

DIRECTORS MUST DIRECT

Misfeasance Judgment in British Columbia—Affairs of Company Could Not Bear Investigation

All the directors of the Traders' Trust Company now in liquidation are held by Mr. Justice Morrison to have participated in the non-investment of Miss Bertha M. Kory's \$2,500, and all those cited in her misfeasance suit are declared liable for the repayment of that sum and interest. The directors, against whom the judgment goes, are Messrs. C. G. MacLean, C. B. Pitblado, Duke, Graham, Newton, Thomson and Newington, according to the report of the Vancouver World. This is the first time the directors of a company have ever been held liable on a misfeasance suit in British Columbia.

In the course of his judgment his lordship deals frankly with the affairs of the company during 1913 and 1914, the period affected by the action, and says:—

"The affairs of this company could not at that time bear the most superficial investigation by one desiring to resort to it as a medium in which to invest. They had no money except as they might borrow on their individual credit, or such sums as they could, by personal solicitation, obtain from unsuspecting, unthinking persons for investment. Such moneys were treated as capital."

Functions Delegated to Executive.

Dealing with the critical situation which arose prior to Miss Kory's investment, his lordship points out that in order to meet certain obligations \$2,500 was borrowed from W. G. Wasmansdorff for one month at 60 per cent. per annum. In order to pay this back, says the judge, "all hands took to the pumps." Mr. C. B. Pitblado was the successful director, he obtaining Miss Kory's \$2,500 on a promise to invest it in a mortgage at 12 per cent. Her evidence at the trial was that she had never seen either Mr. Pitblado or the money since.

His lordship finds that the money was never deposited in the bank as required by law, but that it was at once paid over to Mr. Wasmansdorff. The transaction was confirmed at a meeting of the directors, when Messrs. Elliott, Graham, Duke, Newton, Pitblado and Newington were present.

Misfeasance was alleged in respect of all the above dealings and also certain payments to directors immediately prior to liquidation, notably \$1,058 paid to Mr. C. G. MacLean, although he was indebted to the company in a substantial sum.

Some of the directors sought to absolve themselves by the suggestion that their functions had been delegated to an executive committee. Referring to this his lordship says:—

"Whatever may be the powers of delegation ordinarily and under normal circumstances I am certain there cannot be a power to delegate the task of circumventing a confiding investor."

At another point in his judgment his lordship says: "The company was desperately endeavoring to keep itself alive, and from what motive? Surely one was to keep up an appearance of prosperity which would induce the public to patronize them as a safe and secure medium for receiving trust funds. If that be true of these directors, then they are guilty of fraud towards any person induced by that semblance of prosperity to deal with the company."

Liable for Ignorance.

In fixing the liability upon the directors the judge says that the rule holds directors liable for being ignorant of what they might have discovered by the exercise of that good business diligence that the law imposes on them. He also says that Pitblado perpetrated a pitifully mean fraud on Miss Kory and without losing a moment's time proceeded to misapply the money.

In addition to finding all the directors liable for the repayment of the \$2,500, Mr. Justice Morrison decides that Mr. MacLean must repay the \$1,000 and that Mr. Daykin, a solicitor, who was paid \$150 costs just prior to liquidation, must pay back that sum with interest. These latter sums are to be paid to the liquidator to form part of the assets of the company. The plaintiff is not compelled to pay the costs of the directors whose names were struck from the summons.

RAPID MARKETING LOWERS WHEAT PRICES

Transportation and Freight Rates—Liners Take Most of Shipments

"The United Kingdom, Canada's best market, received its supply of wheat from the whole world in regular amounts month by month. For Canada to throw on the market in October and November a quantity of wheat exceeding the entire demand of the United Kingdom for that period was assuredly a fact of capital importance," suggested Mr. W. Sanford Evans, chairman of the Georgian Bay Canal Commission, in an address before the Winnipeg board of trade. Mr. Evans said his investigations had led him to believe that the over-marketing of Canadian grain was the efficient cause of reduced prices in May, and in October and November. No other country, he asserted, shipped as big a proportion of its crop on the lowest price.

In 1912 and 1913, Canada had put on the market in October and November much more wheat than the United Kingdom would buy from the entire world in the same period. This over-marketing seemed to be the direct cause of the decline in price.

When beginning the study of this problem, Mr. Evans had not believed it possible that the relatively small amount of the Canadian wheat supply so powerfully affected price in the fall. He had noted the correspondence between the drop in price and the Canadian thrust at the market. That the two facts bore a casual relation to one another he had at first doubted. He was now, however, pretty sure that the two things were cause and effect.

Used Canadian Ports.

The Canadian ports had first call on the export business, but owing to their inability to handle more than a certain amount the balance was diverted. Shipments were approximately regular through Canadian ports and irregular through the United States ports. This fact shows that the United States export channels obtained a varying surplus of Canadian wheat traffic, which could not be handled through Canadian ports.

While the imports amounted to only about half the exports, nevertheless the same ratio tended to prevail with respect to United States ports. In 1913 about 98 per cent. of Canada's purchases in Europe had been imported through Canadian ports. The question raised, therefore, was whether it would be possible to put relatively more boats on the Canadian route, because if the larger number had only the same amount of cargo to bring in, their earnings would be less.

Should Make Larger Shipments.

Competition really plays a big part in determining ocean freight charges. Freight rates on the different routes were shown to be in direct relation to distances. Mr. Evans said if distance was really the law governing ocean freight charges, shippers from North Atlantic ports would naturally have an advantage owing to the short voyage. With present rates on wheat about 40 cents a bushel from New York, Australia and Argentina seemed unable to get boats without offering rates which would make it unprofitable to ship. Argentina had been offering about 15 cents a bushel more than the freight from New York, and Australia had been offering 21 cents more. This spread, Mr. Evans said, gave Canada and the United States almost a monopolistic position, and should make possible a much larger shipment during the winter months than had ever been possible before.

Incidentally, Mr. Evans showed that tramp steamers carry hardly any of the Canadian wheat trade. Most of it goes in liners, those vessels being ready to take the wheat as a filler, at rates which tramp steamers could not touch. There were other causes of the dearth of tramp steamers in the Canadian wheat carrying trade. Among them was the distaste of master mariners for the St. Lawrence Channel in the late fall.

British Columbia apple growers have had a good year. Crops have been good and demand excellent, though prices have not been as high as in former years. Messrs. Stirling and Pitcairn, Kelowna, have shipped apples to the Antipodes, South Africa and Buenos Aires. On the October boat to Australia out of Vancouver, 25,000 boxes of apples were in the cargo, and 30,000 boxes on the November boat. Nearly all of these were British Columbia grown. There have also been large shipments to other parts of Canada and to Great Britain.