BETWEEN

1908
May 14.

THE ROYAL TRUST COMPANY.....PLAINTIFF;

AND

THE ATLANTIC AND LAKE SUPERIOR RAILWAY COMPANY.. } DEFENDANTS;

AND

GEORGE BALL, CHARLES VEILLEUX, F. D. SHALLOW, W. H. RAPHAEL, A. PHIDIME SIMARD, DAME D. GOJLET, ZÉPHERIN PERRAULT AND ALFRED E. GERVAIS, R. C. SCOLES, ARCHIBALD CAMPBELL, ALEXANDER DUCLOS, MARTIAL OLSCAMP, THE GAZETTE PRINTING COMPANY, THE SHIPOWNERS AND MERCHANTS' AGENCY, LIMITED, THE NORTH-EASTERN BANKING COMPANY, LIMITED, *et al.*, JESSIE CAMPBELL ASHWORTH, ADELARD LANGLOIS, JAMES M. SHANLEY, CHARLES J. ARMSTRONG, WILLIAM OWENS, AND THE BRITISH AMERICAN BANK NOTE COMPANY, LIMITED. } CREDITORS.

Railway company—Trust deed—Registration—Trustees' salary—Prescription—Constitutional law—Cestui que trust—Salary of Director—Privilege of Bondholder—Bond as Pledge—Amendment of claim—Hypothec by registered judgment—Privilege of Trustees—Estoppel.

Held, (by the Registrar, as Referee) that the deposit of a trust deed by a railway company with the Secretary of State and notice thereof given in the *Canada Gazette*, as required by sec. 94 of 51 Vict. c. 29, satisfies the requirements of Title XVIII, C. C. P. Q., with respect to registration.

2. The holding of a railway bond by one of several trustees of a railway company as collateral security for the payment of salary to such

trustees is an interruption of prescription under Art. 2260 C. C. from the time it was deposited with such trustee.

3. The power of the Parliament of Canada to legislate upon the subject of railways extends to civil rights arising out of, or relating to, such railways.
4. A *cestui que trust* cannot act as trustee for his own trustee and recover remuneration for his services as such.
5. A director of a company is not entitled to any remuneration for his services, without a resolution of the shareholders authorizing the same.
6. The failure on the part of a bondholder to deposit his bonds within a certain period, in the hands of a named trustee in compliance with the terms of a Scheme of Arrangement, duly confirmed by the Court under the provisions of *The Railway Act*, deprives him of any privilege attached to his bonds, and he must be ranked only with the unsecured creditors.
7. Where bonds find their way into the hands of a creditor as a mere pledge for his debt, not being bought in open market, the creditor can only recover the amount of his debt and not the face value of the bonds.
8. Leave to amend under Rule 86 of the practice of the Court becomes null and void if not acted upon within the period fixed for the purpupose.
9. Under the law of the Province of Quebec a hypothec cannot be acquired by the registration of a judgment upon the immovables of a person notoriously insolvent at the time of such registration, to the prejudice of existing creditors.
10. Under the facts of this case, trustees under a debenture-holders trust deed were held to be entitled to be indemnified in preference to all other creditors out of the trust property, for all costs, damages and expenses incurred by them in the performance of the trust. In re *Accles Limited*, (1902) 17 T. L. R. 786, referred to.
11. The word "approved" written by the debtor upon an account against him, and dated, will not suffice to revive the debt already prescribed under the provisions of Art. 2267 C. C P. Q.

THIS was a case in which a reference was made to the Registrar of the Court to take accounts and to determine the amount due to the plaintiff and creditors and to fix the priority of claims against the defendant railway company, previous to an order for the sale of the railway being made by the Court (*).

* REPORTER'S NOTE.—See the report of the trial of this case before the Court, *ante*, p. 38.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

The facts of the case in respect of which the order of reference was made are fully set out in the report of the Registrar, L. A. AUDETTE, K.C.

May 14, 1908.

THE REFEREE: The reference herein was proceeded with, at Montreal, on the 10th, 11th, 14th days of March, and on the 10th day of April, 1908 in the presence of Counsel, T. C. Casgrain, Esq., K.C., with whom was J. W. Weldon, Esq., appearing for the plaintiffs; N. K. Laflamme, Esq., K.C., appearing for the said creditors Ball, Veilleux, Shallow, Raphael, Simard and Goulet, Scoles, and Perrault and Gervais; C. J. Fleet, Esq., K. C. appearing for creditor Ashworth; and S. Dale Harris, Esq. appearing for the Shipowners' and Mercantile Agency, Ltd. and the North-eastern Banking Company, Ltd. *et al.*

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

The question of the validity of the bonds has been determined by the judgment of the 13th February, 1908. The question as to whether or not the registration of the trust deed in the Registry Office of the Province of Quebec, as required by the Civil Code, in addition to its registration in the office of the Secretary of State, is necessary to give the bondholders a privilege over and above the judgment creditors who have so registered their judgments has been much discussed before the undersigned.

The Atlantic and Lake Superior Railway Company was incorporated in 1893 under the Act 56 Vic. ch. 39, passed by the Parliament of Canada. The general Railway Act in force and regulating the matters in question in the present case is the Act of 1888. The Railway Act of 1903, re-enacted in the Revised Statutes of 1906, does not apply to the questions involved herein.

It is obvious that in the present case the Dominion statute must be read first and the Civil Code, as far as applicable, only next. Under section 94 of 51 Vict. ch. 57 (1888) a company may issue bonds creating a mortgage upon its property by mortgage deed, which under subsection 3 thereof must be deposited in the office of the Secretary of State for Canada and notice thereof given in the *Canada Gazette*, a condition which has been complied with in the present case as will appear by the exhibits filed herein.

Clearly such registration in the office of the Secretary of State of which notice has been given in the *Canada Gazette* must be taken to be the notice to the public which the Civil Code has in view by the registration therein required. Therefore the bonds in question must be taken to be under ordinary circumstances valid and to be a first preferential claim and charge upon the property sought to be sold herein.

It is contended by counsel on behalf of the creditors who have filed written pleadings, that as civil rights are in question, the Parliament of Canada could not in violation of the rights vested in a Province, legislate the company out of the obligation of registering its bonds, and that therefore the bonds to carry privilege must be registered in compliance with the requirements of the Civil Code. The argument goes still further and says that all legislation by the Dominion as to railways is valid, except when it interferes with civil rights, and that in so far as Dominion legislation interferes with civil rights such legislation is *ultra vires*.

It may be set down as a principle for our guidance here that the Parliament of Canada has power to legislate upon the question of railways, and that such power would extend to civil rights arising from or relating to the class of subject matter coming within its jurisdiction.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

In *Cushing* v. *Dupuy* (1) it was decided by the Privy Council that, inasmuch as bankruptcy was one of the subjects expressly reserved to the Dominion Parliament by section 91 of the British North America Act, 1867, the statute objected to as *ultra vires* was valid even though it interfered with civil rights.

And in *Tennant* v. *Union Bank* (2) where a similar qustion came up respecting the Bank Act of the Dominion, the following expression of opinion is to be found in the judgment of the Court delivered by Lord Watson: (p 30):—"The objections taken by the appellant to the "provisions of the Bank Act would be unanswerable if "it could be shown that by the Act of 1867, the Parlia- "ment of Canada is absolutely debarred from trenching "to any extent upon matters assigned to the Provincial "Legislatures by section 92. But section 91 expressly "declares that notwithstanding anything in this Act "the exclusive legislative authority of the Parliament of "Canada shall extend to all matters coming within "the enumerated classes, which plainly indicates that "the legislation of that Parliament, as long as it strict- "ly relates to these matters is to be of paramount "authority. To refuse effect to the declaration would "render nugatory some of the legislative powers specially "assigned to the Canadian Parliament. For example, "among the enumerated classes of subjects in section 91, "are Patents of Invention and Discovery and Copyrights. "It would be practically impossible for the Dominion "Parliament to legislate upon either of these subjects "without affecting the property and civil rights of indi- "viduals in the Provinces."

Another case cited by the plaintiff is the case of *Bourgoin, et al* v. *Montreal, Ottawa & Occidental Railway Company* (3) where it was held in effect that the Provinces

(1) L. R. 5 A. C. 409.
(2) (1894) A. C. 31.
(1) 49 L. J. P. C. 68.

were incompetent to legislate as to civil rights relating to a railway subject to the jurisdiction of the Dominion when inconsistent with its legislation. This was the case of a contract of sale of a Dominion railway situated within the Province of Quebec and ratified by the Provincial Legislature. And the Privy Council held that such sale, except under the authority or sanction of an Act of the Dominion Parliament, was *ultra vires*, and that the Legislature of Quebec was incompetent to give such sanction. (1)

While section 4617 of the Revised Statutes of Quebec requires the registration of debentures issued by municipal corporations and by companies generally, section 4626 specifically exempts railway companies from doing so.

The first claims to be dealt with under the reference are the plaintiff's claims and they arise under the bonds of the said company.

The total issue of bonds by the Atlantic and Lake Superior Railway Company is £500,000, of which £398,700 were deposited, in compliance with the Scheme of Arrangement, with the plaintiff herein on or before the 3rd day of September, 1907, leaving £101,300 which have not been so deposited, the owners of which, under the provisions of the Scheme, would simply become unsecured creditors.

Exhibit No. 18 reads as follows:—

STATEMENT of Bonds of the Atlantic and Lake Superior Railway Company received by The Royal Trust Com-

(1) See also *Toronto Corporation* v. *Bell Telephone Company* [1905] A. C. 52; *Attorney-General B.C.* v. *C.P. Railway Company* [1906] A.C. 204; and *The G. T. Railway Company* v. *Attorney General of Canada* [1907] A. C. 65.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

pany under the Scheme of Arrangement confirmed by the Exchequer Court of Canada.

Amount.	Distinctive Numbers.	From whom received.
£391,400	1-2009, 2021-2270, 2276-9, 2281-2500, 2723-50, 3589-5000, 3914.....bonds of £100	Galindez Bros.
£ 2,000	3051-70..... 20 bonds of £100	"
£ 2,000	2001-20.....20 bonds of £100	L. H. De Friese.
£ 3,000	3431-60.....30 bonds of £100	Pickford and Black.
£ 200	3582-3 ..... 2 bonds of £100	A. Langlois.
£ 100	3581..... ..... 1 bond of £100	A. Lemieux .....
£398,700		

The Royal Trust Company hereby certifies that all the above mentioned Bonds were received from the parties set out, above, on or before the 3rd September, 1907.

The Royal Trust Company also certifies that all the foregoing bonds bear the Certificate and the seals of the Atlantic and Lake Superior Railway Company and of The Royal Trust Company as set out in Schedule "A" of the Scheme of Arrangement; and it further certifies that all the above mentioned Bonds are now in the possession of The Royal Trust Company as Trustees for the Atlantic and Lake Superior Railway Trust Fund (except No. 2, which has been fyled in this Court as an exhibit in The Royal Trust Company v. Atlantic and Lake Superior Railway Company *et al.*)

Montreal, 12th February, 1908.

THE ROYAL TRUST COMPANY.

{Seal of Royal Trust Co.}

(Sgd.) A. MACNIDER,
Member of Executive Committee

(Sgd.) H. ROBERTSON,
Manager.

The first claim to be dealt with is the claim of the trustees for the amount which should be charged as a first charge against the property of the company, as mortgagors (*Palmer's Company Precedents*, Vol. 3. pp. 83, 702) and these are as follows, viz:—

(*a*) The sum of..... $ 18,449 17
being the balance due C. S. Scoles, under the contract between the Company and the trustees and in virtue of the final estimates of the Chief Engineer who, under the contract, is the sole Judge of the matters therein mentioned. These moneys are also claimed by the trustees, from the Dominion Government, as being due them under the subsidy contract, and will have to be accounted for by the said trustees if the same is ever paid them by the Government.

It is true that the Government has sent engineers to place a value upon the work done and that, rightly or wrongly, they have reported the value to be less, but as between the trustees and the contractor, it is absolutely clear that the finding of the Chief Engineer mentioned in the contract must be final and prevail.

(*b*) The next item covers the trustees' expenses through their attorney or representative in Canada, the Honourable J. P. B. Casgrain, from the 15th December, 1900 to the 31st December, 1907, inclusively, upon which interest is allowed at 5 per

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

cent, beginning five years from the service of the present action, i.e. from the 23rd July, 1902, the statement of claim having been served on that date. Messrs. Galindez Bros. really acted as bankers for the trustees, they having advanced all the necessary expenditure, and are accordingly entitled to the usual legal interest upon such advances. From the account originally filed, amounting, exclusive of interest, to the sum of $49,933.22, the sum of $2,000 representing the item of 23rd July, 1901, has been deducted and charged elsewhere.

The total amount so recoverable against the company is..... $ 47,933 22

with interest at 5% on $19,428.04 from 23rd July 1902 to date of sale

"	"	$ 1,580.00	"	31st Dec. 1902	"	"
"	"	$ 3,611.08	"	30th June 1903	"	"
"	"	$ 2,483.33	"	31st Dec. 1903	"	"
"	"	$ 2,683.33	"	30th June 1904	"	"
"	"	$ 2,483.33	"	31st Dec. 1904	"	"
"	"	$ 2,597.46	"	30th June 1905	"	"
"	"	$ 2,483.33	"	31st Dec. 1905	"	"
"	"	$ 2,483.33	"	30th June 1906	"	"
"	"	$ 2,483,33	"	31st Dec. 1906	"	"
"	"	$ 3,133.33	"	30th June 1907	"	"
"	"	$ 2,483.33	"	31st Dec. 1907	"	"

(*c*) This item is for legal expenses, as per the bill of costs filed by Messrs. McGibbon, Casgrain, Mitchell & Surveyer, amounting to the total sum of $28,091.24, including the interest charged by Messrs. Galindez Bros., Bankers, on the advances of the several sums. Mr. T. C. Casgrain

was heard as a witness in support of the bill, and testified that the same, amounting to the sum of $23,869.57 has been paid to his firm. From this amount should be deducted $25.00 for the reasons mentioned at pages 82 and 88 of the evidence on the reference; leaving the sum of.... $ 23,844 57

These costs are chargeable against the trustees under the provisions of the deed of trust, and as it would be rather a difficult operation to distinguish what is actually chargeable against the company and what against the bondholders, a short cut has been resorted to by consent and that is to divide the bill in half, charging one half against the company and one half against the bondholders.

Therefore the amount found to be recoverable against the company as above mentioned is the sum of $11,922.29 with interest thereon at 5 per cent. from the dates respectively mentioned to the date of sale, and upon the amounts also respectively mentioned in the statement No. 3 filed herein on the 3rd March, 1908, which said interest should also be divided in half, one half being added to the sum of $11,922.29 and the other half added to the similar sum of $11,922.-29 as chargeable and recoverable against the bondholders. Of course the interest is not payable to the

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

solicitors but to the bankers who made the advances.

(*d*) This item covers both the trustees' remuneration and the fees paid the Chief Engineer of the company.

The first amount is the sum of.....	$973 33
with interest thereon at 5 per cent. from 30th January. 1902, to date of sale, together with a similar amount of.....	973 33
with interest thereon from the 4th February, 1903, at 5 per cent. to date of sale. This total sum of.....	1,946 66
represents the trustees' fee. To this should be added the sum of.....	486 67
with interest thereon at 5 per cent. from the 24th Dec. 1902 to the date of sale	
And the further sum of.....	389 33
with interest thereon at 5 per cent. from the 26th February, 1903, to the date of sale, making the total sum of.	876 00
with interest as above mentioned, representing the fees due the chief engineer, the account for the same having previously been approved by Senator Casgrain.	
Making the total sum of.....	2,822 66
with interest payable as above mentioned.	
(*e*) This item amounts to the sum of	973 33
with interest thereon from the 31st December, 1907 to the date of sale, and represents the fee payable to the plaintiff therein for their services as trustees under the provisions of	

the Scheme of Arrangement, and will be allowed as claimed.

We have now come to the expenses chargeable and payable by the bondholders.

(*a*) The first item is for the sum of..... 2,000 00
with interest thereon at 5 per cent. from the 23rd July, 1902 to the date of sale, as representing an amount paid by the trustees through their bankers Messrs. Galindez Bros. in settlement of a judgment obtained against the trustees by one Chevrier who was but a *prête-nom* for the Honourable R. Prefontaine. From Mr. J. deGalindez' evidence (p. 211 et seq.) we find that this was an action for about $50,000 defended by the said trustees. The plaintiff therein succeeded both in the Superior Court and in the Court of Appeals. After the appeal had been lodged in the Privy Council, but before the hearing, the case was settled upon the payment of the sum of $2,000, and for the reasons given by the witness the amount will be allowed as asked.

(*b*) There will be allowed here the other half of the legal fees amounting to the total sum of 23,844 57
the half being 11,922 28
with interest as above mentioned under sub-item (*d*) in item No. 1.

(*c*) The sum of $27,225.88 and interest will be allowed under the judgment recovered by Mr. Galindez, with the rank and privilege given it by the bonds he received as collateral security, and will be refused here failing to see

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

any good reason why this amount should be charged to the bondholders.

(*d*) The amount charged by J. de Galindez for a living allowance of $10 per day and a salary of $2,000 a year, amounting in all to the sum of $24,567 for his alleged services to the trustees will be refused and disallowed.

Mr. deGalindez claims that he holds from the trustees, who reside in England, a power of attorney, wherein there is no question of remuneration, and that under the deed of trust the services he would render as such agent or attorney of the trustees would be entitled to remuneration. Without entering into the consideration as to whether or not a person acting in the manner Mr. deGalindez did, where the power of attorney given him did not provide for any remuneration, would be entitled to it, and whether it would or would not come under the provisions of the Article of the Civil Code 881 (*g*) which says that trustees act gratuitously, unless it be otherwise provided in the document creating the trust, and whether the class of trust contemplated by this article is to be distinguished from a commercial trust (Art. 1702 C.C.), the undersigned fails to see how the *cestui que* trust could become the trustee of his own trustees. The principle is not a sound one, and were it adopted it would carry us to absurd results. The trustees had in Canada a representative in the able person of the Honourable J. P. B. Casgrain, receiving a handsome salary, and who was quite able to perform any function the trustees themselves could be called upon to discharge. And besides the Honourable J. P. B. Casgrain, the trustees had and have still to-day a manager to whom they pay the sum of $2,000 a year. There was never any contract or arrangement with the trustees for his remuneration, and Mr. de Galindez very fairly admits in his evidence (p. 164) that all he did was to protect his investment, and not for philanthropic purposes. He did

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

not do all the work to benefit anyone else but himself. Mr. de Galindez is really in the position of a principal who, by preference, chooses to attend to his own business instead of allowing his paid agents to do so. When he is looking after his own business he cannot charge the other creditors for the same.

When Mr. J. de Galindez was in Canada, acting as he says for the trustees, he was looking after his own interests; he was looking after his own personal business, and as the remuneration for such class of work cannot be recovered to the detriment of the other creditors, more than the expenses of the several creditors themselves who are to-day left without any practical recourse against the company, because they have no privilege notwithstanding they have spent time and money in looking after their claims.

Moreover, Mr. de Galindez was, as I can gather from the evidence (p. 12 of evidence upon claim of Shipowners, etc.) a director of the company at the time, and as such would not be entitled to any remuneration from the company without a resolution of the shareholders.

This brings us to the claim of the bondholders. Taking them in the order set forth in Exhibit No. 18, as above recited, we will deal first with items Nos. 1 and 2, viz:—

I. £391,400—3914 bonds of £100—Galindez Bros.

II. £2,000 —20 bonds of £100— do

Under the agreement of the 14th day of September, 1897, between the Atlantic and Lake Superior Railway Co. and Messrs. de Galindez Bros. duly ratified and confirmed by a resolution of the board of directors of the said company, bearing date the 30th September, 1897, the said Messrs. de Galindez Bros. made advances to the said company for which they obtained two judgments which are guaranteed by these bonds as collateral security.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

The first judgment bearing date the 17th day of April, 1906, and duly registered respectively in the 1st and 2nd Registration Divisions for the County of Bonaventure, is for the sum of.....$ 499,579 55 with interest at 6 per cent. on $389,-333.33 from the 31st March, 1905, and on $110,246.22 from the 29th day of April, 1905, to the date of sale.

The second judgment bears date the 31st December, 1906, and has also been registered in both Registration Divisions of the County of Bonaventure, and is for the sum of $330,000, with interest at 6 per cent. from the 30th June, 1905.

Mr. J. de Galindez having discovered that the interest on $389,333.33 from the 31st March, 1900, to the 30th June, 1905, *i. e.* $330,-000, 5¼ at 6 per cent. amounting to.....$ 122,640 00 had been by mistake included in the said judgment, fairly and honestly declared it in his evidence on the reference. Therefore this sum should be deducted from the capital, leaving the sum of.....$ 207,360 00 207,360 00 with interest thereon at 6 per cent. from the 30th June, 1905, to the date of sale.

The Royal Trust Co. is therefore entitled to recover these two sums with interest as above mentioned.

Item III. £2,000—20 bonds of £100—L. H. DeFriese.

In an affidavit of L. H. DeFriese, filed herein on the 6th day of April, 1908, in support of the Ashworth claim, Mr. DeFriese states that he held, until the month of July, 1907, £1,000 nominal Atlantic and Lake Superior Railway 4 per cent. first mortgage bonds, as security for the amount due to the trustees for the bondholders of the said company, and that he now holds certificate of participation for the said amount under the provisions of the Scheme of Arrangement.

The amount claimed by the Ashworth estate is more than £1,000. There is no evidence with respect to the other £1,000. Would it mean that DeFriese held £1,000 in bonds as security for his own fees, and £1,000 in bonds as security for Ashworth's fee? That fact should be clearly established before the moneys will be distributed.

Under the circumstances the face value of the bonds will be allowed, viz: the sum of $9,733.33, with interest thereon at 4 per cent. from the 23rd July, 1902, to the date of sale.

The rate of interest is determined by the rate of the bond. 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 on the 23rd July, 1907.

Item IV. £3,000—30 bonds of £100—Pickford & Black.

No evidence has been adduced to determine under what circumstances Messrs. Pickford & Black came into possession of these bonds, which *primâ facie* should be paid at their face value.

Therefore the plaintiffs will be entitled to recover the face value of the said bonds, viz.: the sum of $14,600 with interest at 4 per cent. from the 23rd day of July,

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

1902, to the date of sale, for the reasons above mentioned.

Item V. £200—2 of £100—A. Langlois.

Same finding as upon Item No. IV. The face value of the bonds will be allowed, viz: the sum of $973.33 with the interest thereon at 4 per cent. from the 23rd day of July, 1902 to the date of sale.

Item VI. £100—1 Bond of £100—A. Lemieux.

Same finding as upon Nos. IV and V, viz: the sum of $486.67 with interest thereon at the rate of 4 per cent. from the 23rd day of July, 1902 to the date of sale.

CLAIM OF THE ESTATE A. P. ASHWORTH.

This is a claim for £1,383-6-8, equal to $6,731.83 for remuneration as trustee, under the trust deed of 31st December, 1894, of the late Caldwell Ashworth, who died on the 15th June, 1903. The claim now presented by the representatives of the Estate of the said Ashworth is for the salary of the said trustee, amounting to the sum of £1,583-6-8 for a period of seven years and eleven months, viz: from the 19th July, 1895 to the 15th June, 1903, upon which the sums of £200-0-0 have been paid on account on the 30th January, 1902, and on the 30th January, 1903, respectively, reducing the claim to the said sum of £1,383-6-8; and it is admitted that Ashworth was trustee as alleged.

L. H. DeFriese, in his affidavit, sworn to on the 18th March, 1908, states that for upwards of seven years he held £1,000 bonds of the company as security for the amount due to the trustees, until the month of July, 1907, when the said bonds were lodged with the plaintiff herein and for which he received in exchange certificates of participation in the Trust Fund created by the Scheme of Arrangement.

If DeFriese had been in possession of the bonds for upwards of seven years on the 18th March, 1908, that

would take us back to the year 1901, and as no date is given, the undersigned finds for the purposes of this case that it would be on the 19th January, 1901. Therefore the first six months of the year 1896 were prescribed when the bonds were so received. The salary is prescribed by five years under Art. 2260 C. C., and under Art. 2267 C. C. the debt is absolutely extinguished after the delay for prescription has expired.

The holding of the bond by one of the trustees, as collateral security, for their respective salaries as such trustees has civilly interrupted prescription up to the time it was deposited with the plaintiffs in the manner above set forth. This principle was adopted in the case *La Banque du Peuple* v. *Huot*, (1) where it was held that the fact that the debtor, who gave a pledge to his creditor assuring the payment of his debt, of leaving the pledge in the hands of the creditors, constituted a constant and incessant acknowledgement of his obligation which interrupts prescription for such time as the pledge remains in the hands of the creditor.

Therefore this sum of £1,383-6-8 must be reduced by £100, as representing the first six months so prescribed, leaving the claim at £1,283-6-8, equal to $6,245.17, the prescription having been interrupted by the holding of the bonds.

Now this bond has not been given in payment of Ashworth's claim, but merely as a pledge, a collateral security for the claim, and a pledge is quite distinct from the debt it guarantees, and *vice versa*. When the debt is paid the pledge passes away, and that is the end of the transaction. The claim has not been changed by the fact that Ashworth held that bond; his claim has not been changed from one of salary to one of a bondholder. The bond has not been either given or accepted in payment, and there is no agreement by which the claimant has expressed his

(1) R. J. Q. 12 C. S. 370.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

willingness to accept a bond in payment of his claim. The claim has not become an alternative claim payable either with the salary privilege or with the bond privilege. The bond has had the effect of interrupting prescription, but not changing the nature of the claim, and if the prescription has been interrupted the claim stands on its original merit. The vendor does not throw away his privilege or vendor's lien because he accepts bonds as collateral security. Any flaw which might exist through prescription has disappeared and the claim remains on its merits.

Under Clause II. of the trust deed, in case the company makes default in paying to the trustees their remuneration either original or additional as therein mentioned, the trustees may retain the same in priority to any other claim out of any trust moneys coming into their hands. The contract cannot be extended beyond what the words import; it is a privilege strictly *de juris* upon moneys coming into the hands of the trustees. Therefore, the claimant, without his bond, would have a claim against the company without privilege under the circumstances of the case (1).

Now the bond has certainly given him a privilege, besides interrupting prescription as above mentioned, and the fact that the bond has been deposited with the Royal Trust Company does not change the position of the claimant with respect to the creditors of the company. The certificates of participation will change his right from the face value that bonds will have under the Scheme of Arrangement, and that value will only be determined by the price the railway will be sold for.

Therefore the claimant Ashworth will be entitled to recover the sum of $6,245.17, which will be paid in the following manner, viz.: (1) by privilege *pro tanto* the

(1) *Re* Accles Ltd. Hodgson v. Accles, 18 T. L. R. 786; and Palmer's Company Precedents, 9th Ed. Vol. 3, pp. 703, 704.

amount the bond will give him under the value it will ultimately have after the sale of the railway, pursuant to the terms of the Scheme of Arrangement; (2) the balance remaining unpaid will be payable by the company without privilege. There will be no costs to either party.

What has been said under Item III. in disposing of the claim made by L. H. DeFriese for £2,000 might well be repeated here, and it is that the fact as to whether the said £2,000 in bonds so held by DeFriese represent £1,000 as collateral security for Ashworth's fee and £1,000 as collateral security for DeFriese's own fee should be made clear before the final distribution of the moneys herein.

THE SHIPOWNERS AND MERCHANTS AGENCY, Limited, in voluntary liquidation; and HASTINGS BAGSHAW, Liquidator thereof, Creditors of the Atlantic and Lake Superior Railway Company; and THE ROYAL TRUST COMPANY, Plaintiff contesting.

The claimants allege they are bearers of First Mortgage Bonds of the company defendant to the amount of £22,500 sterling, and ask to be collocated herein for the said amount with the priority to which they are entitled.

It is well to preface anything to be said in connection with this claim by the statement that the claimants have not complied with the provisions of the Scheme of Arrangement duly confirmed by this court, and that these bonds have not been deposited with the plaintiffs on or before the 3rd day of September, 1904, as will appear by Exhibit No. 18 filed herein. It is unnecessary to relate here the history of the correspondence, by letters and cables exchanged between the claimants, Mr. de Galindez and the company, as the net result of it all is that the claimants of their own free will chose not to comply with the requirements of the Scheme of Arrangement, and did not deposit their bonds as required by the same.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

Clause 8 of the Scheme of Arrangement reads as follows:—"The bondholders who shall not transfer and "deliver their bonds to The Royal Trust Company within "the time stipulated in the public notices, shall remain "creditors of the company to the extent of the principal "and interest represented by their bonds, but they shall "not be entitled to any mortgage lien, charge or equity "of redemption in respect of any of the company's "property and assets, nor to any preference of payment "over other unsecured creditors of the company".

The claimants will therefore rank with the unsecured creditors.

The next question to be determined is the one of quantum.

The evidence we have to pass upon this claim is very unsatisfactory. However we have distinct testimony that the bonds in question were given as pledge or colo-lateral security, and that the amount now owing by the company to the claimants is between £4,000 and £5,000.

The claimants are therefore entitled to recover against the company the amount for which the pledge was given, and that amount will now be fixed at £4,500, and will be payable to the said claimants without privilege, upon the delivery or surrender of their bonds.

The claimants having presented their claim after the legal delays for doing so, and having been heard by indulgence after the reference had been closed, will be refused costs. There will be no costs to either party.

THE NORTHEASTERN BANKING COMPANY, Limited and THE COMMERCIAL TRUST COMPANY, Limited.

The claimants The Northeastern Banking Company, Ltd., allege they are bearers of First Mortgage Bonds of the company defendant to the amount of £10,000, and ask to be collocated herein for the said amount with the priority to which they are entitled.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

The Commercial Trust Company declare by their pleadings herein that they do not desire to file any claim.

These bonds have not been deposited with the plaintiffs herein in compliance with the requirement of the Scheme of Arrangement, and the bondholders must therefore rank with the unsecured creditors.

Here again the evidence adduced is very unsatisfactory and superficial.

The bonds appear to have been given as pledge, but the amount for which they were so given is not disclosed. And beyond the fact that the Northeastern Banking Co., Ltd., received them in the ordinary course of business, we have no evidence of the circumstances under which they did come into their possession.

It is said in the argument that overdue coupons are not detached, but there is not sufficient evidence upon this point to find that the claimants were put upon inquiry.

The bonds are now in the hands of third parties, and in the absence of evidence they must be taken to be *primâ face*, good and valid in their hands.

Therefore the claimants The Northeastern Banking Co., Ltd., are entitled to recover the said sum of £10,000, equal to $48,666.67, and without privilege, upon the delivery or surrender of the bonds alleged to be in their possession. No costs to either party.

Re GEORGE BALL'S CLAIM.

Turning to the objections filed by this claimant, we find it is therein alleged that he has a claim both against the Baie des Chaleurs Railway Company and the Atlantic & Lake Superior Railway Company respectively.

The claim against the Baie des Chaleurs Railway Co., has already been disposed of in the case instituted in this Court by The Royal Trust Co. v. The Baie des Chaleurs Railway Co.

The first claim against the Atlantic & Lake Superior Railway Co., is, as alleged, for goods sold and delivered

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

by the claimant to the company defendant, amounting to the sum of $17,789.92, as more fully appears in a detailed statement filed herein as Exhibit No. 1, together with interest thereon, amounting at the time of filing the said objections to the sum of $2,136.00.

This claim appears on the face of the statement of account, Exhibit No. 1, to be entirely prescribed, and will accordingly be dismissed.

As already stated in the *Baie des Chaleurs* Case (1), the claimant was, on the 17th January, 1908, allowed to amend his pleadings in a manner to show 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 the provisions of 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 Exhibits "W","X" and "Y" filed in the case of the *Baie des Chaleurs Railway Co.*

It is true that Exhibit No. 7 filed by the claimant is a document purporting to be a copy of Exhibit No. 1, and that at the foot of each account is to be found the following: "Approved, Dec. 10th, 1904, Atlantic and Lake Superior Railway Co., signed J. R. Thibaudeau, President." But is that sufficient to revive an account which under Art. 2267 was absolutely extinguished? Under Beauchamp's annotation No. 14 following Art. 2227 of the Civil Code we find that "The limitation of five years operates a statue of repose which extinguishes the debt, and nothing less than a new promise in writing can suffice to found an action upon." Then annotation No. 48, under the same Art. says:—"La renonciation à la prescription acquise ne peut être faite que par le débiteur et doit renfermer les conditions d'une obligation nouvelle."

(1) J. Ante, p. 31.

This word "approved" does not comply with the jurisprudence established, and did not interrupt prescription. Furthermore the fact that the railway has been in the hands of the trustees of the bondholders since a number of years, and was so in 1904, must not be lost sight of. Then that the president alone, of his own free will, without any proper authorization, would have the power to bind the company under such circumstances is very questionable under the provisions of the Act of 1888.

Passing now to a more substantial claim we come to the judgment of the 7th April, 1902 which the claimant obtained against the defendant company for the sum of $4,959.20 with interest thereon at 5 per cent. from the 17th April 1900, and costs amounting to $74.70.

The judgment has been registered in the first and second divisions of the County of Bonaventure on the 17th and 18th days of June, A.D. 1907, respectively.

Therefore, the said claimant George Ball is entitled to recover against the defendant company the said sum of $4,959.20 with interest to the date of sale and costs, as above mentioned, with the privilege and rank given him under the Civil Code by the registration of the said judgment, coming immediately in rank of date after the privilege attached to the bonds.

Re CHARLES VEILLEUX'S CLAIM.

This is another judgment creditor. The claim is for $22,221.48, based upon a judgment of the Superior Court, P.Q., bearing date the 4th February, 1902, varied by the Court of King's Bench, appeal side, on the 23rd September, 1902, the latter judgment being affirmed by the Supreme Court of Canada on the 22nd June, 1903.

These three judgments appear to have been registered in the first division of the County of Bonaventure on the 20th September, 1904, as appears by the Registrar's certificate filed as Exhibit No. 25, with the exception how

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

ever that no date of registration is given therein with respect to the judgment of the Supreme Court of Canada, but the fact is admitted by the admission filed of record herein on the 15th February, 1908. The same three judgments appear to have also been registered in the second Registration Division of the County of Bonaventure on the 12th September, 1904, as appears by Exhibit No. 26, the Registrar's certificate of that division.

Several of the dates in the Registrar's certificates and the allegations of the pleadings differ somewhat materially. To cite one instance, for example: The certificate says the original was judgment obtained as far back as 1892, while the pleadings state 1902. The last date would appear to be the right one, but nothing turns upon it, and for the purposes of this case, it is taken to be the same judgment.

Therefore, the said claimant Veilleux is entitled to recover against the said company defendant the said sum of $26,221.48, with interest to the date of sale, and costs, with the privilege and rank given him under the Civil Code by the registration of the said judgments, coming immediately in rank of date after the privileges attached to the bonds.

Re DAME DELPHINE GOULET'S CLAIM.

This is a claim based upon a judgment of the Superior Court of the District of Montreal, bearing date the 2nd day of April, A.D. 1908, for the sum of $1,038.30 with interest thereon from the 12th day of April, 1900.

The judgment has been registered in the first registration division of the County of Bonaventure on the 4th June, 1901, and in the second Registration Division of the same county on the 18th September, 1905.

Therefore, the said claimant Goulet is entitled to recover against the company defendant the sum of $1,038.30 with interest thereon from the 12th day of

April, 1900, to the date of sale, with the privilege and rank given her under the Civil Code by the registration of the said judgment, coming in rank of date immediately after the privilege attached to the bonds.

Re CHARLES R. SCOLES'S CLAIM.

No claim has been filed herein, excepting the certified copy of a judgment against the defendant company.

The claim is based on a judgment against the company defendant, bearing date the 11th October, 1904 for the sum of $35,691.34 with interest and costs, registered in the first and second Registration Divisions of the County of Bonaventure on the 3rd and 5th days of December A.D. 1904, respectively.

Therefore, the said claimant Scoles is entitled to recover against the said company defendant, the said sum of $35,691.34 with interest and costs, with the privilege and rank given him, under the Civil Code, by the registration of the said judgment, coming in rank of date immediately after the privilege attached to the bonds.

Re ARCHIBALD CAMPBELL'S CLAIM.

This is a claim appearing only in the Registrar's certificate for the second Registration Division of the County of Bonaventure, and for which no claim has been filed.

The debt is based on a transfer to the above claimant by James Slessor *et al.* of a judgment against the company defendant, of the 5th September, 1893, for the sum of $602.55 with interest and costs, and duly registered on the 13th June, 1899.

Therefore, the said claimant Campbell is entitled to recover against the company defendant the said sum of $602.55 with interest and costs, with the privilege and rank given him, under the Civil Code, by the registration of the said judgment, coming in rank of date immediately after the privilege attached to the bonds.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

Re ALEXANDER DUCLOS' CLAIM.

This is a claim appearing only upon the Registrars' certificates for the first and second Registration Divisions of the County of Bonaventure, and for which no claim has been filed.

The judgment was registered in the first Division on the 28th July, 1905. No date of registration appears in the second Division.

The debt is based upon a judgment against the defendant company, bearing date the 16th October, 1909, for the sum of $1,468.45 with interest, and costs of suit. The costs amount to the sum of $158.75.

Therefore, the said claimant is entitled to recover the said sum of $1,627.20 with interest, and with such privilege and rank given him under the Civil Code by the registration of the said judgment, coming in rank of date immediately after the privilege attached to the bonds.

Re MARTIAL OLSCAMP'S CLAIM.

This is also a claim appearing only upon the Registrars' certificates for the first and second Registration Divisions of the County of Bonaventure, and for which no claim has been filed.

The judgment has been registered in the second Registration Division of the County of Bonaventure on the 20th March, 1907, and in the first Registration Division of the same County on the 3rd April, 1907.

The debt is based upon a judgment of the Superior Court, bearing date the 13th March, 1900, for the sum of $250 with interest thereon at the rate of 6 per cent. from the 17th July, 1899, to the date of sale, and the costs of suit amounting to $223.41.

Therefore, the said claimant is entitled to recover the said sum of $473.41 with interest as above mentioned, with the privilege and rank given him under the Civil Code by the registration of the said judgment, coming in

rank of date immediately after the privilege attached to the bonds.

Re THE GAZETTE PRINTING COMPANY'S CLAIM.

This is a claim appearing only upon the Registrars' certificates for the first and second Registration Divisions of the County of Bonaventure, and for which no claim has been filed in this case.

The judgment has been registered in the first and second Registration Divisions of the said county, on the 29th day of June (no year given) and on the 2nd July, 1907, respectively.

The debt is based upon a judgment of the Superior Court for the District of Montreal, bearing date the 17th day of November, 1908, for the sum of $13,953.10, with interest thereon at the rate of 5 per cent. from the 2nd of November, 1906, and costs of suit taxed at $80.50.

Therefore, the said claimants are entitled to recover from the defendant company the said sum of $13,953.10, with interest thereon at the rate of 5 per cent. from the 2nd November, 1906 to the date of sale, and the costs of suit taxed at $80.50, with the rank and privilege given them under the Civil Code by the registration of the said judgment, coming in rank of date immediately after the the privilege attached to the bonds.

Re WILLIAM HENRY RAPHAEL'S CLAIM.

This is a claim exclusively against the Baie des Chaleurs Railway Co., and which has been disposed of in this Court in the case of *The Royal Trust Co.* v. *The Baie des Chaleurs Railway Co.*

Re FRANCIS D. SHALLOW'S CLAIM.

This also is a claim exclusively against the Baie des Chaleurs Railway Co., and which has been disposed of in the manner mentioned in the previous claim.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

Re ALEXANDER P. SIMARD'S CLAIM.

This is a claim for an ordinary unsecured creditor for the sum of $1,535.66 against the company defendant, representing, as alleged, good and valuable consideration for a certain number of time checks, as appears on reference to Exhibit No. 1 filed in the case of the Baie des Chaleurs Railway Company before this court, running from November, 1897, to March, 1899. The claimant has received $129 on account of the present claim, and a small one against the Baie des Chaleurs Railway from the Department of Railways and Canals, at Ottawa, in 1904.

The claim is obviously prescribed. Therefore the claimant cannot recover.

Re ZEPHERIN PERRAULT AND ALFRED ED. GERVAIS'S CLAIM.

This is a claim by unsecured creditors for the sum of $90,823.04, and for which the defendant company has been sued in the Superior Court for the Province of Quebec. It appears from the evidence adduced herein that the case has been heard by a judge of the said court and is presently under advisement. Were it only for comity of courts the undersigned cannot pass upon the merits of the case under the circumstances.

The most that can be said is that the claimants will be entitled to recover, without privilege, the amount which they will be found entitled to by the final judgment in the case now pending before the said Superior Court.

Re THE BRITISH AMERICAN BANK NOTE COMPANY'S CLAIM.

This is a claim for paper, printing and engraving, supported by the usual affidavit and amounting to the sum of $6,173.88, which the claimants are entitled to recover, without privilege.

Re WILLIAM OWEN'S CLAIM.

This is a claim, supported by the usual affidavit, for moneys alleged to have been advanced to the company defendant for the purpose of "protecting the interests of the company in connection with the Scheme of Arrangement proposed by the Baie des Chaleurs Railway Company and rejected by the Exchequer Court".

Perhaps it is a claim that might with more propriety be made against the Baie des Chaleurs Railway Company, but if the notes are from the defendant company it should be charged herein, and on the whole, as the claim is without privilege in the hands of the present claimant, it makes no difference.

The claim is made up of two promissory notes of $585.03 and $569.87 respectively, amounting to $1,154.90.

The claimant is entitled to recover the amount of the said notes, upon surrendering the same, but without privilege, and provided the said notes are good and valid.

Re CHARLES J. ARMSTRONG'S CLAIM.

This is a claim, supported by the usual affidavit, establishing *primâ facie* evidence, for the sum of $1,500, alleged to be for salary as assistant engineer upon the construction of the Atlantic and Lake Superior Railway Company, and for which the claimant has a promissory note dated the 1st December, 1906.

The claimant will be entitled to recover the sum of $1,500 without privilege, upon surrendering the original note in question, and provided the same is good and valid.

Re JAMES M. SHANLY'S CLAIM.

This is a claim for the sum of $7,404.80, supported by the usual affidavit, and alleged to be for balance of salary as chief engineer during the year 1899.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

Were it not for this note given by the company dated the 1st December, 1906, a copy of which is filed herewith, the claim would be entirely prescribed.

Under the Railway Act, 1903, which came into force on the 1st February, 1904, and which is practically re-enacted in the Revised Statutes, 1906, the claimant would have a privileged claim, but he comes under the Act of 1888 which would give him a privilege only upon the rents and revenues of the railway.

The claimant is therefore entitled to recover without privilege the said sum of $7,404.80, upon the surrender of this original promissory note, and provided further the latter is good and valid.

Re ADELARD LANGLOIS' CLAIM.

This is also a claim for $1,500, supported by the usual affidavit, alleged to be for a salary and for a period not given or defined, but for which he allegee having a promissory note from the company defendant.

For the reasons mentioned in claim No. 22, there is no privilege.

The claimant is therefore entitled to recover the sum of $1,500 without privilege upon surrendering the original note, provided the same proves to be good and valid.

There are a number of these claims which are entirely based on promissory notes given by the company defendant at a very recent date which might be quite questionable. The undersigned has not the material allowing him to go into the merits of the claims on these promissory notes, and has to be satisfied, for the purposes herein, with the *primâ facie* evidence of the affidavits in support of the claims, which, however, go without privilege and will never come in question herein, the privileged claims absorbing, in all probability, the full proceeds of the sale.

Then with respect to the judgment creditors who have registered their judgments and are making a claim

thereunder, the undersigned, although not seized of the actual fact that the company was insolvent at the time of the registering of these judgments, or at least at the time of the registering of most of them, cannot overlook Art. 2023 of the Civil Code which says that "hypothec cannot be acquired, to the prejudice of existing creditors, upon the immovables of a person notoriously insolvent etc".

In view of the general evidence adduced herein which tends to show that the company has been insolvent from almost its origin, the undersigned will refrain from passing upon the claims of the judgment creditors with finality without having further evidence on this question of insolvency; because if the company was actually insolvent at the time of the registering of these judgments, there would be no privileges attached to the same, and those creditors would come *au marc la livre* with the other unsecured creditors.

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

1. The plaintiffs, with first charge (*) against the property of the company as mortgagors	(b)	$18,449.17
	(c)	47,933.22
with interest as above mentioned and.....	(d)	11,922.29
with interest as above mentioned and.....	(e)	2,822.66
with interest as above mentioned, and.....	(f)	973 33
2. The following expenses are chargeable to and payable by the Bondholders, viz:.	(a)	$2,000 00
with interest as above mentioned, and do do	(b)	11,922 28

(*) See the directions of the Court on this point, *ante*, p. 41.

1908

THE ROYAL TRUST CO. v. THE ATLANTIC AND LAKE SUPERIOR RWAY. CO.

Report of Referee.

3. The Bondholders:—

Items Nos. 1 and 2—the sum of.....	499,579	55
with interest as above mentioned, and	207,360	00
do do		
Item No. 3—the sum of.....	9,733	33
with interest as above mentioned		
Item No. 4—the sum of	14,600	00
with interest as above mentioned		
Item No. 5—the sum of.....	973	33
with interest as above mentioned.		
Item No. 6—the sum of.....	486	67
with interest as above mentioned.		

4. *Estate A. P. Ashworth*, the sum of.... 6,245 17
in the manner hereinbefore mentioned.

Judgment Creditors, subject to further evidence under provisions of Art. 2023 C. C.

5. *George Ball*, the sum of..... 4,959 20
with interest and costs, as above mentioned, subject to Art. 2023.

6. *Charles Veilleux*, the sum of..... 26,221 48
with interest and costs as above mentioned, subject to Art. 2023.

7. *De. Delphine Goulet*, the sum of.. ..... 1,038 30
with interest as above mentioned, and subject to Art. 2023.

8. *Charles R. Scoles*, the sum of 35,691 34
with interest and costs, as above mentioned, and subject to Art. 2023.

9. *Archibald Campbell*, the sum of..... 602 55
with interest and costs, as above mentioned, and subject to Art. 2023.

10. *Alexander Duclos* the sum of..... 1,627 20
with interest and costs, as above mentioned, and subject to Art. 2023.

11. *Martial Olscamp*, the sum of..... 473 41
with interest and costs as above mentioned, and subject to Art. 2023.

12.	*The Gazette Printing Co.*, the sum of with interest and costs, as above mentioned, and subject to Art. 2023.	13,953	10
	UNSECURED CREDITORS.		
13.	*William H. Raphael* recovers.....	Nil.	
14.	*Francis D. Shallow* recovers	Nil.	
15.	*Alexander P. Simar* recovers.....	Nil.	
16.	*Zepherin Perrault and Alfred E. Gervais*, recover.....	Nil.	
17.	*The British American Bank Note Co.* recovers.....	6,173	88
18.	*William Owens*, recovers	1,154	90
19.	*Charles J. Armstrong*, recovers	1,500	00
20.	*James M. Shanly*, recovers.....	7,404	80
21.	*Adelard Langlois*, recovers.....	1,500	00
22.	*The Shipowners' & Merchants' Agency, Ltd., et al*, recovers £4,500.....	21,900	00
23.	The *Northeastern Banking Company, Ltd.*, recovers £10,000	48,666	67

In the final disposition of the several amounts recoverable herein, special consideration must be given to the several amounts also recoverable in the case of *The Royal Trust Company* v. *The Baie des Chaleurs Railway Co.*, because, while some of these amounts may be recoverable against both or either of the two companies, they are only recoverable once.

June 10th, 1908.

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 Atlantic & Lake Superior Railway Company: *Hickson & Campbell.*