

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

remedy for the deficiency being to obtain a reduction of the price, or damages for non-delivery according to the contract. FOURNIER and HENRY, JJ., dissenting.

Bain, Q.C., Kapelle with him, for appellants.

McCarthy, Q.C., for respondents.

MCCALL V. McDONALD.

Mortgage—Given in contemplation of insolvency—

Suit by creditors to set aside—Parties to suit—

Distribution of assets.

C, a trader, mortgaged his stock, and a few days after executed an assignment in trust for the benefit of his creditors. On a suit by a creditor, on behalf of himself and the other creditors, except the mortgagees, to set this mortgage aside as a fraudulent preference in favour of the mortgagees.

Held, affirming the judgment of the court below, 12 Ont. App. R. 593, that the suit could be properly brought without joining the mortgagees as plaintiffs, and that the mortgage could be set aside without attacking the assignment in trust.

Held, also, reversing the decision of the court below, that the proceeds of the sale of the mortgaged property, which had been paid into court to abide the result of the appeal, should be paid over to the assignee under the trust deed to be distributed as part of the assets of the estate, and not dealt with by the court as ordered by the Court of Appeal. The decree of the Court of Appeal was varied, and the judgment of Ferguson, J., 9 O. R. 185, restored in full.

Robinson, Q.C., and Geo. Kerr, for appellants.

Blake, Q.C., and McDonald, Q.C., for respondents.

BEATTY V. NEELON.

Company—Action by shareholders of, against promoters—Misrepresentation—Delay in bringing action—Parties injured.

An action was brought by B and others, shareholders in a joint stock company, against N and others, who had been the promoters of the company, for damages caused by the fraudulent misrepresentation, as was alleged, the said promoters in the formation of the

company. The plaintiffs and defendants had been owners of rival lines of steamboats, and the plaintiffs claimed that the defendants had proposed to the plaintiffs to amalgamate the two lines and form a joint stock company, and as an inducement to the plaintiffs' consent to such amalgamation the defendants had represented that they had a four years' contract with the Government for carrying the mails from Windsor to Duluth, whereas the fact was that they had only a verbal contract for carrying such mails from year to year, which was discontinued after the formation of the company, which was the misrepresentation complained of, and also that the defendants had received a bonus from the town of Windsor, and refused to pay to the plaintiffs their portion of the same as agreed upon when the said company was formed.

The evidence on the trial showed that the plaintiffs had been aware of the true state of the said mail contract a short time after the company was formed, but had allowed the business of the company to go on for four years before taking proceedings against the promoters.

Held, Strong, J., dissenting, that the alleged injury, if any, was to the company and not to the plaintiffs, and the action should have been brought in the name of the company or on behalf of all the shareholders.

And *held*, also, affirming the judgment of the court below, 12 Ont. App. R. 50, that if the action could be brought by the plaintiffs the long delay and the conduct of the plaintiffs in allowing the business of the company to proceed without making a speedy claim for redress, disentitled them to relief.

McCarthy, Q.C., and McDonald, Q.C., for the appellants.

Robinson, Q.C., and Cassels, Q.C., for the respondents.