Privy Council Appeal No. 155 *of* 1924.

The Ticonderoga Pulp and Paper Company - - - - *Appellants*

v.

Percy P. Cowans and others - - - - - *Respondents*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (Appeal Side).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 9TH JULY, 1925.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD SHAW.
LORD CARSON.
MR. JUSTICE DUFF.

Delivered by THE LORD CHANCELLOR.

This is an appeal from a judgment of the Court of King's Bench for the Province of Quebec on its appeal side, reversing a judgment of Mr. Justice Duclos and giving judgment for the respondents, who were the plaintiffs in the action. In their Lordships' opinion there is no substantial foundation for the appeal, and it might be sufficient for them to base their decision upon the reasons given by Chief Justice Lafontaine, with which their Lordships find themselves in entire agreement; but, as important interests are involved and the case has been vigorously argued, it is desirable to indicate shortly the manner in which the case presents itself to the Board.

The action was brought by the respondents, who are brokers carrying on business in Montreal, to recover the amount of certain promissory notes which were given to them by the appellant company in satisfaction of or as security for the balance of the brokers' account. That account consisted of transactions in stock of an allied company called the Riordon Pulp and Paper Company.

The claim upon the promissory notes was resisted in substance upon two grounds; and first, on the ground that the transactions in the stock of the Riordon Pulp and Paper Company were beyond the powers of the appellant company. There is some indication in the judgment of the Chief Justice that in his view that point had been abandoned by the present appellants; but, assuming that there was no such abandonment, it appears to their Lordships that the point is not effectively made. The appellant company is an American company, and its powers are regulated by, among other enactments, section 52 of the Stock Corporations Law of New York. That section provides (reading only the material words) that any stock corporation—this is admitted to be a stock corporation—may purchase, acquire, hold and dispose of the stock, bonds and other evidences of indebtedness of any corporation, if the corporation whose stock is so purchased, acquired, held or disposed of is engaged in a business similar to that of such stock corporation. In this case the purchasing corporation was a pulp company. The corporation whose stock was purchased was also a pulp company, and, under its constitution, it carried on a business substantially similar to that of the purchasing corporation. It was suggested in the course of the argument that the Riordon Pulp and Paper Company, having sold its undertaking to a larger company, was not at the time of the purchase actually carrying on the business of a pulp company; but this point was apparently not taken at the trial or in the Appellate Court, and it appears to their Lordships that it is too late to raise it now, even if there be any substance in the point.

The second and strongest argument urged on behalf of the appellants was this: Assuming the purchase of this stock to have been within the powers of the appellant company, the directors or officers of the company who gave the orders for the purchase of the stock had no authority from the board to give those orders, and in giving them were acting, not in the interests of or for the purposes of the general body of the shareholders in the appellant company, but in order to keep up the price of Riordon Pulp shares in which they, the directors, had a personal interest. As to the intention and purposes of the directors who were involved, it is difficult upon the present materials to pronounce a final opinion. Those directors are not parties to this action, nor are they represented before the Board, and it is obviously undesirable to condemn them unheard. But upon the face of things it is certainly not easy to see what interest the appellant company, the Ticonderoga Company, had in supporting the market in Riordon Pulp Stock; and it appears that at a meeting of the company, held on the 7th May, 1921, the two directors who were principally involved did make certain statements tending to show that their purpose was to support the market in Riordon Pulp shares. There may be some explanation of their action, and it may be that in taking that course they considered that they were in fact promoting the interests of the appellant company, or of its

shareholders, who were at that time the holders of a large block of Riordon Pulp stock; but for the present purposes, it may be assumed that the directors were in fact not acting wholly in the interests of the appellant company. Of course, that is not sufficient to dispose of the case. In order that the brokers who carried out the orders may be implicated in the matter it is necessary for the appellant company to prove, not only that there was what has been called a breach of trust or an abuse of powers on the part of the directors, but that the brokers themselves knew of and were parties to an improper transaction. In their Lordships' opinion the evidence falls very far short of proof of that fact.

There is really no question about the law, but it is worth while to refer to a well-known statement of the law by Lord Hatherley in the course of his judgment in the case of *Mahony* v. *East Holyford Mining Company*, reported in L.R., 7 H.L., at page 893. Lord Hatherley said this :

> " On the one hand, it is settled by a series of decisions, of which *Ernest* v. *Nicholls* is one and *Royal British Bank* v. *Turquand* a later one, that those who deal with joint stock companies are bound to take notice of that which I may call the external position of the company. Every joint stock company has its memorandum and articles of association ; every joint stock company, or nearly every one, I imagine (unless it adopts the form provided by the statute, and that comes to the same thing) has its partnership deed under which it acts. Those articles of association and that partnership deed are open to all who are minded to have any dealings whatsoever with the company, and those who so deal with them must be affected with notice of all that is contained in those two documents. After that, the company entering upon its business and dealing with persons external to it, is supposed on its part to have all those powers and authorities which, by its articles of association and by its deed, it appears to possess ; and all that the directors do with reference to what I may call the indoor management of their own concern, is a thing known to them and known to them only ; subject to this observation, that no person dealing with them has a right to suppose that any thing has been or can be done that is not permitted by the articles of association or by the deed."

Applying that law, it is necessary for the appellant company to show that their directors, who were acting within their ostensible powers, were to the knowledge of the brokers abusing those powers and giving directions which they had no power or right to give. On that point their Lordships are satisfied that the appellants have failed. This company had for some four years before the transactions which are now in question made a practice of buying the stock of the Riordon Pulp and Paper Company, and it appears that in the course of those four years they had bought something like 15,000 shares in that company. The earlier purchases had been made through other brokers in Montreal ; but in September, 1920, the company began to purchase these shares through the plaintiffs in the present action, Messrs. McDougall and Cowans. The earlier purchases through these brokers, that is to say, the purchases made in September, October and November, and in the early days

of December, 1920, were adopted by the company and by the shareholders themselves ; for it appears that the shares then purchased through the brokers were delivered to the company and were divided by the board by some process of declaration of a dividend and purchase of shares among and accepted by the shareholders of the appellant company—so that there was a plain ratification of what was done up to the 9th December, 1920. The shareholders made no objection. They did not repudiate or quarrel with the purchase, and they were content to accept those shares at a moment when very large profits were apparently being made by the appellant company ; indeed, they went so far as to vote very handsome bonuses to the officers concerned. This, of course, the brokers knew, and when they received from the directors orders for the purchase of further stock of the same character they had no reason to believe that those orders were given without the authority of the whole board, to or suppose that they were not made with the approval of the appellant company. Under those orders they bought some 2,000 further shares in the Riordon Pulp Company. Cheques of the company were from time to time paid to the brokers for the purpose of putting the account in credit, and the last of those cheques was paid as late as the 23rd February, 1921. At a meeting of the shareholders of the appellant company, held on the 15th February, 1921, there was brought before the meeting a report for the past year, together with a supplemental list showing heavy transactions in the shares which are now in question ; and thereupon a resolution was passed to the effect that the annual report of the directors for the year 1920, consisting of the financial statement, balance sheet and statement of profit and loss, certified by well known auditors, together with the supplementary statement also submitted and read at the meeting, showing in detail the increase of 227,000 odd dollars in investments during the year 1920 and the cash bonuses paid to the directors and others, be approved, and that the acts of the directors in making such investments and disbursements, and all other acts in the administration of the affairs of the company during the year 1920, be and they were thereby ratified and confirmed. That resolution is said to have been carried unanimously. It is true, as Mr. Justice Rivard pointed out, that that particular ratification only goes to the purchases made down to the 31st December, 1920, and does not cover the further purchases made in the year 1921, and that ratification, if it stood alone, might not be sufficient to carry the plaintiffs through ; but it is an important element in the case and shows once more that both the board and the shareholders in the company were fully cognisant of what was being done by the two directors in question.

There is one other observation to make. Mr. Cowans, who seems to be the senior member of the plaintiff company, and Mr. Christmas, another member of the firm, who was most actively concerned in these matters, were both of them called as witnesses,

and they made in their evidence in chief statements which appear to amount to a denial of any knowledge of any impropriety in these matters. This appears especially from the statement by Mr. Cowans noted at page 207 of the record (at line 44), and from the statement by Mr. Christmas, which is to be found at the top of page 216 of the record. Both those witnesses were cross-examined by counsel for the present appellants, and it is remarkable that in the course of that cross-examination not a single question was put to either of these gentlemen which suggested to them that they had been cognisant of or parties to any impropriety of any kind, and they did not, therefore, have the opportunity, which is uniformly given to persons in that position, to deal with and deny the allegations which are now put forward against them.

In their Lordships' opinion, having regard to all these facts, it would be impossible now to hold that the respondents were parties to any fraud or breach of trust or improper transaction ; and, that being so, this action could not have been decided against them. In these circumstances, their Lordships are of opinion that this appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

THE TICONDEROGA PULP AND PAPER COMPANY,

v.

PERCY P. COWANS AND OTHERS.

DELIVERED BY THE LORD CHANCELLOR.

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