

Province of British Columbia.

SUPREME COURT.

Full Court]. DANIEL v. GOLD HILL MINING COMPANY. [Jan. 20.

Company—Assets of—Fraudulent sale by directors—Collusion—Inadequate consideration—Companies Act Amendment Act, 1893—Enabling, not restrictive.

Action in which Richard T. Daniel who sued on behalf of himself and all the shareholders in the Gold Hill Mining Company (Foreign) and others were plaintiffs, and Michael Doneen, E. J. Doneen, et al, and the said Gold Hill Mining Company were defendants, for a declaration that a certain sale of the Gold Hill mine to the defendant E. J. Doneen, was null and void. In July, 1895, the Gold Hill mineral claim situate in the Trail Creek mining division of British Columbia was owned by the defendant Welch, who sold a half interest to the plaintiff Daniel and a quarter interest to the defendant Michael Doneen. In September, 1895, the Company was formed under the laws of the State of Washington; the capital stock was \$500,000.00 divided into 500,000 shares of \$1.00 each. The Company acquired the Gold Hill mineral claim, the plaintiff Daniel receiving for his interest in the claim 200,000 shares in the Company, and the defendants M. Doneen and Welch receiving 100,000 shares each, and 100,000 shares were put in the treasury for the working of the mine. The treasury stock with the exception of a few hundred shares was sold for about \$5,500.00 which was spent in development work, and then the Company was at the end of its resources. The defendant Michael Doneen, one of the directors of the Company, having become responsible to a contractor for \$432.00 for work done on the mine, borrowed that sum from his brother, the defendant E. J. Doneen, who held 138,900 shares in the Company, and then the defendants M. Doneen, Welch, Comegys, and Davidson, directors of the Company, sold the mine to E. J. Doneen for \$1,250 00. The plaintiff was a director of the Company but did not attend the meeting at which the resolution was passed authorizing the sale—it was a regular monthly meeting and the plaintiff had notice of it but not of the fact that the mine was to be sold. Subsequently the transaction was ratified by a general meeting of the shareholders. The fraud alleged was that the sale was a sham sale and that the stated consideration of \$1,250.00 was never in fact paid. At the trial, Drake, J., set aside the sale, finding that it was made at a price so inadequate as to show an intention to benefit the purchaser at the expense of the shareholders. The trial judge