

Province of Canada, }
DISTRICT OF MONTREAL.

In the Queen's Bench.

APPEAL SIDE.

ARTHUR C. WEBSTER,

Plaintiff Below,

Appellant,

vs.

THE GRAND TRUNK RAILWAY COMPANY,

Defendants Below,

Respondents.

RESPONDENT'S CASE.

The Judgment which forms the subject matter of this appeal dismissed the action of the Plaintiff below on a *défense en droit* filed by the Defendants to the declaration. These pleadings are copied in the Appendix together with the Judgment appealed from and the precise positions of the parties will be evident on examination of these documents.

The declaration of the Plaintiff contained allegations to the following effect:

That on the 1st October 1853, the Appellant was owner of 268 shares of the value of £25 sterling each, in the stock of the Grand Trunk Railway Company, and was then indebted to the firm of Lemesurier, Routh, and Company, in the sum of £1403 15 7, and that having "engaged" to transfer 58 of these shares as collateral security for the debt, he the Plaintiff did on the 1st day of October 1853, by writing in duplicate, transfer and sell to Lemesurier, Routh and Company, the 58 shares, "on this understanding" that the surplus after payment of the debt should be returned to the Plaintiff.

That thereupon Lemesurier, Routh and Company demanded of the Company to execute a transfer of these fifty-eight shares in the Company's Books, and presented and offered to surrender "the transfer;" the refusal of the Company to execute the transfer in the Books of the Company; protest of Lemesurier, Routh and Company on the 24th December 1853 reiterating the demand of transfer and the offer to surrender.

Then follow allegations in similar terms, setting up the indebtedness of the Plaintiff to "The City and District Savings Bank" in the sum of £4750 9 8; the engagement to transfer to the Bank 210 of the 268 shares as collateral security for the debt due to the Bank, the transfer in duplicate of the twenty-fifth November 1853 of the understanding referred to;—the presentation and demand and refusal to transfer;—the protest by the Bank on the 9th December 1853. That the Company was bound forthwith to have made the transfers "to the parties so demanding the same" but refused and alleged no sufficient ground for the refusal; and that at the date of the demand, the 25 shares were worth in the market 18 per cent discount; and that if the transfers had been made, Lemesurier and Company and the Bank could and would have sold the 268 shares for £6684 7 4 cy. and that between the dates of the demands and transfer of the shares by the Company on their Books (namely on the 4th April 1854 for the 58 shares; and 13th May 1854 for the 210 shares,) the stock had depreciated; and that the only amount which Lemesurier and Company and the Bank were enabled to obtain for the stock which they caused to be sold "with all reasonable and prudent despatch" after the transfer had been made by the Company was £4358 4 3 cy. "thereby causing a manifest loss to the Plaintiff of £2331 3 3 cy." independent of loss of interest costs of protest and other damages estimated at £668 10 10 currency; and that by reason of the premises and by law, the Plaintiff had a right to recover these two sums making together £3000 currency, for which Judgment is prayed.

To this action, the Defendants pleaded:

1st. A *défense au fonds en droit* to the whole action;

2dly. A special demurrer to that part of the action relating to the Savings Bank;

3dly. A peremptory exception;

4th. A *défense au fonds en fait*.