

The railway company did not repay W. as agreed, and the bank obtained the bonds from the trust company and having threatened to sell the same the company, by its manager, wrote to E. and W. a letter requesting that the sale be not carried out, but that the bank should substitute E. and W. as the attorney irrevocable of the company for such sale, under a provision in the aforesaid agreement, and if that were done the company agreed that E. and W. should have the sole and absolute right to sell the bonds for the price and in the manner they should deem best in the interest of all concerned and apply the proceeds in a specified manner, and also agreed to do certain other things to further secure the repayment of the monies advanced. E. and W. agreed to this, and extended the time for payment of their claims, and made further advances, and, as the last mentioned agreement authorised, they re-hypothecated the bonds to the bank on certain terms.

At the expiration of the extended time the railway company again made default in payment, and notice was given them by the bank that the bonds would be sold unless the debt was paid on a certain day named; the company then brought an action to have such sale restrained.

*Held*, affirming the decision of the Court below, that the bank and E. & W. were respectively first and second incumbrancers of the bonds, being to all intents and purposes mortgagees, and not trustees of the company in respect thereof, and there was no rule of equity forbidding the bank to sell, or E. & W. to purchase, under that sale.

*Held*, further, that if E. & W. should purchase at such sale they would become absolute holders of the bonds and not liable to be redeemed by the company.

*Held*, also, that the dealing by the bank with the bonds was authorised by the Banking Act.

*Henry, Q. J.*, and *Newcombe* for the appellants.

*Borden, Q. C.*, and *Russell, Q. C.*, for the respondents.

Ontario.]

WATEROUS ENGINE WORKS CO. v. TOWN OF PALMERSTON.

*Municipal Corporation—Contract under seal—By-law—Executory contract—Enforcement.*

In pursuance of Sec. 480 of the Ontario Municipal Act (R. S. O. 1887, c. 184) empowering any Municipal Council to purchase fire apparatus, the Council of the Town of P., by resolution,