

lants; Doutre and Doutre for Respondent.

GRAND TRUNK RAILWAY, (opponents in the Court below), Appellants; and EASTERN TOWNSHIPS BANK, (plaintiffs contesting in the Court below), Respondents.

**Held**—That in Canada the rolling stock of the Grand Trunk and other Railways forms part of the realty, and is not liable to seizure and sale under execution.

This was an appeal from a judgment of the Superior Court, Montreal, dismissing an opposition filed by the appellants under the following circumstances:—The Eastern Townships Bank sued the Grand Trunk Company on a promissory note for \$2,568, dated 1st Feb., 1862, and obtained judgment, 1st Dec., 1862. In January, 1863, execution *de bonis* issued, and a locomotive was seized. To prevent the sale of this locomotive the Grand Trunk Company filed an opposition *afin d'annuler*, reciting the provisions of the 25th Vic., cap. 56, and claiming the benefit of the Act. The provisions of this Act appropriate towards payment of the debts due by the Grand Trunk, other than bond debts or notarial mortgages, "all monies to be received by the Company from the Province and from the Imperial Government for postal services, and for the conveyance of troops or military stores and munitions of war." The opposition alleged that this Act had been duly accepted and consented to by the necessary number of the bond and shareholders of the Company, at a meeting held in the London Tavern on the 8th August, 1862; that the opposants had not received from the Province the monies earned by them for postal services, and the amount was in dispute between them and the Canadian Government; that the debt claimed by plaintiff was a debt due them before and at the time of the passing of the Act. For the payment of this debt, the opposants said the Bank had no other right than to receive their dividend of the monies or bonds authorized to be issued and appropriated under the Act, and to the balance in 4th preference stock, under the 24th section of the Act. The opposants further alleged that the rolling stock formed part of the road, and was not liable to seizure; that the earnings of the Company were the only assets available to the creditors—first deducting working expenses—but that plaintiffs and other creditors were excluded by the Act from sharing in such balance of earnings. The rolling stock was alleged to be necessary for the working of the road, and mortgaged in favour of the 1st and 2nd preference bondholders to an amount exceeding \$8,000,000 stg., and also in favour of the Province. Even if the rolling stock were liable to seizure, it could not be sold unless by consent of the privileged creditors, to whom the proceeds of sale must go. The Company prayed *acte* of their offer to pay in money, bonds and 4th preference stock, with reserve to take other conclusions as soon as the amount due by the Province was finally adjusted and paid. The Bank made answer to this by denying that the Arrangements Act had ever been carried into effect, the consent of the required three-fourths majority not having been obtain-

ed. As to the rolling stock being pledged to other creditors, the plaintiffs said that these creditors were not before the Court, and the question of their rights could only be raised by themselves. The opposition having been dismissed in the Court below, the Grand Trunk Company appealed.

DRUMMOND, J., after reviewing the pleadings, observed that the first point—as to the required number of the creditors having assented to the Act—was the point mainly insisted upon at the argument. The other ground, as to the rolling stock forming part of the realty of the road, was barely touched upon. This, however, was the great point, and it was upon this that the decision of the Court would rest. As to the first question, he believed the Company had done something to comply with the Act, but what had been done was done in the very unprofessional—he might almost say slovenly—manner, characteristic of the style in which the business of the Company had been conducted. The professional gentlemen acting for the Company in England had got up papers that were not proper proof of so important a matter. But the Court was called upon to apply the great principle, that in Canada the rolling stock of Railways formed part of the road, and was not liable to seizure. It was true also that this property was mortgaged in favor of other creditors, and even if it could be seized and sold, the proceeds must go to them. But the Court did not consider the question of the property being mortgaged at all. They held that the property was *immeuble par destination* and could not be sold off piecemeal. The law did not allow it, and the law was in this instance perfectly in accordance with reason, with justice, and with sound policy. The locomotive seized in this case was part of the realty of the Grand Trunk Company, and could no more be seized separately than the vats in a brewery, or the burr stones in a mill.

AYLWIN, J., while concurring in the judgment, was of opinion that the Court below was right as to the first point, the certificate of the creditors' consent, produced by the Company, being in his opinion wholly insufficient, and absolutely null and void.

DUVAL, C. J.—The judgment is based upon the ground that the locomotive forms part of the realty. The Court gives no opinion as to whether the Company has complied with the requirements of the law. His honor believed the locomotives formed a part of the road just as much as the wheel formed part of the coach. The fact of an article admitting of being removed was no argument against this. The keys of a house, for example, might easily be taken away, and yet belonged to the house. As to the consent of the creditors, there appeared to be some negligence or clerical blunder in the papers. Matters of this kind, however, were too important to admit of clerical blunders. But fortunately for the Company, the Court pronounced no opinion on this question.

The Chief Justice then observed that Mr. Justice Meredith had requested him to state that he did express an opinion that there was