

BETWEEN

THE MINISTER OF RAILWAYS } PLAINTIFF;  
AND CANALS..... }

1908  
Oct. 31.

AND

THE QUEBEC SOUTHERN RAIL- }  
WAY COMPANY AND THE } DEFENDANTS.  
SOUTH SHORE RAILWAY COM- }  
PANY..... }

*In re* THE STANDARD TRUST COM- }  
PANY OF NEW YORK (CLAIMANT) }

AND

THE BANK OF ST. HYACINTHE, }  
THE ATTORNEY-GENERAL OF } APPELLANTS.  
CANADA, AND H. A. HODGE, }  
(CONTESTING PARTIES)..... }

*Railway--Purchasers--Organization of company to operate road--Enhanced price paid by purchasers--Right to profit on transaction.*

Where purchasers of a railway, having acquired the same on their own behalf and with their own money, organize a company to operate it, in compliance with the requirements of *The Railway Act* (now found in Sec. 299, R. S. 1906, c. 37), and turn over the railway to such company at an enhanced price, they are entitled in law to their profit on the transaction.

**APPEAL** from a Report of the Registrar acting as Referee.

The facts of the case are fully set out in the following extracts from the Referee's provisional and final reports.

"This claim, against the South Shore Railway Company, was originally filed on the 1st day of March, 1906, alleging that by agreement of the 2nd December, 1895, between L. Tourville, J. Leduc, J. M. Fortier and

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Reasons for  
 Judgment.  
 ———

Hyacinthe Beauchemin, of the first part, and the South Shore Railway Company, of the second part, the latter acknowledged itself to be indebted to the parties of the first part in the sum of \$348,000, one-fourth to each, being the price of the purchase of the Montreal and Sorel Railway, bought by the South Shore Railway from the parties of the first part. This sum of \$348,000 the South Shore Railway promising to pay to the parties of the first part, to wit: \$87,000 to each, with interest at 6 % from 1st July, 1895, payable half-yearly on the first days of January and July, any arrears of interest to be added to the capital and to bear interest as capital, the first payment of interest to become due on the 1st January, 1896; and the principal sum being made payable five years from the date of the said agreement.

“For its indebtedness to the said J. M. Fortier, the South Shore Railway gave a promissory note dated the 2nd December, 1895, whereby five years after date it promised to pay to the order of the said J. M. Fortier the sum of \$87,000 at the Bank of Nova Scotia, in Montreal, with interest from the 2nd July, 1895, at 6 % payable half-yearly.

“The Standard Trust Company is now the legal owner and holder of the said note and is vested in the rights of the said Messrs. Tourville, Leduc, Fortier, and Beauchemin, under certain transfers and assignments filed herein, and claims the sum of \$348,000 with interest thereon to the 22nd January, 1903, date at which an action had been taken by the Standard Trust Company against the South Shore Railway for the amount of the present claim, as originally formulated, and in which action they were asking further the cancellation of the amalgamation. This said sum of \$348,000, and interest, as above mentioned amounting to..... \$194,160 00

“The Standard Trust Company further claimed to be the legal owner and holder of

135 first mortgage bonds of the South Shore Railway Company of the par value of \$2,000, from 001 to 135, dated 1st January, 1900, and the coupons attached thereto, which with interest accrued on the 22nd January, 1903, amounted to..... 302,400 00  
 together with interest on interest upon same. 25,000 00

making the total sum of..... \$821,560 00  
 which, after including further interest, as stated in the claim, would amount to over \$850,000.00.

“On the 2nd June, 1906, evidence having been adduced, before the undersigned, in support of the claim, at the opening J. E. Martin, of counsel for the claimants, materially amended and reduced this claim, withdrawing the \$270,000 and interest respecting the above-mentioned bonds and claiming the sum of..... \$348,000 00  
 and interest thereon from the 1st July, 1895 (Evidence, p. 26), together with the further sum of..... 52,994 84  
 also with interest thereon from 31st August, 1901; the latter amount representing certain indebtedness of the South Shore Railway Company to the Hochelaga Bank, H. Beauchemin and J. M. Fortier, and which were paid and discharged by the present claimants. This sum of \$52,994-84, being made up of the following items, viz.: The sum of... \$27,674 53  
 which the Montreal & Sorel Railway Syndicate (composed of L. Tourville, Leduc Estate, H. Beauchemin and J. M. Fortier) had obtained for the South Shore Railway upon their gua-

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. Co.  
 AND THE  
 SOUTH SHORE  
 RWAY. Co.  
 —  
 STANDARD  
 TRUST  
 CLAIM.  
 —  
 Statement  
 of Facts.  
 —

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 —  
 STANDARD  
 TRUST  
 CLAIM.  
 —  
 Statement  
 of Facts.  
 —

rantee as a loan from the Hoche-  
 laga Bank, at the end of August,  
 1901, for the benefit of the South  
 Shore Railway, which was the  
 principal debtor for the same.

The sum of..... \$12,351 88

\* \* \* \*

represents the current indebted-  
 ness of the South Shore Railway  
 to the Hochelaga Bank, under  
 current account, and which at  
 the end of August amounted to  
 that sum.

The further sum of..... \$12,968 43

-----  
 \$52,994 84

is an indebtedness to Mr. H. Beauchemin by the South  
 Shore Railway, and which was specifically reserved in the  
 deed of the 13th of August, 1901, between H. Beau-  
 chemin and R. J. Campbell, and mentioned in the sche-  
 dule thereto attached with the other two above mentioned  
 amounts.

“The present claim then resumes itself, 1st, to the  
 \$348,000.00 and interest originally due by the South  
 Shore Railway to Messrs. Tourville, Leduc, Fortier, and  
 Beauchemin, and 2ndly, to the \$52,994.84, and interest,  
 representing moneys due by the South Shore Railway to  
 the Bank of Hochelaga and to H. Beauchemin and finally  
 paid by Mr. H. Regensberger, acting for Mr. Meyer.

“The claimant’s title to the \$348,000 is complete and  
 valid. Messrs. Tourville, Leduc, Fortier and Beauchemin  
 were proprietors of the Montreal and Sorel Railway Com-  
 pany valued by them at \$648,000. This railway being  
 sold by the Sheriff, Mr. Tourville, in the interest of their  
 syndicate, composed of the four gentlemen above men-

tioned, and to protect them, bought the road at such sale for a nominal sum, which was duly paid.

“Instead of selling the road to the South Shore Railway Company for the price they might think fit or proper, they proceeded differently. Mr. Tourville transferred his adjudication to the company which became, from the entries at the Registry Office, the actual purchasers from the sheriff, with the purchase price paid cash. But they executed an independent agreement or *contre lettre* between the syndicate composed of the above mentioned four gentlemen on the one part and the company on the other part, whereby the purchase price was fixed at \$648,000, the estimated value of the debentures of the Montreal & Sorel Railway Company, held by the interested parties, and the latter being debtors of the South Shore Railway for \$300,000, the value of the shares subscribed by them, remained creditors for the balance of \$348,000.

“This transaction appears to be perfectly valid and made in good faith, and could in any case only be attacked by establishing that the price of \$648,000 was not a reasonable one, or that there was fraud. As there is no evidence to show that this price was not a reasonable one; but to the contrary everything points to show that the transaction was made, so to speak, above board and in good faith, and that fraud cannot be presumed, the transaction must be declared valid.

“If this claim of \$348,000 was a valid claim in the hands of the Syndicate, there can be no doubt that it has now passed into the hands of the Standard Trust Company, and that it is as good and valid in its hands as it was in the hands of the Syndicate. The transfers are distinct and complete.

“The fact that this part of the claim was not the most important part of the purchase by the American people cannot affect the question. For them, as for the original syndicate, it was the same thing; if they insisted upon

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 —  
 STANDARD  
 TRUST  
 CLAIM.  
 —  
 Statement  
 of Facts.  
 —

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Statement  
 of Facts.

the payment of their claim their shares became of no value ; if they neglected their claim their shares acquired more value. As they held both it was of little importance to them upon which head they claimed. That is the reason why perhaps not so much importance was attached to this claim as might at first appear. And as those claims were clearly existing at the time of the transfers, and there is no doubt they were so transferred, and nothing having occurred since to render them null or void, they cannot now be ignored. The fact that they are not mentioned in the schedule attached to the transfer from Beauchemin to Campbell would appear to be of no consequence. The purchaser exacted a list of the liabilities he was interested to know, debts due to third parties. He did not concern himself about the debts or claims of which he became the holder.

“What would tend to remove any doubt, if any existed with respect to the effect of the transfers, is first the fact that Campbell made the transferrors give him Fortier’s promissory note, and 2ndly, the fact that Moore exacted two separate contracts from the Tourville Estate, one being a transfer of the shares and the other a transfer of the claims belonging to that estate.

“Then we must not overlook the fact that in that transfer of Beauchemin to Campbell, to which is attached the list of the company’s debts and liabilities, there is no statement to the effect that this list covers all the debts and is exhaustive. Such statement, indeed, would be incompatible with the very terms of the contract, whereas the list mentions no debts whatsoever in favour of Tourville, Fortier, Leduc and Beauchemin, with the exception, however, of the \$12,968.43 which the latter reserved to himself; whereas, further, that at this very moment Beauchemin was handing over a promissory note of the company in favour of Fortier, and that Beauchemin, the Leduc Estate and the Tourville Estate,

the latter by a distinct deed, were transferring, besides their shares, their claims against the company.

“The claim is not a privileged one. These South Shore bonds cannot give it any privilege under the circumstances. Indeed it is nowhere stated or mentioned that these bonds were issued or given as collateral security for this claim. It is only mentioned in a resolution that these creditors will not be in a position to exact payment before the bonds are issued, and that then they will be paid out of the proceeds of such bonds, which is not at all the same thing. No privilege is given and the bonds were never issued.

“It cannot be said either that they have the privilege of *bailleur de fonds*. The deed was not registered. The interpretation which the undersigned is inclined to place upon Art. 2094 of the Civil Code is that no privilege is given the privileged creditor who omits to register when registration is required, even upon the ordinary chirographic creditor in a case of insolvency, as the present one. We are not here dealing with creditors who have simply omitted to register their claim, but with creditors who consented to the registration of a deed which upon its face shows they have no claim, because they ceded to the company their adjudication to the Sheriff, and the company accordingly appears at the Registry Office as having purchased directly from the Sheriff and as having paid cash the purchase price. They must then have led third parties and the public to believe that the purchase price had been paid, and this, it must be said, with some hesitation, perhaps, would stand in their way as a bar to the recovery with the privilege of *bailleur de fonds* which cannot subsist under the circumstances.

“The only privilege which can be claimed and the only one distinctly claimed is the one which is given to the ordinary creditor of the South Shore under Sec. 4 of

1908

THE  
MINISTER OF  
RAILWAYS  
AND CANALS

v.  
THE  
QUEBEC  
SOUTHERN  
RWAY. CO.  
AND THE  
SOUTH SHORE  
RWAY. CO.

—  
STANDARD  
TRUST  
CLAIM.

—  
Statement  
of Facts.  
—

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Statement  
 of Facts.  
 ———

4-5 Edward VII, chapter 158, discussed elsewhere in this report.

“The claim is not prescribed, as it only became due in December, 1900. Part of the interest, however, is prescribed as it is payable semi-annually, beginning with the 1st of January, 1896. The claimants are entitled to 5 years interest under Art. 2250 of the Civil Code.

“This sum of .....	\$348,000 00
with interest thereon from the 8th November, 1900, to the 8th November, 1905, at 6%, payable under the terms of the agreement of the 2nd December, 1895, half-yearly, on the first days of January and July, any arrears of interest to be added to the capital and to bear interest as capital, making the additional sum of.....	\$119,784 42
Forming the total of.....	\$467,784 42

which will be allowed against the South Shore Railway, without privilege, excepting, however, such privilege which may be derived from sec. 4, ch. 158 of 4-5 Edward VII.

“Passing to the second branch of the claim for..... \$52,994.84 it must be said that this sum has been well established by the evidence adduced. It was due by the South Shore and has been duly paid by Mr. Regensberger for Mr. Meyer.

“ Besides resting their claim on both branches upon the *vivâ voce* evidence adduced in support of the same, the claimants also rest upon the following documentary evidence, viz. .

1. Resolution of Directors of South Shore of 4th June, 1894.
2. Resolution of Directors of South Shore of 8th October, 1895.



3. Resolution of Directors of South Shore of 7th December, 1895.

4. Sale by Estate Leduc to R. M. Campbell, 30th August, 1901.

5. Transfer by Estate Louis Tourville to B. P. Moore, 9th April, 1902.

6. Sale and transfer by H. Beauchemin to R. M. Campbell, 30th August, 1901.

7. Agreement between R. J. Campbell and Arthur L. Meyer and The Standard Trust Company, 31st December, 1902.

8. Agreement between B. P. Moore and Arthur L. Meyer and The Standard Trust Company, 9th April, 1902.

9. Assignment by R. J. Campbell to Arthur L. Meyer of the 30th August, 1901.

10. Assignment by A. L. Meyer and R. J. Campbell to The Standard Trust Company, 7th November, 1906.

There is no stipulation for interest upon this sum of \$52,994.84 and it is not payable at law under the present circumstances."

[By his Provisional Report the Referee allowed this claim at the sum of \$520,779.26, against the South Shore without privilege, excepting, however, such privilege as may be derived from section 4, ch. 158 of 4-5 Edward VII ]

"The Bank of St. Hyacinthe, a creditor collocated in the Provisional Report, being dissatisfied with the finding of the said Report upon the above claim of The Standard Trust Company of New York, filed a contestation of the same, which said contestation was, by leave, twice amended.

"The Standard Trust Company of New York joined issue upon the contestation of the Bank of St. Hyacinthe.

1908

THE  
MINISTER OF  
RAILWAYS  
AND CANALS

v.  
THE  
QUEBEC  
SOUTHERN  
RWAY. CO.  
AND THE  
SOUTH SHORE  
RWAY. CO.

STANDARD  
TRUST  
CLAIM.

Statement  
of Facts.

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 St tement  
 of Facts.  
 ———

“ On the 29th November, 1907, the Attorney-General of Canada, a creditor interested herein through the collocation of the Intercolonial Railway, for traffic balances etc., was allowed to intervene and file a contestation upon the same grounds as those set forth by the Bank of St. Hyacinthe’s contestation of the claim of the Standard Trust Company, as allowed by the Provisional Report, which contestation was, by leave, once amended. The Bank of St. Hyacinthe then declared that they did not intend to join issue on the contestation of the said Attorney-General.

“ The Standard Trust Company joined issue upon the contestation filed by the said Attorney-General.

[ Within the period allowed for appealing to the Judge of the Exchequer Court from the Registrar’s final Report, H. A. Hodge, a creditor herein, moved for leave to intervene and appeal from the Registrar’s finding upon the present claim. Such leave was subsequently granted ]

“ The above contestations were proceeded with, before the undersigned, at the City of Montreal, on the 6th, 7th, 14th and 24th days of December, A.D. 1907, and on the 11th and 18th days of January, A.D. 1908. F. L. Beique, Esq., K.C., and E. Lafleur, Esq., K.C., appeared for the Bank of St. Hyacinthe ; A. Geoffrion, Esq., K. C., appeared for the Attorney-General of Canada ; and S. Beaudin, Esq., K.C., and J. E. Martin, Esq., K.C., appeared for the Standard Trust Company of New York. Upon hearing the evidence adduced and what was alleged by counsel aforesaid, the undersigned humbly submits :—

“ The evidence adduced upon this contestation has thrown a great deal of light upon many facts which up to then remained unexplained, and has brought the whole matter to a clear understanding.

“ The grounds of the contestations of the above claim may be, *inter alia*, summarized as follows :—

"1. That the syndicate previous to becoming directors of the South Shore Railway, were promoters.

"2. That at the time of the adjudication of the Montreal and Sorel Railway by the sheriff to Tourville, the members of the syndicate were directors of the South Shore Railway and as such were acting in a fiduciary capacity towards the said company. That they are, therefore, not entitled to make profit out of the purchase, as it is made by the South Shore Railway Company which is entitled to take the property at the price actually paid.

"3. Then in the alternative, that the resolution and agreement by which the price is fixed at \$648,000 should be set aside both on account of the fiduciary relationship between the parties and because the price is excessive.

"4. The amount claimed by the members of the syndicate for the transfer of the railway is more than paid by the stock; that the amount due on the stock, \$300,000, is more than sufficient to pay anything coming to them.

"The Standard Trust Company joined issue on these allegations, and the main answer rests upon the facts of the case which go to show there existed no trust, no fiduciary relation, as between the syndicate and the South Shore Railway Company, and that the members of the syndicate owned the railway as well before the sale and formation of that company as after; that they bought it with their own money, and that the formation of the company was only a re-organization of their interests and in compliance with the Railway Act. They never acted in a fiduciary capacity for anyone.

"The only two questions to be decided here are: (1) Whether there was any fiduciary relation as between the syndicate and the South Shore Railway Company at the time of the sale; and (2) Whether the price of \$648,000 is, under the circumstances, fair and reasonable.

"There must be read with the present finding the finding made upon the Provisional Report, with the object of avoiding repetition.

1908

THE  
MINISTER OF  
RAILWAYS  
AND CANALS

v.  
THE  
QUEBEC  
SOUTHERN  
RWAY, CO.  
AND THE  
SOUTH SHORE  
RWAY, CO.

STANDARD  
TRUST  
CLAIM.

Statement  
of Facts.

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Statement  
 of Facts.  
 ———

“The regularity of the Minute Book with respect to the words “purchase price to be agreed at a later period” has been challenged, but the undersigned finds— if ever there was anything in it—it has been satisfactorily explained by the Secretary, Lalonde, and by Judge Choquet, the solicitor of the company at the time.

“The South Shore Railway Company was incorporated by the Act 57 Vict., ch. 72 (Que.) which was assented to on the 8th January, 1894. The Montreal and Sorel Railway was sold by the sheriff of Montreal on the 1st June, 1894, and the Great Eastern was sold *à la folle enchère* for the last time in 1899.

“The deed of agreement or partnership between the four members of the Syndicate bears date the 1st March, 1893, and by clause 2 thereof, it reverts and dates back to the 4th November, 1892, and the purpose for which the Syndicate was formed is related in clause 1 of that deed, which states that it is with the object of completing and equipping the Montreal and Sorel Railway between St. Lambert and Sorel, to put it, and maintain it, in good working order, in compliance with the provisions of ch. 88, par. BB of 54 Vict. (Que.), and with the further object of operating the said railway generally and of acquiring it, if deemed advisable (*s'il y a lieu*).

“Now the very intention of the Syndicate is disclosed as far back as 1892. Their object is to operate the road and acquire it. If they acquire it, a company must be formed, as under the Railway Act a company alone can operate a railway, and can it be said that because they so comply with the Act they become in a fiduciary relation with that company which is themselves? Where is the *cestui que* trust and where is the trustee? While directors in name after or before purchasing the property, they nevertheless remained the principals and the owners in fact before and after the incorporation. They actually were the vendors and vendees. The whole transaction resumes itself into a re-organization, that is all.

"This is said at the outset in view of the terse statement made by Mr. Geoffrion of the gravamen of the whole argument and pleadings which is based on the elementary legal principle that 'If a person instructs another as his agent to go and buy something for him, and that other person goes and buys it for \$10,000, or any other price, he is bound to turn it over for the same price to his principal,' adding further that this principle is applied to the case of promoters before a company is formed; the promoter, he claims, would be in the position of an agent.

"Now, what are the actual facts? Dealing with that view there could be no agency or mandate, since that company was not even organized when the Syndicate started buying and improving the road and investing large sums of money in it. As far back as 1892, before the South Shore Railway Company is incorporated, before the road is sold at Sheriff's sale, the Syndicate start working together with the object mentioned in the deed of the 1st March, 1893. Judge Choquet in his evidence (p. 186) tells us that upon his own application, as provided by the Code, a sequestrator was appointed on account of frivolous oppositions having been made. The sequestrator represented the bondholders of the Montreal and Sorel Railway. Subsequently, the Syndicate purchased 1,453 bonds out of a total of 1,500 for the sum of \$170,322.40, and operated the road with the consent of the sequestrator. Now, when the Syndicate took possession and began to operate the Montreal and Sorel Railway, it consisted of very little (so Secretary Lalonde informs us, p. 93); it was only the right of way on rails, and at that time the road was not being operated; it was stopped from the winter of 1893, and they opened it up in 1894. At the time of the taking of such possession there was no rolling stock, no locomotives—practically no locomotives—they were renting them from the Grand Trunk or the Canadian Pacific Railways, and the roadbed was in an awful condition (Secretary Lalonde's evidence, p. 70).

1908

THE  
MINISTER OF  
RAILWAYS  
AND CANALS

v.  
THE  
QUEBEC  
SOUTHERN  
RWAY. CO.  
AND THE  
SOUTH SHORE  
RWAY. CO.

—  
STANDARD  
TRUST  
CLAIM.

—  
Statement  
of Facts.

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Statement  
 of Facts.  
 ———

“In the first days there was no profit, no return to cover anything like interest on the amount expended. However, from the day they took hold of the road, the Syndicate improved it all along with their own money. Fortier, one of the members of the Syndicate, heard as a witness, tells us he disbursed as his share alone \$48,630.-81, equal to \$194,523.24 by the Syndicate. Then Lalonde tells us the earnings over operating expenses from the 1st June, 1894, down to 1901, amounting to \$73,208.25 were all put into the company for improvements .....

	194,523 24
	73,208 25
	\$267,731 49

Exhibit 12a would show, as explained by Lalonde, that Beauchemin would have paid	4,850 42
	\$272,581 91

more than the others, having remitted later. \$272,581 91

“Then Leduc, one of the members of the Syndicate, had obtained judgment, on 10th February, 1893, against the Montreal and Sorel Railway for \$250,576.92 and interests and costs. The Syndicate had bought the bonds, had spent good money in improvements and had bought the Great Eastern Railway, which was partly paid by subsidies.

“From the above it will clearly appear that in 1892, these four gentlemen bought the bonds and improved the road with their own money, having the ultimate intention of acquiring the road. Can it be said, after they have acquired the road, they are not at perfect liberty to do what they like with it? Keep it or sell it, and sell it for what they like.

“What happened? One Lamb, collector of revenue, sued the road for taxes and brought it to a sale, when on the 1st June, 1894, it was sold and adjudicated, by the Sheriff, for the sum of \$1,600 to Mr. Tourville acting for

the Syndicate. The Syndicate being the owners of the hypothecary bonds, as above mentioned, were already practically the owners of the road and the bonds also practically represented most of the purchase price—the \$1,600 being the amount, or thereabouts, of the Sheriff's costs. It is to be presumed that the plaintiff had been settled with in the meantime for the amount of \$675.00 interest and costs, recovered by that judgment.

“As already stated, the South Shore Railway Company had been incorporated by the four members of the Syndicate with the object of operating the road, after it had been sold by the Sheriff with the object of securing a clear title. On the 4th of June, 1894, Mr. Tourville, the *adjudicataire* reports to the South Shore Railway Company, at a meeting of that date, that the Montreal and Sorel Railway had been sold by the Sheriff and purchased by him in the manner mentioned, and he then proposes, and it is approved to transfer to the new company, the South Shore Railway Company, the title which the Sheriff of Montreal will give and to substitute for his name the name of the South Shore Railway Company as purchaser of the Montreal and Sorel Railway, the purchase price to be agreed upon at a later period. The President and Secretary being authorized to sign said deed of sale.

“Now these very words ‘purchase price to be agreed upon at a later date’ which have been so much spoken of will go to show that the Syndicate were just as much sole proprietors of the railway before as after the sale. If, indeed, they had not been acting the whole time for themselves,—if they had sold, as was contended, to a company which was not themselves, they would certainly have fixed the price then and there and they would not have taken the risk of leaving that important question undecided as it would have been a nest of litigation for the future, and they would not have left it to be ascertained and fixed at a later period. They then subscribed

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Statement  
 of Facts.  
 ———

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. Co.  
 AND THE  
 SOUTH SHORE  
 RWAY. Co.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Statement  
 of Facts.  
 ———

\$75,000 in the South Shore Railway Company and paid these sums by handing over the Railway to the company, retaining a claim against it for the balance of the purchase price, viz.: \$348,000.

“ In other words, this consideration price of \$648,000 was credited to the four members of the Syndicate, each for the sum of \$162,000. Then each member of the Syndicate subscribed for 750 shares at \$100 equal to \$75,000 for each and for the four equal to \$300,000, which went in as contra account with what the company owed them for the railway as part of the contra account, or out of the total value of \$648,000, this sum of \$300,000 being deducted from the \$648,000, left a balance due to the four of the sum of \$87,000 each, or a total of \$348,000.

“ The whole of the transaction was recorded in the books of the company. In the minute book, stock ledger, the ledger and the journal, each member being credited in the books of the company with the sum of \$87,000.

“ One of the members of the Syndicate, J. M. Fortier, received a further acknowledgment of that indebtedness by the South Shore Railway Company to him of the sum of \$87,000 in the form of a note dated also of the 2nd December, 1895, the same date as the agreement, and when Fortier sold his interest to Beauchemin the note was in the bank (this note is not filed, but is fully described in E. Wing’s evidence), from where he withdrew it and gave it to Beauchemin after endorsing it without recourse. This note is now in the possession and is the property of the present claimant, The Standard Trust Company, who, from the transfer of the Syndicate’s rights, stands absolutely in the same position, having the same rights as their transferors had and in whose hands the note was a negotiable paper taken in due course.

“ The giving of that note to Fortier goes further to show the intention of the company of carrying out the



contract entered into and to pay these people each the sum of \$87,000.

The journal entry of the arrangement reads as follows :  
 "JOURNAL, Page 141."

FOLIO			
Rolling Stock .....	397	\$58,906 39	
Stations and Buildings ...	397	15,250 00	
Roadbed, Track and Siding	397	570,000 00	
Tools and Machinery .....	69	3,843 61	
Hon. L. Tourville.....	411		\$162,000 00
H. Beauchemin .....	411		162,000 00
J. M. Fortier.....	403		162,000 00
Joel Leduc.....	402		162,000 00
		\$648,000 00	\$648,000 00

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Statement  
 of Facts.  
 ———

Hon. L. Tourville.....	411	\$75,000 00	
H. Beauchemin.....	411	75,000 00	
J. M. Fortier.....	403	75,000 00	
Joel Leduc.....	402	75,000 00	
Capital Stock.....	412	—————	\$300,000 00
J. M. Fortier.....	403	\$87,000 00	
Bills Payable.....	410		\$87,000 00

Note dated October 8th at (5) five years from date bearing interest at 6 % per annum, payable semi-annually; further information see motion passed by the Board of Directors, October 8th, 1895.

"Now this price or value of the road at \$648,000 was arrived at in the most ordinary business-like manner. Mr. Lalonde, the Secretary of the company, a gentleman who has been railroading for over 35 years, a person of great experience, and I would say an expert in such

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Statement  
 of Facts.  
 ———

matters, made, at the request of the four gentlemen in question, a full inventory of the road and its rolling stock; taking the value of everything entering into the enterprise, the stations, buildings, road bed, track, sidings, tools, machinery, etc., etc.. It is unnecessary to go into the details of this valuation. There were 45 miles of railway, together with 12 miles of sidings, making a total of 57 miles. Placing a value of say, \$12,000 per mile, would alone make the total sum of \$684,000. The road was bonded at \$15,000 a mile; and we must not lose sight of the fact that there were several important bridges within the territory travelled by the railway, and furthermore, that in ascertaining the value, Mr. Lalonde says he did not take the franchise into consideration and did not give it a value,—valuing only what was actually tangible. Now this witness asserts that it was his opinion that the \$648,000 was but a fair and reasonable price, that it is yet, and has proved to be since.

“Both Mr. Fortier and Judge Choquet confirm Mr. Lalonde in the valuation. These three gentlemen are called and heard as witnesses on behalf of the contesting parties and their testimony remains uncontroverted. There is no other evidence on the subject, and it is adduced by the very parties who contest it. Judge Choquet goes still further on this question of value. After stating that the \$648,000 was a fair value at the time of the sale, he is asked by the referee: ‘Do you go beyond that, Judge, and say that you thought it was the actual cost of the road?—A. It was not the actual cost. It would have cost that probably to build a road like that; it has cost a great deal more than that: it has cost over a million.’”

“Now, in face of this uncontroverted evidence adduced by the contesting parties, it is unnecessary to go into the full details of the several amounts and items going to make up these \$648,000.

“Therefore, the undersigned finds in face of this overwhelming evidence that the price of \$648,000 is a fair and reasonable price.

“Then Judge Choquet, the solicitor of the syndicate, tells us, at p. 179 of his evidence, how the matter was adjusted and the settlement arrived at: ‘The value of the road was then fixed at \$648,000 It was an estimate. There was at the time over 45 miles of road (45 of road and 12 of sidings), engines, stations, side tracks, etc. and they made an estimate of exactly how much it had cost; it was about the cost price, and they made it at \$648,000, which represented the cost price of the Montreal and Sorel Railway as this was the property of the Syndicate,—that is, it was bought by the Syndicate. I advised them to subscribe \$300,000 of stock of the South Shore Railway Company, which they did. They signed for \$300,000 equally divided between themselves, and as I understood that they were owners each of  $\frac{1}{4}$  of the Montreal and Sorel Railway, which they estimated at \$648,000, I said, deduct the \$300,000 from the \$648,000, leaving a balance of \$348,000 for which they were creditors. That was the idea I had and that they had also, and it was carried out in that way.’

“The railway was practically their own after they had bought the bonds. It was legally their own at the date of the sale on the 1st June, 1894, having bought with their own money without any mandate from anybody, and it remained their own when they passed it over to a company, which was still themselves and which, under the Railway Act, they had to organize and which they organized for the purpose of operating it. The railway belonged to the Syndicate up to the time it was sold in 1901 to the Standard Trust Company for about \$458,550.37, following, as witness Fortier says, a period of business depression between 1896 and 1901. Now, in November, 1905, this railway was, at a forced sale by the

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 —  
 STANDARD  
 TRUST  
 CLAIM.  
 —  
 Statement  
 of Facts.  
 —

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM,  
 ———  
 Statement  
 of Facts.  
 ———

Court, sold for about \$503,000, after having materially deteriorated under Hodge's management (as stated by witness Lalonde) who operated it without either keeping it in repair or improving it. True, some necessary repairs and improvements were made during the Receivership, but what was done was only what was absolutely necessary to operate the road, which, at the date of the appointment of the Receiver, had been found in a most dilapidated state.

“The agreement between the Syndicate and the South Shore Railway Company, and bearing date the 2nd December, 1895, which has already been mentioned, is filed as exhibit No. 11 and is confirmed by and embodied in a resolution of the South Shore Railway Company of the 7th December, 1895. The agreement reads as follows, viz.:—

‘This agreement made between the Hon. Louis Tourville, manufacturer; Joel Leduc, gentleman; Joseph M. Fortier, manufacturer, all of the City of Montreal, and Hyacinthe Beauchemin, of the City of Sorel, contractor, hereinafter called the parties of the first part, and the South Shore Railway Company, a body politic and corporate, having its chief place of business in the said City of Montreal, hereinafter called the party of the second part, and duly represented by Edouard C. Lalonde, its Secretary, duly authorized, WITNESSETH:

‘That whereas the parties of the first part as hypothecary creditors and bondholders of the Montreal and Sorel Railway Company were the real owners of the Montreal and Sorel Railway now owned and operated by the party of the second part;

“Whereas said Montreal & Sorel Railway was bought at a Sheriff's sale by the Hon. Louis Tourville for the benefit of the party of the first part, and that the title was transferred to South Shore Railway Company with the

understanding that the purchase price would be agreed at a later period ;

'Whereas the purchase price or value of the said Montreal & Sorel Railway, including the rolling stock now used and in possession of the party of the second part, was agreed to and fixed at the sum of six hundred and forty-eight thousand dollars, out of which an amount of three thousand dollars, was credited as payment of the capital stock subscribed by the party of the first part, leaving a balance of three hundred and forty-eight thousand dollars due by the party of the second part to the party of the first part, with interest and hereinafter mentioned ;

'The South Shore Railway Company, party of the second part, does hereby acknowledge to owe and to be indebted to the said party of the first part into the sum of three hundred and forty-eight thousand dollars, one fourth of which is due to each of them as follows :

To Hon. Louis Tourville, eighty-seven thousand dollars ;

To J. Leduc, eighty-seven thousand dollars ;

To J. M. Fortier, eighty-seven thousand dollars ;

To H. Beauchemin, eighty-seven thousand dollars ;

With interest at six per cent. per annum from the first of July last, payable half-yearly on the first days of January and July, and arrears of interest to be added to the capital and to bear interest as capital, first payment of interest to become due on the first of January next (1896).

'It is agreed that the said sum of \$87,000.00 shall be paid by the party of second part to each of the parties of the first part, or their representatives, out of the proceeds of the bonds to be issued by the South Shore Railway Company within five years from this date, or otherwise, at an earlier period at the option of the party of the second part, with interest as above mentioned.

"It is also agreed that the said party of the first part and each of them, or their representatives, shall not claim

1908

THE  
MINISTER OF  
RAILWAYS  
AND CANALS

v.  
THE  
QUEBEC  
SOUTHERN  
RWAY. Co.  
AND THE  
SOUTH SHORE  
RWAY. Co.

STANDARD  
TRUST  
CLAIM.

Statement  
of Facts.

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 —  
 STANDARD  
 TRUST  
 CLAIM.  
 —  
 Statement  
 of Facts.  
 —

and shall not be entitled to claim their money before the expiration of the delay of five years just above mentioned.

‘Passed and dated at Montreal this second day of December, 1895.

(Signed) THE SOUTH SHORE RAILWAY COMPANY,  
 ED. C. LALONDE, Secretary of the South Shore  
 Railway Company.

L. TOURVILLE,  
 H. BEAUCHÉMIN,  
 J. M. FORTIER,  
 J. LEDUC.

(Signed) F. X. CHOQUET,  
 Witness’

“Now, from all the circumstances above stated, it obviously appears that the *raison d'être* of the Syndicate from its very inception was to operate the road and to acquire it. They improved the road very materially, operated it, bought bonds with their own money, formed a company to take over the enterprise, as they were bound to do, bought the railway with their own money, without issuing any prospectus and calling for outside money.

“When they bought the road there was clearly no obligation upon the Syndicate to sell it to the South Shore Railway Company more than to anybody else, or to sell it at all, and for all that they might just as well have sold it to the Grand Trunk or the Canadian Pacific Railway Company as to the South Shore Railway Company. No more obligation to sell it to one than to the other, as there existed no mandate. When Tourville bought for the Syndicate he clearly had no mandate from the South Shore Railway Company, and was not acting in a fiduciary capacity for that company. If any mandate he had it was clearly from the Syndicate and nobody else, and he bought to protect himself and the members of the Syndicate. However, they had under the Railway Act to pass it over to a company for operation.

“There is nothing at common law” says Sedgewick, J., (*Hood v. Eden*, 36 Can. S.C.R. 484) “to prevent two mercantile establishments carrying on two separate businesses, uniting for the purpose of forming a new partnership, each association contributing as its share of the capital of the new partnership whatever property it possesses. And in the absence of bad faith or fraud there is nothing to prevent the members of the new partnership from allotting, as among themselves, the share of the capital with which each member of the partnership may afterwards be credited, even although the amount so allotted to him may be from a purely monetary point of view largely in excess of its market value.”

“Of course in this case it appears that the amount of \$618,000 was not in excess of the market value, but the authority is cited merely to show that when the amount is in excess of the market value, the parties are still at liberty to re-organize in the manner therein set forth. There were here no creditors, no one but the Syndicate interested.

“There was full disclosure of all the transaction to everyone having any interest. No one had any right to complain, no one did complain. The contract was ratified, adopted and confirmed by the company which took the benefit of it, operated it, sold it and it has now passed into other hands. It is a question unnecessary to discuss as to whether the contracting parties have, under Arts. 1031, 1039 and 2258 of the Civil Code, any right or interest upon this contestation as they are posterior creditors whose rights would be prescribed.

“Bearing now in mind the well established fact that the four gentlemen forming the Syndicate bought the railway in question with their own money, improved it, formed a company, as was called for by the Act, re-organized their business under the name of the new com-

1908  
THE  
MINISTER OF  
RAILWAYS  
AND CANALS  
v.  
THE  
QUEBEC  
SOUTHERN  
RWAY. CO.  
AND THE  
SOUTH SHORE  
RWAY. CO.  
—  
STANDARD  
TRUST  
CLAIM.  
—  
Statement  
of Facts.

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Statement  
 of Facts.  
 ———

pany, under the name of the South Shore Railway Company, always owned the railway as well before as after the sale and the formation of the South Shore Railway Company, that this company, which was themselves, never furnished any funds to them, nor did it give them any authority or mandate to buy the railway, let us examine the jurisprudence bearing upon the subject.

(Cites *Burland v Earle* (1).)

“Clearly, this case of *Burland v. Earle* sets down the principle which must guide us in arriving at a decision upon the present issues. Repeating what has already been said, the company was organized long after the Syndicate agreement was entered into, if that has anything to do with it. These four gentlemen were shareholders and directors of the company from the days of its incorporation and could not in any way be called promoters, they were always proprietors of the enterprise as well before as after the formation of the company who could not give them any mandate or authority, as it would mean giving a mandate and authority to themselves. Then they brought and used their own money in the whole transaction, the company never supplying any funds. They had, undoubtedly, the power to buy a property with the object of transferring it to a company which they intended to organize, and actually did organize. There is certainly no impropriety in this.

“The present case comes within the four corners of the *Burland* case. *Burland* had no mandate, but he was a director, that is all. *Burland* occupied the position *Tourville* occupies here. He was a creditor. *Tourville* was a creditor. He was a director of the company. *Tourville* was also a director. The lower courts in that case said that as *Burland* had bought the property with the intention of selling it to a new company that he must pay the profits; but that was set aside by His Majesty’s Privy

(1) [1902] A. C. 93.



Council, and yet in that case he did not own all the stock as the Syndicate did in the present. No rescission of contract is here possible, but what is asked is to force on the vendors a contract to sell at another price. \* \* \* \*

“A number of authorities have been cited. Most of the leading ones are discussed in the *Burland* case and actually go to support the view taken by the undersigned upon the present contestation, arriving at the conclusion (1) that the price of \$648,000 was fair and reasonable; (2) That as the four members of the Syndicate were proprietors of the new company which was still themselves, and as they bought with their own money and not with money supplied by the company, no fiduciary relation existed between themselves and the company and no mandate could possibly have ever existed. The parties admitted at the argument that the claimants should succeed for the \$52,994.84 mentioned in the Provisional Report and as above set forth.

“The contestation of the Bank of St. Hyacinthe and of the Attorney-General are accordingly hereby dismissed with costs.”

September 23rd, 24th and 30th, 1908.

The questions arising on the appeals were now argued at Montreal.

*A. Geoffrion, K.C.*, for the Attorney-General of Canada.

*F. L. Beique, K.C.*, and *E. Lafleur, K.C.*, for the Bank of St. Hyacinthe.

*J. E. Martin, K.C.*, and *S. Beaudin, K.C.*, for the Standard Trust Company.

*G. A. Campbell*, for *H. A. Hodge*.

*A. Geoffrion, K.C.*, on behalf of the Attorney-General for Canada, contended that the Standard Trust Company was estopped from recovering the amount of its claim by

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. Co.  
 AND THE  
 SOUTH SHORE  
 RWAY. Co.  
 ---  
 STANDARD  
 TRUST  
 CLAIM.  
 ---  
 Argument  
 of Counsel.

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. Co.

STANDARD  
 TRUST  
 CLAIM.

Argument  
 of Counsel.

the effect of clauses 6 and 7 of the deed of amalgamation, notwithstanding sec. 4 of the Statute of 1905. Neither the Trust Company nor its predecessors in title could receive a profit on the transfer of the railway, but must account to the company for the whole amount of the moneys received. (Cites *Gluckstein v. Barnes* (1); *In re Olympia, Limited*, (2); *Erlanger v. New Sombrero Phosphate Co.* (3).

*F. L. Beique, K.C.*, for the Bank of St. Hyacinthe, contended that there was a clear estoppel upon the facts of the case against the claim of the Trust Company. (He cited Arts. 1,508 and 2,048 C. C. P. Q.)

*E. Lafleur, K.C.*, followed for the Bank of St. Hyacinthe, arguing that while the fair meaning of sec. 4 of the Act of 1905 was that no claim of any creditor should be prejudiced by the merger, it did not relieve anyone of the effect of his contacts or any estoppel that might arise out of his conduct. The statute did not operate to revive any claim that was extinct or barred before its passage. (Cites *Great North-West Central Ry. Co. v. Charlebois* (4).

*J. E. Martin, K.C.*, for the Standard Trust Company, contended that the members of the syndicate were never, in any way, trustees of the old road because they had recovered judgment against the road in their individual capacity. It is impossible to raise an estoppel upon such a state of facts. (Cites 60 Vict. (P.Q.) c. 10; *Hood v. Eden* (5); *McCracken v. Robison* (6). Our property cannot be taken away except upon consideration. There is no waiver by any shareholder of his claim or rights. Such an issue was not raised in the pleadings; if it had been we would have been ready with evidence to meet it. The amalgamation was never perfected, nor did it receive the sanction of Parliament. The deed of 24th

(1) [1900] A. C. 240.

(2) 16 T. L. R. 564.

(3) 3 App. Cas. 1,218 at p. 1,235.

(4) [1899] A. C. 114 at p. 126.

(5) 36 S. C. R. 476 at pp. 484 *et seq.*

(6) 57 Fed. Rep. 375.

January, 1902, was between the two railways and not between the shareholders; it could not be treated as a waiver by the latter of any of their rights. The claim of the shareholders was never paid or discharged under the covenants of the deeds of the 16th October, 1900, and 24th January, 1902. Every right we had was revived by the Act of Parliament.

*S. Beaudin, K. C.*, followed for the Standard Trust Company, contending that the question raised by the bank at the last moment was one of fact, and not of law, and should have been raised by the pleadings. Evidence could have been adduced to show that the amalgamation was in fact never effected. The grounds of the contestation before the Referee admitted our claim. There was no waiver or abandonment. Not having raised the issue in the pleadings it cannot be raised now. It should have been threshed out before the Referee. The Act of 1905 expressly states that it was for the purpose of selling the South Shore Railway. The South Shore Railway is treated there as in existence as a separate entity, to be separately sold. The syndicate was bound to form a company to operate the railway. Moreover, by the order of the court appointing a Receiver, directions were given to keep a separate account respecting each railway. (Cites Arts. 1039, 1040, and 2258 C. C. P. Q.)

The bank cannot contest our claim because it existed before the bank became a creditor of the road.

*A. Geoffrion, K. C.*, in reply, argued that the Crown had a status to contest the claim of the Standard Trust Company because the proceedings here are in the nature of a winding-up. Hence Arts. 1039 and 1040 C. C. P. Q. do not apply. (Cites *Gluckstein v. Barnes* (1).

The question is not only one of estoppel but of release. The Trust Company stands in the place of Myers who signed the deed of agreement.

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. Co.  
 AND THE  
 SOUTH SHORE  
 RWAY. Co.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Argument  
 of Counsel.

(1) [1900] A. C. at p. 256.

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.

The Trust Company cannot invoke the irregularities of the amalgamation authorized by Myers.

Mr. *Martin, K.C.*, cited *In re Lady Forrest (Murchison) Gold Mine, Ltd.* (1); *Chappelle v. The King* (2).

*G. A. Campbell*, in support of the appeal of H. A. Hodge, contended that there should have been a resolution of the shareholders ratifying the transfer of the property to the Standard Trust Company.

STANDARD  
 TRUST  
 CLAIM.

CASSELS, J. now (October 31st, 1908,) delivered judgment.

Reasons for  
 Judgment

APPEALS of the BANK OF ST. HYACINTHE and the ATTORNEY-GENERAL, and of *Hodge* against allowance of claim of the STANDARD TRUST Co. of New York.

The grounds for the contestation, and the facts relating to the claim are fully set out in the report of the Referee at page 101 and the following pages.

There is practically no objection to his findings of fact except as to the capacity of the witness Lalonde to value the assets of the railway. All the arguments against his valuation are mere inferences drawn from previous and subsequent sales. Everything connected with the transaction was carried out in good faith. I think the Referee came to the only conclusion open to him on the evidence adduced. I think his conclusion as to the legal result of the transaction is correct. The chief authorities relating to sales by promoters are set out in his reasons for judgment.

A question has been raised before me not raised before the Referee, namely, that by the documents of 16th October, 1901, and 24th January, 1902, there was a release of the claims.

The validity of the amalgamation between the Quebec Southern and the South Shore Railways has been questioned. It is certainly a question of grave doubt whether

(1) [1901] 1 Ch. 582.

(2) [1904] A. C. 157.

or not an amalgamation ever took place. The petitioner in this case had grave doubts otherwise the South Shore Railway would not have been parties to this proceeding. The question being one of doubt and certain shareholders of the South Shore claiming that no legal amalgamation had taken place, Parliament solved the riddle by the statute enacted in 1905, cap. 158 4-5 Edw. VII. I have copied the preamble and section 4 in the previous judgment. (See *ante* pp. 40, 41.)

It will be noticed that section 4 of the statute does not declare the amalgamation void, and if in point of fact the amalgamation was valid intervening rights would be protected. But I think the effect of the statute is that while intervening rights may be protected all claims validly existing against the South Shore Railway are protected notwithstanding the amalgamation. The South Shore is to be sold separately, which could hardly be done if for all purposes there was an effective amalgamation.

In the case in question the terms of the agreements of 16th October, 1901, and 24th June, 1902, were not carried out.

It would be a hardship on the Standard Trust Company if their claim be defeated on a technicality. I think Parliament has protected them, and that the appeals should be dismissed with costs.

*Judgment accordingly.*

Solicitor for plaintiff: *A. Geoffrion.*

Solicitors for defendants: *Greenshields, Greenshields & Heneker.*

Solicitors for Bank of St. Hyacinthe: *Beique, Turgeon & Beique.*

Solicitor for the Standard Trust Company: *J. E. Martin.*

Solicitor for H. A. Hodge; *G. A. Campbell.*

1908  
 THE  
 MINISTER OF  
 RAILWAYS  
 AND CANALS  
 v.  
 THE  
 QUEBEC  
 SOUTHERN  
 RWAY. CO.  
 AND THE  
 SOUTH SHORE  
 RWAY. CO.  
 ———  
 STANDARD  
 TRUST  
 CLAIM.  
 ———  
 Reasons for  
 Judgment.