

which the appellant had a right of appeal to the Privy Council in England. Arts. 1178 & 1178 (a) C.C.P.

Appeal quashed with costs.

T. C. Casgrain, Q.C., for motion.

Pelletier, contra.

GREAT EASTERN RAILWAY v. LANDE.

Opposition afin de charge—Pledge—Art. 40 C.C.—Agreement—Effect of—Arts. 1977, 2015, and 2094 C.C.

The respondent obtained against the Montreal & Sorel Railway Co. a judgment for the sum of \$675 and costs, and having caused a writ of *renditioni exponus* to issue against the railway property of the Montreal & Sorel Railway, the appellants, who were in possession and working the railway, claimed under a certain agreement in writing to be entitled to retain possession of the railway property pledged to them for the disbursements they had made on it, and filed an opposition *afin de charge* for the sum of \$35,000 in the hands of the sheriff. The respondent contested the opposition. The agreement relied on by the appellant company was entered into between the Montreal & Sorel Railway and the appellant company, and stated, amongst other things, that "the Montreal & Sorel Railway Co. was burthened with debts, and had neither money nor credit to place the road in running order," etc. The amount claimed for disbursements, etc., was over \$35,000. The Superior Court, whose judgment was affirmed by the Court of Queen's Bench for Lower Canada, dismissed the opposition *afin de charge*. On appeal to the Supreme Court, the respondent moved to quash the appeal on the ground that the amount of the original judgment was the only matter in controversy, and was insufficient in amount to give jurisdiction to the court. The court, without deciding the question of jurisdiction, heard the appeal on the merits, and it was

Held, (1) that such an agreement must be deemed in law to have been made with intent to defraud, and was void as to the anterior creditors of the Montreal & Sorel Railway Co.

(2) That as the alleged deed of pledge affected immovable property, and had not been registered, it was void against the anterior creditors of the Montreal & Sorel Railway Co. (Arts. 1977, 2015, and 2094 C.C.).

(3) That Art. 419 C.C. does not give to a pledgee of an immovable who has not registered his deed a right of retention as against the pledger's execution creditors for the payment of his disbursements on the property pledged, but the pledgee's remedy is by an opposition *afin de conserver* to be paid out of the proceeds of the judicial sale (Art. 1972 C.C.).

Appeal dismissed with costs.

Louergan for appellant.

Choquette for respondent.

Nova Scotia].

[Oct. 10.

SMITH v. MCLEAN.

Bill of sale—Affidavit of bona fides—Adherence to statutory form—Description of deponent—R.S.N.S., 5th ser., c. 94, ss. 4 & 11.

By R.S.N.S., 5th ser., c. 92, s. 4, every bill of sale executed in Nova Scotia must be accompanied by an affidavit by the grantor that it is given in good faith, etc., and by s. 11 such affidavit shall be as nearly as may be in the form given in schedules to the Act. The prescribed form begins as follows: "I, A.B., of . . . in the county of . . . (occupation) make oath and say." In an affidavit accompanying a bill of sale given under this Act, the occupation of the deponent was not stated.

Held, per STRONG, GWYNNE, and PATTERSON, JJ., that as the affidavit referred in terms to the bill of sale itself, in which the occupation of the grantor was mentioned, the statute was complied with, and the instrument was valid.

Per TASCHEREAU, J.: The onus was on the persons attacking the bill of sale to prove, by direct evidence, that the deponent had no occupation, which they had failed to do.

The judgment of the Supreme Court of Nova Scotia was reversed.

Appeal allowed with costs.

Whitman for the appellants.

Silver for the respondent.

BRITISH-AMERICAN ASSURANCE CO. v. LAW. *Marine insurance—Insurable interest—Insurance on advances—Construction of policy.*

A policy of marine insurance on the barque Lizzie Perry was issued by the British American Assurance Co. to W.L.&Co., managing owners of the vessel. The first part of the policy read as