

stated that the property was bought from Dr. Gill, one of the directors, acting as trustee, for \$175,000, to be paid for in 175,000 shares of stock—which was the total number of shares sold to the date of the prospectus.

After this completion of the transaction, other advances were made, stock was sold, and the affairs of the company carried on until the final disaster. In all that was done up to this time there was nothing in the nature of concealment or breach of trust; everything was assented to by all concerned; and, although the records were not complete or satisfactory, there was nothing upon which any liability of the directors could be founded.

It was alleged that there was misfeasance by an over-issue of stock. Some of the figures appeared to be difficult of explanation; but it was unsatisfactory to attempt to base a claim upon the piecing together of isolated facts and figures where the subject was not in issue and was not brought to the attention of any of the deponents at the hearing. There was no foundation for what was alleged.

It was argued that the whole transaction between Dr. Gill and the company was colourable—entered into for the purpose or with the obvious result of enabling the company to issue its shares at a discount. This allegation was not made out in fact. Dr. Gill had a property of absolutely speculative value, and the price in shares of the company was fixed in the mode indicated.

Under the Companies Act, the shares of a mining company may be issued at a discount, if certain statutory requirements are met; and, even if what was alleged had been made out, it was doubtful whether the liability charged would have arisen; for on a misfeasance summons the liability of the directors depends upon the loss sustained by the company by reason of what is complained of. Here no loss was sustained; at the time of the transaction, all concerned understood and approved of it; and none were afterwards misled, for the prospectus stated the facts.

Apart from this, the Limitations Act afforded a complete defence. The allegation against the respondents was, in substance, breach of duty to the company of which they were directors, and this is a liability falling within the trustee clauses of the Act (R.S.O. 1914 ch. 75, secs. 46-48). See cases collected in *Lightwood's Time Limit on Actions*, pp. 282, 283.

Appeal dismissed with costs, to be paid by the liquidator out of any assets of the company which may have come to his hands.