

Two months after L. sued P. for the price of goods so purchased, amounting to about \$1000, and after being served with the writ in such suit, P. gave B. a chattel mortgage on the goods originally purchased and other goods which it was alleged would have been included in the purchase from B., had it not been claimed that they were not in the factory at the time, but were afterwards found to be there. P. had not given a hire receipt or chattel mortgage at the time of the original purchase from B.

L. having signed judgment against P., issued executions, and caused the mortgaged goods to be seized thereunder. On the trial of an interpleader issue to try the title in said goods judgment was given in favor of B. for the goods originally sold to P., but not for those added in the mortgage. The Divisional Court held, on motion to set aside this judgment, that the mortgage was void for the inclusion of the goods not mentioned in the original agreement and reversed the judgment at the trial in B.'s favor. This decision was affirmed by the Court of Appeal. On appeal to the Supreme Court of Canada,

*Held*, that the judgment of the Court of Appeal was right, and should be affirmed.

Appeal dismissed with costs.

O'Gara, Q.C., for the appellant.

Belcourt for the respondent.

#### PONTIAC v. ROSS.

*Municipal aid to Railway Company—Debentures—Signed by Warden de facto—44 and 45 Vict., c. 2, s. 19, P.Q.—Completion of line—Evidence of—Onus probandi on defendant.*

A municipal corporation under the authority of a by-law, issued and handed to the treasurer of the province of Quebec, \$50,000 of his debentures as a subsidy to a railway company, the same to be paid over to the company in the manner and subject to the same conditions on which the government provincial subsidy was payable under 44 and 45 Vict. c. 2, s. 19, viz.: "When the road was completed and in good running order to the satisfaction of the Lieutenant-Governor-in-Council."

The debentures were signed by S.M., who was elected warden, and took and held possession

of the office after W.J.P. had verbally resigned the position.

In an action brought by the railway company to recover from the treasurer of the Province the \$50,000 debentures, after the government bonus had been paid, and in which action the municipal corporation was *mise en cause* as a co-defendant, the Provincial treasurer pleaded by demurrer only, which was overruled, and the County of Pontiac pleaded general denial, and that the debentures were illegally signed,

*Held* (affirming the judgment of the Court below), 1st. that the debentures signed by the warden *de facto* were perfectly legal.

2nd. That as the provincial treasurer had admitted by his pleadings that the road had been completed to the satisfaction of the Lieut.-Governor-in-Council, the onus was on the municipal corporation, *mise en cause*, to prove that the government had not acted in conformity with the statute. STRONG, J., dissenting.

Appeal dismissed with costs.

Langelier, Q.C., and McDougall for appellant.

Irvine, Q.C., and D. Ross for respondent.

#### HARDY v. FILIATRAULT.

*Demolition of dam—Transaction—Arts. 1918, 1920, C.C.—Report of expert—Motion to hear further evidence.*

In an action brought by a riparian owner, asking for damages and the demolition of a second dam built by another riparian owner, in contravention to the terms and conditions of an agreement made between the parties, while a judgment ordering the demolition of the first dam was pending in appeal, the Superior Court appointed a civil engineer as expert, who reported that the second dam did not injure the plaintiff's property.

The Superior Court subsequently rejected a motion made by the plaintiff, asking to examine the said expert to explain his report, and dismissed the action with costs. This judgment was confirmed by the Court of Queen's Bench for Lower Canada (Appeal side) and on appeal to the Supreme Court of Canada it was—

*Held*, per FOURNIER, GWYNNE and PATTERSON, JJ., that the provisions of arts. 1918 and 1920,