

that the said Portage Extension shall cross the Pombina Mountain branch of the Canadian Pacific Railway (the said branch being part of the Canadian Pacific Railway) at a point within the said Province. Whereupon the following question is submitted:

Is the said Statute of Manitoba, in view of the provisions of chap. 109, Revised Statutes of Canada, particularly sec. 121 thereof, and in view of the Railway Act of 1888, particularly secs. 306 and 307, valid and effectual, so as to confer authority on the Railway Commissioner in said Statute of Manitoba mentioned, to construct such a railway as the said Portage Extension of the Red River Valley Railway crossing the Canadian Pacific Railway, the Railway Committee first approving of the mode and place of crossing, and first giving their directions as to the matters mentioned in secs. 174, 175 and 176 of the said Railway Act?

In answer to the said question, this Court, having heard counsel for the Province of Manitoba, and also for the Canadian Pacific Railway Company, is unanimously of opinion that the said Statute of Manitoba is valid and effectual so as to confer authority on the Railway Commissioner in the said Statute of Manitoba mentioned, to construct such a railway as the Portage Extension of the Red River Valley Railway crossing the Canadian Pacific Railway, the Railway Committee first approving of the mode and place of crossing, and first giving their directions as to the matters mentioned in secs. 174, 175 and 176 of the said Railway Act.

Dated the 22nd day of December, 1888.

E. Blake, Q.C.; C. Robinson, Q.C., and Clarke, for C. P. Railway.

O. Mowat, Q.C.; Martin; D. McCarthy, Q.C., and F. Langelier, Q.C., for Manitoba.

MANITOBA MORTGAGE CO. v. THE BANK OF MONTREAL.

[Feb. 8, 1889.

Partnership—Buying and selling lands on speculation—Lands considered in equity as personalty—Cheque—Payable to order of three—Indorsed by one—Right of bank to pay—Acquiescence by drawer—Monthly statements.

R., K. and M. formed a partnership for the purpose of buying and selling lands on speculation. R. held a power of attorney from M.

authorising him to buy, sell and mortgage, and use M.'s name in so doing. R. negotiated a loan with the Manitoba Mortgage Co., and assigned as security certain mortgages given to the three partners, and executed the assignments in M.'s name as his attorney. A cheque for the amount of the loan was drawn by the Mortgage Co., payable to the order of R., K. and M., which cheque was delivered to R., who indorsed it in his own name and as attorney for the other payees, and received the cash. M. afterwards successfully defended a suit by the Mortgage Co. on the covenants in the assignments of mortgage, his defence being that he had received no benefit from the proceeds of the cheque given to R. The company then sued the bank on which the cheque was drawn for the amount of the same, as an unpaid balance of his deposit in said bank.

*Held*, 1. That lands acquired by partners engaged in buying and selling lands on speculation are, in equity, considered as personalty, and may be so dealt with by the partners.

2. That from the nature of the business, R. had power to effect the loan and make an equitable assignment of the mortgages, which a Court of Equity would compel the other partners to clothe with the legal estate.

3. That R., having such power and having a right to receive cash for the loan, could use the names of his partners in indorsing the cheque, and the bank was justified in assuming that he did so for the purposes of the partnership business and in paying it on such indorsement.

*Held*, also, that the company, having for two years received monthly statements from the bank in which the cheque so paid affected his balance on deposit, must be considered to have acquiesced in the payment, R. having failed in the meantime, and the position of the bank as to recourse against him being altered for the worse. Appeal dismissed.

Ewart, Q.C., for the appellants.

Robinson, Q.C., for the respondents.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.]

[March 5.

PETERSON v. THE QUEEN.

Petition of right—Waiver by the Crown—Jurisdiction.

The Superintendent General of Indian