ROBERT H. BAIRD .....APPELLANT;

AND

DISTRICT REGISTRAR OF TITLES....RESPONDENT.

1937

* Oct. 5.
* Dec. 15.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Companies—Seal—Duplicate or facsimile seal affixed in Vancouver by Quebec company—Deed—Registration refused—Powers of company as granted by incorporating statutes.

A deed, purporting to be a conveyance of land by the Montreal Trust Company (its head office and its seal being both in Montreal) as grantor to the appellant as grantee, was refused registration on the ground that it was executed in Vancouver and a duplicate or facsimile seal affixed thereto. Upon a petition under section 230 of

* PRESENT:—Duff C.J. and Crocket, Davis, Kerwin and Hudson JJ.

(1) (1929) Q.R. 46 K.B. 405.

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chapter 127 of R.S.B.C., 1924, the trial judge upheld the registrar on the ground that a company can have only one seal, i.e., its common seal, unless enabled thereto by statutory authority. On appeal, the judgment was affirmed on equal division of the appellate court.

Held, that the appeal should be allowed and that there should be judgment directing the registrar to proceed with the registration of the deed under the appellant's application.—In virtue of the enactments of the Quebec statute incorporating the Montreal Trust Company and the amending statutes, it was within the powers of the directors of the company to authorize the sealing of instruments on behalf of the company in this form, by employing a stamp usually kept at the head office or by employing a stamp or stamps kept at branch offices; and this power in virtue of the above enactments could be delegated to an executive committee.

Judgment of the Court of Appeal ([1937] 3 W.W.R. 13) reversed.

APPEAL from the judgment of the Court of Appeal for British Columbia (1), affirming on equal division of the court the judgment of Robertson J. and dismissing the appellant's application by way of petition under section 230 of the *Land Registry Act*, R.S.B.C., 1924, c. 127, for a declaration that a certain conveyance in fee, made by the Montreal Trust Company as grantor to the appellant as grantee, was properly executed and for an order directing the Registrar of the Vancouver Land Registration District to proceed with the registration of the said conveyance under the application to him which he had rejected. On November 17, 1937, an application to this Court by the appellant in order to add the Montreal Trust Company as respondent was granted, costs reserved.

W. F. Chipman K.C. for the appellant.

Ls. St-Laurent K.C. for the respondent.

The judgment of the Court was delivered by

DUFF C.J.—The application of the appellant for registration of a certain conveyance in fee of the 30th of June, 1936, purporting to be made by the Montreal Trust Company as grantor to the appellant as grantee, was rejected by the Registrar at Vancouver for reasons in writing given by him and expressed in these words:

This application is summarily rejected on the ground that it is apparent on the face of the document submitted that the same was executed in Vancouver and a duplicate or facsimile seal affixed thereto (the head office of the Montreal Trust Company and the seal of the said

(1) [1937] 3 W.W.R. 13; [1937] 3 D.L.R. 484.

company being both in Montreal). In fact, solicitor for applicant admits that this is so, claiming that a company can have as many seals as it wishes. In my opinion a company can have only one seal, i.e., its common seal, unless enabled thereto by statutory authority.

The appellant accordingly presented a petition under section 230 of chapter 127, R.S.B.C., 1924, praying a declaration that the conveyance was properly executed and an order directing the Registrar to proceed with the registration of it. This application was dismissed.

On appeal to the Court of Appeal (1) the appellant failed by reason of an equal division, two of the learned judges of that court thinking the appeal should be allowed, and two agreeing with Mr. Justice Robertson.

The question to be determined on this appeal is whether or not the instrument in question was competently executed on behalf of the Montreal Trust Company.

The Montreal Trust Company was incorporated by a statute of the province of Quebec (52 Vict., c. 72). By this statute certain general provisions of the statutory company law of that province are made applicable to the company. By one of these (now section 164 of chapter 223, R.S.Q., 1925):

1. The directors may administer the affairs of the company in all things, and may make or cause to be made for it in its name any kind of contract which it may lawfully enter into.

2. They may make by-laws not contrary to law nor to the charter of the company, for the following purposes:—

(*d*) the appointment, functions, duties and removal of all agents, officers and servants of the company, the security to be given by them to the company and their remuneration;

(*g*) the conduct in all other particulars of the affairs of the company.

By section 9 of the special statute, as amended by (1900) 63 Vict., ch. 77, section 5,

The principal place of business of the company shall be at the city of Montreal, but the company may establish branch offices in other places.

And by section 9 (*a*) of 20 Geo. V, ch. 139,

The affairs of the company shall be managed by a board of not less than five directors and the directors of the company may, from time to time, by by-law, increase or decrease to not less than five the number of its directors.

The directors may, from time to time, by by-law, delegate such of their powers as they see fit to an executive committee consisting of not less than three members of the board.

In virtue of a provision of the *Interpretation Act* in the Consolidated Statutes of Canada ((1859), c. 5, s. 6 (24)),

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which is still in force in Quebec, the Montreal Trust Company is expressly empowered to have a common seal; and there are enactments in the statutes amending the Trust Company's special Act which, obviously, proceed upon the assumption that this is so, and which, indeed, could not be put into effect without the use of a common seal of the company. There is nothing in any of these statutory provisions touching the form of the seal.

One of the by-laws of the company provides that the seal of the company shall be in the form, "Montreal Trust Company, Incorporated 1889."

We think it was clearly within the powers of the directors, as defined by the relevant statutes, to authorize the sealing of instruments on behalf of the company in this form, by employing a stamp usually kept at the head office, or by employing a stamp or stamps kept at branch offices; and that this power, in virtue of the enactment quoted above, could be delegated to the executive committee.

By a by-law, number 9, passed on April 10, 1930, it was provided,

> All the powers and authority of the board of directors are delegated to the executive committee and shall be exercised by it when the board is not in session.

By the company's by-law number 12, the following regulation came into force:

> Any director of the company, together with any one of the following officers of the company, to wit: the general manager, an assistant general manager, a manager, the secretary or an assistant secretary, may exercise all such powers and do all such acts and things as the company itself is authorized to exercise and do, including the management, administration and transaction of all the affairs and business of the company; and for greater certainty, but without limiting the generality of the foregoing, may exercise the following powers:—
>
> To sell, alienate . . . all kinds of property, whether moveable or immoveable, real or personal . . . :
>
> and to sign and execute . . . all such deeds, documents and such instruments as such directors and officers of the company may deem necessary or expedient, all of which deeds, documents and other instruments shall be valid and binding upon the company without further authorization, the whole with full powers of substitution either generally or for specific instances, all such powers may also be exercised and all such deeds, documents and other instruments may also be signed by such other person or persons either alone or otherwise as the board of directors or the executive committee of the company may from time to time by resolution authorize. The seal of the company, when required, may be affixed to all such deeds, documents and other instruments so signed or executed.

Then, by resolution of the 23rd of August, 1935, the executive committee resolved as follows:

> It was resolved that Messrs. R. H. Baird, A. T. Lowe, F. J. Lynn and A. J. Ross, officers of the Royal Bank of Canada, Vancouver, or any one of them, be authorized to sign as an authorized signing officer where the signature of the president, vice-president or a director is required under by-law no. 12 and they are hereby authorized to sign with Robert Bone, manager of the Vancouver office, or Frank N. Hirst, assistant secretary, and all documents so executed shall be binding upon the company without any further authorization. The seal of the company may be affixed to the document so executed.

We think the executive committee was acting within the scope of its authority in passing this resolution, and that the persons named became possessed of the powers which the resolution purports to vest in them. With respect, we are unable to concur in the view, upon which Mr. Justice Robertson acted, that the last sentence contemplates exclusively the seal of the company which is kept in the head office at Montreal and designates exclusively an impression created by that seal. We think such an interpretation of the resolution is unnecessarily narrow; and that, properly read, the resolution contemplates an impression in the form prescribed by the by-law made by any stamp used by agents thereunto properly authorized on behalf of the company.

The instrument is, *prima facie,* the instrument of the company, and there is nothing in the material brought to the notice of this Court or of the British Columbia courts justifying a judicial conclusion that the deed is invalid.

The appeal will, therefore, be allowed and there will be judgment directing the Registrar to proceed with the registration under the appellant's application.

As to costs, the appellants shall have their costs of the appeal to this Court. There will be no costs of the application in this Court to add the Trust Company as a party.

Appeal allowed with costs.

Solicitor for the appellant: *Knox Walkem.*

Solicitor for the respondent: *H. Alan Maclean.*