

16,1897

UNIVERSITY OF LONDON  
W.C.1.  
24 OCT 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

In the Privy Council.

No. 58 of 1896.

29466

ON APPEAL FROM THE SUPERIOR COURT FOR LOWER  
CANADA, PROVINCE OF QUEBEC, SITTING IN REVIEW,  
DISTRICT OF MONTREAL.

BETWEEN

ARSÈNE A. LAROCQUE *ès-qual.*, . . . *Appellant,*

AND

HYACINTHE BEAUCHEMIN *et al.*, . . . *Respondents.*

CASE FOR THE APPELLANT.

1. This is an appeal from a judgment of the Court of Review, in the Province of Quebec, dated 31st December 1895, confirming a judgment of the Superior Court dated 24th November 1894, dismissing an action taken by Appellant as liquidator of La Compagnie de Papier de Sorel, against the Respondents as shareholders thereof, to recover an alleged unpaid balance of 50 per cent. of their subscribed stock. This action was originally taken against the Respondent Beauchemin alone, but by a subsequent arrangement made by consent of all the parties in order to prevent expense and multiplicity of actions, the other Respondents, Tourville, de Martigny, Irish, Beaulieu, Gervais, the representatives of Sénécal, deceased, Leduc, Bourque, Durocher and the representatives of Melançon, deceased, who are in precisely the same position towards the company, were, before the action was pleaded to, made co-defendants, and the writ and declaration amended so as to include them as such. For convenience, Sénécal and Melançon, deceased, are in this case, mentioned instead of their representatives. Record, p. 38. p. 2. pp. 3-5. pp. 33-36. pp. 36-37.
2. On May 30th 1886, C. T. Irish as liquidator to the insolvent St. Lawrence Pulp and Paper Company, sold for \$9,000 to de Martigny, acting both for himself and on behalf of Tourville, Melançon and D. T. Irish, certain land and buildings in Sorel which the Company had used for a paper manufactory but which was not then in use. pp. 7-9. p. 8, l. 10, et seq. p. 28, l. 13, et seq.
3. The said purchasers, who were shareholders in the St. Lawrence Pulp and Paper Company, made the purchase with the view of organizing a new company to renew the exploitation of the property as a paper manufactory, and thereupon entered into negotiations with the other Respondents, with the result p. 28, l. 8, et seq. p. 29, l. 8, et seq.

APPELLANT'S CASE.

Record,  
p. 17.  
pp. 7-9.  
p. 29.  
p. 32, l. 16-  
20.  
p. 19.  
p. 28, l. 8,  
*et seq.*  
p. 29, l. 25.

that it was agreed, that in order to exploit the property in question for the purposes already unsuccessfully attempted by the St. Lawrence Pulp and Paper Company, the Respondents should procure themselves to be incorporated under the name of *La Compagnie de Papier de Sorel*, and that the property (which was really worth no more than \$10,000) should be sold to the new company as soon as it was organized, for \$35,000 being a sum greatly in excess of its value, whereof \$10,000 was to recoup the said purchasers for their outlay (*viz.* \$9,000 and certain expenses amounting to \$1,000), and the balance of \$25,000 was to accrue to the benefit of all the Respondents who should subscribe for shares to the amount of \$50,000 in all, which shares should be treated as half paid by virtue, or in respect, of the said profit. Subsequently, one Finlay joined Respondents as manager and in promoting the formation of the company and subscribed for \$5,000 of the stock, but he was given no share in the \$25,000 profit just mentioned.

p. 17.  
p. 27, l. 36.

4. On May 5th 1886, the other Respondents and the said Finlay held a meeting (styled in the minutes "*assemblée provisoire des actionnaires de la Compagnie de Papier de Sorel*") ; appointed Beauchemin, Beaulieu, Irish, Tourville, and Leduc provisional directors; and instructed the latter to apply for letters patent to incorporate the projected company, and to make an immediate call on the subscribed stock. On the same day, the said provisional directors made a call of 75 per cent., payable on the 20th of the same month.

p. 17.  
p. 26.  
p. 27, l. 47.  
p. 29, l. 8-  
30.  
p. 37, l. 17.

5. On June 26th 1886, the Respondents and Finlay petitioned the Lieutenant-Governor of Quebec, in Council, for incorporation by letters patent under the "Joint Stock Companies Incorporation Act," sections 4694-4753, Revised Statutes of Quebec, under the name of "*La Compagnie de Papier de Sorel*," with an authorized capital stock of \$100,000. The Petitioners, including Finlay, were declared (as is admitted and proved by the Respondent Beauchemin) to have subscribed for \$55,000 of the capital stock; *viz.* Durocher for \$3,000; Bourque for \$2,000, and the others for \$5,000 each.

p. 6.

On August 10th 1886, letters patent were issued, incorporating the petitioners and whomsoever else might become members, under the name and with the authorized capital stock already stated.

p. 18.  
p. 19.

6. On September 3rd 1886, the shareholders of the new company (*viz.* the Respondents and said Finlay) held a meeting and appointed a board of directors. A meeting of these directors (Beauchemin, Tourville, Irish, Leduc and Beaulieu) was held on the same day, and a resolution passed : "that the President, Mr. H. Beauchemin be authorised to sign in the name of the Company, the deed of purchase of the property whereon the company's mill is now built," (to wit the property in question purchased by de Martigny *et al.* for \$9,000) "from its present possessors, for the price of \$35,000 and that Joseph Melançon, notary, be authorised to prepare such deed." It was also resolved that a last call of 25 per cent. on the stock should be made, payable on the 26th of October following.

7. There was thus no independent board of directors or executive, competent and impartial judges as to the purchase and price of the property, or exercising an independent judgment on the transaction; and it was in this respect improper and fraudulent.

8. A copy of the company's cash book, was produced by the Respondent Record, Beauchemin and filed as Plaintiff's Exhibit A 2 at *enquête*. From this it appears pp. 20-25. that the first entries in the cash book, under date of September 1886, debited p. 27, l. 40. the Company with \$50,000·00 as follows :—

	To L. A. Sénécal . . . . .	\$5,000·00
	„ J. Leduc . . . . .	\$5,000·00
	„ E. J. Bourque . . . . .	\$5,000·00
	„ H. Beauchemin . . . . .	\$5,000·00
	„ C. Melançon . . . . .	\$5,000·00
10	„ Louis Tourville . . . . .	\$5,000·00
	„ A. de Martigny . . . . .	\$5,000·00
	„ D. T. Irish . . . . .	\$5,000·00
	„ C. H. Beaulieu . . . . .	\$5,000·00
	„ A. E. Gervais . . . . .	\$5,000·00
		<hr/>
		\$50,000·00

and credited it with \$35,000·00 as follows :—

	Paid A. de Martigny as per deed of sale . . . . .	\$34,000·00
	Chemical a/c paid to A. de Martigny for grass	
	on the property at time of purchase . . . . .	\$900·00
20	Furniture a/c paid safe in office at the time of	
	purchase of property . . . . .	\$100·00

9. On November 8th 1886, a deed of sale was passed before Guevrémont, p. 10. notary, between the said Tourville, de Martigny, Irish and Beaulieu of the one part, and the said “La Compagnie de Papier de Sorel,” of the other part, represented by Respondent Beauchemin, whereby the former acknowledged to have sold to the latter the property in question for \$35,000 declared to have been paid in cash. At the date of this deed, the property was in the same condition as p. 37, l. 14. when sold to de Martigny *et al.* on March 30th 1886; and it was not used between that time and September 1886 when the said Company commenced its operations 30 by means of the said premises and factory.

10. It appears from the evidence of Beauchemin, and the facts are, that the Respondents, though credited with \$50,000, only paid to the Company in money, pp. 28-29. on account of their stock \$25,000, being 50 per cent. of the stock of each; that the Company, though credited in the notarial deed with \$35,000 paid in money for the acquisition of the property, paid \$10,000 only, which went to de Martigny, Tourville, Melançon and Irish, to recoup their outlay; and that the remainder of the supposed purchase price (\$25,000) was, in fulfilment of the said understanding, pretended to be paid by treating the shares as fully paid up, so that the sale was in effect in consideration of shares treated as half paid.

40 11. Article 4722—Revised Statutes of Quebec, which forms part of the statute under which the company was incorporated, is as follows:—

“The capital stock of all joint stock companies shall consist of that portion  
“of the amount authorized by the charter, which shall have been *bona fide*  
“subscribed for and allotted, and shall be paid in cash.”

“The amount of paid up capital, from year to year, shall be published  
“annually in a report to the shareholders of the company.”

(2) "The property accounts of a company shall represent only the amount of the actual *bona fide* outlay necessary for the undertaking."

"No stock shall be issued to represent the increased value of any property."

"Any such issue shall be null and void."

(3) "The practice, commonly known as watering of stock, is prohibited, and all stock so issued shall be null and void."

(4) "The capitalization of surplus earnings, and the issue of stock to represent such capitalized surplus, are also prohibited, and all stock so issued shall be null and void, and the directors consenting to such issue of stock, shall be jointly and severally liable to the holders thereof for the re-imbursement of 10 the amount paid for such stock."

(5) "Every form and manner of fictitious capitalization of stock in any joint stock company, or the issuing of stock which is not represented by a legitimate and necessary expenditure in the interest of such company, and not represented by an amount in cash paid into the treasury of the company, which has been expended for the promotion of the objects of the company, is prohibited, and all such stock shall be null and void."

Record,  
pp. 14 and  
34.

12. The company having subsequently become insolvent, the Appellant who had been appointed liquidator, took, under the authority of the Court, the action in question against Respondents to recover from each of them one-half of the 20 amount of his subscribed stock, \$25,000 in all, alleging that though they pretend to have paid the same, they had not really done so; that the pretended payment was effected by illegally crediting Respondents in the books of the company, as a payment to that amount on their stock, with \$25,000 of the \$35,000 pretended to have been paid for the property; and that this payment was simulated and fraudulent and illegal to the extent of \$25,000, the real price paid having been \$10,000, which was the actual value of the property.

p. 15, l. 38.  
p. 16.

13. The Respondents pleaded that Tourville, de Martigny, Melançon and Irish, having bought the property in question became associated with the other Respondents for the formation of La Compagnie de Papier de Sorel, and the 30 working of the property, and to induce the other Respondents to join them, agreed to admit the latter to share with them in proportion to their respective interests in the company, in the entire benefit to be derived from the sale of such property to the company; and that the property was afterwards sold to the company in good faith, for the actual price of \$35,000, which was its real value.

p. 29, l. 38.  
p. 32, l. 20.

14. During the liquidation, the said property, together with additions made by La Compagnie de Papier de Sorel, at a cost of from \$10,000 to \$12,000, was sold by sheriff's sale to the Respondent Beauchemin for about \$5,000 in spite of all possible attempts to get the highest price possible.

p. 37.

15. Respondents admit the allegations as to the incorporation of the com- 40 pany, their subscription to the stock, and the authorization of Appellant to institute the action; and also that the property when sold to the company was in the same condition as when bought by de Martigny *et al.* on March 30th 1896.

p. 2.

16. The Superior Court (Tait J.) dismissed Appellant's action, the sole *considérant* of the judgment being that Appellant had failed to prove the material allegations of his declaration. The Court of Review confirmed this judgment, merely saying that they found no error in it. It would appear, however, from

p. 38.  
pp. 51-56.

the notes of Mr. Justice Jetté, that they considered the company's claim for 50 per cent. of the stock had been set off against \$25,000 of the purchase price of the property, which they regarded as a payment "in cash," within the meaning of the law.

17. An appeal was taken from said judgment against all the Respondents ; but the Respondents Durocher and Bourque having indicated their intention to challenge the validity of the appeal as far as they are concerned and the amount of their liability being less than Five Hundred Pounds, the appeal as to them has been discontinued.

10 The Appellant humbly submits that the said judgments of the Court of Review and Superior Court are erroneous and ought to be reversed for the following among other

### REASONS.

1. Because the Respondents did not pay in cash into the treasury of the company, within the meaning of the Statute, more than 50 per cent. of their stock, and are liable to pay the remaining 50 per cent. thereof.
- 20 2. Because the property was worth only \$10,000, and the price was arranged and the plan of procedure devised between the parties in order to enable the parties to effect an improper sale for a fictitious and exaggerated price at the cost of the projected company by treating as half paid up in respect of their intended profit the shares of the Respondents.
3. Because the property was acquired by virtue of an understanding previously reached, that shares should be taken which should represent as to 50 per cent. of the nominal value thereof part of the price of the property; and there was no independent contract for the purchase of the property in cash, nor any such contract for the taking of the shares to be paid up in cash.
- 30 4. Because the Respondents are not entitled to hold the company to the said pretended bargain, or to retain the profit so by them claimed out of the transaction.
5. Because the placing on the property of the increased value of \$35,000 represented by stock was a violation of the provision of the Statute prohibiting the issue of stock as representing the increased value of property.
6. Because on the whole case the Respondents should be ordered to pay each his share of the said sum of \$25,000.

EDWARD BLAKE.

F. L. BÉIQUÉ.

# In the Privy Council.

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CASE FOR THE APPELLANT.

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S. V. BLAKE,

17, Victoria Street, S.W.