

company could take to the award, and in particular the one which has proved fatal to it, were taken in their defences. The intervention of the Attorney General was not until 1878, and the reasons filed by him on the 17th of September in that year are sufficient to show that the object of the intervention was to raise objections to the validity of the award, founded upon the attempted transfer of 1875, which could not have been taken in the name of the company. Those reasons, the contestation of them, and the other pleadings show that the new issues raised between the parties were the validity of the transfer as against the appellants, the right of the Commissioners under the Quebec Act to continue or discontinue the proceedings in the expropriation, the abandonment of the railway, and its transformation into a new railway, to be constructed under different conditions. This intervention was only necessary for the trial of these fresh and additional issues; and was, as the Court of Queen's Bench itself has found, wholly unnecessary for the trial of the original issues. Upon the trial of the action in the Superior Court, Mr. Justice Mackay expressly found "*que les faits allégués dans la dite intervention, savoir le transport des droits et actions de la dite Défenderesse au Gouvernement de la dite Province de Québec, n'a pas été prouvé avoir lieu légalement,*" a finding in accordance with the conclusion to which their Lordships have come touching the transaction of 1875, and one which would justify the dismissal of the intervention, even if the learned Judge had taken a view different from that which he did take of the validity of the award. The Attorney General had failed to show any grounds for inflicting upon the appellants the costs of unnecessary and expensive proceedings. In these circumstances, their Lordships are of opinion that the Court of Queen's Bench ought to have dismissed the appeal of the Attorney General, and to have affirmed the judgment of the Superior Court, in so far as it related to the intervention, with costs.

Their Lordships have now to consider appeal No. 144, which arises out of the "*opposition à fin de distraire.*" That opposition to the execution could not succeed as to such of the lands seized as had belonged to the company, unless it were established that the property in those lands had been changed by the attempted trans-

fer of 1875. Their Lordships are of opinion that there was no such change of property. The transaction, viewed as a whole, and as one single contract, could not, for the reasons above stated, operate as a valid transfer of the lands of the company to the Government of Quebec. Their Lordships feel bound to dissent from two propositions, on one of which the judgment of Mr. Justice Johnson, and on the other of which the judgment of Chief Justice Dorion, in part proceeds. Mr. Justice Johnson ruled that the contestants ought, if they questioned the validity of the transaction of 1875, to have concluded that it should be set aside or declared null, and that, by reason of their failure to do so, they must be taken to be bound by it. Chief Justice Dorion expressed an opinion that it was only at the instance of the Government of Canada (the Dominion,) or of an individual who could show that he had a special interest distinct from that of the public, that the transfer could be set aside. These reasons are somewhat contradictory, and their Lordships cannot think that either affords a good ground for the judgment impeached. If the transaction, not having the sanction of the Parliament of Canada, were *ultra vires* of the company and the Government and Legislature of Quebec, it was of no legal force or validity against the appellants, and might be so treated by them whether it were formally set aside or not. The other ground on which the judgment proceeds, and which has been chiefly insisted upon here, is more plausible. It is that the company had power, under the second sub-section of the 7th section of "*the Railway Act, 1868,*" to "*alienate, sell, and dispose of its lands;*" that the transaction of 1875, even if invalid as a whole, is severable, and that the company must be taken to have sold by it their land to the Government of Quebec in the exercise of that power. Their Lordships cannot accede to this argument. It appears to them that the contract is not severable in the manner suggested. It is a contract whereby, for the same consideration, everything which it purported to pass was intended to pass. Suppose what was suggested by Chief Justice Dorion were really to happen, that the Dominion Government were to take steps to set aside the transaction, could the Government of Quebec be heard to say, "*True, the transaction will not stand as a transfer of the railway, or of the*