

Lebire & Carteret, Vo. Bail Emph. § 1er; Laurent, Vol. VIII, p. 421; Troplong, Louage, Ch. I, pp. 174-5; De Villeneuve & Gilbert (1791-1850), Vo. Emphytéose, § 2, No. 18, p. 369; *id. ibid.*, § 1, No. 1; Dalloz & Vergé, Codes annotés, append.au Tit. VIII, No. V, Louage Emph. § 1, No. 21; *id. ibid.*, § 3, No. 49; Ledru Rollin, Vo. Emph. Nos. 39, 51, 112; Pepin le Haleur, Hist. de l'Emphytéose, pp. 75-7; Pothier, Traité de l'Hypothèque, Sec. II, § 2.

Petition granted and *décret* annulled.

Lafleur & Sharp, for petitioner.

De Bellefeuille & Bonin, for plaintiffs contesting.

Pelletier & Jodoin, for defendant.

SUPERIOR COURT.

MONTREAL, December 31, 1881.

Before RAINVILLE, J.

LOW v. THE MONTREAL TELEGRAPH CO. et al.

Corporation—Transfer of franchises and special privileges—Action by shareholder.

corporation of a public character such as a Telegraph company, while competent to enter into any agreement for the division of profits or for carrying on its business, cannot legally transfer or divest itself of its franchises or special privileges. Therefore a lease by a Telegraph Company of all its lines for 97 years, at a fixed annual rent, the lessees to have control of the rates for transmission of messages, &c., was held to be illegal notwithstanding a clause in the charter giving the company power to let, convey or otherwise part with their estate, real, personal or mixed.

A shareholder has a right to bring an action in his own name for the rescission of such agreement.

PER CURIAM. The plaintiff complains of the Montreal Telegraph Company and of the Great North-western Telegraph Company of Canada. In his declaration he sets out the act incorporating the Montreal Telegraph Company (10 and 11 Vic., chap. 83), and alleges that under section 6 of this act the affairs of the company were to be administered by a board composed of five directors; that the directors were to fix the rate for the transmission of messages, declare dividends, make by-laws, and appoint officers and employees, &c.; that by a subsequent statute (18 Vic., chap. 207) the privileges of the said company were enlarged and its capital increased to

\$2,000,000; that on the 17th April last (1881) the said company was doing a very profitable business, and had assets worth three million dollars; that the company has no power to transfer its property and revenues so as to divest it of the right and duty of exercising the franchises conferred upon it by law; that notwithstanding this, the company, by a deed of agreement executed on the 17th August, 1881, illegally transferred for the term of 97 years to the other defendant, the Great North-western Company, all its telegraph lines, offices, instruments, apparatus, &c., the same to be operated in future by the Great North-western Company; said abandonment and transfer being made for the sum of \$165,000 per annum, and that the Great Northwestern Company is now in possession of all the lines, &c., of the Montreal Company; that the said agreement is *ultra vires* and an abandonment of the franchises conferred upon the Montreal Telegraph Company, and jeopardizes the existence of its charter. The plaintiff alleges that he is the owner of 51 shares of Montreal Telegraph Company stock, and has been so since the 10th June last (1881); and he prays by his conclusions that the said agreement be declared *ultra vires*, and set aside and annulled; that the Montreal Company be ordered to resume possession of its lines and to operate them, that the Great Northwestern Company be enjoined to cease to operate the lines, and to give up possession thereof to the other defendant; and lastly, that it be ordered to account for the moneys received from said lines.

To this action the Montreal Telegraph Company pleaded, first a demurrer; secondly, two exceptions. By the demurrer the defendant said that the action should be dismissed, 1st, because all the shareholders were not in the cause, and 2ndly, because the action could only be brought in the name of the Attorney-General. I had to dispose of this demurrer; I dismissed it, and I have seen nothing to cause me to change my opinion. To the authorities which I cited in rendering judgment, I will add the following:—

"A court of equity has jurisdiction at the instance of stockholders in a corporation, to restrain the corporation and those who have control and management thereof from acts tending to the destruction of its franchises,