

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Senecal v.
Hatton and another from the Court of Queen's
Bench for Lower Canada, Province of Quebec ;
delivered December 8th, 1886.*

Present :

LORD HOBHOUSE.

LORD HERSHELL.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

THIS is an appeal from a judgement of the Court of Queen's Bench in Lower Canada, which modified a judgement which had been given by the Superior Court.

There were two actions: one was brought by Hatton against Senecal to recover from him 35 debentures of the Montreal, Chambly, and Sorel Railway Company for 1,000 dollars each, with coupons attached, Hatton having received an assignment of those debentures from Hibbard; and the other action was brought by Senecal against Hibbard, calling upon him to intervene in the suit brought by Hatton against Senecal and to render an account of the debentures.

The declaration in the first suit, which was filed on the 16th of May 1882, stated that by deed dated 17th October 1872 the said Railway Company agreed to pay over to the Defendant (Senecal) 25 per cent. of all subsidies which they should receive from the Government and Municipalities; that afterwards, on the 15th May 1875, in consideration of the sale and delivery to Defendant by Hibbard of 35 debentures of the said Railway Company for 1,000 dollars each, with coupons attached, for the payment

of interest at 6 per cent. per annum (being the bonds in question), the Defendant transferred to Hibbard all his rights under the deed of 17th October 1872, and gave him a receipt dated the 15th of May 1875, and an order dated the 19th of May 1875, with relation to that transfer; that afterwards, in November 1877, Defendant repudiated the transfer of 15th May 1875, and alleging that it had been cancelled, claimed from the Government payment to himself of 25 per cent. of their subsidy to the Railway Company, and afterwards, on the 22nd November 1877, assigned his interest under the deed of 17th October 1872 to one Hurteau, who ultimately, as such assignee, obtained judgement against the Railway Company, and payment from the Government of a large sum; that notwithstanding the cancellation and repudiation of the transfer by the Defendant to Hibbard, Defendant, without right, retained the 35 debentures and sold them without the knowledge or consent of Hibbard or of the Plaintiff (Hatton); that by deed dated 26th January 1882, Hibbard sold and transferred the said debentures and coupons to the Plaintiff; that Plaintiff gave Defendant notice thereof, and demanded delivery to him of the said debentures, but that Defendant, though frequently requested, had neglected and refused to deliver the same to Hibbard or to the Plaintiff; the declaration concluded by praying that Defendant be condemned to deliver to Plaintiff the said debentures and coupons, and, in default of delivery, be condemned to pay 35,000 dollars with interest thereon from 2nd January 1874, the date of the said debentures, and also interest on the amount of each coupon from the date when the same became due. The Defendant in an amended plea stated: That he ceded to Hibbard

his rights under the deed of 17th October 1872, in consideration of 35 debentures, which Hibbard handed over to Defendant under an arrangement that they were to be paid or else exchanged for debentures in other solvent companies within one month from the handing over, and that it was upon these terms that the receipt of the 15th May 1875 and the order of the 19th May were signed and handed by Defendant to Hibbard; that afterwards, in April 1876, Hibbard having made over to Defendant his contract for the construction of the said railway, handed back to him the said receipt of 15th May and the order of the 19th May 1875, and ceded back to him in this manner the rights under the deed of 17th October 1872; that it was at the same time agreed between Hibbard and Defendant that Defendant should keep the said debentures in consideration of certain advances made by him to Hibbard, and that in case he sold the said debentures he should render account to Hibbard of the proceeds of the sale, as he is still bound to do, setting off in such account the sums due by Hibbard to him which have not yet been settled, although the Defendant has often requested Hibbard to do so; and that the balance in favour of the Defendant far exceeds the value of the debentures.

Both Courts have found against the Defendant upon that plea; and as to the arrangement which it was said that Hibbard had made with him. That being the case, it appears that Hibbard having handed over 35 debentures to Senecal in consideration of the transfer of the subsidy of the Government to the railway company, Senecal repudiated the agreement, and subsequently sold the right to the subsidy to another person. Under these circumstances it became his duty to return the debentures to Hibbard. He did not do

so, and Hibbard transferred the debentures to Hatton. The arrangement which was stated by Senecal as an answer to the action—that Hibbard had agreed with him that he should sell the debentures and account for the proceeds—was found by the Courts not to have been proved.

The Superior Court in the first action gave judgement for the Plaintiff and condemned the Defendant to deliver to the Plaintiff the 35 debentures within 15 days from the date of the judgement, and in default to pay to the Plaintiff 35,000 dollars as the value of the debentures. On appeal the Queen's Bench reduced the amount and valued the debentures at 25 cents to the dollar. The judgements were perfectly right in ordering the debentures to be returned and handed over to Hatton, and that in default of their being handed over the Defendant should pay the value of them.

It has been contended that the Court of Queen's Bench was wrong in valuing the debentures at 25 cents to the dollar. It appears to their Lordships that there was evidence upon which the Court were fully justified in arriving at that conclusion. There was evidence that on the 29th of November 1882 similar debentures were sold at 25 cents to the dollar.

Under these circumstances their Lordships are of opinion that there was no error in the judgement of the Court of Queen's Bench.

In the other action by Senecal against Hibbard Senecal relied upon the facts which he had set up in his defence to the first action, and complained that, notwithstanding the facts alleged, Hibbard had wrongfully transferred the debentures to Hatton, who had commenced an action against the Plaintiff to recover the same; and concluded by praying that the Defendant Hibbard should be made to intervene

in the first action, and admit or deny the allegations of the defence therein, and produce a statement of all existing accounts between him and Senecal, and declare whether he had not on several occasions admitted that Senecal was entitled to keep the said debentures.

In the second action both Courts found, as they did in the first action, that the facts stated were not made out in evidence. The Superior Court dismissed the suit with costs. The Court of Queen's Bench on affirming the judgement said, "Considering that the said Appellant has failed to establish that he was entitled to the conclusions of his declaration against the said Ashley Hibbard, doth confirm the judgement rendered by the Court below, and doth dismiss the said action of the said Louis A. Senecal with costs against him, both in the Court below and on the present Appeal." They, however, added a reservation. The contention of Mr. Fullarton on behalf of Senecal is that the reservation is not sufficient. It was this: they reserved to Senecal "any recourse which he might have or pretend against said Ashley Hibbard as Defendant" on two judgements, which had been set up by Senecal in the suit; but there was no reservation in respect of two promissory notes which had also been set up by Senecal, the learned Judge on the trial having found that those two promissory notes were not on stamps, and that they were prescribed. It appears to their Lordships that such a reservation was unnecessary. The Court found merely that the Plaintiff had not made out his conclusions; but, whether the reservation was necessary or not, their Lordships think that the Court omitted to reserve the right upon the two notes because they considered that they had not been stamped, and were barred by prescription. Under those circum-

stances they think it unnecessary to amend the reservation by including in it the right to have recourse upon the two notes.

Their Lordships will therefore humbly recommend to Her Majesty that the judgement of the Court of Queen's Bench be affirmed. The Appellants must pay the costs of this Appeal.