

of December 7, 1887, setting aside the judgment of the Superior Court in an action brought by the respondent to recover damages for the alleged wrongful detention and conversion by the appellant of one thousand \$100 shares in the capital stock of the North Shore Railway Company of Canada.

The judgment of their Lordships was delivered by

SIR RICHARD COUCH :—

The respondent McGreevy being the owner of one thousand \$100 shares in the North Shore Railway Company, and being unable to pay a call of 50 per cent. which had been made upon them, on September 14, 1882, transferred them to the appellant, who was also a shareholder in the company, and took from him a letter of that date, in which it was stated that the transfer had been made with the express condition that McGreevy would have the right to redeem the stock within two months from that date by paying 50 per cent. of the nominal amount of the shares—*i.e.*, \$50,000, and any further call on the same that might be paid “within said delay,” with interest on such amount. On the 13th November, 1882, McGreevy, by his notary, made a formal tender to McDougall of \$51,125, being \$50,000 and interest thereon at 6 per cent., and McDougall refused to receive the amount. The declaration in the action states that the defendant illegally and fraudulently converted the shares to his own use, and sold and disposed of them to his own great profit and advantage, to wit, in the sum of \$200,000, which sum the plaintiff could and would have realized on the said stock, had he not been deprived thereof by the defendant, and prays a judgment for \$200,000, with interest and costs.

On the argument of the appeal it was not disputed that the tender was sufficient, and the only question raised was whether the plaintiff was entitled to recover any damages. The evidence on that subject was this. McDougall had apparently obtained the control of the whole of the shares of the North Shore Railway Company, and on the 2nd December, 1882, they were all transferred by him to Robert Wright, the treasurer of the Grand

Trunk Railway. Wright's evidence was as follows :—

“ I received a transfer of shares of the North Shore Railway Company from McDougall for a certain consideration.

“ Q.—That was in 1882, was it not? A.—Yes.

“ Q.—Will you state what that consideration was? A.—The consideration was \$250,000 in cash, if I remember rightly; that, I think, as far as I remember, was the only consideration.

“ Q.—Were you not to give him a certain number of bonds of the North Shore Railway Company? A.—Well, I think there was some understanding about bonds, but I don't clearly remember the terms of it. There was to be a conditional issue of bonds to McDougall, I think.

“ Q.—Mr. McDougall did transfer to you the whole of the stock of the North Shore Railway Company? A.—He did.

“ Q.—And after the transfer was made, the North Shore Railway Company issued a certain number of bonds, which you handed to McDougall, did you not? A.—Some time afterwards.

“ Q.—What was the amount of the bonds? A.—The amount of the bonds, I think, was \$1,500,000, or it may have been a little more. I am speaking from memory. In round figures, \$1,500,000.

“ Q.—Previous to the transfer to you of the stock of the North Shore Railway Company, no bonds had been issued by this company, had they? A.—No; the bonds were not created until long afterwards.

“ Q.—These bonds of the North Shore Railway Company were subsequently redeemed or taken up by the Dominion Government, were they not? A.—So I understand.

“ Q.—These bonds were a portion of the consideration of the transfer of the stock, were they not? A.—I cannot say from memory what the conditions of the transfer of the stock were as regards the bonds, but I know the bonds were issued to McDougall.

“ Q.—As a part of the consideration of that transfer, there was no further consideration given? A.—Yes, there was. The bonds were issued in accordance with the agree-