

the northern section bonds, and the greater part of the southern section and united railway bonds were still outstanding, and the earnings of the company were insufficient to pay the arrears of interest then due. In these circumstances the Legislature of Quebec passed an Act (43 & 44 Vic., cap. 49), which received Her Majesty's assent on the 24th July, 1880, giving effect to the terms of an arrangement between the company and its bondholders for the issue of new bonds, to carry a first mortgage and charge upon the entire undertaking, in substitution for the outstanding bonds already mentioned.

By that Act the company was authorized to issue mortgage bonds, at the rate of \$12,500 per each mile of railway constructed or to be constructed, up to a limit of two million dollars; and, for securing the due payment thereof with interest, to convey its entire property, including its franchise, to trustees in trust for that purpose. It was made lawful to insert in the trust conveyance, stipulations as to who should have the possession and control of the franchise and other property conveyed; and, in the event of default in payment of the bonds, or of any of the coupons thereto attached, for divesting the company of all interest, equity of redemption, claim, or title in the said franchise and property, and vesting the same absolutely in the trustees. Sect. 5 empowered the trustees, when and as often as default should be made, to "take possession of and run, operate, maintain, manage, and control the said railway and other property conveyed to them as fully and effectually as the company might do the same." The conveyance, when executed, was (Sect. 7) declared to be to all intents valid, and to have the effect of creating a first lien, privilege, and mortgage upon the railway and other property thereby conveyed.

In pursuance of the Act of 1880, the company issued new mortgage bonds; and, on the 12th August, 1881, executed a relative conveyance in trust, which contains a covenant entitling the trustees to enter into possession if default shall be made and continue for 90 days; and a further covenant for divesting the company, in certain events, of all interest, equity of redemption, and claim

or title, as in the Act provided. On the 5th October, 1883, interest on the mortgage bonds being more than 90 days overdue, the company, on the requisition of the trustees, and in compliance with the terms of the conveyance, gave them possession; and the trustees have since continued to maintain, work and manage the railway, on behalf and at the expense of the bondholders, and have received the tolls and other profits of the undertaking. The appellants are now the acting trustees under the conveyance.

Neither the Arthabaska Company nor the South-Eastern Company (to whom its contract obligations were transferred by the Amalgamation Act of 1872), carried any part of their lines of railway through the municipality of the township of Wickham. In respect of that breach of agreement, the respondents, on the 17th July, 1880, just seven days before the Act 43 & 44 Vict., cap. 49, became law, brought an action of damages before the Superior Court of Quebec, against the South-Eastern Company, in which they obtained a judgment, now final, for the sum of \$22,280, on the 29th January, 1883. Upon the 6th November, 1883, a writ of *Fi. fa., de bonis et terris*, was issued; and, on the 19th of that month, the sheriff seized in execution and proceeded to advertise for sale the whole of the South-Eastern Company's railway, including both sections thereof, together with all the lands of the company and buildings erected thereon, as well as the rolling stock and other appurtenances of the railway, which are *immeubles* according to the statute law of Quebec.

The appellants then filed their opposition *afin de distraire*, their main ground of objection being that Article 553 of the Procedure Code only authorizes the seizure of immoveable property of the judgment debtor, which is in the possession of such debtor, whereas the railway seized was neither the property, nor in the possession of the South-Eastern Company. Their Lordships do not doubt that the effect of the trust conveyance of 12th August, 1881, followed by possession in terms of the deed, was to vest the property of the railway and its appurtenances in the appellants, and to reduce the interest of the South-Eastern Company to a bare right of