Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal and Cross Appeal of the Queen v. *Belleau and others, and Belleau and others* v. *the Queen, from the Supreme Court of Canada; delivered 20th June* 1882.

Present :

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR JAMES HANNEN.
SIR RICHARD COUCH.

This is a petition of right against the Crown, by the holders of certain debentures issued by "the Trustees of the Quebec turnpike roads," for payment of the principal and interest of their debentures.

No question has been raised as to the form in which the suppliants seek to have the question in dispute determined, which is, whether the late Province of Canada was liable to pay the principal and interest of the debentures sued on. By "The British North America Act, 1867," the debts and liabilities of each province existing at the union were transferred to the Dominion of Canada, and it is conceded by the Crown that if the debentures created a debt on the part of the province, the suppliants are entitled to a decision in their favour.

The debentures purport on their face to be

Q 9298. 100.—6/82. A

and were in fact issued under the authority of an Act of Parliament of the Province of Canada (16 Vict., c. 235), 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."

The debentures are in form certificates by the Trustees, that under the authority of the said Act there had been borrowed and received from the holder a certain sum bearing interest from the date of the certificate, which sum was reimbursable to the holder or bearer on a day named.

The Act, after reciting that it was expedient to extend the provisions of a certain Ordinance (4 Vict. c. 17) to certain roads other than those to which they then extended, and to such further improvements through the Trustees of the roads established under the said Ordinance, and that in order to the construction and completion of the roads then undertaken by the Trustees, it was expedient to provide for the raising of the necessary funds by the issue of debentures by the said Trustees, enacted that the provisions of the said Ordinance, and the provisions of all Acts and Statutes in force amending the said Ordinance, and the powers of the Trustees appointed under the said Ordinance, should extend or apply to the roads in the said Act mentioned, in the same manner as if the said roads had been mentioned and described in the said Ordinance.

By the 2nd and subsequent sections down to and inclusive of the 6th, the Trustees were required to execute certain works, and were authorized to execute others, and the roads are enumerated to which the provisions of the Ordnance were to be extended.

By the 7th section it is enacted that, in order to the making and completion of certain roads described in a previous Act, and the making of

the various improvements above mentioned, " it should be lawful for the Trustees to raise by " loan a sum not exceeding 30,000*l*. currency, " and this loan and the debentures which shall " be issued to effect the same, and all other " matters having reference to the said loan, shall " be subject to the provisions of the Ordinance " above cited with respect to the loan authorized " under it."

This is followed by a proviso which it will be necessary to refer to hereafter. Thus we are obliged, in order to see what were the obligations created by the debentures issued under the 16th Vict. and now sued on, to examine the provisions of the Ordinance 4 Vict., c. 17.

By that Ordinance the Governer was empowered to appoint not less than five nor more than nine persons to be and who and their successors should be Trustees for the purpose of opening, making, and keeping in repair the roads therein-after specified.

By Section 3 it was enacted that the said Trustees might, by the name of the Trustees of the Quebec Turnpike Road, sue and be sued, and might acquire property and estates moveable and immoveable, which being so acquired should be vested in Her Majesty for the public use of the province, subject to the management of the said Trustees for the purposes of the Ordinance.

By the 18th section it was enacted that the roads should be and remain under the exclusive management, charge, and control of the said Trustees, and the tolls thereon should be applied solely to the necessary expenses of the management, making, and repairing of the *said roads*, and the payment of the interest on and the principal of the debentures therein-after mentioned.

The 21st section is the most important, and is as follows :—" 21. And be it further ordained

" and enacted that it shall be lawful for the " said Trustees, as soon after the passing of this " Ordinance as may be expedient, to raise by " way of loan, on the credit and security of the " tolls hereby authorized to be imposed, and of " other moneys which may come into the pos- " session and be at the disposal of the said " Trustees, under and by virtue of this Ordinance, " and not to be paid out of or chargeable against " the general revenue of this province, any sum " or sums of money not exceeding in the whole " 25,000*l.* currency."

Unless, therefore, it can be shown that some qualification of these words is to be found expressed or implied in the Ordinance or the statutes amending it, it is clear that the suppliants lent their money on the credit and security of the tolls, "and not to be paid out of or chargeable " against the revenues of the province."

Their contention is that, notwithstanding these words, the province was bound to pay the debentures.

The Trustees, it is said, were the agents of the province, and in that character they borrowed money for the province, to be applied to provincial purposes; thus the province became the principal debtor, and the tolls are to be regarded only as a first source of repayment of the debt of the province.

These general propositions cannot afford assistance in the consideration of the question we have to determine. It is of no avail to call the Trustees agents of the province if it is admitted, as it must be, that the extent and limits of their agency must be sought in the Act of the Legislature which gives them existence. To make the Trustees the agents of the province, it must be shown that, by their constitution, they have authority to act for the province, and to create obligations binding upon it. But this has not

been shown. The Trustees are a corporate body, the absolute creation of the Legislature, and their rights, duties, and powers are exclusively contained and defined in the instrument by which they were incorporated. Such corporations are well known to the law as well of this country as of Canada. They are created for a great variety of purposes, some of local, others of general importance. In the present instance the corporation is created for the local object of improving the roads round Quebec, and to this end the Trustees are empowered to borrow money on certain specific terms, for the purposes of the trust as defined in the Ordinance. The benefit which the province may be supposed to derive from the expenditure of the money borrowed no more imposes a liability on the province to repay it than it imposes such a liability on the adjoining landowners, the value of whose property may be increased by the construction of the roads authorized to be made.

In order to ascertain the powers of the Trustees we must examine the provisions of the Ordinance.

By the 21st section it appears that the loan is to be raised on the credit and security of the tolls authorized to be imposed, and other moneys which may come into the possession, and be at the disposal of, the Trustees under and by virtue of the Ordinance. On this it is observed that it does not say the "sole" credit and security of the tolls, &c., but, in the absence of any other credit or security defined by the Ordinance, those only can be looked to which are expressly mentioned. It is, however, evident that it was for the very purpose of guarding against the possibility of the present claim that, in addition to the affirmative words already quoted, negative words were introduced that the loan is "not to be paid

" out of or be chargeable against the general " revenue of the province."

It does not appear possible to use language more carefully framed to exclude from the minds of proposed lenders the idea that they were in any case to look to the province for repayment of the moneys advanced by them.

The only criticism which has been offered upon this passage is that it does not negative the contention that the loan is to be paid out of revenue other than the " general " revenue of the province. But no other revenue can be suggested.

The Government has no power to raise or apply revenue in any other way than is authorized by law. It is obvious that revenue already appropriated to particular objects cannot be diverted from them, and, when it is forbidden to apply the unappropriated or general revenue to the payment of the loan, all possible sources of reimbursement out of revenue of the province are excluded. It is a contradiction in terms to say that that which the province is by express enactment forbidden to pay out of its revenue remains nevertheless a liability of the province.

The 26th section enacts that it shall be lawful for the Governor, if he shall deem it expedient, at any time within three years from the passing of the Ordinance, and not afterwards, out of any unappropriated public moneys in his hands to purchase for the public uses of the province and from the said Trustees debentures to an amount not exceeding 10,000*l.* currency, the interest and principal of and on which shall be paid to the Receiver General by the said Trustees in the same manner, and under the same provisions, as are provided with regard to such payments to any lawful holder of such debentures.

Thus the Governor is enabled to purchase, on behalf of the province, debentures, and so to become

the creditor of the Trustees, but this power is limited to three years.

This is wholly inconsistent with the idea that the province was already the debtor for the whole amount of the loan.

The province cannot stand in the relation both of debtor and creditor to itself; and if the process be regarded as a means of redeeming the debt of the province, no reason can be suggested why this power of purchasing debentures should be limited in amount and to a period of three years.

The 23rd section enacts that the debentures shall bear interest, and concludes thus:—"Such "interest to be paid out of the tolls upon the "roads, or out of any other moneys at the dis- "posal of the Trustees for the purposes of this "Ordinance."

Here there are no negative words excluding the liability of the province, but the obligation to pay interest primarily follows that of paying the principal, and it lies upon the party asserting that it is imposed elsewhere to establish it.

So far from there being anything in the Ordinance to support the contention that the interest is to be paid by the province, everything on the subject of interest tends strongly in the opposite direction.

By the 27th section it is enacted that all arrears of interest shall be paid before any part of the principal sum, "and if the deficiency be such "that the funds then at the disposal of the Trus- "tees shall not be sufficient to pay such arrears, "it shall be lawful for the Governor for the time "being, by warrant under his hand, to authorize "the Receiver General to advance to the Trustees "out of any unappropriated moneys in his hands "such sum of money as may, with the funds then "at the disposal of the Trustees, be sufficient to "pay such arrears of interest as aforesaid, and

" the amount so advanced shall be repaid by the " Trustees to the Receiver General."

This provision, empowering the Governor General to authorize a loan to the Trustees to enable them to pay interest, is inconsistent with the idea that the province was already under an obligation to pay the interest.

If then the case had rested upon the effect of the Ordinance alone, their Lordships are of opinion that no liability on the part of the province for payment of either the principal or interest could be established; but it has been argued that by subsequent legislation and conduct the Province of Canada has recognized its liability to pay the principal and interest of the debentures issued under the authority of the Ordinance of 4 Vict.

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

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

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

obscure, that the debentures issued under the Ordinance were, in fact redeemed under the powers supposed to be conferred by the 12 Vict., c. 5.

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

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

The 7th section of that Act authorized the Trustees to raise a loan, which "loan, and the "debentures which shall be issued to effect the "same, and all matters having reference to the said "loan, shall be subject to the provisions of the "Ordinance with respect to the loan authorized "under it;" but this important proviso is added,— "provided nevertheless that the rate of interest "shall not exceed 6 per cent., and no moneys "shall be advanced out of the provincial funds "for the payment of the said interest."

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

They must therefore be treated as issued not merely on the express condition that they were not to be paid out of or chargeable against the

general revenues of the province, but with the further express condition that no moneys should be advanced out of provincial funds for the payment of interest.

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

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

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

Their Lordships do not desire, by any observations, to diminish the force of these arguments, if

addressed to the proper tribunal. It may be that the Legislature of the Province of Canada or that of the Dominion may see reason to listen to the prayer of the suppliants to be relieved in whole or in part from the loss of their money, which has been expended for the benefit of the province. But this tribunal cannot allow itself to be influenced by feelings of sympathy with the individuals affected. Its duty is limited to expressing its opinion upon the legal question submitted to it, and upon that their Lordships entertain no doubt.

Another argument of a similar kind has been based upon a subsequent statute of the Province of Canada, 20 Vict., c. 125, by which the Quebec turnpike roads were divided into two parts, and by which it is contended some of the debenture holders have been deprived of a part of the special fund created for the payment of their loan.

Assuming the correctness of this contention, it might have been made a ground for opposing the later enactment, or it may now be used by way of appeal to the Legislature for redress, but it cannot supply a reason for putting a construction on the obligations created by the 16th Vict., c. 235, different from that which must have been put upon them immediately after the passing of that statute.

Some minor points have been relied on by the learned Judges who have held that the suppliants were entitled to succeed on this petition. It is from no disrespect to those learned Judges that these points have not been particularly dealt with, but from a belief that, however they may tend to fortify the general argument in support of which they are used, they do not by themselves afford a basis upon which their Lordships' judgment can be founded.

For these reasons, their Lordships are of opinion that the judgment of the Exchequer Court of Canada, as well as the judgment of the Supreme Court confirming the judgment of the Exchequer Court so far as it decided that the Respondents were entitled to the principal of their debentures, but varying the same by declaring that the Respondents were entitled in addition to the principal to interest from the date of filing the petition of right, are erroneous, and their Lordships will humbly advise Her Majesty that they should be reversed and judgment entered for the Crown.

Their Lordships are further of opinion and will advise Her Majesty that the Cross Appeal of the Respondents asserting the liability of the Crown to pay interest on the debentures from the date of their falling due should be dismissed, and that the costs of the Appeal and of the Cross Appeal and of the proceedings in the Courts below should be paid by the Respondents.