

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of The North-West Transportation Company and James Hughes Beatty v. Henry Beatty, on behalf of himself and others, from the Supreme Court of Canada; delivered 21st July 1887.

Present :

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD BAGGALLAY.

SIR RICHARD COUCH.

The action, in which this appeal has been brought, was commenced, on the 31st May 1883, in the Chancery Division of the High Court of Justice of Ontario. The Plaintiff, Henry Beatty, is a shareholder in the North-West Transportation Company, Limited, and he sues on behalf of himself and all other shareholders in the Company, except those who are Defendants. The Defendants are the Company and five shareholders, who, at the commencement of the action, were the Directors of the Company. The claim in the action is to set aside a sale made to the Company by James Hughes Beatty, one of the Directors, of a steamer called the "United Empire," of which previously to such sale he was sole owner.

The general principles applicable to cases of this kind are well established. Unless some provision to the contrary is to be found in the charter or other instrument by which the Company is incorporated, the resolution of a majority of the shareholders, duly convened,

upon any question with which the Company is legally competent to deal, is binding upon the minority, and consequently upon the Company, and every shareholder has a perfect right to vote upon any such question, although he may have a personal interest in the subject matter opposed to, or different from, the general or particular interests of the Company.

On the other hand, a Director of a Company is precluded from dealing, on behalf of the Company, with himself, and from entering into engagements in which he has a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound by fiduciary duty to protect; and this rule is as applicable to the case of one of several Directors as to a managing or sole Director. Any such dealing or engagement may, however, be affirmed or adopted by the Company, provided such affirmance or adoption is not brought about by unfair or improper means, and is not illegal or fraudulent or oppressive towards those shareholders who oppose it.

The material facts of the case are not now in dispute.

The Company was incorporated under the provisions of the Canada Joint Stock Companies Letters Patent Act of 1869. By its charter, dated the 5th March 1877, it was authorized to carry on business in the Province of Ontario, and to construct, acquire, and maintain steam, sailing, and other vessels for the conveyance of passengers and goods over the navigable waters within or bordering upon the Dominion of Canada, to and from any foreign ports, with power, amongst other things, to sell, charter, or dispose of any of such vessels, and to make contracts with any person or corporation whatever.

By Sections 16, 18, and 22 of the Act of 1869, it was provided that the affairs of every Company

incorporated under its provisions should be managed by a Board of Directors, the major part of whom should at all times be resident in Canada, and subjects of Her Majesty, and that the Directors should have power to make for the Company any description of contract into which the Company might by law enter, and from time to time to make byelaws not contrary to law, but every byelaw so made, unless in the meantime confirmed at a general meeting duly called for that purpose, should only have force until the next annual meeting of the Company, and, in default of confirmation thereat, should, at and from that time only, cease to have force; and the powers conferred upon the Directors by Section 22 were made subject to a proviso that one fourth part in value of the shareholders of the Company should at all times have the right to call a special meeting for the transaction of any business specified in such written requisition and notice as they might issue to that effect.

By byelaws, made in March 1877 and duly confirmed, it was provided that the affairs of the Company should be managed by a Board of five Directors; that the qualification for a Director should be the holding of five shares in the Company; that every shareholder should have as many votes as he had shares in the Company; that the annual meetings should be held on the first Wednesday in February in each year; and that at such meetings the Directors should be annually elected, retiring Directors being eligible for re-election.

The Company commenced business shortly after its incorporation, and acquired for its purposes a fleet of several steamers. In the autumn of 1882, one of its steamers, the "Asia," was lost, and another, the "Sovereign," was deemed unsuitable for the Company's business. At this time the steamer "United Empire" was in pro-

cess of building for the Defendant James Hughes Beatty, and was approaching completion; the contract for her construction had been entered into in December 1880, and she was in fact completed on the 20th May 1883, a few days before the commencement of the action. The acquisition of the "United Empire" by the Company had been suggested to the Directors and had been the subject of consideration by them and others interested in the Company as early as the close of the year 1881; the loss of the "Asia" led to the matter being further considered, and the sale to the Company was brought about in the following manner.

The annual meeting for the year 1883 was held on the 7th February, and, at such meeting, the Defendants were elected Directors for the ensuing year; at the same meeting, a discussion took place as to the suggested purchase of the "United Empire," and it was resolved that a special meeting of the shareholders should be held on the 16th for the purpose of having submitted to them a byelaw for the purchase of the steamer "United Empire," and also to consider the advisability of selling the steamer "Sovereign."

At a meeting of the Directors held on the 10th February 1883, and at which all the Directors except the Defendant William Beatty were present, it was resolved that a byelaw, which was read to the meeting, for the purchase of the "United Empire" should pass. It is unnecessary to refer in detail to the terms in which this byelaw was expressed; it is sufficient to state that, after reciting an agreement between the Company and the Defendant James Hughes Beatty, that the Company should buy and the Defendant should sell the steamer "United Empire" for the sum of \$125,000, to be in part paid in cash and in part secured, as therein men-

tioned, it was enacted that the Company should purchase the steamer from the Defendant upon those terms, with various directions for giving effect to the terms of the contract.

The agreement, recited in the byelaw, was executed at the same meeting.

At a meeting of shareholders, held, as arranged, on the 16th February 1883, the byelaw, which had been enacted by the Directors, was read by the Secretary, and, after being modified in its terms, with respect to the price, was adopted by a majority of votes.

The "United Empire," on her completion, was delivered to the Company, and has ever since been employed in the ordinary business of the Company.

It is proved by uncontradicted evidence, and is indeed now substantially admitted, that, at the date of the purchase, the acquisition of another steamer to supply the place of the "Asia" was essential to the efficient conduct of the Company's business; that the "United Empire" was well adapted for that purpose; that it was not within the power of the Company to acquire any other steamer equally well adapted for its business; and that the price agreed to be paid for the steamer was not excessive or unreasonable.

Had there been no material facts in the case other than those above stated, there would have been, in the opinion of their Lordships, no reason for setting aside the sale of the steamer; it would have been immaterial to consider whether the contract for the purchase of the "United Empire" should be regarded as one entered into by the Directors and confirmed by the shareholders, or as one entirely emanating from the shareholders; in either view of the case, the transaction was one which, if carried out in a regular way, was within the powers of the Company; in the former view, any defect

arising from the fiduciary relationship of the Defendant James Hughes Beatty to the Company would be remedied by the resolution of the shareholders, on the 16th February, and, in the latter, the fact of the Defendant being a Director would not deprive him of his right to vote, as a shareholder, in support of any resolution which he might deem favourable to his own interests.

There is, however, a further element for consideration, arising out of the following facts, which have been relied upon, in the arguments on behalf of the Plaintiff, as evidencing that the resolution of the 16th February was brought about by unfair and improper means.

It appears that, at the commencement of the year 1883, 595 of the 600 shares into which the capital of the Company was divided were held by seven living shareholders, and five belonged to the estate of a deceased shareholder ; that of the seven living shareholders,—

The Defendant J. H. Beatty	held	200	shares.
The Plaintiff	-	120	„
S. Neelon (then a Director)	-	101	„
F. S. Hankey	-	71	„
The Defendant J. D. Beatty	-	59	„
J. C. Graham	-	39	„
The Defendant W. Beatty	-	5	„

It further appears that the Defendant J. H. Beatty purchased the 101 shares of S. Neelon, and that they were transferred to him on the last day of January 1883, the number of shares held by the Defendant being thus raised to 301, an actual majority of all the shares in the Company ; that on the morning of the 7th February, before the annual meeting of that day, the Defendant J. H. Beatty transferred five of his shares to the Defendant Rose, and the like number to the Defendant Laird, whereby they respectively became qualified to be elected Directors ; and that on the same day they were elected Directors.

The Defendants Rose and Laird deny, and

their denial is unimpeached, that there was any agreement or understanding between them or either of them and the Defendant J. H. Beatty, that they would support his views in respect of the sale of his steamer to the Company; they both, however, admit that, previously to the transfers of the shares to them, they considered that the purchase of the steamer would be beneficial to the Company, that they accepted the transfers with the view of becoming Directors, and that the Defendant was well aware of the opinions and views entertained by them. Indeed, the Defendant Rose states that he would not have joined the Company but for the intention to purchase the steamer.

By the transfers to the Defendants Rose and Laird, the number of shares held by the Defendant J. H. Beatty was reduced to 291, but the united voting power of the three last-named Defendants was such that they could command a majority at any meeting of the shareholders.

Though there was a discussion, at the annual meeting on the 7th February, as to the expediency of purchasing the steamer, the resolution, directing a byelaw to be prepared, appears to have been passed without any division.

At the meeting of Directors of the 10th, the same three Defendants were in a position to carry any resolution or to pass any byelaw upon which they were agreed.

At the shareholders' meeting of the 16th the voting was as follows:—

For the confirmation of the byelaw,—

	Votes.
The Defendant J. H. Beatty	- 291
The Defendant J. E. Rose	- 5
The Defendant R. Laird	- 5
The Defendant William Beatty	- 5
Total	- 306

Against the confirmation,—

	Votes.
John C. Graham - - -	39
F. L. Hankey - - -	71
The Plaintiff - - -	120
The Defendant John D. Beatty -	59
Total - - -	289

It follows that the majority of votes in favour of the confirmation of the byelaw was due to the votes of the Defendant J. H. Beatty.

These last mentioned facts were stated by the Plaintiff in his claim in the action, and he not only insisted that the Defendant J. H. Beatty was in such a fiduciary relation to the Company that it was not competent for him, under any circumstances, to enter into the contract for the sale of his steamer to the Company, but he made various charges of fraud and collusion against the Defendant Directors, other than the Defendant J. D. Beatty, who was also the Secretary of the Company.

These charges of fraud and collusion were abandoned at the trial of the action, but the facts before referred to were pressed upon the Judges, before whom, in succession, the action came, and afforded to those Judges, who were of opinion that the sale should be set aside, the substantial grounds for their decisions.

The action first came on to be heard before the Chancellor of Ontario, who, on the 6th May 1884, ordered the sale to be set aside, with the usual consequential directions. All charges of fraud and collusion being discarded, the Chancellor treated the question as one of "purely equitable law," and held that the three-fold character of Director, shareholder and vendor, sustained by the Defendant J. H. Beatty, involved a conflict between duty and interest, and that, being so circumstanced, he could not

be permitted, in the conduct of the Company's affairs, to exercise the balance of power which he possessed, to the possible prejudice of the other shareholders.

The Defendants appealed against the order of the Chancellor, and, on the 17th April 1885, the Court of Appeal of Ontario allowed the appeal, and ordered that the Plaintiff's bill should be dismissed, with costs. In the opinion of the members of that Court, the resolution to purchase the steamer was a pure question of internal management, and the shareholders had a perfect right, either to ratify the act of the Directors, or to treat the matter as an original offer to themselves, and to assent to and complete the purchase.

From the order of the Court of Appeal the Plaintiff appealed to the Supreme Court of Canada, and, on the 9th April 1886, the Supreme Court reversed the order of the Court of Appeal, and affirmed that of the Chancellor. It appears to have been the opinion of the Judges of the Supreme Court that the case turned entirely on the fiduciary character of the Defendant J. H. Beatty, as a Director; that, if the acts or transactions of an interested Director were to be confirmed by the shareholders, it should be by an exercise of the impartial, independent, and intelligent judgement of disinterested shareholders and not by the votes of the interested Director, who ought never to have departed from his duty; that the course pursued by the Defendant J. H. Beatty was an oppressive proceeding on his part; and that, consequently, the vote of the shareholders, at the meeting of the 16th February 1883, was ineffectual to confirm the byelaw which had been enacted by the Directors. The nature of the transaction itself does not appear to have been taken into consideration by the Judges in their decision of the case.

From this decision of the Supreme Court of Canada the appeal has been brought, with which their Lordships have now to deal. The question involved is doubtless novel in its circumstances, and the decision important in its consequences; it would be very undesirable even to appear to relax the rules relating to dealings between trustees and their beneficiaries; on the other hand, great confusion would be introduced into the affairs of joint stock Companies if the circumstances of shareholders, voting in that character at general meetings, were to be examined, and their votes practically nullified, if they also stood in some fiduciary relation to the Company.

It is clear upon the authorities that the contract, entered into by the Directors on the 10th February, could not have been enforced against the Company at the instance of the Defendant J. H. Beatty, but it is equally clear that it was within the competency of the shareholders at the meeting of the 16th to adopt or reject it. In form and in terms they adopted it by a majority of votes, and the vote of the majority must prevail, unless the adoption was brought about by unfair or improper means.

The only unfairness or impropriety, which, consistently with the admitted and established facts, could be suggested, arises out of the fact that the Defendant J. H. Beatty possessed a voting power as a shareholder, which enabled him, and those who thought with him, to adopt the bye-law, and thereby either to ratify and adopt a voidable contract, into which he, as a Director, and his co-Directors had entered, or to make a similar contract, which latter seems to have been what was intended to be done by the resolution passed on the 7th February.

It may be quite right that, in such a case, the opposing minority should be able, in a suit like this, to challenge the transaction, and to show

that it is an improper one, and to be freed from the objection that a suit with such an object can only be maintained by the Company itself.

But the constitution of the Company enabled the Defendant J. H. Beatty to acquire this voting power; there was no limit upon the number of shares which a shareholder might hold, and for every share so held he was entitled to a vote; the charter itself recognized the Defendant as a holder of 200 shares, one third of the aggregate number; he had a perfect right to acquire further shares, and to exercise his voting power in such a manner as to secure the election of Directors whose views upon policy agreed with his own, and to support those views at any shareholders' meeting; the acquisition of the "United Empire" was a pure question of policy, as to which it might be expected that there would be differences of opinion, and upon which the voice of the majority ought to prevail; to reject the votes of the Defendant upon the question of the adoption of the byelaw would be to give effect to the views of the minority, and to disregard those of the majority.

The Judges of the Supreme Court appear to have regarded the exercise by the Defendant J. H. Beatty of his voting power as of so oppressive a character as to invalidate the adoption of the byelaw; their Lordships are unable to adopt this view; in their opinion, the Defendant was acting within his rights in voting as he did, though they agree with the Chief Justice in the views, expressed by him in the Court of Appeal, that the matter might have been conducted in a manner less likely to give rise to objection.

Their Lordships will humbly advise Her Majesty to allow the appeal; to discharge the order of the Supreme Court of Canada; and to

dismiss the appeal to that Court with costs; the Respondent must bear the costs of the present appeal.
