

The issues having been perfected, and the case having been heard on the law issues, the Court maintained the *defense en droit* filed to the declaration and dismissed the Plaintiff's action (see Judgment copied in the Appendix).

The reasons given by the Honorable Judge in rendering the Judgment were to the following effect:

DAY JUSTICE. "This is an action by a former Stockholder of the Grand Trunk Railway Company for money in the form of damages, in consequence of the Defendants refusal to transfer in their register certain shares sold by the Plaintiff, it being alleged that the shares depreciated in value, between the date of the demand of registration, and the date of the actual registry.

"The Plaintiff sets out that he was a proprietor of a certain number of shares of the Company's Stock, part of which he transferred to Lemesurier, Routh and Company, and part to the Saving's Bank as collateral security for debts due to them, they the creditors being obliged in the case of sale of the stock to pay back to Plaintiff any surplus after payment of the debts secured,—that these creditors applied to get the transfer "executed in the Company's Books," that the Company refused,—and that they could not sell the stock until some time afterwards, when the stock had depreciated. The Defendants pleaded a *defense en droit* to the action by which two principal questions are substantially raised.

1st. "That the Plaintiff could not call upon the Company, to make good any loss not having shewn a compliance with the Statute of the Company as to the form of the transfer and registry.

2nd. "That having parted with his stock, he ceased to have a right of property in it, so as to support the action as brought; the right of action, under the circumstances, being vested in Lemesurier, Routh and Company and the Bank, as creditors in consequence of the demand made by them for the registration and the protests for the refusal; and that the agreements between Plaintiff and his creditors could not affect the Company.

"There is a special demurrer to the part of this action setting forth the transfer to the Saving's Bank, on which demurrer I am against the Defendants. As to the *defense en droit* to the declaration, I am against the Plaintiff. Having parted with his stock he ceased to be a stockholder, and it was incumbent on the proprietors of it to take proceedings against the Company to obtain the necessary registration. They had a right of action or might have taken proceedings by *mandamus* to compel the registration. They did not adopt those means. It is true they made a demand of registry, they protested by reason of the refusal, but they received the registration when made. Now the Plaintiff comes in and says: "I made certain agreements as to qualified transfers of the stock, which were not carried out." But as between the Plaintiff and his creditors any agreement as to a conditioned and qualified transfer might be made; but the Defendants were not bound by any such conditions or restrictions. Every transfer, so far as they are concerned, must be absolute. Here there is no allegation that the Plaintiff demanded the registry of the transfer, or that he protested by reason of the refusal. He wishes to treat the demand of the creditors as being his demand under the "special agreements" set forth without alleging "that he was liable to the creditors or had paid them any damages suffered by reason of his, the Plaintiff's failure to get a complete transfer made."

"There are other difficulties in the way."

"The declaration sets out that the Company were notified and required "to transfer the shares in the Books of the Company." Now they were not bound to make such transfer. By the Railway Clauses, Consolidation Act 14 & 15 Victoria ch. 51 sect. 17, a form of transfer is provided which must be made in duplicate "one part of which shall be delivered to the Directors to be filed and kept for the use of the Company, and an entry thereof shall be made in a Book to be kept for that purpose." The declaration does not say that a duplicate was delivered to the Directors, but that "the parties presented the transfer and offered to surrender the same, on the due execution of such transfer aforesaid on the Books of the said Company but that the said Company wholly neglected and refused to execute such transfer on the Books of the said Company." A party suing for breach of Statute must allege the very breach set forth in the Statute and in its terms. "The noting of the transfer by the Company in their Book could only be legally made after the delivery of the duplicate. It is not the duty of the Company to execute or to make any transfer, but first to receive the duplicate and then make an entry of the transfer indicated by the duplicate."

It is submitted by the respondents that the declaration clearly shews that the transfers to his creditors were simply as collateral security, for debts due by him to the transferees, and that they were made under special engagements or agreements between him and them, and on understandings as to the application of any surplus arising from the sale of the shares, if the shares were actually sold. To these agreements and understandings the respondents were no parties; and they cannot, therefore be held responsible for alleged depreciation in value, or even for damage arising from these engagements and understandings, as between the Plaintiff and the Respondents the relation was simply that of stockholder and Company. The special reasons which induced and justified the Directors to delay the Registration of the shares do not come up at the present stage of the case. It is not denied that a stockholder may transfer his shares, and that the Directors were bound to register the transfer on compliance with the formalities required by law. If they refuse to register when these formalities are complied with, the Stockholder, from the very relation of stockholder has his recourse against the Directors to recover the value of the stock, or against the officer whose duty it was to note the transfer in the Company's Books to