

ON APPEAL FROM THE COURT OF APPEAL  
FOR ONTARIO.

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BETWEEN

LESLIE COLBATCH CLARK TRUSTEE OF THE ESTATE  
OF VERNON WRIGHT WORSDALE, A BANKRUPT

*(Plaintiff) Appellant*

AND

THE YUKON CONSOLIDATED GOLD CORPORATION  
LIMITED - - - - -

*(Defendant) Respondent.*

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CASE FOR THE APPELLANT.

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1. This is an appeal from an Order of the Court of Appeal for Ontario made on the 28th day of September 1936 and entered on the 29th day of September 1936 affirming the judgment given in favour of the Respondent Company on the trial of an action in the Supreme Court of Ontario before the Honourable Mr. Justice Jeffrey wherein the Appellant was the Plaintiff and the Respondent Company the Defendant. RECORD.  
p. 408.

2. The main questions for decision in this Appeal are :—

(i) Whether the Appellant is entitled to a Declaration that he is the owner of 1,663,900 shares of and in the Respondent Company and to have entry of the transfer of such shares hereinafter mentioned duly made in the register of transfers of the Respondent Company.

(ii) Whether a limited liability company incorporated under the laws of the Dominion of Canada which issues a certificate certifying that a person named therein is the owner of particular shares specified is estopped as against a transferee for value who has acted to his detriment on the faith of such certificate from denying the truth of what is therein represented.

RECORD.

(iii) Whether in an action by a transferee of shares against a limited liability company incorporated as aforesaid for an Order directing the registration of the transfer of such shares, the burden of proving the transferees's knowledge of his transferor's alleged fraudulent conduct does not shift to the defendant company after the transferee has proved the execution of the deed of transfer, the delivery of the share certificate, and the payment of the consideration and has deposed to his reliance on the share certificate.

(iv) Whether there was evidence to support the findings of the learned trial Judge.

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3. The Appellant is the trustee of the estate of one Vernon Wright Worsdale (hereinafter referred to as the said Worsdale), a bankrupt.

4. The Respondent Company is a limited liability company incorporated under the laws of the Dominion of Canada and having its head office in the City of Ottawa in the Province of Ontario.

5. The Appellant as trustee of the estate of the said Worsdale, claims that he is the owner for the said estate and others of 1,663,900 ordinary shares of the capital stock of the Respondent Company and that he is the holder of share certificate No. 0369 dated the 8th day of May 1930 relating to the said 1,663,900 shares. The said share certificate was assigned to the said Worsdale on or about the 19th day of July 1930 by one Arthur Newton Christian Treadgold (hereinafter referred to as the said Treadgold) the registered holder of the said shares, and was delivered by the said Treadgold to the said Worsdale in London, England, on or about the 27th day of August 1930.

Ex. P. 1,  
p. 409.

p. 12,  
l. 11-23.

p. 15, l. 23,  
l. 36.

p. 73, l. 21.  
Ex. P. 2,  
p. 411.

6. On or about the 10th day of July 1930 the said Treadgold executed in the City of New York in the State of New York, one of the United States of America, a deed dated the said 10th day of July 1930 whereby he assigned to the said Worsdale for the consideration set out in the said deed 1,750,000 shares in the capital stock of the Respondent Company. The balance of the shares included in the said deed over and above the 1,663,900 shares represented by share certificate No. 0369 were included in another share certificate for 116,100 shares, being certificate No. 0370 issued by the Respondent Company to the said Treadgold and dated the 14th day of May 1930. The said deed and the said share certificates were delivered to the said Worsdale by the said Treadgold in London, England, on or about the said 27th day of August 1930. Between the said 27th day of August 1930 and the 18th day of October 1930 the said Worsdale paid the said Treadgold the sum of £300 for the said 1,750,000 shares. During the said period the Respondent Company was bordering on insolvency.

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Ex. P. 70,  
p. 644.

p. 15, l. 23,  
l. 36.  
Ex. P. 14,  
pp. 439-471.  
p. 15, l. 10-21.  
p. 66, l. 19-p. 67,  
l. 12.  
p. 395, l. 6-31.

p. 69, l. 27.

7. On or about the said 27th day of August 1930 in order to enable the said Treadgold "to put the Company on its feet" it was agreed between the said Worsdale and the said Treadgold that the said Worsdale should not register the transfer of the said 1,750,000 shares with the Respondent

Company until he should think fit and that the said Treadgold should pay to the said Worsdale any dividends which might be received and become payable in respect of the said 1,750,000 shares and should send him all notices from the Respondent Company relating thereto. The said agreement was evidenced by a letter written by the said Treadgold to the said Worsdale and dated the said 10th day of July 1930. Further on or about the said 27th day of August 1930 the said Worsdale lent the said certificate No. 0370 to the said Treadgold and has never had it returned to him.

RECORD.

Ex. P. 3,  
p. 411.

p. 12, l. 36.

8. On or about the said 27th day of August 1930 the said Worsdale had no notice of any defect in the said Treadgold's title to the said shares; and further he had no knowledge of any litigation to which the said Treadgold either was a party or to which he might become a party. In truth there was no such litigation until the 22nd day of December 1930 as set out in paragraph 9 hereof.

p. 17, l. 26.  
p. 21,  
l. 16-19.p. 17, l. 20.  
Ex. D. 52,  
pp. 568-596.

9. By a Writ of Summons issued out of the Supreme Court of Ontario on the said 22nd day of December 1930 in an action intituled *Patton and Others v. The Yukon Consolidated Gold Corporation Limited and Others* (hereinafter referred to as the said Patton action) certain persons, viz., John Thomas Patton, Robert Allen Lawther and Mark Morrell, on behalf of themselves and all other shareholders of the Respondent Company excepting the said Treadgold sought against the Defendants therein, viz., the Yukon Consolidated Gold Corporation Limited (the Respondent Company herein), the North Fork Power Company Limited and the said Treadgold, *inter alia*, to recover for the benefit of the Respondent Company a large number of shares registered by the Respondent Company in the name of the said Treadgold. Further by a Writ of Summons issued out of the Supreme Court of Ontario on the 26th day of December 1930 in an action intituled *Harrison v. Treadgold and Others* (hereinafter referred to as the said Harrison action), one Laurence Harrison claimed against the said Treadgold, one Edgar M. Williamson and The Yukon Consolidated Gold Corporation Limited (the Respondent Company herein), *inter alia*, a declaration that 1,000,000 ordinary shares in the capital stock of the Respondent Company were obtained from the said Laurence Harrison by the said Treadgold by misrepresentation and fraud.

Ex. D. 52,  
p. 568.Ex. D. 39,  
p. 546.

10. The said Harrison action was tried on the 17th and 18th days of March 1932 before the Honourable Mr. Justice Raney who gave judgment in favour of the said Laurence Harrison.

Ex. D. 39,  
p. 554, l. 14.

11. The said Patton action was tried in the month of March 1932 before the Honourable Mr. Justice Raney who gave judgment in favour of the Plaintiffs therein. The said Treadgold and the said The North Fork Power Company Limited appealed from the said judgment of the Honourable Mr. Justice Raney to the Court of Appeal for Ontario. Before the hearing of the appeal the Court reporter, who had taken a shorthand note of the evidence adduced before the Honourable Mr. Justice Raney, died. On the hearing of the appeal the Court of Appeal for Ontario,

- RECORD. having no record of the evidence adduced before the Honourable Mr. Justice Raney, ordered a new trial. The said Patton action was re-tried before the Honourable Mr. Justice Davis, who after a hearing lasting 20 days, gave judgment on the 23rd day of June 1933 for the Plaintiffs therein. The judgment in the said Patton action is set out in the Record.
- Ex. D. 53,  
p. 590.
12. The said Treadgold and the said The North Fork Power Company Limited served notices of Appeal from the said judgment of the Honourable Mr. Justice Davis.
- p. 17, l. 28.
13. In or about the month of January 1934 the said Treadgold informed the said Worsdale, who prior to the said month of January 1934 had no knowledge of any of the facts mentioned in paragraphs 9, 10, 11 and 12 hereof, of the result of the said Patton action. 10
- Ex. D. 53,  
p. 590.
14. After learning of the said judgment of the Honourable Mr. Justice Davis, the said Worsdale had an interview on or about the 20th day of February 1934 at the Respondent Company's office in London, England, with one Troop, one Hay and one Patton, officers of the Respondent Company. At the said interview the Respondent Company's said officers informed the said Worsdale that the Respondent Company did not intend to register the transfer of the said 1,750,000 shares held by him. In a letter to the Secretary of the Respondent Company dated the said 20th day of February 1934 the said Worsdale explained his interests in the said Treadgold and the Respondent Company. 20
- Ex. P. 4,  
pp. 412-413.
- p. 17, l. 30.
15. Thereupon the said Worsdale proceeded to Toronto in the Province of Ontario where he consulted his solicitors Messrs. McLaughlin Johnston Moorhead and Macaulay.
16. On or about the 21st day of March 1934, prior to the hearing of the appeal of the said Treadgold and the said The North Fork Power Company Limited in the said Patton action, the said Worsdale by his Counsel moved the Court of Appeal for Ontario for leave to intervene in that action. The application was refused and the motion was dismissed. In dismissing the motion the Chief Justice said "The applicant is at liberty to have a new cause of action by an independent action." 30
- p. 17,  
l. 35-45.
- Ex. P. 15,  
p. 472, l. 7.
- Ex. P. 16,  
p. 472.
17. On or about the 11th day of April, 1934 the said Worsdale by his agents one A. E. Honeywell, K.C. and one Allen Lewis, K.C. tendered to the Respondent Company at its said office in the City of Ottawa in the Province of Ontario the said Deed of Transfer and the said certificate No. 0369 and requested that the Respondent Company should register the transfer from the said Treadgold to the said Worsdale of the shares represented by the said certificate No. 0369. By letter dated the 17th day of April 1934 and addressed to the said Worsdale's said solicitors the Respondent Company declined to register the transfer from the said Treadgold to the said Worsdale of the shares represented by the said certificate No. 0369. 40
- Ex. P. 2,  
p. 411.  
Ex. P. 1,  
p. 409.  
Ex. P. 17,  
p. 473.

18. The said Worsdale was adjudged bankrupt on the 25th day of May 1934 in the County Court of Kent holden at Tunbridge Wells, England, and the Appellant was appointed and approved as the trustee of the said Worsdale's estate on the 26th day of May 1934. RECORD.  
Ex. P. 6,  
p. 411.

19. On the 25th day of September 1934 the Respondent Company obtained an order from the Honourable Mr. Justice Fisher, one of the Judges of the Supreme Court of Ontario, for the summoning of a Special General Meeting of the shareholders of the Respondent Company to consider a scheme (hereinafter referred to as the said scheme) for the reorganisation of the share capital of the Respondent Company. On or about the said 25th day of September 1934 the Respondent Company sent to its ordinary and preferred shareholders notices convening a Special General Meeting. Ex. D. 61,  
pp. 626-627.

20. The Appellant commenced the present action against the Respondent Company by a Writ of Summons issued out of the Supreme Court of Ontario on the 6th day of November 1934. The Statement of Claim was delivered on the 23rd day of November 1934 and was amended by leave of the Supreme Court of Ontario on the 20th day of December 1934. The Appellant claimed against the Respondent Company:— p. 1.

(a) a declaration that as trustee of the estate of the said Worsdale he was the owner of 1,663,900 shares in the Respondent Company;

(b) an Order directing the Respondent Company to register the transfer of the said 1,663,900 shares from the said Treadgold to the said Worsdale, or, in the alternative, to rectify its share register by inserting the name of the Appellant as the owner of the said 1,663,900 shares; and

(c) Damages.

21. By its Statement of Defence delivered on the 8th day of December 1934 the Respondent Company denied that the Appellant was the owner or holder of shares or share certificates of the capital stock of the Respondent Company; that the said 1,750,000 shares and the said certificates Number 0369 and Number 0370 were assigned or delivered to the said Worsdale; that the Appellant was entitled to have or would become entitled to have any shares in the Respondent Company transferred to him and that any demand for the transfer of the said certificate No. 0369 was made on behalf of the Appellant to the Respondent Company or that the said certificate was tendered to the Respondent Company with a request that the same should be transferred to the said Worsdale. Further the Respondent Company alleged inter alia:— pp. 3-5.

(a) that the shares represented by the said certificates No. 0369 and No. 0370 were procured by the said Treadgold to be allotted to the said The North Fork Power Company Limited or its nominees without consideration or value therefor and in fraud of the Respondent Company and of its other shareholders and that without any nomination by the said The North Fork Power Company Limited

RECORD.

the said Treadgold fraudulently procured the said certificates No. 0369 and No. 0370 to be issued to him and in his name without any consideration whatsoever therefor;

(b) that the said certificates No. 0369 and No. 0370 were not signed by or on behalf of the Respondent Company by persons authorised to sign such certificates;

(c) that in his dealings with the said Treadgold in respect of the said shares and the said certificates No. 0369 and No. 0370 the said Worsdale had knowledge and notice of the fraudulent conduct of the said Treadgold and of his want of title to the said shares and the said 10 certificates;

(d) that by the said judgment of the Honourable Mr. Justice Davis in the said Patton action it was ordered and adjudged that the Respondent Company's register of shareholders should be rectified by striking out therefrom the name of the said Treadgold as the holder of shares and that the said Treadgold should deliver up for cancellation the certificates therefor including the said certificates No. 0369 and No. 0370;

(e) that the name of the said Treadgold was removed from the Respondent Company's register of shareholders prior to any request 20 or demand by the Appellant or the said Worsdale to be entered as holder of the shares represented by the said certificates No. 0369 and No. 0370 and before any notice was given to the Respondent Company by or on behalf of the Appellant or the said Worsdale that he or the said Worsdale claimed to be the owner of the shares represented by the said certificates No. 0369 and No. 0370 or to have any interest therein;

(f) that at or prior to the time when the said Worsdale acquired from the said Treadgold the shares represented by the said certificates No. 0369 and No. 0370 the said Treadgold was and at the date of the 30 Writ of Summons herein continued to be indebted to the Respondent Company in a sum exceeding \$250,000 and that in accordance with the by-laws of the Respondent Company the Respondent Company's Board of Directors were entitled to decline to permit and had declined to permit the registration of a transfer of any shares made by the said Treadgold whilst he was so indebted;

(g) that the Appellant by reason of laches and delay on his part and on the part of the said Worsdale was not entitled to the relief claimed and that the Appellant was estopped from setting up any title to the said shares by reason of the fact that he and the said 40 Worsdale had stood by whilst the said Treadgold asserted his continued ownership of the said shares.

Ex. D. 59,  
p. 623, l. 17.

pp. 5-6.

22. By an amended Reply and Joinder of Issue delivered on the 4th day of June 1935 the Appellant denied, inter alia :—

(a) that the said Worsdale at any time had knowledge of any fraudulent conduct on the part of the said Treadgold towards the

Respondent Company or of the said Treadgold's alleged want of title to the said 1,750,000 shares; RECORD.

(b) that there had been laches and delay on his part or on the part of the said Worsdale and that either he or the said Worsdale had stood by whilst the said Treadgold asserted his continued ownership of the said shares in the said Patton action.

Further the Appellant alleged that the Respondent Company was estopped from denying the validity of the said certificates No. 0369 and No. 0370 or contesting in any way the fact that they were good and valid  
 10 certificates for 1,663,900 shares and 116,100 shares respectively in the Respondent Company since the said certificates had been issued by the Respondent Company duly signed by its proper officers and sealed with its seal.

23. By leave of the Honourable Mr. Justice Macdonnell, one of the Judges of the Supreme Court of Ontario and after service of a Notice of Motion dated the 6th day of November 1934 the Appellant by his Counsel moved the Supreme Court of Ontario for an Order to restrain the Respondent Company by injunction from proceeding with the said scheme. On the adjourned hearing of the Motion on the 20th day of June 1935  
 20 before the Honourable Mr. Justice Henderson, one of the Judges of the Supreme Court of Ontario, the Appellant by his Counsel withdrew all opposition to the said scheme. On the 21st day of June 1935 an Order was made by the Honourable Mr. Justice Fisher, one of the Judges of the Supreme Court of Ontario, sanctioning the said scheme. On the 24th day of June 1935 Supplementary Letters Patent were issued amending the Letters Patent incorporating the Respondent Company whereby effect was given to the said scheme. Ex. D. 62,  
pp. 628-629.  
Ex. D. 63,  
pp. 631-635.

24. On the 3rd day of September 1935 pursuant to rule 161 of the Rules of the Supreme Court of Ontario the Respondents delivered a Further  
 30 Statement of Defence alleging that as the Appellant had withdrawn his opposition to the approval of the said scheme by the Honourable Mr. Justice Fisher, he was not entitled to claim the number of shares mentioned in the Statement of Claim. The Appellant joined issue with the Respondent Company on its Further Statement of Defence on the 12th day of September 1935. p. 6.  
p. 7.

25. The action was tried before the Honourable Mr. Justice Jeffrey on the 28th, 29th, 30th and 31st days of October 1935, the 1st, 8th and 22nd days of November 1935 and the 6th day of December 1935 and the 20th day of January 1936 at the sittings of the Supreme Court of Ontario  
 40 holden in the City of Toronto. On opening the Appellant's case before the learned trial Judge on the said 28th day of October 1935 the Appellant's Counsel stated that for the purpose of the action the Appellant was prepared to admit that the said 1,663,900 shares were part of a number of shares which it was held in the previous litigation that the said Treadgold could not claim and to which he was not entitled. On the said 20th day p. 9, l. 4-8.

RECORD. of January 1936 the learned trial Judge directed that the action should stand over for judgment. On the 15th day of February 1936, the action then being before the Court for judgment, the learned trial Judge without giving any reasons ordered and adjudged that the action should be dismissed with costs.

p. 396, l. 30.

26. At the trial evidence was given on behalf of both the Appellant and the Respondent Company. In addition evidence taken before a Commissioner in England was read and admitted. On behalf of the Appellant objection was taken to all the evidence so read and admitted except such of it as related to matters connected with the said Worsdale's financial position. A transcript of a shorthand note taken at the trial is set out in the Record.

pp. 234-392.

p. 231, l. 37.

pp. 8-396.

p. 397.

27. By Notice of Appeal dated the 29th day of February 1936 the Appellant appealed to the Court of Appeal for Ontario for an Order that the said judgment of the learned trial Judge be set aside and judgment entered for the Appellant on the following grounds :—

(i) that the Respondent Company was estopped as against the Appellant from contending that the said certificate No. 0369 was not properly issued ;

(ii) that the Appellant became entitled to the said 1,663,900 shares by reason of the bankruptcy of the said Worsdale ;

(iii) that the said judgment was against the evidence and the weight of evidence ;

(iv) that the said judgment erred in law.

28. On Sunday the 27th day of September 1936 the learned trial Judge delivered to the Appellant's Counsel Reasons for Judgment. In the course of his said Reasons His Lordship said :—

pp. 398-407.

p. 405, l. 45.

Throughout all these proceedings Worsdale has yet to state who his friends were for whom he was holding shares in trust. The evidence given by Treadgold was not satisfactory and I do not accept it nor do I accept the evidence of Worsdale. Treadgold in giving his evidence sought to justify himself in respect of his dealings with the defendant company. These matters were disposed of. In the main he corroborates the story told by Worsdale.

p. 406, l. 6.

I have arrived at the conclusion on the evidence that Treadgold appreciated that his holdings in the Company were about to be attacked and in 1930 he well knew at least believed that the shares registered in his name might be cancelled. He was well aware of this in 1930 before sailing for England and before the transfer was made to Worsdale.

p. 406, l. 11.

Their relations have been very intimate and I do not and cannot believe that at the time the transfer was made Worsdale was not fully advised not only as to the financial condition of the company but that further action would in all probability be taken to set aside or challenge Treadgold's holdings. I think that Treadgold

had this in mind and the information as to his relations with the company and the shareholders was explained to Worsdale and that they entered into the alleged agreement for the sole purpose of protecting Treadgold. RECORD.  
p. 406, l. 18.

The said Reasons for Judgment are set out in the Record. pp. 398-407.

29. The Appeal was heard on the 28th day of September 1936 before the Honourable Chief Justice in Appeal (Latchford C.J.) Riddell, Middleton, Masten and Henderson, J.J.A. and was dismissed with costs. Their lordships' short reasons and the Order dismissing the Appeal are set out p. 407.  
10 in the Record.

30. On the 16th day of March 1937 the Appellant by his Counsel applied to the Honourable Mr. Justice Masten, sitting in chambers, for an Order admitting the Appellant's appeal to His Majesty in His Privy Council; and the Honourable Mr. Justice Masten ordered that the appeal p. 408.  
be admitted on the usual terms.

31. The Appellant humbly submits that the Order of the Court of Appeal for Ontario and the judgment of the Honourable Mr. Justice Jeffrey should be reversed and set aside and that judgment should be entered for the Appellant for the relief claimed or alternatively for a new trial for  
20 the following, among other

### R E A S O N S

- (1) Because on the evidence adduced at the trial the Appellant was entitled to the relief claimed against the Respondent Company.
- (2) Because the learned trial Judge misdirected himself in not holding that the Respondent Company was estopped as against the Appellant from denying the truth of the statements set out in the said certificate No. 0369.
- (3) Because there was no evidence to support the findings of the learned trial Judge.
- 30 (4) Because the burden of proving that the said Worsdale had knowledge of the said Treadgold's alleged fraudulent conduct rested upon the Respondent Company at the close of the Appellant's case and that the Respondent Company failed to discharge that burden.
- (5) Because the judgment of the learned trial Judge was against the weight of evidence.
- (6) Because the learned trial Judge ought to have accepted and given effect to the evidence adduced by the Appellant.

- (7) Because the learned trial Judge was wrong in admitting the evidence taken before a Commissioner in England except such of it as related to matters connected with the said Worsdale's financial position.
- (8) Because the Judgment and Reasons of the learned trial Judge were wrong.
- (9) Because the Reasons and Order of the Court of Appeal for Ontario were wrong.
- (10) Because on the facts and the law applicable thereto the Appellant was entitled to judgment.

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J. P. EDDY.

F. H. LAWTON.

In the Privy Council.

No. 70 of 1937.

ON APPEAL FROM THE COURT OF APPEAL  
FOR ONTARIO.

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LESLIE COLBATCH CLARK  
*(Plaintiff) Appellant*

*v.*

THE YUKON CONSOLIDATED GOLD  
CORPORATION LIMITED  
*(Defendant) Respondent.*

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CASE FOR THE APPELLANT.

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EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.4