of payment thereof, obtain a foreclosure or sale of the railway by suit in Chancery.

On Feb. 5th, 1875, the directors accordingly passed a by-law enacting that such debentures should be issued in sums of $1,000, which should be under the seal of the company, and should "be negotiated from time to time as the proceeds thereof shall be required for the purposes of the company by the managing director."

On Feb. 1st, 1876, the railway being in debt to the plaintiffs, delivered to them several of these debentures, as security for such debt.

The debentures were in the following form:

Debenture No.

The Cobourg, etc., R. W. Company owes the Bank of Toronto, or order, the sum of $1,000, payable in ten years from Jan. 1st, 1875, at the Bank of Toronto, in Toronto, with interest at eight per cent. per annum, payable half-yearly, on presentation of the proper coupons hereto attached.

The payment of these debentures being in default, the plaintiffs brought this action for an account of what was due thereunder and payment thereof, or, in default, a sale by the Court of the property of the company.

Held, that the debentures were valid, and judgment must go as asked.

Looking at the debentures, they were strictly, on the face of them, negotiable instruments. The fact that they were sealed did not detract from their character, being rather that of promissory notes than of mortgages. Though the Act, 38 Vic. c. 47, O., makes the debentures a charge on all the property, real and personal, of the company, with a right of foreclosure and sale, this is something superinduced upon the security by virtue of the statute.

It would be an entirely retrograde movement to apply to debentures such as these the strict rules of the Common Law relating to deeds, rather than the rules of the law merchant applicable to negotiable securities. But, even if this were not so, the fact that the name, "Bank of Toronto," was not filled in until about the time of delivery to the plaintiffs, did not make the debentures void; and *Hibblewhite* v. *McMorrin*, 6 M. and W. 200, is distinguishable. There the instrument was delivered in an imperfect form, and was therefore void; here the instrument when handed to the bank was complete in all its parts.

If the law as to deeds applied, it would be that class of cases where deeds have been held good, notwithstanding an alteration or subsequent addition, because, at the time of execution, there was something which could not be ascertained, and was therefore to be filled up afterwards: *Bank of Montreal* v. *Buller*, 9 Gr. 89. Here, however, there was really no execution, which imports *delivery*, prior to the time when the name was filled up.

The company then, issuing debentures in blank, and handing them to the managing director, who was also secretary and treasurer, to be dealt with by him at his discretion, he was empowered to complete the instruments by the insertion of the obligee's name.

Held, also, that inasmuch as it appeared that these debentures were delivered with a view to facilitate the company's operations in getting out and disposing of ore, the main branch of the company's business, this was "for the purposes of the company's business," and so within the meaning of the aforesaid Act and by-law.

C. Robinson, Q.C., *S. H. Blake*, Q.C., *D. McCarthy*, Q.C., *C. Moss*, Q.C., *Reeve* and *Blackstock*, for the plaintiffs.

J. Bethune, Q.C., and *Marsh*, for the defendants.

Boyd, C.] [January 19.

BEATTY v. THE NORTH-WEST TRANSPORTATION COMPANY (LIMITED).

Company—Purchase by company effected by preponderating vote of vendor—Rescission of contract—Directors—Trustee and cestui que trust.

The Board of Directors of a steamship company passed a by-law authorizing the purchase for the company of a certain steamship owned by one of the directorate, and, at a subsequent meeting of the shareholders, this by-law was confirmed, such result being attained by the votes of the director, who owned the steamer, and who was the largest shareholder. Without his, the vendor's, votes, the majority of the votes recorded at the meeting would have