THE DOMINION TEXTILE COMPANY (DEFENDANTS) ..... } APPELLANTS;

AND

L. CHARLES A. ANGERS (PLAINTIFF) ..... } RESPONDENT.

1908
*Nov. 4.
*Dec. 15.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Company—Sale of shares—Resolutive condition—Hypothecary security—Construction of contract—Rescission.

By the judgment appealed from (Q.R. 18 K.B. 63), affirming the judgment of the Superior Court (Q.R. 30 S.C. 56), it was held that the acceptance of a proposal to purchase shares in a joint stock company for a price payable half in bonds and half in the stock of a new company to be formed to take over the business of the first mentioned company, on condition that the shares so sold should be deposited in trust as security for the payment of the bonds and that, so soon as all the shares of that company were so deposited and its real estate transferred to the new company, a mortgage on the real estate should be executed to secure payment of the bonds, was a sale subject to a resolutive condition to become complete and effective only in the event of the new company acquiring the property of the first company and executing the mortgage, and that, on breach of the condition respecting the security to be given for payment of the bonds, the sale became ineffective and should be rescinded.

On an appeal to the Supreme Court of Canada, the judgment appealed from was affirmed.

APPEAL from the judgment of the Court of King's Bench, appeal side(1), affirming the judgment of Archibald J. in the Superior Court, District of Montreal(2), maintaining the respondent's action with costs.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Idington, Maclennan and Duff JJ.

(1) Q.R. 18 K.B. 63.

(2) Q.R. 30 S.C. 56.

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In December, 1904, the respondent was offered bonds and preferred stock of a projected joint stock company in exchange for fifty shares of stock held by him in the Dominion Cotton Mills Company. It was stipulated in the offer that the fifty shares would be held in trust by the Royal Trust Company as security for the payment of the bonds. The person who made the offer and his associates undertook that, so soon as all the shares of that company were so deposited in trust and its real estate transferred to the new company, a mortgage would be executed and registered by the new company against such real estate to secure the payment of the bonds to be so given in exchange, so that they should be secured, not only by the assets of the new company, but also by such real estate. In case of acceptance of the offer the respondent was asked to deposit the stock as proposed "in order to receive in exchange therefor the securities above mentioned so soon as the transaction can be given effect."

The respondent accepted the offer, agreed to make the exchange at any time within three months, and transferred his fifty shares to the Royal Trust Company. The appellants are the company which it was proposed to incorporate, as mentioned in the offer.

At the time of the institution of the action the shares of the Dominion Cotton Mills Company had not all been deposited and its real estate had not been transferred to the appellants.

On the 27th January, 1905, the Royal Trust Company wrote and sent to the respondent and other shareholders of the Dominion Cotton Mills Co. a letter in which it was stated that the buyers had turned over to the Royal Trust Company the shares of the Dominion Cotton Mills Company stock which had

been deposited, so that such shares would thereafter be held for the appellants, and that the appellants would continue the offer of exchange made on the 29th December, 1904. The respondent acquiesced in this substitution of the appellants for the persons by whom the offer was made, but it was understood that the fifty shares remained subject to the trust stated in the offer.

In January, 1905, the appellants enacted a by-law to provide for the issue of debentures, a proportion of which debentures were to be applied in exchange for the shares of the Dominion Cotton Co., which had been agreed to be exchanged. Bonds were accordingly issued and tendered to the shareholders of the old company, but those tendered to the respondent were refused by him, and the respondent brought the action for an order that the mortgage bonds and preferred stock should be delivered to him, within fifteen days; that, in default of such delivery, the sale of the fifty shares of stock should be set aside and the defendants condemned to re-transfer the shares to him, and that, in the event of the defendants neither delivering the bonds and preferred stock, nor retransferring the fifty shares, they should be condemned to pay him $5,000, the par value of said fifty shares, with interest from the 11th day of January, 1905.

At the trial the plaintiff's action was maintained, with costs, and that judgment was affirmed by the judgment from which the present appeal was asserted.

Aimé Geoffrion K.C. and *George H. Montgomery* for the appellants.

Béique K.C. for the respondent.

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Idington J.

THE CHIEF JUSTICE and GIROUARD J. were of opinion that the appeal should be dismissed with costs.

IDINGTON J.—Let us try to understand what those concerned were about and I do not think we will find much difficulty in finding the law suitable for their case.

I cannot read the proposal and the acceptance in question as a whole, as they ought to be read, if we wish to understand the questions raised, without coming to the conclusion that what the respondent intended to obtain was fifty cents on the dollar for his stock in the Dominion Cotton Mills Company by means of exchanging it for bonds of the appellants to the amount of $1,250, charged upon the property of the Dominion Cotton Mills Company, and preferred stock of the appellant company for the like amount.

Nor can I doubt, unless I impute a dishonest instead of an honest purpose to the appellants, that their intention coincided with that of the respondent and that he should have realized his expectations within a reasonable time, now long since expired.

The appellants got a delivery of the respondent's shares on the faith of such common intention and understanding, and I see no reason why, as a result thereof and of the appellants' failure to implement the bargain, they should not abide by such a judgment as that appealed from, which seems to fit the case.

The phrase "so soon as," of which much has been made, does not mean "never," or imply some years short of forever, as the appellants' contention might lead to if maintained.

It does not matter that by a long involved train of reasoning it may become, to the legal mind, clear that

if the law is honestly observed and remains unchanged the security the respondent has may, in effect, be as good as what he sought.

It is not what he bargained for. It is not as simple and easily understood as that. It is, hence, by no means as marketable.

The respondent may be ill-advised in claiming a return of his stock instead of trusting to the financial skill and benignity of the promoters of the appellants. Yet I cannot see how he has, by anything he did, adopted the latter course.

The appeal should be dismissed with costs.

MACLENNAN and DUFF JJ. concurred in the opinion of Idington J.

Appeal dismissed with costs.

Solicitors for the appellants: *Brown, Montgomery & McMichael.*

Solicitors for the respondent: *Béique, Turgeon & Béique.*