

1895 THE CHATHAM NATIONAL BANK...APPELLANT;

*Feb. 19, 20.

*May 6.

AND

LEWIS MCKEEN AND EASTERN }
TRUST COMPANY, LIQUIDATORS OF } RESPONDENTS.
THE MABOU COAL AND GYPSUM CO. }

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Winding-up Act—Sale by liquidator—Purchase by director of insolvent company—Fiduciary relationship—R. S. C. c. 129 s. 34.

Upon the appointment of a liquidator for a company being wound up under R. S. C. c. 129 (The Winding-up Act) if the powers of the directors are not continued as provided by s. 34 of the Act their fiduciary relations to the company or its shareholders are at an end and a sale to them by the liquidator of the company is valid.

APPEAL from a decision of the Supreme Court of Nova Scotia reversing the ruling of the Chief Justice who refused to confirm a sale by the liquidator of the Mabou Coal and Gypsum Company to the respondent McKeen of property of the company.

At the time the winding-up order was made the respondent, McKeen, was a director of the insolvent company and the sole question for decision was whether or not his position as such director continued after the order was made so as to prevent him from becoming a purchaser of the property of the company from the liquidator. The Chief Justice held that it did and refused to confirm the sale but his ruling was reversed by the full court.

Gormully Q.C. and *Orde* for the appellant. Though the powers of directors cease when the winding-up

*PRESENT :—Sir Henry Strong C.J., and Fournier, Taschereau, Sedgewick and King JJ.

order is made their duties do not. *Madrid Bank v. Bayley* (1). 1895

As to duties of superseded directors see *Grover v. Hugell* (2); *Ex parte James* (3); *Tennant v. Trenchard* (4). THE CHATHAM NATIONAL BANK v. McKEEN.

Code for the respondent referred to *Re Alexandra Hall Co.* (5); *Coles v. Trecothick* (6).

The judgment of the court was delivered by:

THE CHIEF JUSTICE.—A careful consideration of this case since the argument has led me to the conclusion that the judgment of the Supreme Court of Nova Scotia is right and ought not to be disturbed.

By the 34th section of the Winding Up Act it is enacted that:—

Upon the appointment of the liquidator all the powers of the directors shall cease except in so far as the court or the liquidator sanctions a continuance of such powers.

We have nothing before us to show that there was any continuance of powers to the directors in the present case.

It does not therefore appear that there was any fiduciary relationship subsisting between Mr. McKeen and the company or its shareholders when he became a purchaser at the sale which the order appealed from upholds. I can see no reason therefore why the sale should not be confirmed.

I have examined the note of the Alexandra Hall Co. case in the Weekly Notes (7) and although the report is certainly very meagre, yet it seems to be an authority for the decision now under appeal.

(1) L. R. 2. Q. B. 37.

(2) 3 Russ. 428.

(3) 8 Ves. 337.

(4) 4 Ch. App. 537.

(5) W. N. [1867] p. 67.

(6) 9 Ves. 234.

(7) [1867] p. 67.

1895

THE

CHATHAM
NATIONAL
BANK

v.

McKEEN.

The Chief
Justice.

I do not write at greater length because I entirely agree in the judgment of Mr. Justice Townshend in which the case is fully and clearly treated.

The appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Silver & Payzant.*

Solicitors for the respondent McKeen: *Ross, Mellish
& Mathers.*

Solicitors for the respondent Eastern Trust Co.: *W.
& J. A. McDonald.*
