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*Feb. 21.

*June 26.

G. B. S. YOUNG AND OTHERS (PLAINTIFFS) APPELLANTS;

AND

JAMES MACNIDER (DEFENDANT).....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Trustees and administrators—Fraudulent conversion—Past due bonds, transfer of—Negotiable security—Commercial paper—Debentures transferable by delivery—Equities of previous holders—Art. 2287 *C. C.—Estoppel — Brokers and factors — Pledge—Implied notice—Duty of pledgee to make inquiry—Innocent holder for value—Arts.* 1487, 1490, 2202 *C. C.*

The Quebec Turnpike Trusts bonds issued under special acts and ordinances (Rev. Stats. Que., 1888, Sup. p. 505) are payable to bearer and transferable by delivery. Certain of these bonds belonging to the estate of the late D. D. Young, had been used as exhibits and marked as such in a case of *Young* v. *Rattray*, and having been afterwards lost were advertised for in a newspaper in Quebec in the year 1882. About ten years afterwards W., who was the agent and administrator of the estate and had the bonds in his possession as such, pledged them to a broker for advances on his own account, the bonds then being long past due but payment being provided for under the above cited statutes.

Held, affirming the judgment of the Court of Queen's Bench, Fournier and Taschereau JJ. dissenting, that neither the advertisement, nor the marks upon the bonds, nor the broker's knowledge of the agent's insolvency, were notice to pledgee of defects in the pledgor's title; and that the owners of the bonds, having by their act enabled their agent to transfer them by delivery, were estopped from asserting their title to the detriment of a *bonâ fide* holder.

Held, also, (affirming the opinion of the trial judge), that a *bonâ fide* holder acquiring commercial paper after dishonour takes subject not merely to the equities of prior parties to the paper, but also to those of all parties having an interest therein. *In re European Bank. Ex parte Oriental Commercial Bank* (5 Ch. App. 358) followed.

*PRESENT:—Sir Henry Strong C.J., and Fournier, Taschereau, Sedgewick and King JJ.

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APPEAL from a decision of the Court of Queen's Bench for Lower Canada (appeal side) (1), reversing the judgment of the Superior Court, District of Quebec (2), in an action brought to revendicate six bonds of the Quebec Turnpike Trust from the possession of the defendant, by which the defendant had been condemned to restore the bonds to plaintiffs.

The facts of the case appear from the head note and are fully set out in the judgment of the court pronounced by His Lordship the Chief Justice.

Stuart Q.C. for the appellants.

Langlois Q.C. for the respondent.

The judgment of the court was delivered by:

THE CHIEF JUSTICE.—The appellants who are the plaintiffs in the action are legatees under the will of the late David Douglas Young. The action is brought to revendicate from the possession of the defendant, the present respondent, six bonds or debentures issued by the Quebec Turnpike Trust, numbered, 3, 4, 5, 16, 17 and 51, the aggregate face value of which amounted to $5,000 and upon which debentures some ten years arrears of interest was due.

The defence set up by the respondent in his pleadings was that having been for twenty years and upwards a stock and share broker and private banker, one Welch had been in the habit of borrowing large sums from him and pledging bonds as security for such loans; that Welch was indebted to him in the sum of $6,125 the amount of certain promissory notes discounted by him for Welch, and including a sum of $800 lent to the appellants through the ministry of Welch, and to secure the payment of which the bonds in question had been pledged by Welch as being

(1) Q.R. 3 Q.B. 539. (2) Q.R. 4 S.C. 208.

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his own property; that Welch was insolvent and the defendant did not know to whom the bonds belonged; that they were in the possession of Welch apparently as owner; and he prayed for the dismissal of the action unless the plaintiffs preferred to pay $6,125 and the costs.

The plaintiffs replied that Welch was the administrator of their father's estate and as such was intrusted with the custody and safe keeping of the bonds in question, but was not authorized to deal with them in any way; that it was a matter of public notoriety that Welch was the administrator of the estate of the appellants' late father, and that such fact was known to the defendant at the time he took the bonds from the defendant Welch; that the defendant was also aware that Welch had been unfortunate in business and was not possessed of property in his own right; that the bonds in question were publicly advertised for in a Quebec newspaper, the "Morning Chronicle," on the 18th July, 1883, as having been lost, and that they had been the subject matter of correspondence in the same newspaper; that in the year 1883 the bonds had been filed as exhibits in a cause pending in the Superior Court wherein Rattray was plaintiff and the heirs Young were defendants, and they were indorsed as exhibits in that cause and still bore such indorsement when received by the defendant from Welch, by which it was rendered apparent that the bonds were the property of the appellants; that in consequence of the knowledge which the defendant had of the position which Welch occupied towards the appellants, and others, he was bound to have made reasonable inquiry as to the ownership of the bonds, and to have exercised due care before receiving them, and that by reason of his neglect so to do the respondent was not a holder in good faith. And further, that Welch was not au-

thorized to deal with the bonds in any way, and in pledging them Welch was guilty of a fraud and conveyed no title to the respondent who was a tortious holder inasmuch as the respondent was aware when he took the bonds that he was taking them from a person who had no power to deal with them and who was therefore fraudulently converting them.

The case was heard before Mr. Justice Andrews. Both Welch and the respondent were examined as witnesses on behalf of the plaintiffs, and Welch was also examined as a witness for the defendant. It was proved beyond question that Welch held the bonds which were the property of the appellants as the administrator of their father's estate; that he had improperly and dishonestly pledged them with the respondent to secure moneys which he had borrowed for his own use. There was, however, no evidence to establish that the defendant was not a *bonâ fide* holder of the debentures for valuable consideration except the fact that some four or five years before the respondent received the debentures there had been a controversy about them between one D. Rattray and the representatives of the estate of the late D. D. Young, and that this controversy had been the subject of correspondence in a Quebec newspaper, the "Morning Chronicle," and in addition the further fact that three of the bonds bore an indorsement which indicated that they had been filed as exhibits in the Superior Court in an action there pending of *Rattray* v. *Young*.

Mr. Justice Andrews rendered a carefully considered judgment by which he condemned the respondent to restore the debentures to the appellants. The learned judge based this decision upon the ground that the defendant did not come within any of the exceptions to the rule of law that no one can confer a better title than he has himself; that the debentures were over-

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due and consequently the respondent took no title. The case of *In re European Bank. Ex parte Oriental Commercial Bank* (1), and other authorities were relied upon by the learned judge for the proposition that negotiable securities transferred after they were due were taken by any holder for value subject to all equities affecting them, including not merely equities belonging to prior parties to the paper but also to equities of third persons, and that this rule applied to the transfer of a security negotiable by delivery which had been transferred by an agent in fraud of his principal.

The Court of Queen's Bench on appeal reversed this decision holding that the debentures in question were negotiable securities; that even though they were overdue that affected only their exigibility as against the parties (makers or indorsers) who were liable on the paper itself and did not apply to the case of an agent who had negotiated a security in fraud of his principal; further, that the debentures in question had been used and dealt with in the market in such a way that they could not be considered as overdue securities; and lastly, that the appellants by reason of their having placed securities transferable by delivery in the hands of an agent, and thus having conferred power upon that agent to negotiate them, were estopped as against a *bonâ fide* holder for value, as the respondent was held to be, from asserting their title to his prejudice, and for these reasons the court allowed the appeal and dismissed the action.

I am of opinion that the court of Queen's Bench was in all respects right in holding that the respondents had no notice of the appellants' title to the bonds in question. Neither the fact of the publication of the advertisement nor the marking of the bonds as exhibits

(1) 5 Ch. App. 358.

in a former action were sufficient to establish that fact. The evidence of the brokers and bankers who were called as witnesses for the appellants was strictly inadmissible, the subject of inquiry not being one in which the evidence of experts is admissible. To give effect to the opinions of these gentlemen would be to substitute them for the court on the trial of an ordinary question of fact.

I do not agree with the Court of Queen's Bench that in general a *bonâ fide* holder who acquires ordinary commercial paper such as bills or notes after dishonour takes subject only to the equities of prior parties to the paper. Upon this point I agree with Mr. Justice Andrews that not merely the equities of prior parties, but also those of third parties, may be enforced against such holders. This is the effect of the decision in *In re European Bank. Ex parte Oriental Commercial Bank* (1), and I think we ought to follow that authority. In the view I take, however, this point is immaterial. It is also unnecessary to determine another question on which I have much doubt, namely, whether these bonds, especially having regard to the statutory authority under which they were issued, and to the way in which they have been dealt with in the market, are for this purpose to be considered as ordinary mercantile securities such as bills and notes. Many American cases would seem to show that they are.

The *ratio decidendi* which I proceed upon in holding that the respondent is entitled to be protected as a *bonâ fide* holder is that of estoppel, a ground strongly relied upon in the judgment of Mr. Justice Hall in the Court of Queen's Bench. I am of opinion that the appellants, having placed their bonds, transferable by delivery, in Welch's hands, and having thus enabled

(1) 5 Ch. App. 358.

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him to deal with them as his own, are now, when he has committed a fraud which must result in a loss either to themselves or to the respondent, precluded from asserting their title in such a way as to throw the loss upon the respondent. In applying this principle of estoppel it appears to me that the circumstance of the bonds being overdue is of no importance. This doctrine has for its support very high and late authority. The cases of *Goodwin* v. *Robarts* (1); *Rumball* v. *Metropolitan Bank* (2); *London Joint Stock Bank* v. *Simmons* (3); *Bentinck* v. *London Joint Stock Bank* (4); are all authorities strongly supporting the judgment of Mr. Justice Hall in this respect.

In France, where the rule *possession vaut titre* applies generally to the transfer of title to movables (which are thus then on the same footing as these bonds transferable by delivery are with us), a similar doctrine is applied to such property, as is shown by Laurent (5) and Troplong (6).

The action having been brought for the revendication of the bonds, and not for their redemption, I do not think we ought to interfere with the judgment of the Court of Queen's Bench to provide relief for the appellants which they have not sought. Moreover, it is not clearly to be ascertained from the depositions for what amount the respondent is entitled to hold them in security. This may, probably, to some extent depend on the applicability and legal effect of article 1975 of the Quebec Civil Code. The judgment in this case will not, of course, in any way prejudice the rights of the appellants to maintain an action to redeem, should the appellants be compelled to have recourse to such a remedy.

The appeal is dismissed with costs.

(1) 1 App. Cas. 476.
(2) 2 Q.B.D. 194.
(3) [1892] A. C. 201.
(4) [1893] 2 Ch. 120.
(5) Vol. 28 Mandat, nos. 54 to 59.
(6) Mandat, nos. 604 to 607.

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FOURNIER J.—I concur with Mr. Justice Taschereau's conclusion to allow this appeal and restore the judgment of the Superior Court.

TASCHEREAU J.—I would have no doubt on the question of the legality of MacNider's title as a pledgee to these debentures if he had acquired them in good faith. There is no room, in my opinion, for the appellants' contention that the law of the province of Quebec, which governs this case, differs now on this point from the law of France as to such *titres au porteur*, notwithstanding the difference in the wording of art. 2268 of the Quebec code and the corresponding art. 2279 of the French code.

The owner of negotiable securities payable to bearer and transferable by mere delivery, who intrusts an agent with the possession thereof, gives him, *ipso facto*, in law, towards third parties in good faith, the right to effectually sell or pledge them. In constituting his agent the apparent absolute owner of these securities, and conferring upon him all the indicia of ownership, he precludes himself from disputing the title of any subsequent *bonâ fide* transferee. Or, to put it in another way, the agent stands in the same position as if he had a power of attorney from the owner, authorizing him to deal with the securities, in his own name, as he might think fit. Or, in other words again, as laid down in Smith's Mercantile Law (1) on the same principle in reference to agents generally:

> He who accredits another by employing him must abide by the effects of that credit, and will be bound by contracts made with innocent third persons in the seeming course of that employment, and on the faith of that credit, whether the employer intended to authorize him or not, since, when one of two innocent persons must suffer by the fraud of a third, he who enabled that third person to commit the fraud, should be the sufferer.

(1) 10 ed. p. 136.

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2 Leroux, Prescr. nos. 1324, 1328: Buchère, Des valeurs mobilières, nos. 802-816; Troplong, Nantissement, nos. 74-76, Prescript. nos. 1055, 1286 *et seq.* 2 Pardessus dr. comm. nos. 181, 313, 483; de Folleville, de la possession des meubles et titres au porteur, nos. 23, 25, 36, 61 bis, 116, 331, 590; 32 Laurent, nos. 568, 575, 598; Boileux, vol. 7, p. 882; 3 Delv. 438; 4 Aubry & Rau, par. 432, notes 1 and 12; Dall. 29, 1, 384, 52, 5, 427; 58, 1. 238; Bédarride, Achats et ventes, No. 21; Per Fournier J. in *Sweeny* v. *Bank of Montreal* (1).

Art. 1573 C.C. supports the respondent's contention on this point, though negatively, that the simple transfer from hand to hand of such securities confers a perfect title *adversus omnes*.

The second part of art. 1027 is also based on the doctrine that possession of movable property is equivalent to a title. And in the case of *Sweeny* v. *The Bank of Montreal* (1), it is evident that in all the courts, but for the fact that the bank had been put upon inquiry, the transfer by Rose of the securities in question in that case would have been held perfectly valid as against the true owner.

The question is open to still less doubt here, as the securities pledged to MacNider are payable to bearer, *titres au porteur*, whilst in Sweeny's case, to give a title to the transferee a regular transfer of the securities there under litigation had to be made in the books of the company by which they had been issued.

I would also adopt without hesitation the Court of Appeal's opinion as expressed by Mr. Justice Hall, that the law as to the transfer of overdue securities, that the transferee acquires no better title than the transferer had, does not affect MacNider's title, assuming that art. 2287 C.C. (which would govern here, as these debentures

(1) 12 Can. S.C.R. 661.

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were pledged to MacNider before the passing of the Bills of Exchange Act of 1890), extends to debentures of this nature. The judgment of the Superior Court on this point was, in my opinion, erroneous.

The only question that could be raised under that article, were it applicable, is: What title did Welch have as against the Turnpike Trust? And that would bring us back to the question whether the possession of a security payable to bearer is equivalent to a title. And unquestionably, as against the Turnpike Trust, Welch's title was perfect, and a payment in good faith by the company to him would have been unassailable. Welch could have maintained an action against the company, and there were no equities between him and the company that the company could have opposed to him. For "the equities of the bill, not the equities of the parties" (1), can alone be a defence by the maker of such an instrument.

MacNider's title cannot be less valid, as against the Turnpike Trust, than Welch's was. That is, however, what the appellants' contentions would lead to. There is nothing to help the appellants' case on this point in Daniel on negotiable instruments, relied upon by them, and by the Superior Court, though the passage they quote, read alone, would seem at first to bear them out. But *cavendum est a fragmentis*, and a reference to pars. 725, 725*a*, 782, 786, 803 and 1192 of the book, makes it clear that what is intended by the writer is that it is only as against the maker that the transferee's title to overdue securities is not better than the transferer's. I refer to *Fairclough* v. *Pavia* (2); Byles on Bills (3); *Chalmers* v. *Lanion* (4); Randolph on Commercial paper (5); *Brooks* v. *Clegg* (6); Pothier, Change (7)

(1) *Sturtevant* v. *Ford* 4 M. & G. 101.
(2) 9 Ex. 690.
(3) 15th ed. 190, 191.
(4) 1 Camp. 383.
(5) Secs. 1006, 1879 *et seq.*
(6) 12 L.C.R. 461.
(7) Nos. 184 *et seq.*

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2 Bédarride, Dr. com (1); 1er Pardessus. Lettre de change (2); Ruben de Couder, Dict. de dr. com. (3).

The case of *Tinson* v. *Francis* (4), is quite distinguishable. There the plaintiff's transferer could not have maintained an action against the maker.

Malins V.C. in *Ex parte Swan* (5) said:

> The broad proposition that the transferee of a bill after dishonour can under no circumstances have a better right against the acceptor than the drawer would have, cannot at this day be maintained.

There are cases from the United States courts that would seem to support the appellants' case on this point, but they are not governing authorities.

Then, were it necessary to determine the point, I would doubt very much if that rule and article 2287 of the Code apply at all to promissory notes or securities payable to bearer. 2 Pardessus (6); *Courty* v. *de Béville* (7); Sirey (8). For when a security payable to bearer is transfered by delivery, the transferer is no longer a party to it. Story on Promissory Notes, par. 117; Dall. (9) cites a case directly in point. The maker is the bearer's direct debtor, and there is no privity between the maker and the previous holders. Lyon-Gaen (10). In *Cols* v. *Dufour-Clarat* (11) it is expressly held in that sense, that the holder of a security payable to bearer is the immediate creditor of the maker, who cannot oppose to him the exceptions that he would have had against previous holders. See also *Barrois* v. *Grimonprez* (12). These debentures, moreover, are not promissory

(1) Nos. 319, 320, 322 *et seq*; 642 *et seq.*
(2) Nos. 132, 134 *et seq.*
(3) Vo. billet au porteur, nos. 12, 13, 17, 18.
(4) 1 Camp. 19.
(5) L.R. 6 Eq. 344.
(6) Dr. com. no. 352.
(7) Dall. 72, 1, 115.
(8) Table Générale vo. Endossement, nos. 27 *et seq.*
(9) Rep. vo. Effets de commerce, nos. 409, 410.
(10) Dr. Comm. vol. 5, nos. 135, 771 *et seq.*
(11) Dall. 86, 2, 230.
(13) Dall. 68, 5, 161.

notes, and art. 2287 C. C. is not applicable at all in the province of Quebec to debentures or like securities, even payable to order. I am not disposed to think that, as the appellants' contention on this point would import, the words "Bills of Exchange and Promissory notes" in sec. 91 of the British North America Act, can be construed as including such debentures, and that the Federal Parliament has now exclusive legislative power over them as it has over bills of exchange and promissory notes. They are securities of the kind known under the French law as *effets publics* (1), reimbursable out of a certain fund, which said fund has always been held in the province not to be seizable under execution. 4 Vic. ch. 17, secs. 21, 27; 16 Vic. ch. 235, sec. 7; *The Queen* v. *Belleau* (2). I have not seen a single case, or a single text book where such securities have been called promissory notes, or considered as such. And if these debentures are not promissory notes the case is governed exclusively by the French law and the Quebec Code. As said by Sir Montague Smith, in the Privy Council, in the case of *Bell* v. *Corporation of Quebec* (3), English and American decisions are not governing authorities in the province. Except as to the rules of evidence, art. 1206 C. C., and to a certain extent as to promissory notes, by a special article of the code (art. 2340), in force as to this case, the commercial law of the province of Quebec, as a general rule, is the French law.

Upon the contention that a commercial contract is governed by the English law in the province of Quebec, Aylwin J. said, in *The Montreal Assurance Co.* v. *McGillivray* (4):

A more dangerous error than this could not be committed; commercial contracts like all others are governed by the law of Lower

(1) Sirey's Tables. eo. verb.
(2) 7 App. Cas. 473.
(3) 5 App. Cas. 84.
(4) 8 L. C. R. 423.

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Canada. It is in proof only of commercial matters that the rules of evidence of the law of England are to be resorted to.

Now, under the French law, the appellants have not been able to cite a single authority that bears out their contentions and the conclusions reached by the Superior Court in their favour on this point. I would on this point, as on the first, think their contention unfounded.

However, I dissent from the judgment about to be rendered, and I would have allowed this appeal on the ground that the respondent was not justified in taking these debentures from Welch without making the inquiry which the circumstances, to my mind, ought to have suggested to him, and that the consequence of his forbearance to do so must be held fatal to the pledge he accepted from Welch. He shut his eyes not to see; he put no questions, not to know. For we must assume that Welch would not have told an untruth if he had been asked to whom those debentures belonged. *May* v *Chapman* (1).

The facts are not disputed, and this part of the case depends on inferences from the undisputed facts proved in the case, and so is, consequently, fully open to the appellants upon this appeal. And that being so, no assistance can be had from a reference to the cases of *London Joint Stock Bank* v. *Simmons* (2); or *Bentinck* v. *London Joint Stock Bank* (3), and cases of that class. As said by Lord Halsbury in the Simmons case. "no one case can be an authority for another," when the solution rests on the evidence.

The following facts are disclosed by the oral and documentary evidence in the present case: The respondent knew that Welch was a mere agent, and had no business but the business of others. He knew that

(1) 16 M. & W. 361.
(2) [1892] A. C. 201.
(3) [1893] 2 Ch. 120.

the Young estate were owners of debentures of this same Turnpike Trust, and that they, having lost trace of them, had some years previously advertised for them in the Quebec newspapers, through this very same Welch as their agent. He saw the Young's estates name indorsed on three of these debentures, or a tag as it were attached to each of them, bearing their name; as he well knew the Rattray thereon mentioned had had possession of them only as agent for the estate; he knew that Welch had some years previously made a disastrous failure, from the effects of which he had never recovered; he also knew that Welch had succeeded Rattray as agent and administrator of the Young estate; he, in fact, as appears by his own plea, lent money to the Young estate through Welch as their agent. Now, when he received these debentures from Welch, three of which were indorsed, as I remarked, so as to show that they had certainly, at one time, been part of that estate, whose agent Welch then was to his knowledge, and so bearing on their face an unmistakeable mark of infirmity, it was incumbent upon him, in my opinion, to make inquiries as to Welch's right to dispose of them. Laurent (1).

When there exist circumstances of a nature to arouse suspicion, says the Cour de Cassation inferentially (2), or, as says the Court of Appeal at Rouen in *Piat* v. *Weismann* (3):

> Lorsqu'une circonstance accessoire et concomitante est venue éveiller les soupçons sur la loyauté du vendeur,

the purchaser or pledgee of securities, payable to bearer, should require the seller or pledger to justify his right to sell them.

By wilfully shutting his eyes in such a dealing with a man whose business was essentially one of a fiduciary

(1) Vol. 23, no. 604; see Dall. 68, 3, 88.
(2) Dall. 72, 1, 161.
(3) S. V. 73, 2, 80.

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character McNider was not acting in good faith in the eyes of the law, whatever views the mercantile community, according to its present standard of morality, may entertain upon the matter. Jones on Pledges, 104, 105.

One of his own witnesses, McGie, a stock broker of twenty-five years standing, swears that, with the indorsement, *Rattray* v. *Young*, on these debentures, he would rather have had nothing to do with them. And Dean swears that, under the circumstances, he would not have advanced money to Welch upon these debentures without making some inquiry as to his powers.

Dumoulin, manager of the People's Bank, also brought in by the respondent, testified in the same sense that he would have inquired from Welch about his right to these debentures if he, Welch, had offered them to the bank. These two witnesses, it is true, would have limited their suspicions of Welch's dealing with those debentures to the three so indorsed. But, to my mind, the very name of Young in connection with any of them should have suggested to the respondent that they might possibly all of them belong to the Young estate, as he well knew that Welch was the administrator of that estate, and that he was not in a financial position so flourishing as to be the owner of this amount of valuables. In fact, even without these indorsements, MacNider would have shown more prudence under the circumstances, with his perfect knowledge of Welch's financial status and of his occupation, not to take these debentures from him before asking him if he had the right to dispose of them.

One taking under such circumstances a pledge of negotiable securities from another who is notoriously but an agent, and professes to be only an agent, cannot infer the agent's authority to pledge them. He is

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bound to inquire and know what his authority is. *Cooke* v. *Eshelby* (1); Jones on Pledges, 493. But here, MacNider was afraid of the answer, and that is why, in my opinion, he did not put the question. He might have known but he preferred not to know, so as not to lose, perhaps, a good bargain. He avoided making inquiries, because they might be injurious to him. *Jones* v. *Gordon* (2).

And when, as here, the securities pledged are overdue, the pledgee is still less justifiable in having accepted them without inquiry. For "where a note of hand," (and I cannot see why this should not apply to debentures) "is assigned after maturity, and there is fraud in the transaction, the law on slight grounds will presume that the indorsee had knowledge of the fraud, if it appears that he omitted to satisfy himself as to the validity of the note." Such is the law laid down long ago in the Court of King's Bench at Quebec in a case of *Hunt* v. *Lee* (3). In *Taylor* v. *Mather* (note to *Brown* v. *Davis*) (4),, Buller J. had previously held that where there is fraud in the transfer of a negotiable instrument, if it be made after maturity, the slightest circumstance will be sufficient to imply notice. And it must be remembered that whilst mere possession of a negotiable instrument payable to bearer is a *primâ facie* evidence of the holders's good faith, yet that applies only to any holder taking the bill before maturity. But where such an instrument has been fraudulently disposed of by the owner's agent, as in the present case, and an action is brought by the owner against the holder, proof of the fraud will throw on the holder the burden of proving his good faith, especially if he had received the security after maturity. Randolph on Commercial Paper, pars. 159, 160, 1026, 1683. Art. 2202 C.C.

(1) 12 App. Cas. 271.
(2) 2 App. Cas. 616.
(3) 2 Rev. de Leg. 28.
(4) 3 T.R. 83.

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has then no application. The plaintiff having proved his title the onus of proving a possession sufficient to defeat that title lies on the defendant.

I have alluded to the fact that by his plea it appears that MacNider, besides the moneys lent to Welch, personally, lent money to the Young estate. Now he claims by the conclusion of his plea a right to pledge on these debentures as well for the loan he so made to the Young estate as for the loan he made to Welch personally. There was undoubtedly nothing to prevent Welch from pledging his own debentures for a loan made to his principals. But I fail to see in MacNider's plea any contention of that nature. The plea simply claims a tacit pledge created by the operation of the law for the Young estate's debt. A special pledge of other securities had been given by Welch for this loan. Now, if, on the face of his own allegations, these debentures are by law security for his claim against the Young estate, it must be that they are the property of the Young estate. Without special allegations to that effect in the plea it cannot be assumed that a pledge held by MacNider for a debt due by the Young estate belongs to any one else than to the Young estate.

For these reasons the appeal should, in my opinion, be allowed with costs, and the *dispositif* of the judgment of the Superior Court should be restored.

GWYNNE J. and SEDGEWICK J. concurred in the judgment of the Chief Justice.

KING J.—I am of opinion that this appeal should be dismissed with costs, for the reasons given in the judgment of the Chief Justice.

Appeal dismissed with costs.

Solicitors for the appellants: *Caron, Pentland & Stuart.*

Solicitor for the respondent: *C. B. Langlois.*