

the proceeds of the cheque given to R. The Company then sued the bank on which the cheque was drawn for the amount of the same as an unpaid balance of his deposit in said bank.

Held:—1. That lands acquired by partners engaged in buying and selling lands on speculation are, in equity, considered as personalty, and may be so dealt with by the partners.

2. That from the nature of the business, R. had power to effect the loan and make an equitable assignment of the mortgages which a court of equity would compel the other partners to clothe with the legal estate.

3. That R. having such power, and having a right to receive cash for the loan, could use the names of his partners in indorsing the cheque, and the bank was justified in assuming that he did so for the purposes of the partnership business, and in paying it on such indorsement.

Held, also, that the Company having for two years, received monthly statements from the bank in which the cheque so paid affected his balance on deposit, must be considered to have acquiesced in the payment, R. having failed in the meantime and the position of the bank as to recourse against him being altered for the worse.

Appeal dismissed.

Ewart, Q.C., for the Appellants.

Robinson, Q.C., for the Respondents.

Quebec.]

MUIR V. CARTER.

Appeal—Matter in Controversy—Bank Shares—Actual value—Opposition—Shares held “in trust”—Substitution—Res judicata.

In this case the appeal arose out of an opposition filed by the appellant to the seizure of thirty-three shares of Molsons Bank stock, part of a larger number seized under a writ of execution to levy \$31,125 and interest pursuant to a judgment obtained in a suit of *Carter v. Molson*. The par value of the stock was \$50 per share, equal to \$1,650, but it was shown by affidavit, to the satisfaction of the learned chief justice of the Court of Queen's Bench of the Province of Quebec, that at the time the opposition was filed and the appeal brought, the shares were worth

\$2,500. The chief justice therefore allowed the appeal.

On a motion to quash for want of jurisdiction, on the ground that the value of the matter in controversy did not amount to \$2,000:

Held:—That under section 29 of the Supreme and Exchequer Courts Act the sum or value of the matter in controversy determined the right to appeal, and such value was the actual value of the shares, which was properly established by an affidavit to be over \$2,000.

TASCHEREAU, J., dissented on the ground that the right to appeal was governed by the statutory value of the shares, \$50 per share, and not by their market value.

The appellant, as curator to the substitution created by the will of the late Hon. John Molson, by his opposition claimed that the shares seized are the property of the substitution. The respondent contested the opposition, pleading *chose jugée*, and that the stock never belonged to the substitution.

At the trial it was proved that the shares had been purchased when A. Molson was solvent with moneys belonging to the substitution, and had been entered in the books of the bank as shares belonging to “A. Molson, Esq, in trust”; that he subsequently dealt with them as his own property and pledged them, but that at the time of the seizure, the shares had been re-transferred to the account of “A. Molson, in trust for E.A.M. *et al.*”

It was also admitted that the interest on these shares had been previously seized and that, upon an opposition filed by A. Molson as institute under the will, and upon petitions to intervene filed by E.A.M. and E.A.M. *et al.* claiming that the interest being interest on shares forming part of 640 shares belonging to the estate of the late Hon. J. Molson, and was not arrestable for A. Molson's debts, the Privy Council dismissed the opposition and rejected the petitions to intervene, but stated that anything decided with regard to the validity of the substitutions would not be binding upon the petitioners as *res judicata*—*Carter v. Molson*, 10 App. Cas. 674.

On appeal to the Supreme Court it was *Held*, reversing the judgment of the courts