

[E. C.] 1879

BELLEAU *et al.* v. THE QUEEN.

Dec. 24. Debentures issued by Trustees of Quebec Turnpike Roads—16 Vic. c. 25
 (Can.)—Legislative recognition of a debt—Trustees, liability of the
 [S. C.] 1881 Crown for acts by.

Feb. 10.

The province of Canada had raised, by way of loan, a sum of £30,000 for the improvement of provincial highways situate on the north shore of the river St. Lawrence, in the neighbourhood of the city of Quebec, and a further sum of £40,000 for the improvement of like highways on the south shore of the said river. Debentures for both loans were issued, signed by the Quebec Turnpike Roads Trustees, under the authority of an act of the parliament of the province of Canada, passed in the 16th year of Her Majesty's reign, intituled : "An Act to authorize the Trustees of the Quebec Turnpike Roads to issue debentures to a certain amount, and to place certain roads under their control."

By their petition of right, the suppliants, who had loaned money upon the said debentures, alleged, *inter alia*, that the moneys so borrowed had come into the hands of the Crown and were expended in the improvement of the highways in the said act mentioned ; that the debentures held by them fell due after the Union and were not paid, and that Her Majesty was not liable for the payment of the same under the 3rd section of the British North America Act, 1867, as debts of the late province of Canada existing at the Union.

In his defence to this petition, Her Majesty's Attorney-General did not deny the liability of the Crown for the debts of the late province of Canada, but he denied that the debentures in question were debentures of the province of Canada, that the moneys for which they issued were borrowed and received by Her Majesty, and that there was any undertaking or obligation by or upon the province of Canada to pay the whole or any part of the said debentures.

The questions of law arising out of the defence set up by the Attorney-General may be resolved into the following :—

Whether the debentures in question were, or not, debentures of the late province of Canada ?

Whether the moneys for which they issued did, or did not, come into the hands of Her Majesty, and were, or not, expended in the improvement of provincial highways ?

Whether there was any undertaking or obligation by or upon the late province of Canada to pay the said debentures ?

And whether Canada is, or is not, liable to pay the said debentures under the provisions of the British North America Act, 1867.

Held :—(per Fournier, J.) That ‘The Quebec Turnpike Trust,’ as it was constituted at the time of the passing of the act 16 Vic. c. 235, a public corporation charged with the execution, in the interest of the public, of great works of improvement.

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2. That the trustees of that trust, acting within the scope of their authority, did not incur any personal liabilities but were the agents of the Crown.
3. That the roads, bridges and other property put under their control were not vested in them as their property and were not liable to be levied against, because by the ordinance 4 Vic. c. 17 they were declared to be the property of Her Majesty.
4. That the said trustees in issuing, in conformity with the provisions of the act 16 Vic. c. 235, debentures for the various loans therein mentioned, loans effected for the purpose of ameliorating properties declared to be vested in Her Majesty, and the proceeds of which were in fact employed in said improvements, were in law the agents of the Government which thereby became liable.
5. That independently of the obligation contracted as above by the trustees, under the special provisions contained in the above acts, viz. : 4 Vic. c. 17, 14-15 Vic. c. 115, 16 Vic. c. 235, the Government of Canada can be held liable for the repayment of the principal of the debentures, which amount is claimed by the present petition.
6. That the applicants have suffered losses by the alterations made in the law by 20 Vic. c. 125, but that the liability of the Government remains what it was and cannot be increased in consequence of said alterations, and therefore under section 7 the Government should be declared free from all liability as to interest.
7. That as the loans in question, at the time of the passing of the British North America Act, formed part of the liabilities of the late province of Canada, they have become, by virtue of the 111th section of said act, a debt and liability of the Dominion of Canada.
8. That the suppliants are entitled to the relief sought by their petition of right,—to the amount of principal, without interest, but with costs of said petition.

On appeal to the Supreme Court of Canada, by the Crown,—

Held :—(Ritchie, C.J. and Gwynne, J., dissenting,)—That the Trustees of the Quebec North Shore Turnpike Trust, appointed under ordinance 4 Vic. c. 17, when issuing the debentures in suit under 16 Vic., c. 235, were acting as agents of the Government of the late province of Canada, and that the said province became liable to provide for the payment of the principal of such debentures when they became due.

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- 1881 Per Henry and Taschereau, JJ.—That the province of Canada had, by its conduct and legislation, recognized its liability to pay the same ; and that respondents were entitled to succeed on their cross-appeal as to interest from the date of the maturing of the said debentures.
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- Per Ritchie, C.J. and Gwynne, J.—That the trustees, being empowered by the ordinance to borrow money “on the credit and security of the tolls thereby authorized to be imposed and other moneys which might come into the possession and be at the disposal of the said trustees, under and by virtue of the ordinance, and not to be paid out of or chargeable against the general revenue of this province,” the debentures did not create a liability on the part of the province in respect of either the principal or the interest thereof.
- On appeal to the Judicial Committee of the Privy Council, the judgment of the Supreme Court of Canada was reversed, and the construction put upon the statute, 16 Vic. c. 235 (Can.), by Ritchie, C.J. and Gwynne, J. was affirmed.
- See Can. S.C.R., vol. vii, p. 53, and also 7 App. Cas. 473.