The Legal News.

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The decision of the Judicial Committee of the Privy Council in *Porteous* v. *Reynar*, which will be found in the present issue, furnishes a striking illustration of the inconvenience which may arise from having two Supreme Courts of Appeal. It is now about three years since the profession in this Province were startled by the decision of the Supreme Court of Canada in *Burland* v. *Moffatt* (8 Leg. News, 147), reversing the law as stated by our provincial Court of Appeal (7 Leg. News, 182), and holding that persons in possession of trust property under a voluntary deed of assignment, by a debtor for the benefit of his creditors, are not entitled, as such assignees, to sue or be sued in reference to the estate and property assigned to them. It now appears that if that case had been appealed to England, the judgment of the Queen's Bench upon this point would have been affirmed; for the Judicial Committee, in *Porteous* v. *Reynar*, in the most emphatic terms express their dissent from the doctrine enunciated by the Supreme Court in *Burland* v. *Moffatt*. The decision of the Supreme Court being accepted by the Court of Queen's Bench as binding on them, was followed by the latter court in *Porteous* v. *Reynar*, contrary to their own view of the law previously expressed in *Burland* v. *Moffatt*. But the case of *Porteous* v. *Reynar* having been carried to the Privy Council, the Judicial Committee now render the judgment which the Court of Queen's Bench would have rendered, if the decision of the Supreme Court in *Burland* v. *Moffatt* had not stood in the way. The Judicial Committee, in *Porteous* v. *Reynar*, express the opinion that to accept the ruling of the Supreme Court in *Burland* v. *Moffatt* "would do considerable mischief, and practically defeat those compromises which constantly take place in carrying into operation the provisions of the Insolvent Act, and which can rarely be made effective without the introduction of trustees." This curious chapter in our jurisprudence will, we fear, not tend to diminish the number of applications to the Privy Council for leave to appeal from the Supreme Court of Canada.

JUDICIAL COMMITEE OF THE PRIVY COUNCIL.

LONDON, November 15, 1887.

Before LORD FITZGERALD, LORD HOBHOUSE, SIR BARNES PEACOCK, SIR RICHARD COUCH.

JOHN PORTEOUS et al. (plaintiffs in first instance), Appellants: and JOSEPH REYNAR (defendant in first instance), Respondent.

Assignment in trust for benefit of creditors—Right of assignee to sue in respect of the trust property—C. C. P. 19—"Burland v. Moffatt" (11 S.C. Can. Rep. 76), overruled.

HELD:—1. (*Overruling the decision of the Supreme Court of Canada in "Burland v. Moffatt," 11 S. C. Can. Rep. 76*), *that an assignee under a voluntary deed of assignment by a debtor for the benefit of his creditors can, as such assignee, sue and be sued in respect of the estate and property assigned to him.—Art. 19 C. C. P. is applicable to mere agents or mandatories who are authorized to act for others, and who have no estate or interest in the subject of the trusts; but is not applicable to trustees in whom the subject of the trust has been vested in property and in possession for the benefit of third parties, and who have duties to perform in the protection or realization of the trust estate.*

2. *That in the present case, the trustees having derived their title with the assent of all the creditors, from the official assignee appointed to an insolvent estate under the Insolvent Act of 1875, were assignees of his rights, and were entitled to enforce a contract entered into with them in respect of the trust property in their possession.*

LORD FITZGERALD:—This appeal comes before their lordships *ex parte*. The plaintiffs below are the appellants, and are represented here by solicitor and counsel. The defendant, who obtained the decision of the Supreme Court of Canada in his favor, does not appear.

In this particular case, which is one of considerable importance, though it does not present much difficulty, it was specially desirable that the respondent should have been represented by counsel to assist their lordships by his arguments, and to lay before them the reasons for the decision of the Supreme Court. Mr. Bompas, Q.C., for the appellants, has fully and candidly opened the case on both sides, and has laid before their lordships the authorities on which the Supreme Conrt acted. But though that is so, it is incumbent on their lordships, in a case heard *ex parte*, to examine it more minutely, and to give their reasons more at large than would otherwise be necessary or desirable. Two leading authorities, decisions of the same Supreme Court, on appeal, have been principally discussed, viz.: *Brown* v. *Pinsonnault* and *Moffatt* v. *Burland*, and as there was no appeal in either of those cases to this tribunal, the decisions are binding and conclusive in Canada. But nevertheless it became obvious, in the course of this hearing, that it would be necessary for their lordships to review these previous decisions as to one question affecting this appeal.

The facts of the present case are conveniently and accurately stated in the appellants' case. The action was brought by the appellants against the respondent on the 19th May, 1884, to recover $4,281, being the price of certain land sold by the appellants to the respondent under an act of sale in December, 1882. The notarial act was made between the appellants and respondent, and the respondent's contract to pay the price was with the appellants in their own names. The defence of the respondent, while not disputing the title of the appellants to the lands in question, or their right to sell, or the respondent's liability to pay for them, denied the right of the appellants to bring an action for the recovery of the price in their own names.

In 1876, the firm of Benson, Bennett & Co., in which Alfred Frederick Augustus Knight was a partner, became insolvent, and made an assignment under the Insolvent Act of 1875 to William Walker, as official assignee, for the benefit of their creditors. By a deed of composition and discharge, made under the provisions of the same Act on the 16th of June, 1876, and a deed supplementary thereto made on the 19th of June, 1877, Knight undertook to pay a composition to the creditors of Benson, Bennett & Co., on condition that all the assets of the firm were transferred to him, with the exception of the real property and the timber limits, which were to be transferred by the official assignee, in whose possession they were by law, to the appellants, Ross and Porteous, and one Francis Vezina (since deceased), as trustees appointed by all the parties concerned, to hold the said real estate and timber limits for the benefit of the creditors and of Knight, until Knight had paid all the instalments of the composition, when the real estate and the timber limits would be conveyed to him by the said trustees. Knight was unable to pay the composition, and thereupon, on the 24th of January, 1879, by an agreement made by the creditors of the firm of Benson, Bennett & Co., and Knight, it was agreed that Knight should transfer all the assets of Benson, Bennett & Co. in his hands, and all his interest in the real property of the firm to the appellants, Porteous and Ross, and the said Vezina, for the creditors. By a deed made on the 9th of June, 1880, the official assignee transferred to the appellants, Porteous and Ross, and the said Vezina, the said real property and timber limits, and all his rights therein, Knight consenting and releasing all his rights. On the 16th May, 1882, by a deed between the creditors of Benson, Bennett & Co. and the appellants, Porteous and Ross, and Pierre Lafrance, after reciting that Vezina died on the 25th January, 1882, and it was desirable that a formal deed should be executed to carry out the provisions of the agreement of the 24th January, 1879, it was provided that the appellant, Pierre Lafrance, should be appointed in the place of Vez na; and that after the execution of the deed the appellants should have actual and exclusive possession of all the real and personal property of Benson, Bennett & Co., with power (Article 18) to sell the same or any part thereof, and (Article 19) to prosecute any actions nece-

sary in the interest of the estate. All proceeds (Article 22) of the estate, after payment of the trustees' expenses, to be divided amongst the creditors. It was stated (Article 26) that the powers and authority given to the trustees were given with the intent that the trustees should have the power of granting as good and valid a conveyance of any part of the estate as if every creditor signed the deeds. In accordance with the provisions of the deed of the 16th May, 1882, the appellants took possession of the real property of the firm of Benson, Bennett & Co., and in December, 1882, by the act of sale, sold part thereof to the respondent. The title of the appellants, and their right to sell the property, as arising under the conveyance of William Walker, the official assignee, and dated 9th of June, 1880, and the deed of the 16th of May, 1882, was stated on the face of the act of sale. The respondent took possession of the land so sold to him, and cut down timber thereon.

The whole case of the respondent rests on the contention that the appellants were agents of the creditors, and as such were not entitled to bring an action for the price of the land sold to him, in their own names. It was not contested, but that by the insolvency of Benson & Co., and by force of the provisions of the Insolvency Act, their whole estate vested in the official assignee, and that if the sale to the respondent had been by the official assignee, that officer, and he alone, could have sued in his own name as such to enforce payment of the purchase money. Their lordships refer to sections 16, 39, 75 and 76 of the Canada Insolvent Statute. The three original trustees had been appointed by the creditors' inspectors, with the powers and duties expressed by section 49 of the same statute. The several deeds or agreements by which the trustees became trustees of the estate were all duly made under the insolvency and in accordance with the provisions of the Insolvent Statutes, and by the deed of the 9th June, 1880, to which the official assignee was a party, and made also in pursuance of the same statutes, the said official assignee did, "for the advantage of the creditors and of the estate," transfer and assign to the trustees all the whole real estate of the insolvents to hold for the purposes of the deed, and it contains the following provision: "And for the effect of the present assign-"ment the said William Walker, official "assignee, did hereby put, substitute and "subrogate the said John Porteous, James "Gibb Ross, and François Vezina, in their "capacities of trustees and inspectors as "aforesaid, in the place and stead of him, "the said William Walker, in his capacity "aforesaid, and in all his rights, title, in-"terest, and demand, privileges and hypo-"thecs, in, to, upon, or respecting the "premises. And the above named Alfred "Frederick Augustus Knight doth, both "individually and as having been such co-"partner, ratify and confirm the same in all "respects, and doth consent and agree that "the said parties of the second part shall re-"ceive and dispose of all the real estate "hereinabove mentioned for the purposes "hereinbefore set forth, hereby relinquish-"ing, in favor of the said parties of the "second part, all and any rights of any kind "that he the said Alfred Frederick Augustus "Knight may or can have in, to, or upon "the above mentioned real estate and "premises."

By the deed of the 16th May, 1882, to which the creditors were parties, and by which Lafrance was appointed trustee in place of Vezina deceased, after reciting that the whole property had come into the possession of the trustees, the confirmation of prior deeds and an agreement to discharge Knight from his liabilities under the composition arrangement, by the 18th article of the deed, it is declared "that the trustees "shall have actual and exclusive possession "of the whole of the said estate, real and "personal, and are authorized to sell and "dispose of it in such wise and upon such "terms and conditions, either by private "sale or by auction, and either for ready "money or on credit, as to them, in their "own discretion, shall appear most advan-"tageous to the said creditors, with power "to the said trustees in their discretion to "contract from time to time any loans that "they, in their discretion, may deem "necessary for the advantageous carrying

"out of the trusts hereby reposed in them, "as well as for the better conservation of the "property hereby entrusted to them, and "also for the execution of any incumbrances "thereon; also to lease the said real estate "or any part thereof until it can advanta- "geously be sold; and also until the said "timber limits can be sold, to allow timber "to be cut thereon upon such terms as the "said trustees may deem reasonable." And by 19th, "That the said trustees shall and "may, by all such lawful ways and means "as they may think proper, collect and get "in all sums of money belonging to the "said estate; and dispose of, and convert "into money all other the property and "effects belonging to the said estate, the "whole as to them in their discretion shall "seem best; also to commence and prosecute "any action or actions, suit or suits, as well "real as personal, in any courts of law or "equity for the recovery of any sum or sums "of money, goods, chattels, or other property "of any kind that now is or may hereafter "become due or payable, or belonging to the "said estate, or for any other purpose "that the said trustees may consider neces- "sary in the interest of the said estate to "commence and prosecute, and the same "action or actions, suit or suits, to prosecute "and follow until final judgment." And by 22nd, "That all moneys which shall be got in "and received by the said trustees after the "payment of all costs and charges of wind- "ing up the said estate, shall be applied in "the first place to the payment of the ad- "vances heretofore obtained by the said "trustees to enable them to meet the ex- "penses incident to the discharge of their "duties as such trustees, and more particu- "larly to pay the sum of $6,170.15 (with "interest at 7 per cent.) advanced by the "Bank of Montreal to pay the Crown Lands "Department the transfer dues owing on "said timber limits so belonging to the said "estate, as appears by a certain deed bear- "ing date the 30th day of June, 1877, exe- "cuted before the undersigned notary, to "which William Walker, of the said city "of Quebec, in his capacity as assignee as "aforesaid, was party of the first part, and the "said the Bank of Montreal was party of the "second part, and the said Alfred Frederick "Augustus Knight was party of the third "part, and by a certain deed bearing date "at Quebec aforesaid, on the 4th of July "of the same year, passed before the same "notary between the said parties."

The estates being thus vested in the trustees, they proceeded to sell and make sale of a portion to the respondent, and by the conveyance dated 13th December, 1882, in which their position as vendors and their title to the lands is fully recited, they conveyed to the respondent, "for ever, with "promise of warranty against all gifts, "dowers, mortgages, substitutions, aliena- "tions, and other hindrances whatsoever, "the lands so sold; of all of which the said "purchaser declares to have a perfect "knowledge, as having viewed and ex- "amined the said property and the titles "thereto, and therewith is content and "satisfied. Which said vendors are law- "fully seized thereof under and by virtue of "a certain deed of transfer consented to by "the said William Walker, of the said city "of Quebec, Esquire, official assignee, in his "capacity as assignee duly appointed to the "insolvent estate of Benson, Bennett & Co." The deed then recites, "The present bargain "and sale is thus made for and in consider- "ation of the price or sum of $11,014.64, "on account of which the said vendors do "hereby acknowledge to have received from "the said purchaser, at the time of the exe- "cution thereof, the sum of $3,671.54, *dont* "*quittance d'autant.* And as to the balance "of the said purchase price, to wit, the sum "$7,343.10, the said purchaser doth hereby "bind and oblige himself, his heirs, and "assigns, to pay the same to the said ven- "dors at the said city of Quebec," by instalments as provided for in the deed. The action was instituted by the trustees' vendors to recover the residue of the purchase money, all the instalments being overdue. All the averments in the plaintiff's declaration have been sustained in evidence.

The defence, whilst it puts the plaintiff on proof, amounts to what we would call a demurrer in law, and concludes thus:—"Qu'à "tout événement la demande en cette cause "devait être par les dits John Porteous,

"James Gibb Ross, et Pierre Lafrance en "leur qualité de mandataires, mois non leur "propre et privé nom. Pourquoi le dit "défendeur conclut à ce que l'action des dits "demandeurs soit deboutée avec dépens "distraits aux sous-signés." The Superior Court of the Province of Quebec, in which this suit was instituted (Cour Supérieure, District des Trois Rivières), pronounced its decision on the 8th November, 1884, holding that the plaintiffs had proved their allegations and were entitled under the act of sale to recover from the defendant the balance of the purchase money. There is no allusion in that judgment to the 19th article of the Code of Civil Procedure, or to the exception now founded on it, and therefore it would seem not to have been brought under the notice of that tribunal.

From that decision an appeal was taken to the Court of Queen's Bench for the Province of Quebec; but there is nothing in the reasons of appeal to indicate that any question on the 19th article of the Code was to be raised. The 19th article is in these words:—"No person can use the name of another to "plead, except the Crown through its re- "cognised officers." That article is intended to express the rule of procedure previously existing in Lower Canada, and which, subject to numerous exceptions, represents in some respects the rule of procedure in this country, *e.g.* the Queen never sues in her royal name alone. Her suit is by her Attorney-General on her behalf, or by some other public officer who has authority by Act of Parliament to enforce the rights of the Crown. Again, by the law of England a mere agent who contracts as such cannot generally sue in his own name; but he may do so, and sometimes is the proper person to sue on contracts entered into with him directly in his own name. He may be personally held liable on such contracts, and generally with us, trustees of real or personal estate, who have in them the title and possession, though but in trust for others, can sue to enforce their rights as such, and are the proper parties to enforce the contracts entered into with them in respect of the trust property, and a trustee is not regarded in the light of a mere agent, "mandataire," or as a "Procureur qui a pouvoir d'agir par "un autre." But their lordships do not deem it necessary to pursue this further, as they have to give effect to Canadian, and not to English law.

This case came before the Canadian Court of Queen's Bench, Province of Quebec,* and that court reversed the decision of the Primary Court:—"Considering that the "Supreme Court has already decided in the "cases of *Brown et al.* v. *Pinsonnault*, and of "*Burland* v. *Moffatt*, that a voluntary assign- "ment by an insolvent debtor of his estate "and property for the benefit of his creditors "did not confer upon the assignees the right "to sue or defend in their own name the "actions accruing with regard to the estates "and property assigned. And, considering "that the present case does not constitute an "exception to the ruling of the Supreme "Court." Mr. Justice Ramsay concurred, but not in the reasons of the judgment; and after stating that the reversal by the Supreme Court of the decision of the Queen's Bench in *Burland* v. *Moffatt* was a calamitous mistake, and a double error, he adds:—"But the "deed in this case is of a totally different "character. It carefully avoids giving re- "spondents any title but that of trustees; and "this respondents perfectly understood. They "sold as trustees, and now they bring the "action as principals. I do not see how this "action could be maintained. If they are "principals they show no title; if they are "trustees they cannot sue as such; for no "one but the Crown can use the name of "another to sue. Art. 19, C.C.P." The reasons of Mr. Justice Ramsay, so far as they are reported, do not appear to their lordships to be satisfactory; but in truth the majority of the court seem to have merely followed the two prior decisions of the Supreme Court at Ottawa. Their attention does not appear to have been directed to the totally different circumstances of the present case.

Their lordships have now to consider these two decisions, of which the earliest was *Brown* v. *Pinsonnault*, reported in 3 Supreme Court of Canada Reports, p. 102, on appeal from the Court of Queen's Bench. There were two questions. The first was whether a particu-

* 11 Q. L. R. 297.

lar contract was terminated by *force majeure*. The court so held, and that formed a decision on the merits terminating the action. The second was whether the appellants as trustees for the creditors of Steele, had a right to sustain the action for Steele's creditors, though the contract was with them, the action, if any, belonging to the creditors under Article 19, and not to them. Mr. Justice Taschereau delivered the judgment of the court on both points; but the second, or technical question, receives the first attention. He says:—"The "plaintiffs sue in their quality of trustees "duly named of the creditors of Steele. The "rule with us, contained in Article 19 of the "Code of Civil Procedure, is that no one can "sue 'par procureur.' Of course in certain "cases, when specially authorized by law to "do so, certain trustees may sue and appear "before the courts as such; so can assignees "under the Insolvency Acts; but here the "plaintiffs have no such standing—*they are* "*merely the attorneys of Steele's creditors.* It is "true that Pinsonnault passed the deed of "April, 1879, with them, acting in their qual- "ity of such trustees, but this does not give "them any right to appear as such before a "court of justice."

Moffatt v. *Burland*,* which was the other case, appears to have been decided on the 27th of May, 1884. It came before the Court of Queen's Bench at Montreal, and the head note is this: "(1) A sale of a chattel may be "considered as a mere pledge instead of an "actual sale, and invalid as a pledge for want "of delivery and possession. (2) The assignee "under a voluntary deed of assignment by a "debtor for the benefit of his creditors, can "as such assignee sue and be sued in refer- "ence to the estate and property assigned to "him." With the decision of that court on the main question their lordships have now no concern, but the judgment of Chief Justice Dorion on the second question is remarkable, and deserves the closest consideration. The very learned Chief Justice points out that the question was whether the appellant as *cessionnaire* from the debtor for the benefit of creditors, was entitled to resist the action in his own name. He was not plaintiff in the suit, but was sued as defendant in respect of the trust property in his possession. The Chief Justice observes:—" But it is contended that "the defendant, as the assignee of Gebhart "& Co., being a mere agent or attorney, has "no quality and no interest as such to appear "in a court of justice and urge any objection "against the title of the respondent. Now, "is this a transaction in which the old rule "'Personne ne plaide par procureur,' embo- "died in Article 19, does apply? We have no "hesitation in saying it is not." His lordship, in a most able, elaborate, and learned judgment, considers the authorities, both French and French-Canadian, that bore on the question, and observes: "As far as we "can refer back for precedents in the courts "of Lower Canada we find that assignees or "trustees vested by voluntary agreements "with the estate of insolvent debtors for the "benefit of their creditors have invariably, "with one or two exceptional cases, been ad- "mitted to urge before courts of justice the "claims and rights of the estates which they "represented as such assignees or trustees." Dealing with the Canadian authorities, which he describes as an unbroken chain of precedents going as far back as 1811, he adds: — "That the jurisprudence of a "country on any given case when cer- "tain is not only the best, but the sole "authentic of what the law is now on "the subject." We gather also from his lordship's judgment that the rule of procedure in Article 19 is applicable only to a mere agent.

Burland v. *Moffatt* is reported on appeal from the Court of Queen's Bench to the Supreme Court of Canada in the 11th Supreme Court Reports, p. 76.* The judgment of the Supreme Court is the judgment of Mr. Justice Taschereau. He says that "*Nul ne peut plaider par procureur*" is, and always has been, the law of Lower Canada.

The case on the merits is so mixed up with the question of procedure that it is difficult to disentangle them; but undoubtedly the decision of the court on the technical question of procedure rests on the the supposed rule that a voluntary assignee

* 7 Leg. News, 182; 4 Q. B. (Dor.) 59.

* See also 8 Leg. News, p. 147.

in trust for creditors comes within the article "*Nul ne peut plaider par procureur,*" and adopts the decision of Mr. Justice Badgley that the assignees of an insolvent cannot "ester en justice" for the creditors.

Their lordships cannot interfere authoritatively with either of those decisions, but they may express their opinion on them for future guidance; and their lordships have no hesitation in saying that the reasoning and the decisions of the Supreme Court in relation to the exception founded on Article 19 of the Code of Civil Procedure are not satisfactory, and that on the contrary they adopt the reasoning and decision of Dorion, C.J., in *Burland* v. *Moffatt*, as consistent with reason and law.

Their lordships having so disposed of the two decisions of the Supreme Court, which governed the Court of Queen's Bench, proceed to deal with the present case.

On this appeal they entertain not a shade of doubt that the decision of the Court of Queen's Bench was erroneous, and that the decision of the Superior Court was correct in fact and in law, and ought to be restored; and their lordships would have come to the same conclusion if the facts of this case were in effect similar to and had not gone beyond both *Brown* v. *Pinsonnault* and *Moffatt* v. *Burland*. Their lordships entertain the view that Article 19 is applicable to mere agents or mandatories who are authorized to act for another or others, and who have no estate or interest in the subject of the trusts, but is not applicable to trustees in whom the subject of the trust has been vested in property and in possession for the benefit of third parties, and who have duties to perform in the protection or realization of the trust estate. The case before their lordships is so different that even if the two preceding decisions were untouched they would not necessarily affect the decision of their lordships on the present appeal. This is not a case of a mere voluntary cession to a trustee for the benefit of creditors, but of an assignment under the Insolvent Acts to the official assignee for the purpose of realization. That officer could sue and must sue in his own name, though he has no beneficial interest. The present plaintiffs derive their title from him with the assent of all the creditors, and they are the assignees of all his rights, so far as he could transfer those rights. In addition, by the composition arrangement entered into under the provisions of the 49th section of the Insolvent Act, and the subsequent acts springing from that composition, the estates moveable and immoveable have been vested in the plaintiffs in possession and in property under a mandate, to preserve, to manage, to realise, to pay off charges, and distribute the surplus. The trustees, too, are empowered to act independently of the creditors in performance of their obligations and duties, and are specially authorised to enter into contracts and to enforce them. The act of sale in the present case was regular and lawful. The plaintiffs as trustees, sold property to the defendant, of which they were lawfully possessed, and to which they had title. He received that title and that possession from them. They were to receive the purchase money, and he covenanted to pay the balance of that purchase money to them. The action is brought by the trustees on that covenant, and if they cannot enforce it in the present action there is some difficulty in defining what the remedy, if any, may be.

Their lordships are of opinion that to hold that the present suit could not be maintained, and in the present form, would do considerable mischief, and practically defeat those compromises which constantly take place in carrying into operation the provisions of the Insolvent Act, and which can rarely be made effective without the introduction of trustees. They do not forget that in ordinary trust cases the estate is vested in the person of the trustee to accomplish the ends and purposes of the trust. In order to create an effectual trust the subject is usually vested in the trustee to preserve it, and deal with it for the objects contemplated, and whatever is essential to the purposes of the trust, if not expressed, is usually implied: thus, for instance, if trustees are to recover and distribute funds, they may institute and carry on actions, recover payment, and discharge the debtors.

Upon the whole their lordships are clearly

of opinion that the judgment of the Court of Queen's Bench should be reversed, the judgment of the Superior Court re-instated, and the appeal to the Court of Queen's Bench dismissed with costs, and their lordships will so humbly advise Her Majesty. The costs of this appeal will be paid by the respondent.

G. H. Malhiot, for plaintiff in Court below and in Appeal.

Honan & Tourigny, for defendant in both courts.

Bompas, Q.C., and *Lejeune*, for appellants before the Privy Council.

COURT OF APPEAL.

Nov. 15, 16, 17, 19, 1887.

Before COTTON, L.J., SIR JAMES HANNEN, LOPES, L.J.

PEEK v. DERRY.

Company—Misstatement in Prospectus—Liability of Directors.

The Plymouth, Davenport and District Tramways Company was incorporated by special Act of Parliament in 1882. On February 1, 1883, a prospectus was issued inviting subscriptions for ordinary share capital. It was headed, in large type, "Incorporated by special Act of Parliament, 45 & 46 Vict., c. 159, authorising the use of steam or other mechanical motive power," and contained the following statement: "One great feature of this undertaking, to which considerable importance should be attached, is that, by the special Act of Parliament, this company has the right to use steam or mechanical motive power instead of horses, and it is fully expected that by the means of this a considerable saving will result in the working expenses of the line as compared with other tramways worked by horses." The only provisions contained with regard to steam in the special Act were as follows: "By section 35 it was provided that the carriages might be drawn by animal power; and with the consent of the Board of Trade during seven years after the opening of the tramway for public traffic, and with the like consent during such further period as the Board might from time to time specify in manner therein mentioned, by steam or other mechanical power;" and it was further provided, "that the exercise of the powers therein conferred with respect to the use of steam or any mechanical power should be subject as therein provided, and to the company obtaining the consent of the Corporations of Plymouth and Devonport therefor." At the time when the prospectus was issued, the company had not obtained the consent of the Board of Trade or the consents of the Plymouth and Devonport Boards to their use of steam power, and such consents never were obtained. In an action by a shareholder for damages on the ground of misrepresentations in the prospectus, Held, that the directors who issued the prospectus were responsible for the misstatements of fact contained in it, and that they were not justified, because they thought there was a strong possibility that they would get the necessary consents to the use of steam power in stating that they had actually the power, and that they were therefore liable to the plaintiff in damages, and an inquiry was directed as to such damages.

Decision of Stirling, J., reversed.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Jan. 7.

Judicial Abandonments.

Benjamin H. Lecompte, trader, Montreal, Jan. 3.
Robert Marcus Levine, Fox River, Dec. 27.
Augustin Brodeur, trader, Sherbrooke, Jan. 4.

Curators appointed.

Re L. P. Guilmette, St. Jérome.—Kent & Turcotte, Montreal, curator, Jan. 2.

Dividends.

Re Zélire Brouillette (E. Beauchamp & Co.)—First and final dividend, payable Jan. 26, C. Desmarteau, Montreal, curator.

Re Louis Tremblay.—First and final dividend, payable Jan. 26, C. Desmarteau, Montreal, curator.

Re McDougall, Logie & Co., and personal estate of John McDougall.—First and final dividend, payable Jan. 24, A. F. Riddell, Montreal, curator.

GENERAL NOTES.

The number of *Littell's Living Age* dated Jan. 7, begins a new volume—the 176th—of this standard weekly magazine. *The Living Age* contains an excellent selection of the best reading, and is indispensable to those who would keep pace with the best literary work of the time.

Vick's Floral Guide for 1888 (Rochester, N. Y.) is a gem in its way, and with *Vick's Magazine*, presents the study and practice of floriculture in their most inviting aspect.