

HERRICK v. GRAND TRUNK RAILWAY.

JUDGMENT OF THE COURT, AS DRAWN UP BY
PLAINTIFF'S COUNSEL.

On the 17th June, 1861, the case was argued by Council for all parties, before their Lordships, Mr. V. C. ESTEN, and Mr. V. C. SPRAGGE, when their Lordships delivered their judgments *viva voce*, and to the effect following :

Mr. V. C. ESTEN thought that the plaintiff's Bill should be dismissed, inasmuch as the preferential bondholders had a preferential lien, over the property of the company under 19 and 20 Vic., ch. 111, and that the rights thus created had not been impaired by the subsequent enactments; that it was therefore the duty of the Directors to apply the surplus earnings of the road in and towards payment of the interest due upon the preferential bonds. His Lordship distinguished the present case from that of *Corry v. the Londonderry & Enniskillen Railway Company*, 7 *Jur. N. S.* 508, which was cited in argument, viewing that case as one in which creditors' rights were not in question, but only those of shareholders *inter se*. His Lordship doubted how far the rights of absent parties could be bound by the present parties to the bill.

Mr. V. C. SPRAGGE was inclined to think that the rights of the Preferential Bondholders were statutory only, and that taking the place of the Government Loan, the interest on these Bonds was only payable out of profits, as provided for by Stat. 12 Vic., ch. 29, and that therefore the principal established by Corry's case would require the payment of debts incurred for the maintenance and working of the Railway before that of the interest on the Preferential Bonds, but with the view of enabling the parties to obtain the benefit of a judgment from the Court of Appeal, he would concur *pro forma* with the opinion pronounced by Mr. V. C. ESTEN.