut fas aut nefas*, that the whole contract was based in fraud and extortion; and the majority of the members were equally so pledged. Assuming, however, that when named as judges, they would forget their prejudices as accusers, it might have been expected that common fairness would have dictated, in an enquiry of the kind, that the other party to the contract—ourselves—should have been allowed to be represented, and that they would at least have given us the opportunity of meeting our accusers face to face, hearing their evidence, and defending ourselves by such proof as we might possess. The Committee did nothing of the kind. They never intimated to us a wish, or even permission, that we should attend, as parties to the investigation. They never gave us the slightest opportunity of cross-examining their witnesses, or adducing testimony ourselves—and even had the audacity to expect us to appear as witnesses before them, in a case in which we had at least equal rights with the city, and to submit to the inquisition

of men whose sole and avowed object was to deprive us of our rights, and to damage our characters.

Waiving, however, the evidence of a plain and foregone conclusion, that the city *wished* to have an exclusively *ex parte* statement, it might be thought that common honesty would have dictated to that committee the propriety of seeking disinterested testimony. What has been their course? We know not who they examined, but their report plainly shows on whose testimony it is based; and we may safely infer that if they had obtained similar evidence from others, we should not have seen their conclusions arrived at upon the assertions of disappointed contractors and non-professional men, who, however respectable in their own line of life, are not fitted by habit or education to give reliable testimony in such a case.

On the evidence of such parties the whole report of the committee has been founded, as it is painfully evident that the greatest care has been taken to distort and question the statements made by Mr. Thompson and Mr. Shauly; and the former gentleman is even exposed to the most wanton charges of dishonesty, because his evidence bears out our position, while the latter has his professional reputation decried and sneered at for the same reason.

We consider, therefore, that in the appointment of the committee, and in the course of its proceedings, the Council had no wish to elicit truth, but sought merely a cloak for that wrongful course they had previously determined on.

We do not propose to follow the committee through the mazes of their report, or to occupy ourselves with the exposure of the numerous falsities and unjustifiable conclusions which mark it. The whole case is capable of being narrowed down to a very few issues, and to these we shall endeavor to confine ourselves.

The most serious charge, and in fact the one on which the whole case of the committee rests is, that the contract was obtained by fraud and corruption; and while they are obliged to admit that even with their *ex parte* evidence they have failed to detect any trace of fraud, they affirm it is still to be presumed on account of our receiving excessive prices; and they add the gratuitous insult to those parties who appeared before them, that if on oath their evidence might have been different. Before this statement closes, we shall show that if, as the committee themselves state, fraud is only a presumption based on our excessive profits, there is not the slightest ground for the imputation either on us or on those gentlemen who represented the city when the contract was made.

The charge of fraud and corruption we might, if we alone were concerned, have treated with that scorn and contempt which we trust will yet be the guerdon of our opponents from their fellow citizens for their action in this matter. We are not strangers either in this city or this province; we have as individuals been known and trusted for very many years, and we defy our worst enemy to point to one single act that any one of us individually or our firm collectively has ever done for which we have occasion to blush before our

fellow citizens. If previous reputation be any safeguard from the attacks of the slanderer and the liar, we have that reputation; and we would not fear calmly to rest on our well known characters until the future shall expose the calumnies of our accusers. But having in our possession abundant means of dispelling the suspicions that have been raised, we do feel that injustice to these honorable men who have supported and sustained us, we have no right, even for our own personal advantage, to omit one single act or statement which may remove from their characters charges that we would ourselves despise. In taking this course, it may be necessary somewhat to weaken our claim for indemnity against the city by dissipating the idea of those fabulous profits the committee allege we were to make; out we feel assured, that if we thus destroy our future claim for damages for prospective profits, we shall at any rate preserve to ourselves the esteem and confidence of those who have trusted us, which we regard as far transcending those views of profit that have obscured every principle of equity in the minds of the City-Council.

We find in the report of the committee that they object to the contract for nine specific reasons which we shall now consider seriatim, in as brief terms as possible.

1st. Because it is not in accordance with the tender of the 7th October, 1853, and the memorandum of the 25th of November, 1853, specifying the price of the Esplanade to be £140,000 or £150,000, less £10,000 for the right of way.

This statement we distinctly deny; the tender stated in the plainest terms that we would construct the Esplanade for a *gross sum* of £150,000, and allow out of it £10,000 for right of way. It further stated that if required to build certain iron bridges we should require a *net sum* of £150,000 without deduction for right of way. In fact no one but a most dishonest reasoner can draw any other conclusions from our letter, as the bridges formed *no part* of the original plan or work, and our proposal as interpreted by the committee, would, therefore, have been that we would build the iron bridges for nothing, which is manifestly absurd. And here we must notice the way the committee have referred to this subject; they say the letter then proceeds:

"If desired by the Corporation we will complete the Esplanade as stated above, and construct five iron bridges, &c. &c., for £150,000 without deduction," and this expression *without deduction* is explained as follows:—

"At your suggestion the offer of £150,000 without deduction is to cover the cost of constructing a wooden bridge across the Don, connecting the island with the main shore," so that this offer was to build the Esplanade and five iron bridges and one wooden bridge for £150,000, and to allow the city £10,000 for the right of way.

We trust you will mark the committee's explanation of the words "without deduction," when, we add, that the sum of £150,000, without deduction, is to cover the cost of constructing the Don bridge. Now can the words "without deduction" refer to anything else than the sum the city were to *deduct* for the right of way? A

more infamous distortion of plain language was never made than the committee have here been guilty of. Our previous letter to the Mayor showed that we never proposed to include the bridges, except on payment of an additional sum; the proceedings of the Council show they so understood it, and Mr. Shanly's estimate shows he so understood it. But how do the committee support this wilful distortion of language? as might be expected by a similar distortion of the memorandum of 25th of November, which considering the right of way as a set off against the bridges, states the "price for the entire Esplanade as per plan to be £140,000, and for the five bridges £10,000, agreeing precisely with our tender of 7th October, which says, "we will construct, &c., for the sum of one hundred and fifty thousand pounds, and we will allow the city from the said sum £10,000 for the right of way forty feet in width," making the price of the Esplanade £140,000 net, after deduction of price of right of way. Our tender then went to say, "we will complete the Esplanade as stated above, and construct five iron bridges across the railway tracks, supported, &c., for the sum of £150,000 without deduction" of £10,000 for right of way, and finally, we agreed that the offer for £150,000, without deduction for right of way, should include a wooden bridge over the Don. Now, after all the misrepresentations of the committee, it is abundantly evident that we demanded £150,000 net for the proposed work and the reservation of the right of way for the Grand Trunk; that the city Council so understood our offer, and that the contract is in strict and literal conformity with our tender, giving us a gross sum of £160,000, from which a deduction of £10,000 was to be made for right of way.

We now pass to the second point:—

"Because it does not specify the price of earth filling at 1s. 3d. per cubic yard, according to the memorandum of the 25th of November, 1853."

Our reply to this is plain and distinct. We never made any tender to do work for the city by detailed prices; we offered to construct a certain work, according to certain plans, and taking all risks upon ourselves, for a gross sum of money, and whether the result gave us 1s. 3d. or 2s. 6d. was perfectly immaterial to the city. We must, however, notice the dishonesty of the committee on this subject, putting aside our tender and taking up the memorandum of 25th of November, they assert it was an offer to do the earth filling at 1s. 3d. per yard, while they entirely annul the fact that if this memorandum were to operate against us on this item, it ought to operate in our favour on all the others. But, in their desire to do justice, they assume that we agreed to do the work for 1s. 3d. and spend columns in calculations on this basis, over and over again repeating that this was our own price, where, in all these calculations, they designed to prove our enormous profits, they reduce the other items of the memorandum of the 25th of Nov., to what they call fair rates. It will, however, scarcely be credited that after having based numerous calculations upon the price of 1s. 3d., and spoken of it over and over again, as our price, and all we asked, &c., the committee in referring to this

same memorandum say, in speaking of Mr. Gamble's evidence, that "Gzowski & Co." objected to the price of 1s. 3d. being inserted in their contract, and were sustained by Mr. Thompson; and the committee subsequently, when they have apparently forgotten what they have stated before, and only desire to injure Mr. Thompson; admit that by his evidence it appeared "that the 1s. 3d. per yard is increased to 1s. 6d. (by Mr. Thompson) for discount, &c., was a price obtained by him from Gzowski & Co. to satisfy the water lot owners;" and "that he had neutralized his statement that the owners and lessees would not be charged more than 1s. 3d. per yard for earth filling, by the statement that he had informed them it would make no difference to them at what price the earth filling was done, as they would have to pay the difference between whatever price might be charged to them, in the shape of a charge upon the cribbing." And the committee in their comments upon Mr. Thompson's evidence state "Mr. Thompson nor the contractors never meant to let the water lot owners or lessees off altogether from this difference between the 1s. 3d. per yard, and the contract price of the earth filling." Now, can the committee venture to say we offered to do the work at 1s. 3d., when in their own Report they conclusively show that we never did anything of the kind, and that the memorandum of 25th November was obtained from us on account of differences between the city and the water lot owners, in which we had no concern.

The third, fourth and fifth objections are as follows:—

"3d. Because £10,000 to be retained is too small a security for the due performance of the work."

"4th. Because the payment of that £10,000 within thirty days after the completion of the works, leaves no security whatever to the city that the works will stand good for the two years for which it is guaranteed."

"5th. Because the submission of differences which may arise, to the decision of the Grand Trunk Engineer, is not a sufficient protection to the city that its interests will be properly attended to, as that officer is more frequently in communication and correspondence with the contractors under him than with the city, and to whom, therefore, he is more likely to be favourable in matters not connected with those he is superintending."

These are really too trumpery to be worthy of particular notice, they merely serve to show the animus of the committee, and could not possibly be offered as reasons for a violation of a contract once entered into. The allusion to the Chief Engineer of the Grand Trunk is in the worst possible taste. Whoever occupies that position in a company whose transactions involve such enormous interests must be a man of character and professional ability, and if such a person could have any favourable bias towards us, it could only arise through our faithful discharge of other work under him, which should be evidence in our favor rather than against us. It is, however, a contemptible endeavor to impugn the motives of one who may yet have to act in the matter of this contract, and to create a prejudice against him.

The sixth objection is :—

“6th. Because the right of way for £10,000 has been sold at an unreasonably low price.”

With reference to the right of way we shall at this time only state, that so far as our line is concerned, it is a matter of perfect indifference to us what the price of the right of way may be. We acted, in obtaining it, as agents of the railway company; we made for them what we thought an equitable bargain. The railway company would have had to pay us the £10,000 when we delivered the line to them, and neither more nor less. We have no personal interest in this question, and never expected or desired to make one shilling profit upon it. The whole allegations and insinuations of the committee and its members on this matter are therefore perfectly baseless and unfounded.

The seventh objection is—

“7th. Because the sum to be paid of £160,000 for the entire work is an exorbitant and unwarranted sum, as it can be made manifestly to appear, by reference to the following statement.”

This objection will be found fully answered in a future part of this statement.

The eighth objection is—

“Because three years and a half have been given for the performance of the work, while Mr. Thomas allowed the others who tendered, the period of only two years.”

As the Committee do not lay any stress on this point—we presume they are aware it is unimportant and certainly affording no ground for a breach of contract.

The ninth and last objection is—

“Because there are 166 feet appropriated for public purposes and the Railway track, while the city is only entitled to 100 feet, and the price of the other 66 feet has not yet been ascertained, even if it should be a necessity to take that 66 feet at all, which your Committee believes there it not.”

To this we need offer no reply, it may be a charge against the former city Council, but it is certainly none against us, as it is certainly a matter entirely irrelevant from the contract, the disposition the city choose to make of the Esplanade, when finished.

Besides the foregoing nine objections to our contract, we find in a subsequent part of the Report, seven distinct allegations against us, which we shall here dispose of—

“1st. From the time of Gzowski & Co.’s tender on the 7th of October, 1853, they have had their teeth-filling, as before adverted to, curtailed in the deepest part for several thousand feet in extent.”

This statement is not true. The line of Esplanade, as laid out in the bay, is precisely that designated on the plan, and therefore we have not had “our earth-filling curtailed in the deepest part for several thousand feet in extent.” The difference in distance remarked on by the committee as existing in the several plans in no respect affect the outer water line of the Esplanade, which was the same on them all; and the at-

tempt to make it appear that we were benefitted by this change is most unjust, as a simple inspection of the plans will prove. Our tender was to fill out to a certain line for a certain price, at all risks as to distance or depth; that line was designated on the plan, and we have never made the slightest attempt to change it.

“2d. They have had their earth filling fixed upon an estimate of 1,000,000 of yards,—while it does not nearly amount to that quantity.”

This is untrue in two respects. First, our contract being for a gross sum, it is quite immaterial in the end what estimate is made; and secondly, the quantity of earth work does amount to 1,000,000 yards, as we shall presently prove.

The third objection is—

“They have had their price for it assumed at much more than the 1s. 3d. per yard they had offered to do it for.”

To this we reply as before, that we never offered to do the earth filling or any other portion of this work at detailed prices; and that neither the estimate of price nor quantity were or could be material portions of the contract.

The fourth objection is—

“They have had a large discount granted to them when they agreed to take debentures at par.”

This is simply untrue. The Act required the city to issue its debentures at par. We made our own estimate of their real value, and thus arrived at the sum which we considered it prudent to offer to construct the esplanade for, receiving such description of payment. For the committee to assume that the city debentures were, in October, 1853, worth par, is ridiculous, and it is equally absurd to suppose we did not make such allowance in our price as would in our judgment cover such discount. The committee, however, have displayed singular ingenuity in warping every circumstance connected with the contract; fairness might have dictated a reference by them to the cash value of the payment to be made to us in debentures; but the reader will look for this in vain in their Report. The committee apparently have thought that it was our business to get par for their debentures, and that all must be profit between the cash cost of the work and £150,000. Hereafter the rate-payers of the city may find to their cost that the Esplanade when paid for in cash, will require some sacrifice on their debentures.

“5. They have been allowed for engineering four times as much as the engineering is worth;—for what engineering is there left to be performed, when they have had plans, estimates, specifications, and soundings, performed at the expense of the city and delivered to them without charge?”

This is a distinct mis-statement, one of which the committee must have been deliberately guilty. We are allowed nothing for engineering—it is all included in the gross sum, and in the progress estimate on which we were to have been paid; the amount is only placed at £1,800 per annum, which we know it will cost us not the city. Will the citizens of Toronto believe that in their de-

sire to make out a case against us their own City Council stated that we have had all the engineering-plans, soundings, &c., performed at the expense of the city, and delivered to us free of charge, when the fact is, that every plan, sounding, document, paper, and engineering evidence connected with our contract has been made at the expense of our firm; that we have paid for everything, even to the very information supplied by us to the city, and which our enemies are now using for our injury. Among all the tortuous windings and skilful distortion of facts in the Report, we are glad the committee have in one case at least ventured on a direct assertion, and thus enabled us to convict them, of distinct misrepresentations.

"6. They are doing much less work than they agreed to do in October: for the depth of their breastwork is only nine feet, while it was to have been fourteen feet."

This again is absolutely false, as we have before stated the outer water line of the esplanade and its height were all fixed at the time of our tender and have never been varied from. The city required the Esplanade to be four and one half feet above the water level of 7th October, 1853. This level was established that day and registered by the large boulder at Queen's wharf, and the above, therefore, is a most unfair and untrue assertion. Our work is fixed by the plans and specifications, and we have no means of doing any less work than we agreed to do.

7. And lastly, they are getting as a gift the 40 feet of railway track along the whole Esplanade, which is of value enough to have paid for the construction of the entire work from one end of it to the other.

This assertion is like most others in the report of the Council, made in the most reckless and unadvised way, and has not the shadow of a foundation. We repeat our previous statement, which is fully borne out by the terms of the contract, that we acted solely as agents for the Grand Trunk; that we looked to them for reimbursement of the £10,000 allowed by us to the city; and that whether the railway paid us or not, the right of way was theirs not ours; and if we had made a good bargain about the right of way, it was not for our own benefit but for that of our employers the Grand Trunk Company.

We have now noticed the several pointed objections made by the committee, but before leaving their report we wish only to notice one other assertion, and that rather because it reflects upon one of our firm. The report states: "Mr. Thomas as says Mr. Gzowski was present in the committee room when the tenders of the others were opened." We know not whether Mr. Thomas did give this in evidence to the committee, or whether they have taken similar liberties with his statements as with our own; but we desire to state plainly and distinctly that this assertion is false. Mr. Gzowski was not present.

We have now gone over in detail the several prominent causes alleged by the committee for the course the city has adopted, and we propose to sum up what we take to be the strong points urged against us, and to make our statement in reply.

The result of the whole report of the committee is comprised in the following points.

First. That the quantity of work, especially earth filling is much below that named by us; and that no such quantity as 1,000,000 yards is required for the Esplanade.

Second. That our profits would have been excessive.

Thirdly. That the right of way is worth a sum very much greater than we agreed to pay for it; and that the contract should be broken in order to make a new bargain. If we succeed in showing that the quantity of work to be done agrees with our statements, and that our profits are not excessive, we consider that the committee by their own report must be convicted of a most hasty and ill advised decision.

Under ordinary circumstances we should not have felt it our duty to expose our business transactions, or to state either our original calculations, or the mode in which circumstances have altered them. No men of business can with propriety be called upon to explain their own views of their own operations, and it might be said by us that whether we had made a good or a bad contract, there was no obligation on us to disclose the result. In the case of the Esplanade no one has ever heard from us one word either of murmur or of exultation in regard to it; we made a certain bargain—we were bound to carry it out—and we should have done so. Subjected as we have been to a breach of contract by the city on the ground of excessive profits, we believe few contractors would have been found willing to dissipate their delusion, and thereby show that no injury was inflicted on them, and we freely confess, that had our own reputation not been at stake, we might have accepted the conclusions of the committee as to our profits, as evidence in our favour, and met their charge of fraud as we best could, relying on our receiving enormous damages against the city, but we labor perhaps, unfortunately, under the delusion that good fame and reputation are more valuable than money, and we shall therefore place it beyond our power to claim hereafter prospective profits, while in doing so, we shall justify the confidence of the former City Council in making the contract with us.

First.—With reference to the work to be done. On this point we shall dismiss the minor items with this single observation, that we believe the statement of a professional man like Mr. Shanly, is more worthy of regard than those of Mr. Thomas and Mr. Howard. The committee say that the actual quantities of timber are 297,434 cubic feet. Mr. Shanly says there are 464,000 feet. We believe and know the latter figure is the amount, and we have already delivered upwards of 200,000 feet. The committee say there are only 12,577 cubic yards stone filling,—Mr. Shanly says there are 30,000 yds, and we know there are actually 32000 yds.

The great point is evidently the amount of earth filling, which the committee state at 657,193 yds. On this point we have pledged ourselves to prove that there are 1,000,000 yds., and we shall now proceed to do so.

We have in our possession, and are prepared:

to submit to any citizen of Toronto,—who may not have himself aspersed and calumniated us—the tables of soundings and accurate calculations of quantities made by us on the whole line of Esplanade, after the execution of the contract for our own use, comprising between five and six thousand distinct soundings, taken at every thirty-three feet square of the whole extent with profiles as well of the filling as of the excavation, and which are capable of the most accurate checking and examination, and by which the quantity of filling is established to be 1,025,672 yards; and independent of these measurements, and in case our estimation of loss by settlement should be too large, we are prepared to show in like manner that the approaches to the bridges afford an ample margin for any possible over-estimate. These calculations and soundings we are prepared to establish in any court of law or of equity; and in proof of our belief and knowledge of their accuracy, we may state that in our recent arbitration with Mr. James Cotton and us, Mr. Gzowski testified under oath that the quantity of earth filling was one million of yards, although that admission operated against us in estimating Mr. Cotton's damages, and it can therefore be scarcely conceived that at a time when we had no reason to anticipate difficulty with the city we would ourselves enormously over-estimate the quantity. We know not how Mr. Thomas and Mr. Howard made their calculations of quantity; we only know that ours were made in the winter of 1853-4, and occupied us for months and are open for inspection and revision by any competent authority.

We therefore state, and are fully prepared to prove, that the earth-filling of the Esplanade will exceed 1,000,000 yards.

Knowing that this point is established beyond a doubt, we shall now state, for the information of the citizens of Toronto, the lowest prices at which we have ourselves contracted and agreed to pay for the work, with the names of our subcontractors, that every one may know the exact facts.

We have contracted with Messrs. Humphrey & Camp to complete the earth-filling at 27 cents per yard, in cash, which will amount to 1,000,000 yards @ 27 cents. - - £67,500 0 0

And in further explanation of this matter, we state that no portion of the earth has been taken from our railway cutting; nor shall we require to increase that cutting, which is now nearly completed, so far as our railway contract is concerned.

We have agreed to pay the city threepence per yard for every yard of earth they furnish us; and we have cross-sections and calculations [open to inspection], showing that this quantity will be 500,000 yards - -

We have contracted with Mr. George Weir, for the stone-filling, at 6s 3d per yard, on a quantity,

per our own estimate, of 32,000 yards, [by Mr. Shanly's 30,000], 10,000 0 0

We have contracted with Mr. George Weir to complete the execution of the timber work, making in all 464,000 feet, at 15½ cents per foot - - 17,980 0 0

These contracts are made, we know, and are prepared to prove the quantities, and the cost in cash to us would therefore be £101,730 0 0

The planking, spikes, and bolts, we estimate at a cost of - - 2,200 0 0
The gravelling, at - - - 5,500 0 0
The drainage, at - - - 2,000 0 0
The engineering and superintendence for two years, at - 3,600 0 0
The iron bridges, estimated at £10,000, we now know will cost - - - - - 13,000 0 0

Our actual contracts and liabilities for this work are therefore £128,030 0 0

These sums being the minimum cash cost, we must, as prudent men, allow for contingencies, and on account of our guarantee of the work for two years, the ordinary allowance of 10%; and, in doing so, we would advert to the fact, that as part of such contingencies, we are now sued under an arbitration, by Mr. Cotton, for £2,500, as damages for breach of contract with him, 12,803 0 0

£140,833 0 0

[A small portion of the above work was executed by Cotton & Manning, at rates varying but slightly from the prices mentioned.]

The citizens of Toronto will therefore observe, that under the most favorable circumstances, the actual cash cost of the work to us, without any profit whatever, would have been £140,833.

We now desire to call your attention to the value we should have received for this work. Our contract was for £150,000, payable in debentures at 20 years' date. We need not do more than refer to the altered position of monetary affairs, to prove that this payment is seriously diminished to us. When we took the contract, we believed that our connections in London would have enabled us to make a favorable sale of these debentures; and we considered that, in the price we should receive for them, a fair profit would have been left on the work. These views are now changed, and we are therefore obliged to estimate these debentures at their present value, which we take to be about 80 per

6,250 0 0

cent. At this rate, £150,000 debentures would produce in cash - - £120,000 0 0

Add amount to be received from Grand Trunk for right of way - - - - - 10,000 0 0

Total value of contract, - £130,000 0 0

Total cost of do. - 140,833 0 0

Actual loss - - - £10,833 0 0

We have now put before the citizens of Toronto a plain statement of this contract based upon actual measurements and contracts made by us, and which we are ready to show to any who may desire it.

We shall not, however, content ourselves with this statement, but knowing the motives of our enemies, and that they will say—although this may now be so, it was not when the contract was made—we here add our solemn declaration.—That we never have in any way whatever given, or offered any inducement either of profit or advantage to any one to get us this contract, and further, that no other party besides our ~~sole~~ partners ever had either directly or indirectly any interest whatever in it, and that all suspicions to the contrary are utterly unfounded.

Our contract in the city of Toronto is now at an end by their own act of bad faith, as far as we ourselves are concerned, it is not a subject of regret to us, it is true we made a contract which we expected to yield us a fair profit, but it is also true that circumstances made it no longer desirable for us to go on with it. But at this point we join issue with the city, although our contract has day by day been becoming worse for us, we have never shown a wish to break it, our faith was pledged, and although we must have lost heavily, we should have gone through with it. We cannot but rejoice that our enemies have decided to break our contract, they have thus relieved us from all obligation, and it will be our own fault if we ever again place ourselves in a position to receive injury and insult from a majority of the Council of the city of Toronto.

So far as regards our new course in this matter we can safely affirm that our strong faith in the honor of the city has been best evinced by our going on with their work for months, advancing very large sums, and neither receiving nor demanding payment, and by our strict fulfilment of our contract, until grossly broken by the city. The cause for the recent course of the City Council must not, therefore, be sought for in our own acts, but elsewhere.

In explanation of the motives for the course adopted towards us we unhesitatingly assert that the whole scheme of Mr. Wilson and his friends has been to extort an enormous sum from the Grand Trunk Railway for the right of way through Toronto, based upon their belief that such a vast expenditure has been now made by ourselves and Jackson & Co., East and West, that the line could not be changed, and that if they could only break up their contract with us it would be in their power to make their own terms with the Grand Trunk Company.

If this was not their intention why should these

parties dwell on the immense value of this right of way. If it be greater now than it was two years ago, how has this arisen? Has it not been from the reliance all parties have placed in the faith of this city and their consequent expenditure? It is plain that, assuming our contract to be null, the city can only realize this vast sum for right of way from the Grand Trunk or from us. Now, so far as the Grand Trunk are concerned, it is manifest that if every other act we performed was corrupt and dishonest, it ought not to affect the bargain we made for them with the city, and that the duty of the city should be to save them harmless, whatever be the result of their difference with ourselves. The only excuse to be offered for a different course is, that Mr. Wilson believing, we are bound to find a route for the railway through the city, would break our specific bargain for this object and exact ruinous terms from us, rather than that a community should afford an ordinary facility to a most important and beneficial work at a fair rate. We cannot doubt that this has been the object, and if anything would justify the use of strong language it would be to find a city like Toronto, striving to ruin private individuals for their own collective advantage.

Fortunately for ourselves, we have only placed such reliance on the good faith of Toronto as we can sustain without absolute ruin. We may be left to a law-suit to recover what the city justly owes us, but we are not at their mercy in any other respect.

Our relations to this question we shall now state:—

Our original contract with the Railway Company, was to go to the waters of the Bay, at certain *detailed prices* for the *whole work*. Under this contract, we should have been only too happy to have constructed the whole Esplanade.

The amalgamation with the Grand Trunk, made it, however, necessary to connect the western with the eastern line, and our *contract with the Guelph Company* on which the amalgamation was concluded, expressly limited our line to "the city of Toronto"—leaving it to the Grand Trunk Company to decide how the connection with the Eastern line should be made. Our price for the *new contract* was a gross sum, and our individual interest was, therefore, to reach the city of Toronto at the least expensive point. Under this last contract, it must be evident to the most superficial enquirer, that we should have saved money by entering the rear of the city. But what did we do? We knew that the city wished and expected that the Railway Road would go down to the Bay, and we considered that our Mr. Galt had undertaken this in his communications with the city, when the amalgamation was closed. We therefore urged most strongly on the Grand Trunk Company the front route—Messrs. Jackson & Co., were opposed to this—and to remove all difficulty we engaged that if the city would sell the right of way for a sum equal to the cost of going by the rear of the city, we would engage to carry the railway along the front. This was agreed to, and £10,000 named as the price.

So far as we are concerned, our contract with

the Guelph Company and the Grand Trunk, is equally fulfilled by reaching Queen's Wharf, and if we have any reason for regret it is to be found in the fact that the desire honestly to fulfil all our engagements to the Guelph Company, and through them to the city of Toronto, has led us not merely to incur a large additional expense ourselves, but also to induce such outlay by the Grand Trunk and Jackson & Co., as may be rendered almost nugatory by the present design of the City Council to break their solemn agreement to grant the right of way to the Grand Trunk along the Esplanade.

Much stress has been laid on our assumed threat, that the Grand Trunk Railway would pass in the rear of the city if the Esplanade contract was not granted to us. On this point we will only remark, that the connection of the eastern and western sections of the Grand Trunk was a matter of most vital importance, and that if Messrs. Jackson & Co. and ourselves were to make a very large expenditure, contingent on the city preparing the right of way, we might well be justified in desiring security that it would be properly done. Notwithstanding all our precautions, it is now evident that the city are striving to exact more onerous terms, and the prudence of our former course is thus the more clearly shewn.

So far as we are concerned, the matter is now ended, and we leave the question of right of way through the city to be settled with the Grand Trunk Company, merely stating our opinion, that, as a bargain has existed for obtaining this right of way for £10,000, it will be difficult for the city to evade the performance of their agreement; and that it will hereafter be seen whether the Province will permit the city of Toronto to violate its pledged faith to the Grand Trunk, and to exact from a public work, in which all provincial interests are so deeply engaged, an extravagant sum to meet the views of those City Councillors who consider the former agreement an injurious act for the city. We are perfectly willing to leave the whole question to decision in the proper quarter, confident that, so far from the city gaining credit by its present disreputable manœuvre, they will both lose money and credit.

Before concluding, we will add, that in proof of our sincerity in the previous statements, and our conviction of what the result will be, we will

now grant the city a full and complete discharge of all and every claim on our part arising from the late contract, without prejudice to the rights of the Grand Trunk Railway, if they have any, provided the city will simply pay us for work done on the Esplanade, and secure us against the claims of our sub-contractors for damages. We feel deeply injured and mortified at the unjust attacks upon us, and if we can only be protected from actual loss, we are prepared to withdraw from all further discussion with the city of Toronto, and let the city Council find other and better contractors if they can.

We trust we have, in the foregoing observations, established conclusively that in the case on the Esplanade contract, and of the right of way we have acted honourably towards the city of Toronto, and that the extreme probability is that this work when hereafter built will entail a larger charge on the rate-payers than if our contract had remained undisturbed. In this case, we cannot help being reminded of the suspicions had against us in a previous transaction of our firm with this city. We refer to the £100,000 of stock held in the former Guelph Railway Company. In that case we had offered to relieve the city of their stock *at par* on the amalgamation with the Grand Trunk, and although perfectly aware that the transaction would not be a profitable one, we faithfully adhered to it; but, fortunately for us, certain city Councillors inferred that by our doing so, there must be some extraordinary latent object, and our offer was refused. The stock is now quoted at 50 per cent discount, and unjust suspicion of our sincerity has, therefore, cost the city about £50,000. We have no doubt the result will be the same now, and that the rate-payers of Toronto will yet have to thank the majority of their Council for a very considerable addition to their pecuniary burdens, while they have already acquired for them, by their action towards us, the unenviable reputation of being the only city in Canada that has ever repudiated a solemn contract, which has been in force and acted on for upwards of a year, leaving those who have trusted them with only such redress as a court of justice may afford.

We are, gentlemen,

Your obed't serv'ts,

C. S. GZOWSKI & Co.

Toronto, April 17th, 1855.

