

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Kensington Land Company and others v. The Canada Industrial Company from the Court of King's Bench for the Province of Quebec (Appeal side); delivered the 28th March 1903.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by the Lord Chancellor.*]

This is an Appeal from a Judgment of the Court of King's Bench for the Province of Quebec, affirming two Judgments of the Superior Court for the Province.

The litigants are two Companies—the Appellant Company is a Building Company and the Respondent Company is a Mining Company. The Appeal arises out of a sale of certain land made by the Respondent Company to the Appellant Company. The second Judgment is against the Liquidators of the Building Company, who intervened in the action.

The action was brought by the Respondent Company on the 3rd September 1898, and the Intervention was on the 14th June 1899.

The facts, so far as they are material to this Appeal, appear to be that on the 13th September 1893 the Respondent Company sold to the

Appellant Company through one Bland certain property, part of which was subject to a life rent payable to a widow named Leduc.

\$15,833.34 balance of the purchase money was payable in ten years from the 1st October 1893 with interest from that date at the rate of $5\frac{1}{2}$ per cent. per annum, payable half-yearly, and the vendor reserved all rights to secure payment of the balance and the interest thereon.

On the 15th December 1893 Bland conveyed his purchase to the Appellant Company on whose behalf he had purchased.

The action was brought by the Respondent Company for the balance of the purchase money, and in respect of half a year's annuity, part of the charge upon the land which it had paid to Mme. Leduc, to which the Respondent Company was duly subrogated.

The action was brought, although the time for payment had not arrived, under Article 1092 of the Civil Code of Lower Canada, which permits the bringing of such an action when the debtor has become insolvent or when he has diminished the value of the security.

The two allegations involved in the right to bring the action were contested by the Appellant Company as matters of fact, namely, the allegation that the Appellant Company had diminished the value of the security and that they were insolvent. A considerable body of evidence was given upon the subject, and both the Courts have found the two propositions to be proved.

Their Lordships see no reason whatever for differing from the conclusion in this respect found by both Courts after a lengthened investigation of the facts.

This disposes of the plea, which in substance amounts to the allegation that the action was brought prematurely and before the balance alleged could be demanded.

But the Appellants further allege as a defence that the price which on the face of the contract of sale was \$110,000 was only \$88,000. Mr. Justice Lemieux has investigated the facts in relation to this plea, and they appear to be that the figures in the deed of sale were incorrectly given in two respects: the price was \$88,000 and not \$110,000, and the money paid was not \$50,000 but \$28,000. This appears to have been done by the Syndicate who were forming the Appellant Company under the instructions of Bland to enable \$22,000 to be added in terms to the price to be divided among themselves.

To the Respondent Company it made no difference whatever. Their balance was in either case the same, namely, \$60,000.

Neither the Respondent Company nor any of its agents had anything to do with the matter and from 1894, when the settlement was arrived at and every detail of the circumstances was known to the Appellant Company, no attempt was made to set aside the sale or to obtain any redress, but the contract was adhered to and acted upon, and it is much too late to set it up now as an answer to an action on a balance, which is the true balance due upon the contract, even if it could ever have been made available for any such purpose.

The account given by those responsible for the augmentation of the figures was that it was to prevent the extra expense of several deeds and the difficulty of adjusting the claims of the Syndicate among themselves.

A number of persons engaged in this operation appear to have had differences with the Appellant Company and with each other upon this very question of misrepresentation of the amount, and in some form of arbitration the differences were adjusted between the members

who were shareholders and the Syndicate by the surrender of some of the shares and the payment of the costs of the proceedings.

With respect to the Intervention of Buller and others long after the commencement of the principal suit it is unnecessary to say more than that the learned Judge who tried the cause found, upon what their Lordships are of opinion was ample evidence to justify such a finding, that the Intervention was merely a colourable proceeding for delay. No money was forthcoming for the payment of anything. The learned Judge held that the offer itself was not *bonâ fide*, and the only object of the Intervention was to embarrass and delay the creditors of the Company.

Under these circumstances their Lordships will humbly advise His Majesty that this Appeal ought to be dismissed. The Appellants will pay the costs of the Appeal.
