

The judgment of their Lordships, which was delivered on the 14th instant, and ruled that the award of the 28th of July, 1876, was bad on the face of it, disposed, except as to costs, of the Appeals numbered 13 and 144 respectively, and of all the questions on this record between the appellants and the respondent company.

It seemed, moreover, to leave to the appellants no substantial interest, other than costs, in the rest of the litigation. Their counsel, however, expressed a desire to argue the remaining appeals (Nos. 117 and 141), and satisfied their Lordships that they were entitled to do so. Those appeals have accordingly been heard, and their Lordships have now to give judgment upon them. In order to see clearly what are the questions raised by them, it is necessary to refer shortly to some of the proceedings in the two actions numbered respectively in the Superior Court 693 and 1,213.

In the latter of these, which was brought by the appellants against the company in December, 1874, in order to recover the amount due on the award, the respondent, the Attorney General, intervened in the month of February, 1878. The cause was heard on the 18th of April, 1878, by Mr. Justice Mackay in the Superior Court against both the company, the defendants, and the Attorney General as intervenor, and the judgment of that Court dismissed the intervention, and condemned the company to pay to the appellants the amount due on the award. From this judgment the company and the Attorney General appealed separately. The Court of Queen's Bench reversed the judgment of the Superior Court against the company, and the appeal of the appellants against so much of their judgment (No. 144) has already been disposed of. The appeal of the Attorney General was also allowed, and the judgment of the Superior Court reversed as against him, but on the ground that the intervention, though legally competent, was unnecessary, without costs. Hence the Appeal No. 117.

Again, the Superior Court, by its judgment in suit No. 693, wherein the company sued to set aside the award, dismissed that suit with costs. The company appealed against that judgment, and has succeeded both in the Court of Queen's Bench and here in getting it reversed. The date, however, of the judgment of the Superior Court was the 30th of April, 1877; the appeal

against it was not lodged until the 5th of October following, and intermediately, *i. e.*, on the 22nd May in that year, the appellants issued a writ of execution for their costs, under which the Sheriff seized certain lands, rolling stock, and other property as belonging to the company. On the 17th January, 1878, the Attorney General filed an "opposition à fin de distraire," by which he claimed the whole of the property seized as the property of the Queen for the use of the Province of Quebec. The appellants filed their contestation, and on the 31st May, 1878, Mr. Justice Johnson pronounced the judgment of the Superior Court, which upheld the opposition; declared that all the lands seized were the property of Her Majesty for the use of the Province of Quebec; that accordingly the seizure of the lands, immoveables, and accessories in question was null, void, and illegal, and granted main levée thereof to the opposant, with costs against the contestants, the present appellants.\* That judgment was, on appeal, confirmed by the Court of Queen's Bench, and hence the Appeal No. 141.

The determination of both these appeals mainly depends on the effect to be given to the transaction between the company and the Government of Quebec which is embodied in the Notarial Act or Deed of the 16th of November, 1875, and in Act 39 Vict., c. 2, of the Legislature of Quebec. The parties to the Deed are stated to be Her Majesty the Queen, represented by the Secretary of the Province of Quebec, "acting as well for and on behalf of Her Majesty" "as for and on behalf of the Province of Quebec;" "party hereto of the first part, hereinafter called 'the Government,' and the Montreal, Ottawa, and Western Railway Company, described as "a body politic and corporate, duly incorporated "by statutes of the Province of Quebec and of "the Dominion of Canada, &c., party hereto of "the second part, hereinafter called 'the Company.'" The deed, after reciting the nature of the enterprise and the commencement of the work, and that the company was then unable to proceed further with the construction of the railway by reason of certain bonds not being negotiated; and that the Government was willing to assume and complete the construction of the said railway upon such terms and conditions, and in such manner and within such time as

\* See 1 Legal News, p. 279.