

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of McDougall v. McGreevy, from the Court of Queen's Bench for Lower Canada, Province of Quebec ; delivered 20th July 1889.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The Respondent McGreevy being the owner of one thousand \$100 shares in the North Shore Railway Company, and being unable to pay a call of 50 per cent. which had been made upon them on the 14th September 1882, transferred them to the Appellant, who was also a shareholder in the Company, and took from him a letter of that date, in which it was stated that the transfer had been made with the express condition that McGreevy would have the right to redeem the stock within two months from that date by paying 50 per cent. of the nominal amount of the shares, that is to say, fifty thousand dollars, and any further call on the same that might be paid "within said delay," with interest on such amount. On the 13th November 1882 McGreevy by his notary made a formal tender to McDougall of \$51,125, being \$50,000 and interest thereon at 6 per cent., and McDougall refused to receive the amount. The declaration in the action states that the Defendant illegally and fraudulently converted the shares to his own use

and sold and disposed of them to his own great profit and advantage, to wit, in the sum of two hundred thousand dollars, which sum the Plaintiff could and would have realized on the said stock had he not been deprived thereof by the Defendant, and prays a judgment for \$200,000, with interest and costs.

On the argument of the appeal it was not disputed that the tender was sufficient, and the only question raised was whether the Plaintiff was entitled to recover any damages. The evidence on that subject was this. McDougall had apparently obtained the control of the whole of the shares of the North Shore Railway Company, and on the 2nd December 1882 they were all transferred by him to Robert Wright, the treasurer of the Grand Trunk Railway. Wright's evidence was as follows:—

“I received a transfer of shares of the North Shore Railway Company from Mr. McDougall for a certain consideration.

*Question.* This was in one thousand eight hundred and eighty-two, was it not?—*Answer.* Yes.

*Q.* Will you state what that consideration was?—*A.* The consideration was two hundred and fifty thousand dollars in cash, if I remember rightly; that, I think, as far as I remember, was the only consideration.

*Q.* Were you not to give him a certain number of bonds of the North Shore Railway Company?—*A.* Well, I think there was some understanding about bonds, but I don't clearly remember the terms of it. There was to be a conditional issue of bonds to McDougall, I think.

*Q.* Mr. McDougall did transfer to you the whole of the stock of the North Shore Railway Company?—*A.* He did.

*Q.* And after that transfer was made, the North Shore Railway Company issued a certain number of bonds, which you handed to McDougall, did you not?—*A.* Some time afterwards.

*Q.* What was the amount of the bonds?—*A.* The amount of the bonds, I think, was one million five hundred thousand dollars, or it may have been a little more. I am speaking from memory. In round figures, one million five hundred thousand dollars.

*Q.* Previous to the transfer to you of the stock of the North Shore Railway Company, no bonds had been issued by this Company, had it?—*A.* No, the bonds were not created until long afterwards.

*Q.* These bonds of the North Shore Railway Company were subsequently redeemed or taken up by the Dominion Government, were they not?—*A.* So I understand.

*Q.* These bonds were a portion of the consideration of the transfer of the stock, were they not?—*A.* I cannot say from memory what the conditions of the transfer of the stock were as regards the bonds, but I know the bonds were issued to McDougall.

*Q.* As a part of the consideration of that transfer, there was no further consideration given?—*A.* Yes, there was. The bonds were issued in accordance with the agreement between the North Shore Railway Company and McDougall, in which there was several conditions. One of the conditions of that agreement was, that McDougall should assume all the debts of the North Shore Railway Company at the date of its transfer, and should complete certain works which the North Shore Railway Company were under contract with the Government of Quebec to complete in Quebec, and there may have been some further conditions, but the agreement is on file and recorded in the minutes of the North Shore Railway Company in their minute book.

*Q.* You are positive to state that there was no written agreement between you and McDougall for the transfer to you of the stock of the North Shore Railway Company?—*A.* Certainly, there was no written agreement between me and McDougall. I was not authorized to enter into any such agreement.

*Cross-examined.—Q.* When you speak of the transfer of shares by McDougall to you, Mr. Wright, do you include those that were transferred to Senécal?—*A.* Certainly, the whole of the stock of the North Shore Railway Company was transferred to me.”

William Wainwright, Assistant Manager of the Grand Trunk Railway, said :—

“ *Question.* Do you remember the transaction with reference to the purchase of the shares in the North Shore Railway Company by Mr. Wright, who was the Treasurer, I think, of the Grand Trunk?—*Answer.* I do.

*Q.* Were you cognizant of the transfer at the time?—*A.* I was.

*Q.* Mr. Wright, I presume, managed that transaction in his own name but for the benefit of the Grand Trunk Railway Company?—*A.* Yes.

*Q.* Do you remember the price that was paid for those shares?—*A.* Yes, I think I remember, my recollection is, that the amount that was paid was two hundred and fifty thousand dollars in cash.

*Q.* And what was paid in bonds of the Company, do you know?—*A.* In regard to the transfer of the shares of the North Shore Railway, there was an obligation on the part of

the Grand Trunk that on receiving the shares of the North Shore Company, bonds would be created under the Act provided that in addition to the North Shore stock and the rights appertaining thereto, the parties with whom Mr. Wright was dealing with the Grand Trunk, would transfer certain other valuable franchise which were then in their possession.

Q. Those bonds were afterwards handed over to the parties who made the transfer?—A. The bonds were afterwards handed over.

Q. To what value?—A. To the extent of one million and a half dollars.

Q. Do you know whether any written agreement was made with reference to this transaction?—A. I believe there was an agreement.

Q. Was that agreement between Wright and McDougall and Senécal?—A. Between Senécal and McDougall and Mr. Wright, acting for his principals, I understand.

Q. You never yourself made this arrangement?—A. I had to do with it in connection with our solicitors, but Mr. Wright was acting as Treasurer of the Company with respect to the shares.

Q. The negotiations connected with it were made by yourself?—A. I was present representing the Company along with Mr. Bell, our solicitor."

On the 29th June 1883, an agreement was made between the North Shore Railway Company and McDougall and Louis Adélar Senécal, which was confirmed at a meeting of the Directors of the Company on the 27th July 1883. The material parts upon the present question of this agreement are as follows :—

" *Second.* That the contractors covenant and agree with the Company, for the considerations herein-after expressed, payable as herein-after expressed, to find all labour, tools, plant, and material of all kinds required, and to build, construct, complete, and finish all the works mentioned in the schedule annexed hereto and marked A.

" *Seventh.* That the whole of the said work shall be done and completed according to the requirements of the agreement dated the fourth day of March one thousand eight hundred and eighty-two, and entered into by and between Her Majesty the Queen, acting for and on behalf of the Province of Quebec, by the Honourable J. A. Chapleau, Premier, and Commissioner of Railways of that Province, therein-after styled the Government, and the Honourable Thomas McGreevy, of the city of Quebec, Alphonse Desjardins, of the city of Montreal, all three members of the House of Commons of Canada, and Louis Adélar Senécal, of the city of Montreal, gentleman, therein-after styled the syndicate, and which agree-

ment is ratified and approved by section one of the Statute of the Province of Quebec, 45 Vict., chap. 20, and is set out at the end thereof, and is mentioned in Schedule B to said agreement under the head of 'Works at Quebec,' and the works to be done and completed are those intended to be covered by the said Schedule B under the heading 'Works at Quebec.'

"*Eighth.* That when the said work or any part of it is now under contract, they the contractors shall and will assume the said contracts, and shall carry out the same, and pay and save harmless the Company of and from all claims of the contractors aforesaid, and of and from all claims for material furnished heretofore, or which may be hereafter provided by any one for the purpose of said work, and that the same shall be complete in all respects to the satisfaction of the said General Manager.

"*Ninth.* That they the contractors shall and will pay off, discharge, and satisfy all claims and demands whatsoever against the Company up to and which existed on the twentieth day of April now last past inclusive, including interest up to that date on the debt to the Quebec Government herein-after mentioned, and from all said claims they will hold the Company harmless in all respects save and except only principal of Government lien upon the railway of three million five hundred thousand dollars (\$3,500,000), for which the North Shore Company reserve bonds for the payment thereof, and save and except also the amount of seventy-five thousand dollars to be paid to the city of Quebec or to the Quebec Government for the Palais Wharf.

"*Tenth.* For the full completion of all the above works to the satisfaction of the said General Manager the Company will pay the contractors the sum to be paid over by the Quebec Government, and which is chiefly to be paid for; and upon completion of said works such payments to be made in a manner and as received by the Company from the said Quebec Government.

"*Eleventh.* That the Company will at once hand over to the contractors the sum of one million five hundred and forty thousand dollars of the five per cent. mortgage bonds of the Company.

"*Twelfth.* That the above considerations shall be in full satisfaction for the completion of all the said works, and for the payment of all the claims and demands of all kinds above mentioned, including interest to the twentieth April last, on the sum due the Quebec Government, and the full purpose of this agreement by the contractors in all respects according to the spirit, true intent, and meaning thereof."

The Superior Court having given judgment for the Plaintiff for 83,500 dollars damages, as being the clear profit realized by the Defendant

on the sale by him of the shares, both parties appealed to the Court of Queen's Bench (Appeal Side), whose judgment is the subject of this appeal. By that judgment an inquiry by experts was ordered, and they were to report to the Superior Court what other property, franchise, or right, if any, in which McGreevy had no interest were sold by McDougall and Senécal to Wright in addition to the shares, and what were the relative values of the shares and the other property, franchise, or right sold, and what portion of the consideration paid by Wright or his principals applied to or represented the price of the shares. The grounds of this judgment are stated to be that the measure of damages is the sum which McDougall had received for the shares beyond the amount which McGreevy was bound to refund to him in order to get them back, and that it appears by the evidence that McDougall and Senécal sold the shares, together with other property in which it does not appear that McGreevy had any interest, for the price and sum of two hundred and fifty thousand dollars in cash, and one million and five hundred thousand dollars in bonds of the North Shore Railway Company, which bonds were subsequently disposed of by McDougall and Senécal at  $87\frac{1}{2}$  per cent. of their nominal value, and subject to certain charges and obligations assumed by them, the nature of which is not clearly established by the evidence in the cause.

Their Lordships cannot agree with the Court of Queen's Bench that it is proved that the bonds were part of the price of the shares. They are not unmindful of the answer of McDougall to the question, "What was the price or consideration that you received for the sale of the shares to Mr. Wright?" who said, "We got one million and a half in bonds and a quarter of a

“ million dollars in cash ;” or of Senecal, who said, “ I can tell you now what we have sold the “ stock in the Company for. The transaction “ was that we received two hundred and fifty “ thousand dollars in cash and the bonds of the “ North Shore Road for one million and a half, “ that includes everything for the stock and our “ rights ;” or of Mr. Wright, which has been stated. The contract of July 1883, which is in writing, and which the Respondent has not attempted to impeach, affords strong evidence to the contrary. None of these witnesses referred to the written contract, and the answers which they gave to the general questions put to them probably had reference to the effect of the whole series of their transactions, and not to any one of them in particular. At the time when the shares were transferred to Wright there may have been an expectation of getting the bonds by a subsequent arrangement which is mixed up in the memory of the witnesses with the transfer of the shares, but the written agreement clearly shows for what the bonds were to be given. There is no reference in it to the shares, and the twelfth clause must refer to the agreement to hand over the bonds which immediately precedes it. Their Lordships cannot, in estimating the value of the shares, take the bonds into consideration, and they see no reason to suppose that McGreevy could have sold the shares for more than \$50,000. Consequently he has not sustained any damage, and his suit should be dismissed with costs in the Superior Court, each party paying the costs incurred by himself in the two appeals, as was adjudged by the Court of Queen’s Bench.

Their Lordships will humbly advise Her Majesty to reverse the decree of the Court of Queen’s Bench, and so to order. The Respondent will pay the costs of this appeal.

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