

BETWEEN

THE ROYAL TRUST COMPANY, A
 BODY POLITIC AND CORPORATE, HAVING
 ITS PRINCIPAL PLACE OF BUSINESS IN THE
 CITY OF MONTREAL, AND LAFAYETTE
 HOYT DE FRIESE AND GEORGE
 LEDGER, BOTH OF THE CITY OF LON-
 DON, ENGLAND, IN THEIR QUALITY OF
 TRUSTEES DULY APPOINTED FOR THE
 BONDHOLDERS OF THE ATLANTIC & LAKE
 SUPERIOR RAILWAY, COMPANY. AND
 WILLARD BROWN AND CHARLES W.
 WELLS, BOTH OF THE CITY OF NEW YORK,
 IN THE UNITED STATES OF AMERICA,
 COUNSELLORS-AT-LAW, AND AS SUCH
 PRACTISING IN PARTNERSHIP IN THE SAID
 CITY OF NEW YORK, UNDER THE NAME
 AND STYLE OF BROWN & WELLS.....

PLAINTIFFS;

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AND

THE BAIE DES CHALEURS RAIL-
 WAY COMPANY, ET AL.....

DEFENDANTS;

AND

GEORGE BALL, A. P. SIMAR, DEL-
 PHINE GOULET, F. D. SHAL-
 LOW, W. H. RAPHAEL, CHAR-
 LES VEILLEUX, THE GAZETTE
 PRINTING COMPANY, FROTH-
 INGHAM & WORKMAN (LIMITED),
 ESTATE SIMON PETERS,
 JACQUES PELOQUIN, CHARLES
 R. SCOLES AND ALEXANDER
 McDONALD.

CREDITORS.

*Construction of Statutes—Prescription—Interest on foreign judgment—
Debt and costs.*

Held, (by the Registrar, as Referee), applying to legislation regulating procedure the French doctrine of construction, namely, that a new law enlarging the period of prescription applies to a claim in respect of which prescription had begun to run under the old law, and that

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where a judgment bearing interest had been pronounced before the coming into operation of 62 Vict. (P.Q.) c. 51, such interest was prescribed by the term of thirty years and not by that of five years under Art. 2250 of the Civil Code as it stood before the passing of the last mentioned enactment.

2. In the case of a judgment obtained by a creditor in England against a railway company incorporated and being operated in the Province of Quebec, interest at the rate of four per centum per annum runs from the date of judgment on the judgment debt and costs, and may be recovered against the company.

THIS was a reference to L. A. Audette, K.C., Registrar of the Court, under the judgment of the Court, dated December 12th, 1907, whereby he was directed and empowered to take accounts and to determine the amounts due to the respective plaintiffs in the cause, the priorities of the plaintiffs amongst themselves, and to determine what other claims, if any, have priority over those of the said plaintiffs, or any of them, and to ascertain the amount of such claims and fix their priorities (*).

February 17th, 1908.

THE REFEREE:—The reference herein was proceeded with, at Montreal, on the 16th, 17th, 22nd and 27th days of January, and on and on the 6th and 7th days of February, A.D., 1908, in presence of counsel, T. C. Casgrain, Esq., K.C., appearing for the plaintiff's herein; F. S. MacLennan, Esq., K.C., and N. K. Laflamme, Esq., K.C., appearing for creditors Ball, Simar, Goulet, Shallow, Raphael, Veilleux; P. Buchannan, Esq., appearing for *The Gazette Printing Company*; and A. R. Angers, Esq., K.C., appearing for *Frothingham and Workman, Limited*.

The first seven creditors above mentioned filed a contestation and objections to the plaintiffs' statement of claim, and issues were joined thereon.

The first claims to be dealt with under the reference are the plaintiffs' claims which are to be found under

* REPORTER'S NOTE.—See the report of the trial of this case before the Court, *ante*, p. 1.

paragraph 18 of the statement of claim, set forth as follows :—

(a) The claim of the said Trustees for the bondholders of the Atlantic and Lake Superior Railway Company for \$70,000.

(b) The claim of the said Brown & Wells for \$360,000.

(c) The claim of the said The Royal Trust Company for £409,400.

1. Claim (a) by the trustees for the bondholders of the Atlantic and Lake Superior Railway Co., for \$70,000 has been abandoned against the Baie des Chaleurs Railway Co., by plaintiffs' counsel, who, in the course of this enquiry, made the following declaration :

“In view of the fact that it would take a considerable “*enquête* to establish the right figures of the claim of the “trustees of the bondholders of the Atlantic and Lake “Superior Railway Company, and for the reason that the “plaintiffs are not prepared yet with the full figures, for “the purposes of this suit, the claim of the trustees is “abandoned with the reserve that the said claim will be “urged in the matter of the *Royal Trust Company v. “The Atlantic and Lake Superior Railway Company.*”

Re McFARLANE'S CLAIM.

Then comes claim (b) of Brown & Wells for \$360,000.

Under the provisions of sec. 6 of 54-55 Vic., ch. 97, the claim is given priority over all mortgages, hypothecs, charges and encumbrances whatsoever, created by the Baie des Chaleurs Railway Company, before or after the passing of this Act, upon that part of the railway at or near Metapedia to Cascapedia river, a distance of about 60 miles, and upon the company's lands, works, buildings, material, rolling stock, or other property moveable or immoveable. The Act further states that no registration in any manner whatsoever shall be necessary to preserve such priority.

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The company is given the option, under the same Act, to deposit the sum of \$180,000 to the joint credit of the General Manager of the Ontario Bank and of the President of the Company, in trust, as security for and to be applied towards the payment of any sum which may, by any final judgment &c., be found to be due Henry McFarlane, and then and as soon as such deposit has been made, the said claim, charge and lien shall cease to exist.

The said Henry McFarlane having become insolvent, Alexander F. Riddell and Thomas Watson were duly appointed, under the law of the Province of Quebec, Curators to the insolvent estate of the said Henry McFarlane, and on the 18th day of February, 1897, in a certain suit bearing the No. 1339 of the records of the Superior Court of the Province of Quebec, District of Montreal, the said joint curators obtained judgment against the said Baie des Chaleurs Railway Company and one Charles N. Armstrong for the sum of \$168,964.10 with interest and costs. There is no evidence that this amount has ever been deposited, as above mentioned.

By a certain transfer, duly executed at the City of Montreal on the 2nd of December, 1904, before Mtre. John Fair, Notary Public, the said Alexander F. Riddell and Thomas Watson, in their quality of joint curators of the said insolvent estate, thereunto duly authorized by a judgment of the said Superior Court, rendered on the 4th day of October, 1904, did sell and transfer to the aforementioned Willard Brown and Charles W. Wells, for and in consideration of the sum of \$35,000.00, duly paid, all their right, title and interest in the said judgment against the said Baie des Chaleurs Railway Company, with all the rights, actions, privileges and hypothecs resulting to the said Alexander F. Riddell and Thomas Watson from the above mentioned judgment, the whole as more fully appears by an authentic copy of the said transfer, produced herewith as plaintiffs' Exhibit No. 2.

The sum of \$168,964.10 with interest and costs is now claimed by the plaintiffs Brown & Wells, with interest at 6 per cent. from the 28th November, 1889, under the judgment of the Superior Court, District of Montreal, of the 18th February, 1897, filed herein as Exhibit No. 10, and confirmed by the Court of Queen's Bench on the 30th September, 1899, and filed herein as Exhibit No. 16.

This judgment having been delivered before the passing of the Act 63-64 Vict. ch. 29, changing the legal rate of interest from 6 to 5 per cent., the said plaintiffs are clearly entitled to the interest at the said rate of 6 per cent., under the provisions of the said Act which say that this change in the rate of interest shall not apply to liabilities existing at the time of the passing of the Act. The Act came into force on the 7th July, 1900.

Now there is the further question as to whether the said plaintiffs are entitled to the interest as far back as 29th November, 1889, or whether the interest is not prescribed by five years. Under Art. 2250 of the Civil Code, in force before 62 Vic., (P.Q.) ch. 51, interest on judgments was prescribed by five years. That statute (62 Vict. ch. 51) which came into force on the 10th March, 1899, amended this Art. 2250, and ever since that date, such interest is only prescribed by thirty years.

If the prescription of five years had been acquired or had taken effect before the passing of the Act 62 Vict. ch. 51, the old law would obtain; but as the Act extending the prescription from 5 to 30 years was passed in the same year from which interest herein is declared by the judgment to run, we must adopt the French legal theory that the new law is presumed to be better than the old one, and that the legislature has made the change for the better. The French text-writers are of that opinion, and as French law obtains in this case, it must be followed. A number of authorities, both French and English, have

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been cited by the plaintiffs in support of this proposition. (1)

The undersigned therefore finds that the said plaintiffs, Brown & Wells have a claim against the Baie des Chaleurs Railway Co. for \$168,964, with interest thereon at the rate of six per centum per annum from the 28th November, 1889, to the date of the sale of the said railway as ordered by this court, and costs. The said claim will moreover have a prior or preferential lien upon the first 60 miles of the said property of the said Baie des Chaleurs Railway Co., having priority over the bonds and all other mortgages, hypothecs, charges and encumbrances whatever upon the said property.

BONDS.

The first seven paragraphs of the amended statement of claim herein read as follows, viz :—

“ 1. In virtue of the statute of the Province of Quebec, 45 Victoria, ch. 53, the directors of the Baie des Chaleurs Railway Company, on or about the second day of January, 1889, issued mortgage bonds bearing the seal of the company, and signed by the President, and countersigned by the Secretary, for an amount of £409,400 sterling which said bonds, in virtue of the said statutes, created a first claim and privileged debt against the said company, its undertakings, tolls and revenues and the movables and immovables which it might thereafter acquire.

“ 2. By a certain indenture or trust deed duly executed and signed by the said company, at the City of Quebec,

(1) The following may be referred to, viz : Marcade, Art. 2281, p. 258 ; Baudry-Lacantinerie, Prescription, Nos. 943, 949 ; Aubry & Rau, Vol. 2, No. 215 bis ; Troplong, 683 ; Dalloz, Nouveau Code Civil, 2281, No. 2 ; Dalloz, Jur. Gen. Prescription Civile, No. 1112 ; Marcadé, Sur Art. 2 No. xiii, par 56 ; F. Laurent, Pr. de Droit Civil, No. 233 ; Guillouard, Prescription, Vol. 2, No. 622 ; 1 Laurent, par. 234, p. 302 ; 1 Guillouard, Prescription, p. 54, No. 52 ; 1 Demolombe, No. 61 ; Wade on Retroactive Laws, No. 228 ; Ross v. Beaudry, 1905 A. C. 570 ; Endlich, Interpretation of Statutes, par. 281 ; and Maxwell, Interpretation of Statutes, 4th Ed. 339, 340.

on the second day of January, 1889, certain trustees were appointed for the holders of said bonds.

"3. On the 10th day of June, instant, the petition of the directors of the said Baie des Chaleurs Railway Company for confirmation of a certain scheme of arrangement with its creditors, duly filed in this honourable court, pursuant to the provisions of section 865 of the Railway Act was granted, and the said scheme duly enrolled in the said Exchequer Court.

"4. By the said scheme of arrangement the Royal Trust Company, one of the plaintiffs herein, was duly appointed trustee for the bondholders of the said Baie des Chaleurs Railway Company.

"5. On the 19th of June, 1907, at the City of Montreal, by the ministry of John Fair, Notary Public, the said the Royal Trust Company duly presented for payment to the said Baie des Chaleurs Railway Company, the coupons of the bonds hereinbefore mentioned and more specifically set out in a copy of the demand for payment, and produced herein as plaintiffs' Exhibit No. 1.

"6. Upon such demand of payment and protest the said company refused payment and declared that it had no funds available for the payment of the said coupons.

"7. By and in virtue of the statute of Canada, 1st Edward VII, ch. 48, the trustees for the bondholders of the Atlantic and Lake Superior Railway Company were authorized to repair and renew the roadbed and bridges upon the railway between Metapedia and Caplin, that is, that part of the Baie des Chaleurs Railway extending from Metapedia to a place called Caplin, a distance of eighty miles, the said statute giving to the said trustees a first lien upon the said part of the said railway for the reasonable cost of repairs or renewals effected by the said trustees upon the said railway."

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Considering that the facts alleged in the above mentioned paragraphs have been proved by uncontroverted evidence, it is thought quite unnecessary upon this enquiry, to go into the full history of each bond, a history, which indeed under the evidence, discloses a series of uncontroverted facts.

The bonds claimed herein are described in plaintiffs' Exhibit No. 17, and the whole issue was deposited with the Royal Trust Company within the time mentioned in the Scheme of Arrangement with the exception of £10,600, the owners of which would thereby become simply unsecured creditors.

Exhibit No. 17 reads as follows:—

“STATEMENT of Bonds of the Baie des Chaleurs Railway Company received by the Royal Trust Company under the Scheme of Arrangement confirmed by the Exchequer Court of Canada.

| Amount. | Numbers. | From whom received. |
|----------|----------------------------|-----------------------|
| £185,600 | 1 to 83.....83 of £500 | Galindez Bros. |
| | 106 " 311.....206 " £500 | |
| | 692 " 1102.....411 " £100 | |
| £154,100 | 105.....1 " £500 | A. Haes (Haes & Son.) |
| | 312 to 600,289..... " £500 | |
| | 601 " 691.....91 " £100 | |
| £ 12,000 | 1192 " 1311.....120 " £100 | Galindez Bros. |
| £ 12,300 | 1318 " 1437 | L. J. Riopel. |
| | 1692 " 1694.....123 " £100 | |
| £ 11,200 | 84 " 104.....21 " £500 | Estate J. Cooper. |
| | 1685 " 1691.....7 " £100 | |
| £ 4,700 | 1483 " 1529.....47 " £100 | John Beattie. |
| £ 9,300 | 1591 " 1683.....93 " £100 | Galindez Bros. |
| £ 8,900 | 1103 " 1191.....89 " £100 | Galindez Bros. |
| £ 700 | 1312 and 1313.....2 " £100 | Galindez Bros. |
| | 1478 to 1482.....5 " £100 | |
| £398,800 | | |

The Royal Trust Company hereby certifies that the above mentioned Bonds were received from the parties whose names appear on the respective lines prior to the 15th July, 1907. The Royal Trust Company further certifies that all the said Bonds have been and are now duly stamped and sealed in the manner shewn by Schedule "A" of the Scheme of Arrangement, and that all of them are now in the vaults of the said The Royal Trust Company (except No. 1 which has been filed in the Exchequer Court of Canada as an exhibit in the suit *The Royal Trust Company et al. vs. Baie des Chaleurs Railway Company, et al.*)

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{ Seal of Royal } (Sgd.) N. MACNIDER,
 { Trust Co. } Member of Executive Committee.

(Sgd.) H. ROBERTSON,
 Manager.

Under the circumstances and the evidence adduced, the undersigned finds :

1. That the bonds mentioned in items 5, 6 and 7 of Exhibit No. 17 belong out and out to the plaintiffs, the Royal Trust Co. in its said capacity of trustee, as having duly and legally acquired the same, and that they are entitled to the full face value thereof.

2. That the bonds mentioned in items Nos. 1, 2, 3, 4, 8 and 9, are held by the said Royal Trust Co. as pledgees, and that they are only entitled to the amount for which they were originally given as such collateral security or pledge.

The total issue of the bonds is for the sum of \$2,000,000, which at the rate of exchange of \$4.88½ per £1, as provided by the Scheme of Arrangement filed herein, will give the total amount in pounds at the said sum of £409,400,—or, in other words, if £409,400 equal \$2,000,000, then one pound equals \$4.88½.

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Dealing with the bonds in the order set forth in Exhibit No. 17, as above mentioned, we come to Item No. 1, viz :—

Item 1. £185,600 1 to 83— 83 of £500 Dom. } Galindez
 106 to 311—206 of £500 P.Q. } s.
 692 to 1102—411 of £100 P.Q. }

Briefly stated, these bonds were originally had by the company to both the Dominion and Quebec Governments as a guarantee for the construction of the last 20 miles to Paspébiac within a certain delay, and failing to build the 20 miles within that delay these bonds were to be confiscated and forfeited.

Under the contracts and resolution filed of record both the Baie des Chaleurs Railway Company and the Atlantic and Lake Superior Railway Company, in view of the advances made by the firm of Galindez Bros., mostly for the building of these 20 miles, released the said bonds and authorized the said Governments to hand them over to the said Galindez Brothers. Upon the certificate of the proper officer showing that the road had been built, the bonds were released and handed to the Galindez Brothers as a pledge or collateral security for the judgment obtained by them against the company for these very advances. The judgment is filed as Exhibit No. 15, and the condemnation clause thereof reads as follows:—"Doth condemn the said defendant (The Baie des Chaleurs Railway Company) to pay and satisfy to the plaintiffs (Galindez Brothers) the said sum of \$529,493.33 with interest on \$529,493.33 from the 23rd July, 1906, date of service of process."

The rate of interest is not mentioned, therefore it must be the legal rate of 5 per cent. the rate in force at the time the judgment was delivered, on the 10th day of October, 1906.

The Royal Trust Company is therefore entitled to recover, under the first item, the amount for which the

bonds were pledged, viz.: The sum of \$529,493.33, with interest thereon at the rate of 5 per cent. from the 23rd July, 1906.

Item No. 2: £154,000—105 1 of £500 } A. Haes.
 312 to 600—289 of £500 } (Haes &
 601 to 691— 91 of £100 } Son).

Under authority given C. N. Armstrong, by the resolution passed at the meeting of the directors of the Baie des Chaleurs Railway Company during June, 1894 the said Armstrong was empowered to negotiate a loan upon the first mortgage bonds of the company (£409,400) for such an amount and upon such terms as he might consider advisable in the interests of the company.

C. N. Armstrong, presumably acting under such authority, borrowed from Haes & Son, and the bonds in question in this item were given as a pledge or collateral security.

Haes & Son on the 30th October, 1895, signed judgment by default in England against the Baie des Chaleurs Railway Company, for the sum of £21,993 10s. and costs, amounting to £8 8s. 10d., as will appear by the judgment filed herein.

On the 12th November, 1895, R. S. Gregson, Haes & Son's solicitor, writes to the Secretary of the Baie des Chaleurs Railway Company, informing him of having obtained judgment against the company, as above mentioned, and stating that he shall have to take proceedings to enforce payment in Canada, and also to sell the bonds deposited with his clients, unless their debt and costs are forthwith paid and the bonds taken out of their hands.

This is another clear case of pledge.

The Royal Trust Company is therefore entitled to recover under this second item, the amount for which the bonds were pledged, viz., the amount of the said judgment and costs, £21,993 2s. 10d. capital, equal to \$107,-

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033. 28; and £8 8s. 10d. costs equal to \$41.08, making the total sum of \$107,074.36, with interest thereon at the rate of four per centum per annum from the 30th October, 1895.

The rate of interest under a judgment or order in England is four per cent. as stated in sec. 17 of the Judicature Act, 1883, and Order 42, r. 16, even though the debt recovered by the judgment bore a higher rate (1).

In the absence of any special rate no distinction is made between the interest on debt and the interest on costs. Both began to run from the day of the judgment (2).

The interest becomes part of the judgment debt. In *re Clagett* (3).

Item 3. £12,000—Nos. 1192 to 1311—10 of £100,
 De Galindez Bros.

Under three debentures bearing date the 7th June, 1907, de Galindez Brothers purchased for the consideration therein mentioned, from M. Connolly the judgment the latter had obtained against the Baie des Chaleurs Railway Co., upon its promissory note on the 18th May, 1896, for the sum of \$11,448, with interest thereon from the 12th December, 1895 and costs.

The consideration for which this judgment was obtained would appear to be for advances to the amount of \$10,000 made to the company as referred to in the minutes of the meeting on the 10th May, 1894.

Under paragraph 2 of the said indenture the vendor sells, transfers and assigns the said judgment together with the benefit of the security of 120 bonds of the company of the face value of £100 each, which he received from the said company as a pledge to recover the payment of the amount due under the said judgment.

(1) In *re European Central Railway Life Assurance Socy. v. Osborne*, 1902 Co., 1876, 4 C. D. 33; *Ex parte Fewings* A. C. 147.
 1883, 25 Ch. D. 338; *Arbuthnot v.* (2) *Pyman v. Burt*, 1884, W. N. 100.
Bunsilall, 1890, 62 L. T. 234, *Economic* (3) (1888) 36 W. R. 653, C. A.

This is another case of pledge, and the said plaintiffs The Royal Trust Company are accordingly entitled to recover, under Item No. 3, the amount for which the bonds were pledged, that is, the amount of the said judgment, interest and costs. No prescription acquired as it was interrupted by the holding of the bonds. (1)

No evidence has been adduced as to the costs. The amount recoverable will be the sum of \$11,448.00 with interest thereon at the rate of six per cent per annum from the 12th December, 1895.

Item No. 4.—£12,300—Nos. 1318 to 1437 &

Nos. 1692 to 1694—123 of £100

L. J. Riopel.

L. J. Riopel having made some advances to one James Cooper, who himself had made advances to the company from which he obtained a promissory note for \$15,000 duly signed by the company and bearing date the 7th January, 1893, in favor of the said Cooper. The latter endorsed the said note in favour of the said Riopel and transferred it to him in 1892. In 1896 Riopel instituted action for the amount of this note, and this action has had the effect of interrupting prescription.

Up to this date Riopel had no dealings with the company but with Mr. Cooper alone, and this brings us to the passing of the agreement of the 27th November, 1893, between L. J. Riopel, James Cooper, The Baie des Chaleurs Railway Company and others. This agreement is filed. Under this indenture it is, *inter alia*, agreed that in consideration of the said L. J. Riopel relinquishing his right to recover the full payment of the said promissory note out of the balance of the unpaid Quebec Government subsidy, namely \$48,000, which was transferred by the said company to the manager of the Bank of Toronto in trust to secure said payment, a certain proportion of

(1) See Art. 2227 C. C., and the case of *La Banque du Peuple v. Huot*, C.R. 1897 R. J., Q. 12 C. S. 370.

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the note would then be paid, leaving an unpaid balance out of the said note of \$6,500 which would remain due with interest at 10 per cent., from the 1st of December, 1893. The company, to secure the payment of the same, placed in the hands of the said L. J. Riopel its bonds or debentures to the amount of \$60,000, being the bonds above describe under the item No. 4.

The agreement further states that in default of the said \$6,500 being paid before the 1st of December, 1894, then on and after that date, L. J. Riopel would have the right to keep and retain the said bonds as his own property, taking and accepting the same in full payment of the said \$6,500 and interest, by giving notice to that effect to the said company; or at his option, to cause the said bonds to be sold by auction, in Montreal, after giving eight days notice &c., the proceeds of the sale to be applied by privilege to the payment of the said sum of \$6,500 and interest.

The note was not paid.

There is a resolution of the Board approving of that note, and another resolution confirming it.

Those bonds were given to L. J. Riopel by the company for the consideration of granting delay and waiving his rights to the subsidy.

On the fourth of June, 1907, L. J. Riopel sold to de Galindez Brothers all his rights, title and interest against the Baie des Chaleurs Railway Company and against James Cooper, in the above mentioned note and under the said agreement executed on the 27th November 1893.

This another case of pledge. The Royal Trust Company are accordingly entitled to recover, under Item No. 4, the amount of said note and interest at the rate mentioned in the deed, viz: the sum of \$6,500 with interest thereon at the rate of 10 per cent. from the 1st December, 1893.

Item No. 5 £11,200--No. 84 to 104--21 of £500 } Estate
 1685 to 1690--7 of £100 } J. Cooper

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These bonds were purchased on the 8th of June, 1907, as appears by the deed of sale filed herein by de Galindez Brothers, for substantial consideration and in good faith from the estate James Cooper. The latter as a member of the firm of Cooper, Fairman & Co. appears to have acquired them under indenture of the 5th December, 1890, from one Gervais, who appears to be a contractor doing work for the company, and these bonds are clearly not the same bonds which were put up with Murray Smith, as security for Gervais' claim, because those bonds were put up with Murray Smith in 1892, whereas Cooper acquired them in 1890.

There is no evidence to show, and J. de Galindez in his evidence says he does not know, how Gervais obtained these bonds, and whether he received them as security or in payment. However, Gervais under his contract with Cooper gave the latter the right to sell them, and this applies only to twenty-one bonds of the value of £10,500

Cooper in selling these bonds in 1907 to de Galindez Brothers complied with the conditions of his own contract with his pledger, who was not the company.

De Galindez Brothers also bought under this deed of sale eight other bonds of the company of £100 each, equal to £800, Numbers 1684 to 1691. Number 1684 has been lost and no claim is made therefor. J. de Galindez at p. 244 of his testimony, says he has no knowledge of the history of these seven bonds under which he is claiming. He cannot say how the Estate Cooper obtained them.

We do not know how Gervais obtained the 21 bonds from the company; but that would be a question between Gervais and the Company. Cooper, to all purposes seems to have them in good faith and de Galindez Brothers

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appear to have bought them also in good faith and for valuable consideration.

The plaintiffs The Royal Trust Company are, under the circumstances, entitled to the full face value of these bonds, viz: the sum of \$54,712.00 with interest thereon at the rate of five per centum per annum from the 25th day of June A.D., 1902.

The rate of 5 per cent. is the rate fixed by the bonds. The present action has interrupted prescription from the date of service, namely, the 25th day of June, 1907. Under Art. 2250 C. C. the arrears of interest being prescribed by five years, the plaintiffs are only entitled to the interest for the five years preceding the service of the action.

Item No. 6 £4,700—Nos. 1483 to 1529—47 of £100

John Beattie.

This being a clear case of purchase, it will be sufficient to say that, as appears by a resolution of the 25th October, 1892, John Beattie was at that date a creditor of the company, and that subsequently he took an execution to realize upon his judgment. Under a writ of *venditioni exponas* issued in the said case, the bonds claimed herein were duly sold to John Beattie, the plaintiff, by the bailiff at public sale, of which due notice had been given, as appears by the *procès verbal* of sale.

Under indenture of sale of the 8th June, 1907, John Beattie, in turn, sold, transferred and conveyed to de Galindez Brothers, all right, title and interest in the said bonds, and also assigned and conveyed to the said purchasers any judgment or claim that he may have had against the company.

This is obviously a case of sale, and the plaintiffs The Royal Trust Company are accordingly entitled to recover the full face value of these 47 bonds (£4,700) viz: the sum

of \$22,959.50, with interest thereon at five per centum per annum from the 25th June, 1902.

The rate of interest and the date from which interest should run are determined by the finding on the previous item.

Item No. 7— £9,300—Nos. 1591 to 1683—93 of £100

De Galindez Brothers.

This appears to be a case of sale. Briefly stated, it may be said that J. de Galindez, in his evidence, says he has a hazy notion that these bonds had been placed by the company, under the authority of a resolution, in the hands of one Murray Smith, manager of the Toronto Bank, in trust as collateral security for several creditors of the company. Murray Smith having died, his widow, to be relieved of any responsibility in respect to these bonds, would have deposited them in court in the hands of the Prothonotary. M. Connolly, who had a judgment against the company, hearing of this seized the bonds in the hands of the Prothonotary and had them sold by the bailiff in a regular manner, at a public sale, seventy-three of these bonds were sold to the plaintiff, M. Connolly, twelve to Garrand, Terroux & Cie, and eight to de Galindez Brothers.

Subsequently, these 73 bonds became the property of de Galindez Brothers under a contract between themselves and M. Connolly, of the 7th June, 1907. De Galindez Brothers also purchased from Garrand, Terroux & Cie, the 12 bonds they had purchased at the judicial sale, as will appear by the deed of sale. This placed in the hands of de Galindez Brothers the whole of the 93 bonds in the present item.

Under the circumstances, the plaintiffs the Royal Trust Company are clearly entitled to recover the full face value of these 93 bonds (£9,300), viz.: the sum of \$45,430.50 with interest thereon at the rate of five per centum per annum from the 25th June, 1902.

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The rate of interest and the time for which it should run are determined by the finding on Item No. 4.

Item No. 8—£8,900—Nos. 1103 to 1191—89 of £100
 De Galindez Brothers.

These bonds were acquired by de Galindez Brothers from Hogan who held them as collateral security in virtue of his contract with the company. Hogan was a contractor who built a certain portion of the road, and in December, 1893, the balance due him amounted to the sum of \$2,571.57, and the bonds were under the said contract deposited in the Bank of Montreal to be held there under the terms of the said contract.

There is a clause in the contract stating that it "shall be confirmed at a meeting of the directors of the company within eight days." There is no evidence showing whether that has been done. However, can it be said it is necessary in view of the fact that the contract is duly signed by the president and manager of the company? Moreover, the company must have acquiesced in the contract by parting with the bonds in the manner mentioned in the contract and would thus have waived this requirement, if not actually confirmed by a resolution of which there is no evidence. At any rate it must be so presumed since the bonds were at Hogan's bidding, who caused them to be delivered to de Galindez Brothers, when the latter sent the draft to the Bank of Montreal in payment of the claim, which was sent on the 17th January, 1902, for the sum of £575 6s. 0, as testified to by J. de Galindez.

The bonds passed over to the purchaser of the claim with all the privileges and rights the former possessor had, and under Art. 1156 C.C., legal subrogation of such right passed by the mere operation of law.

It was quite plausible and natural for de Galindez Brothers to purchase this claim. They themselves had

a large claim against the company, and it was in their interest to eliminate any creditor having a privilege under the bonds.

This is a case of pledge, and the plaintiffs, the Royal Trust Company, are accordingly entitled to recover under this Item No. 8 the amount mentioned in the contract in question, and for which the pledge or collateral was given, viz. : the sum of \$2,571.57.

The holding of these bonds as collateral security interrupted prescription. It is contended that interest should run on this amount from the date of the contract, namely, the 12th December, 1893. But no mention of interest is made in that contract. However, as interest is asked by the conclusion of the present action, the most that can be allowed would be interest upon this sum of \$2,571.57 from the date of the service of the action, the 25th day of June, 1907, at the legal rate of five per centum per annum from that date.

Item No. 9—£700—Nos. 1312 and 1313—of £100, Nos. 1478 to 1482—5 of £100, de Galindez Brothers.

These first two bonds Nos. 1312 and 1313, were held with four others, which are now lost, by the Canadian Bank of Commerce, securing some promissory notes of the Baie des Chaleurs Railway Co, and de Galindez Brothers wishing to get the bonds away from hostile hands paid the Bank of Commerce the sum of £216.10s by a draft which became due on the 25th December, 1901, and secured from the bank the several notes, together with the bonds.

Then J. de Galindez tells us that he received from the executors of the late Mr. Thom the five bonds Nos. 1478 to 1482, which Thom held as collateral security for a note. He states he has a transfer in writing which cannot now be found, but says he paid the claim in full, about \$500. Then, at page 267, in answer to Mr. MacLennan, he says

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that as regards the Thom bonds he found two payments, one of £70 and the other of £50 odd, but he asserts these were not all the payments made. As the evidence is not satisfactory on this point the undersigned finds for the purposes herein that the Thom claim was in the neighbourhood of \$600, and that the bonds in question were given as a pledge for the same.

In the absence of evidence that the amounts for which the pledge was given carried interest, the claim will only carry interest from the date of the service of the present action, the 25th June, 1907.

This is another case of pledge, and the plaintiffs The Royal Trust Company are accordingly entitled to recover under this Item No. 9 the amount found as actually paid, viz.: (£216 10s.) \$1,053.63 plus \$600, making the total sum of \$1,653.63, with interest thereon at the rate of five per centum per annum from the 25th June, 1907.

All of these bonds appear to have been regularly issued in compliance with the Special Act 45 Victoria ch. 53, sec. 13, and the resolutions of the company filed herein and attached to the Deed of Trust.

There is also a trust deed, although it is questionable as to whether or not such trust deed was necessary under the terms of the Special Act. Then in virtue of the Scheme of Arrangement duly confirmed and enrolled the Royal Trust Company were substituted as trustees in lieu and place of the trustees of the bondholders under the said deed.

The bonds extend on the full one hundred miles from Metapedia to Paspebiac, and are created, under 45 Vict. ch. 53 (Quebec), a hypothec and first claim or privileged debt against the company, without registration. The total bond issue was for £409,400, equal to \$2,000,000, placing the value of the one at \$4.88½, or a bonded indebtedness of \$20,000 a mile.

The Baie des Chaleurs Railway Co. built and equipped the first 80 miles before 1894, and under the agreement of the 16th. April, 1894, sold to the Atlantic and Lake Superior Railway Co., the railway as at that time located and constructed from Metapedia to Caplin, a distance of about 80 miles. However, under 57-58 Vict. ch. 63 (Dom.), the Act ratifying the said agreement and sale, by sub-sec. 2 of sec. 2, the rights or priorities of the bondholders of the Baie des Chaleurs Railway Co. are duly saved and declared to be continued. The bonds are not affected by this sale, and the bondholders will therefore have their privileges as prayed by the statement of claim, on that part of the road from Metapedia to Caplin, the 80 mile section. They will come after the above mentioned claim of Brown & Wells upon the first 60 miles extending from Metapedia to Cascapedia, and will rank as a first claim and privileged debt on the other 20 miles from Cascapedia to Caplin.

Having disposed of the several claims made by the plaintiffs herein, we now come to the several creditors who have filed claims and objections or defences to the statement of claim herein. The plaintiffs' claims having been allowed with privileges and priority to such a large amount, it is questionable whether or not it is worth while going into these new claims, as it is not probable the Baie des Chaleurs would be sold for a larger amount than the two claims of McFarlane and the Royal Trust Co. added together.

However, they should, under the order of reference, be considered. Some of these claims are wholly, and some are partly, against the Atlantic and Lake Superior Railway Company. The railway sought to be sold in the present action is the Baie des Chaleurs Railway, comprising the full eighty miles from Metapedia to Caplin, as mentioned in the judgment of this court of the 12th December, 1907. It is true that under the indenture of

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sale of the 16th April, 1894, the Baie des Chaleurs Railway has been, among other railways, sold to the Atlantic and Lake Superior Railway Co., and that this deed of sale or agreement has been confirmed by the Act of the Parliament of Canada 57-58 Vict. ch. 63, under the conditions therein mentioned. But the question of the validity of this sale and as to whether a judgment against the Atlantic and Lake Superior Railway Company could be enforced against the property of the Baie des Chaleurs Railway Company is now pending before the Superior Court at Montreal in the case of *Veilleux v. The Atlantic and Lake Superior Railway Company and others*; and then there is another action pending before this court wherein the sale of the Atlantic and Lake Superior Railway has been ordered, and a similar reference to the present one made to the undersigned; and the above, coupled with the fact that the McFarlane claim and the bonds would more than absorb the amount the sale might realize, taking even a most optimistic view of the value of the Baie des Chaleurs Railway, it is thought idle work going into these claims against the Atlantic and Lake Superior Railway in the present case, not to say anything upon the question as to whether or not they could under the present circumstances be legally enforced against the Baie des Chaleurs Railway. Therefore it is thought sufficient for the purposes herein to deal upon this reference only with the claims against the Baie des Chaleurs Railway.

The first claim is that of

GEORGE BALL.

Turning to the objections filed by this claimant, we find it is alleged that he has a claim against the Atlantic and Lake Superior Railway Co. for the sum of \$27,171.12, and one of \$5,724.84 against the Baie des Chaleurs Railway Co.

Without going into the details of the claim against the Atlantic and Lake Superior Railway Co. it would be well to say that the claimants were, on the 17th January, 1908, allowed to amend their pleadings by filing a replication showing that the account sued upon, and which appears prescribed, has not been so prescribed, prescription having been interrupted by payments made from time to time.

The leave to amend has not been acted upon and has thus become void under Rule 86 of the General Rules and Orders of this Court. Moreover, no evidence has been adduced with respect to these payments alleged to have been made from time to time, with the exception, however, of three of them.

Dealing with this claim against the Baie des Chaleurs Railway, it would appear that on the 7th March, 1900, J. A. Seybold obtained judgment against the said railway for the sum of \$3,967.84 with interest thereon from the 13th March, 1900, and costs. Subsequently thereto, on the 29th June, 1907, it appears that Seybold for alleged valuable consideration assigned, transferred, and made over unto the present claimant George Ball all his right, title and interest in the above mentioned judgment. The said transfer was served upon the company. The claimant heard as a witness, declared he did not receive anything on account of the said judgment, but we have no evidence to show whether any amount had been paid Seybold before he transferred the said judgment. Leave will, however, be given claimant to establish that fact by affidavit, if the necessity ever arises for the purpose of distribution of the moneys herein. This judgment does not appear to have been registered.

Subject to the said affidavit being produced the claimant Ball will be entitled to recover *without privilege* the said sum of \$3,967.84, interest and costs.

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Re CHARLES VEILLEUX'S CLAIM.

This is a claim exclusively against the Atlantic and Lake Superior Railway, and for the reasons above mentioned, it will not be gone into or dealt with upon the present reference.

Re WILLIAM HENRY RAPHAEL'S CLAIM.

This is a claim against the Baie des Chaleurs Railway Company under a judgment obtained by the said claimant against the said company, Charles N. Armstrong and Joseph R. Thibaudeau, on the 5th May, 1897 for the sum of \$513.06, with interest at 6 per cent. on \$510.00 from the 18th March, 1897, and \$3.06 from the 22nd April, 1897, and costs.

This judgment does not appear to have been registered. The claimant Raphael will be entitled to recover the amount of the said judgment, as above mentioned, and without privilege.

Re DAME DELPHINE GOULET'S CLAIM.

This is also a claim exclusively against The Atlantic and Lake Superior Railway. For the reasons above mentioned the claim will not be gone into or dealt with upon the present reference.

Re ALEXANDER P. SIMAR'S CLAIM.

This is a claim of an ordinary unsecured creditor for the sum of \$1,535.66 against the Atlantic and Lake Superior Railway Co., and for the sum of \$10 against the Baie des Chaleurs Railway, representing, as alleged, good and valuable consideration for a certain number of time checks running from November 1897 to March 1899. The claimant received \$129 on account of those two claims from the Department of Railways and Canals, at Ottawa, in 1904.

This claim is obviously prescribed. Therefore the claimant is not entitled to recover.

Re "GAZETTE" PRINTING COMPANY'S CLAIM.

This is another claim exclusively against the Atlantic and Lake Superior Railway Co. For the reasons above mentioned the claim will not be gone into or dealt with upon the present reference.

Re FRANCIS D. SHALLOW'S CLAIM.

This is a claim against the Baie des Chaleurs Railway Company under a judgment obtained by the claimant against the said company, C. N. Armstrong and J. A. Thibaudeau, jointly and severally, for the sum of \$7,885.72 with interest at 5 per cent. from the 14th January, 1901, and costs. This judgment does not appear to have been registered.

The said claimant is entitled to recover, without privilege, the amount of the said judgment.

The three following claimants, unlike those immediately preceding, have not filed any objections or plea to the statement of claim herein, but have merely filed their claim supported by affidavit.

Re CLAIM OF FROTHINGHAM & WORKMAN, LIMITED.

This is another claim against the Atlantic and Lake Superior Railway Co. For the reasons above mentioned the claims will not be gone into or dealt with upon the present reference or enquiry.

Re CLAIM ESTATE SIMON PETERS.

This is a claim exclusively against the Atlantic & Lake Superior Railway Co. For the reasons above mentioned, it will not be gone into or dealt with upon the present reference or enquiry.

Re JACQUES PELOQUIN'S CLAIM.

This is a claim of \$126 for salary against the Baie des Chaleurs Railway Co. The affidavit filed in support of this claim asks for privilege; but it is insufficient in so

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far as it does not state the period or date for which the salary is due. Without this information it is impossible to pass upon this claim, which will be denied, as it is very loosely presented. Leave will be, however, given to supplement the affidavit already filed, by giving the information above mentioned.

Re CHARLES ROBERT SCOLES'S CLAIM.

This creditor has filed no claim, but had been given leave to do so within a reasonable time, on the 16th January, 1908. He was heard as a witness upon another subject than that of his claim, and during the course of his examination his counsel, Mr. Laflamme, put in a judgment in favour of the said Scoles against the Atlantic and Lake Superior Railway Co. with certificate of registration. Were the judgment not registered, no notice would be taken of it, and no claim has been filed. However, the claim being against the Atlantic and Lake Superior Railway Co. it will not be dealt with on this enquiry.

Re ALEXANDER McDONALD'S CLAIM.

On the 17th January, 1908, an application by Mr. Laflamme, K.C., this claimant was allowed to file his claim within a reasonable time. The case was heard and closed and no claim has ever been filed.

Therefore, the undersigned finds that the amounts due to the plaintiffs and claimants herein, respectively, according to their rank and priority, are as follows, viz:—

1. The plaintiffs, the trustees of the bondholders of the Atlantic and Lake Superior Railway Company, having abandoned their claim, as above mentioned, recover. Nil.

2. First preferential claim with lien upon the 60 miles between Metapedia and Cascapedia River, in favour of the plaintiffs Brown & Wells, for the sum of..... \$168,964 10 with interest thereon at 6 per cent. from the 28th November, 1889, to the date of sale and costs.

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3. First preferential claim, upon the 20 miles between Cascapedia River and Caplin, and second preferential claim (subject to Brown & Wells' claim) on the 60 miles between Metapedia and Cascapedia, in favour of the plaintiffs The Royal Trust Co., for the amount of the bonds as above mentioned, viz:—

Item No. 1.—The sum of..... 529,493 33 with interest thereon at 5 per cent. from the 23rd July, 1906, to the date of sale.

Item No. 2.—The sum of..... 107,074 36 with interest thereon at the rate of 4 per cent. from the 30th Oct., 1895, to date of sale.

Item No. 3.—The sum of..... 11,448 00 with interest thereon at 6 per cent. from the 12th Dec., 1895, to the date of sale and costs.

Item No. 4.—The sum of..... 6,500 00 with interest thereon at the rate of 10 per cent. from the 1st Dec., 1893, to date of sale.

Item No. 5.—The sum of..... 54,712 00 with interest thereon at the rate of 5 per cent. from the 25th June, 1902, to date of sale.

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| Item No. 6.—The sum of..... | 22,959 50 |
| with interest thereon at 5 per cent. from the 25th June, 1902, to date of sale. | |
| Item No. 7.—The sum of..... | 45,430 50 |
| with interest thereon at 5 per cent. from 25th June, 1902, to date of sale. | |
| Item No. 8.—The sum of..... | 2,571 57 |
| with interest thereon at 5 per cent. from the 25th June, 1907, to date of sale. | |
| Item No. 9.—The sum of. | 1,653 63 |
| with interest thereon at 5 per cent. from the 25th June, 1907, to date of sale. | |

Making the sum of.....\$ 781,842 89

The sum of.....\$ 950,806 99

with interest and costs, as above mentioned, form the total amount the plaintiffs are entitled to recover and rank by privilege.

UNSECURED CREDITORS.

GEORGE BALL.

Subject to the condition above mentioned, George Ball is entitled to recover against the Baie des Chaleurs Railway Company, without privilege, the sum of \$3,967.84 with interest thereon at 6 per cent. from the 13th March, 1900 to the date of sale, and costs.

WILLIAM H. RAPHAEL.

* This claimant is entitled to the sum of \$513.06 with interest on \$510 at 6 per cent. from the 18th March, 1897, and on \$3.06 from the 22nd April, 1897, to date of sale and costs, and without privilege.

FRANCIS D. SHALLOW.

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This claimant is entitled to recover the sum of \$7,885.72 with interest thereon at 5 per cent. from the 14th January, 1901, to date of sale, and costs, and without privilege.

Charles Veilleux, Nil.

D. Delphine Goulet, Nil.

Alexander P. Simard, Nil.

The Gazette Printing Co., Nil.

Frothingham & Workman (LTD.), Nil.

Estate Simon Peters, Nil.

Jacques Peloquin, Nil.

Charles R. Scoles, Nil.

Alexander McDonald, Nil.

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T. Chase Casgrain, K.C., on behalf of The Royal Trust Company, no one appearing for the other parties, now moved for an order for judgment confirming the above report. Motion granted, and judgment ordered to be entered accordingly.

Judgment accordingly.

Solicitors for the Royal Trust Company: *Casgrain, Mitchell & Surveyer.*

Solicitors for the Baie des Chaleurs Railway Company: *Hickson & Campbell.*