

HODGINS, J.A., reading the judgment of the Court, said that the sum of money in Court came from the sale, by the receiver, of the Grand Valley Railway, the Brantford Street Railway, and the Grand Valley road between Brantford and Galt. The sale was under the Grand Valley mortgages of 1902 and 1907; that of 1902 including the Brantford to Galt road, and that of 1907 covering both, and also the Thames Valley Railway. No evidence was given to enable the Court to say what proportion of the purchase-money was attributable to the Brantford Street Railway undertaking as distinguished from the Brantford to Galt road, but it was stated that each had a separate value and had been operated separately.

The 1902 Grand Valley mortgage covered the Brantford to Galt road and the railway "constructed or which may be hereafter constructed" (under the powers conferred) "and all charters, franchises, privileges, and immunities now owned or possessed by it or to be hereafter acquired by it from any town or municipality or county or from any source whatever." It also included "all property whatever which may be hereafter acquired by it." It was argued that, notwithstanding these words, as the Grand Valley Railway Company in 1902 did not own and had no power to acquire the franchise of the Brantford Street Railway Company or the railway itself, the mortgage included only franchises from a town or county through which the Grand Valley road was then authorised to be built; and, in consequence, if the claim of the holders of coupons from the Brantford Street Railway was disallowed, the bondholders of the issue of 1907 came next to the \$125,000 bond issue of the Brantford Street Railway, and were entitled to the money in Court so far as it was derived from the sale of the street railway undertaking in Brantford itself.

It was important to determine what the transactions were under which the coupons upon which claims were made were acquired—whether of purchase or of payment and satisfaction.

The finding of the trial Judge, upon the whole case, was, that the effect of the transactions was, that none of the coupons were sold or transferred in such a way as to preserve their lien or the right to rank with the outstanding bonds.

Review of the American authorities.

According to these authorities—and the learned Judge could find no English or Canadian authority inconsistent with them—the real test to be applied to determine whether there was a payment in satisfaction or by way of a purchase, lies in the knowledge and intention of both parties to the payment—which knowledge may be inferred from the circumstances—and, in case of doubt, the scale will be turned against the idea of purchase either by the want of proof of mutual intent or by the fact that there is not