

and Seven pounds, five shillings and nine pence, two farthings currency, Confirm the said Judgment, to wit, the Judgment of the Superior Court rendered at Montreal, in this cause, on the Twenty third day of November one thousand Eight hundred and Fifty Seven—The Chief Justice, Sir Louis Hypolite LaFontaine, Baronet, and Mr. Justice Meredith dissenting from the foregoing part of the present Judgment.

And considering that the deed of agreement, bearing date the Twelfth day of April, One thousand Eight hundred and Fifty Three in the plaintiff's declaration mentioned, is in effect a conveyance,—*Acte translatif de propriété*, and did cause an alienation, or change in the Ownership, of the said real estate, situated in the Seignior of St. François-le-neuf, belonging to the Appellant, and mentioned in the declaration of the Appellant in this cause filed; in as much as before, and at the time of the making of the said agreement, the said real estate belonged exclusively to the St. Lawrence and Atlantic Railway Company, mentioned in the plaintiff's declaration; whereas after the making, and carrying into effect of the said agreement, and under and by virtue thereof, the said real estate became the property, of another and different corporation, namely, the Grand Trunk Railway Company of Canada the respondent in this cause. Considering also that the said agreement cannot be deemed equivalent to a sale—*équivalent à vente*—in so far as regards the shares in the said Grand Trunk Railway Company of Canada, to which the Shareholders in the St. Lawrence and Atlantic Railway Company became entitled under and by virtue of the said agreement, in as much as the said shares were received by the said Shareholders in exchange for their shares in the said St. Lawrence and Atlantic Railway Company.

Considering also, that the said agreement cannot be deemed a contract equivalent to a sale, in so far as regards the liabilities of the said St. Lawrence and Atlantic Railway Company assumed by the Grand Trunk Railway Company of Canada, as mentioned in the said agreement, in as much as the said liabilities are to be considered as so much that had to be deducted from the value of the assets transferred as Capital by the said St. Lawrence and Atlantic Railway Company to the said Grand Trunk Railway Company of Canada, and in as much as the assuming of the said liabilities by the said Grand Trunk Railway Company of Canada was, under the Fourth Section of the Statute, Sixteenth Victoria, Chapter the Thirty ninth, a necessary consequence of the union of the said two Companies, parties to the said agreement; and which said union of the said Companies is not considered as a sale in the said Statute.

Considering, however, that in so far as regards the sum of seventy five thousand pounds sterling, mentioned in the said agreement and in the Plaintiff's declaration, the said agreement is a contract equivalent to a sale—*acte équivalent à vente*—in as much as the parties to the said agreement, by agreeing that the said sum of Seventy five thousand pounds sterling should be paid for the exclusive benefit of the St. Lawrence and Atlantic Railway Company, in effect admitted that the property transferred by the said St. Lawrence and Atlantic Railway Company to the said Grand Trunk Railway Company of Canada, exceeded in value, to that extent, the shares in the said Grand Trunk Railway Company of Canada, to which the Stockholders in the said St. Lawrence and Atlantic Railway Company became entitled under and by virtue of the said agreement.

Considering also that the said defendants are not exempted from the obligation to pay *lods et ventes* in relation to the said contract, in as much as the said Grand Trunk Railway Company of Canada is merely a private Corporation and is not a public body, acting for the state; and therefore is not entitled to the privileges incident to contracts entered into by the state for purposes of public utility.

Considering, therefore, that there is error in the Judgment of the Court below, in so far as it wholly rejects the claim of the said Appellant for *lods et ventes*, doth reverse the said Judgment of the Court below, in so far as it rejects the claim of the Appellant for *lods et ventes*, and proceeding to render such Judgment as the Court below ought to have rendered in the premises, doth order that two experts be named in the Court below in this cause by the parties, in due course of law and according to the course and practice of the Court, and in default of such Nomination by the parties, that the said experts be named by the Court, or by a Judge thereof in vacation, and that a third expert be named, by the said Court, or by a Judge thereof in Vacation, and that the said experts do, in due course of law, ascertain and report to the said Superior Court, at Montreal,

FIRST.—What was, at the date of the said agreement, namely, the Twelfth April One thousand Eight hundred and Fifty three, the value of the whole of the property, moveable and immoveable, which, under and by virtue of the said agreement, was transferred by the St. Lawrence and Atlantic Railway Company to the said Grand Trunk Railway Company of Canada.

SECONDLY.—What was, at the same date, the value of the moveable property transferred under and by virtue of the said agreement.

THIRDLY.—What was, at the same date, the value of the immoveable property transferred under and by virtue of the said agreement.

And the said experts are hereby directed to include, in their estimate of the said immoveable property, the buildings, fences, rails and other improvements made thereon, or permanently attached thereto, at the date of the said agreement.—And in case the said Experts entertain any doubt as to whether any thing ought to be deemed moveable or immoveable, the said experts will make a special report to the Court, setting forth the value of the things in relation to which such doubts may be entertained by them.

FOURTHLY.—What part of the sum of money reported as the value of the whole of the property moveable and immoveable transferred by the said St. Lawrence and Atlantic Railway Company to the Grand Trunk Railway Company of Canada, ought to be considered as the value of the said real estate situate in the said Seignior of St. François-le-Neuf mentioned in the declarations of the Appellant in this cause filed in which estimate of the said last mentioned real estate the said experts are hereby directed to include the value of the buildings, fences, rails and other improvements made thereon or permanently attached thereto with power to the said Experts, in addition to the evidence