

duct the Province of Canada has recognized its liability to pay the principal and interest of the debentures issued under the authority of the Ordinance of 4 Vict.

The first which is relied on is the 12th Vict., c. 5, by which it was provided that it "should be lawful for the Governor to redeem or purchase on account of the province all or any of the debentures constituting the public debt of the Province of Canada, or such or any of the debentures issued by Commissioners or other public officers under the authority of the Legislature of Canada, or of the late Province of Canada, the interest or principal of which debentures is made a charge on the consolidated revenue fund of the province."

It is said that the Government, under the authority of this Act, paid off the debentures issued under the Ordinance.

It appears highly probable, as is stated in the very able judgment of Mr. Justice Gwynne, that the power given to the Governor by the 27th section of the Ordinance to advance, by way of loan, money to the Trustees to pay arrears of interest did, in fact, lead to the idea that the province was under a legal liability to pay the interest, and it would seem, though the manner in which the transaction was carried out is very obscure, that the debentures issued under the Ordinance were, in fact redeemed under the powers supposed to be conferred by the 12 Vict., c. 5.

All that need be said upon this subject is that, if the Governor did suppose himself to be acting under the authority of this statute, he mistook his powers. The debentures issued under the Ordinance did not constitute part of the public debt of the province, and neither the interest or principal of them was made a charge on the consolidated revenue fund of the province.

But, whatever considerations may have led to the redemption by the Government of the debentures issued under the Ordinance, it is clear that they cannot affect the construction of the 16th Vict., c. 235, under which the debentures now in suit were issued.

The 7th Section of that Act authorized the Trustees to raise a loan, which "loan, and the debentures which shall be issued to effect the same, and all matters having reference to the said loan, shall be subject to the provisions of

"the Ordinance with respect to the loan authorized under it;" but this important proviso is added,— "provided nevertheless that the rate of interest shall not exceed 6 per cent., and no moneys shall be advanced out of the provincial funds for the payment of the said interest."

Thus the power to make advances out of provincial funds for payment of interest which was given by the 27th section of the Ordinance as to the debentures issued under it, and which had possibly led to misconception as to the liability of the province, is expressly taken away by the 16th Vict. as to the debentures now in question.

They must therefore be treated as issued not merely on the express condition that they were not to be paid out of or chargeable against the general revenues of the province, but with the further express condition that no moneys should be advanced out of provincial funds for the payment of interest.

And again, as though for the purpose of guarding against the possibility of the debenture holders contending that the debentures issued under the 16th Vict. had the provincial guarantee, the proviso to the 7th section enacts that "all the debentures which shall be issued under this Act, so far as relates to the interest payable thereupon, shall have a privilege of priority of lien upon the tolls, &c., in preference to the interest payable upon all debentures which shall have been issued under the provincial guarantee, or which shall hereafter be issued by the said Trustees under the provincial guarantee."

What debentures had been or could be issued under the provincial guarantee does not appear, but this at least is clear, that the debentures issued under the Act, and now sued on, have no provincial guarantee, since they have a preference given to them over all that have, and are thus distinguished from them.

It remains only to consider some general arguments which have been advanced on behalf of the suppliants. It has been urged that the Government of the province, by redeeming the debentures issued under the Ordinance, induced the belief that the same course would be pursued with regard to the debentures issued under the Act of 16 Vict., c. 235, and that without such belief the debenture holders would not have lent their money on the security of the