BETWEEN

THE MINISTER OF RAILWAYS AND CANALS FOR THE DOMINION OF CANADA..... } PLAINTIFF; 1908 Oct. 31.

AND

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

In re THE BANK OF ST. HYACINTHE (CLAIMANT) ..... } APPELLANT;

AND

THE RUTLAND RAILROAD CO. (CLAIMANTS)..... } RESPONDENT.

In re HANSON BROS. (CLAIMANTS). .....APPELLANTS.

In re F. D. WHITE..... ..... { INTERVENING CLAIMANT AND APPELLANT.

Railway—Sale—Dominion Railway Act—Vendor's lien—Waiver.

The acceptance by the vendor of a railway of the bonds of the company purchasing the road is a waiver by implication of his lien, if any, for a balance of the price remaining unpaid.

Semble:—That a vendor's lien for unpaid purchase money does not obtain in the case of the sale of a railway under the operation of *The Railway Act* (R. S. 1906, c. 37). The rights of the vendor in such a case are limited to the remedies prescribed by the statute.

APPEALS from the Registrar acting as Referee.

The following statement of facts is taken from the Registrar's provisional and final reports herein:—

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO, AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

"No. 66 LA BANQUE DE ST. HYACINTHE.

The claim made by the bank reads as follows, viz. :

To price of sale of United Counties Railway and East Richelieu Valley Railway, exclusive of balance of the price of the latter railway, $100,000 and interest, remaining due to the East Richelieu Valley Railway and forming the object of the claim.....	$500,000 00	
Less amount paid for stock Hanson Bros.....	6,300 00	
		$493,700 00
Interest on $493,700.00 from August 7th, 1900, to 23rd April, 1906, at 4 p.c.....		112,806 82
To one half of the $25,000.00 paid to the East Richelieu Valley Railway as per deed of the 30th May, 1900.....		12,500 00
Interest on same from the 1st of June, 1900, to the 23rd April, 1906 at 5 p.c.".....		3,684 92
		$622,691 74

E. & O. E.

"For this sum of $622,691.74, the bank claims privilege of *bailleur de fonds*, or vendor's lien, and relies upon the two deeds of agreement of the 2nd December, 1899, made and executed between the Bank of St. Hyacinthe and H. A. Hodge, relying upon the agreement of the 7th August, 1900, in so far only as it complies with the agreements of the 2nd December, 1899.

"At the time these agreements of the 2nd December,

1899 were made and executed the Bank was, as alleged, the creditor, in a large sum of money, of the United Counties Railway, and was about to take proceedings to secure a clear title, as it was desirous of disposing of the railway when acquired. On the other hand H. A. Hodge was willing to purchase it and in the meantime to use and operate the same, upon the terms of these agreements of December, 1899, whereby the Bank agreed, *inter alia*, to sell to H. A. Hodge, or to the Quebec Southern Ry., when organized, the United Railway for the price of

(a) $25,000. in cash.

(b) 75,000. in a promissory note of the said Company to be hereafter organized, endorsed by Hodge, payable one year from the date of the transfer of the said railroad, with interest at 4 p.c.

(c) 300.000. in first mortgage four per cent. gold bonds payable at such time in principal as the Quebec Southern Ry. may elect, the principal thereof not being re-payable for a period of less than 20 years, nor more than 30 years.

And the Bank further agreed, on the same date, to sell to H. A. Hodge or the Quebec Southern Ry., the line of railway owned by the East Richelieu Valley Railway for the sum of

100,000 in first mortgage four per cent. gold bonds.

It was further agreed that should the Bank be obliged to pay for the East Richelieu Valley Railway a sum in excess of $100,000, that H. A. Hodge or The Quebec Southern Ry. would pay one half of the amount of said excess up to $25,000 in *bonds*. The road was paid $125,000 and the Bank paid $25,000 in cash at the time

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

12,500. of the sale and is now claiming $12,500.00, half of that amount.

It was further agreed that the Bank had to convey both lines of railways free and clear from all incumbrances, and that, in addition to the consideration price for the United Counties Railway stipulated at $400,000., H. A. Hodge, or The Quebec Southern Ry., would pay a further sum of $100,000 in gold bonds of four per cent. of same issue as above mentioned, provided a reasonable traffic agreement with the I. C. Ry. be entered into with the United Counties Railway.

The said agreement was entered into on the 5th Dec., 1899, and entitled the Bank

100,000. to the sum of $100 000.

$612,500.

"On the 27th January, 1900, an agreement was entered into between H. A Hodge and G. C. Dessaulles, alleging the agreements of the 2nd December, 1899, touching the purchase of the United Counties Railway, alleging further the agreement of the 11th January, 1900, under which the Bank agreed to acquire the said railroad when sold at Sheriff's sale, and in order to be in a position to carry out the terms of the original agreement, the said G. C. Dessaulles thereby agreed and undertook to buy the said railway and carry out the terms and conditions of the agreements of the 2nd December, 1899, and the said Hodge assumed against the said G. C. Dessaulles the same obligations which he had assumed towards the Bank of St. Hyacinthe in the original agreement, and the Bank intervened to this agreement and declared itself satisfied therewith.

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

"The United Counties Railway was then sold by the Sheriff of the District of St. Hyacinthe, on the 25th day of January, 1900, to the said G. C. Dessaulles, acting for the bank.

"On the 30th of May, 1900, the East Richelieu Valley Railway was sold to M. E. Bernier, acting a trustee for the Quebec Southern Railway. This part of the claim will however, be treated separately when hereafter dealing with the claim of the East Richelieu Valley, No. 48.

"On the 26th June, 1901, The Quebec Southern Railway, acting by H. A. Hodge, deposited in the office of the notary R. A. Dunton, to remain therein as part of the minutes of the said notary, an agreement bearing date the 7th August, 1900, between the said G. C. Dessaulles and the Quebec Southern Railway, alleging that the said G. C. Dessaulles had purchased the United Counties Railway at Sheriff's sale and that the Quebec Southern Ry. had been duly incorporated and was desirous to acquire the said railway, and whereby it was agreed by the said G. C. Dessaulles to sell the United Counties Ry. to the Quebec Southern Ry. for the sum of $1,650,000, clear of all lien and incumbrances, and give valid marketable title.

"This price agreed upon being payable as follows :—

$749,000 in paid-up non- assessable stock.

$750,000 in first mortgage bonds bearing interest at 4 % per annum, &c.

151,000 in promissory notes payable one year after date of issue.

$1,650,000

* * * * * *

"The claim will be allowed as follows, viz.,

The sum of..... $100,000.00

with interest thereon at 4 p. c. from the 7th August,

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

1900, as claimed, to the 8th November, 1905.....		21,019.17
with privilege of bailleur de fonds		
The sum of.....	$300,000.00	
balance of purchase price, with interest thereon from 7th August, 1900, to the 8th November, 1905, at 4 p.c.	63,057.51	
The sum of.....	100,000.00	
with interest thereon at 5 per cent from the 1st June, 1900, to the 8th November, 1905, under agreement of 30th May, 1900, and as representing the cost of the East Richelieu Valley.....	27,191.78	
The further sum of.....	12,500.00	
with interest thereon at 5 p. c. from 1st June, 1900, to the 8th November, 1905, the bank's share of the excess price of same...	3,398.98	
Finally the sum of.....	100,000.00	
with interest thereon at the rate of 4 p. c. from the 7th August, 1900, to the 8th November, 1905, the amount due in virtue of the traffic arrangement with the I. C. Ry.....	21,019.17	
		$627,167.44
making the total sum of...		748,886.61
from which shall be deducted the amount paid for		

stock Hanson Brothers, viz.....		6,300.00
Leaving the net sum of.....		$741,886.61
To which should be added the cost of evidence adduced therein.....		20.60
		$741,906.21
From this amount should be deducted the sum of.....	$100,000.00	
with interest at 5 per cent from the 1st June, 1900, to the 8th November, 1905...	27,191.78	
		$127,191.78
		$614,714.43
which said sum of $127,191.78 is payable to the East Richelieu Valley before that of the bank, and which will be distributed as set forth in claim No. 48.		
The United Counties Railway having been sold by the bank free from all incumbrances, there will be deducted from the sum of,.....		$614,714.43
coming to the bank, the sum of as representing the claim of Hanson Brothers more clearly established and discussed under No. 43.		8,099.27
		$606,615 16

"Subject to the provisions of Sec. 4 of ch. 158, 4-5 Edward VII, the balance of the claim of the Bank of St. Hyacinthe, which remains unpaid, shall be collocated on a *pro*

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

rata basis with the chirographic creditors, as hereinafter set forth in "Schedule B".

"The Bank of St. Hyacinthe, being dissatisfied with the above finding made by the Provisional Report, dated the 12th day of December, 1906, filed, on the 28th February, 1907, a contestation of the said Report, asking, *inter alia*, that both the East Richelieu Valley Railway and the Bank of St. Hyacinthe be collocated for the total amount of their respective claims, with the special privilege of *bailleur de fonds* or vendor's lien; and for the portion remaining unpaid after their collocation out of the proceeds of the sale of the East Richelieu Valley and the United Counties Railways, upon any balance remaining out of the proceeds of the sale of the South Shore Railway, after payment of the claims entitled to priority under sec. 4 of ch. 58, 4-5 Edward VII.

"The plaintiff, acting in the interests of the creditors at large, under the direction of the Court, filed on the 4th April, 1907, a plea to this contestation praying for the dismissal of the same.

"The Rutland Railroad Company, a creditor collocated in the said Provisional Report, filed, by leave, on the 11th November, 1907, a plea or answer to the contestation of the Bank of St. Hyacinthe identical with the plaintiff's plea, consenting that the evidence, both written and oral, already adduced at that date, upon the issues between the plaintiff and the bank, avail upon their issue, declaring further they have no further evidence to adduce.

"The hearing of the contestation was proceeded with, at Montreal, before the undersigned on the 2nd, 4th, 8th, 29th and 30th days of November, A. D. 1907, in presence of F. L. Beique, Esq., K.C., and E. Lafleur, Esq., K.C., of counsel for the Bank of St. Hyacinthe; of A. Geoffrion, Esq., K.C., of Counsel for the plaintiff, and of J.E. Martin, Esq., K.C., of Counsel for the Rutland Railroad Co. After hearing read the Provisional Report, the

pleadings, etc., and upon hearing the evidence adduced and what was alleged by Counsel aforesaid, it is humbly submitted :—

"Dealing first with the question as to whether or not the East Richelieu Valley Railway Company is, under the circumstances, entitled to be collocated by special privilege of *bailleur de fonds* (vendor's lien), it may be said here that, under a special final report made by the undersigned and confirmed by this Court on the 23rd day of December, 1907, it has been found that the East Richelieu Valley Railway Company was entitled to be paid with privilege of *bailleur de fonds*, reserving the question between the parties interested as to whether the amount of the said collocation should or should not ultimately come out of, or be charged to, the collocation of the Bank of St. Hyacinthe.

"Therefore, the only question remaining to be determined on this contestation with respect to the East Richelieu Valley Railway Company, is as to whether the latter as against the proceeds of the sale, having its privilege of *bailleur de fonds*, is not the Bank of St. Hyacinthe, under the deed of the 2nd December, 1899, liable for the purchase price in cash and the Quebec Southern Railway Company entitled to discharge this obligation in bonds.

"That deed of the 2nd December, 1899, between the Bank of St. Hyacinthe and H. A. Hodge respecting the sale of the East Richelieu Valley Railway, is, to my apprehension, somewhat ambiguous. However that may be, both parties have departed from the provisions of this deed, and resorted to the deed of the 30th May, 1900, entered into between the Quebec Southern Railway Company and the East Richelieu Valley Railway Company, which was subsequently followed by the registration and ratification by the President of the Quebec Southern Railway Company. By the first clause of the deed of the 2nd December, 1899, the bank agrees, not to sell, but to

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

assign, to Hodge all the rights and claims which the United Counties Railway has or other persons have to any claims to the capital stock of the East Richelieu Valley Railway, etc., *in order to enable the obtaining possession and control* of the East Richelieu Valley Railway. Clause three provides that the cost of litigation therein referred to, shall be borne by both parties in equal proportions, and clause four is an undertaking by the bank to turn over to Hodge the control of the stock or more than 51 per cent. if more is obtained. Would not again these two clauses, coupled with the surrounding circumstances, go to show that the deed was not an out and out sale?

"Now, although the deed of the 2nd December, 1899, is perhaps not as clear as it might be, and that it is somewhat hazy with respect to the obligations of the bank in connection with the East Richelieu Valley Railway, does it not appear therefrom that all the bank undertook under it was to use its best exertions and endeavours in obtaining a transfer of the East Richelieu Valley Railway to the Quebec Southern Railway Company, or to Hodge acting for the company to be organized? The bank did not undertake an absolute obligation to obtain title to the East Richelieu Valley Railway. It undertook clearly to sell the United Counties Railway, because it controlled it, and it was also greatly interested in effecting the sale of the East Richelieu Valley Railway, as the Quebec Southern Railway Company was not obliged to take only one of the railways, if the two were not procured the whole scheme thus falling through. The bank, however, was not, by the terms of the deed, liable for any damages in case it was unable to procure the sale of the East Richelieu Valley Railway.

"The proprietors of the East Richelieu Valley Railway would not, on any account, deal with the bank itself; but were quite agreeable to deal with Mr. Bernier, who had formerly been a director of the bank, and was well dispo-

sed towards it; but who was not, however, representing the bank on the sale. Carrying out the spirit of the deed of the 2nd December, 1899, and partly in discharge thereof, the bank, at a meeting of its directors on the 19th January, 1900, authorized Mr. L. P. Morin, one of the directors, to accompany Mr. M. E. Bernier to negotiate the purchase of the East Richelieu Valley Railway.

"The bank was unable to effect the sale of the East Richelieu Valley Railway under the terms and conditions of the 2nd December, 1899, as the company refused to accept bonds, exacting cash or something equivalent to it. Hodge, of the Quebec Southern Railway, was at that time, unable to pay in cash, and the bank was to endeavor to get the East Richelieu Valley Railway for $100,000 in bonds, and both parties were also willing to go as high as $125,000, each paying half of the excess. However, the sale could not be made for bonds, and Mr. Lafleur, of counsel for the bank, suggests that then both parties fell upon clause 9 of the deed of the 2nd December, 1899, whereby it is understood and agreed that in the negotiation for acquiring the East Richelieu Valley Railway the parties will meet one another in a *fair spirit and will give and take* with a view of making mutual concessions, having in view the ultimate goal of acquiring the road; and the parties made mutual concessions, and the Quebec Southern Railway Company acquired the road, through them or the trustee Mr. Bernier, for cash instead of bonds.

"However true that view may be, bearing in mind that the parties could always give and take without any agreement to that effect, we find in the deed of the 30th May, 1900, by which the East Richelieu Valley Railway is sold to Mr. Bernier in trust for the Quebec Southern Railway Company for the sum of $125,000 in cash, that the bank at the time paid $25,000 in cash, as the vendors were exacting at least that amount in cash. Of these $25,000

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

the bank was, it is claimed, paying $12,500, the amount it owned as one-half of the excess over $100,000, and was advancing the balance, the other $12,500, by way of accommodation, to the Quebec Southern Railway Company. The bank, it must be assumed, thus declaring itself satisfied with the deed. But the Quebec Southern Railway Company cannot, on the face of these transactions, hold the bank responsible for the change from bonds to cash. The bank is not a party to the deed of the 30th May, 1900, which, however, must be taken to be in discharge of and in compliance with the deed of the 2nd December, 1899.

"The deed of the 30th May, 1900, was by the Quebec Southern Railway Company itself duly registered as it was. On the 8th July, 1901, Hodge, acting as President of the company, by a deed passed before Dunton, Notary, which said deed is itself registered on the 26th September, 1901, declares that by the deed of the 30th May, 1900, the East Richelieu Valley Railway Company sold and conveyed to M. E. Bernier, therein acting and accepting as trustee for the Quebec Southern Railway Company a line of railway known as the East Richelieu Valley Railway. That the Quebec Southern Railway Company has become vested with the said line of railway so acquired by the said Bernier in trust for the said Quebec Southern Railway Company, giving further the usual notice of registration as provided by the Code.

"This last mentioned deal actually completed the whole transaction which is affirmed by the Quebec Southern Railway Company. The latter is a party to the deed of 30th May, 1900, and ratifies it by the deed of the 8th July, 1901. The acceptance of the deed of the 30th May, 1900, without any reservation, is a waiver by the Quebec Southern Railway Company to stand by the deed of the 2nd December, 1899. If the East Richelieu Valley Railway Company were suing the Quebec Southern Railway

Company for the purchase price, obviously the Quebec Southern Railway Company could not call the bank in warranty and say: True, we undertook by the deed of the 30th May, 1900, to pay that in cash, but we call upon you under the provisions of the deed of the 2nd December, 1899, to discharge that obligation of ours, and we tender you the necessary bonds in payment. The bank assumed no such obligation under the deed of the 2nd December, 1899.

"It cannot now be said in face of the deeds of the 30th May, 1900, and the 8th July, 1901, and all the surrounding circumstances, that the Quebec Southern Railway Company can turn around and say to the bank you must pay in cash the full amount of $125,000, the purchase price of the East Richelieu Valley Railway, to our discharge and accept bonds in payment.

"Therefore, the undersigned, having been much enlightened by the evidence adduced and argument heard since the production of the Provisional Report, finds that the East Richelieu Valley Railway Company is entitled to be paid with full privilege of *bailleur de fonds* and that the bank is entirely discharged from any liability in respect thereof."

"The claim of the Bank of St. Hyacinthe, for the price of the United Counties Railway with privilege of *bailleur de fonds*, resumes itself upon this contestation into the sole question as to whether or not the bank is entitled to the privilege of *bailleur de fonds* (vendor's lien) for that part of the purchase price, which, under the deed of the 2nd December, 1899, is payable in bonds.

"By reference to the above finding made in the Provisional Report, it will be seen that the undersigned, for reasons therein mentioned, refused that privilege and only allowed such privilege as was attached to the bonds.

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Claim.

"The deed of the 2nd December, 1899, is nothing but a promise of sale with possession under lease, as already mentioned.

"The agreement of the 7th August, 1900, is a deed by which Dessaulles agrees to sell, and the Quebec Southern Railway Company agrees to buy, the United Counties Railway for a price different from that mentioned in the deed of December, as above set forth. Then the deed goes on and states that Dessaulles, pending the delivery of the purchase price therein mentioned, divests himself of the road and gives absolute possession thereof to the Quebec Southern Railway Company.

"Then we have here a promise of sale with tradition and actual possession, which, under Art. 1478 of the Civil Code, amounts to a sale.

"Furthermore, by this deed of the 7th August, 1900, Mr. Dessaulles undertakes to execute what must be taken to be again in compliance with the deed of 2nd December, 1999, all further agreements, assignments and transfers to more fully vest the property in the company, and procure and have discharged all liens and encumbrances upon the property and perfect the title thereof.

"Following the execution of this deed of the 7th August, 1900, a protest dated the 12th November, 1901, (Exhibit No. 21) is served upon the bank requesting it to free and discharge without delay the railway properties from all liens and encumbrances, mortgages and hypothecs and charges whatsoever, and procure a free and unencumbered and indefeasible title.

"The bank in answer (Exhibit No. 22) to the protest, on the 28th April, 1902, says that, as far as the East Richelieu Valley is concerned, the obligation of the bank was executed by the deed of the 30th May, 1900, and that as far as the United Counties Railway is concerned, the obligations of the bank were executed by the deed of the 7th August, 1900, in so far as that deed purports to

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Claim.

convey to the Quebec Southern Railway Company the property of the United Counties Railway and the registration of such conveyance. The bank further states, among other things, that in so far as anything else is concerned in the said agreement, it does not intend to be committed, reserving its right to repudiate it as being foreign to the carrying out of its obligations and as exceeding the power of Mr. Dessaulles, as resulting from the several deeds of agreement entered into with reference to the said railway property. And the bank further asserts having fulfilled its obligations and declares its willingness to execute any further reasonable deeds, etc., etc.

"Mr. Dessaulles, the President of the Bank, having all along failed to live up to his contract of the 11th January, 1900, and refused to give to both the Estate Chapleau and Hanson Bros. the hypothec he had thereby undertaken to give them, thus breaking faith—if the word does not appear too strong—with these parties who had obliged him by parting with their bond for $150,000 which stood in the way of the purchase of the United Counties Railway, and which furthermore was, by their consent, used as part of the purchase price thereof, an action was instituted by the Estate Chapleau in January, 1901, against Mr. Dessaulles, Hanson Bros. being *mis-en-cause*, to compel Mr. Dessaulles to execute the hypothec in question to the amount of $150,000. Judgment was, on the 4th April, 1901, rendered accordingly, ordering Mr. Dessaulles to execute within twenty-four hours from the service of the said judgment, in favour of the said parties, a good and valid hypothec for $150,000, to be as security for whatever amount of money there might be found to be due to them, and that failing to execute such hypothec within such delay after the service of the said judgment, such judgment should avail in lieu and stead of such hypothec. Mr. Dessaulles having been served with the said judgment and having failed to

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

execute a deed of hypothec, the judgment was registered against the property and the hypothec and registration have never been discharged, thus preventing the bank from being in a position to give a clear title to the company.

"The bank settled with the Estate Chapleau on the 9th December, 1901, but the hypothec still remains as an encumbrance of $150,000 against the property as collateral for Hanson Bros.' claim.

"Now, without entering into the merits of this hypothec, and asking whether it is good or bad, it is sufficient to say, for the purposes of this case, that it is an encumbrance upon the property to the amount of $150,000 until discharged, and it does not rest with the Quebec Southern Railway, but with the bank, to have the same set aside, radiated or made disappear in any such manner it may care to. The hypothec, good or bad, is in evidence, and it is for the bank to have it radiated, if it thinks it valueless.

"All this is said to show that the bank, up to this day, is not in a position to give a clear title, and it is in answer to the argument by the bank that the company has never delivered the bonds in question. The sale of the United Counties Railway by the bank is a *franc et quitte* sale, and such sales expressly stipulate that no part of the consideration price should be paid until the property has been freed from all liens and encumbrances (see Civil Code, *Beauchamp*, Art. 1532, n. 4, 7, and 10, and Art. 1535, n, 20, 25, 36 and 37). Would it have been competent for the bank to take an action against the Quebec Southern Railway Company, for the payment of the purchase price before all hypothecs and encumbrances have been removed? No, the question of non-delivery of the bonds does not amount to a serious objection, and as was said in the Provisional Report, the bonds are not offered or given in payment, but are used to determine the privilege

attached thereto, under the provisions of the deed of the 2nd December, 1899.

"The bank attacks the bonds, and says that when the Quebec Southern Railway Company issued these bonds to the amount of $900,000 they made it, by the deed of trust, a condition that the party taking those bonds was to submit to the obligation of suffering the redemption of the same and have them substituted for bonds of any other issue at the rate of $12,000 per mile, in lieu of the rate of $10,000 per mile, as provided in the deed of the 2nd December, 1899. The following cases are authority to say that although the security prove to be inadequate, or wholly void or useless, under the circumstances, there is an implied waiver of the lien. *Kendrick* v. *Eggleston*, 41 Am. R. 90; *Camden* v. *Vail*, 23 Cal. 633; *Partridge* v. *Logan*, 3 Mo. App. 509. If the proper bonds have not been delivered and were not forthcoming at the proper time, when the bank would have been in an position to give a clear title, the company would have been guilty of a breach of contract and the bank had an action to rescind and in damages; but for all that the contract could not be altered, and the bank could only recover in damages or otherwise an amount equal to the value of the bonds, pursuant to the contract. *The bank had contracted itself out of the vendor's lien and accepted bonds in substitution therefor.*

"Now there is no doubt, and it even appears on the face of each bond, that the issue of $900,000 is limited to the amount of $10,000, and it is even called an issue of first mortgage bonds to that extent over an area of 90 miles. That appears both on the face of the bonds and in the deed of trust. The company may never have changed the rate per mile. However, what we have to-day is a bond contemplated and required by the deed of the 2nd December, 1899, and it is the equivalent of that bond

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

which is given to the bank and for which it has contracted.

"These bonds were so much issued that part thereof are to-day in the hands of *bonâ fide* persons who made advances to the company and received them as collateral security. And if the privilege of *bailleur de fonds* were given to the bank for that part of the purchase price, which is payable in bonds, these *bonâ fide* bondholders would be deprived from recovering, as the *bailleur de fonds* privilege would wipe out and take all the moneys available on the Quebec Southern Railway, remaining with a small recourse *au marc la livre* under section 4, ch. 158, 4–5 Ed. VII.

"To the back of all these questions, there is a much more serious one, and that is, whether in face of the statute, the Railway Act, the privilege of vendor's lien can exist or can be enforced.

"Under the Railway Act (and the Railway Act guiding us in this case is the Act of 1888, 51 Vict., ch. 29), sec. 95, the bonds, subject to the privilege of the penalties and working expenditure upon the rents and revenues of the railway, as enacted in sec. 94, are declared to be "the first preferential claim and charge upon the company and the franchise, undertaking, tolls and income, rents and revenue and real and personal property thereof, at any time acquired." It would appear from the above that no vendor's lien would exist, and the Supreme Court of Canada held, to some extent, in that sense in the cases of *Wallbridge* v. *Farwell* and *Ontario Car & Foundry Co* v. *Farwell* (18 Can. S. C. R. 1). However, the case must be distinguished from the present. True, in that case Mr. Justice Taschereau (now Sir Elzear Taschereau), who delivered the judgment of the Court, said (at p. 15) that the first charge mentioned in the statute is a first charge second to none, and that it should pass before the privilege of *bailleur de fonds* asked in that case; but that case and the present are very different. The former, among other

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

many differences, is an action to recover the value of supplies and cars sold to the company, which, it is true, would, under the law of the Province of Quebec, become by destination part of the immoveables, and one of the numerous objections raised was that the sale with the privilege of vendor's lien of the goods so sold would interfere with the operation of the railway, a public utility. In the present case no such objection exists, as the claimant is the vendor of the United Counties Railway, at one time in the hands of a Receiver and now sold by the Court to another railway company, and the Court has under the Exchequer Court Act power to sell a railway or a section of a railway, and the vendors of that section of the railway, sold while in the hands of a Receiver, claim their privilege of vendor's lien upon the proceeds of the sale in the hands of the Court.

"Then a very important fact that must not be lost sight of in this case is that the deed of the 7th August, 1900, by which the property passed to the Quebec Southern Railway Company, was duly registered before the deed of trust respecting the bonds in question.

"Moreover, one of the presumptions and rules of construction is that the legislature does not intend to make any alteration in the law beyond what it explicitly declares, either in express terms or by implication; or, in other words, beyond the immediate scope and object of the statute. In all general matters beyond, the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights or depart from the general system of law without expressing its intention with irresistible clearness: *Maxwell on Statutes*, 4th Ed. p. 122, and cases there cited.

"Therefore, the Dominion Railway Act should be held strictly to its precise object, namely, to give a certain class of persons a privilege as creditors which they did not

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

enjoy at common law. Hence, its provisions must be taken as ancillary and supplementary to the common law respecting legal rights and remedies of creditors, and not as abrogating or destroying them, leaving in existence the paramount privilege of vendor's lien which has always been an underlying principle of the civil law, as well as of the common law, being an inheritance of both systems from the Roman Law.

"True, the undersigned has had to read first the Federal statute (the Railway Act) and read the statutes of the Province of Quebec (the Code) only next. And he has allowed the privilege of *bailleur de fonds* or vendor's lien for the part payable in cash under the contract in question, under the principle set forth in the two preceding paragraphs.

"Mr. Beique's paralled between the position of the bank and that of a proprietor whose land has been expropriated for a section of a railway and who had agreed to accept bonds that were ultimately never issued to him, is not applicable. The bonds in the present case have been issued, and, as already said, some of them are in the hands of third *bonâ fide* parties who are claiming *pari passu* with the bank. Further, the remedy mentioned is given by sec. 143 of the Railway Act for land taken by the railway, and is thereby declared to rank before the bonds if the registration takes place before the trust deed. Furthermore, the right of expropriation is founded on the exercise of Eminent Domain, a right *ne plus ultra* (*supérieur à tout*), and notwithstanding such decisions as *Pell v. Midland and South Wales Railway Co.*,(17 W. R. 506); and *Wing* v. *Tottenham &c. Railway Co.*, (L. R. 3 Ch. 740), and the English Lands Clauses Acts, it is doubtful, to say the least, that a vendor's lien would obtain against a railway company in a case of expropriation under the Railway Act, R. S. 1906, c. 37. See per Lord Macnaghten in *Parkdale v. West* (1887, 12 A. C. at

p. 613); *Dayton &c. Railway Co. v. Lewton*, 20 Ohio, 401; and see 10 Am. & Eng. Rail. Cas., p. 11.

"It has been stated in the Provisional Report, and it is thought advisable to repeat it here again: The deed of the 2nd December, 1899, was never registered. The deed of the 7th August, 1900, was registered on the 6th September, 1901, and the trust deed for the bond issue in question was only subsequently registered.

"While the undersigned has allowed vendor's lien for the part of the purchase price payable in cash, he is unable to find any law allowing him to carry that principle to that part of the purchase price payable in bonds. This is not an alternative sale where the vendor has the option, under the deed, to take payment either in cash or in bonds. He has by this very deed abandoned his privilege of vendor's lien and substituted therefor the privilege the bonds might give him, and he can only recover in pursuance thereof, otherwise he would be recovering more than he bargained for. The jurisprudence in support of that view is overwhelming.

"When the vendor has accepted something in substitution of a money payment, he cannot assert a lien against the immoveable. See *Parrot* v. *Sweetland*, 3 My. & K. 655:—Where a daughter conveyed her remainder in fee to her father, the tenant for life, the consideration being a bond for £3,000 it was held not to be a case of security for the purchase money, but a substitution for the price, which the vendor has agreed to accept, and that the lien for the purchase money was consequently discharged. So likewise *In re Brentwood Brick & Coal Co.*, L. R. 4 Ch. D. 562, where a leasehold brick field was assigned to a company in consideration of £6,000 to be paid to the vendor as follows: 50 per cent. on all moneys to be received from the sale of shares, and 50 per cent. on all moneys borrowed by the company by way of capital, until the £6,000 were paid. The company became abortive.

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

No money was received from the sale of shares or borrowed, and ultimately the company were ordered to be wound up, and it was held that the nature of the contract was such as to exclude the vendor's lien, and the vendor had no lien on the leasehold premises. See also *In re Patent Carriage Co. Gore and Durrant's case*, L. R. 2 Eq. 349; and *In re Albert Life Insurance Co.* L. R. 11, Eq. 178.

"In *White & Tudor's Leading Cases in Equity* (6th Ed. 1886) Vol. 1, p. 383, it is said: "Where it appears that the bond covenant, or annuity, was *substituted for* the consideration money, and was, in fact, the thing bargained for, the lien will be lost."

"See *Jones on Liens*, Vol. II, sec. 1073, and sec. 1086, in the latter it being said: "A vendor's lien is lost by taking a mortgage upon other property, or by taking other independent security for the purchase money such as a bond, etc., etc., unless there be an express agreement that it shall not have that effect."

"The intention to substitute may also be implied from the circumstances as in the present case. *Austen* v. *Halsey*, 6 Ves. 483; *Mackreth* v. *Symmonds*, 15 Ves. 348. And if the vendor does any act which manifests an intention to rely upon any security independent of the lien he will be taken to have waived it. *Buntin* v. *French*, 16 N. H. 592; *Coit* v. *Fougera*, 36 Barb. 195. If the security accepted be totally distinct and independent it will become a case of substitution for the lien. Per Eldon, Ld. Ch. in *Mackreth* v. *Symmonds* 15 Ves. 348.

"Girouard, J., in the case of *Quebec &c. Railway Co.* v. *Gibsone*, 29 S. C. R. 358, held that, under paragraph 29 of Art. 5164 of the Quebec Railway Act, the indemnity to a proprietor need not consist in the payment of money, but that the parties may settle it any way they please.

and when the indemnity is made the property passes absolutely to the vendee.

"The law respecting the vendor's lien is practically the same under the English law and the law of the Province of Quebec, subject to the case-law above set forth.

"The bank having accepted, by the deed of the 2nd December, 1899, as part payment for the United Counties Railway, the bonds in question, they are only entitled for that part of the purchase price to the privilege attached to the bonds. It was never contemplated by the parties to the contract that the part of the purchase price payable in bonds would ever be paid in money. Had the company contracted to pay the whole amount in cash, it would have placed itself in an absolutely impossible position to finance and to raise money by bonds for its enterprise. From the bank accepting bonds in payment, there would, it seems result an implied contract giving the company power to issue bonds to third parties for value, since the bank did not absorb the whole issue. Therefore, the interests of other bondholders of the same issue must be respected. The bank, under the present distribution, competing with other bondholders of the same issue, receives the equivalent in money to what the bonds can bring it. The creditors are treated as if the contract was carried out. It is not a question of amount, however, it is a question of privilege. Were the company, for one reason or another, guilty of breach of contract, it would be liable in damages; but this would not change the contract and give the bank a vendor's lien.

"On the question of interest, while it might be said that the bank is not entitled to interest, because it was never in a position to give a clear title, on the other hand we must not overlook the fact that the bank parted with the possession of the railway on the 7th August, 1900, and for that reason it is entitled to interest.

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Statement of Facts.

"For the reasons above set forth, the undersigned finds that the contestation by the bank of its own collocation should be, and the same is, hereby dismissed with costs. And the claim will be allowed as follows,

viz: the sum of.....		$100,000.00
from which should be deducted the amount of..... paid for Hanson Bros.' stock, on the 20th day of January, 1900. There was no imputation of payment at the time this sum of $6,300 was so paid by White, and under Art. 1161 C. C., it should be imputed in discharge of the debt actually payable which the debtor had at the time the greater interest in paying. Leaving the sum of.....		6,300.00
		$93,700.00
with interest thereon at 4 per cent, from the 7th August, 1900, as claimed, to 8th November, 1905, with privilege of *bailleur de fonds*.....		19,684.70
		$113,384.70
The sum of..... balance of purchase price, with interest thereon from 7th August, 1900, to 8th November, 1905, at 4 p.c..	300,000.00 $63.057.51	
The sum of..... with interest thereon at 5 per cent, from 1st June, 1900, to 8th November, 1905, being the bank's share of the excess price of the East Richelieu Valley Railway.....	12,500.00 3,398.98	

Finally the sum of..... with interest thereon at the rate of 4 per cent., from the 7th August, 1900, to 8th November, 1905, the amount due in virtue of the traffic arrangement with I. C. Ry	100,000.00 21,019.17	499,975.66
		$613,360.36
The United Counties Railway having been sold by the bank free from all encumbrances, there will be deducted from these.....		$613,360.36
the sum of..... as representing the claim of Hanson Bros. more clearly established and discussed under No. 43.	$8,099.27	
From which should also be deducted the further sum of..... as representing the plaintiff's costs herein upon the present contestation, taking into consideration that the bank has practically succeeded on the issue respecting the East Richelieu Valley Railway, and after having reduced the costs accordingly and lumped them with the view of avoiding delay.	350.00	
The further sum of..... should be deducted as re-	125.00	

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Argument of Counsel.

presenting the costs of the Rutland Rd. Co. upon the said contestation..... $8,574. 27

Leaving the net sum of..... $604,786 09"

These three appeals by the Bank, by Hanson Bros. and by F. D. White were heard at Montreal on the 21st and 22nd days of September, 1908.

F. L. Beique, K.C., and *E. Lafleur, K.C.*, appeared for the Bank of St. Hyacinthe;

J. E. Martin, K.C., and *S. Beaudin, K.C.*, for the Rutland Railroad Company;

R. C. Smith, K.C., for Hanson Bros.;

G. A. Campbell, for F. D. White.

F. L. Beique, K.C., for the Bank of St. Hyacinthe, stated that there was only one important question arising on the appeal from the Referee's report so far as the bank was concerned, viz., whether on the sale of the United Counties Railway the bank had a privilege of *bailleur de fonds* (vendor's lien) for the balance of purchase money unpaid. When a sale is made of railway property for a fixed and determinate price, payable partly in cash and the balance in bonds, does the vendor lose his lien or privilege for the balance by accepting bonds instead of cash? Upon the authorities and the law we submit he does not. In this case the bank, as vendor, is not confronted with an executed contract, because the bonds were not in fact delivered to the bank by the vendee. (Cites Arts. 1534 and 2014 C. C. P. Q.) The Railway Act does not expressly or impliedly cut out the lien. (Cites *Wing* v. *Tottenham, &c. Junction Railway Co.* (1). In any event, the Dominion Parliament could not destroy the vendor's lien as it is a matter of property and civil rights within the province.

(1) [1868] 3 Ch. App. 740.

E. Lafleur, K.C., followed for the bank, citing Arts. 2009, sub-sec. 8, and 2114. He contended that a vendor's lien is a real right attaching upon the immovable sold. The sale was to Hodge and White, and not to the railway company; hence a clear lien was created which could only be discharged by the will of the parties to the contract of sale. A fair interpretation of the Railway Act would exclude any modification of the legal privilege of a vendor.

J. E. Martin, K.C., for the Rutland Railway Company, contended that the Bank of St. Hyacinthe could not possibly have a vendor's lien because the railway never belonged to them, they were merely creditors. By the deed of 2nd December, 1899, they only agreed to procure a title, they never transferred one by that instrument. No vendor's lien could arise upon such an instrument as that. Again, by accepting bonds for balance of price the bank waived any lien they might have had. Further than that, by the deed of 7th August, 1900, the bank, by Dessaulles, its agent, waived all its privileges against the railway.

Again, as to the question of delivery of the bonds to the bank, the fact is that they were delivered to Matthewson for the bank.

As to the Railway Act overriding the provisions of the Code, the legislation of the Dominion Parliament, so long as it strictly relates to the subjects enumerated in sec. 91 of the B. N. A. Act, is of paramount authority even though it touches upon the matters assigned to the provincial legislatures by sect. 92. (*Tennant* v. *Union Bank* (1); *Crawford* v. *Tilden* (2).

S. Beaudin, K.C., followed for the Rutland Railroad Company. He contended that on the face of the instrument of 2nd December, 1899, the bank sold to Hodge, but the intention was to sell to a company to be organized which

(1) [1894] A. C. 31. (2) 6 Can. Ry. Cas. 300.

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Argument of Counsel.

would issue the bonds. No bonds could be issued before the bank abandoned the privilege of vendor's lien. The deed of 7th August, 1900, the only deed registered, was ratified by the bank, and that deed put the company in possession of the road. The bonds were issued by the consent of the bank, and cannot be repudiated. (*Royal British Bank* v. *Turquand* (1); *McMurchy & Dennison's Canadian Railway Act* (2).

G. A. Campbell, for F. D. White, asked leave to intervene in the contestation and to appeal against the Registrar's report in so far as it allowed interest to the bank. The bank undertook, but failed, to sell the East Richelieu Valley Railway to Hodge. The bank never became entitled to the bonds, because they never delivered over the property; hence they are not entitled to interest on the bonds. We do not appeal from the finding of the Referee with respect to the vendor's lien.

F.L. Beique, K.C., replied to the arguments of Mr. Martin and Mr. Campbell, contending that the case of *Crawford* v. *Tilden*, *supra*, referred only to a mechanic's lien, and so was distinguishable from the case of a vendor's lien. A vendor's lien is as important a security for money as a mortgage; it is a privilege. In the Province of Quebec a railway can be seized and sold by a privileged creditor.

The bank never undertook to sell the East Richelieu Valley Railway to Hodge. The bank's undertaking was to sell the United Counties Railway. The East Richelieu Valley Railway would not deal with the bank, and Hodge waived the undertaking of the bank to endeavour to procure it, and bought the railway direct.

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

APPEAL OF THE BANK OF ST. HYACINTHE from the report of the Referee.

(1) 5 E. & B. 248. (2) P. 147.

The facts and documents connected with the sale by the bank to Hodge and transfer to the Quebec Southern have been fully set out in dealing with the appeals of Hodge and White (1).

The Referee has allowed the bank a privilege of *bailleur de fonds*, or vendor's lien, to the extent of $100,000 and interest, but refused to allow the balance of the claim as a privileged *bailleur de fonds* claim. The reasons given by the Referee for the refusal to collocate the bank as privileged creditors with the right of vendor's lien is that by their agreement it was expressly stipulated that bonds of the new company to be incorporated were to be accepted as the consideration.

From this finding the bank appeals and claims the right of privilege of *bailleur de fonds* for the full amount.

I think the Referee's conclusion was correct so far as he declined to allow the bank to rank for a vendor's lien for that portion of the purchase money payable in bonds.

It appears from the report of the Referee that the law of England relating to vendor's lien and of the Province of Quebec are practically similar.

The Quebec Southern Railway Company was duly incorporated. The bonds were to be issued, and when issued to be deposited with Frank Mathewson under the terms of the agreement of the 7th August, 1900, entered into between Dessaulles, Hodge and White, and Mathewson. The bonds were subsequently issued, but the bank has not yet fulfilled the obligation imposed upon them by the terms of the deed of 2nd December, 1899, as to making a clear title.

I am of opinion that the Referee erred in allowing the bank the privilege of *bailleur de fonds* for the $100,000. To my mind such a right as *bailleur de fonds* or vendor's lien cannot exist under the circumstances of this case. The bank was purchasing a railway for the purpose of

(1) *Ante pp. 42 et seq.*

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Reasons for Judgment.

having an act of incorporation pursuant to the statute to operate it. It was a re-organization of the company. I have fully dealt with the facts in the former appeal. How is it possible that as against the reorganized company this equity should exist.

Furthermore, when the bank accepted security in the shape of bonds for the large portion of their claim and agreed to take a note for the balance it became disentitled, if otherwise entitled, to a vendor's lien.

Strong, V.C., when Vice-Chancellor of Ontario in the case of *Anderson* v. *Trott* (1) stated as follows :—

"It is clear both on authority and principle that a vendor who completes a sale and takes a mortgage for part of the purchase money disentitles himself to a lien for the esidue remaining unpaid and unsecured".

The learned Vice-Chancellor quotes numerous authorities.

In *Driffill* v. *McFall* (2) Harrison, C.J., at p. 321 says:—

"A vendor's lien is raised irrespective of contract and is on principles of equity held to exist unless expressly waived, or the facts be such that the Court can safely infer that it was waived."

I would also refer to *Mathers* v. *Short* (3); *Boulton* v. *Gillespie* (4)

Moreover, what was sold was the franchise, railway and property, a blended property for an indivisible sum. A railway is a public utility, a creature of statute with power to create charges as the statute may permit, and I fail to understand how such an equity as *bailleur de fonds* can be held to exist.

It has been held by the Ontario Courts that a workman's lien cannot be created as against a railway. *King* v. *Alford* (5).

(1) 19 Gr. 619.
(2) 41 U. C. Q. B. 313.
(3) 14 Gr. 254.
(4) 8 Gr. 223.
(5) 9 Ont. R. 643.

1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO.

BANK OF ST. HYACINTHE'S CLAIM.

Reasons for Judgment.

The principle upon which a vendor's lien is given to the vendor of land which the railway purchases for construction is entirely different. The railway might purchase, paying a portion of the purchase money and a mortgage for the balance. In this case the railway never acquires anything but the equity, and only the equity becomes charged in favour of the bondholders.

The case in question is entirely different. It is the case of a complete operating railway, retaining its continuity, and I fail to see how such a charge as contended for can be allowed.

I think the appeal of the bank should be dismissed with costs.

Had there been an appeal against the allowance of the claim of $100,000 as a privileged *bailleur de fonds*, or if on the appeal of the bank any respondent had raised the question I would have felt bound to vary the report. No claimant however who has any status to object raises the question and I do not think I should interfere.

APPEAL BY HANSON BROS. from finding upon claim of Bank of St. Hyacinthe :—

I have found that Hanson Bros. have no status as creditors, and therefore no right to appeal (1).

Appeal dismissed with costs.

APPEAL BY WHITE from finding of Referee upon the claim of the Bank of St. Hyacinthe :—

This appeal is against the Bank of St. Hyacinthe. The appellant claims that the bank should be charged with the amount paid to purchase the East Richelieu Valley Railway, and receives bonds therefor and ranks as bondholders. The claim is that the Referee was correct in his Provisional Report.

(1) See *post*, p 93.

[1908

THE MINISTER OF RAILWAYS AND CANALS v. THE QUEBEC SOUTHERN RWAY. CO. AND THE SOUTH SHORE RWAY. CO. — BANK OF ST. HYACINTHE'S CLAIM.

Reasons for Judgment.

By the agreement of 2nd December, 1899, Hodge was not bound to acquire the United Counties Railway unless the bank also procured title to the East Richelieu Valley Railway. The bank had agreed to purchase this railway for a sum to be paid in bonds of the Quebec Southern. The East Richelieu Valley Railway Co. refused to accept payment in bonds and required cash. Hodge need not have carried out his purchase of the United Counties Railway. He did so. The East Richelieu Valley Railway Co. sold direct to the Quebec Southern. There is no liability against the bank.

The appeal is dismissed with costs.

Judgment accordingly.

Solicitor for plaintiff: *A. Geoffrion.*

Solicitors for the defendant: *Greenshields, Greenshields & Heneker.*

Solicitors for Bank of St. Hyacinthe: *Turgeon & Beique.*

Solicitors for Hanson Bros.: *Smith, Markey & Skinner.*

Solicitors for F. D. White: *Hickson & Campbell.*