

## NOTES OF CASES.

## SUPERIOR COURT.

MONTREAL, December 31, 1881.

Before JOHNSON, J.

BELANGER V. GAUTHIER, BOURQUE, & MOISAN; &  
LA SOCIÉTÉ DE CONSTRUCTION D'HOCHELAGA,  
and SCHILLER, *mis en cause*.

*Action to annul sale—C. C. 1484—Interest of person suing for resiliation—Transfer of shares after liquidation of Building Society.*

PER CURIAM. This is a case in which a large sum of money is involved, as well as very extensive interests, and perhaps some important principles. It is the case of a plaintiff asserting his right to set aside a deed of sale of the assets of a building society then in liquidation, on the alleged grounds that two of the liquidators, Gauthier and Bourque, acquired the property for themselves, acting through Mr. Moisan, who only lent his name for the purpose, each of the three being interested for one-third. The assets of this society were adjudged to Mr. Moisan for \$21,000, and they are alleged to have been worth \$50,000; and it is also said that the defendants conspired to run down and depreciate the assets so as to prevent a higher tender being made; and the conclusions taken are that the deed of sale of the 21st of September, 1880, be set aside as fraudulent and illegal, with costs against Gauthier, Bourque and Moisan jointly and severally, and against the society itself and Mr. Schiller, who are made parties to the case, if they should contest.

The allegations of the plaintiff which require notice are:—1st, that the Building Society of the County of Hochelaga went into liquidation in February, 1880 (26th February), and Messrs. Gauthier, Bourque and Schiller were named liquidators; 2nd, that these gentlemen accepted the charge, and being properly authorized by the shareholders so to do, advertised for tenders at so much in the dollar; 3rd, that Moisan made a tender in his own name of 88½ cents in the dollar, which was accepted by the shareholders by their resolution of the 7th September; 4th, that by deed of the 21st of September the liquidators sold to Moisan all the assets at 88½ cents; 5th, that at all these dates the plaintiff was proprietor of several shares duly entered in the Society's books in the name of Jos. Limoges

in trust, and Limoges on the 6th of August made a declaration that he only held them for the plaintiff, whose property they were; 6th, that the deed of the 21st September by Gauthier, Bourque and Schiller, as liquidators, to Moisan is simulated, fraudulent and null; 7th, that Moisan was a mere *prête-nom* for the real purchasers, Gauthier and Bourque, who were associated with him each for a third; 8th, that Gauthier and Bourque, being liquidators, could not by law, either by themselves or through others, acquire these assets; 9th, that the assets were sold for 88½ cents in the dollar, making \$21,000, while they were worth \$50,000, which the purchasers have realized by them; 10th, that the defendants and Moisan fraudulently conspired to prevent tenders, by depreciating the value of the property and obstructing free examination of the books, &c; 11th, to the great damage of the plaintiff, who saw his shares depreciated more than one-half by the defendant's fault, and who has an interest in setting aside the deed of sale.

The three defendants, Moisan, Gauthier and Bourque, have pleaded—1st. That the plaintiff was not proprietor of shares as alleged, and no shares were standing in the books in the name of Limoges in trust. 2nd. That Limoges (in April, 1880) acquired two shares from Allard and two from Rouk, which were all the shares he ever had, and were in his own (Limoges') name. 3rd. These four shares were acquired by Limoges after the liquidation, (which was in Feb., 1880.) 4th. That tenders were asked for, and three were put in; (1) by the Montreal Loan and Mortgage Company; (2) by the Société de Construction Jacques Cartier; (3) by Moisan, whose tender was accepted by the shareholders on the 7th of September. 5th. All fraud and concert are denied, and it is averred that the liquidators furnished all the information in their power; that full value was got for the assets; Moisan has paid the \$21,000 in full, and it has been distributed to the shareholders. 6th. That after paying over proceeds to all the shareholders, a general meeting was held on the 14th of February, 1881, and the liquidators rendered an account, which was accepted, and the plaintiff had notice, and took part in all the meetings.

By a second plea the defendants contend that the sale was not by the liquidators but by the society or shareholders, and the plaintiff, if he