THE QUEEN ....APPELLANT; 1880

AND *May 17.

1881

SIR NARCISSE FORTUNAT BELLEAU, KNT., AND OTHERS..... } RESPONDENTS. *Feb'y. 10.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

16 *Vic., ch.* 235—*Construction—Debentures issued by Trustees of the Quebec Turnpike Roads—Legislative recognition of a debt—Trustees—Parliamentary agents, Liability of the Crown for acts by.*

Held, (Ritchie, C.J., *and Gwynne,* J., dissenting,)—That the trustees of the *Quebec* North Shore Turnpike Trust, appointed under ordinance, 4 *Vic.*, ch. 17, when issuing the debentures in suit, under 16 *Vic.*, ch. 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 said debentures when they became due.

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.

Per *Ritchie,* C.J., and *Gwynne,* J.: That the Trustees, being empowered by the ordinance to borrow moneys "on the credit and security of the tolls thereby authorized to be imposed

*PRESENT:—Sir William Johnstone Ritchie, Knight, C. J., and Fournier, Henry, Taschereau and Gwynne, JJ.

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and of 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 (1).

APPEAL and cross appeal from a judgment of the Exchequer Court of *Canada* (December 24, 1879) decreeing that appellant was legally liable to the respondents for the payment of the principal of certain debentures issued by the Trustees of the *Quebec* Turnpike roads under the authority of 16 *Vic.*, c. 235.

The respondents by petition of right set forth in substance:

That 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 £10,000 for the improvement of like highways on the south shore of the river *St. Lawrence*—that there were issued debentures for both of the said loans, signed by the *Quebec* turnpike road trustees, under the authority of an act of the Parliament of the province of *Canada*, passed in the sixteenth 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"—that the moneys so borrowed came into the hands of Her Majesty, and were expended in the improvement of the highways in the said act mentioned—that no tolls or rates were ever imposed or levied on the persons passing over the roads improved by means of the said loan of £30,000—that the tolls

(1) The judgment of the Supreme Court of *Canada* was reversed by the Judicial Committee of the Privy Council and the holding of the minority of the court was affirmed. See 7 App. Cases 473. See also appendix to this case.

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imposed and collected on the highways improved by means of the said loan of £40,000 were never applied to the payment of the debentures issued for the said last mentioned loan in interest or principal—that the trustees accounted to Her Majesty, as well for the said loans as for the tolls collected by them—that at no time had there been a fund in the hands of the said trustees adequate to the payment, in interest and principal, of the debentures issued for said loans—that the respondents are holders of debentures for both of the said loans to an amount of $70,072, upon which interest is due from the first day of July, 1872—that the debentures so held by them fell due after the union, and that Her Majesty is liable for the same under 3rd sec. of 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 Her Majesty 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—that there was any undertaking or obligation in 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 and argued at length may be resumed 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 not come into the hands of Her Majesty, and were expended in the improvement of provincial highways?

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

And whether *Canada* is or not liable to pay the said

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debentures under the provisions of the British North America Act, 1867?

The case was argued in the Exchequer Court, *Fournier*, J., presiding, by Mr. *Irvine*, Q. C., and Mr. *Andrew Stuart*, on behalf of the suppliants, and Mr. *Langelier*, Q. C., and Mr. *Langlois*, Q. C., on behalf of the Crown, and the following judgment in favor of the suppliants was delivered:—

FOURNIER, J.:—[*Translated.*]

"This is a petition of right, by which the suppliants seek to recover from Her Majesty the sum of $70,072, with interest from the 1st July, 1872, in payment of an equal sum loaned on debentures issued by "the trustees of the *Quebec* Turnpike Roads" under the authority of an Act passed by the legislature of the province of *Canada*, 16 *Vic.* ch. 235.

"The question submitted for the decision of this court is whether the crown can legally be held liable for the payment at maturity of the debentures so issued.

"In order to determine this point it will be necessary to refer to the special legislation originally effected in reference to these turnpike roads.

"It was by the ordinance 4 *Vic.* ch. 17, that this mode of improvement of roads was introduced in the late province of Lower *Canada*, now the province of *Quebec*. The object and the intention of this legislation, in making the change in the system then followed for the management of the roads, are thus stated in the preamble to the ordinance:

"'Whereas the state of the roads hereinafter mentioned, in the neighborhood of, and leading to the city of *Quebec*, is such as to render their improvement an object of immediate and urgent necessity, and it is therefore expedient to provide means for effecting such improvement, and to create a fund for defraying the

expense thereof, and the expenses necessary for keeping the said roads in permanent repair.'

"It then proceeded to enact, that the powers and authorities vested by 36 *George III.*, in any magistrates, *grand voyer* and other officers should cease and determine from and after the time when the trustees, authorized to be named by the ordinance, should assume the management and control of the roads. The governor is authorized by letters patent, under the great seal of the province, to appoint not less than five, nor more than nine persons, to be, as well as their successors in office, trustees, for the purpose of opening, making and keeping in repair the roads specified in the ordinance.

"In case of a vacancy in the said trust the governor was to supply and fill such vacancy by the appointment by letters patent of another trustee.

"The trustees are then declared to be a corporation to be known by the name of 'The trustees of the *Quebec* 'Turnpike Roads' and may sue and be sued, and 'may acquire property and estate, movable and immovable, which, being so acquired, shall be vested in Her Majesty for the public uses of the province, subject to the management of the said trustees for the purposes of this ordinance,' and who are given all the necessary powers to cause to be improved and widened, repaired and made anew all the roads and bridges put under their control.

"By the 4th, 5th, 6th and 7th sections provision is made for expropriation and the payment of compensation for damages.

"The trustees are also authorized to levy on each of the said roads, at the turnpike gates or toll bars to be thereon established, the tolls specified in said ordinance.

"The trustees were authorized to raise by way of loan, on the credit and security of the tolls, and of other moneys in the possession of the trustees, under

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and by virtue of this ordinance, 'and not to be paid out of or be chargeable against the general revenue of this province, any sum or sums of money not exceeding £25,000.'

"The trustees are authorized to issue debentures in the form contained in the schedule A, bearing interest at six per centum per annum, and redeemable at such times as the trustees may think convenient. With the approval of the governor the debentures may be redeemed before the time they are made redeemable. All arrears of interest were to be paid before any part of the principal sum. In case of deficiency of funds at the disposal of the trustees to pay interest accrued, the governor, by warrant under his hand, may authorize the Receiver General to advance to the said trustees out of any unappropriated moneys in his hands the necessary amount sufficient to pay such arrears of interest, and which sum shall be repaid by the trustees to the Receiver General in the manner specified in the ordinance.

"The trustees were also authorized, with the approval of the governor, to raise further sums to pay off the principal of any loan becoming due at a certain time, under the same provisions as the previous loans.

"It was further enacted that due application of all public moneys, whereof the expenditure or receipt was authorized, shall be accounted for to Her Majesty through the Lords Commissioners of Her Majesty's treasury for the time being, in such manner and form as Her Majesty, her heirs and successors, shall be pleased to direct.

"The trustees were also bound to lay detailed accounts of all moneys by them received and expended, supported by proper vouchers, and also detailed reports of all their doings and proceedings before such officer, and in such manner and form, and publish the same in such a

way, at the expense of the trustees, as the governor shall be pleased to direct.

"The ordinance was declared to be a public and permanent ordinance.

"All the provisions of this ordinance were put into force by trustees duly appointed, who took the management and control of these roads for the use and benefit of the public.

"The late province of *Lower Canada* borrowed through these trustees the sum of £25,000 for the amelioration of these roads as authorized by the said ordinance.

"This amount was employed in conformity with the provisions of the Act—detailed accounts of the same as public moneys were rendered to Her Majesty as ordained by the ordinance, as well as of the tolls collected on said roads.

"After the union of *Canada*, the provisions of this ordinance were extended and made applicable to divers other roads. The legislature and the executive government of the late province of *Canada* have always exercised over these roads, and other property under the control of the trustees, the most absolute and unlimited powers.

"By 16 *Vic.* ch. 235, the statute under which the debentures now in question were issued, the provisions of the ordinance 4 *Vic.* ch. 17 which I have just summarized, and the powers of the trustees, are extended and made applicable to a certain number of other roads and bridges therein mentioned, and situated on the north and south shores of the *St. Lawrence.*

"The principal provisions of this Act, which have reference to the point raised in this suit, are contained in the following sections:—

"The seventh section authorizes the issue of debentures for a loan of £30,000 for the construction and

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completion of the works authorized by this Act, and an Act of the preceding session, on the roads on the north shore of the *St. Lawrence*, and which loan is made subject to the provisions of the ordinance 4 *Vic.* ch. 17, as follows: 'and this loan, 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: Provided nevertheless, that the rate of interest to be taken under this act shall in no case exceed the rate of six per centum, and no moneys shall be advanced out of the provincial funds for the payment of the said interest, and 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 and other moneys which shall come into the possession and shall be at the disposal of the said trustees, in preference to the interest payable upon all debentures which shall have been issued under the provincial guarantee, and also to all other claims for the reimbursement of any sums of money advanced or to be advanced to the said trustees by the Receiver General of this province, and the said debentures as respects the payment of the principal and interest thereof, shall rank after those issued under the act passed during the last session of the parliament of the province and hereinbefore cited.

"A further sum of £40,000 was by the tenth section of the same act authorized to be raised by way of a loan subject to the conditions in the seventh section for the construction and repairing of the roads on the south shore of the *St. Lawrence*.

"These different loans were made by the issuing of debentures, and the moneys raised thereby were employed by the trustees to pay for the works and improvements specified in the said act.

"Unfortunately for the suppliants the revenues derived from these new roads, as well as from those derived from the roads first made by the trustees, and which constituted the special fund created by 4 *Vic.*, ch. 17, were found insufficient to pay even the interest on the amounts so borrowed. The result has been that the suppliants have not received any interest since 1872, nor have the legislature taken any steps to remedy the present state of affairs by making provision for the repayment of the loans, which matured in part on 2nd March, 1869, and in part on 1st December, 1874.

"In answer to this petition Her Majesty avers that all the debentures guaranteed by the ordinance of 1841 were redeemed in 1853, and that since no debentures have been issued guaranteed by the province, but that on the contrary by 12 *Vic.*, ch. 115, 14 & 15 *Vic*, ch. 132, 16 *Vic.*, ch. 235 and 20 *Vic.*, ch. 125 it was enacted 'that no guarantee for the said debentures should be given by the said late province of *Canada*, that no money of the said province should be advanced for paying the interest or the principal of the said debentures.'

"The facts in issue between the parties to this petition have been settled by a special admission of facts which are sufficient for the determination of the question submitted for decision. It only remains for the court to decide whether the Government of *Canada* prior to the passing of the British North America Act, was responsible for the repayment of the loans in question.

"Before taking this question into consideration, I must acknowledge that I do not do so without great hesitation. In determining this point I have not had the advantage of referring to previous decisions. The learned counsel for the suppliants as well as for respondent, in answer to a question I made on the argument, said that, notwithstanding exhaustive researches on their part, they had been unable to find a decision

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applicable to this question. I have since searched for authorities on this subject, but I must confess with no better success. It is therefore by examining our statutes and comparing them with those passed in *England* on the same subject-matter, that we will be able to arrive at a solution of this question.

"The extracts I have just given of the principal provisions of the ordinance of 1841, and of the subsequent statutes, when compared with the provisions contained in the imperial statutes relating to 'turnpike trusts,' show that there are such essential differences in these institutions in both countries as will justify me in drawing certain inferences useful to the determination of this suit.

"Before stating the peculiar provisions of the organization of turnpike trusts in *England*, I will cite a short passage on their origin: 'A turnpike road is a road across which turnpike gates are erected and tolls taken, and such roads existed previous to the passing of the 13 *Geo.* III, ch. 84, and independently of that statute altogether. A turnpike road means a road having toll gates or bars on it, which were originally called "turns," and were first constructed about the middle of the last century. Certain individuals, with a view to the repairs of particular roads, subscribed amongst themselves for that purpose and erected gates upon the roads, taking tolls from those who passed through them. These were violently opposed at first, and petitions addressed to parliament against them; and acts were in consequence passed for their regulation. This was the origin of turnpike roads.'

"If turnpike trusts in *England*, in their origin, resemble ours by the opposition which was made to their establishment, they differ essentially by the fundamental principle of their constitution.

"The above quotation shows that they were established

by certain persons associated together and subscribing between themselves the amount necessary for repairing certain roads. There were quite a number of turnpike trusts in existence at the time of the passing of the 13 *Geo.* III, ch. 84, but the statutes which established these trusts were private statutes, and are not to be found in the collection of the imperial statutes. It is easy, however, to ascertain their character by referring to the act of 3 *Geo.* IV, ch. 126, passed for the purpose of legislating on this subject in a general manner for the whole country. After the 1st January, 1823, the provisions of that act were made applicable to all private acts, before, or which might be hereafter, passed, relating to the construction, repair and maintenance of turnpike roads.

"I will now refer to those provisions in the English statute which will obviously show the difference that exists between the laws in force in *England* and those which are under consideration in this case.

"Section 60 of the act enacts: 'that the right, interest and property of and in all the toll gates and toll houses weighing machines and other erections and buildings, lamps, bars, toll boards, direction boards, mile stones, posts, rails, fences and other things, which shall have been or shall be erected and provided in pursuance of any act of parliament for making turnpike roads, with the several conveniences and appurtenances thereunto respectively belonging, and the materials of which the same shall consist, and all materials, tools and implements which shall be provided for repairing the said roads, shall be vested in the trustees or commissioners acting in pursuance of such act for the time being, and they are hereby authorized and empowered to apply and dispose of the same as they shall think fit, and to bring or cause to be brought any action or actions, &c,, &c.'

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"Sec. 43 gives power to the trustees to increase or diminish the tolls in accordance to the provisions of the section.

"The 62nd section provides that the trustees shall be qualified in real estate to the amount of £100 and shall take an oath of office.

"The 66th section, which has reference to the mode of appointing trustees, enacts that in case of death, insolvency or incapacity of acting, those surviving or remaining in office can elect trustees in their stead in the manner prescribed by that section.

"72. The proceedings and decisions of the trustees shall be entered in a book kept open to the inspection of the trustees and the creditors of the trust.

"73. Account books shall be kept and be opened to the inspection of the trustees and of the creditors. The eighty-first section empowers the trustees to borrow money and to give a mortgage, in the form given, as a security for the sum borrowed.

"86. When a new road has been opened and completed, the trustees can sell the old road, (sec. 89) but giving to the original proprietor or the adjoining proprietors the right of preemption. Section 135 provides for the mode of recovering a sum of money due by the trustees and enacts 'that satisfaction shall and may be levied and recovered by distress and sale of the goods and chattels vested in the said trustees or commissioners.'

"The above provisions taken in the English statute compared with those I have before cited taken from our own statute clearly show that the legislatures have given an essentially different character to the trusts in both countries.

"By the English statute the trusts are established by private enterprise and the property of the roads, tolls, &c., is vested in the commission or body of trustees

charged with the duty of administering it in the common interest, whilst by our statute, the trusts were created by the government and the property of the trust is declared to be the property of Her Majesty for the public use of the province.

"The appointment of the trustees belongs to the governor, who appoints by letters patent, under the great seal of the province, persons who shall discharge the duties of their office gratuitously, and without deriving any benefit or profit out of the revenue of the roads they manage. On the contrary, in *England*, the trustees appoint others to any vacancy, and choose persons who, like themselves, have a personal interest in the revenues of the roads under their control. They have the extraordinary power of increasing or diminishing the tolls. Here the same power could only be exercised by the Governor-in-Council, or by the parliament. The necessary funds to construct and complete the roads were raised here by the sale of debentures issued by trustees under the authority of the law; whilst in *England* the commissioners or trustees secure the amount by the private subscriptions of persons associated together for that purpose, and who therefore become, not merely creditors, but proprietors of the 'trust.'

"The English act enacts that the trustees must keep books of their orders and proceedings, and also cause to be kept, books of accounts open to their inspection and liable to be audited in their interest. None of these privileges were granted by our statutes to the holders of the debentures of our turnpike roads. The accounts to be kept of the moneys expended, which are said to be public moneys, are to be rendered to Her Majesty, her heirs and successors, through the Lords High Commissioners of the Treasury of Her Majesty for the time being.

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"Under the English statute any goods or property vested in the trustees may be levied against, for the purpose of paying off any liabilities; here they are declared to be the goods and property of the crown, and as such inalienable even for debt. See *Anderson* v. *The Quebec North Shore Turnpike Trust* (1).

"From all these differences it is clear to my mind, that under the English law turnpike trusts are nothing more than private corporations, whilst in this country they are public corporations, acting as the organs of the state in effecting a great public improvement. The principal features of the organization of the 'trusts' under our system of laws are precisely the characteristic features which constitute a public corporation, as shown by the following text writer (2).

"'But where a corporation is composed exclusively of officers of the government, having no personal interest in it, or with its concerns, and only acting as the organs of the state in effecting a great public improvement, it is a public corporation.' *Layne* vs. *North-Western T. Co.* (3). Then the trustees of the university of *Alabama* were held to be a public corporation, because the state had the whole interest in the institution without being under any obligation of contract with any one (4).

"'The commission includes all the elements which are essential to a public corporation. It is composed exclusively of officers appointed by the crown, having no personal interest in administering the things under their control, and only acting as the organs of the state, effecting a great public improvement.'

This last expression applied to our turnpike roads may appear exaggerated at the present day, when the country is covered over with a large system of railways and

(1) 14 L. C. R. 90.
(2) Angell & Ames, p. 25,
(3) 10 Leigh 454.
(4) Angell & Ames p. 26, No. 34.

canals, but when we bear in mind that at the time these turnpike roads were contemplated, there were in the province of *Quebec* only a few miles of railroads and two canals of a few miles in length; that the bad state of roads was one of the great drawbacks to the opening of the country; and if we recollect, not only the indifference, but the opposition of the public to make the slightest sacrifice in order to repair the roads, it will be better understood why the construction of turnpike roads was considered a great public improvement. And that in order to effect it, it was found necessary that a public law should be passed by an irresponsible legislature, and at the time only such a body could have enacted such a law and have it put into force in all its details. If this institution was able to surmount all obstacles at first and has since been able to aggrandize itself, it is solely because nothing was left, in organizing it, to private enterprise, and because its character was such as to make it a public body, empowered by the government to effect loans of money in order to execute for the government certain improvements with which it had been charged.

"If one of the peculiar features in the constitution of a public corporate body is that its members are entirely without any personal interest, on the other hand one of the essential elements of a private corporate body is, that its members have a personal interest in the institution. Whatever authority or power is given to the members of a corporate body, or however general may be its object, if the members of the corporation receive a consideration or an emolument to perform the duties imposed upon them, then that corporate body is considered to be a private corporation.

"But the most numerous, and in a secular and commercial point of view, the most important class of private civil corporations, and which are very often

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called "companies," consist at the present day of banking, insurance, manufacture and extensive trading corporations; and likewise of turnpike, bridge, canal and railroad corporations. The latter kind have a concern with some of the extensive duties of the state; the trouble and charge of which are undertaken and defrayed by them in consideration of an emolument allowed to their members; and in cases of this sort there are the most unquestionable features of a contract, and manifestly a *quid pro quo* (1).

"This authority, if applied to 'trusts' as constituted in *England*, shows that they are private corporations, but the authority I first cited, proves evidently that our turnpike trusts are public corporations. The conclusion I draw from what I have stated is, that the 'trustees' in this case were the agents of the crown, authorized to put into force a public law relating to turnpike roads. This is really what has been decided already in the case of *Anderson* v. *The Quebec North Shore Turnpike Trustees*, viz:—'That the *Quebec* turnpike trustees are the agents of the crown.' It follows, then, that when the trustees, acting within the scope of their authority, enter into a contract, it is the government, who, having delegated their power, are liable, and not the trustees. 'It is clear, also, that a servant of the crown, contracting in his official capacity, is not personally liable on the contracts so entered into (2).'

"The government would therefore be liable in this case, unless it is shown that the trustees have not acted within the scope of their authority in issuing these debentures, or unless there can be found in 16 *Vic.*, ch. 235, or in some other act, a positive enactment leaving no doubt that the government is exempted of all responsibility. It was not contended that the trustees

(1) Angell & Ames, p 31, No. 40.

(2) Broom's legal maxims, p 830.

had exceeded the limits of their authority. The defence in this case consists simply in averring that the crown is not responsible to the holders of the bonds, and the statement of defence is as follows: 'Not only was no provincial guarantee given or provided for in favour of the bonds issued by the said trust, from the said year, 1853, but it was especially provided in by several statutes passed by the parliament of the said province of *Canada*, and, amongst others, by the act 12 *Vic.*, ch. 115, by the act 14 and 15 *Vic.*, ch. 132, by the act 16 *Vic.*, ch. 235, by the act 20 *Vic.*, ch. 125, that no guarantee for the said debentures should be given by the said late province of *Canada*, that no money of the said province should be advanced for paying the interest or principal of the sums borrowed by the issue of the said debentures.'

"By referring to the statutes mentioned in that paragraph of the defence, it will be seen that what is there alleged cannot be sustained.

"In 12 *Vic.*, ch. 115, there is no mention of any provincial guarantee. What is there stated is: 'No moneys shall be advanced out of the provincial funds for the payment of the said interest.' It is different from the 4 *Vic.*, ch. 17, which had provided the means of paying any arrears of interest on the loan authorized by that act, by allowing the Receiver General to advance out of the provincial funds to the trustees the necessary amount for that purpose. But I cannot find in that section anything which limited the responsibility of the government as to the payment of the capital except by declaring that the loan is made subject to the conditions contained in the ordinance of 4 *Vic.*, ch. 17. This provision is also found to be inserted in the act 14 and 15 *Vic.*, ch. 235. In the extract I have before given of sec. 7 of this act, there is no question of any provincial guarantee having been given or refused. All we find

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is, as in 12 *Vic*, ch. 115, and in 14 and 15 *Vic.*, ch. 132, that 'no moneys shall be advanced out of the provincial funds for the payment of said interest;' as respects the principal, it only enacts that: 'As respects the payment of principal and interest thereof,' the debentures shall rank after those issued under the act passed during the last session of parliament of the province, and hereinbefore cited.' In this lengthy provision, no word or expression can be found which would authorize me in coming to the conclusion that there was any repudiation of, or even that it was intended to repudiate, all responsibility with respect to that loan. If the inevitable consequence of that act was not to make the province responsible, why take the trouble of limiting their responsibility as regards interest only by stating, 'no moneys shall be advanced for the payment of the interest on the debentures.' If the intention of the government had been to exempt the province from all liability, why not make the same enactment with respect to the capital as they did with respect to the interest? The absence of such a declaration is a strong argument that the government did not intend to exempt themselves from the liability of paying at least the principal of the loan. This section, in my opinion, instead of supporting the contention made by the respondent, that the crown is not responsible, on the contrary supposes the obligation of reimbursing, necessarily arising out of the loan.

"It was also argued, on behalf of the respondent, that the loan effected under the authority of 16 *Vic.*, ch. 235, was subjected to the provisions contained in the ordinance of 4 *Vic.*, ch. 17, and therefore that the principal cannot be paid out of or chargeable against the general revenue of this province. The inference which is sought to be drawn, is that the Crown had incurred no responsibility for the reimbursement of the loan made under the authority of that ordinance, and

consequently the loan made under 16 *Vic.*, ch. 235 is in the same position. Nevertheless, we find that the legislature paid the first loan, and the reason no doubt was, because they admitted the obligation to pay was a consequence of the provisions of the law. The law being the same in both cases, the same obligation to pay the amount of the loan for which the present petition was brought certainly remains.

"The enactment that the general revenue shall not be held liable for the moneys borrowed, is explained, first, because the tolls levied by the trustees were declared to form a special fund for the purpose of paying off these bonds, then also for this other self-evident reason, because the ordinary expenditure of the government was the first charge upon the general revenue it was not intended to adopt a mode of payment which at that time might have created disorder in the financial arrangements of the year. Moreover, does not the fact of the legislature only stating in the act in question that the general revenue shall not be charged with this debt virtually declare that the legislature shall provide other means to pay with than with the general revenue, which is exempted? The government having still other means of providing for the reimbursement of this loan, thereby contracted the obligation of providing these means, viz: either by increasing the revenues of the special fund, by increasing the tolls, or by creating another fund. This seems necessarily to have been the intention of the legislature, for it would be impossible to explain their act otherwise than by supposing that they gave the power to the government to borrow money in the name of Her Majesty, at the same time dispensing with the obligation of reimbursing the amount. Such an interpretation of the act being contrary to the dignity and honor of the crown, cannot be entertained for a single moment.

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"To say that the provisions of the law contained an obligation to raise a special fund is a much more consistent interpretation, inasmuch as at the time this loan was effected, the government were in the habit of creating special funds. We find that there was the common schools fund, superior education fund, the clergy reserves, the court houses fund, the seigniorial fund, &c., &c. It was no doubt on the establishment of such a fund that the legislature relied to reimburse the principal.

"Because the intention has not been carried into effect, is not a reason why there should be any alteration in the legal obligation to reimburse the capital, an obligation arising out of the very terms of the law. It is certainly a matter of indifference to the bondholders to know what mode will be adopted to procure the money.

"But if as a matter of fact the statute in so many words enacted, that the government were exempt from all responsibility, then what I have before said would be of no avail. Fortunately for the suppliants this is not the case. For nowhere do I find in the quotations which I have given from 4 *Vic.* ch. 17, 12 *Vic.* ch. 115, 14 and 15 *Vic.* ch. 137 and 16 *Vic.* ch. 235, the statement put forward in respondent's defence 'that not only was no provincial guarantee given in favor of the bonds issued by the trust under the authority of 16 *Vic.* ch. 235, in 1853, but that it was especially provided in and by several statutes that no guarantee should be given for the said debentures by the said late province of *Canada*; that no money of the said province should be advanced for paying the interest of, or the principal of the sums borrowed by the issue of said debentures.'

"The learned counsel were certainly in error when they formulated that general and sweeping proposition, for it cannot be sustained by any of the acts I have just

cited. It may be correct in so far as it relates to 20 *Vic.* ch. 125, for there we find, for the first time, an enactment stating that the provincial government shall not be held responsible for the payment of the principal and interest of the debentures issued under that act.

"It was also by this act that the legislature divided the turnpike trust into two different trusts, one for the north shore and the other for the south shore of the *St. Lawrence*. Sections 8, 9, 11 and 12 authorized these trusts to effect new loans, and it is with respect to these new loans that the following proviso was enacted: 'Provided always that the province shall not guarantee or be liable for the principal or interest of any debentures issued under this act, nor shall any money be advanced or paid therefor out of the provincial funds.'

"If this proviso was to be found in 16 *Vic.* ch. 235 or in the 4 *Vic.* ch. 17, which is declared by the eighth section to form part of the act, I would not hesitate for a moment and would dismiss the petition on the ground that the government cannot be held liable either for the principal or for the interest of the debentures issued. But as I have already stated, such a provision is not to be found in the previous acts, and it is enacted for the first time in 20 *Vic.* ch. 125. This must necessarily have been effected in consequence of a change of policy on the part of the government of the day, with respect to turnpike roads, a change which is there enacted for the first time.

"I know of no rule of law which would allow me to interpret this provision as being applicable to the previous acts. In order to do so it would be necessary for me to find in the text of the law (what I have not found) a positive declaration stating that such a provision must be considered as forming part of the previous acts. In my opinion, far from helping the respondents' contention, this declaration in this last act

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seems to me to furnish a strong argument in favor of the suppliants. The only reasonable conclusion to draw seems to me to be that if the legislature had intended in the previous acts to repudiate all guarantee or liability as regards the principal and interest, they would in those previous acts have made use of the same language in order to express the same thing. This provision may be even considered as an interpretation given by the law itself, and declaring that as the government had, up till that time, been liable, henceforth it would cease to be liable for any new loan. This interpretation does not extinguish the obligation previously contracted. The contract entered into legally by the trustees, acting within the scope of their authority, by borrowing the moneys, necessarily implies the obligation to pay back the same. And as the loans were effected by the government through its agents (the trustees) the payment of the same devolves on the government and not on the trustees, who entered into no obligation, as may be seen by the form of debenture which was issued, viz:

"NORTH SHORE ROAD LOAN UNDER PROVINCIAL STATUTE OF 1853.

£250 Cy.

"Certificate No. 257. *Quebec*, 24th March, 1856.

"We certify that, under the authority of an Act of the Parliament of *Canada*, passed in the session held in the 16th year of Her Majesty's reign, intituled 'An act to authorize the trustees of the *Quebec* turnpike road to issue debentures to a certain amount and to place certain roads under their control', there has been borrowed and received from *Charles Gethings*, Esquire, two hundred and fifty pounds, currency, bearing interest from the date hereof, at the rate of six per cent. per annum, payable half yearly, on the first day of July and on the first day of January, which sum is reimbursable to the said *Charles Gethings* or bearer hereof, on the twenty-fourth day of March, in the year of our Lord 1871, and is part of the sum to be raised under the said statute to make and complete the roads thereby authorized to be made on the north shore of the *St. Lawrence*.

Registered by J. PORTER, Secretary.

Trustees.—H. GOWEN, L. G. NAULT, L. T. MACPHERSON, A. C. BUCHANAN, JOHN ROWLEY, DANIEL MCCALLUM, JAS. GIBB.

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"I am therefore of opinion that the government of *Canada* became legally indebted to the suppliants, and that under the 111th section of the *British North America* Act, the Dominion of *Canada* was made liable for the principal of the debentures issued under the authority of 16 *Vic.* ch. 235. This interpretation seems to be in accordance with the letter and the intent of the act in virtue of which this loan was effected as well as with the provisions of 4 *Vic.* ch. 17, incorporated in ch. 235.

"The suppliants, however, did not rely so much on the reasons on which I have arrived at a favorable conclusion to them, as upon their argument based on the fact that changes were effected by the legislature in the laws relating to these trusts; such changes, they contend, having virtually destroyed the special fund which was created by means of the levy of tolls, and which was affected to the reimbursement of this loan, are sufficient to render the government generally liable instead of leaving them as theretofore liable only for a limited amount. If this view of the law could prevail the suppliants would, no doubt, benefit by it very much as the government would then be obliged to pay the interest as well as the principal of these debentures.

"I will now examine if this contention can be sustained. The act of 16 *Vic.* ch. 235 did not create any additional revenue in order to pay the interest which would become due on the loan of £30,000 authorized to be made for the *Quebec* north shore roads, but tolls were to be collected on the south shore roads, for the improvement of which the act also authorized a further loan of £40,000, which sum was expended on the said roads.

"Subsequently, four years after, the *Quebec* turnpike trust was divided into two trusts under the authority of the act I have just mentioned, 20 *Vic.* ch. 125, viz.;

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the *Quebec* north shore turnpike roads trustees and the *Quebec* south shore turnpike roads trustees, charged respectively with the management of the roads on each shore. By section five of the said act, all debts and liabilities made before the said division, were charged against the trustees of the north shore roads, as follows: 'The north shore trustees shall be liable for the principal and interest of all debentures issued by the "trustees of the *Quebec* turnpike roads," and for all debts and liabilities of the said trustees, contracted before the day to be appointed as aforesaid for the separation of the trusts.' There is a proviso which declares that should the trustees of the south shore roads have a balance in hand from the roads under their control, they shall, after having paid all expenses, pay over said balance in the hands of the north shore trustees, in order to aid them to pay the principal and interest on the debentures issued prior to the passing of said act.

"Amongst the debts and liabilities for which the north shore trustees were declared to be liable was a loan of £40,000, borrowed and expended for the construction of roads on the south shore of the *St. Lawrence*.

"It is also proved by the admission of facts filed in this suit, that since the separation of the trusts, no moneys levied and collected by the trustees of the south shore were ever employed to pay either the interest or the capital on the said sum of £40,000, and that payments of interest made on account of said sum were so made by means of tolls levied on the north shore roads.

"The effect of this legislation has been very disastrous to the bondholders of these two last mentioned sums. By the separation of the trusts they were first deprived of a part of the special fund which was created for the purpose of paying their loans, to wit, the tolls to be collected on the south shore, and then the north shore trust, being constituted in lieu of the old

trust, was declared to be liable for the loan of £40,000, which were expended for the construction of the south shore roads and in the interest of the south shore trust.

"It cannot be denied, that such legislation has caused great loss to the suppliants. The admission of facts filed in this suit proves it.

"But can damages or losses resulting from a law enunciated in clear, precise and unambiguous language be claimed by suppliants? Certainly not. And it is no doubt for this reason that the suppliants have not sought relief on this ground. Their contention is that the legislature, by abolishing, without their consent, a part of the special fund affected to the payment of their bonds, and by declaring to their detriment, that the north shore trust should pay £40,000 expended on the south shore roads, have substituted the government to the first commission, and have thereby contracted a promissory obligation to pay the total amount due. Thus we find the suppliants relying on a contract alleged to be implied from change of legislation, and not on a 'tort,' which can never arise from the passing of a law, nor consequently give a right of action for damages. I think it correct to say that the legislature, by passing this act, have virtually taken upon themselves to dispose of the turnpike trust as being their property, the trust being in reality the property of Her Majesty, as I trust I have before shown it. Had it been the property of the trustees, and not of Her Majesty, the government could not have disposed of it without violating a well known principle of legislation.

"The public benefit is deemed a sufficient consideration of a grant of corporate privileges; and hence, when a grant of such privileges is made (being in the nature of an executed contract) it cannot, in case of a private corporation which involves private rights, be revoked (1).

(1) Angell & Ames, p. 7, No. 13.

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"This act no doubt passed because the government considered itself, for the reasons I have before given, liable for the debt created by 16 *Vic.* ch. 235. If such was the case, the government has not changed its position. Then also, the provision contained in the fifth section above cited, for the reasons I have given, can be invoked in support of the contention that the province was responsible for the principal, but there is nothing in that section to show that it was the intention of the legislature to contract a new obligation, viz: the obligation to pay the interest, which they were previously exempted from paying. To gather such an intention, it would be necessary to find words which are not there. Such an interpretation would be in violation of the well known rule of law 'that nothing is to be added or taken from a statute' when you construe it. The change in this legislation cannot therefore be said to have implied a contract to pay the interest, as the statute itself contains an express provision as to interest, as I will show. By separating the 'old trust' into two commissions the 20 *Vic.* ch. 125 enacted that the previous acts applicable to turnpike roads would remain in force. The third section is as follows: 'And all the provisions of the ordinance and acts hereinbefore mentioned shall apply as they now do, except in so far as they are altered by or may be inconsistent with this act.'

"I cannot find anywhere that the following provision with respect to interest, which is contained in the seventh section of ch. 235, 16 *Vic.*, has been revoked, altered or modified: 'and no moneys shall be advanced out of the provincial funds for the payment of the said interest.'

"It is utterly impossible, with such clear and precise words before you, to contend that the government can be made liable for the interest. There is no room for construction in such a case as this.

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"When the language is free from doubt it best declares, without more, the intention of the law-giver, and is decisive of it. The legislature, in such a case, must be intended to mean what it has plainly expressed, and consequently there is no room for construction.

"The result of this legislation is, in my opinion, that the bondholders' position as to interest since the passing of 20 *Vic.*, ch. 125, remains exactly what it was after the passing of 16 *Vic.*, ch. 235, sec. 7, to wit: they cannot in law render the government liable for the interest. Nevertheless it cannot be denied, as I have before said, that the guarantee and sureties which these bondholders had on the tolls to be levied on the south shore roads have virtually been taken away, and that in this respect this legislation has interfered with their vested rights.

"However serious may be the pecuniary losses the bondholders will have to sustain in consequence of this legislation, it is quite out of my power to give them any relief. The law not being uncertain, my only duty is to administer it such as I find it. This point is so clear that it ought not to be necessary to cite any authorities, but as it will not add much to this already lengthy judgment, I will quote two or three of them.

"'Though vested rights are divested, and acts which were perfectly lawful when done are subsequently made unlawful by a statute, those who have to interpret the law must give effect to it. And they are bound to do this even when they suspect or conjecture that the language does not faithfully express what was the real intention of the legislature when it passed the act, or would have been its intention if the specific case had been proposed to it' (1).

"*Sedgwick* (2) argues that the judiciary have no right whatever to set aside, to avoid, or nullify a law passed

(1) Maxwell on Statutes, p. 5. (2) Stat. and Const. Law t p. 187.

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in relation to a subject within the scope of legislative authority on the ground that it conflicts with the notions of natural right, abstract justice, or sound morality.

"And *Kent* (3)—where it is said that if a statute is contrary to natural equity or reason, or repugnant, or impossible to be performed, the cases are understood to mean that the court is to give them a reasonable construction. They will not, out of respect and duty to the lawgiver, presume that every unjust or absurd consequence was within the contemplation of the law, but if it should be too palpable to meet with but one construction, there is no doubt in the English law of the efficacy of the statute.

"*Blackstone*—'If the parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to contest it, and the examples usually alleged in support of this sense of the rule, do none of them prove that where the main object of a statute is unreasonable, the judges are at liberty to reject it for that reason, for that were to assert the judicial power above that of the legislature.'

"For these reasons I am forced to reject the proposition propounded that the effect of the legislation of 20 *Vic.* ch. 125, was to create an obligation on the part of the government to pay any arrears of interest of the debentures issued under the authority of 16 *Vic.* ch. 235.

"In conclusion, I am of opinion that 'the *Quebec* turnpike trust,' as it was constituted at the time of the passing of the act 16 *Vic.* ch. 235, was a public corporation charged with the execution, in the interest of the public, of great works of improvement.

"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) Vol. 4., p. 247.

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"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 ordnance 4 *Vic.* ch. 17, they were declared to be the property of Her Majesty.

"That the said trustees in issuing, in conformity with the provisions of the act 16 *Vic.* ch. 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 who thereby become liable.

"That independently of the obligation contracted as above by the trustees, under the special provisions contained in the above acts, viz.: 4 *Vic.* ch. 17, 14 and 15 *Vic.* ch. 115, and 16 *Vic.* ch. 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.

"That the suppliants have suffered losses by the alterations made in the law by 20 *Vic.* ch. 125, but that the liability of the government remains what it was and cannot be increased in consequence of said alterations, and therefore under the section seven the government should be declared free from all liability as to interest.

"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*.

"And lastly, 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."

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A motion was made on behalf of Her Majesty for an order calling upon the suppliants to show cause why a new trial should not be granted, or a rehearing or a review of the cause directed, or why the judgment for the suppliants herein should not be set aside and a judgment entered for Her Majesty upon the evidence adduced at the trial upon the following grounds:—

1. Because it had not been proved that the late province of *Canada* was ever liable for the amount awarded the suppliants by the judgment in this cause.

2. Because the said judgment was based upon the ground that the trustees of the *Quebec* North Shore Turnpike Trust, when issuing the debentures, the amount whereof is claimed by the suppliants, were acting as agents of the government, and that the said late province of *Canada* was then liable for their acts.

3. Because the said trustees never were agents of the government of the said late province of *Canada*.

4. Because the said trustees never had any authority to pledge the credit of the said late province of *Canada* to the payment either of the principal or of the interest of the said debentures.

5. Because the judgment rendered in this case on the 24th December, 1879, should have dismissed the petition herein of the suppliants.

6. Because the said judgment was contrary to the evidence adduced.

The court rejected the motion, and thereupon an appeal was taken to the Supreme Court of *Canada*.

The case was argued in the Supreme Court by Mr. *Church*, Q. C., and Mr. *Langelier*, Q. C., on behalf of the crown, and by Mr. *Irvine*, Q.C., and Mr. *Dalton McCarthy*, Q. C., on behalf of the respondents.

The arguments, authorities and statutes relied upon are fully reviewed in the judgments of the court.

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So far back as the year 1796, an act, 36 *Geo.* 3, ch. 9, was passed in the then province of *Lower Canada* for making, repairing and altering the highways and bridges within that province. By this act it was provided that all the King's highways and public bridges should be made and repaired and kept up under the directions of the *grand voyer* of each and every district within the province, or his deputy: and the act provides that the occupiers of lands, whether proprietors or farmers, adjoining the King's highways called front roads, should make and keep in good repair the said highways and ditches upon the breadth of their said lands respectively, and also the bridges which are not declared by the *proces verbaux* of the *grand voyers*, or their deputies, to be such as ought to be kept in repair at the public expense. The act contained many provisions and regulations, but all were of a purely local character, and power was given to the justices, in their general quarter sessions of the peace, to hear, examine and determine matters and things relating to *proces verbaux*, that should be made in their districts; the subject of the care, management and regulation of highways being dealt with throughout the act as matter of local and municipal concern, the regulations as to the cities and parishes of *Quebec* and *Montreal* being dealt with in a different manner from the districts under the care of the *grand voyer*; but still as of a local and municipal character. This continued until the year 1841, when the governor of *Lower Canada* and special council, the then legislative authority of the province, under stat. 1 & 2 *Vic.*, chap. 9, and 2 & 3 *Vic*, chap. 53, passed a certain ordinance, entitled "An ordinance to provide for the improvement of certain roads in the neighbor-

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hood of and leading to the city of *Quebec* and to raise a fund for that purpose."

That ordinance proceeded to enact that all powers, authorities, jurisdiction and control over or with regard to the roads therein mentioned, or any of them, which then vested in any magistrate, *grand voyer*, overseer of roads, or road surveyor or other road officer, by the said act passed in the thirty-sixth year of the reign of His said late Majesty *George* the Third, hereinbefore mentioned, or by any other act or ordinance or law whatever, or in any district council, should cease and determine from and after the time when the trustees authorized to be named by the said ordinance should assume the management, charge and control of the said roads; and further, that it should be lawful for the governor of the said province of *Lower Canada*, by letters patent, under the great seal of the province, at any time after the passing of the said ordinance, to appoint not less than five nor more than nine persons to be trustees for the purpose of opening, making and keeping in repair the roads in the said ordinance specified, and for acquiring property and estate, moveable and immoveable, which being so acquired, should vest in her Majesty for the public use of the province.

Suppliants allege in section 23 of their petition, that by 16 *Vic.*, chap. 235, of province of *Canada*, the provisions of this ordinance of 1841 were extended to certain other roads, specifying them.

And by section 25, that the sum of £30,000 was authorized to be raised by way of loan, for which loan trustees issued debentures in the form prescribed by ordinance of 1841.

And by section 31, that the debentures so issued bore date between 22nd March, 1854, and 1st December, 1859, and fell due between the 2nd March, 1869, and 1st December, 1874.

And by section 32, that by said 16 *Vic.*, chap. 235, the provisions of the ordinance of 1841 were further extended to certain enumerated roads on the south shore of the *St. Lawrence.*

Section 33, that a further sum of £40,000 was by the said last mentioned act authorized to be raised for making, etc., these last mentioned roads on the south side, and trustees were empowered to issue debentures in the form prescribed by the ordinance of 1841.

And by section 34, allege that debentures were issued for £40,000, bearing date between 8th June, 1854, and 9th October, 1858, and fell due between 8th June, 1869, and 9th October, 1873.

Section 45, suppliants represent that they are *bonâ fide* holders of debentures issued for loan of £30,000, to the amount of £9,708 = $38,832 currency; and by section 46, that they are likewise *bonâ fide* holders of debentures issued for loan of £40,000, to the amount of £7,810 = $31,240 currency.

And by section 47 they further allege that these debentures having fallen due, no part of principal has been paid and the whole remains due, together with interest from 1st July, 1872.

And by section 48 suppliants allege that there was never any fund created for the payment at maturity of the said bonds and debentures, nor did there exist at any time in the hands of the said trustees (to wit the trustees of the *Quebec* turnpike roads, the *Quebec* north shore turnpike trustees and the *Quebec* south shore turnpike trustees) any fund whatever for the payment of the said bonds and debentures, nor does there exist now in the hands of the present trustees any fund or funds whatever for the payment of the same.

That the said bonds and debentures were debts and liabilities of the late province of *Canada*, at the time

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"The *British North America* Act 1867" came into force and the dominion of *Canada* came into existence.

That it is enacted by "The *British North America* Act 1867," as follows:

"Section 111.—*Canada* shall be liable for the debts and liabilities of each province existing at the union:" that all debts and liabilities of the province of *Canada* existing at the union, whether due in connection with the turnpike trust, or from any and every other cause, were thus imposed on her Majesty's government of *Canada* for payment, and the imperial legislation which nullified the legal and political existence of the suppliants' debtor, the province of *Canada*, created in their favor a new debtor in her Majesty's government of *Canada*; which sums, amounting to $70,072, they now seek to recover in this proceeding.

The trustees appointed under this ordinance were, in my opinion, constituted a *quasi*-municipal corporation, not to represent the crown or the province, nor to act as agents for either, but to discharge municipal functions in the improvement and care of certain local roads: and to enable them to accomplish this were clothed with power to raise money by means of debentures on a certain specified security, and so to perform duties which up to the time of their incorporation had been discharged by the *grand voyer* with funds or means raised directly from the inhabitants of the districts through which the roads passed; and though these trustees may be consideded in the light of a public corporation, it by no means follows that the holders of such debentures have therefore a claim on the crown or on the general revenues of the country for payment of either principal or interest on their debentures. Though a public corporation, these trustees can act only within the scope of their legislative authority; they can bind neither the crown, the legislature, nor the public

revenues, nor any person or fund beyond what the statute permits. To the contracts, as contained in the debentures and in the statutes authorizing their issue, must we look to discover the liabilities created and the fund or means which the legislature has provided for meeting such liabilities.

The question is not, have these suppliants in a moral or a political point of view a just and equitable claim on the province of *Quebec*, which should induce its legislature to make provision for indemnifying them for the money advanced, either by imposing the whole burthen on the whole province by granting the money from the general revenues of the province, or by authorizing a local assessment on the inhabitants of the districts more immediately benefited by the expenditure, and upon whom before the passing of the ordinance the legal burthen and liability rested, for the reparation and maintenance of the roads passing through their respective districts, either on the ground that the province or a part of it has practically received the benefit of the expenditure of the money so advanced, or on the ground that by subsequent legislation the security on which the loan was made was impaired, or on any other equitable ground which in *foro conscientiæ* ought to induce the legislature to protect or indemnify the suppliants, if the suppliants can make it appear that any such ground exists.

But the question we have to determine is simply and purely a legal one. Did these suppliants advance their money on the credit of the acts, and on the security of the tolls and means provided by the acts under the authority of which the debentures were issued, and rely on the funds and means so provided for their re-imbursement? or was there in addition thereto a statutory contract or obligation (for there certainly was no other duty when the money was advanced) between the

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debenture holders and the crown or government of the province of *Quebec*, that the government would guarantee the sufficiency and proper management and distribution of the funds and means provided by the act, and in the event of such funds and means proving inadequate, or by reason of mismanagement or dereliction of duty on the part of the trustees insufficient, that the crown or government would provide the money to make good any such deficiency? For the liability of the crown must, if the suppliants' contention is correct, be not only a liability to pay in the event of the tolls and revenues being themselves inadequate, but also should there be a misapplication of the tolls and revenues when collected, or a deficiency from a neglect to collect the tolls, or a loss of tolls by exemptions from payment of tolls contrary to express legislative provisions, or from other reasons; because, in this case, it appears there was a misapplication of some of the money and a neglect to enforce the payment of tolls by granting exemptions in direct defiance of legislation to the contrary, and neglect to collect from proprietors the amounts due and payable as provided by law; for we see that while by the ordinance the proprietors are required to commute by means of an annual sum, the book put in, to be used as evidence, states that it does not appear that this provision has ever been put into execution by the trustees. And again, by the 23 *Vic.* ch. 69, all exemptions are abolished, except funerals, but this same book says that the trustees have not acted on this statute, but have always acted as if this act had not been passed. By the same book £404 appears to have been misappropriated by the secretary of the trustees, and though judgment was obtained the book says no execution was ever issued or proceedings taken against his sureties. In other words, then, did the crown or government agree, in the event of the debentures not being paid at

maturity by the trustees, to pay and discharge them? Did the legislature pledge the crown or the general province for the liquidation of these debentures? Or did the legislature create a fund to which alone the debenture holders were to look for payment of their interest and ultimately for the repayment of the principal sums advanced?

To ascertain this we must in the first instance look to 1 and 2 *Vic.* ch. 9, and 2 and 3 *Vic.* ch. 53, for the authority of the Governor in Council, and to the ordinance of 4 *Vic.* ch. 17. By these acts it is provided, in 1 and 2 *Vic.* ch. 9, section 3, that it shall not be lawful by any such law or ordinance to impose any tax, duty, rate or impost, save only in so far as any tax, duty, rate or impost which at the passing of this act is payable within the province may be thereby continued.

By section 3 of the 2 and 3 *Vic.* ch. 53, so much of the 1 and 2 *Vic.* ch. 9 as provides that it shall not be lawful by any such law or ordinance as therein mentioned to impose any tax, duty, rate or impost, save only in so far as any tax, duty, rate or impost which at the passing of that act was payable within the said province of *Lower Canada*, or might be continued, shall be and the same is hereby repealed: Provided always, that it shall not be lawful for the said governor, with such advice and consent as aforesaid, to make any law or ordinance imposing or authorizing the imposition of any new tax, duty, rate or impost, except for carrying into effect local improvements within the said province of *Lower Canada*, or any district or other local division thereof, or for the establishment or maintenance of police or other objects of municipal government within any city, or town, or district, or other local division of the said province; provided also, that in every law or ordinance imposing or authorizing the imposition of any such new tax, duty, rate or impost, provision shall

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be made for the levying, receipt and appropriation thereof by such person or persons as shall be thereby appointed or designated for that purpose, but that no such new tax, rate, duty or impost shall be levied by, or made payable to the receiver-general, or any other public officer employed in the receipt of Her Majesty's ordinary revenue in the said province, nor shall any such law or ordinance as aforesaid provide for the appropriation of any such new tax, duty, rate or impost by the said governor, either with or without the advice of the executive council of the said province, or by the commissioners of Her Majesty's treasury, or by any other officer of the crown employed in the receipt of Her Majesty's ordinary revenue.

Here, then, we have the governor and council strictly limited to the imposition of charges for local and municipal purposes.

By the ordinance 4 *Vic.*, ch. 17, the governor was, as has been stated, authorized by letters patent to appoint not less than five nor more than nine persons, who, and their successors, should be trustees for the purpose of making and keeping in repair the roads thereinafter specified.

Section 3 provides that these trustees might sue and be sued by a certain name and take and hold property and estate.

By section 9 the roads to and over which the provisions of the ordinance and the powers of the trustees should extend are specified.

Section 10 provides for the trustees exacting and receiving tolls. Sections 13, 15 and 16 provide for certain exemptions from payment of tolls, and authorize trustees to commute.

Section 17 authorizes tolls to be let by auction.

Section 18 provides that the roads are to be under the exclusive control of the trustees; and the powers

of *grand voyer*, magistrates and road officers to cease, and that the tolls shall be applied exclusively to the purposes of the ordinance.

By section 19, parties bound by law to perform any labor on any of the said roads must commute by payment of an annual sum, with a proviso for compelling commutation; and then we have section 21, authorizing the trustees to raise money by loan. That section is in these words:—

And be it further ordained, etc., 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 monies which may come into the possession and be at the disposal of the said trustees under and by virtue of this ordinance, and not to be paid out of or be chargeable against the general revenue of this province, any sum or sums of money not exceeding in the whole twenty-five thousand pounds currency; and out of the monies so raised, as well as out of the monies which shall come into their hands, and which are not hereby directed to be applied solely to one special purpose, it shall be lawful for the said trustees to defray any expenses they are authorized to incur for the purposes of this ordinance.

And next sections 22 and 23 provide for the issue of debentures in these words:—

Section 22.—And be it further ordained, etc., that it shall be lawful for the said trustees to cause to be made out for such sum or sums of money as they may raise by loan as aforesaid, debentures in the form contained in the schedule A., to this ordinance annexed, redeemable at such time or times (subject to the provisions herein made) as the said trustees shall think most safe and convenient; which said debentures shall be signed in the manner above provided for in the written acts relating to the said trust and shall be transferable by delivery.

Section 23—And be it further ordained, etc., that such debentures shall respectively bear interest at the rate therein mentioned; and such interest shall be made payable semi-annually, and may, at the discretion of the trustees, and with the express approval and sanction of the governor of this province, and not otherwise, exceed the rate of six per centum per annum, any law to the contrary notwithstanding, and shall be the lowest rate at which the said sum or sums

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to be loaned on any such debentures, shall be offered or can be obtained by the said trustees; such interest to be paid out of the tolls upon the said roads, or out of any other monies at the disposal of the trustees for the purposes of this ordinance.

The form given of the debenture is as follows:—

Certificate No. .
Currency. } QUEBEC, 18 .

Certificate No. . We certify, that under the authority of the
Currency provincial ordinance of *Lower Canada*, passed
in the fourth year of Her Majesty's reign, and
Interest at per cent. intituled "An ordinance to provide for the im-
18 . provement of certain roads in the neighborhood
of and leading to the city of *Quebec*, and to
Interest on this cer- raise a fund for that purpose," there has been
tificate paid borrowed and received from the
sum of pounds currency, bearing interest
Jan. 18 Receipt No. . from the date hereof at the rate of per cent.
July per annum, payable half-yearly on the
Jan. 18 day of and on the day of
July which sum is re-imbursable to the said
Jan. 18 or bearer hereof on the day of
July in the manner provided for by the provincial
Jan. 18 ordinance aforesaid.
July Registered by .....
Jan. 18 ..... } Trustees.
.....

It is difficult to understand how any lender or holder of debentures issued under the authority of this ordinance could be in any doubt as to the credit and security on which he loaned his money, or as to the fund to which he was to look for re-imbursement of principal and interest; still less could he have any doubt that he was not to be paid out of, or that his loan was not to be chargeable against, the general revenues of the province, but that his money was to be re-imbursable to him, or to the bearer of his debentures, in the manner provided for by the said ordinance; and these provisions but carry out the intention of the legislature as expressed in the preamble, which recites that:

Whereas the state of the roads hereinafter mentioned, in the

neighborhood of and leading to the city of *Quebec* is such as to render their improvement an object of immediate and urgent necessity, and it is therefore expedient to provide means for effecting such improvement, and to create a fund for defraying the expense thereof and the expenses necessary for keeping the said roads in permanent repair.

And sections 26 and 27 seem to me to show very conclusively that the province was in no way involved in the transaction either as the principal, or as a surety, or guarantor, but that the legislature deals with the province as it would with an outsider wholly unconnected with the trustees, and in a manner wholly inconsistent with the relation of principal and agent which it is now put forward existed between the province and the trustees, wholly inconsistent with the idea of the government of the province being the borrower and liable for the repayment of the debentures. The sections are as follows:

Section 26.—And be it further ordained and enacted, that it shall be lawful for the governor for the time being, if he shall deem it expedient, at any time within three years from the passing of this ordinance, and not afterwards, to purchase for the public uses of this province, and from the said trustees, debentures to an amount not exceeding ten thousand pounds currency, and by warrant under his hand to authorize the receiver-general to pay to the said trustees, out of any unappropriated public monies in his hands, the sum secured by such debentures; 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, and being so paid, shall remain in the hands of the receiver-general, at the disposal of the legislative authority of the province for the time being.

Section 27 —And be it further ordained, &c., that if at any time it shall happen that the monies then in the hands of the said trustees shall be insufficient to enable the trustees to make any payment required or authorized to be made by this ordinance, all arrears of interest due on any debentures issued under the authority of this ordinance shall be paid by the said trustees before any part of the principal sum then due upon and secured by any such debenture

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shall be so paid; and if the deficiency be such that the funds then at the disposal of the trustees shall not be sufficient to pay such arrears of interest, it shall then be lawful for the governor for the time being, by warrant under his hand, to authorize the receiver-general to advance to the said trustees, out of any unappropriated monies in his hands, such sum of money as may, with the funds then at the disposal of the trustees, etc., be sufficient to pay such arrears of interest as aforesaid, and the amount so advanced shall be repaid by the said trustees to the receiver-general out of the sums to be commuted, levied and collected as aforesaid, and being so repaid, shall remain in the hands of the receiver-general at the disposal of the legislative authority of the province.

And sections 25 and 28 likewise show, I think, that the redemption of the debentures was to be by the trustees from the funds collected by them, and not by the government, nor from the provincial revenues.

These sections are as follows:

Section 25.—And be it further ordained, etc., that nothing herein contained shall prevent the said trustees from voluntarily redeeming any debentures, with the consent of the lawful holder thereof, at any time before such debentures shall be made redeemable, if the state of the funds of the said trustees shall be such as to warrant such redemption, and if the said trustees shall obtain the approval of the governor to such redemption.

Section 28.—And be it further ordained, etc., that over and above the sums which the said trustees are authorized by the preceding sections of this ordinance to raise by way of loan, it shall be lawful for the said trustees at any time, and as often as occasion may require, to raise in like manner such further sum or sums as may be necessary to enable them to pay off the principal of any loan which they have bound themselves to repay at any certain time, and which the funds in their hands, or which will probably be in their hands, at such time and applicable to such repayment, shall appear insufficient to enable them to repay; Provided always, that any sum or sums raised under the authority of this section shall be applied solely to the purpose herein mentioned; that no such sum shall be borrowed without the approval of the governor of this province, and that the whole sum due by the said trustees under the debentures then unredeemed and issued under the authority of this ordinance shall in no case exceed thirty-five thousand pounds currency; and all the provisions of this ordinance touching the terms on which any shall be borrowed under the authority thereof by the trustees, the

rate of interest payable thereon, the payment of such interest, the advance by the receiver-general of the sums necessary to enable the trustees to pay such interest, and the repayment of the sum so advanced, shall be extended to any sum or sums borrowed under the authority of this section.

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I think nothing can be much more apparent than that the money to be raised under this ordinance was to be solely on the credit and security of the tolls and monies which might come into the possession and be at the disposal of the trustees by virtue of the ordinance, and not to be repaid out of or chargeable against the general revenue of the province, that the government was not authorized by the said ordinance to, and could not by virtue thereof, legally raise a loan on the faith and credit of the government or province, nor to pledge in any way the public funds or property of the province for the repayment of any debentures issued thereunder.

If the language of these enactments does not establish this, I am at a loss to conceive language that could make it very much more clear. Looking, then, first at the ordinance, I think it is abundantly clear that the governor and council did not thereby intend to relieve the locality from the burthen of repairing and keeping in order the roads mentioned therein, or to cast the obligation on the province at large, but adopting the turnpike principle in operation in the mother country as affording the means of raising money for the improvement of the roads, as well as the permanent maintenance, simply transferred the management of the roads from the *grand voyer* to the trustees; and instead of continuing the system by which the proprietors of lands through which the roads passed were bound to keep them in repair, created a fund by imposing tolls on those who should use the roads and by commutation money to be payable by those who up to that time were obliged by law to repair or keep the roads in

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order, and so on the credit of those tolls and commutation moneys, to borrow for the purposes of the ordinance the moneys thereby authorized, taking care, however, from abundant caution, to declare that any money so borrowed was not to be payable out of the general revenues of the province, no doubt to prevent the possibility of any inference being drawn from the receiver-general being permitted to advance by way of loan to the trustees to pay interest, that the government were to be in any way liable or responsible for the principal; and that, so far as the borrowing and obtaining money was concerned, I think this ordinance was suggested by and based on the principles of the English turnpike acts. In *England* the trustees or commissioners were authorized to borrow on the credit of the tolls, and to mortgage the tolls as security to persons advancing the money, and the trustees pursuing the form of security prescribed by the statutes, were exonerated from personal liability, and the lenders left to the security of the tolls for their re-imbursement, a security of which, numerous cases on the books show, capitalists have constantly availed themselves. (See 39 *Geo.* 4, c. 126, sec. 81; 5 *Geo.* 4, c. 92, sec. 61; 7 and 8 *Geo.* 4, c. 24.)

Though from many cases to be found in the English books it is abundantly evident that frequently the revenues of turnpike roads have not only been unequal to the payment of the monies due on mortgage of the tolls, but also unequal to the maintenance of the roads, it has never, that I can discover, been contended that this cast on the government a duty to pay the one or repair the other; but to meet such cases without going into the particular legislation on the subject, it may be said generally, either the common law duty of repairing the roads has been invoked, or legislative provisions have been made, whereby, by assessment,

deficiencies have been made up, or failing the security of the tolls or revenues, toll mortgagees have been compelled to sustain the loss of a bad investment.

The cases of the *Queen* v. *White* (1) and *Reg.* v. *Trustees South Shields Turnpike Road* (2), and *Reg.* v. *Hutchinson* (3) afford illustrations of the course of legislation in *England* when tolls were not of themselves sufficient to defray both the expenses of keeping the road in repair, and that of paying interest and principal on monies due and owing on the credit of the Act, the legislative remedy being by assessment, or from local funds. I think the legislature acted on the principle, right or wrong, that the roads and the traffic over them afforded ample security for any money borrowed necessary for their improvement and maintenance, and that capitalists would be found ready and willing to advance, as in *England*, the necessary means on the security of the tolls and the means provided by the Act.

It has been urged that in *England* the turnpike corporations are generally private companies, while here the trustees are acting not for their own private advantage but for the benefit of the public, and therefore there is no analogy, but this does not, in my opinion, in the least affect the principle on which the money in both cases is to be raised, viz., on the security of the tolls and revenues of the roads, because there as well as here the turnpikes were public highways and the public there derived as much benefit from the expenditure of the money loaned as here.

A good deal of stress has been laid on sections 29 and 37, as indicating that the improving, care and maintenance of the roads under this ordinance was a public

(1) 4 Q. B. 101.
(2) 3 El. & B. 599.
(3) 28 L. & E. 282.

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work belonging to the province. The sections are these:

Section 29.—And be it further ordained, &c., that the due application of all public monies whereof the expenditure or receipt is authorized by the preceding sections, shall be accounted for to Her Majesty, her heirs and successors, through the Lords Commissioners of Her Majesty's treasury, for the time being, in such manner and form as Her Majesty, her heirs and successors, shall be pleased to direct.

Section 37. And be it further ordained and enacted that the said trustees shall lay detailed accounts of all monies by them received and expended under the authority of this ordinance supported by proper vouchers, and also detailed reports of all their doings and proceedings under the said authority, before such officer, at such times, and in such manner and form, and shall publish the same in such way, at the expense of the said trustees, as the governor shall be pleased to direct.

But this is no more than was required by the 36 *Geo.* 3, cap. 9, which enacts that all the King's highways and public bridges shall be made, repaired and kept up under the direction of the *grand voyer* of each and every district within the province, and which we have seen is an enactment containing provisions of a purely local and municipal character, and which imposes no burdens or liabilities whatever on the crown or government of the province. By section 74 it is enacted in these words:

And all monies arising by virtue of this act are hereby granted to His Majesty for the purposes hereinbefore mentioned, and the due application thereof accordingly (that is to say, to the repairs of the highways and bridges) shall be accounted for to His Majesty through the commissioners of His Majesty's treasury for the time being, in such manner and form as His Majesty, his heirs and successors, shall direct.

These provisions, then, 29 and 37 of the ordinance, were obviously not intended to, and did not, any more than the similar sections in the 36 *Geo.* 3, impose any pecuniary liability on the crown, or establish any contract between the crown and the debenture holders, or

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to take the turnpikes out of the category of municipal institutions, but they were, in my opinion, for the protection of the public interested in the proper expenditure of the money on the roads, and also for the security of the debenture holders to ensure, by a direct accountability to a proper authority, the faithful discharge by the trustees of their financial duties to the public and to the debenture holders.

Then, again, it has been urged that, as the property was vested in the crown by the ordinance, that created a contract, obligation, or duty to repay money borrowed, to be expended in acquiring or maintaining such property. Vesting the property in the crown was doubtless to indicate that the character of public highways was to be preserved. It is said in *Regina* v. *Lordimere* (1) "arguendo" that "in many of the local turnpike acts there is an express enactment that the roads, when made, shall be a public highway;" there was such a clause in the act in *Rex* v. *Netherton* (2).

But with whatever intent this was done, this of itself could create no liability to repay the sums loaned to these trustees, the ordinance and the debentures issued under its authority constituted the contract between the trustees and the lenders outside of which neither party as against the other, or as against any third party party, governmental or other, had, in my opinion, any claim.

Let us now examine the 16 *Vic.*, ch. 235, which was passed by the legislature established under the 3 and 4 *Vic.*, ch. 35, an act to re-unite the provinces of *Upper* and *Lower Canada* and for the government of *Canada*, and by authority of which the debentures now in question were issued, to ascertain whether they were placed on any other or different footing than those issued under the authority of the ordinance; to ascer-

(1) 15 Q. B. 692.

(2) 2 B. & Ald. 180.

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tain this it will be only necessary to refer to those sections having reference to the raising money by loan for the purposes of the act. Section 7 provides that:

In order to the making and completion of the several roads described and mentioned in the act passed during the last session of provincial parliament (14 and 15 *Vic.* ch. 132) and also to the improving and macadamizing of the roads hereinbefore menioned, and the making of the various improvements hereinabove mentioned, it shall be lawful for the said turnpike trustees to raise by loan, a sum not exceeding £30,000 currency, and this loan, 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: Provided nevertheless, that the rate of interest to be taken under this act shall in no case exceed the rate of 6 per centum, and no moneys shall be advanced out of the provincial funds for the payment of the said interest, and 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 and other monies which shall come into the possession and shall be at the disposal of the said trustees, in preference to the interest payable upon all debentures which shall have been issued under the provincial guarantee, and also to all other claims for the re-imbursement of any sums of money advanced or to be advanced to the said trustees by the receiver-general of this province, and the said debentures as respects the payment of the principal and interest thereof, shall rank after those issued under the act passed during the last session of the parliament of the province, and hereinbefore cited.

And be it enacted: That for the completion of the roads, bridges and improvements mentioned in the two next preceding sections, it shall be lawful for the said trustees to issue debentures to the amount of forty thousand pounds currency, which debentures shall be wholly subject to the provisions of the ordinance hereinbefore cited, shall take precedence of those issued under the provincial guarantee, and of the claim of the government, to be repaid out of the revenues of the said toll-gates, and shall take order and precedence and rank currently with those to be issued by and under the seventh section of this act.

Here we see that this act, so far as relates to the borrowing powers of the trustees, embodies the provisions of the ordinance and makes the debentures issued

expressly subject to the provisions of the ordinance, except that while in the ordinance permission was given the government to advance by way of loan to the trustees, to aid them in paying interest, in this act it is declared that no money shall be advanced out of the provincial funds for the payment of interest.

I do not think it at all necessary to inquire what debentures were here referred to as having been issued under the provincial guarantee, because, assuming the provincial guarantee to have been given to debentures theretofore issued, that guarantee would not attach to the debentures now in question without express legislative authority, and the fact that this act expressly takes away the right of the government to advance on account of interest, and gives these debentures priority over debentures issued under a provincial guarantee, and so clearly distinguishes between those issued under this act without a provincial guarantee and those that may have been issued under a provincial guarantee, without even referring to the clause of the ordinance declaring that the debentures shall not be payable out of the general revenues, shows as strongly as very well can be, that the legislature never intended that the crown or general revenues were to become liable for the repayment of these debentures. Thus we find that by the 16 *Vic.*, ch. 235, the loans authorized by that act and the debentures which shall be issued to effect the same, and all having reference to such loan, shall be subject to the provisions of the ordinance, except that the permissive authority to advance on account of interest is expressly taken away, "no monies shall be advanced out of the provincial funds for the payment of the said interest"; but so far as relates to the interest, the debentures are to have a privilege of priority of lien upon the tolls, in preference to the interest payable on debentures issued under the provincial guarantee and

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other claims for reimbursement of any sums advanced to the trustees by the receiver-general. As we have seen, the 4 *Vic.*, ch. 17 having allowed the receiver-general to advance out of the provincial funds money to pay arrears of interest, providing at the same time for its repayment by the trustees, as subsequent acts were passed, and loans and debentures made, subject to the provisions of the 4 *Vic*, ch. 17, we find that this assistance from the provincial funds is not to apply, and therefore 12 *Vic.* ch. 115, 14 and 15 *Vic.*, ch. 132, and the act under consideration, 16 *Vic.*, ch. 235, all provide that "no money shall be advanced out of the provincial funds for the payment of the said interest." It is asked, why was there no provision that no money should be advanced to pay the capital? The answer seems very obvious: for the very good reason that in the 4 *Vic.* the loan is made on the credit and payable out of the funds of the roads, and there is not one word authorizing the advance of a cent from the provincial funds on account of the principal, nor is there one word in that statute directly or indirectly implying a liability on the part of the crown or government to pay the principal or any portion of it. The ordinance which governs this loan expressly provides that it is not to be paid out of the general revenues, and so no necessity or reason for saying that the principal should not be advanced which was never authorized to be advanced; so that when the right to advance on account of interest was ignored the loans simply stood on the security of the act minus the provision for advancing on account of interest. But may it not be much more pertinently asked why, if the crown or government was legally bound to pay both principal and interest as a debt contracted by the agent, as now contended, what possible object could there be in giving the receiver-general a permissive power to advance by way of loan interest, when, if

what is now contended for is law, there was a legal obligatory duty growing out of the act to pay both principal and interest; and if the crown or government were legally bound to pay principal and interest, as on a loan contracted by duly authorized agents, upon what principle was it enacted that no monies shall be advanced out of the provincial funds for payment of interest, if the loan was to the government and for the public benefit? Surely the duty and obligation to see the interest paid was quite as great as to see the principal repaid; and if liable for principal and interest, why was there such a provision in the 4 *Vic.*, that any money so advanced for interest should be repaid by the trustees, the agents of the government, to their principals, and if there was really a loan to and a debt due by the crown, why was there a positive prohibition to its payment from the general revenue, and there being no other provision made for its liquidation, how could it possibly be paid by the government?

But the suppliants in their petition, section 55, subsection 14, say,

> The provision in the said ordinance that the loans should be made on the credit and security of the tolls to be imposed on the roads for the improvements of which such loans were contracted and should be payable out of the same and not out of or chargeable against the general revenue of the province, was one entirely in the interests of the lenders and was held out as an inducement to them to lend their money, which makes a contract obligation on the province of *Canada* to fulfil, of that highly obligatory character attaching to all promissory obligations, and created no exemptions of the general revenues of the province of *Canada* from liability for the repayment of such loans, except upon the double condition of the said province having created such adequate fund and supplying such fund, in fact, to the payment of such loans.

It passes my ability to comprehend and appreciate the propositions here put forward. Upon what principles can a statute, which enacts affirmatively that a loan shall be made on the credit and security of a par-

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ticular fund, such as the tolls to be imposed on the roads, and should be payable out of the same, and negatively that such loan shall not be payable out of or chargeable against the general revenue of the province, be construed into a contract obligation, binding on the province of *Canada*, to repay such loans in the event of such fund proving inadequate, and creating in such case no exemption of the general revenues of the province of *Canada* from liability for the repayment of such loans? In other words, to give to the language of the act a meaning the exact opposite of what the language used conveys, and while the legislature says in plain unambiguous language that the loan shall be made on the credit and security of one fund and payable thereout, and that such loan shall not be payable out of or chargeable on another fund, we are asked to say that the legislature intended thereby to say that it was to be chargeable on and payable out of both funds—failing one, then out of the other.

I am therefore of opinion that this, though a *quasi* public law, was not, under the ordinance, or the 16 *Vic.*, or both, a government loan for repayment of which either the general revenues of the country or the faith or credit of the government of the country were pledged, that is, it was in the nature of a municipal loan, for repayment of which a specific fund was provided, and to which fund the debenture holder was to look for repayment; that the debenture holders advanced their money on the bargain contained in the act 16 *Vic.*, ch. 235, incorporating the 4 *Vic.*, ch. 17; that they must be taken to have full notice of the provisions of those acts, and of the security those acts afforded those who purchased the debentures issued by virtue of their authority and under their provisions, and have no right to look to any other security than those acts provided.

If, then, there was no liability fixed on the crown by

the combined effect of the ordinance of 1841 and the 16 *Vic.*, ch. 235, has there been any subsequent legislation imposing on the crown a liability to discharge an indebtedness which was not incurred on the faith or credit of the crown, and for which it was not primarily liable, whereby the debenture holders (who, when the money was loaned, advanced it on the credit of the tolls and other resources of the road) became not only creditors on such tolls and resources but creditors of the crown, entitled to judgment against the crown in a proceeding such as this? After a most careful consideration of all that has been urged, and a most critical examination of all legislative and governmental acts, in connection with these turnpikes and the debentures issued in connection therewith, I am constrained to say that I have failed to discover one legislative enactment or one act creating such a liability.

My brother *Gwynne* has kindly permitted me to see the judgment he intends delivering in this case, and he has with so much labor and with such critical skill analysed the legislative and governmental action in connection with these turnpikes, and I so fully concur in the conclusions at which he has arrived in reference to them, that it would be worse than waste of time were I to refer at length to what he will, so much better than I could, say on the subject.

I will only very briefly notice one or two matters which have been put forward very prominently by the suppliants.

In section 43 they say: debentures issued for loans effected under the ordinance of 1841, amounting to £25,000 and the debentures issued under 7 *Vic*, ch 45, to the amount of £8,882, were paid at maturity by the province of *Canada* out of the general revenues of that province.

And in section 44—The province of *Canada*, about

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1850, paid out of its general revenues large sums to pay at maturity home district turnpike trust bonds and debentures, issued under acts of the province of *Upper Canada*, which bonds were not payable by or chargeable against the general revenues of *Upper Canada*, but out of the tolls levied on the same.

Section 57 of the 3 and 4 *Vic.*, ch. 35, provides that, subject to the charges on the consolidated revenue fund mentioned in the act, the said fund shall be appropriated by the legislature of the province of *Canada* for the public service in such manner as they shall think proper. Provided that all bills appropriating any part of the surplus of the said consolidated revenue fund, or for imposing any new tax or impost shall originate in the legislative assembly, and also that it shall not be lawful for the legislative assembly to originate or pass any vote, resolution or bill for the appropriation of any part of the surplus, or of any other tax or impost, to any purpose which shall not have been first recommended by a message of the governor to the assembly during the session in which such vote, resolution or bill shall be passed. From these enactments they claim to fix on the crown a liability to pay these debentures under the 16 *Vic.*, ch 235, and so it has been strongly urged that because the government paid the first loan under the 4 *Vic*, and the home district bonds, ergo, they became liable to pay this loan under the 16 *Vic.* This, to my mind, is a pure fallacy. The legislature in its wisdom or or its liberality continually grants money in aid of institutions and undertakings, public, local, or individual, but I know of no principle by which a simple grant of money to one object can be construed into a binding contract to pay other monies, because the parties seeking to set up such a contract are in a position similar to that of those who, by the grants made, benefited by the bounty of the legislature.

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But it has been much urged that the special fund provided for payment of these debentures having proved insufficient, the government was bound to increase the revenues of the special fund, or to have created another fund. It appears to me this is very easily answered: In the first place, where is any such obligation to be found? I can discover none, statutory or otherwise, and statutory to be obligatory, I think it must be; and in the second place, it was the legislature, not the crown or the government, that created the fund, a fund as I have observed, no doubt in estimation of the then legislature, adequate to the repayment of the loans authorized, and it is very clear the lenders must have thought it so or it cannot be supposed they would have invested their means on its security. If it has unfortunately proved insufficient, what power has the crown or the government to increase the revenues of the special fund beyond what the legislature has authorized, or what power has the crown or government to create another fund? This is all for legislative action.

It is also suggested that the legislature, in this act, having stated that the general revenues should not be charged with this debt, virtually declared that the legislature would provide other means to pay with than the general revenue, which is exempted. If this is so, it seems to me most effectually to put the suppliants out of this court, and requires them to resort for redress to the legislature, which alone can give it in such a case. It might be very just and right the legislature should consider the matter and should come to the aid of the debenture holders, but surely if they do not do so there is no legal liability cast on the crown or government, enforceable by petition of right, to provide, unsanctioned by the legislature, for the deficiency of this special fund. There can be no doubt that the investment, depending on repayment from tolls, was, to

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a certain extent, precarious; but the investor, on lending his money on such a security, assumed the risk, and, as stated in *Chatham Local Board* v. *Rochester Commissioners* (1), in *England* the character of such investments had then greatly changed owing to railways, by reason whereof, it is there said, turnpike tolls do not afford the security they did; but, as I have before stated, in *England*, when the tolls proved insufficient to pay either the interest or principal loaned on the security and to keep the roads in repair, the remedy was not by suing the Queen, but by seeking from the legislature further powers of increasing the tolls, or by calling on the parish or district to contribute. See 4 *Vic.*, ch. 35, 4 and 5 *Vic.*, ch. 59. So here, if the suppliants are to have any relief, the action of the legislature appears to me indispensable, and as was said in *Gibson* v. *East India* Co. (2), relief should be sought for by petition, memorial or remonstrance; not by action in a court of law. In that case it was held that the retiring pension of a military officer of the *East India* Company, granted by the company, but not by deed, did not, upon his bankruptcy, pass to his assignee, as it could not have been enforced by the officer against the company. *Tyndall*, C. J., says of the claim put forward:

> Although it may differ in some particulars from a grant of half-pay by the crown to the officers of the army or navy upon their retirement from actual service; yet it bears a much stronger analogy to it in the mode of its being granted and in the consequences attending it than to any contract. Now it is clear that no action could be supported against any one to recover the arrears of half-pay granted by the crown, unless the money has been specifically appropriated by the government and placed in the hands of the paymaster or agent to the account of the particular officer, and there is no ground on general principle to hold that an action could be maintained against any one unless under the same circumstances as the present case.

(1) L. R. 1 Q. B. 31.

(2) 4 B. & Ald. 273.

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He goes on to say:

> The grant in question, therefore, appears to us to range itself under that class of obligations which is described by jurists as imperfect obligations, obligations which want the *vinculum juris*, although binding in moral equity and conscience, to be a grant which the *East India* Company, as governors, are bound in *foro conscientiæ* to make good, but of which the performance is to be sought for by petition, memorial or remonstrance, not by action in a court of law.

I am therefore of opinion that the relief sought cannot be granted, and that the appeal should be allowed and petition dismissed.

FOURNIER, J. adhered to the judgment delivered by him in the Court below.

HENRY, J.:

I have not thought it necessary in view of the very exhaustive and elaborate judgment of my brother *Fournier* and that of my brother *Taschereau*, which I have had the advantage of seeing, to write out a judgment in this case, and thereby add uselessly to the volume of our reports. I entirely concur in the judgment to be delivered by my brother *Taschereau* on this appeal, except as to interest, for the provision in the 16 *Vic.*, ch. 235, has certainly exempted the province from any liability as to interest, but as to principal I entertain the same views as my brothers *Fournier* and *Taschereau*. It is said the roads were under municipal control and that the act created a quasi-municipal corporation, but by the Act 4 *Vic.*, ch. 17, I find that the policy of the government as to these roads was entirely changed. The municipal control which previously existed is taken away and the legislature declares that the government shall take entire control of the roads, and the property, toll houses, the stock and implements, &c., &c., are all vested in the Crown. Here the officers are appointed by the government and

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no municipal officer or bondholder had any control over them. This is certainly very different from the turnpike roads in *England*, where although, as said by the Chief Justice, the roads are declared to be public highways, if the officers appointed did not fulfil their duties, the bondholders had some remedy. I have also ascertained that the loan in question has been acknowledged by the legislature as a public debt, as they had power to do.

Moreover, I find that the government have actually paid previous loans made under the same authority, and having paid them authorized its officers to effect the present loan. If we were to hold now that this is not a public debt, it would be declaring that the government had been guilty of a moral fraud. Then also we are told that the loan is secured by tolls, &c., but it has been decided that a bondholder cannot levy against Her Majesty's property, and surely if a party gives a mortgage, he is nevertheless answerable for the principal. True, the legislature has said that payment of this loan would not come out of the general revenue, but if the liability exists, it still throws upon the government the obligation of providing other means for the payment thereof.

Under all these circumstances I think the suppliants are entitled to the judgment of this court for the principal of the overdue debentures, with interest from the date of the fyling of their petition of right.

TASCHEREAU, J.:

By their petition of right before the Exchequer Court, the respondents alleged:—

That 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 neighborhood of the city of *Quebec*—and a further sum of £40,000 for the improvement of

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like highways on the south shore of the river *St. Lawrence* – that there were issued debentures for both of the said loans, signed by the *Quebec* turnpike road trustees, under the authority of an act of the parliament of the province of *Canada*, passed in the sixteenth 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"—that the moneys so borrowed came into the hands of Her Majesty, and were expended in the improvement of the highways in the said act mentioned—that no tolls or rates were ever imposed or levied on persons passing over the roads improved by means of said loan of £30,000—that the tolls imposed and collected on the highways improved by means of the said loan of £40,000 were never applied to the payment of the debentures issued for the said last mentioned loan in interest or principal—that the trustees accounted to Her Majesty, as well for the said loans as for the tolls collected by them—that at no time had there been a fund in the hands of the said trustees adequate to the payment, in interest and principal, of the debentures issued for said loans – that the respondents are holders of debentures for both of the said loans to an amount of $70,072, upon which interest is due from the 1st day of July, 1872—that the debentures so held by them fell due after the union, and that Her Majesty is liable for the same under 111 sec. of *British North America* Act, 1867, as debts of the late province of *Canada* existing at the union.

Wherefore they demanded the payment of the said sum of $70,072 with interest from the 1st day of July, 1872.

The attorney general, for Her Majesty, by his plea to the said petition of right, denied that the act of the said trustees, when issuing the debentures sought to be

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recovered from Her Majesty by the respondents, was the act of the late province of *Canada*, or that the monies obtained from the respondents had been so obtained for and in the name of the said province, and that there never was any undertaking from the said late province of *Canada* to pay the whole or any part of the debentures sought to be now recovered by the respondents.

It is admitted that under the one hundred and eleventh section of the *B. N. A.* Act, the Dominion of *Canada* is liable for the payment of these debentures, if the late province of *Canada* was responsible for them, and the case is to be considered as being against the said province as constituted before confederation. The question to be determined is, in what capacity did the said trustees act when they issued the said debentures. Were they acting for the province or for a private corporation, and was there any undertaking on the part of the said province to pay the said debentures? At the hearing it struck me that there was a misjoinder of the suppliants in this case, and that they could not, as they have done, being each of them, without any relation whatsoever to the others, holder,individually and for his sole benefit, of debentures, join in one action for the recovery thereof; not more than four different persons holding promissory notes against a fifth, could join in one action for the recovery of these notes. However, no objection on this ground seems to have been taken on the part of the defense. On the contrary, we were told at the hearing by both parties, that any irregularity of this kind in the record was to be considered as waived so as to have a decision on the merits of the contestation between the parties.

It has been contended on the part of the respondents that the trustees under 4 *Vic.*, ch. 17, do not constitute a body in the nature of a corporation. This contention

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has not been sustained by the Exchequer Court, and rightly so, in my opinion.

The words "corporation" or "incorporated," it is true, are not used in the statute, but no precise form of words is necessary for the creation of a corporation, and the assent of the legislative power to grant an incorporation may be given constructively or presumptively.

Aldridge vs. *Cats* (1); *Conservators of River Tone* vs. *Ash* (2); *Dean* vs. *Davis* (3); *Angell & Ames on Corporations* (4). In *Standley* vs. *Perry* (5), the commissioners of the *Cobourg* town trust were held by this court to have been duly incorporated by the Act 22 *Vic.*, ch. 72, though this statute did not, in express words, enact it.

Here it is still clearer that the intention of the Act, 4 *Vic*, ch. 17, was to incorporate the said *Quebec* Turnpike Road Trustees. But are they a private corporation? Undoubtedly no. This has been so conclusively demonstrated by Mr. Justice *Fournier* in the Exchequer Court, that I deem it unnecessary to dwell on this point at any length. The *Quebec* Turnpike Roads Trustees are a *quasi* corporation only, what I might call a state corporation. They have no interest whatsoever in the undertaking authorized and ordered by the act. They are not only officers of the body created, but they are the only members of this body. They and they alone constitute it in its entirety. They cannot own any property, real or personal; everything they acquire belongs to the crown. It is crown property that they have to administer and crown property alone that they control. This 4 *Vic.*, ch. 17 which creates them is clear on this. A reference to two statutes of the very same year, 1841 (4 *Vic.*, chs. 11 and 22), shows the difference between a private turnpike road corporation and the *quasi* corporation of the *Quebec* turnpike roads created

(1) L. R. 4 P. C. 413.
(2) 10 Barn. & C. 349.
(3) 51 Cal. 406.
(4) Pps. 76, 77, 78, 80.
(5) 3 Can. Sup. Court R. 356.

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by the 4 *Vic.*, ch 17. By these two first statutes (4 *Vic.*, chs. 11 and 22) companies are incorporated for the construction of turnpike roads, from the river *Richelieu* to *Granby*, and from *Montreal* to a neighboring parish. And it is precisely because no such company was forthcoming to macadamize the *Quebec* roads, that the legislative authority had to intervene and take upon itself, for the common weal, to order, as a part of the public works of the country, the construction of those roads. The very preamble of the ordinances establishes this proposition. It cannot be taken as having been enacted in the interest of the landholders of the vicinity for they pay the tolls as the rest of the public when they use these roads, and those bound before this act to perform any labor on any of these roads, have (sec. 19) to pay an annual sum in commutation of such obligation. In their report, filed in this case, the commissioners appointed in 1876 to inquire into the affairs of this trust, state that it does not appear that these commutation moneys were ever levied. This is an error. In statements Nos. 3 and 7, appendix AA, for 1850, and in appendix G for 1852-53, and appendix I for 1854-55, the trustees, in their accounts to the government, acknowledge having received such commutation from a number of persons. However, this is immaterial, the law ordered this commutation, and if the trustees did not do their duty in the matter the crown would be estopped from invoking its own officers' dereliction of duty. But, moreover, this is not put in issue by the crown on this record. There is no plea that the suppliants would have been paid if the trustees had strictly obeyed the law. It is the state then which assumed the burthen of making these roads and of creating a fund for that purpose. When in 8 *Vic.*, ch. 55, sec. 4, for instance, the purchase of the *Dorchester* bridge, by these trustees, is mentioned, it is called a purchase by the provincial government.

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It is the state which, through the instrumentality of the body created by the act and by and through its administrators, issued the debentures authorized by the act. The very form of these debentures shows this. Debentures issued by incorporated companies in their name are and have always been in an entirely different form. It is the state which borrowed, from the purchasers of these debentures, the moneys necessary to form the fund required for the purposes of the act, a special fund certainly, but a fund belonging to the state; a fund to be employed as directed by the act certainly, but always in the name of and for the state, acting through its own officers, through its own agent, this *quasi* corporation, through its own trustees. It is upon the state's property that the £25,000 borrowed from the debenture holders were expended, and it is the state which benefited from this expenditure. A contrary interpretation has been suggested on the part of Her Majesty, but the act itself says so in clear terms. It enacts in so many words that all property whatsoever, moveable or immoveable, in the hands of the said trustees, shall be vested in Her Majesty for the public uses of the province. That the tolls to be levied are included in this enactment admits of no doubt, and is made still clearer by the preamble of 12 *Vic.*, ch. 115. The ordinance adds, it is true, that such property "shall be subject to the management of the said trustees for the purposes of this ordinance;" but may I ask if, after paying these debentures and making all the works ordered by the act, a surplus had remained in the trustees' hands, would not this surplus, would not the surplus of the tolls every year, have belonged to the crown and formed part of the public revenue of the country? May I ask also, could this corporation make an assignment under the bankruptcy laws, or could it be forced into bankruptcy?

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I find two state corporations of the same kind created by our statutes.

By the 7 *Vic.* ch. 11, "the principal officers of Her Majesty's Ordinance" are incorporated, authorized to sue and to be sued, and *to hold in trust for Her Majesty* all Her Majesty's property connected with the defence of the country.

By the 14 and 15 *Vic.* ch. 67, the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland are in the same manner created a *quasi* corporation, empowered to sue and be sued, and authorized to hold *in trust for Her Majesty* the property therein described.

Under these statutes which are in fact mere re-enactments, for this country, of Imperial statutes to the same effect, the bodies thereby created, can, as the *Quebec* Turnpike Road Trustees, sue and be sued, but everything in their possession, as also in the trustees' possession, is vested in Her Majesty. A judgment can be obtained, but it cannot be executed against the board of ordinance or against the Commissioners for executing the office of Lord High Admiral. So it was held by the Superior Court of *Quebec* for the Turnpike Road Trustees in *Anderson* v. *The Quebec North Shore Turnpike Roads* (1). The plaintiff, in that case, having obtained judgment against the trustees, seized in the hands of the *Quebec* Bank a sum of $5,386.74 which stood there deposited in their name. The trustees contested the validity of this seizure, on the ground that this sum of money, though deposited by them, belonged to Her Majesty, under the 4 *Vic.* The plaintiff demurred to this contestation, but the court held that this seizure was null, as these moneys and all property whatsoever in the hands of these trustees belong to Her Majesty.

(1) 14 L. C. R. 90.

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So was in *England*, the property vested in the board of ordinance by the statute incorporating it, of which I have spoken, declared to continue to be the crown's property, *Doe, Leigh* v. *Roe* (1). In its various clauses and enactments, this ordinance of 1841 demonstrates conclusively that such is the case, for the property under the control of the trustees.

A reference to the preamble of the 16 *Vic.* ch. 235 itself, under which the debentures here claimed were issued, demonstrates that the legislature considered these roads as public works and the trustees as government officers. It reads thus : "Whereas it is expedient * * * to make further improvements in the vicinity of *Quebec through the trustees* of the turnpike roads established under the said ordinance 4 *Vic.*" Is this language used in the statute book, when the legislature gives additional powers to a private company? Certainly not. These improvements that the legislature desires and declares to be expedient, are to be made *through the* trustees ; but by whom and for whom? This preamble does not say in express terms, but I read it as meaning by and for the government, by and for the province through its officers, the said trustees to whom has been given the form of a corporation that they might the more effectually discharge their appointed duties, but, in the performance of these duties, always acting in the name of and for the province.

Now, if it is the province which borrowed these moneys, it follows, as a matter of course, that the province is obliged to re-imburse them. By the very fact of borrowing, the borrower obliges himself to refund. No express undertaking is required, there is an implied promise to pay. These debenture holders lent money to the province. To the province they look for pay-

(1) 8 M. & W. 579.

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ment. They had a right to expect an immediate re-imbursement. But such is not the case. Since 1872 they have not received a single cent of interest on these loans, and now that the capital is due and overdue, they are refused both. But how are they met? Upon what grounds is it contended that he who borrows has not to re-imburse? Upon a plea of payment? No! Of prescription? No! Of set off? No! But upon the most extraordinary contention that the state did not guarantee the repayment of this loan! That the borrower did not guarantee the repayment of this loan! That the borrower did not guarantee the payment of the money lent to him!

But since when is it necessary for the borrower to guarantee the re-imbursement of the loan made to him? Is it not the very essence of this contract that the borrower must re-imburse the lender? Certainly, a stipulation in a private contract that the borrower would not be in any way personally liable for the moneys lent, and that the only recourse of the lender would be against a certain security given, would be lawful; as also, in the case submitted, it would have been in the power of the legislative authority to enact that the province would never be liable for the payment of these debentures, or that they were to be issued without any guarantee whatsoever on the part of the province. But a stipulation, in a private contract, of such a novel, unusual, and I might say startling character, would require to be couched in very clear terms to be sanctioned by a court of justice. And on the same principle, if in this statute the state wants the court to find that it was empowered to borrow upon the condition that it should never repay, I take it that it is incumbent upon its representatives to show a very clear and unambiguous text to that effect, and that the court will not by interpretation or implication find

such an enactment if it does not appear upon the face of the statute itself, in so many words. Now, no such enactment can be found in the 4 *Vic* ch. 17, or the 16 *Vic.* ch. 235. And it is no doubt by inadvertence that in the third paragraph of the plea filed in this case on the part of Her Majesty, it is alleged that the Act 16 *Vic.* ch. 235 contains such an enactment as to the principal of these debentures.

There is not a word in this statute. The only words therein having reference to the nature of the debentures are as follows:

Section 7: 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.

Now the ordinance here referred to is the 4 *Vic.* ch. 17, and the only words therein upon which the state could perhaps contend that it was authorized to borrow and relieved at the same time of the obligation of refunding, are in the 21st section, to the effect that the trustees are authorized "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 possession 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 twenty-five thousand pounds currency."

On the part of Her Majesty it was alleged in the plea on the record and argued before us that the words "on the credit and security of the tolls" means on the sole credit and security of the tolls. I do not see how this contention can be sustained, for the simple reason that the word "sole" is not in the statute. Upon what principle could we so make an Act of Parliament say what it does not say? If a private individual is

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said to borrow money on the credit and security of the indorser, for instance, is it meant by this that the lender renounces to his recourse against the borrower personally? Surely not! Can such a renunciation be ever presumed? Is it not the obligation on the borrower to refund that is on the contrary to be presumed. As I have remarked before, a special promise to refund is unnecessary in this contract. By the acknowledgment of a loan, there is an implied promise by the borrower to refund

As to the enactment that this loan was not to be paid out or chargeable against the general revenue of the province, I have very little to add to what Mr. Justice *Fournier*, in the Exchequer Court, has said on this part of the case. The province, by the very preamble of the act, assumes the obligation to make these roads and to create a fund for that purpose. It borrows money so to create this special fund, and says to the lenders "you shall be paid out of this special fund and not out of the general revenue of the Province." But they are not and cannot be paid out of this special fund; does it follow that they will not be paid at all? Does it follow that because a pledge or security given for the payment of a debt proves to be worthless or insufficient to pay the debt the debtor is relieved from all personal liability? I take it that the fair and reasonable construction to be put on these words is:—1st, that as the debentures to be issued were to be redeemable only at a remote period, the contingent liability of the province was not to appear, and the amount of these debentures was not to be considered before they matured, as a debt of the province, and 2nd, that it was enacted they were not to be paid out of the general revenue of the province, because it was taken for granted that they would be paid out of the special fund. The contingency of the

special fund proving worthless was not provided for. It may be that a finance minister, with these words on the statute book, could not pay the amount of these debentures without a special authorization of parliament, and that he could not, without such authorization, fill up a deficiency in a special fund from the proceeds of the general fund. But this is a matter of administration with which the suppliants have nothing to do. The fact that by the statute which authorizes the loan, parliament did not then provide for the repayment of this loan, in case the special fund created thereby should turn out to be inadequate for that purpose, may so put the executive under the necessity to get an appropriation from the parliament to make this payment, but surely does and cannot relieve the state from the obligation of repaying that loan.

If there was any doubt on the construction of these words of this said 21st clause of the ordinance, it seems to me that the lender, not the borrower, should have the benefit of it, and that the presumption in such a case is altogether against the borrower. But whatever doubts there might arise in this case at the reading of this clause by itself, are entirely removed by the interpretation of it given later, by the legislative and administrative authorities of the province itself.

By the Act 12 *Vic.*, ch. 5, intituled: "An act for the better management of the public debt, accounts, revenue and property," it is ordered, "that whereas it is expedient to make better provision for the management of the public debt of this province, it shall be lawful for the Governor in Council to redeem or purchase on account of the province all or any of the outstanding debentures constituting the public debt of the Province of *Canada*, or all or any of the debentures issued by Commissioners or other public officers, under the authority of the Legislature of *Canada* or of the late

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Province of *Canada*, the interest or principal of which debentures is made a charge on the consolidated revenue fund of the province."

Now, under this act the government has paid (see public accounts for 1853, No. 41, under heading "statement of debentures, redeemed under authority of 12 *Vic.*, ch. 5") £33,882 for the redemption of the debentures issued under this 4 *Vic.*, ch. 17 and the 8 *Vic.*, ch. 55. And though (document No. 47 of 1852 and No. 43 of 1853 public accounts) special statements are given of the debentures for which the government is only partially liable, or is liable for the interest thereof only, the *Quebec* Turnpike debentures are not included in these statements. Now, if it had been considered that the government was liable for the interest only on those debentures, they would certainly have been so therein included. On the contrary, in document 44 (public accounts) for 1852, all the payments made according to No. 45 thereof, including £11,790 then paid for, the *Quebec* Turnpike Trust debentures are given as made under the 12 *Vic.*, ch. 5, which relates to the public debt of the province and as effected for the construction of public works Is not that acknowledging that these roads are public works? Is not that acknowledging as expressly as possible that these debentures formed part of the public debt?

Now, in the public accounts for 1854 and those for 1855 there is something showing yet more clearly that the government always considered these roads as public works and these debentures as a provincial debt.

I have just said that by the public accounts of 1853 the sum of £33,882 was charged as paid by the province for redeeming the debentures in question. Now, if we refer to the public accounts for the year 1854, page 6, (and the debentures held by the suppliants were to a large amount thereof issued subsequently to this), and

to the public accounts for the year 1855, statement No. 2, page 6, it will be seen first that nowhere is the province credited (or ever was at any time subsequently credited) for that sum as a creditor of the turnpike trust: and this shows that the payment of these debentures was not made as a loan to the trustees, but entirely as a payment by the province of one of its own debts. Statements are to be found in the documents referred to, headed "Loans to incorporated companies." If the contention on the part of Her Majesty was correct, surely this sum of £33,882 which had then been paid by the government for these debentures, would be found in these statements But not a word of it is to be found therein. Was it an omission? Clearly not, for in the very same statement we find this very same sum accounted for, or charged, and under what heading? Under the heading "Provincial Works, *Quebec* Turnpike Trust £33,882," in the same list and category as the St. Lawrence Canals, the Welland Canal, the Provincial Penitentiary and such other works and institutions, the character of which cannot be questioned. And in document 40 (public accounts for 1853), headed "A statement showing the amount of legislative grants towards the construction of public works, and of the outstanding debentures issued under the several acts of appropriation on account thereof," (viz., on account of the legislative grants towards the construction of public works), *Quebec* road trust debentures to the amount of £22,092, paid in 1853, as per statement No. 41 of the said public accounts, are included

It has been contended on the part of Her Majesty that those debentures were so paid by the province under the 12 *Vic.*, ch. 5, simply because the interest, and the interest only, thereof was, under the clause of the ordinance which authorized the government to

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advance it to the trustees, a charge on the consolidated revenue fund of the province.

But 1st, this interest was not a charge on the consolidated revenue of the country by this clause of the 4 *Vic.*, which simply authorized a loan for the payment thereof by the government and at its discretion, to the trustees, a loan from the unappropriated funds of the country to a special fund, a loan which undoubtedly the government would have ceased to make, if these debentures had not been its own debt, when those trustees found themselves in the impossibility to refund the advances previously made.

2nd. If the government had been liable for the interest only of these debentures, they would have been included in the statements, Nos. 47 of 1852 and 43 of 1853, of the public accounts for those years, headed "A statement of debentures for which the government are partially liable," and under which are included debentures for the interest of which only the government is liable; and they are not so included.

3rd. If the government had not been liable for the principal of these debentures, when it paid it in 1854 it would have included it in the statements of 1854 and 1855, headed "Loans to incorporated companies;" and it is not so included.

4th. The government, if the contention on this point on the part of Her Majesty was correct, would not have included the capital of these debentures in their statements of the public accounts of 1854 and 1855 as paid for one of the public works of the country, crediting the country for the amount thereof as an asset, because these roads, the property of the country, on which this amount had been expended, were to that amount increased in value.

It has been said that those *Quebec* roads were local works, and that we cannot presume that the province

intended so to benefit a particular locality at the expense of the public chest. But a reference to the statute book and the public accounts of that period will show that, at that time, the construction of local works of that nature by the province was not an unusual thing. In 1841, for instance, I find that the legislature voted fifteen thousand pounds to macadamize the road between the *Cascades* and the province line, forty-five thousand pounds to macadamize the roads in the district of *Brantford*, and thirty thousand pounds for a road from *Hamilton* to *Port Dover*.

In the public accounts of 1853, for another instance, I find the home district roads, the *Chambly* roads, the *Montreal* roads, the *Hamilton* and *Brantford* roads, the *Queenston* and *Grimsby* road, the *Kingston* and *Napanee* road, the *York* roads, the *Yonge* street roads, paid for in whole or in part by the provincial government; yet all of them were clearly local works.

But I find in the statute book additional evidence that the legislature did not enact, and cannot be interpreted to have enacted, that the province would never be liable for the amount of these debentures.

By the 14 and 15 *Vic.*, ch. 133 (1851), these trustees are authorized to purchase the *Montmorency* bridge, and for the payment thereof to issue debentures, but for these debentures the legislature did not want the province to be responsible. Undoubtedly because this bridge was of such a well established value that it was taken as a certainty that the said debentures would be easily negociated without such guarantee. How for that purpose was this statute framed? Does it say that these debentures and the loan made thereby will be subject to the provisions of the ordinance, 4 *Vic.*? No such words as these are to be found here, and undoubtedly because they would, in the mind of the law giver, have rendered the province liable. But it enacts in

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express terms that "neither the principal or interest of the debentures to be issued under this act, shall be guaranteed by the province or payable out of any provincial funds." Now, when we see this proviso struck out in the very next statute, passed by the same legislature in relation to these turnpike roads, and this only two years later, (the 16 *Vic.*, ch. 235, under which the suppliants hold the debentures in question here) and replaced by one, saying that the loan will be ruled by the provisions of the 4 *Vic.*, have we not clear and unmistakable evidence that the legislature did not intend that these last debentures should not be guaranteed or paid by the province? If this had been intended, would they not have said so in the same clear and express terms of the preceding statute?

Here is a statute saying in so many words that the province will not be liable, and another and the very next one, on the same subject, in which these words are struck out. Surely the fair and reasonable construction is that these words were left out, because under this one the province was to be liable, if the special fund turned out to be unable to pay these debentures. In 1851 the legislature says debentures shall be issued, but neither capital or interest shall be guaranteed by the province; in 1853 it says: "debentures shall be issued, but these debentures will be ruled by the provisions of 4 *Vic.*" It seems to me that the legislature here purposely made a distinction, so as not to exempt the province, the special fund being insufficient from paying the debentures of 1853, as it had done for the debentures of 1851. Otherwise it would have said so in the same terms, and this, I apprehend, the legislature did for the best possible reason. It is evident that the sale of a single one of these new debentures of 1853 would have been utterly impossible if the legislature had enacted that the province would not at all be

liable for them. If we consider the circumstances under which the debentures previously issued through these trustees were paid at their maturity by the province, and if we compare the date of this statute 16 *Vic.*, ch. 235, under which the suppliants base their claims against the crown, with this payment, we find why the legislature did not enact that the new debentures of 1853 would not be guaranteed by the province, and why the province did pay the old debentures. In 1853 (public accounts of 1853, statement No. 41) a sum of £22,092 was due to the holders of matured debentures issued under the ordinance and the 8th *Vic.*, ch. 55. In the same year the legislature, by this 16 *Vic.*, ch. 235, authorizes the issue of £70,000 more of debentures through the said trust. Now how would these £70,000 of debentures have been received on the money market, if the government had repudiated the payment of the £22,092 then overdue by this trust? How could it have been expected that this trust could, on its own credit, obtain a loan of £70,000, when it had at this very time £22,092 of debentures overdue and unpaid, when, in fact, as a special fund, it was and had always been, utterly insolvent? For, though a priority over the claims of the province is given by the act to the new debentures, this priority, in the very words of sec. 7 is only for the interest payable on the said debentures and not for the capital thereof, and there were then on the market, besides the amounts issued under the ordinance and the 8 *Vic.*, £45,000 of debentures not yet matured issued by the trust under the 12 *Vic.*, ch. 115, and the 14 and 15 *Vic.*, ch. 132 and 133. Can we not presume—nay, even take as a certainty—that, if the government had not, before these new debentures were put on the market, paid the old debentures then matured, the sale of a single one of these new debentures would have been absolutely impossible. Who would

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have lent money to an insolvent special fund on the guarantee of that fund alone? To obviate this and to secure the new loan, the legislature strikes out from this statute the enactment that the province would not be liable for the new debentures, which was inserted in the very next preceding statute on the same subject, and the government pay in the very same year the old debentures: they pay these £22,092 overdue, making, with what they had paid previously, £33,882 paid for the redemption of the debentures of this trust. They thus admit the state's responsibility for the debts of this trust, and by so doing secure the new loan and the sale of the new debentures. And they make this payment, not as a loan to this trust, not as if this trust was anything but itself a department of state, but as the province's own debt, as a payment done in the ordinary course of the government business, for provincial public works; as appears by statement No. 2 of the public accounts of 1855, to which I have already referred, headed "A statement of the affairs of the province of *Canada*." They could not have made a loan or a payment, still less a gratuity, to a private corporation without the authority of the legislature, but for this authority they did not ask a special act, they found it in the 4 *Vic.* itself. They come before the legislature, they lay before them a statement of this transaction, and of these payments made in this manner. The Legislature ratifies and sanctions them, not only tacitly, but also as expressly as possible, by voting the supplies and the moneys required for the service of the country, according to this statement of its executive department. Were not the suppliants induced, under these circumstances, to lend their monies by the fact that the province having been responsible for the anterior loans would be so for the new loans, declared in express terms by the 16 *Vic.*, authorizing the new loan,

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to be ruled by the provisions of the ordinance authorizing the old loan. It is a well settled rule of law, that he who holds himself responsible towards the world for the debts of another person cannot later repudiate the debts of this other person, without some notification of his intention not to be any longer so responsible. This principle must rule the governments in their dealing with the individuals, as well as the individuals themselves. Here the case is stronger against the Government, as they paid these old debentures, not as the debt of another, but as their own debt and debentures. In fact it appears to me that, under these circumstances, not only was not this new loan obtained on the sole credit of this trust, but that it was, on the contrary, obtained on the sole credit of the province.

I find further that in the estimates for 1852 (last document in the public accounts for 1851) it is provided for the interest on these debentures as a permanent charge under the 4 *Vic.*, chap. 17, and 8 *Vic.*, chap. 55, on the public revenue, and that in document No. 16 of the public accounts for the same year, 1851, the interest is charged as paid by the government, not as a loan or advance to the trustees, but as a debt of the province. Now sec. 27 of the 4 *Vic.*, ch. 17 merely authorized the government, at their discretion, to advance as a loan, such sums as would be necessary to enable the trustees to pay the arrears of interest on these debentures. And sec. 23 of this ordinance enacted in express terms that the interest on these debentures was to be paid out of the tolls or out of any other moneys at the disposal of the trustees for the purposes of the ordinance, whilst sec. 21, already referred to, expressly enacted that the loan to be raised by the trustees was not to be paid out of the general revenues of the country, yet in the public accounts and in the estimates for the public service laid before the legislature of the country, the

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government treats the interest they have already paid and those that they intend to pay thereafter on these debentures as a debt of the country, as a permanent charge on the revenue, and not due, for which a vote is required; for supplies are not voted for them (16 *Vic.*, chaps. 255 and 156), but one already provided for by law, that is to say, by the 4 *Vic.*, chap. 17, and 8 *Vic.*, ch. 55. Now, here again is a clear and unambiguous admission that these debentures were a debt of the province by the government, which submitted these accounts and estimates to the legislature, and by this legislature which accepted them, and this not only for the interest but for the capital, as it is evident that the province in admitting the payment of the interest under the provisions of the ordinance, not as a loan or advance, but as a permanent charge on the public revenue and as one of the public debts of the country, impliedly admitted its liability to the same extent for the capital of those debentures, authorized by the said ordinance. That the province thus paid this interest because it was its own debt and not as a loan under section 17 of the ordinance, cannot be denied when the public accounts give this payment as a permanent charge on the revenue of the country. And then if it had paid it as a loan, the payment would be inserted under the heading "Loans to incorporated companies;" and it is not thus inserted. Moreover, the government had already in 1850 advanced a sum of over £16,000 for the payment of these interests: (Journals of 1851, page 213). Now clearly they would not, in 1851 and 1852, have paid another large sum for these interests as a loan to this trust when this trust was already so largely indebted for amounts previously advanced and was moreover actually insolvent; but they paid it, not under sec. 17 of the ordinance, as a loan, but as one of the liabilities of the province and as interest on sums

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borrowed for public works by the country itself. Now, I repeat it, by paying the interest of these debentures, as a permanent charge on its revenue, when the special fund provided is insufficient for that purpose, the province admitted that the capital also of the said debentures was its debt and would have to be paid out of the public funds, at their maturity, if the special fund should then also prove insufficient to pay the said capital.

I find further that, at the very outset, the legislature itself and the executive of the late province of *Canada*, considered the statute 16 *Vic.* ch. 235, and the loan authorized thereby for these roads, as containing an appropriation of public monies.

By the 9 *Vic.*, ch. 114, sec 8, of the said province, combined with the 10 and 11 *Vic.* ch. 71, of the imperial parliament, it was enacted as follows: "The legislative assembly shall not originate or pass any vote, resolution or bill for the appropriation of any part of the consolidated revenue fund, or of any other tax or impost to any purpose which has not been first recommended by a message of the governor to the said legislative assembly during the session in which such vote, resolution or bill is passed."

In conformity to this enactment in the journals of 1853, p. 894, after the entry, that the house do resolve itself into committee on the bill relating to these turnpike roads, now the said statute 16 *Vic.*, ch. 235, under which the suppliants hold their debentures, we find the following words: "The honorable Mr. *Hincks*, a member of the executive council, by command of His Excellency the Governor General, then acquainted the the house that His Excellency, having been informed of the subject-matter of this motion, recommends it to the consideration of the house."

In the like manner, when the resolutions introducing

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the bill, which is now the 14 and 15 *Vic.*, ch. 132, entitled, "An act to authorize the *Quebec* turnpike road trustees to effect a new loan" were first moved before the house, "the honorable attorney-general *Baldwin*, by command of His Excellency the Governor General, acquainted the house that His Excellency, having been informed of the subject of this motion, recommended it to the consideration of the house (Journals of 1851, p. 106)." Why was His Excellency's recommendation deemed necessary and actually given for the introduction of this bill, now on the statute book, as the 16 *Vic.*, ch. 235, as well as for the 14 and 15 *Vic.*, ch. 132? Unquestionably, because this loan, and the appropriation of it to these roads, authorized by these acts, were an appropriation of the public moneys of the country. Yet, in these two statutes is to be found the proviso that the interest on the debentures to be issued in accordance thereof, was not to be advanced out of the provincial funds. As to the capital, both of them enact that the debentures to be issued and the loan to be effected thereby shall be ruled by the provisions of the 4th *Vic.* Now, between these two statutes, another one was passed in relation to this turnpike trust, the 14 and 15 *Vic.*, ch. 133, entitled: "An act to authorize the trustees of the *Quebec* turnpike roads to issue debentures to a limited amount," and if we refer to page 186 of the journals of 1851, we find that, for this last statute, His Excellency's recommendation was not obtained and communicated to the house. Why this difference between the two first named statutes and this last one? Why for the two first, have His Excellency's recommendation, and not for the last? Here are three consecutive statutes in relation to the same matter. For the first and third the royal authorization is obtained, but not for the second. Evidently the house and the executive saw a distinction between the last one and

the two others. But where is the difference between them? It appears plainly, it seems to me, on the face of them. For this last one, the 14 and 15 *Vic.*, ch. 133, the royal authorization was not deemed necessary, because it contains a special proviso that neither the principal or interest of the debentures to be issued under it shall be guaranteed by the province or payable out of any provincial funds, whilst in the two others, 14 and 15 *Vic.*, ch. 132 and 16 *Vic.*, ch. 235, this proviso does not appear, and the only words to be found therein concerning the capital of the debentures they authorized, is to the effect that they are to be ruled by the provisions of the 4th *Vic.* It has been suggested that for these two the royal permission was thought necessary, because they contain enactments relating to tolls and taxes. But this cannot have been the reason for it, because first, bills imposing local tolls and taxes though they are generally introduced in committees of the whole house, never require to be accompanied by the royal recommendation, and then that reason would apply entirely to the other one, which is as much as the other two in relation to tolls and taxes; the 14 and 15 *Vic*, ch. 132 more especially authorizing no new tolls on toll-gates—neither can it have been because these two statutes give a priority for the interest of the debentures they authorize over the claims of the province, for the other one contains a clause to the same effect. Nor, because by the 4th *Vic.*, whose provisions were extended to these two statutes, the interest of these debentures was considered to be guaranteed by the province, but not the principal, for as to the interest it is expressly enacted in both of them that the section of the ordinance relating to interest shall not apply to the new debentures. It must have been then, because under the 4th *Vic.* the capital was considered to be guaranteed by the province in the event of the special

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fund proving insufficient and because the enactment that the provisions of the said 4th *Vic.* would rule the new debentures was equivalent to an enactment that the capital of these new debentures would likewise be guaranteed by the government; whilst in the other one, the 14 and 15 *Vic*, ch 133, the debentures to be issued were not so enacted to be ruled by the provisions of the 4th *Vic.*, but on the contrary were especially said to be, either for capital or interest, not payable by the province; this last one not containing an appropriation of public moneys, whilst the other two did so—I fail to see any other reason for the distinction thus made between these statutes.

And, if we refer to the legislation on another trust created at the same time for analogous purposes, the *Chambly* turnpike roads trust, this is made still more apparent. The construction of these roads is authorized in the very same year as the *Quebec* roads, by an ordinance on the very next preceding page, the 4 *Vic.*, ch. 16, and under precisely the same provisions and conditions as to the issue of debentures as those for the *Quebec* roads. In fact one is almost *verbatim* the copy of the other. Now the government in 1850 and 1851 paid £19,000 of matured debentures issued by the trustees of these *Chambly* roads (statement No. 45 of public accounts for 1852); here also acknowledging the liability of the province for these debentures, though as for the *Quebec* roads, the ordinance authorizing them had enacted that they should be issued on the credit of the tolls, and were not to be paid out of the general revenue of the province. But moreover, it being thought expedient, for reasons which do not appear, to take the said *Chambly* roads from the hands of the trust created by the ordinance or statute, the 13 and 14 *Vic.* ch. 106 was passed for this purpose. And under whose control are the roads then put? Under the control of

the commissioners of public works. The statute enacts in a very few words that "Whereas it is expedient that the turnpike road hereinafter mentioned should be placed under the control of the commissioners of public works, the said road is and shall be thereby transferred from the control of the trustees to that of the commissioners of public works." It enacts also that this property shall be vested in Her Majesty; but this was mere surplusage, as, by the express terms of the ordinance, all the property under the control of the said trustees was already so vested in Her Majesty. The evident purport of the statute is merely to transfer a part of the public works of the country from the control of one state department to another. Now if the *Chambly* roads, under the 4 *Vic.* ch. 16, were part of the public works of the country, clearly the *Quebec* roads, under the 4 *Vic.* ch. 17, are so; this admits of no doubt. And then, though this statute clearly enacted an appropriation of public moneys, as the province is thereby in express words charged with the liabilities of this trust, £19,000 of which appear to have been actually paid out of the provincial chest very soon after, in 1850 and 1851 (public accounts of 1854, statement No. 41). Yet not only was not His Excellency's previous recommendation of it obtained and communicated to the house as required by the 9 *Vic.* ch. 114, before the house could constitutionally take into consideration any such proposed appropriation of public money, but moreover, the bill originated in the upper house (journals of 1850, page 142). Now all money bills, it is well known, must originate in the lower house. Why, then, though on the face of it, it would at first sight seem to contain an appropriation of the public funds, was this bill so allowed to be originated in the upper house, and why was His Excellency's previous recommendation of it not considered necessary in the lower house? Because the

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province was already liable for the debts of this *Chambly* trust, before this statute, and independently of it, by the operation of the 4th *Vic.*, chap. 16, itself; and consequently, this new statute imposed no additional liability on the public chest, but merely transferred an existing liability from the control of the Government's agents or representatives to one of the regular departments of state, in respect to one of the public works of the country. Now, if these *Chambly* roads were a part of the public works and if the ordinance providing for their construction, though not saying so in express words, was to be read as imposing upon the country the cost of that construction in the event of the tolls proving insufficient for it, clearly, the *Quebec* roads are on the same footing, and the cost thereof must, as the revenues from the tolls have also proved to be insufficient to provide for it, fall in the like manner upon the province. I have referred to the statements in the public accounts of the province concerning the debentures issued by this trust under the 4th *Vic.*, chap. 17, and 8th *Vic.* chap. 55, after their maturity, and have shewn that these roads, then, were considered as public works, and these debentures, at and since their maturity, as provincial debentures. That they were also held to be, before their maturity, is made apparent by a reference to the public accounts of the province prior to 1850; and it seems to me great weight must be attached to the official interpretation of the first legislative acts on these roads, given by those who were at the head of the affairs of the province at that time, or a very few years after, when the spirit and intent of the legislation could not have been but well known and understood. In statement No. 19 of the public accounts of 1842 (appendix K), in statement E of the public accounts of 1843, in statement No. 23 of the public accounts of 1844-45, in statement No. 25, appendix A, of the public

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accounts of 1846 (vol. 5, appendix No. 1 of 1846); in statement No. 23 of the public accounts of 1847, and in statement No. 25 of the public accounts of 1849, I find as assets of the province under the heading "loans to incorporated companies" as the *Quebec* turnpike trust, in 1842, £400 19s. 7½d; in 1843, £21,600; 1844, £21,600, and in the said subsequent years, £33,850. Now, the province then had not paid any money in cash to or for this trust. It was the purchasers of the debentures who alone had advanced these amounts. What is it then that the province credits itself for as a loan to this trust? Clearly for the debentures as successively issued under the statutes. Whatever may be said of this perhaps singular mode of book-keeping, do we not find here again as expressly as possible that these debentures were considered to be provincial debentures? The province had loaned its debentures to this trust and credits itself for their amount. The province of course had its recourse against the trust for the repayment of this loan, but the purchasers of the debentures had their recourse against the province for the moneys by them loaned on the said debentures. I have shown that the province, when these debentures matured, did acknowledge its liability therefor, and paid them all in capital and interest. Now there can be no doubt, and it was conceded at the argument, that if the province was liable for the capital of the debentures issued under the 4th *Vic.*, ch. 17, it is liable to the same extent for those issued under the 16th *Vic.*, ch. 235, the amount whereof is claimed by the suppliants in this case; for this last statute, as already stated, positively enacts (sections 7-10) that as to the capital, the debentures to be issued in virtue thereof and all other matters having reference thereto, shall be subject to the provisions of the 4th *Vic.*, ch. 17. It is because, in the same terms the provisions of the

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ordinance were extended to the debentures issued under the 8th *Vic.*, ch. 55, that the province paid these last debentures.

The point was taken on the part of Her Majesty that it being enacted by section 17 of this 16th *Vic.*, ch. 235 that the new debentures should take precedence of those issued under the provincial guarantee, this shows that these new debentures were not issued under such guarantee. Read alone, this provision, which, as I have remarked before, applies to these debentures only so far as relates to the interest payable thereupon, to use the words of the act, would bear that construction. But if it is, as it must be, taken in its entirety and connection with the other parts of the section and the ordinance, it not only does not sustain the contention on the part of Her Majesty on this point, but, it seems to me, that, on the contrary, it repels absolutely the theory relied upon to contest the suppliant's claim that none of the debentures of this trust were ever issued with the provincial guarantee. For there is here an express admission by the legislative authority that debentures had been issued with such guarantee. Now to which debentures does the statute refer, as having been so issued? Clearly to the debentures issued under the ordinance, which the province had then paid to tne amount of £11,790. (Public accounts for 1852, statements Nos. 41 and 45.) The legislature, in so many words, admits then, in this section, that the debentures issued under the ordinance were guaranteed by the province. Now, the first part of the section 7 enacts that the debentures to be issued shall be subject to the provisions of the said ordinance. That is saying clearly that as the debentures issued under the ordinance were to be considered as guaranteed by the province, in case the trustees should be unable to pay them, the debentures issued under this new statute

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would be so guaranteed. And when the statute adds that these new debentures as to the interest shall take precedence of those issued under the provincial guarantee, and of any claims by the government for moneys advanced to the said trustees, this has reference exclusively, and the Act says so expressly, to the special fund and the tolls in the hands of the trustees. The legislature, by this enactment, merely authorizing the trustees to give to the new debentures priority, for the interest, over the old ones on the moneys in their hands, but not providing, as it had not provided in the ordinance for the old debentures, for the contingency of the trustees having no funds to pay the new debentures. Here again the fact that this contingency was not provided for probably would put a Finance Minister under the obligation to get an appropriation from the Parliament before he could pay these debentures, but could not be invoked as relieving the province of a liability which is imposed upon it by the very same clause of the statute, a contingent liability only then, but now, the special fund being exhausted, an immediate and direct liability.

I may here remark, that it is admitted on the record that all matters of fact which appear by the public accounts of the Dominion of *Canada*, or of the late province of *Canada*, or of the late province of *Lower Canada*, as well as all facts which appear by the journals of the different branches of the legislatures of the Dominion, or of the said late provinces, or by the sessional papers thereof, shall be taken to be proved by reference to the official publications thereof, without it being necessary to specially produce the same in this cause, so that the ruling in *Poliny* v. *Gray* (1), that reports of the public departments of state are not admissible as evidence of facts stated therein, does not govern this case.

(1) 12 Ch. Div. 411.

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Another view of the case suggests itself to my mind. Leaving aside the ordinance, or supposing that under it, the province would have had the right to repudiate its liability for the debentures then issued and might have refused to pay them, is the said province not precluded now from repudiating the payment of the debentures issued upon the same conditions and provisions?

I have shown how, as a matter of fact, the province has, before their maturity, treated these debentures as provincial debentures, and credited itself for the loan of them to this trust. Now, at their maturity, the province had paid them as its own debt; how, since their maturity, and since that payment, it had continued to treat the amount paid therefore as a payment of a provincial debt for a provincial work; how the interest on these debentures has been considered in the legislature itself, not as the loan authorized by the ordinance, but as a permanent charge on the revenue of the country; how the legislature, when ordering the issue of the debentures now held by the suppliants, avoided purposely, to my mind, to reproduce the enactment contained in the preceding statute upon identical debentures, that these debentures would not stand guaranteed by the province; all of these were facts amounting to representations, by the province to the general public, of whom the suppliants form part, that these debentures were, as a matter of fact, provincial debentures.

See remarks of *Blackburn*, J., in *Swan* v. *The North British Australasian Co.* (1).

By these representations, the suppliants have been induced to invest their moneys in these debentures. Now, it is a rule of law that, if any one, by a course of conduct or by actual expressions, so conduct himself

(1) 2 H. & C. 175.

that another may reasonably infer an agreement and undertaking by the one so conducting or expressing himself, the party so conducting or expressing himself cannot afterwards gainsay the reasonable inference to be drawn from his words or conduct, even if he never made such agreement or undertaking.

Per *Pollock*, C. B., *Cornish* v. *Abingdon* (1), or, in other words, when any one, by his expressions or conduct, voluntarily causes another to believe in the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things.

Per *Denman*, C. J. (2); see also *Stone* v. *Godfrey* (3); *Thane* v. *Rogers* (4); *Newton* v. *Liddeard* (5); *Cairncross* v. *Lorimer* (6); *Carr* v. *London and North Western Railway Co.* (7); and cases collected in 2 *Smith's* leading cases (8).

According to these universally admitted rules of law, the province in the case submitted, is estopped, both by statements and by conduct, from now denying its liability for the debentures held by the suppliants, even if it could have done so at first under the ordinance (9).

I have only one more observation to make. It is with reference to the remark made by one of the learned counsel, heard before us on the part of Her Majesty in the course of his argument, that it would be unjust to make the whole of the province pay for the roads of a particular locality. I have already quoted the public accounts to show that the policy of the government at that time was to so build and improve roads in different parts of the pro-

(1) 4 H. & N. 549.
(2) 6 Ad. & E. 469.
(3) 5 De G. M. & G. 76.
(4) 9 Barn. & C. 586.
(5) 12 Q. B. 925.
(6) 3 Macq. H. L. Cases 829.
(7) L. R. 10 C. P. 307.
(8) 7th Edit. 851 et seq.
(9) *Commonwealth v. Andre*, 3 Pick. 224.

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vince and do not intend to revert to that. What strikes my mind now is this. These debenture holders cannot be paid by the inhabitants of the locality where these roads have been made, no liability is imposed on this locality by the statutes; and this is admitted, they cannot be paid out of the special fund in the hands of the trustees, for this fund cannot meet their claim; this is also admitted. It follows, that, if the province does not pay them, they will lose every cent of the moneys they have lent for making these roads, that consequently they, who may not have the least interest in the locality where these roads have been made, who may reside in *England* or the *United States*, or in any other part of the world, will be made to pay for making and improving the said roads to the amount of the £70,000 they have so lent, that the province whose property these roads are, would thus have become richer by £70,000 at the expense of the said debenture holders. Now, for states as for individuals "*Æquum sit neminem cum alterius detrimento locupletari.*" And would there not be a greater injustice in causing these debenture holders to lose their £70,000, than in obliging the province on whose property this money has been expended to repay it? By the construction I give to this statute, 16 *Vic.*, ch. 235, read in connection with the prior and subsequent acts and proceedings of the province, concerning this trust, not only is such a grave, very grave injustice prevented, but moreover the repudiation of a public debt by the province of *Canada* as constituted before confederation does not receive the sanction and authority of the courts of justice.

I am of opinion that the judgment of the Exchequer Court awarding to the suppliants the capital of the debentures held by them is right, and that the appeal from the said judgment taken on the part of Her Majesty should be dismissed with costs.

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On the cross-appeal the suppliants complain of that part of the judgment of the Exchequer Court by which they were refused the interest accrued on the debentures held by them.

The proviso in the 16 *Vic.*, ch. 235, sec. 7, relating to this part of the case, reads as follows:—"*Provided nevertheless that no moneys shall be advanced out of the provincial funds for the payment of the said interest.*"

The point was taken by the suppliants that the enactment that the interest was not to be advanced out of the provincial funds, referred only to the issue of £30,000 made under this seventh section of the act and did not apply to the issue of £40,000 made under the tenth section, but this is an error. This enactment in section 7 applies by its very terms, not only to the debentures issued under the said section, but also generally to all debentures issued under the act, including those issued under section 10, so that they all stand on the same footing, and must be governed by the same rules.

It is clear, and I apprehend not contested, that the only thing that the legislature intended by so enacting that no moneys were to be *advanced* out of the provincial funds for the payment of the interest on these new debentures, was to repeal, *quoad* the said debentures, the enactment contained in section 27 of the ordinance 4th *Vic.*, ch. 17, by which the Governor General was empowered to authorize the loan to the special fund in the hands of the trustees, of any sum of money necessary to pay any arrears of interest that might be due on the debentures issued by the trust, which loan the trustees were ordered by the same section of the ordinance to repay to the receiver general out of the said special fund. Now, the suppliants here have nothing to do with this loan which was a mere matter of administration between the executive authority and its

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officers, the trustees. Whether the executive lends money to the trustees and whether the trustees repay this loan is not and could not be the ground of their claim. They ask the amount of the interest on their debentures, not as a loan, but as a debt of the government to them. The government, in their legislature, as I have shown by the public accounts, has considered this interest, when it paid it before, not as a loan to an incorporated company, but as a permanent charge on the public revenues of the country, as a debt of the country. It is as such that the suppliants claim it now. Having come to the conclusion that the province was responsible for the capital of these debentures as one of its debts, it seems to me that it follows as a necessary consequence that the interest of these debentures, which on their face are payable with interest, is likewise a debt of the province. There might be some doubt as to the liability of the province for this interest before these debentures matured. But since their maturity, since they have become a direct liability of the province for their capital, the province, if liable at all, is liable for them as they are, that is to say with interest. The provincial chest has received the interest on these moneys; that interest belonged to the suppliants. If the province was not condemned to repay it to the suppliants as accrued since the maturity of these debentures, it would have derived a benefit, and a very large one indeed, from the non-fulfilment of its obligation to pay the capital when it matured. The only way to cause this interest to cease to accrue after the maturity of these debentures, was to call them in, according to section 24 of the ordinance, and this has not been done. It would be unnecessarily going over the same ground again for me to repeat here at length what I have said on the first part of the case as to the capital. The province heretofore paid

the interest of the moneys lent by the debenture holders under the ordinance, and the 8th *Vic.*, as its debt, not as the loan authorized by the ordinance. The suppliants ask the same thing for the debentures issued under the 16th *Vic.*, which are ruled by the same provisions. The fact that this last statute enacts that the loan authorized by the ordinance to be made by the crown to the trustees for the payment of the interest shall not be made for the new debentures cannot affect them; particularly for the interest accrued since the maturity of these debentures, since they have become payable by the province; as, in any case, this enactment would probably be construed to apply only to the interest accruing before the maturity of these debentures, and then, it is not under that clause of the ordinance at all that they here claim these interests but purely and simply as a liability of the province; as an accessory of the capital due to them by the said province, which capital carries interest on the face of the contract. Indeed, even if the interest had not been settled by the contract, I apprehend that, as the detention of these moneys by the province since the maturity of the debentures has been a wrongful detention, the said provinces should be mulcted in interest.

I am of opinion to allow the cross-appeal of the suppliants with costs and to modify the judgment of the Exchequer Court so as to allow them, in addition to the capital awarded by the said court, the interest at six per cent. on the debentures held by them since the maturity thereof, with the costs in the Exchequer Court.

GWYNNE, J.:

The question which we have to determine in this case is whether or not the amounts, or any part of the amounts, purported to be secured by bonds or deben-

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tures issued by the Trustees of the *Quebec* Turnpike Trust, under the authority of the act of the parliament of the province of *Canada*, before Confederation, being 16 *Vic.*, ch. 235, constituted, at the time of the passing of the *B. N. A.* Act, a debt or liability of the province of *Canada*, existing at Confederation, so as to become imposed upon the Dominion of *Canada*, by the 111th sec. of the *B. N. A.* Act. In the view which I take, it appears to me to be free from all doubt that such liability did not then exist, unless it was expressly imposed by the Imperial Act, 3 and 4 *Vic.*, ch. 35, or by some acts or act of the legislature of the province of *United Canada*, as constituted by that act.

Such was the nature of the constitution given to the province of *Canada*, by 3 and 4 *Vic.*, ch. 35, that no debt or liability could be enforced against the executive government, even in a proceeding by petition of right, or become imposed upon it by any executive officer, or by all the executive officers of the government combined, without the sanction of an act of parliament, or a vote or resolution of the legislative assembly. No contract or obligation, arising by way of estoppel, from statements made by a finance minister or other public servant appearing in the public accounts or elsewhere, or from any conduct of any of the executive officers of the government, can be implied against the government of the province. The doctrine of estoppel *in pais*, which is recognized in dealings between individuals or corporations, the principle of which is explained in *Pickard* v. *Sears* (1), *Freeman* v. *Cooke* (2), *Swan* v. *N. B. Australasian Co.* (3), *Cornish* v. *Abingdon* (4), *Carr* v. *London & N. W. Railway Co.* (5), and such like cases, has, in my judgment, no application to the

(1) 6 Ad. & El. 274.
(2) 2 Ex. 662.
(3) 2 H. & C. 175.
(4) 4 H. & N. 549.
(5) L R. 10 C. P. 316.

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case before us, which must be determined upon the construction simply of the act or acts of parliament, vote or resolution which is, or are, relied upon as creating the debt or liability. I shall, I think, best be able to convey the mode of reasoning, which has led my mind to the opinion I have formed, by dealing with the subject in a chronological order of events from the earliest statute which appears to have any bearing upon the case.

At the time of the passing of the Imperial Statute 1 & 2 *Vic.*, ch. 9, whereby the constitution of *Lower Canada*, as theretofore existing, was suspended, the management and repair of the public highways in *Lower Canada* were provided for and regulated under the provisions of the provincial statute 36 *Geo.* 3rd, ch. 9. By the 1st sec. of 1 & 2 *Vic.*, ch. 9, the constitution of *Lower Canada* were declared to be suspended, from the time of the proclamation of the act in *Canada*, until the first day of November, 1840. By the second section, provision was made for the constitution of a special council for the government of the province, and by the third section it was enacted: "that from and after such proclamation, as aforesaid, until the said 1st day of November, 1840, it should be lawful for the governor of the province of *Lower Canada*, with the advice and consent of a majority of the said councillors present, &c., &c., to make such laws or ordinances for the peace, welfare and good government of the said province of *Lower Canada* as the legislature of *Lower Canada* as theretofore constituted was empowered to make, &c., &c., provided always that no law or ordinance so made should continue in force beyond the 1st day of November, 1842, unless continued by competent authority; provided also that it should not be lawful, by any such law or ordinance, to impose any tax, duty, rate or impost, save only in so far as any tax, duty, rate or impost, which

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at the time of the passing of the act was payable within the said province, might be thereby continued. Upon the 17th day August, 1839, the Imperial Statute, 2 and 3 *Vic.*, ch. 53, was passed in amendment of the act just recited, and the duration of the special council was extended. By the third section of this act it was enacted that so much of the said recited act, 1 and 2 *Vic*, ch. 9, as provided that it should not be lawful by any such law or ordinance as therein mentioned to impose any tax, duty, rate or impost, save only in so far as any tax, duty or impost which at the passing of that act was payable within the said province of *Lower Canada* might be continued, should be and was thereby repealed, subject however to this proviso—that it should not be lawful for the said governor and special council to make any law imposing or authorizing the imposition of any new tax, rate, duty or impost, except for carrying into effect local improvements within the said province of *Lower Canada*, or any district or other local division thereof, or for the establishment or maintenance of police or other object of municipal government within any city, town or district or other local division of the said province; and provided also that in every law or ordinance imposing or authorizing the imposition of any such new tax, duty, rate or impost, provision should be made for the levying, receipt and appropriation thereof by such person or persons as should be thereby appointed or designated for that purpose, but that no such new tax, duty, rate or impost should be levied by or made payable to the Receiver-General or to any other public officer employed in the receipt of Her Majesty's ordinary revenue in the province; nor should any such law or ordinance aforesaid provide for the appropriation of any such new tax, duty rate or impost by the said governor either with or without the advice of the executive council of the

said province, or by the commissioners of Her Majesty's treasury, or by any other officer of the crown employed in the receipt of Her Majesty's ordinary revenue.

Now, it seems to me that by this very precise language, the Imperial parliament, while impressed with the necessity, for the preservation of the peace, order and good government of the province, of temporarily suspending the exercise of its ancient representative institutions, was scrupulously careful to interfere as little as possible with the right of the people to impose upon themselves their own burthens, and that they therefore thus, in what appears to be very plain language, declined to invest the special council, so exceptional in its construction, with power to make any law which could be construed as imposing, directly or indirectly, a new burthen upon the public revenues of the province; and in express terms limited the council's power of imposing any rate, duty, tax or impost, of whatever nature or amount, to matters of a purely local or municipal character, in respect of the levying or receipt of which, neither the Lords of Her Majesty's treasury nor the Receiver-General of the province, nor any other public officer ordinarily employed in the collection and receipt of Her Majesty's revenue in the province, should be in any wise concerned or be accountable.

The special council whose powers were thus restricted passed an ordinance upon the 30th day of January, 1841, in the first section of which it was enacted: That it should be lawful for the governor by letters patent under the great seal of the province to appoint not less than five nor more than nine persons to be, and who and their successors, to be appointed in the manner thereinafter mentioned should be trustees for the purpose of opening, making and keeping in repair the roads thereinafter specified. The second section pro-

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vided for the appointment of successors to the trustees, By the third section it was enacted that the said trustees, for all the purposes of the ordinances might, by the name of "The Trustees of the *Quebec* Turnpike Roads," sue and be sued, answer and be answered unto, in all courts of justice and might acquire property and estate, moveable and immoveable, which being so acquired should be vested in Her Majesty for the public uses of the province, subject to the management of the said trustees, for the purposes of the ordinance, and might, in the manner which they should deem fit, cause the said roads and each of them, and the bridges thereupon, to be improved, widened and repaired, etc., etc, and might from time to time appoint and remove surveyors, officers and other persons under them as they might deem necessary for the purposes of the ordinance, and pay them such reasonable compensation as the said trustees should deem meet, and might generally do and perform all such matters and things as might be necessary for carrying the ordinance into effect according to the true intent, meaning and object thereof. By the ninth section it was enacted that the roads over which the provisions of the ordinance and the powers of the trustees should extend should be seven in number, covering thirty miles in the whole, as appears by a paper subsequently laid before the legislature of *United Canada*, but consisting of several short roads varying from one to six or seven miles each in length, radiating in every direction from the city of *Quebec*.

By the 10th section it was enacted that the said trustees might erect toll gates and collect certain specified tolls and rates thereat upon each of the said roads, and that the said trustees might establish the regulations under which such tolls and rates should be levied and collected, and that, with the consent of the governor, they might from time to time, as they should see

fit, alter, change and modify the said rates and tolls and the said regulations.

By the 14th section it was enacted that the said tolls might be levied by the said trustees on the said roads, or on any of them, or on any part of them, or of any of them, from and after the day when the said trustees should have assumed control and management of such roads or road or part of a road in the manner in the ordinance provided and not before, but that the time of such assumption should be at the discretion of the said trustees and should not depend upon the completion or non-completion of the improvements on the roads, road or part of road of which the control and management should be so assumed.

By the 16th section it was enacted that the said trustees might if they should think proper commute the tolls on any road or portion thereof with any person by taking a certain sum either monthly or yearly in lieu of such tolls. By the 18th section it was enacted that the said roads should, respectively, from the time thereinafter mentioned, be and remain in and under the exclusive management, charge and control of the said trustees, and that 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 principal of, the debentures thereinafter mentioned.

By the 19th section it was enacted that from the time when the said trustees should assume the control and management of any part of any road mentioned in the 9th section of the ordinance, every person, body politic or corporate, who might be bound by any law of the province, or any *proces verbal*, duly homologated (and all such laws and *proces verbaux* were declared to remain in full force except in so far as they were thereby expressly derogated from) to repair or keep up or to per-

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form any service or labor on or with regard to any portion of such road, should, and were thereby required, to commute all such obligations with the said trustees, for such sum of money as might be agreed upon, by such parties respectively and the said trustees, and that such commutation money should be paid annually on the 1st day of May in each year, and that in default of payment the trustees might sue for and recover the same in any court having jurisdiction to the amount, and that if no such agreement should be effected in any case, the trustees might sue the party refusing to come to an agreement and might recover such sum for such commutation as the court should award.

By the 20th section it was enacted that it should be lawful for the governor, at any time, and whenever he should deem it expedient, to appoint the said trustees commissioners for carrying into effect an ordinance of the special council, passed in the same year, intituled "An ordinance to declare and regulate the tolls to be taken on the bridge over the Cap Rouge River, and for other purposes relative to the said bridge," and that during the time the said trustees should be such commissioners the said bridge should be held to be part of the roads and bridges under the management of the said trustees as if it had been mentioned in the 9th section of the ordinance, and that the tolls authorized to be levied by the ordinance relating to the said bridge, from the persons using the said bridge and collected during the said time, should form part of the funds thereby placed at the disposal of the said trustees, and should and might be applied by them in the same manner as the other tolls authorized to be levied under the ordinance.

By the 21st section it was enacted that it should be lawful for the said trustees to raise, by way of loan, on the credit and security of the tolls thereby authorized

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to be imposed, and of other monies which might come into the possession of, or 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 the province, any sum of money not exceeding on the whole twenty-five thousand pounds currency.

By the 22nd section it was enacted that it should be lawful for the said trustees to cause to be made out, for such sum or sums of money as they might raise by loan as aforesaid, debentures in the form contained in Schedule A of the ordinance, redeemable at such times, subject to the provisions of the ordinance as the said trustees should think most safe and convenient.

By the 23rd section it was enacted that such debentures should respectively bear interest at the rate therein mentioned, and that such interest should be made payable semi-annually, and might, at the discretion of the trustees, and with the express sanction and approval of the governor of the province, and not otherwise, exceed the rate of six per cent per annum, any law to the contrary notwithstanding, and that the interest should be paid out of the tolls upon the said roads, or out of any other monies at the disposal of the trustees for the purposes of the ordinance.

By the 26th section it was enacted that it should be lawful for the governor for the time being, if he should deem it expedient at any time within three years from the passing of the ordinance, and not afterwards, to purchase for the public uses of the province, and from the said trustees, debentures to an amount not exceeding ten thousand pounds currency, and by warrant, under his hand, to authorize the receiver-general to pay to the said trustees out of any unappropriated public monies in his hands the sum secured by such debentures, the principal and interest of,and on which, should be paid to the Receiver-General by the said trustees in

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the same manner and under the same provisions as are provided with regard to such payments to any lawful holder of such debentures, and being so paid should remain in the hands of the Receiver-General at the disposal of the legislative authority of the province for the time being.

By the 27th section it was enacted that all arrears of interest, due on any debentures issued under the authority of the ordinance, should be paid by the said trustees before any part of the principal sum then due and secured by any such debenture should be so paid, and that if the deficiency of the funds then in the hands of the said trustees should be such, that the funds then at their disposal should not be sufficient to pay such arrears of interest, it should be lawful for the governor for the time being, by warrant under his hand, to authorize the Receiver-General to advance to the said trustees out of any unappropriated monies in his hands, such sum of money as might, with the funds then at the disposal of the said trustees, be sufficient to pay such arrears of interest as aforesaid, which being repaid should remain in the hands of the Receiver-General, at the disposal of the legislative authority of the province.

By the 28th section it was enacted, that it should be lawful for the said trustees at any time, and as often as occasion might require, to raise in like manner such further sum or sums as might be necessary to enable them to pay off the principal of any loan which they might bind themselves to repay at any certain time, and which the funds in their hands, or which would probably be in their hands at such time, and applicable to such repayment, should appear insufficient to enable them to repay; provided always that any sum or sums so raised should be applied solely to the purpose in this section mentioned, and that no such sum should

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be borrowed without the approval of the governor of the province, and that the whole sum due by the said trustees under the debentures then unredeemed and issued under the authority of the ordinance should in no case exceed thirty-five thousand pounds currency, and that all the provisions of the ordinance touching the terms upon which any sum should be borrowed under the authority thereof by the trustees, the rate of interest payable thereon, the payment of such interest, the advance by the Receiver-General of the sums necessary to enable the trustees to pay such interest, and the repayment of the sums so advanced should be extended to any sum or sums borrowed under the authority of this section.

By the 29th section it was enacted that the due application of all public monies whereof the expenditure or receipt is authorized by the preceding sections should be accounted for to Her Majesty, her heirs and sucessors, through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner and form as Her Majesty, her heirs and successors should be pleased to direct, and:

By the 37th section that the said trustees should lay detailed accounts of all monies by them received and expended under the authority of the ordinance, supported by proper vouchers, and also detailed reports of all their doings and proceedings under the said authority, before such officer, at such times and in such manner and form, and should publish the same in such way at the expense of the said trustees as the governor should be pleased to direct.

The true construction of this ordinance, as it appears to me, was to constitute the trustees, when appointed in the manner directed by the ordinance, a body corporate, not, it is true, for purposes of private profit, or for trade, but for a special limited public purpose of

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a purely local, sectional or municipal character, and not at all of a public character, in the sense of being provincial; composed of persons who were no doubt selected and appointed trustees, in consequence of their having an interest in the contemplated local improvements as residents in the locality; but whether the trustees were constituted a body corporate for a private or for a public purpose seems to me to be of no importance, for the first question which arises for our consideration is: Was that body corporate invested with power to impose, and did it impose, by the debentures issued by it under the ordinance, any burthen upon the public revenues of the province of *Lower Canada*, for the payment, either of the interest or the principal, secured by those debentures, or was it invested with power to contract, and did the debentures issued by the corporation constitute a contract, entered into for and in behalf of Her Majesty, with the respective purchasers of the debentures? The answer to these questions must be sought for solely within the four corners of the ordinance itself, which alone gives to the debentures whatever validity and effect they had.

The ordinance, it is true, in its 3rd section, provides that the body corporate constituted by the ordinance might acquire property and estate, moveable and immoveable, which being so acquired should be vested, as indeed all the public highways are, in Her Majesty, for the public uses of the province, but subject, as is provided by the 3rd and 18th sections, to the exclusive management, charge and control of the body corporate so created, and upon the express trust that the tolls and rates which the corporation was authorized to impose, levy and collect, should be applied solely to the necessary expenses of the management of the trust—the making and repairing of the roads, and the payment of the interest on, as well as the principal of, the deben-

tures which they were authorized to issue. Now, these tolls and rates, which they were authorized to impose, levy and collect upon and from all persons using the roads, or who, by the provisions of the law previously in force, were made liable to contribute to the repair of the roads abutting upon their lands, were in no sense public monies of the province of *Lower Canada*, nor monies received by Her Majesty either through the Lords of Her Majesty's Treasury, or through the Receiver General of the province, or through any other officer employed in the collection or receipt of Her Majesty's provincial revenue, or for the receipt or appropriation of which any of these officers were accountable or with which they had anything to do. This is conclusively established by the terms of 2 and 3 *Vic.* ch. 53, which alone gave to the special council power to enable the trustees to deal with the work and fund placed under their control as a work and fund of a purely local and sectional and municipal character. It is therefore erroneous to speak of the work as provincial, or the rates, tolls and commutation monies constituting the fund created by the ordinance as being part of the public funds or revenue of the province of *Lower Canada*. The 37th section of the ordinance must be read as referring to those rates, tolls and other monies coming into the hands of the trustees to be applied by them to the specially prescribed purposes of the trust, its object being to afford evidence of the manner in which they should be fulfilling their trust; and the 29th section, to have any application, must be applied to all such public monies, if any, as should, in the discretion of the governor, be advanced under his warrant out of the unappropriated public monies of the province, as a loan to the corporation.

It is, however, to the clauses which alone give to the body corporate any power to raise money by loan upon

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its debentures, that we must look, to ascertain whether or not any charge or liability for the redemption, either of the interest or principal of those debentures, is imposed upon the public revenues of the province, or is assumed by, or on behalf of Her Majesty.

Now these clauses in the most express terms exclude and repel all idea of any such charge or liability having been, by the ordinance, imposed upon the provincial revenue or assumed by or on behalf of Her Majesty.

By the 21st sec. the power of the trustees is limited to raising the £25,000 currency, thereby authorized "upon the credit and security of the tolls authorized to be levied, and of other monies; viz. the commutation monies, coming into the possession of, and at the disposal of the trustees under the ordinance, and not to be paid out of or to be chargeable against the general revenue of the province."

This is an express declaration that the monies so raised shall form no charge or liability upon the general revenue of the province, and there is no warrant or authority for our holding that Her Majesty assumed, or could assume, any obligation in respect of the debentures, otherwise than through the medium of and as a charge or liability upon the provincial revenue.

Then the 23rd section again repeats that the interest payable under the debentures shall be paid out of the tolls upon the said roads, or out of any other monies at the disposal of the trustees for the purposes of the ordinance.

The 26th sec. leaves it discretionary with the governor for the time being, if he should deem it expedient "at any time within three years from the passing of the ordinance, and not afterwards, to purchase for the public uses of the province and from the said trustees, debentures to an amount not exceeding £10,000, currency, and by warrant, under his hand, to authorize

the Receiver General to pay to the said trustees out of any unappropriated public monies in his hands the sum secured by such debentures; the principal and interest 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, and being so paid shall remain in the hands of the Receiver General, at the disposal of the legislative authority of the province for the time being." Now by this clause the governor is empowered, in his discretion, to lend to the corporation out of the unappropriated public monies of the province a sum not exceeding £10,000, and to receive therefor debentures of the corporation, which were to be held by the Receiver General, to and for the public uses of the province The province was thereby authorized to become a creditor of the corporation to that amount, and was placed in respect of such loan precisely in the same position as every other creditor of the corporation who should advance money to it, upon the security of its debentures.

Then, again, by the 27th clause, if the funds at the disposal of the corporation should at any time prove to be insufficient to pay all arears of interest upon the debentures, it was left to the discretion of the governor for the time being, by warrant under his hand, to authorize the Receiver-General to advance to the said trustees, out of any unappropriated monies in his hands, such sum of money as might, 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, out of the sums, so to be commuted, levied and collected as aforesaid, and being so repaid shall remain in the hands of the Receiver-General, at the disposal of the legislative authority of the province."

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Now these provisions, enabling the province, in the discretion of the governor for the time being, to become creditors of the trust corporation precisely in the same manner and upon the same terms as any private person becoming a creditor of the corporation, advancing to it money upon the security of its debentures, is so utterly inconsistent with the province being made the debtor to the purchasers of the debentures, or subjected to any obligation or liability as guarantors or otherwise, to redeem the debentures, either as to principal or interest, that we can in my judgment come to no other conclusion than that no charge or liability whatever in respect of the debentures was imposed upon the province by the terms of the ordinance.

Such, then, being the true construction to put upon the terms of the ordinance at the time of the re-union of the provinces of *Lower* and *Upper Canada* being effected, it is plain that there did not then exist any charge or liability imposed upon the revenues of *Lower Canada* which could in that character, upon the union, become a charge or liability upon the revenues of *United Canada* to redeem any debentures which should be issued by the trustee corporation under the authority of the ordinance.

Now, the Act of Union 3 and 4 *Vic.*, chap. 35, came into operation on the 10th February, 1841, in pursuance of a proclamation to that effect published in *Canada* upon the 5th February, 1841.

There having been no charge or liability, in respect of any debentures which should be issued by the trust corporation under the authority of the ordinance, imposed upon the revenues of *Lower Canada*, or constituting a debt or obligation of that province before the union, which, in that character, could, by the union, become a charge or liability imposed upon *United Canada*, we must, as I have said at the outset, look to

the Imperial statute, 3 and 4 *Vic.*, chap. 35, and to the legislation of the parliament of *United Canada* as the only authorities, under the circumstances, competent to impose the charge or liability upon the revenues of *United Canada*, in order to determine whether or not any such charge or liability has ever been, and if ever when, created and imposed.

By the 3rd and 4th *Vic.*, chap. 35, sec. 50, it was enacted that all revenue over which the respective legislatures of the two provinces of *Upper* and *Lower Canada*, before and at the time of the passing of the act, had power of appropriation, should form one consolidated revenue fund, to be appropriated for the public service of *Canada*, subject to the charges by the act directed.

The sections of this act from 50 to 57 inclusive were repealed by an Imperial act passed in the 10th and 11th years of Her Majesty's reign, for the purpose of adopting similar provisions contained in the provincial act, 9 *Vic.*, chap. 149, but I quote from the act of union as it was by it, that the revenues of the two provinces of *Lower* and *Upper Canada* as those revenues existed at the union were united into one consolidated fund under the exclusive control of the legislature of *United Canada*.

By the 55th section of this act of union it was enacted that the consolidation of the duties and revenues of the said province should not be taken to affect the payment out of the said consolidated revenue fund of any sum or sums theretofore charged upon the said rates and duties already raised, levied, and collected, or to be raised, levied and collected, to and for the use of either of the said provinces of *Upper* and *Lower Canada* for such time as should have been appointed by the several acts of the legislature of the province by which such charges were severally authorized, and:

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By the 57th section it was enacted that subject to the several payments by the act charged on the said consolidated revenue fund the same should be appropriated by the legislature of the province of *Canada* for the public service in such manner as they should think proper: "Provided always that all bills for appropriating any part of the surplus of the said consolidated revenue fund or for imposing any new tax or impost, shall originate in the legislative assembly of the said province of *Canada*; Provided also that it shall not be lawful for the said legislative assembly to originate or pass any vote, resolution or bill for the appropriation of any part of the surplus of the said consolidated revenue fund, or of any other tax or impost, to any purpose which shall not have been first recommended by a message of the governor to the said legislative assembly, during the session in which such vote, resolution or bill shall be passed."

As, then, the liability to redeem any debentures which should be issued by the trust corporation, under the ordinance of the special council of *Lower Canada*, 4 *Vic.* ch. 17, did not, on the 10th February, 1846, exist as a charge upon the revenues of *Lower Canada*, and as all those revenues became, by the act of union, part of the consolidated revenue fund of *Canada*, which was placed under the sole control of the legislature of *United Canada*, subject only to the charges thereon imposed by the act of union, and as the liability to redeem such debentures was not among the charges so imposed, we must seek in the proceedings of the legislature of *Canada*, for some vote, resolution, or bill appropriating some part of the surplus of the consolidated revenue fund of *Canada* towards the redemption of the debentures. From the terms of the 57th section of the Union Act, it is impossible to say that the liability could ever arise by implication from any state of facts, nor could

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any court of justice pronounce it to exist upon any authority or evidence, short of the voice of the legislature, expressed in some vote, resolution or bill imposing the charge. Now, that the legislature of *Canada*, as constituted by the Act of 3 and 4 *Vic.*, ch. 35, recognized a clear distinction between those purely local works, such as those which were placed, by the special ordinance, under the control of the trust corporation thereby created, and those public works which, from their provincial character, should be charged up on the consolidated revenue fund of *United Canada*, appears from two acts passed by the legislature of the province in its first session, namely, 4 and 5 *Vic.*, ch. 28 and 72. By the former of those acts, intituled, "An Act to appropriate certain sums of money for public improvements and for other purposes therein mentioned," there was granted to Her Majesty, the sum of £1,659,632 sterling, to be expended, under the superintendence of the board of works of the province, in the proportions in the Act specified, for the erection and completion of the public works therein enumerated, which, besides canals and other works for improving the navigation of the rivers and lakes, comprehended also certain great public highways which, from their provincial importance, were deemed to be fit to be charged upon the consolidated fund, namely:

9th. For improving the Bay of *Chaleurs* road between *Percé Point* and the Indian Mission, and a portion of the *Metis* or *Kempt* road.

10th. For improving and completing the *Gosford* road, between *Quebec* and the *Eastern Townships*.

11th. For improving and completing the main northern road, from lake *Ontario*, at *Toronto*, to lake *Huron*, continuing and perfecting the same from the termination of the portion already undertaken by the district of *Barrie*, establishing toll bars thereon, and im-

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proving sundry parts thence to *Penetanguishene* and on the *Cold Water Portage*.

12th. For improving the main province road from *Quebec* to *Amherstburg* and *Port Sarnia*, building certain bridges on the same, between *Montreal* and *Quebec* and improving these portions of the line along which the rivers or lakes are not now available for the transport of the mails, that is to say, to macadamize, or otherwise improve that portion between the *Cascades* and the province line, and to establish toll bars thereon.

13th. To macadamize, or otherwise complete that portion from the termination of the part already undertaken by the district of *Brantford* to *London*, and to establish toll bars thereon.

14th To drain, trunk, form, and otherwise improve the road thence to *Port Sarnia*.

15th. To drain, trunk, form, and otherwise improve the road from *London* to *Chatham*, *Sandwich* and *Amherstburg*.

19th. For building bridges over the large rivers between *Quebec* and *Montreal*.

17th. For the completion of the military road from the *Ottawa*, near *L'Orignal* to the *St. Lawrence*, and

18th. For the formation of a line of road from *Hamilton* to *Port Dover*.

And by chapter 72, after reciting that it was expedient to extend the provisions of the ordinance 4 *Vic.*, ch. 17, to the road thereinafter mentioned, it was enacted that the provisions of the said ordinance and the powers of the trustees appointed under the authority thereof, should extend to the road leading from that sixthly mentioned in the 9th sec. of the said ordinance, to *Scott's* bridge, including the said bridge, and to the main road running along the north bank of the river *St. Charles*, from *Scott's* bridge aforesaid, to the bridge over the said river, commonly called the red bridge, or

commissioners' bridge, including the said bridge, as fully, to all intents and purposes whatsoever, as if the said roads and bridges had been mentioned and described in the said 9th sec. of the said ordinance, as among those to which the said provisions and powers should extend.

Now, as regards this act, the most that can be said in aid of the contention of the suppliants is, that it may be construed as an adoption by the Legislature of *Canada* of those provisions of the special ordinance 4 *Vic.*, ch. 17, which profess to empower the governor, for the time being, to authorize a loan to the trust corporation, out of the surplus unappropriated revenues of *Lower Canada*, in the hands of the Receiver-General of that province, so as to make those provisions applicable to any surplus of the consolidated revenue fund of *Canada*, in the hands of the Receiver-General, or other finance officer of the united province, and so as to authorize the governor for the time being, of *Canada*, to issue his warrant upon this fund for the special purposes of the provisions so adopted, which, in view of the provisions of the Imperial statute, 3 and 4 *Vic.*, ch. 35, it would not have been lawful for the Governor to do without the special authority of the legislature of *Canada* for that purpose given; but it is plain that the Act cannot be construed as imposing any other or greater liability upon the consolidated fund of *Canada* than that purported to be imposed upon the revenues of *Lower Canada* by the terms of the special ordinance, and as that ordinance was only permissive, in so far as it authorized the Governor for the time being, if he should deem it to be expedient, to lend public monies to a prescribed amount to the trust corporation, upon the security of its debentures, so, likewise, must the 4 and 5 *Vic.*, ch. 72, be construed to have been permissive only; and, therefore, the latter act cannot be construed

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as imposing any liability to redeem any debentures which might be issued by the trust corporation any more than the special ordinance itself could have been so construed.

In the session of parliament commencing on the 8th September and terminating on the 12th October, 1842, and upon the 29th day of September during that session, there appears to have been a petition presented to the Legislative Assembly from the trustees of the *Quebec* turnpike roads praying to be authorized to raise, by way of loan, a sum sufficient to complete the said roads and also for certain alterations in the ordinance constituting the trust. The only action which appears to have been taken upon this petition during the short remainder of the session was, that upon the 10th October, it was resolved that an humble address be presented to His Excellency the Governor General, praying that His Excellency will be pleased to cause to be laid before the house within ten days after the opening of the next session of the provincial parliament, detailed accounts of all monies received and expended by the trustees of the *Quebec* turnpike roads under the authority of the ordinance to provide for the improvement of the roads in the neighbourhood of and leading to the city of *Quebec* and to raise a fund for that purpose, but in the public accounts laid before the house during that session, accompanying the estimates for appropriations for the public service, in a "schedule of accounts and state-"ments respecting the public income and expenditure "for the province of *Canada*, for the year 1841," and in a statement, forming part of that schedule, of warrants issued on the Receiver General, on account of the expenditure of the civil government of that part of the province formerly *Lower Canada*, for the year 1841, is the entry of a warrant for £360 17*s.* 8*d.* sterling as issued to *John Porter*, secretary of the *Quebec* turnpike

road trustees, to enable him to pay the interest on loans effected under 4 *Vic.*, ch. 17, to the first of January, 1842, and in another statement, being No. 19 of the same schedule, entitled "statement of the affairs of *Canada*, on the 31st of Dec., 1841 and under the heading of 'loans to incorporated companies and commissioners of turnpike roads,' is an entry of £400 19*s* 7½*d*. currency, as a loan to the *Quebec* turnpike trust," which sum it will be seen precisely represents the sum of £300 17*s*. 8*d*. sterling in the other entry.

In similar documents laid before the House in the session held in 1843, for the year ending the 31st December, 1842, is the entry of a payment made to *John Porter*, secretary to the trustees of the *Quebec* Turnpike Roads, being for interest to the 31st of December, 1842, of the sum of £1,041 6s 10d. sterling, equal, as it will be observed, to about £1,157 0s. 10d. currency, and in the statement under the head of "Loans to incorporated companies," is the entry of the sum of £21,600 currency as a loan to the *Quebec* Turnpike Trust. In reply to the address of the legislative assembly in the previous session, there was in the session of 1843 laid before the assembly, a general account of monies received and disbursements made by the trustees of the *Quebec* Turnpike Roads, from the 1st March, 1841, to the 27th March, 1843. By this account it appears that upon the 1st January, 1842, there accrued due for interest upon debentures to the amount of £12,800 previously issued to divers persons, the sum of £400, 19s. 7d. which was liquidated by the Governor-General's warrant of January 1st, 1842, for that precise amount; that upon the 1st July, 1842, the trustees received by the Governor-General's warrant the sum of £524 6s. 5d. to pay the interest then accrued due, and upon the 1st January, 1843, by like warrant, the sum of £632 14s. 5d. to pay the interest which accrued due upon

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the 31st December, 1842, upon all debentures then issued, which amounted to the sum of £21,600, these two sums of £521 6s. 5d. and £632 14s. 5d., making together the sum of £1,157 0s. 10d. represent the £1,041 6s. 10d. sterling, entered in the accounts laid before the legislature in the session of 1843, as paid out of the consolidated fund. Now, by these returns it appears that the £400 19s. 7d., the first item which was entered in the accounts laid before the legislature in 1842, as a loan to the *Quebec* Turnpike Trust, was in fact advanced to the trust corporation to pay interest upon all the debentures then issued, and was correctly represented as a loan to the corporation, but the entry of £21,600 as a loan to the corporation in the accounts laid before the legislative assembly in 1843, does not, it must, I think, be admitted, correctly represent the state of the case, for in fact no such amount had been advanced by the executive government to the trust corporation. It is urged by way of explanation of this entry, that the government officials, whose duty it was to make out the accounts, entered this sum of £21,600 as a loan to the trust corporation, because they regarded the monies obtained upon the trust corporation's debentures, as monies borrowed upon the credit of the Province and to be paid out of the public revenues of the province, but if that was the idea entertained, it could surely have been easily expressed and the account would have been made out so as to show the province to be the debtor to the holders of the debentures and not creditors of the trust corporation for a loan made to the corporation. It is difficult to understand or explain the entry, for before the passing of the Act, 12 *Vic.*, ch. 5, to which I shall have to refer by and by, there was no act of parliament, nor any vote or resolution of the Legislative Assembly which could be construed as subjecting the consolidated fund to the payment of the

principal of the debentures issued by the corporation, or as authorizing the loan of such a sum to the corporation; but whatever explanation may be suggested for the entry, it is clear that if any inference is to be drawn from any conduct of the legislative assembly, founded upon the public accounts laid before it, such inference must be drawn from what is stated in those accounts and not from what is not stated therein, but is thrown out in argument by way of suggested explanation of a statement in those accounts which must be admitted to be incorrect; and it is equally clear, as it seems to me, that from the mere statement in the accounts, no inference whatever can be drawn which could impose upon the province any liability to pay the debentures, for payment of them out of the public revenue of the province could be only authorized or sanctioned, or the liability to pay, be imposed only by some vote or resolution of the legislative assembly, or by some bill originating therein being passed into an act of parliament.

In the accounts laid before the legislative assembly, in the session which commenced on the 28th November, 1844, and terminated on the 29th March, 1845, there appear to be two entries, the one showing that there was paid by the Governor-General's warrant, between the 1st of January and 31st of December, 1843, to *John Porter* to pay interest on turnpike trust debentures, the sum of £1183 8s. 5d. sterling, amounting to £1314 18s. 4d. currency, which, at 6 per cent. (which appears to have been the rate of interest at which all the debentures were issued) would pay one year's interest on £21,915 of debentures; and the other shewing that there was paid by a like warrant, to *John Porter*, secretary, to pay the interest on debentures issued by the *Quebec* Turnpike Trust, to 1st July, 1844, the sum of £695, 3s. 2d. currency, while the entry, under "Loans

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to Incorporated Companies," of a loan to the *Quebec* Turnpike Trust, remains the same in both years 1843 and 1844, namely, £21,600; although, by the trustees' return of monies received and disbursed by them from the 1st January to the 22nd July, 1844, it appears that the sum of £695 3s. 4d. was paid to the trustees by the Governor-General's warrant, on the 1st July, 1844, which, with £3 0s. 0d. in the hands of the trustees, enabled them to pay, and was applied by them in paying, the interest then due upon the sum of £27,100, for which it appears that the trust corporation had then issued debentures, so that the amount entered under "Loan to the trust," does not purport to represent in those years the amount of the principal of the debentures issued. Now, in this session, there were presented to the House, petitions of divers persons, inhabitants of the county of *Quebec*, praying for certain amendments in the ordinance relating to these turnpike roads, and praying that the tolls imposed might be diminished, as more beneficial to the revenue to be realized by the trust, and that the rate at which they might be commuted should be fixed by law, and a petition of the trustees praying for authority to raise a further loan of £8,882, to complete the works; all of which petitions, together with the returns of the accounts and transactions of the trustees, were referred to a special committee which reported recommending, among other things, the prayer of the trustees to be granted if recommended by a message from His Excellency the Governor-General, and accordingly a bill was introduced which, adopting the several suggestions made in the report of the committee, was passed into law as 8 *Vic.*, ch. 55. By this act, it was enacted that it should be lawful for the trustees to raise, by way of loan, for the purposes of the ordinance cited in the preamble, a further sum, not exceeding £8,882 currency,

to which loan and to the debentures issued in consequence thereof, and to the advance of monies out of the provincial funds to pay the interest thereon, if need should be, and to all other matters, incident to the said loan, all the provisions of the said ordinance touching the loan thereby authorized are extended and shall apply, excepting always, that the rate of interest on the loan to be raised under the authority of this act, shall not, in any case, exceed the rate of 6 per centum per annum.

By the 4th section, it was enacted that if the bridge, commonly called *Dorchester Bridge*, should at any time thereafter be acquired by the provincial government, and placed under the control of the said trustees; the toll gate, near the entrance of the road leading to *Beauport*, should be removed to the end of the said bridge, and the tolls payable at such gate for the use of the road and bridge, should not be greater by more than one half than the tolls which will be payable at any other toll gate, and shall be subject to commutation, and that then the *Charlesbourg Road*, up to the church of the parish of *Charlesbourg*, shall come under the operation of the ordinance, as thereby amended, and under the care, control, and management of the said trustees of the *Quebec* turnpike roads. And, by the 5th section, it was enacted that the provisions of the said ordinance as thereby amended, should also immediately after the passing of the act, extend to the road leading from *Champigny Hill*, the said hill included, to the bridge commonly called the *Red Bridge* or *Commissioners' Bridge*.

It seems to be a fair construction to put upon this act that it is a legislative recognition by the province of *Canada* of the provisions contained in the special ordinance, and of the powers vested in the trust corporation to raise, by way of loan, upon its debentures,

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the sum of £33,882; and an application by the legislature of *United Canada* of those provisions, as well as to payment of interest upon the monies secured by the debentures, as to loans to be made by the governor of *Canada*, for the time being to the trust corporation, out of the consolidated revenue fund of *United Canada*, but only upon the like terms and conditions as are mentioned in the special ordinance in relation to the revenues of *Lower Canada*. In the public accounts laid before the legislature in the year 1846, is entered the sum of £2,445 13*s*. 11*d*. to *John Porter* to pay the interest on debentures issued by the trustees of the *Quebec* turnpike trust, for the 18 months ended on 31st December, 1845, and in the accounts of the trust laid before the legislative assembly, in reply to an address for that purpose, this sum appears to have been applied as follows: £720 *s*8. 4*d*. to pay the interest on the 1st January, 1845, upon £25,000; £760 12*s*. 0*d*. to pay the interest on the 1st July, 1845, upon £27,500; and £964 13*s*. 7*d*. to pay the interest on the 1st January, 1846, upon £33,850, which sum is that which is entered in the statement of loans to incorporated companies as an amount loaned to the *Quebec* Turnpike Trust.

During this session also, several petitions were presented to the legislative assembly, praying for amendments in the act of the preceding session, relating to the trust. The trustees also presented a petition praying for authority to borrow a further sum of £12,000 for the improvement of the roads. These petitions, together with the accounts of the trustees, were referred to a special committee, which committee, among other things, reports that the committee had not yet abandoned the hope that something would be done either to acquire the *Dorchester Bridge* on the part of the government, or to vest the right of the crown to purchase the

same in the trustees, and they suggested that, in the event of the bridge being purchased, the *Charlesbourg* road should be macadamized to a certain point therein mentioned. They added further that they were informed that if the trustees were authorized to borrow a sum of £20,000 on the guarantee of the province, it would enable them to macadamize the several roads and portions which they have recommended to be improved, and to purchase the *Dorchester Bridge* from its present proprietors. "The completion of the said roads," they add, "and the additional tolls that would "accrue from the bridge would so increase the revenue "of the trust as to relieve the province from paying in "future the interest on the loans already guaranteed." They further say, "your committee perceive with satisfaction that the reduction of the tolls effected last year has caused no diminution in the revenue, but on the contrary has increased it, and they suggest a new schedule of tolls."

This report, having been referred to a committee of the whole house, resulted only in the adoption by the house of that part which recommended a new schedule of tolls, and a resolution was passed and agreed to by the house, "that it is expedient to amend the act passed in the 8th year of Her Majesty's reign, intituled, &c., &c., *Vic.* 9, ch. 55, by repealing the schedule of tolls established by the said act, and by substituting the following," &c., &c., and leave was given to bring in a bill in conformity with the resolution which was accordingly brought in, and was passed into law as 9 *Vic.*, ch. 68.

In the public accounts laid before the legislative assembly, in the session held in the year 1847, there is the entry of a payment to *John Porter*, secretary, to pay interest on debentures issued by the *Quebec* turnpike trust, in the year ended 31st December, 1846, of the

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sum of £2,031 currency, which it will be seen is jus the interest at 6 per cent upon a principal of £33,850 which is the amount entered in the statement of "Loan to incorporated Companies," as loaned to the Trust.

During this session, also, petitions relating to the trust were presented to the legislative assembly, one praying for an enquiry into the conduct of the trustee s, another praying that the *Dorchester* bridge should be placed under the control of the trustees, another praying that the *L'Ormière* road might be macadamized, and another praying for a grant to extend the improvements of the *Cove* road, and to macadamize the *route de l'Eglise.*

In reply to an address for copies of correspondence between the executive government and the trustees of the *Quebec* turnpike trust, such correspondence was laid before the house, and together with the above petitions was referred to a special committee, which, six days before the house was prorogued, presented their report, wherein among other things, they express regret "that the government had not thought proper to recommend during the present session, a vote of public credit for the purpose of completing the roads in the neighbourhood of *Quebec*, and they regret still more that the government had not thought proper to recommend the purchase of *Dorchester* bridge, with the view of placing it under the control of the *Quebec* turnpike trustees, according to the recommendation several times made by different committees of your honorable house." In the short session of 1848, which commenced on the 25th February, and terminated on the 23rd March, there is nothing which throws any light upon the acts or conduct, either of the executive government or of the legislature in any respect bearing upon the trust. The government, in that session, obtained a vote of credit which may or may not have provided for the interest

accruing upon these debentures, but the journals or appendices throw no light upon the subject.

In the public accounts laid before the legislative assembly in the session held in the year 1849, there appear two entries of monies said to have been paid to *John Porter*, secretary, to pay the interest on debentures issued by the *Quebec* turnpike trust, the one of £2,033 8s. 10d. currency for the year ending 31st December, 1847, and the other of £2032 18s. 4d., for the interest accrued in the year 1848. And under the head of "loans to incorporated companies," in both years is the entry £33,850 as a loan to the trust, whereas the interest paid in those years represents a capital a little in excess of the £33,882 which was the utmost amount the trust corporation was authorized to borrow.

During this session, also, several petitions were presented in relation to the trust; one praying that the trustees might be authorized to borrow a sum of money for the improvement of the *Beauport* road; another, that certain roads in the parish of *St. Foye* be put under the control of the trustees and that they be empowered to raise funds in the usual way to complete and keep the road in repair; another praying a grant of money to improve certain roads therein mentioned under the direction of the trustees; another praying that the road leading from the church of *Charlesbourg* to *Dorchester* bridge be placed under the control of the trustees and that aid be granted for macadamizing the same; and another praying that *Dorchester* bridge should be placed under the control of the trustees.

On the 21st May the house resolved itself into committee on the subject of the *Dorchester* bridge and the roads in the vicinity of *Quebec*. The committee reported several resolutions, which were agreed to by the house as follows:—

"1. Resolved that it is expedient to authorize and

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enable the trustees of the *Quebec* turnpike roads to acquire and assume the possession and property of the bridge called *Dorchester* bridge over the river *St Charles* near the city of *Quebec*.

"2. Resolved that it is expedient to extend the provisions of the ordinance (passed in the 4th year of Her Majesty's reign, entituled 'an ordinance to provide for the improvement of certain roads in the neighborhood of, and leading to the city of *Queb c*, and to raise a fund for that purpose,) to the said bridge as well as to certain roads and parts of roads in the vicinity of *Quebec*;' and

"3. Resolved that for the above purposes it is expedient to authorize the said trustees to raise a further loan not exceeding £25,000 currency on the security of the tolls and other monies which might come into their hands, and to give a preference or priority of lien on the said tolls and monies to the interest on the said loan over the interest on all loans already authorized to be raised by the said trustees, as well as over the claims of Her Majesty's government for repayment of advances made by the Receiver General out of the provincial revenues."

The house having agreed to these resolutions gave leave to the Solicitor General to bring in a bill to give effect to them, which was accordingly brought in and passed into law, as 12 *Vic.*, ch. 115, whereby the 4 section of 8 *Vic.*, ch. 55, was repealed, and it was enacted that it should be lawful for the trustees to raise, by way of loan for the purposes of the Act, a sum not exceeding £25,000 currency, to which loan and to the debentures to be issued in consequence thereof, and to all other matters incident to the said loan, all the provisions of the ordinance 4 *Vic.*, ch. 17, touching the loan thereby authorized, were extended and should apply, excepting always that the rate of interest on the loan to be raised under the Act, should not in any case exceed the rate

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of six per centum per annum, and "that no money shall be advanced out of the provincial funds to pay such interest; and all debentures issued under this Act shall, so far as regards the interest payable thereon, take precedence and have priority of lien on the tolls and other monies, which may come into the possession and be at the disposal of the trustees, over the interest payable on the debentures granted or to be granted by the said trustees for any loan already authorized by law, as well as over all claims for repayment of any sums of money advanced or to be advanced to the said trustees by the Receiver General of the province." By the second section the trustees were required, as soon as possible after the passing of the Act, to purchase the bridge; and by the 5 section the several roads for which upon different occasions petitions were presented, praying that they might be placed under the control and management of the trustees, were placed under such their control. Now, when the legislature not only declined to adopt the recommendation of the special committee, to grant a sum out of the provincial funds to complete the roads, or to authorize a loan to be effected by the corporation upon the guarantee of the province, or to purchase the *Dorchester* bridge, but repealed the 4th section of the 8 *Vic.*, ch. 55, which pointed to and provided for the contingency of the province purchasing the bridge and in lieu of the province purchasing it, authorized the trust corporation to raise a further sum of £25,000 upon security of their debentures, for the purpose, among other purposes, of purchasing it, and required them to purchase it and to take control of it under the provisions of the special ordinances, which were re-enacted for the purpose, it seems to me to be very clear that the legislature never contemplated that the bridge, when purchased, should be regarded as provincial property. The provision as to the Governor,

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for the time being, in his discretion authorizing an advance of monies out of the provincial revenues to pay the interest upon the debentures had been the sole cause and excuse for the government having paid such interest out of the consolidated fund throughout, from the issue of the debentures; and the manner in which, as we have seen from the public accounts, annually laid before the Legislative Assembly, that body dealt with those payments adopting them, as I think we must hold that they did every year upon the occasion of the vote being annually taken for the supply of the civil governments, based upon those accounts, may well be considered to have given to the holders of those debentures a strong moral, if not legal claim to have the interest continued to be so paid to them, and when we find the legislature assuming to give to the newly authorized issue of debentures a preference upon the trust funds, in so far as interest upon those debentures is concerned, over the firstly authorized issue, it may well be held that the legislature gave this preference because they had assumed, or were assuming, the payment of interest upon the first issue, if the trust fund should be insufficient for both; and when in addition to this preference so given to the newly authorized issue, we find the act expressly enacting that no money shall be advanced out of the provincial funds to pay interest upon those debentures, I can come to no other conclusion than that the object of this enactment was to prevent the possibility of any claim upon the province being ever made in respect of the newly authorized issue and to remove the sole foundation for such a claim being made. From this time forth I think it may without impropriety be said (at any rate it may be granted without prejudice to the argument urged before us in this case upon behalf of the Dominion Government) that the holders of the previous issue of deben-

tures to the amount of £33,882 had from this time forth a right to regard the Province of *United Canada* as guarantors of the payment of the interest upon that amount of debentures, although they had no such nor any claim as yet upon the province for the payment of the principal secured by the debentures, and although, for all payments of such interest then already or thereafter to be made out of the consolidated fund, the province should be creditors of the trust corporation for the amount of such advances. It was, however, enacted by an act passed in the same session, viz: 12 *Vic.*, chap. 5, that it should be lawful for the Governor, by and with the advice of the executive council of the province from time to time, and as the interests of the public service might require, to redeem or to purchase, on account of the province all or any of the then outstanding debentures constituting the public debt of the province of *Canada*, or of either of the late provinces of *Lower* or *Upper Canada*, or all or any of the debentures issued by Commissioners or other public officers under the authority of the legislatures of either of the late provinces of *Upper* or *Lower Canada*, or of the legislature of Canada, the principal or interest of which debentures is made a charge on the consolidated revenue fund of this province, and to issue new debentures to an amount not exceeding that of the debentures so redeemed or purchased.

Now, if the true construction of this act was that it authorized the redemption or purchase on account of the province of the debentures for the £33,882 issued by the *Quebec* Turnpike Road Trust Corporation, it can only be so upon the ground that the payment of the interest upon those debentures was, or was deemed by the legislature, to be charged upon the consolidated revenue. The past accrued interest had been, as we have seen, in fact, paid annually out of the consolidated

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fund, and in the public accounts laid before the legislative assembly, as the basis upon which the annual votes of supply were granted, such payments were charged to that fund. This fact, together with the preference given by 12 *Vic*, ch. 115, in respect of the interest upon the debentures by that act authorized, as well over the interest accruing upon the previously issued debentures, as "over all claims for repayment of any sums of money advanced or to be advanced to the trustees by the Receiver-General of this province," as provided by the last recited act, afforded, as I have said, just ground for the holders of the £33,882 debentures, asserting a claim to have all future interest accruing upon those debentures paid, in like manner as the past interest had been, out of the consolidated fund; but whether a strict legal construction of the act if construed by a judicial tribunal before the redemption or purchase by the government of any of those debentures would or not have justified the adjudication that those debentures did properly come within the description of debentures "the interest of which was made a charge on the consolidated revenue fund" so as to bring them within the authority by the 12 *Vic.*, ch. 5, conferred upon the government to redeem or purchase them on account of the province, it is not now necessary to enquire; for, certain it is, as I have said, it could only be by reason of the interest having been so charged that the decision could be upheld, there having been no act whatever purporting to have charged, nor before the passing of 12 *Vic.*, ch. 5, purporting to charge upon the province, or its consolidated fund, any liability whatever—or, indeed, purporting to confer any permission or power upon the provincial authorities—to redeem or pay the principal of any of these debentures. But for this act the holders of those debentures would have had no claim whatever upon or against the province for pay-

ment of the principal of them which a court of justice could recognize, and it was solely upon the authority of this act, as we shall see, that those debentures were subsequently paid by, or purchased on account of, the province. It was suggested that there was the same liability to pay those debentures as there was to pay those issued in *Upper Canada*, for what were called "The York or Home District Roads." It is, I think, very possible that the liability which did rest upon the province of *Canada* to pay those debentures may have operated, as a motive and reason, for the legislature of *Canada* affirming, authorizing or assuming the payment of the *Quebec* Trust debentures ; but, from their issue, the York Roads debentures stood upon quite a different footing. The acts which authorized their issue were acts of the legislature of the province of *Upper Canada*, passed before the union of *Lower* and *Upper Canada*, viz: 1 *Wm.* IV, ch. 16 ; 3 *Wm.* IV, ch. 37 ; 6 *Wm.* IV, ch. 30, and 7 *Wm.* IV, ch. 76. The debentures issued under the authority of those acts were, and were always considered to be, provincial debentures, issued and signed by the Receiver-General, like all other provincial debentures, and the loans obtained upon them were received by the Receiver-General, accounted for and handed by him to the trustees or commissioners entrusted with the duty of expending them on the roads. The tolls imposed by the acts, when received by the trustees or commissioners, were required to be paid over by them to the Receiver-General, by whom the interest upon the debentures was paid. So that, notwithstanding that those debentures, as the *Quebec* Trust debentures, were charged specially upon the tolls imposed, it is clear that in form and character they were essentially provincial debentures, constituting part of the debt and obligations of the province of *Upper Canada* existing at the union, and so quite different

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from the *Quebec* Trust debentures which, as I have shewn, were not provincial debentures and did not constitute part of the public debt of *Lower Canada* existing at the union; accordingly, among the public accounts laid before the legislative assembly of *Canada*, in the year 1842, in a paper intituled "A schedule of government debentures redeemed and outstanding, issued under the authority of acts of the provincial legislature of that part of the province of *Canada*, heretofore *Upper Canada*," all debentures which had then been issued upon the authority of the above Acts of *Upper Canada*, are entered. These debentures were also, it is true, redeemed under the authority of 12 *Vic.*, ch. 5, but it is plain that this Act authorized their payment, under the authority given in the Act to redeem, &c., "any of the then outstanding debentures constituting the public debt of either of the late provinces of *Lower* or *Upper Canada*," these debentures constituting part of the public debt of *Upper Canada*, whereas, as I have shewn already, the *Quebec* trust debentures never constituted part of the debt of the then late province of *Lower Canada*.

By the public accounts laid before the legislative assembly in the session held in 1850, there appears to have been paid out of the consolidated fund, in payment of interest upon the trust corporations debentures, for the year 1859, the sum of £2,032 18s. 4d, in two equal sums, being each for a half year's interest upon the principal sum of £33,832, but in the statement of the affairs of the province under the head of "loans to incorporated companies" there is no longer the entry of this or of any sum as a loan to the *Quebec* turnpike trust.

During this session a petition was presented praying for the passing of an Act to authorize the trustees to continue the *Charlesbourg* road towards *St. Pierre*, for

seven miles, which was referred to a special committee with power to report by bill. An address from the legislative assembly was also presented to His Excellency, praying that he would be pleased to lay before the house copies of all accounts made and rendered by the trustees, for the years 1848-9, and also copies of all documents and correspondence between the executive and the trustees, upon the subject of the management of the roads, and copies of the proceedings of the trustees and of their correspondence with the proprietors of *Dorchester* bridge, on the subject of the purchase of the said bridge, in conformity with the Act of the last session of parliament for that purpose. By the papers laid before the house in reply to this address, it appeared that in the month of July, 1849, application had been made to the trust corporation by the holders of some of the debentures for the £33,882, all of which were then overdue, for payment of the debentures, and that the trustees, being unable to redeem them, had applied to the executive government for permission under the provisions of the ordinance to effect a loan at a rate of interest not exceeding 8 per cent. to redeem £2,500 of debentures, the holders of which were very urgent for repayment of their principal, and that His Excellency had declined to give the requested permission; that thereupon the holders of those debentures in December, 1849, petitioned His Excellency to the like effect, and setting forth that they had advanced their money in the purchase of the debentures, relying upon the provisions of the 28th section of the ordinance, which section authorized the trustees, with the approval of the Governor, to raise money by a loan to redeem the debentures fallen due. To this petition His Excellency replied, through the provincial secretary, informing the petitioners that he was advised not to consent to the application which had been made by the trustees and

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that His Excellency saw no reason to depart from the decision then arrived at, "as the government does not consider itself pledged to the redemption of the bonds but only to the payment of the interest accruing thereon." To this the holders of the debentures replied by a further petition wherein they state that from the terms of the above answer to their former petition, they are persuaded a misapprehension still exists, both with regard to the original application from the trustees and to the prayer of the petitioners, whose object was merely that a loan should be sanctioned at a rate not exceeding 8 per cent. to enable the trustees to pay the overdue debentures, and repeating that they had invested their capital in the debentures upon the faith that they would either be paid at maturity, or that the special powers conferred upon His Excellency by the 28th section of the ordinance to authorize the trustees to borrow money, would be exercised, they again prayed that His Excellency would be pleased to approve of the trustees effecting a loan at a higher rate of interest than 6 per cent., as the petitioners would be likely to remain a long time without a return of their capital unless the trustees should be so authorized, and they urged as a reason in support of the prayer of their petition that the tolls and the commutation thereof on the roads might be fully adequate to the payment of interest even at a higher rate than 6 per cent., although the capital represented by the debentures might not be paid for years out of the proceeds of such tolls.

To this petition His Excellency, in like manner, replied through the provincial secretary, that he saw no sufficient reason in the allegations of the petitioners to induce him to depart from his former decision on the subject.

I have drawn attention to these documents so laid before the legislature, for the purpose of showing that

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the opinion I have expressed as to the legal position of the executive government, with respect to the debentures, namely, that they were not liable at all for the principal, although, under the circumstances already above detailed, they then were, as the government was ready to admit, responsible for the payment of the interest accruing upon them, was not only the opinion which the executive government then entertained, but that this opinion was concurred in by the holders of the debentures, all of which were then overdue, and for the purpose of drawing attention to the fact that the legislative assembly with those documents before them and with the knowledge of the position in which the executive government claimed to be in respect of the debentures, passed a Bill which became an Act, viz., 13 and 14 *Vic.*, ch. 102, wherein, after reciting that the Act 12 *Vic.*, ch. 115, had not obtained the object the legislature had in view in passing it, which was the speedy purchase of the *Dorchester* bridge and the speedy completion of the roads mentioned in that Act, it was enacted that if, at the expiration of two months, the trustees should not have purchased the bridge they should immediately proceed with the construction of a new one, and that they should set apart the sum of £10,000 out of the £25,000 they were authorized to borrow by 12 *Vic.*, ch. 115, for the above purpose, and appropriate the residue towards the improvements of the other roads by that Act placed under their control, thereby compelling the trustees to effect the loan contemplated, upon debentures to be issued under the authority of an Act which, in express terms enacted that no money should be advanced out of provincial funds even for the payment of interest upon the debentures so to be issued. This confirms the opinion I have already expressed that the object of the legislature in that enactment was thereby to remove all possible

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foundation for any claim being ever made against the province, in respect of those debentures, as to the interest as well as to the principal. In the public accounts laid before the legislative assembly in 1851 we find the entry of two payments to the trust corporation out of the consolidated fund, the one of £1,016 9*s.* 9*d.* to pay interest upon £33,882 debentures for the six months ending June 30th. 1850, and the other for £248 15*s.* 2*d.* to pay interest on £28,292 of debentures, for the 6 months ending 31st December, 1850, and in this year and from this year forward under the head of "Loans to Incorporated Companies," there is no longer the entry of any sum as loaned to the trust corporation. By a return made to an address of the house of assembly praying that His Excellency would cause to be laid before the house a debtor and creditor account, between the provincial government and the trust, from the commencement and the amount of debentures held, and of the interest paid and received by the government from year to year, on account of the trust, it appeared that from 1841 to 1850 inclusive, the government had paid for interest upon the debentures issued by the trust, in all £16,009 6*s.* 3*d.* on account of which they had received nothing, but were entered as creditors of the trust for that amount. It also appeared that the trustees were in receipt of an annual income from tolls exceeding £3,000, their receipts from that source for the year 1850 being £3,370 13*s.* 4*d.*, an amount sufficient to pay interest at 6 per cent. upon £50,000. Possessed of this information the legislative assembly passed two bills, which became Acts 14 and 15 *Vic.*, ch. 132 and 133, the former to authorize the trust to effect a new loan and to extend the provisions of the *Quebec* turnpike road ordinance to certain other roads, and the other to authorize the trustees to issue debentures to a limited amount, for the purpose of buying

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and rebuilding the *Montmorency* bridge. By the former it was enacted that it should be lawful for the trustees to raise by way of loan a sum not exceeding £15,000 currency, and that such loan and the debentures which should be issued in conformity with the provisions of the act, and all other matters relating to the said loan should be subject to the provisions of the ordinance (4 *Vic.*, ch. 17,) relative to the loan authorized under the said ordinance; Provided, nevertheless, that the rate of interest to be allowed, under the authority of the act, should in no case exceed the rate of 6 per cent. per annum, and that no money should be advanced out of the provincial funds for the purpose of paying the said interest, and that all debentures issued under the authority of the act, so far as regards the interest payable thereon, should take precedence and have priority of lien on the tolls and other monies which might come into the possession and be at the disposal of the trustees over the interest payable on all debentures which should have been issued upon the guarantee of the province, or which should thereafter be issued by the said trustees upon the guarantee of the province, as well as over all claims for repayment of any sums of money advanced, or to be advanced, to the said trustees by the Receiver-General of the province. Now, it will be observed, that up to this, the frame and phraseology of the act is almost identical with the frame and phraseology of 12 *Vic.*, ch 115, the only difference at all, in fact, being in the manner of describing the debentures over which the newly authorized debentures were to have precedence as to interest, for that the same debentures were referred to by both acts may be admitted, instead of the words used in 12 *Vic.*, ch. 115, namely "over the interest payable on all debentures granted, or to be granted by the said trustees, for any loan authorized by law" are used, the words "over the

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interest payable on all debentures which shall have been issued upon the guarantee of the province, or which shall hereafter be issued by the said trustees upon the guarantee of the province." I cannot see, I must say, that anything was gained by this difference in expression, for it is plain that it leaves open the question whether there were then any, and if any, what debentures issued upon the guarantee of the province, and what was the extent of such guarantee, if any? I have already shown that although neither the terms of the ordinance 4 *Vic.*, ch 17, nor of 4 and 5 *Vic.*, ch. 72, nor of 8 *Vic.*, ch. 55, had made the province liable as guarantors or otherwise, either for interest or principal, upon the debentures which had been issued, yet that the regular payment annually out of the consolidated fund of the interest upon the £33,882 debentures, statements of which were annually laid before the legislature in the public accounts, upon the vote of supply being taken, together with the action of the legislature in 12 *Vic.*, ch. 115, postponing the payment out of the trust funds of interest upon those debentures to the debentures authorized by 12 *Vic.*, ch. 115, might from that time forth justify the expression that in so far as interest upon the first issued debentures was concerned it was assumed or guaranteed by the province, but that there was nothing to warrant a contention that the payment of the principal of those debentures was assumed or guaranteed by the province. It may therefore be admitted that in this sense the reference in 14 and 15 *Vic.*, ch. 132 to those debentures as issued upon the guarantee of the province, such guarantee being limited to the interest upon them, is not inappropriate; but it is really of little importance whether the expression "issued upon the guarantee of the province, was, or not, appropriate as applicable to any of th debentures previously issued, for the question with

which we have to deal is, whether or not debentures issued in virtue of and under the authority of an act subsequently passed, viz., 16 *Vic*, ch. 235, were issued upon the guarantee of the province to any, and if any, to what extent, and that is a question which must be answered irrespective of any propriety or impropriety in the expression used in 14 and 15 *Vic.*, chs. 132 and 133 as applicable to the previously issued debentures. Now, the 14 and 15 *Vic.*, ch. 132, having provided for the precedence which the debentures to be issued under that act should have, as to interest, over all debentures having the guarantee of the province, said nothing as to the rank, order and precedence, either as to interest or principal, between the debentures to be issued under 14 and 15 *Vic.*, ch. 132 and those issued or to be issued under 12 *Vic.*, ch. 115, which latter had not the guarantee of the province, therefore *ex magnâ cautela* the above clause of 14 and 15 *Vic.*, ch. 132 proceeds to enact, "and the debentures, issued under this act shall, as regards both the payment of interest and the principal thereof, rank after those issued under the authority of the act last above cited, passed in the 12th year of Her Majesty's reign," viz., 12 *Vic.*, ch. 115. This latter sentence does not in any manner affect or relate to the debentures for the £33,882, whether they are properly or improperly referred to in the act as debentures issued upon the guarantee of, the province, and the result is that these debentures as regards the liability of the province to have redeemed them, remained precisely in the same condition as they were prior to the passing of the 12 *Vic.*, ch. 5. The like observations may be applied to 14 and 15 *Vic.*, ch. 133, but with greater force, for the frame and phraseology of that act are totally different from the frame and phraseology of ch. 132, inasmuch as in ch. 133 no reference is made to those provisions of the ordinance which relate to the

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power of borrowing money on debentures, as there is in ch. 132. By the ch. 133 the trustees are authorized to purhase the *Montmorency* bridge and to rebuild it, and for that purpose to borrow a sum not exceeding £5,000, at a rate not exceeding six per cent. per annum. Then when they shall have purchased the bridge they are invested with all the rights and privileges vested in the properties thereof, by virtue of 52 *Geo.* 3, ch. 17. Then it is provided that the revenue arising from the bridge shall be applied exclusively to the improvement and gradual completion of the high road of the *Coté de Beaupré*, and the only reference to the terms of the ordinance is to place the bridge and the above road when completed under the control of the trustees, subject to the provisions of the ordinance, which plainly means subject to those provisions as to control and management, but in so far as the trustees have any power to borrow under this act, a step necessarily to be taken before acquiring and completing the bridge and road, the provisions of the ordinance are not mentioned, but the act simply authorizes the trustees to borrow a sum of money not exceeding £5,000, to purchase the bridge ; it then enacts, as did ch. 132, that the interest of the monies to be borrowed under the act should be privileged over the interest on the debentures issued or to be issued by the trustees with the guarantee of the Province, and should, as regards the interest on those debentures lastly mentioned have priority of lien on the tolls and other monies then in or thereafter to come into the hands of the said trustees, but should rank after the debentures issued or to be issued under 12th *Vic.*, ch. 115.

No reference being made in this act to the terms, expressions and provisions of the ordinance, 4 *Vic.*, ch. 17, relating to borrowing, it seems to have been certainly prudent, if not necessary, that some provision should

have been made in order to avoid any question arising as to whether the province could be made liable for those debentures, a question not unlikely to have been raised without such provision, as appears by the question raised here; accordingly we find that such provision was made, for it is added in the section here in recital that: "Neither the principal nor interest on the debentures to be issued under this act shall be guaranteed by the provinces, or be payable out of any provincial funds," thus providing, (as appears to me to have been the deliberate determination of the legislature in despite of the recommendation of several special committees) to take special care in every act authorizing the trustees to effect a loan passed subsequently to 8 *Vic.*, chap. 55, that there should be no liability whatever imposed upon the province, nor any pretence or excuse afforded for setting up any claim asserting any such liability, for the payment of the loans which the trust corporation was by such acts authorized to effect; and it is in my judgment impossible to argue (from the fact of the province by this act, chap 133, being exempted from all liability as to principal as well as to interest) that the province is liable for principal, although not for interest, under chap. 132, because in that act so, differently framed, the word principal is not inserted. I have already shewn, I think, how unnecessary it was to insert it in an act framed as chap. 132 is. It is to my mind quite an inconclusive argument, because the word principal is inserted in one act and not in another, that for this reason the province is liable for the principal of the debentures issued under the one act and not under the other.

In the public accounts laid before the legislative assembly in the year 1852, there appears to have been paid out of the consolidated fund, to the trustees, the sum of £1697. 10s. 4d., to pay twelve months' interest

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upon £28,292, of debentures issued by the trust corporation for the year 1851, and the sum of £656. 15s. 2d., to pay interest which accrued due 1st July, 1852. In this year a statement is introduced with the public accounts, intituled a "Statement of debentures redeemed under the authority of 12 *Vic*, chap. 5, to 31st January, 1853," wherein there is stated to have been redeemed, of the *Quebec* Road Trust debentures, in 1850, the sum of £5,590; in 1851, the sum of £6,100; in 1852, the sum of £100, making in all to the 31st January, 1853, the sum of £11,790.

During this session several petitions were presented, praying that divers other roads might be placed under the control of the trustees. The House resolved itself into committee to take into consideration the expediency of authorizing the trustees to effect a new preferential loan and by extending the roads to be placed under their control; the committee reported six resolutions, the first three of which enumerated several roads situate upon the north side of the River *St. Lawrence*, which the committee recommended should be placed under the control of the trustees, and as to these roads it was in the 4th resolution resolved—"That in order to provide for the improvements mentioned in the preceding resolutions, and also to complete those mentioned in the act passed in the last session of parliament, 14 and 15 *Vic.*, chap. 132, the said trustees be authorized to borrow a sum not exceeding £30,000 currency, and that the loan effected for that purpose be subject to the provisions contained in the ordinances and statutes now in force in that behalf; the rate of interest on which loan shall in no case exceed six per cent. per annum; and that it is expedient, that, while it shall not be lawful to advance any monies out of the funds of the province to pay the interest of the said loan, all debentures issued for the purposes hereinbefore mentioned, shall, as re-

gards the interest payable thereon, entitle the holders thereof, to a priority of privilege on the tolls and other monies which shall come into the hands and be at the disposal of the said trustees, in preference to the interest payable on all debentures which have been issued by the said trustees with the provincial guarantee as well as in preference to any claims for the re-imbursement of any sums advanced or to be advanced to the said trustees by the Receiver General of this province ; and that the said debentures so issued as aforesaid shall take order and precedence in respect to the repayment thereof, both principal and interest, after those issued under the guarantee of the Province by virtue of acts passed in previous sessions of parliament and now in force."

The 5th resolution recommended that certain roads situate on the south side of the river should be placed under the control of the trustees, and as to these, it was in the 6th resolution resolved—"That in order to provide for the improvements mentioned in the foregoing resolution, the said trustees be authorized to borrow a sum not exceeding £40,000 currency, and that such loan be subject, etc., etc., etc., etc, using the same words as in the 4th resolution to the end. These resolutions were agreed to by the House and leave was given to introduce a bill founded upon them which was accordingly introduced and passed into an act as 16 *Vic.*, ch. 235, by the 7th section of which it was enacted that in order to the making and completion of the several roads described and mentioned in the act passed during the last session of the provincial parliament, chap. 132, and also to the improving and macadamizing of the roads hereinbefore mentioned, and the making of the various improvements hereinabove mentioned (*i. e.* the improvements mentioned in the first three of the above resolutions of the house), it should be lawful for the

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said turnpike road trustees to raise, by loan, a sum not exceeding £30,000 currency, and that this loan and the debentures which should be issued to effect the same, and all other matters having reference to said loan, should be subject to the provisions of the ordinance above cited (4 *Vic.*, chap. 17), with respect to the loan authorized under it, "provided, nevertheless, that the rate of interest to be taken under this act shall, in no case, exceed the rate of 6 per centum per annum, and no monies shall be advanced out of the provincial funds for the payment of the said interest," (that is the interest accruing under this act) "and 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 and other monies which shall come into the possession and shall be at the disposal of the said trustees, in preference to the interest payable on all debentures which shall have been issued by the said trustees under the provincial guarantee, and also to all other claims for the reimbursement of any sums of money advanced, or to be advanced to the said trustees by the Receiver-General of this province, and the said debentures, as respects the payment of the principal and interest thereof, shall rank after those issued under the act passed during the last session of the parliament of the province and hereinbefore cited (viz.: 14 and 15 *Vic.*, chap. 132);" and by the tenth section it was enacted that "for the completion of the roads, bridges and improvements mentioned in the two next preceding sections—being the roads on the south side of the *St. Lawrence*—it shall be lawful for the said trustees to issue debentures to the amount of £40,000 currency, which debentures shall be subject to the provisions of the ordinance hereinbefore cited, shall take precedence of those issued under the provincial guarantee and of the claim by the government to be paid out

of the revenues of the toll-gates and shall take order and precedence, and rank concurrently with those to be issued under the 7th section of this act."

It will be observed that there is a difference between the provisions of the 7th and the 10th sections of the act and the provisions of the corresponding resolutions of the house, to give effect to which the act was introduced. By the resolutions it was provided that all the debentures to be issued under the authority of the act were to have precedence, as to the payment of interest, over all debentures which had been issued with the provincial guarantee, that is to say, assuming the £33,882 debentures to be those referred to under this description, the debentures to be issued under the 16 *Vic.*, ch. 235, were, as to interest, to have precedence upon the trust funds over the debentures already issued for £33,882; but as to repayment of the principal, the debentures to be issued under 16 *Vic.*, were to take a rank and order "after those issued under the guarantee of the province, by virtue of acts passed in previous sessions of parliament, and now in force," that is to say, after the £33,882 debentures or such of them as had not been already paid under 12 *Vic.*, ch. 5, whereas under the provisions of the act, all the debentures to be issued under it were to have rank and precedence over all debentures then already, or which thereafter, if any should thereafter be, issued upon the guarantee of the province. That plainly means, the guarantee as to interest, but as to repayment of principal, those to be issued under 16 *Vic.*, chap. 235, were to rank after those which had already been issued under 14 and 15 *Vic.*, chap. 132, which by that act were declared to rank next after those issued under 12 *Vic.*, chap. 115. Taking, however, the expressions contained in the act as passed as what are to govern, there is, I think, no doubt (and in this I concur with the learned judge

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before whom this case was tried in the Court of Exchequer) that notwithstanding the form of expression used in the 10th sec. all the debentures authorized to be issued by the act, whether for the improvement referred to in the 7th sec. or those referred to in the 10th sec., are alike subject to the provisions of the 7th sec., that "no monies shall be advanced out of the provincial funds for the payment of interest thereon." It is quite clear from the 10th sec. that the intention of the legislature was that all debentures to be issued under the act, whether for the purposes of the 7th or of the 10th sec.,should rank alike, those mentioned in the 10th sec. concurrently with those mentioned in the 7th, both as to principal and interest, and that both alike should have precedence over the debentures referred to as having the provincial guarantee,—then if the debentures for the £33,882 (these being the only debentures to which it is suggested the above description then could apply) should be taken out of the way, by being paid, if they should be paid by the provincial government, until there should be another tissue of debentures, if ever there should be, which should have the guarantee of the province as to interest, the provision in respect of precedence over such class of debentures would become nugatory, and to authorize such further issue there would need have to be another act of parliament: the only construction which, as it appears to me, can be given to the words "or which shall hereafter be issued by the said trustees under the provincial guarantee" in this and all previous acts having the same expression, is that the legislature treating the £33,882 debentures as having the provincial guarantee as to interest only, (as we have seen the government to have admitted in reply to the petition of the bond-holders, who prayed that the trustees might be authorized to raise a loan under the provisions of the 28th section of the ordinance,

4 *Vic.*, chap. 17, to redeem the overdue debentures,) had in view the possibility of a loan being authorized and effected under the provisions of that section. It is, however, obvious that the act 16 *Vic.* draws a plain contrast between two distinct classes of debentures, namely, those which had already been, or which thereafter should be, if any should be, issued upon the guarantee of the province, and the debentures to be issued under 16 *Vic.*, ch. 235. A contrast is drawn between these two classes as distinct and diverse, and precedence is given to the one over the other; the same precedence is given to those to be issued for the purposes of the 10th section as to those for the purposes of the 7th section; they rank the one concurrently with the other; they must, then, both belong to the same class, and being contrasted with, and given precedence over, the class designated as being under the provincial guarantee, how can any debenture belonging to a class having precedence over another ever be held to belong to the class over which it has the precedence? The act says that all debentures to be issued by the trust corporation under the authority of this act, 16 *Vic.*, ch. 235, shall have precedence of another class of debentures issued by the same corporation, namely, debentures having the guarantee of the province. Why shall such precedence be given? What is the *rationale* of its being given? No answer can be given to these questions, but that the reason is because those to be issued under 16 *Vic.* have not the guarantee of the province. Therefore it is that they, having only the trust funds of the corporation to look to, have not had that fund diminished by being applied to a different class of debentures which have another fund to look to than the guarantee of the province. The act 16 *Vic.*, ch. 235, in the plainest terms, as it seems to me, pronounces the debentures to be issued under its authority to be de-

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bentures not having the guarantee of the province. If, then, any one of the debentures issued under its authority can be said to belong to a class of debentures having the provincial guarantee, it must be by reason of something outside of the act 16 *Vic.*, authorizing their issue equally, as the fact of the provincial guarantee having become attached to the debentures for £33,882, was to be found, not in the terms and provisions of the acts which authorized their issue, but in proceedings and dealings outside of those acts. In the public accounts laid before the legislative assembly in the session held in 1854-5, there was presented to the assembly "a statement of debentures redeemed under the authority of 12 *Vic.*, ch. 5, to 31st January, 1855," wherein, besides the debentures of the *Quebec* turnpike trust already mentioned as having been redeemed prior to the 31st December, 1852, there is the entry of £22,092 more of such debentures, redeemed in the year 1853, making, with the £11,790 previously redeemed, the whole principal of £33,882 debentures, which sum is thenceforth entered as charged on the consolidated funds. As it is not pretended that the government ever paid any part of the interest accruing on debentures issued under 16 *Vic*, ch. 235, and as therefore there could be no such returns in the public accounts laid before the legislative assembly in respect of those debentures, as there were in relation to the debentures for £33,882, it becomes unnecessary to make any further reference to the journals and appendices of the legislative assembly. The question, therefore, is to be determined upon the construction of 16 *Vic.*, ch. 235, as if prior to the issues of any debentures under it the question had arisen whether the province would be liable by the terms of the act for the payment either of interest or principal of the debentures, if issued. I have already, I think, shown that if the construction of the

ordinance had come up for adjudication immediately after the passing of 4 and 5 *Vic.*, ch. 72, and before the issue of any of the first class of debentures, and the question had been whether the terms of the ordinance had imposed a charge or liability upon the province for the payment of interest or the principal of the debentures there authorized to be issued, the answer must have been in the negative. I think I have also shown that it was the fact of the payment of the interest by the Governor-General which was permitted but not made compulsory by the provisions of the ordinance, and the dealings of the legislature, upon such payments being annually shown in the public accounts, which in progress of time caused the payments of interest on those debentures to be recognized as a charge upon the consolidated fund. I have shown, also, that as regards payment of principal, the terms of the ordinance did not only not impose any charge or liability upon the province, but that they did not authorize or permit the appropriation of any part of the provincial funds towards payment of principal. If, then, the terms of the ordinance had been adopted *verbatim et literatim* by the act 16 *Vic.*, without the prohibition as to the application of any provincial funds towards the payment of interest, there would have been no charge or liability whatever imposed upon the province in respect of the principal of the debentures to be issued under 16 *Vic.*, ch. 235; neither would any such charge or liability have been imposed upon the province in respect of interest on those debentures. There would only have been conferred a permission or power upon the Governor-General, which, in his discretion, he might have exercised or refused to exercise, as seemed to him best. Now, as the terms and provisions of the ordinance are adopted by the act 16 *Vic.*, subject only to the qualification that no monies shall be advanced out of provincial funds for

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the payment of interest, the permission and power vested in the Governor-General to pay, in his discretion, such interest out of provincial funds is taken away; so that the effect simply is that whereas it was permissible and lawful for the Governor in his discretion, but not compulsory upon him, to pay the interest upon debentures issued under the provisions of the ordinance, it is not now permissible or lawful for the Governor, much less compulsory upon him to pay or authorize payment of interest upon debentures, issued under 16 *Vic.*; and as by the provisions of the ordinance it was not permissible or lawful for the Governor to pay or to authorize payment of the principal out of the provincial funds, much less was there a charge imposed upon those funds for such payment, so neither can payment of the principal of the debentures issued under 16 *Vic*, ch. 235, be a charge imposed upon provincial funds; nor is such payment out of such funds permissible or lawful, by the terms simply of the act. Therefore, such charge to be imposed at all must be imposed by some other act, in like manner as the charge and liability to pay the principal of the other debentures for £33,882 out of provincial funds became imposed only, if at all, by 12 *Vic.*, ch. 5.

There is only one act more to which there appears to be any occasion to refer, and that act confirms rather than shakes my view of the construction of 16 *Vic.*, ch. 235; it is 20 *Vic.* ch. 125; the act which divides the old *Quebec* trust corporation into two corporations, the one for the north shore and the other for the south shore of the *St. Lawrence*. That act puts an end to all doubt which may have before existed by reason of the language of the ordinance upon the question whether the property of the trust was vested in Her Majesty or in the corporation, and vests it in the corporations carved out of the old one, if it was not

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already vested in the old one: and the act seems to be declaratory that it was; for in the 4th section it provides that all property, moveable or immoveable vested in the *Quebec* turnpike road trustees and being on the north shore of the river *St. Lawrence*, should be transferred to and vested in the *Quebec* north shore turnpike trustees; and all such property lying on the south shore of the said river should be transferred to and vested in the *Quebec* south shore turnpike road trustees, and that each of the said corporations should have full power and authority to receive or recover from any former trustee or any other person or party wheresoever any property "hereby" vested in it. The 5th section then provides that the north shore trustees should be liable for the principal and interest of all debentures issued by the trustees of the *Quebec* turnpike road, and for all debts and liabilities of the said trustees contracted before the division into two corporations, provided always that whenever the south shore trustees should have any balance remaining in their hands out of the revenues arising from the roads and works under their control, after paying the expenses of completing, maintaining and managing the said roads and works and the interest upon the debentures they shall have issued under the authority of this act, and the principal thereof, they shall pay over such balance to the said north shore trustees, as an aid towards enabling them to pay the interest and principal of the debentures issued by the said trustees of the *Quebec* turnpike roads before the passing of this act. Now, it is impossible to conceive that the legislature would thus have imposed this burden upon the north shore trustees and have taken also the pains exhibited in this section to relieve the south shore trustees and their property from all liability in respect to the £40,000, which 16 *Vic.*, ch. 235 authorized to be borrowed for the south shore roads, if, as is contended, it was the pro-

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vince that, in fact and in reality, was subject to the charge and liability of redeeming these debentures upon whichever side of the river the money raised upon their security was expended. Much was said about the injustice of this provision ; with that we have nothing to do ; that was a point to be urged in the legislature. But after all, the provision was not perhaps so unjust as was contended, when we consider that the legislature had already sanctioned the gift out of the public funds to the amount of £33,882 principal, and about £20,000 interest in creating a property for the corporation upon whom the burthen objected to was cast; which property by the papers laid before the legislature at the time of the passing of the Act 16 *Vic.*, ch. 235, and before the monies thereby authorized to be raised were raised, or the improvements thereby authorized were made produced an annual income exceding £3,000. Then the south shore corporation being by this act, 20 *Vic.*, authorized to borrow £12,000 on their debentures, provision is made for this purpose, not in the form that provision is made in the 7 sec. of 16 *Vic.*, ch. 235, for the loans by that act authorized, but in a short form closing with the provision that the province shall not be guarantor or liable for the principal and interest of any debentures issued under this act, nor shall any money be advanced or paid therefor out of the provincial funds, thereby carrying out what appears to me to be the determination of the legislature as apparent in 12 *Vic.*, ch. 115, and in every act passed subsequently thereto. It was urged that as the word "principal" as well as "interest" is inserted here, and "interest" only in 16 *Vic.*, ch. 235, that therefore the province is responsible for the "principal" although not for the "interest" of the debentures issued under 16 *Vic.*, ch. 235. I have already dealt with this contention when treating of 14 and 15 *Vic.*, ch. 133, but I may add that the contention

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raises a collateral point, which is the contention expressly raised under 16 *Vic.*, namely, was the insertion of the word "principal" absolutely necessary to relieve the province from liability in respect of the debentures authorized by 20 *Vic.*, ch. 125? That it was not necessary to relieve the province from liability in respect of the principal of debentures issued under 12th *Vic.*, ch. 115, the frame and provisions of which are identical in that respect with 16 *Vic.*, ch. 235, I think I have already shewn. The provision as to the exemption of the province from liability upon debentures issued under the latter act is precisely the same as in the former, and such exemption as regards those issued under 12 *Vic.*, ch. 115, as I think I have shewn could not be questioned successfully.

The contrast also which in 16th *Vic.*, ch. 235, is drawn between the debentures to be issued under the authority of the act and debentures having the provincial guarantee, and to which I have drawn attention, is to my mind conclusive, that the debentures issued under 16 *Vic.* cannot themselves have that guarantee; and there is no vote or resolution of the legislative assembly of *Canada*, nor any act of its legislature which subjected that province to the payment of them in whole or in part, unless that liability is to found in the act itself, which authorized their issue.

Upon the passing of the *B. N. A.* Act, the property and civil rights of the corporation which issued the debentures, and the rights of their creditors, became under the exclusive control of the legislature of the province of *Quebec*, under the 91st section of the act, while certain bonds, issued by the corporation to the amount, as appears, of £9,000, which constituted assets of the late province of *Canada*, were by the 113 sec. made the joint property of the provinces of *Quebec* and *Ontario*. It is impossible for us to hold that bonds of the trust corpo-

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which in the hands of the executive government of *Canada* were assets of the province, were when in the hands of another creditor liabilities of the province.

It is to the government of *Quebec* that the creditors of the corporation should apply, if the corporation are unable to pay their debentures as they fall due, to procure action to be taken under the 28th sec. of the ordinance, which is adopted and enacted as part of the act 16 Vic., chap. 235, under which the debentures have been issued; and if, as I understand it to be contended that, but for mismanagement on the part of the trust corporation, the revenue from the roads would have been sufficient to have created a fund to redeem the debentures, complaint upon that head should be made to the legislature, or the courts of the province of *Quebec*, as the competent authorities to afford redress for such a wrong.

Upon the whole it appears to me to be clear that at the time of the passing of the *B. N. A.* act, there was no charge or liability whatever existing upon the late province of *Canada*, or which subjected it to the payment of any part of the interest or principal secured by the debentures, authorized to be issued by the *Quebec* turnpike trust corporation, under 16 *Vic.*, chap. 235, and that therefore the Dominion of *Canada* is subject to no such liability, and that this appeal should be allowed with costs.

Appeal allowed with costs.

Attorney for appellant: *F. Langelier.*

Attorneys for respondent: *Stuart & Stuart.*

This case was appealed to the Privy Council and the Lords of the Judicial Committee reversed the judgment

of the Supreme Court of *Canada*. The following is the judgment:—

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 favor.

The debentures purport on their face to be and were in fact issued under the authority of an act of parliament of the province of *Canada* (16 *Vic.*, 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."

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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 *Vic.*, 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 ordinance 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 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 neces-

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sary to refer to hereafter. Thus we are obliged, in order to see what were the obligations created by the debentures issued under the 16th *Vic.*, and now sued on, to examine the provisions of the ordinance 4 *Vic.*, c. 17.

By that ordinance the governor 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 thereinafter 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 thereinafter 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 possession 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 currency."

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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 shewn. 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 parti-

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cular 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 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 disposal 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 trustees 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 *Vic.*

The first Act which is relied on is the 12th *Vic.*, c. 5, by which it was provided that it

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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 legislature 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 *Vic.*, 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 *Vic.*, 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 *Vic.* 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 *Vic.* 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

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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 *Vic.*, 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 *Vic.*, 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 *Vic.*, 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.