BANK OF MONTREAL v. THOMSON.

Corporation, Endorsement of Note by.

JOHNSON, J. This is an action by the holder against the maker of a promissory note, and the plea is that the endorsement by the Windsor Hotel Company, who were the payees, was ineffectual on the same grounds that have just been discussed in the case against Murphy for calls. The power to endorse notes is given by section 31 of the joint stock companies' general clauses act, and has been exercised as there prescribed. The validity of the exercise by the Windsor Hotel Company of this power to endorse is attacked on the same grounds as the validity of the calls was questioned in the other case, by alleging the forfeiture of the charter, only here it is done by exception *au fond* instead of to the form; and on the grounds that have just been explained there the pleas are dismissed and judgment is given for plaintiffs.

Judgment for plaintiffs.

Dunlop & Lyman, for plaintiffs.

Doutre & Co., for defendant.

FARRELL v. RITCHIE et al.

Broker—Purchase of Shares—Delivery.

JOHNSON, J. The plaintiff brings his action against the defendants—a firm of brokers—to recover $112.50 and interest and costs. He employed them to purchase for him fifty shares of the stock of the Royal Canadian Insurance Company, and they sent him, on the 12th of February, the broker's note for the price, $100, and the brokerage, $12.50 more, and a memorandum at the foot: "Terms, cash; 13th inst." The plaintiff paid them the whole amount on the 13th February; but they did not transfer the stock to him; and on the 22nd of March they were written to by the plaintiff's attorneys to pay back the money in default of the transfer; and again, on the 4th of May, to the same effect. Their plea to the action is that there was a call of five per cent. on the stock made on the 12th, and notified on the 13th, and payable on the 15th May; and all transfers were subject to this call, and could not be made without payment; of all which they notified the plaintiff, and he requested them to carry it for him till the 15th of May, which, however, they refused to do, and repeatedly asked him to pay the call. On the 16th of May, finding that the stock was getting lower in the market, they notified him to pay up at once, or they would sell at his cost and charges, and hold him liable for all loss. That in consequence they sold the stock at a loss; and reserving their right to recover this loss, they ask for the dismissal of the action. There is a letter from Farrell to the defendants of the 20th of March, which, I think, seriously affects the case. I had, in fact, expressed my opinion to that effect when I was induced to take the case back on the representation that there was no proof of the letter. It is now proved, however, and I must look at the transaction by the light thrown on it by that letter. It is as follows:—

"MY DEAR RITCHIE—I paid $112.50 on 50 shares of Royal Canadian Insurance Co., and which we afterwards found could not be transferred until 15th May. Please apply this amount on the 25 shares Richelieu and Ontario, as it is not necessary to pay for Royal Canadian until transferred. Please let me know if this is satisfactory. I will hand you the receipt of above amount on Royal Canadian Insurance Co. when I see you.

"Yours, &c.,

"P. FARRELL."

The plaintiff in this letter plainly says that he knows the stock can't be transferred till he pays the call; that is the evident meaning of it. He asks for his money back because the defendants have made default to deliver the stock; but that is unfounded in point of fact. There is no default of the defendants. They have done all they were employed to do. He can only ask for the money, because he did not get the stock. He can't have both. The defendants were employed as brokers; they were bound to deliver in the ordinary course by transfer, but they were not bound to any more onerous terms of delivery than usual, and payment of the call of 5 per cent formed no part of their contract.

Action dismissed.

Bethune & Bethune, for plaintiff.

Ritchie & Berlase, for defendants.

ROSS et al. v. MCGILLIVRAY.

Procedure—Depositions taken in short hand without consent—Acquiescence.

JOHNSON, J., in the course of his judgment in this case (a contested action for goods sold, involving a simple question of fact), remarked:—The evidence has been taken perhaps in an irregular manner. There are no depositions