

OSLER, J.A.—I think this case raises a question of considerable importance on the point of jurisdiction, and also on that of the proper construction or meaning of the applied section of the Loan Corporations Act. If leave be necessary, I think it should be granted for the purpose of discussing both.

MARCH 17TH, 1905.

C.A.

ELGIN LOAN AND SAVINGS CO. v. NATIONAL TRUST CO.

Company—Shares—Deposit of Certificates—Bailment—Trust—Detention—Excuse—Trustee Act—Winding-up—Direction of Master—Jurisdiction—Detinue—Measure of Damages—Price of Shares.

Appeal by defendants and cross-appeal by plaintiffs from judgment of BOYD, C., 2 O. W. R. 1159, 7 O. L. R. 1.

The appeal was heard by MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.

S. H. Blake, K.C., and W. H. Blake, K.C., for defendants.

G. C. Gibbons, K.C., and Shirley Denison, for plaintiffs.

MOSS, C.J.O.—The sole questions now in dispute are as to the liability of defendants for damages, and as to the quantum, if any.

The writ was issued on 17th July, 1903. The claim was to recover from defendants the possession of scrip certificates of the Dominion Coal Company common stock representing 525 shares, and scrip certificates of the Dominion Iron and Steel Company preferred stock representing 100 shares; also damages for the detention of the shares; and the sum of \$1,050, being dividends received in respect of them. It now appears that the claim should have been for 50 and not 100 shares of the Dominion Steel and Iron Company.

Soon after service of the writ upon defendants, an application was made on their behalf for an order staying the proceedings in the action. On 28th July, 1903, the motion came on for hearing before the Chief Justice of the Common Pleas, who pronounced an order giving plaintiffs leave to amend their writ, and adjourning the motion until 4th September, but providing that upon plaintiffs and the liquidators of the Atlas Loan Company agreeing to do so, they