BETWEEN

1908
Oct. 31.

THE MINISTER OF RAILWAYS AND CANALS FOR THE DOMINION OF CANADA..... PLAINTIFF

AND

THE QUEBEC SOUTHERN RAILWAY COMPANY AND THE SOUTH SHORE RAILWAY COMPANY ..... DEFENDANTS.

HIRAM A. HODGE AND FRANK D. WHITE..... CLAIMANTS;

AND

JOHN B. PILLING, EDWARD H. LOWELL, CHARLES K. LAWTON, JOHN HASSELTINE AND WILLIAM BLOOM..... INTERVENING CLAIMANTS AND APPELLANTS.

THE ATTORNEY-GENERAL OF CANADA AND THE BANK OF ST. HYACINTHE..... RESPONDENTS.

THE ATTORNEY-GENERAL OF CANADA AND THE BANK OF ST. HYACINTHE..... APPELLANTS;

AND

JOHN B. PILLING, *et al*.....RESPONDENTS.

Railway—Bonds—Irregularity in issue—Trustee—Notice—Enquiry—Transfer of bonds—Bona fide holders—Sale—Negligence in custody of bonds—Liability of company.

A railway company issued bonds under the usual deed of trust. The N. T. C., a body corporate, was the original trustee, but after having executed the deed, resigned. Another trustee was appointed who signed and issued a number of the bonds a few days before the company passed into hands of a receiver. The bonds on their face recited that they should not be "obligatory until certified by the

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N. T. C., trustee." D., the new trustee, signed the bonds in the name of the original trustee, adding thereto "succeeded by D." The bonds were also signed by the president and secretary of the company.

Held, that the apparent irregularity in the signature of the bonds by the trustee was not sufficient to put a *bonâ fide* purchaser for value upon enquiry, and that the bonds were valid in his hands.

2. A certain number of the bonds were handed to H., the president of the company, by the trustee D., after he had signed them. H. borrowed money for his own use from R., and gave some of the bonds as collateral security, also depositing sixteen of them with R. for safe keeping. R. used all the bonds as collateral for a loan subsequently obtained by him for his own use. The holders of these bonds for value and without notice made claim, and they were allowed to recover against the company on the ground that the company had by their negligence in allowing H. to have the bonds under his control made it possible for the bonds to find their way into the hands of *bonâ fide* purchasers.

APPEAL from the Registrar acting as Referee.

The facts of the case as presented to the court on the appeal fully appear in the following extracts from the Referee's final report herein.

JOHN B. PILLING, *et al.*

"On the 13th of March, 1907, quite a while after the sale of the railway, which took place on the 8th November, 1905, the Intervening Claimants, John B. Pilling, Edward H. Lowell, Charles K. Lawton, John Hasseltine and William Bloom were, by leave of the Court, allowed, upon giving security for costs in the sum of $200.00 each, to file their claims and to intervene in the contestations by Hodge and White of the Provisional Report, respecting the bonds of the $3,500,000 issue part of which being claimed both by the said intervening parties and by the said Hodge and White. On the 15th May, 1907, their intervention was filed.

"All parties to the contestation of the said five intervening claimants having consented to the consolidation of the five claims, upon application, an order was made to that effect, on the 13th May, 1907. Thus, while

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there are five separate and distinct claims, there is only one set of pleadings on behalf of the said intervening claimants.

"The plaintiff in the present case, acting in the interests of the creditors at large, under direction of the Court, filed a separate and distinct plea to the intervention of the five intervening parties.

"The Bank of St. Hyacinthe, a creditor herein, on the 14th March, 1908, applied for leave to file a contestation of the said intervention of Pilling *at al.* to the same effect and purport as the one filed by the plaintiff, declaring that the evidence already adduced upon this issue should avail upon its present contestation, having no further evidence to adduce, and leave, as prayed, was granted the bank who then and there filed a contestation in the form and effect above mentioned, under the express terms and conditions that no costs herein be, in any event, allowed the said bank either upon its present application or upon its contestation of the said intervention.

"Hodge and White also filed a joint answer or contestation to the intervention of Pilling *et al.*, and were ordered to give security for costs in the usual manner in favour of the intervening parties, Pilling *et al.* Having subsequently been ordered to give additional security for the costs of the said Pilling *et al.*, and failing to do so, Hodge and White's contestation of the said Intervention of said Pilling *et al.*, was, on the 26th November, 1907, dismissed with costs, and the above plaintiff, or some other party, was ordered to continue on behalf of the creditors the contestation of the said intervention of the said intervening claimants. This leaves, at present, the plaintiff and the Bank of St. Hyacinthe alone to contest the intervention.

"The hearing of the contestation, of the intervention of he said claimants Pilling *et al.*, was proceeded with partly at Boston, on the 18th day of October, 1907. when E. F.

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Surveyer, Esq., and Mr. French of the Boston bar, appeared for the five intervening claimants; G. A. Campbell, Esq., appeared for Messrs. Hodge and White; A. Geoffrion, Esq., K.C., appeared for the plaintiff; and Hon. F. L. Beique. K. C., held a watching brief for the Bank of St. Hyacinthe. having only taken part in the issue since the 14th March, 1908. The case was further proceeded with at Montreal, on the 4th and 30th days of November and on the 2nd day of December, 1907, in presence of the aforesaid counsel, excepting Mr. French, the American counsel, the Honourable F. L. Beique, and after the 26th November, 1907, Mr. G. A. Campbell ceased to appear for Hodge and White.

"The said intervening parties claim as follows:—

"John B. Pilling claims the sum of $31,320 00
being the face value of 29 bonds of $1,000 each, with interest thereon up to May, 1907, date of the intervention.

"Edward H. Lowell claims the sum of... 6,480 00
being the face value of six bonds of $1,000 each, with interest as above mentioned.

"Charles K. Lawton claims the sum of... 6,480 00
being the face value of six bonds of $1,000 each, with interest as above mentioned.

"John Hasseltine claims the sum of 3,240 00
being the face value of three bonds of $1,000 each, with interest as above mentioned.

"William Bloom claims the sum of..... 1,080 00
being the face value of one bond of $1,000, with interest as above mentioned.

Making the total sum of..... $48,600 00
with interest as above mentioned.

"The evidence, whether plaintiff's or defendant's, whether offered on behalf of Hodge, White or Pilling *et al.*, or the Bank of St. Hyacinthe, on the Hodge and

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White contestation, has been made common to all the issues.

"It will be noted that although the intervening parties only received possession of these bonds as collateral security, they are all now making claim for the face value of the said bonds. Unless a regular sale of the bonds has been made they clearly can only recover the amounts for which these collaterals were pledged.

"This claim originated in the following manner: H. A. Hodge, the late President of the Quebec Southern Railway Company and a claimant herein, claims as his, 42 bonds of the $3,500,000 issue which he says he took in exchange for 50 bonds of the $100,000 second mortgage issue which, as we have already seen, had been cancelled by the company. His claim for the 42 bonds, numbered from 43 to 84, inclusive, has been dismissed on his contestation of the Provisional Report. (See *supra.*)

"Some time after the railway had been placed in the hands of the Receiver and after the sale of the railway had been ordered and notices calling for tenders had been published, both in the American and Canadian papers, the said H. A Hodge placed in the hands of one G. I. Robinson, jr., a broker of Boston dealing in real estate, mortgages and notes, 29 of his bonds of the issue just mentioned, as collateral security for a loan to him for his personal use and advantage, on a note of $5,000. This note bears date the 23rd December, 1904, and is filed as Exhibit P—1.

"Hodge contends (p 104) that the note after it left his possession was altered by adding the words "three months"; that there was no delay mentioned at first, and that the addition was made without his consent and knowledge.

"Now on this note of $5,000, Hodge says he was to receive $4,775, but only actually received $3,500. Asking Robinson for the balance of the amount which should

have been advanced to him under the terms of the note, Robinson suggested the second note for the same amount, dated the 28th March, 1905, being a renewal of the note of the 23rd December, 1904, giving Hodge a receipt or document showing the latter had only received $3,500 on the note. This receipt is filed herein as Exhibit P—3.

"The loan was never completed, and the bonds were disposed of by Robinson without Hodge's knowledge, he never being called upon to pay the loan or informed that the bonds would be disposed of in accordance with the terms of the loan by Robinson, although the latter knew what was Hodge's address and could have notified him had he wished to do so.

"Robinson also came into possession of 16 other bonds of the same issue under the following circumstances. These bonds are numbered from 85 to 100 inclusively.

"Hodge tells us that he was on his way to the Trust Company to deposit these bonds in a safe deposit box he had there, and Robinson, in whom he then had great confidence, said to him: 'Why not leave them here with me, why pay box rent, I have a safe, etc.' Hodge then left these 16 bonds with Robinson, for safe keeping only. The latter gave him in return a receipt for the same dated 4th February, 1905, filed herein as Exhibit P—4, and reading as follows: 'Received of H. Hodge, 16 Quebec Southern Railway Company bonds, 85 to 100 inclusive, to be returned on call.—(Signed) George I. Robinson, jr.'

"Hodge says (p. 116) he considers these 16 bonds as the property of the company, because they had never left the company for value, and he was not the owner of them. He had found these 16 bonds among papers of the company he had in Boston, and as an officer of the company he entrusted them to Robinson for safe keeping only.

"These 16 bonds will be designated as "stolen bonds" when we come to deal with them, Robinson having no property whatever in them, and no right to give them

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out as collateral security on loans for his own use with the further right to sell in default of payment.

"Having established how all these bonds came into the hands of Robinson, the person who handed them over to the several intervening claimants herein, we will now deal with the claim of each of the intervening claimants."

JOHN B. PILLING.

"On the 15th day of March, 1905,—that is, between the date of Hodge's first note (23rd December, 1904,) and his renewal note (28th March, 1905,) John Hasseltine, a note broker of Boston, and an intervening claimant herein, came to Pilling with 29 bonds of the Quebec Southern Railway, numbered from 57 to 85, inclusive, representing that these bonds came to him through Robinson who had told him they were worth 60 cents on the dollar, and, acting for Robinson, asked to borrow $12,000 on them. Pilling then went to Robinson, who told him other people were buying these bonds, and that they were being accumulated at Montreal, to get them together to be sold to a railway company, and that he had already sold some to Collins & Fairbanks, but made no inquiry from this firm, relying entirely on what Robinson said. The latter further added that the bonds were scattered around, and that at present various people had bought them. He was raking them together, and the money he was getting on the loan was for the purpose of purchasing some more.

"At the time Pilling made the loan, he did not know Hodge and of the company being in the hands of a Receiver.

"After hearing what Robinson and Hasseltine told him, he made the loan of $12,000, taking the 29 bonds as collateral, and was also given the note from some one of the name of Shepherd, whom he did not know. The note reads as follow:—

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'$12,000. BOSTON, March 15, 1905.

Four months after date for value received, I promise to pay to myself, or order, Twelve thousand dollars, having deposited as collateral security for payment of this or any other direct or indirect liability or liabilities of ours (mine) due, or to become due or that may hereafter be contracted, the following property:

$29,000 Quebec Southern 1st Mtge. 4s.

With full power and authority to sell, transfer, assign and deliver the whole of said property, or any part thereof, or any additions thereto, without notice or demand, either at public or private sale, or otherwise, at the option of the holder of this note, upon the non-payment or non-performance of this promise, or the non-payment of any or either of the liabilities above mentioned, at any time, and after deducting the legal or other costs or expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale so to be made to pay any, either or all of said liabilities as said holder shall deem proper, returning the surplus, if any, to the undersigned. Should the market value of any security pledged, in the judgment of the holder or holders hereof, decline, I hereby agree to deposit on demand, which may be made by a notice in writing, sent by mail or otherwise to my residence or place of business, additional security, so that the market value shall always be at least 20 per cent. in excess of $12,000. Failing to deposit such additional collateral, this note shall be deemed to be due and payable forthwith anything hereinbefore expressed to the contrary notwithstanding, and the holder or holders may immediately sell at public or private sale, the collateral then held for the payment of this or any other liabilities above mentioned, and apply

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the net proceeds, after deducting the costs and expenses, to pay this, either or any of said liabilities as said holder may deem proper.

It is agreed that the holder or holders of this note or any person in his or their behalf may purchase at any or either sale or sales of said collateral.

Due July 15th, 1905.

Payable at any Bank or Trust Company in Boston.

(Signed) FRANK H. SHEPHERD,
Notify at 34 School St.

(Endorsed) FRANK H. SHEPHERD,
GEO. I. ROBINSON, Jr."

"When the loan was made he paid no attention to this note, relying on the collateral, which Robinson told him, belonged to Shepherd. From the evidence it would appear that Sheperd was a fictitious person, although his address appeared at the foot of the note in the following words under his signature: "Notify at 34 School St."

"At the maturity of the note Pilling went to Robinson with his note and collateral for payment, and has constantly tried, without success to get the money. Pilling then gave instructions to Hasseltine, who is a licensed auctioneer, to sell the bonds under the terms and conditions of the note, with the object of obtaining the property in the bonds. Hasseltine, in compliance with his instructions, gave notice to Robinson and Pilling. The bonds were accordingly sold on the 19th January, 1907, by Hasseltine, and Pilling became the purchaser for $13,180. Filed as exhibit 1, C–13, is an extract of his minute book showing such sale.

"On the note of $12,000, Pilling received $240.00 at the time of discounting it.

"Neither Hasseltine nor Pilling ever removed any of the coupons from the bonds.

"On reference to the note it will be seen that it is therein provided that after the bonds are sold, in the

manner therein set forth, and after the payment of the liabilities therein mentioned, *the surplus* is to go to the maker of the note. Thus the claimant holding first these bonds as pledge and becoming the owner of the same after the sale, subject to the conditions mentioned in the note, remained practically in the same position as a pledgee, with the difference, however, that he is to add to the amount due him the costs or expenses of collection, sale and delivery.

"The claimant is therefore entitled to recover the amount of the loan with interest. Now there is no interest, or rate of interest, mentioned in the note; therefore he is entitled to recover the rate of interest mentioned in the bonds. There is no evidence respecting the costs or expenses for collection, sale and delivery.

The amount recoverable is, therefore.....		$12,000 00
with interest thereon from the 15th March, 1905 (date of the note), to the 8th day of November, 1905 (date of the sale of the railway), at the rate of 4% per annum, viz:.....	$312 99	
from which should be deducted the sum of.....	240 00	
the amount of interest or the discount paid at the time the moneys were paid, leaving the sum of.....	72 99	72 99
which should be added to the capital, making the total sum of...		$120,72 99"

EDWARD H. LOWELL.

"The claimant was cashier of the Winsmett National Bank for 17½ years, and while in such employment, during July, 1905, he negotiated a loan to Robinson for $3,375, when the latter placed with him six bonds of the Quebec Southern Railway as collateral, telling him they were worth 60 cents on the dollar. The claimant negotiated

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two separate cheques, one on Georgetown and one on the First Ward National Bank of East Boston, and cashed the two cheques, holding the bonds as collateral. One cheque has John Hasseltine as maker and was for..... $ 875 00

and the other had Burnham of Georgetown as maker and was for 2,500 00

$3,375 00

and he cashed these cheques in his capacity as cashier of the bank, with the bank's money.

"At maturity the cheques were not paid, and claimant assumed the obligation.

"These six bonds are part of the stolen bonds and no overdue coupons were attached to them at the time of the delivery of the same to the claimant.

"On the 25th January, 1906, George I. Robinson, jr., sold, transferred and assigned these bonds to the claimant as appears by Exhibit I.C—10, filed herein, in settlement of all Robinson's obligations to him.

"A discount of $5 was paid on the $875 cheque, and one of $25 on the $2,500 cheque. The claimant received $275 from the Plunger Co. in full settlement of the $800 mentioned in Exhibit I.C.—9, and incurred expenses to the amount of $50 on the Ross note (p. 72),

"These six bonds having been sold to Lowell in payment of Robinson's obligations, Lowell is now entitled to the face value of these bonds, i.e.... ..... $6,000 00

with interest thereon at the rate of 4%, say, from the 8th July, 1905, to the 8th November, 1905..... 80 00

making the sum of..... $6,080 00

which is the largest amount to which claimant can be entitled.

"There is absolutely no evidence, either documentary or oral, establishing that any interest is recoverable, or if so, at what rate. We have then to come to the bond to establish this rate of 4%.

"Now Lowell says at page 67 of his evidence that he cannot give the date at which this loan was made, but that it was in July, 1905, and I have found for the purposes of this case that it is the 8th, to make an even four months of interest.

From the amount so allowed should be deducted all the claimant has received on account, viz.:—

The sum of.....	$5 00	
and.....	25 00	
respectively received by way of discount at the time the loans were made.		
Then coming to his letter of the 18th February, 1907, filed herein as exhibit I.C.–9, it would appear therefrom that the claimant received, on account of all these obligations of Robinson for which the bonds were ultimately transferred, the sum of...	$275 00	
Less expenses amounting...	50 00	
leaving the sum of.....	$225 00	
Then the sum of.....	700 00	
on account of the $2,500 note, together with the interest on $2,500, on which the interest has been paid from October 6th, 1905, to May 16th, 1906; representing the sum of.....	240 82	
making the sum of.....		$1,195 82
which should be deducted from the grand total, leaving the net sum of....		$4,884 18

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which the claimant is entitled to recover.

CHARLES K. LAWTON.

"The above mentioned Geo. I. Robinson, jr., in the course of the month of February, 1906, several months after the sale of the railway herein, approached one Costello Converse and asked him for a loan of $1,200 for one month, on the collateral of six bonds of the Quebec Southern Railway. The bonds are numbered respectively 91, 92, 96, 97, 98 and 99, and form part of the sixteen stolen bonds above mentioned. Robinson then stated to Converse that the bonds were worth 40 cents on the dollar, and thought that within a short time, probably a month, they would bring more. He then looked up the *Financial Chronicle* and found out that the Quebec Southern Railway was a long road and that the road was in the hands of a Receiver. Converse did not make any inquiry to verify whether the bonds were worth 40 cents nor did he ask Robinson how they came into his possession.

"Converse then discounted the note, which was at one month's time. That note of $1,200 was dated the 21st February, 1906, at one month. The note was taken up and another one given at the end of the month for another month, and then month by month until the note of Oct. 22nd, 1906, was finally given at one month, Albert Adamson, Jr , being the maker and Geo. I. Robinson, Jr., endorsing it. The note is filed as Exhibit I.C.-6. Converse says he does not know who Adamson is. Robinson paid $6.00 each month when the notes were renewed. The sum of $6.00 had been paid also at the time the note of October, 1906, was discounted.

"Later on Converse endorsed the note to his clerk, C. K. Lawton, without recourse, and the bonds were placed in the latter's hands as a matter of convenience to Converse. The present claimant holds them for him and Lawton has filed the claim.

"The bonds are still held by Lawton as collateral or pledge as they were never sold, and although the coupons of October, 1905, are cut from the bonds, they are pinned to the six bonds respectively.

"Charles K. Lawton, the present claimant and the general clerk and secretary of Converse, was present when Robinson came to make the loan in the manner above mentioned, and confirms Converse's statement that Robinson said the bonds were worth 40. He then turned up the *Commercial and Financial Chronicle* and found, among other things, that G. C. Dessaulles, on 21st March, 1904, had been appointed Receiver, and that an application to issue $20,000 Receiver's certificates made (p. 46.) Then referring from this quarterly to a weekly issue of the paper found that tenders would be received for the purchase of the road until November 2nd, 1905, etc., etc.

"After maturity, when inquiries were made, Robinson would say that the matter was progressing; but no demand was ever made to the maker of the note, except through Robinson's office.

"Robinson has presently left Boston, having appropriated to himself funds which did not belong to him. Lawton has written to Robinson asking him to be in Boston to be examined, and offered to pay his expenses.

"Robinson answered, among other things, that an attorney should get a writ of protection for him while in the city.

"Clarence F. Eldridge, a Barrister from Boston, testified that he knew Robinson and had been unable to make arrangements to get him at Boston at the time of this examination. "He could not get the people to withhold their judgment."

"This claim is then based on this note of $1,200 of the 22nd October, 1906. No mention is therein made of interest, therefore, if interest were to be paid, it must be

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the rate of interest mentioned in the bonds. However as interest is allowable herein, only up to the date of sale of the railway, viz., the 8th November, 1905, no interest is allowed, and as this case is clearly a case of pledge, the claimant is entitled to recover the sum of $1,200, the amount for which the bonds were pledged, without interest, for the reasons above mentioned. The sum of $6.00 paid at the time the loan was made representing interest thereon for one month should be deducted, leaving the net sum of $1,194, which the claimant is entitled to recover."

JOHN HASSELTINE.

"The claimant is the same John Hasseltine already spoken of in dealing with the claim of Pilling, and as most of the representations made to Pilling with respect to his loan were made by Hasseltine, we must necessarily conclude that Hasseltine stands in the same position as Pilling, and for the same reasons must share the same fate.

"At about the same time of the Pilling deal, Hasseltine procured a loan for Robinson on four bonds. One of these was placed with Pilling, and some of them were placed with Amy W. Holden. Three of these bonds came to him, as, at maturity, he had to pay the note he had endorsed for the loan, and in September or October, 1906, he returned to Robinson some of his obligations and took an absolute title to the bonds which had come to his possession in the latter part of March or April, 1905, as collateral. He claims he knew of the Receivership only at the end of 1905; but that was before he took the bonds in full settlement with Robinson in 1906. The amount of these obligations would hardly amount to $3,000. He himself having placed the bonds with persons and made himself liable on the paper, met the notes and took the bonds.

These three bonds are respectively numbered 0048, 0094 and 0095. The two latter are part of the stolen bonds. No overdue coupons are attached to the three bonds.

Now from the above it will be seen that Hasseltine is entitled to recover the sum of $3,000, with interest thereon at 4 per cent. from the 1st April, 1905, to the 8th November, 1905, amounting to $72.66, making the total sum of $3,072.66."

WILLIAM BLOOM.

"This claimant carrying on a wholesale woollen business at Boston, is also engaged in the "business of buying papers, mercantile paper, and of loaning money on securities" (p. 58), and knows Robinson since about 1903 or 1904, and made acquaintance with him in 1903 when he (Robinson) sent his secretary up to the claimant with some papers and kept dealing with him quite extensively, as his reputation was then very good.

"In May, 1905, claimant lent Robinson $2,500 on eight Quebec Southern Railway bonds, and got also Robinson's note as collateral, but the loan was paid. Absolutely no representations were made to him at the time those bonds were handed to him (p. 60) and he made no inquiry at that time, and when the note was paid Robinson took back the bonds.

"On the 2nd March, 1906, Robinson borrowed again from the claimant the sum of $800 on his (Robinson's) note and three bonds, and that loan was again taken up on the 2nd April, and the bonds were handed back to Robinson who came back on the same day, 2nd April, 1906, with one bond and borrowed $250, which again was paid and the bond was given back to Robinson. Finally the claimant on reference to his books, stated that on April 2nd the loan was $275. On May 2nd it was $265, and on June 4th it was $250. On July 6th, $250, and renewed August 6th for $250.

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"The note of 6th August, 1905, for $250, remains unpaid, and a copy thereof is filed as Exhibit I.C.–8, with the bond No. 088, which was given as collateral. This is one of the stolen bonds, and it had been received by claimants on the 2nd April, 1906. On reference to the bond it will appear that on the 2nd April, 1906, when he received the bond, there was one overdue coupon of the 15th October, 1905, still attached to it, although the claimant in his evidence, undoubtedly through inadvertence, stated that all matured coupons had been detached when he got the bond. However, perhaps this is one of the bonds he had previously received during May, 1905, and had returned to Robinson. After the note became due claimant made inquiry of Kidder, Peabody & Company about the Quebec Southern Railway, and was told for the first time the road was in the hands of a Receiver.

"Claimant received $2.50 at the time he discounted the note. There was never any sale of the bond, so he holds it as a pledge; therefore he is entitled to recover the sum of $247.50 without any interest, as interest could only run to the date of sale on the 8th November, 1905.

"Now, dealing in a general manner with these claims, whatever may be said should be prefaced by the statement that the undersigned finds that these five claimants are *bonâ fide* holders of the bonds, having acquired them in good faith. Doubtless the maxim *Omnia praesumuntur rite esse acta* would have thrown the burden of proof upon the other side in this proceeding, but the onus of establishing good faith was voluntary assumed by the claimants, and they adduced evidence of the facts above related, with that object in view.

"They are entitled, under the circumstances, to recover respectively the amounts hereinafter set forth, unless

some important reason or fact is found to put them upon their inquiry.

"The National Trust Company were appointed Trustees for the bond issue of 3,500,000 under Deed of Trust of the 10th June, 1902, and resigned, before signing any of the bonds, on the 27th February, 1904, when J. M. M. Duff was appointed Trustee in their place and stead, and he afterwards signed whatever bonds of that issue the company had at that time in its possession. Duff's appointment appears under Notarial Deed of the 27th February, 1904, filed herein as Exhibit No. 28. He was first appointed by the Executive Committee, and that appointment was subsequently confirmed at a meeting of the shareholders of the company.

"It is contended by the plaintiffs that the resignation of the National Trust Company does not comply with the requirements of the provisions of the Trust Deed, in so far as the notices provided by the Deed of Trust of such resignation were not given. But there was no occasion to give notice. To whom could it be given? There were no bondholders at the time the National Trust Company resigned. The bonds had not been signed, and were neither issued nor delivered.

"It is contended by the plaintiff that as the bond contained on its face the stipulation that "it shall not be obligatory until certified by the National Trust Company, Limited, the Trustee herein named," that it cannot be valid without such signature, and that the purchaser of a bond is put upon his inquiry by the fact that the bond is signed in the following manner: "National Trust Company, Limited, Trustee, succeeded by J. M. M. Duff, Trustee." It was clearly the duty of the company to see that the bonds were issued in correct form, and it is now estopped from setting up a breach of that duty as against a third party, a *bonâ fide* holder of such negotiable instru-

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ment. See *Bigelow's Estoppel* (1); *Oakland Paving Co.* v. *Rier* (2); *Weyanwega* v. *Ayling* (3); *Bentick* v. *London Joint Stock Bank* (4); *Harrison et al.* v. *Annapolis & Elk R. R. Co.* (5); *Willoughby* v. *Chicago &c. Stock Yards Co.* (6); *Fournier* v. *Cyr* (7); 5 *Cyc.* 796, vo. *Bonds;* 16 *Cyc.* 752, vo. *Validity of Bills, &c.*; 7 *Am. & Eng. Ency of Law*, 2nd Ed. pp. 783-4 23 pp. 835, 837; *Reed* v. *Vancleve* (8); *Adams* v. *Irving National Bank* (9). The statute creating the company does not place any restriction on the manner in which the bonds are to be made or signed. The authentication of the bonds is a voluntary or arbitrary provision of the company and one that could be waived *ad nutum*.

"The Trust Deed itself says that "The Trustee" means The National Trust Company, or any other party or Trustee who for the time being shall be Trustee under these presents. It further provides that in the event of the resignation of the Trustee, a new Trustee may be appointed. It cannot be contended that the National Trust Company had not a perfect right to resign, and that the company had not a perfect right to appoint a successor. The bond on its face appears complete, good and valid. It is signed by the President and the Secretary of the company and by a Trustee. Is that not sufficient for a *bonâ fide* third person? The company, or the creditors acting in its place, are obviously estopped under the circumstances from setting up the alleged irregularities or any of these formalities for which they are responsible. These bonds were certified by Duff, the duly appointed Trustee of the company, and after certifying them they are handed by the Trustees to the President of the Company.

(1) 4th ed. 528-536.
(2) 52 Cal. 270.
(3) 99 U. S., 112.
(4) (1893,) 2 Ch. 120.
(5) 50 Md. 490.
(6) 50 N. J. Eq. 656.
(7) 64 Maine, 32.
(8) 27 N. J. Law, 352.
(9) 116 N. Y. 606.

"The broad proposition laid down by Abbott C.J., (1) that whoever is the holder of a negotiable instrument 'has the power to give title to any person honestly acquiring it" is accepted and confirmed by Lord Halsbury in the case of *London Joint Stock Bank* v. *Simmons* (2) and is also accepted as a sound guidance in this case. In the same case the learned Chancellor observed that it cannot be accepted as law that in every case one at his peril must inquire whether an agent with whom he is dealing has the authority of his principal.

"Then the leading case of *Murray* v. *Lardner* (3) in which the English law upon this subject is reviewed, is authority for the proposition that a bond payable to bearer stolen before maturity is valid in the hands of a *bonâ fide* purchaser for value. See also upon the same subject *Young* v. *McNider* (4), *Abbott's Railway Law of Canada*, 111; *Doty* v. *Oriental Print Works Co.* (5); *Miles* v. *Robert* (6); *Goodman* v. *Harvey* (7); *Goodwin* v. *Robarts* (8); *Gorgier* v. *Melville* (9); *Swift* v. *Tyson* (10); *Goodman* v. *Simonds* (11); *Brown* v. *Spofford* (12); *Swift* v. *Smith* (13); *Pana* v. *Bowler* (14); *Purdy's Beach on Private Corporations* (15).

"The line of demarcation between the fraud which does not affect the *bonâ fide* holder for value and without notice and that which makes null and void the negotiable instrument in all hands whatsoever is somewhat narrow and difficult to distinguish, as the distinctions are often very fine.

(1) *Gorgier* v. *Mieville*, 3 B. & C. at p, 47.
(2) (1892), A. C. 201, at p. 212.
(3) 2 Wall. 110.
(4) 25 Can. S.C.R., 272.
(5) 67 Atlantic Reporter, 586.
(6) 76 Fed. Rep. 919.
(7) 4 Ad. & El. 870.
(8) 1 App. Cas. 476-497, 5 Eng. Rul. Cas 199.
(9) 3 B. & C. 45-47, 5 Eng. Rul. Cas. 198.
(10) 16 Pet. I. at p. 22.
(11) 20 How., 343.
(12) 95 U.S., 474.
(13) 102 U.S., 442. 107.
(14) 107 U.S., 529.
(15) Vol. 3, p. 1153.

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"The company was guilty of negligence in respect of these bonds, by means of which an opportunity for fraud has been created. This lies in the facts above set forth, by which it appears that Hodge, the President, was given unrestricted possession of the bonds, and enabled to convert them to his own personal use. That Hodge was himself deceived by Robinson does not alter the responsibility of the company towards *bonâ fide* purchasers for value without notice. *Weimer* v. *Gill* (1); *Bentick* v. *London Joint Stock Bank* (2); *Long Island Loan and Trust Co.* v. *Columbus C. & I. Ry. Co.* (3); *Provident Life Trust Co.* v. *Mercer County.* (4).

"To sum up, the undersigned is of opinion (1) that with respect to the more general question of the form and apparent validity of the bonds in the hands of *bonâ fide* purchasers for value, there is nothing upon the face of these negotiable instruments to put the purchasers upon inquiry, and so lay the foundation of constructive notice of any invalidity therein; (2) the undersigned finds as a fact that to *bonâ fide* third parties the said bonds were duly certified by the proper trustee of the company, and were in all other respects good and valid; (3) that the company was negligent in allowing Hodge unrestricted possession of the bonds, and that whether such bonds reached the hands of *bonâ fide* purchasers for value by reason of Hodge's deliberate breach of trust towards the company by using them as collateral security for a personal loan, or by reason of their being stolen from him, does not alter in any way the liability of the company towards the said purchasers of such negotiable instruments.

"The stronger equity is obviously in favour of the *bonâ fide* holder for value, and when one of two innocent persons must suffer, and in the present case it is as between

(1) [1905] 2 K.B. 181.
(2) [1893], 2 Ch. 120.
(3) 65 Fed. Rep. 455.
(4) 170 U.S., 593, 604.

the company or the creditors representing it, on the one hand, and the *bonâ fide* holders of the negotiable instrument on the other,—the one who does the act from which the loss results, must bear it.

"Therefore the claimant, John B. Pilling,

is entitled to recover the said sum of.....			$12,072	99
The claimant Edward H. Lowell, the sum of..			4,884	18
do	Charles K. Lawton,	do ..	1,194	00
do	John Hasseltine,	do ..	3,072	66
do	William Bloom,	do ..	247	50
Making the total sum of.....			$21,471	33

"These amounts will be allowed with privilege against the amalgamation after giving effect to and working out the operation sec. 4 of ch. 168 4-5, Ed. VII.

"The claimants have already been allowed costs on the issue as between themselves and Hodge and White, when the latter's contestation was dismissed with costs, for want of giving additional security.

"The undersigned is of opinion that no costs should be allowed upon the present contestation as between the plaintiff, the Bank of St. Hyacinthe, and the said five claimants. Indeed, these claimants must stand in the same position as all other creditors. They were duly called in due course of law to file their claims at a given time, and failed to do so, but came at the last moment asking the indulgence of the Court to file their claims and intervene in the contestation of Hodge and White. Had they filed their claims at the same time as all the other creditors did, they would, in all probability, have been allowed, without contestation, and in every case without costs. The creditors or the mass cannot, under the circumstances, be made pay and charged with these costs.

"There will be no costs to any of the parties on the present intervention and contestation, excepting, however, upon the contestation between Hodge and White and the intervening claimants, as above mentioned.

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Argument of Counsel.

September 30th and October 1st, 1908.

The appeal now came on for argument at Montreal.

E. F. Surveyer, for Pilling, and the other intervening claimants;

A. Geoffrion, K.C., for the plaintiff, the Attorney-General of Canada and the Crown;

F. L. Beique, K.C., for the Bank of St. Hyacinthe;

E. F. Surveyer, for the intervening clients on the main appeal, argued that Pilling was a *bonâ fide* holder without notice, as the bonds were sold to him by the pledgees. As to Lowell he bought in the ordinary way so was entitled to rank for the full amount of the bonds he held. (Cites Arts. 1969 and 1973 C. C. P. Q.) Lawton and Bloom took the bonds as pledgees for money advanced. They were entitled to principal moneys and interest against the railway, and their transferrors stood in their place. The finding of the Referee should be increased to the amount claimed by the intervening claimants.

A. Geoffrion, K.C., for the plaintiff on the main appeal, contended that the claims of Pilling, *et al.*, should not be allowed, as the facts in evidence showed they were not *bonâ fide* holders of the bonds for value. The bonds were defective on their face, Duff not having had authority to sign for the National Trust Company. Upon the face of the bonds Duff's signature was an irregularity sufficient to put the purchaser upon inquiry. Inquiry would have shewn that Duff had no authority to sign. It would have shewn that the resolution purporting to appoint Duff as a successor in the trust was a nullity. There was no sufficient resolution of the shareholders appointing him. In the Province of Quebec a minute of the executive committee of a company or corporation which is essentially null is not validated by the presence of the corporate seal. Validity of form will not cure defect of substance. Furthermore, as to the validity of the bonds

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for lack of notice, the appointment of a Receiver was a public matter, with notice of which the transferees of the bonds were charged.

F. L. Beique, K.C., followed for the Bank of St. Hyacinthe on the main appeal. He contended that the minutes of the company shew that on the day that Duff was appointed trustee there was a motion made for a scheme of arrangement. This was notice that the company was insolvent.

Mr. *Geoffrion*, on the cross-appeal by the Attorney-General of Canada, submitted that under the Civil Code (Arts. 1031 and 1484) Pilling had no right to buy the bonds. To allow the pledgee to buy is against public policy. It is the law of Quebec, and not the law of Massachusetts that applies to the purchase of these bonds by Pilling. When the pledgee buys the pledged property the relation he originally stood in touching the pledged property is not changed. He gets no new rights as against other creditors.

It is impossible for a pledgee to sell at private sale to himself. On the other hand notice is necessary to a valid public sale. A pledgee might buy at a judicial sale, but not otherwise. Besides this, Pilling, upon the facts, is a trustee, and *a fortiori* cannot buy for himself.

Mr. *Surveyer*, for the respondents on the cross-appeal, replied, relying on Art. 1971, C. C. P.Q., as empowering Pilling to buy as pledgee.

CASSELS, J., now (October 31st 1908) delivered judgment.

APPEALS BY BANK OF ST. HYACINTHE and the Attorney-General of Canada from finding upon the claims of Pilling, *et al.*, and appeal by Pilling, *et al.*, from finding upon their own claims.

On page 105*m* of the Referee's report this claim is fully dealt with (1).

(1) For the facts here referred to, see *ante* pp. 153 et seq.

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The validity of the claim must depend upon the validity of the amalgamation between the Quebec Southern Railway Co. and the South Shore Railway Co. and the validity of the issue of the bonds by the amalgamated company.

The Referee has found that the amalgamation was valid so far as this intervening claim is concerned.

Pilling recovers the full amount of his claim and interest, but claims to rank for the full amount of the face value of the bonds, his claim being based on the fact that he is in the same position as an outside purchaser would have been had he purchased the bonds at auction sale.

Had Pilling, representing his estate, not been a purchaser for value without notice he would have had no claim as he would have had no higher right than the pledgor. He occupies a higher position and so is allowed in full the amount of his claim.

I think the Referee was correct in holding that he cannot claim for the surplus. The surplus was to be paid over. The Referee's reasoning is in my view correct in respect of the claim of Pilling as well as that of Lowell, Lawton, Hasseltine and Bloom.

I would not have thought it necessary to consider the question of the validity of the amalgamation were it not that the title depends on it.

I have given my views as to the effect of the statute of 195, cap. 158, 4 & 5 Edw. VII, in dealing with the appeals of the Standard Trust Co.

The agreement of the 16th October, 1901, contemplated an amalgamation to be carried out on different lines than that eventually carried out by the agreement of 24th January, 1902. However, the agreement of 24th January, 1902, was intended to create an amalgamation of the two companies. It is a crude document and evidently further conveyances were contemplated which

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were not executed. This was an amalgamation entered into pursuant to the provisions of section 11 of cap. 76, 63-64 Vict. It was assented to by the shareholders of both companies. To make the amalgamation effective the sanction of the Governor in Council was required. This sanction was given by Order in Council bearing date the 15th day of April, 1902.

It is argued that by sub-sec. 3 of sec. 11 of chap. 76 of the Acts of 1900 notice in the *Canada Gazette* was required to be given, and this notice not having been given, the amalgamation never became effective. *Chappelle v. The King* (1), was referred to in support of this contention. I do not think that case affects this one. At page 632 of the judgment of Sir Louis Davies sec. 91 of R.S.C. 1886, c. 54, is set out. The order or regulation only came in force after publication. The provision of sub-section 3 of section 11 to my mind is directory only.

After the amalgamation bonds were duly issued, the two railways were operated as one railway. The minutes of the Quebec Southern show continuous dealings with the railways as one railway.

The National Trust Company were made trustees for the bondholders, subsequently succeeded by one Duff. The bonds in question were issued and in the hands of their holders cannot now be questioned for the reasons given by the Referee.

The appeals and cross-appeals are dismissed with costs.

Judgment accordingly.

Solicitor for plaintiff: *A. Geoffrion.*

Solicitors for defendants: *Greenshields, Greenshields & Heneker.*

Solicitors for Hodge and White: *Hickson & Campbell.*

Solicitors for Pilling, *et al.*: *McGibbon, Casgrain, Mitchell & Surveyer.*

Solicitor for Attorney-General of Canada: *A. Geoffrion.*

(1) 32 S. C. R. 586; affirmed, [1904] A. C. 127.