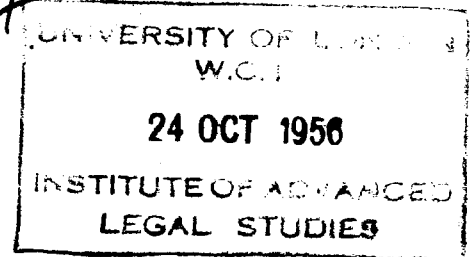


16,1897



In the Privy Council.

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

BETWEEN

ARSÈNE A. LAROCQUE, Ès-Qual. *Appellant,*

AND

HYACINTHE BEAUCHEMIN, Charles H. }
Beaulieu, Edmond Gervais, Louis Tourville, }
Joël Leduc, Adelard L. de Martigny, David }
T. Irish, Louis B. Durocher, E. J. Bourque }
and Philomène Gratton, Joseph Mélançon }
and Arthur Mélançon, the last three being }
the Executrix and Executors of the Estate }
of Claude Mélançon, deceased, and Delphine }
Dansereau, Executrix of the Estate of }
Louis A. Sénécal, deceased }
... *Respondents.*

CASE ON BEHALF OF THE RESPONDENTS.

DEFENDANTS BELOW.

RESPONDENT'S CASE.

Case on behalf of the Respondents.

DEFENDANTS BELOW.

Rec. p. 38. 1. ~~This is~~ an appeal from a judgment of the Court of Review for the District of Montreal, rendered on 31st December, 1895.

Rec. p. 38. 2. The judgment of the Court of Review confirmed the judgment of the Superior Court for the District of Montreal rendered on 28th November, 1894.

Rec. p. 2. 3. The judgment of the Superior Court dismissed with costs an action brought by the appellant as liquidator of La Compagnie de Papier de Sorel (hereinafter called the Company) for the purpose of rendering the respondents liable in manner hereinafter mentioned in respect of certain shares held by them respectively in the Company.

4 The following are the circumstances under which the said action was brought:—

Rec. pp. 7,8. 5. On the 27th March, 1886, Charles J. Irish, in his capacity of liquidator of the insolvent estate of the St. Lawrence Pulp and Paper Company, sold by public auction and by a deed of sale dated the 30th March, 1886, and duly passed before William Henry Chapdelaine, N.P., conveyed to Adelard L. de Martigny acting for himself and for Louis Tourville, Claude Melançon and David Timothy Irish (all of whom or whose legal representatives are Respondents to the present appeal), the land described in the said deed with the improvements, betterments and buildings thereon erected and all the machinery therein contained for the consideration of 9,000 dollars paid in cash. And the said Adelard L. de Martigny declared that the said sum of 9,000 dollars had been furnished by himself and the other three persons above mentioned, each one-fourth part thereof.

Rec. p. 29. 6. After the said sale had been made the said Adelard L. de Martigny and his associates entered into negotiations with certain other persons for the formation of a Company to work the property so acquired as aforesaid. And it was agreed that the property should be sold to the Company, when formed, for the sum of \$35,000, and that the sum of \$25,000 being the difference between the price (\$9,000) at which the property had been purchased as aforesaid, plus the amount (\$1,000) of certain other expenses in connection with the said purchase and the said sum of \$35,000 should be for the benefit of the promoters of the Company who, or whose legal representatives, are the Respondents to this appeal.

Rec. p. 29. 7. Another person (namely) Mr. W. Finlay, subsequently came in as a shareholder in the Company but he did not share in the benefit mentioned in the last paragraph.

Rec. p. 17. 8. On the 5th May, 1886, a provisional meeting of the shareholders of the proposed Company was held at the City of Montreal, at which provisional

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directors were named, and it was resolved that instructions be given to obtain letters patent of incorporation, and that the directors be authorised to make an immediate call on the subscribed capital.

9. On the same day, 5th May, 1886, the provisional directors held a meeting at which a call of 75 per cent. was resolved upon. Rec. p. 17.

10. On the 26th June, 1886, the promoters of the Company and the said Mr. W. Finlay presented a petition to the Lieutenant-Governor of the Province of Quebec praying for incorporation as La Compagnie de Papier de Sorel. Rec. p. 26.

11. The said petition stated that the capital of the Company was to be \$100,000 in 1,000 shares of \$100 each. The persons presenting the said petition appear therein as subscribers of 50 shares each except Durocher and Bourque who appear as subscribers for thirty and twenty shares respectively. Rec. p. 26.*

12. On 5th August, 1886, letters patent were issued incorporating the Company as prayed. Rec. p. 6.

13. On the 3rd September, 1886, a meeting of the shareholders of the Company was held at Sorel at which the minutes of the above-mentioned meetings were read and confirmed and directors of the Company were appointed. Rec. p. 18.

14. On the same day, 3rd September, 1886, a meeting of the Directors of the Company was held at which it was resolved that the President be authorised to sign in the name of the Company the deed of purchase of the property (being the property conveyed to the Respondent Adelard L. de Martigny as mentioned in paragraph 5 hereof) on which the mill to be worked by the Company was actually built and to acquire the same from the then owners for the price of \$35,000. The said sale to the Company was duly carried out by a deed dated the 8th November, 1886. Rec. p. 19.

15. It was resolved at the same meeting to make a final call of 25 per cent. upon the subscribed capital of the Company. Rec. p. 35.

16. In September, 1886, the promoters of the Company (other than L. B. Durocher) are all credited in the books of the Company with payment in full of their shares. It is admitted by the parties that of the \$5,000 credited to E. J. Bourque \$3,000 should be credited to L. B. Durocher, and \$2,000 only to E. J. Bourque. Rec. p. 19.
Rec. p. 20.

17. The amounts credited as aforesaid were paid half in cash and half by receipts given to the Company by the Vendors to the extent of \$25,000 on account of the purchase price of the property sold to the Company as above mentioned. Rec. p. 28.
p. 29.

18. The said property originally cost the St. Lawrence Pulp and Paper Company over \$80,000, and was at the time of the sale to the Compagnie de Papier de Sorel worth \$41,150. The said property and the buildings and machinery therein were in good order, and it cost about \$1,000 only to make the necessary repairs. It would have cost the Company from \$50,000 to \$55,000 to provide itself with an equally suitable establishment elsewhere. Rec. p. 31.
Rec. p. 32.

19. The Company carried on business for about two years and a-half, and then went into liquidation under a winding-up order. On the 27th of June, 1889, the Appellant was appointed liquidator, and on the 7th March, 1890, he was authorised to institute the action in which the judgments appealed from were rendered. Rec. p. 29.
Rec. p. 14.

- Rec. p. 33. 20. On the 13th March, 1890, the said action was instituted, claiming from each of the promoters of the Company or their legal representatives, except L. B. Durocher and E. J. Bourque, the sum of \$2,500, and from L. B. Durocher, \$1,500, and from E. J. Bourque, \$1,000, and asking that the price mentioned
- Rec. p. 34. in the said deed of sale of 8th November, 1886, be declared simulated to the extent of \$25,000, and that the above-mentioned credit entries in the books of the Company might to the extent of 50 per cent. be declared fictitious, simulated, fraudulent, illegal, and null.
- Rec. p. 15. 21. To this claim the Respondents pleaded that the sum for which the said A. L. de Martigny and his associates purchased the property in question, was far from representing its real value, that on the contrary it was worth at least \$35,000, that the said A. L. de Martigny and his associates joined with the other
- Rec. p. 16. promoters of the Company to form the Company for the purpose of working the said property; that, in consideration therefor, and to induce the said other promoters to join them as aforesaid, the said A. L. de Martigny and his associates agreed that they, the said other promoters, should share proportionately, according to their interests in the Company, in any benefit resulting from the purchase of the said property, and that the sale to the Company was made in good faith, and that the price mentioned in the deed of the 8th November, 1886, was not simulated but was the real value of the property.
22. On these issues the case was tried.
23. The judgment of the Superior Court held that the Plaintiff had not proved the essential allegations of his declaration and the judgment of the Superior Court sitting in Review confirmed this judgment.
- Rec. p. 51. 24. The real issue between the parties is:—Do the facts show any violation of the 1st paragraph of Article 4722 of the Revised Statutes of the Province of Quebec, which reads as follows:—"The capital stock of all Joint Stock Companies shall consist of that portion of the amount authorised by the charter, which shall have been bonâ fide subscribed for and allotted and shall be paid in cash."
25. The Appellant has served a notice (dated the 24th October, 1896) of discontinuance of this appeal as against the respondents L. B. Durocher and E. J. Bourque. A petition to dismiss this appeal as against the said Respondents has been duly lodged and is awaiting an order to be made thereon.
26. The Respondents submit that the judgments of the Courts below are right and should be affirmed for the following among other

REASONS.

1. Because the Appellant has not even attempted to prove bad faith on the part of the Respondents.
2. Because without clear proof of bad faith the Courts will not go behind such agreement as that in question in this case.
3. Because the said property was, at the date of the sale to the Company, in fact, of the value of at least \$35,000.

4. Because the Company received for the Respondents' said shares full "payment in cash" within the true meaning of the said words (as used in Article 4722 of the said Statutes of the Province of Quebec).
5. Because the Respondents' obligation to pay for their said shares was fully satisfied and extinguished within the meaning of Article 1139 of the Civil Code.
6. Because the mutual obligations of the Company and Respondents to pay for the said property and to pay for the said shares were extinguished to the extent of \$25,000 under Articles 1187 and 1189 of the Civil Code. 10

C. A. GEOFFRION.

J. AUSTEN CARTMELL.

In the Privy Council.

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

ARSÈNE A. LAROCQUE, *Ès* QUAL.

v.

HYACINTHE BEAUCHEMIN, *ET AL.*

Respondents' Case.

GUY ELLIS,
11, LINCOLN'S INN FIELDS,
W.C.

SOLICITOR FOR THE RESPONDENTS.