

safely in deposit vaults and delivered upon demand under proper authority. The document also provided for the remuneration of the trust company. The certificates were put in the name of the trust company. It appeared that 375 of the shares had been acquired by the plaintiff loan company under an agreement with the Atlas Loan Company, who had an interest in the prospective profits to be derived from the sale of the shares. While the certificates were in possession of the defendant trust company both loan companies were ordered to be wound-up under the Dominion Act, and the defendant trust company were appointed liquidators of the Atlas Loan Company, and the plaintiff trust company liquidators of the plaintiff loan company. After the commencement of the liquidations the plaintiff trust company as liquidators demanded the certificates from the defendant trust company, but the latter refused to deliver them up, and this action was brought for damages for the detention.

Held, 1. The defendant trust company were merely bailees and not trustees; but, if they were to be regarded as trustees, the failure to hand over the certificates was not a breach of trust for which they ought fairly to be excused under 62 Vict. (2), c. 15, s. 1 (O.); owing to their dual character, they did not act with singleness of purpose, and therefore not honestly and reasonably; and the direction of the Master in Ordinary to whom was referred the winding-up of the Atlas Loan Company, that the whole 575 shares should be retained by the defendant trust company as liquidators, was made without jurisdiction, and did not protect them as trustees.

2. The plaintiffs were entitled to damages for the detention (delivery having been made pending the action) based on estimates of what had been lost by the detention; and the measure of damages was the highest price of the shares represented by the certificates between the demand and the delivery.

Gibbons, K.C., *Shirley Denison* and *W. K. Cameron*, for plaintiffs.
S. H. Blake, K.C., and *W. H. Blake*, K.C., for defendants.

Meredith, C.J.C.P., MacMahon, J., Teetzel, J.] [Dec. 29, 1903.
GRAHAM v. BOURQUE.

Chose in action—Assignment of money payable "in respect of the contract"
—Damages for interference with the work—Attachment of debts.

Held, affirming the decision of STREET, J., 6 O.L.R. 428, that the assignment to the claimants of moneys to become due and payable "in respect of a certain contract" for municipal drainage work, included the damages awarded to the contractor by the judgment in *Bourque v. City of Ottawa*, 6 O.L.R. 287, and therefore these moneys were not attachable by a judgment creditor of the contractor.

Aylesworth, K.C., for judgment creditor. *Middleton*, for claimants.