Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Montreal and St. Lawrence Light and Power Company v. Robert, from the Court of King's Bench for the Province of Quebec (Appeal Side); delivered the 7th February 1906.

Present at the Hearing:
LORD MACNAGHTEN.
LORD DAVEY.
SIR FORD NORTH.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

By deed dated the 18th of July 1901, and made between the Respondent, Edmund Arthur Robert, and the Appellant, the Montreal and St. Lawrence Light and Power Company, Robert conveyed to the Company a lot of land known as Buisson Point, situated at the Cascade Rapids on the River St. Lawrence, in the County of Beauharnois and Province of Quebec, with the right of fishing in the river opposite and attached thereto. The consideration for the purchase, as stated on the face of the deed, was "one dollar, and other good and valuable con-"sideration." The deed was prepared by, and executed in the presence of, Maître Perodeau, Notary Public, who was the Company's notary. It bore the Company's seal. It was signed by Mr. Porteous, the President, and Mr. Kitto, the Secretary of the Company. Attached to it was a verified copy of a Resolution purporting to have

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been passed at a meeting of the directors on the 17th instant, and purporting to authorise the President and Secretary "to complete the "transaction and sign the necessary documents."

By another deed dated the same day, and made between the same parties, it was declared that the real consideration for the sale was the sum of $15,000 paid in cash, and an agreement to pay the further sum of $260,000 on the 30th of November then next. It was, however, declared that the purchaser should have the right at any time before the 30th of November to abandon the purchase by forfeiting the said sum of $15,000, and by re-conveying the property to the vendor, in which case the sale was to be dissolved to all legal intents and purposes.

On the 4th of January 1902 the Company brought an action against Robert praying for a declaration that the two deeds of the 18th of July 1901 were null and void, and asking that the Registrar of the County of Beauharnois might be ordered to cancel all entries of the same in the registration books of the County, and that the vendor might be ordered and adjudged to repay the said sum of $15,000 to the Company.

On the 7th of January 1902 Robert brought an action against the Company seeking to recover $260,000, as the balance of the purchase money alleged to be overdue.

The two actions were consolidated, and came on to be heard on the 30th of June 1903 before Davidson J. The learned Judge maintained the action of the Company except so far as it asked for repayment of the $15,000, and dismissed the action of the Respondent Robert. The Superior Court sitting in Review reversed the Judgment of the trial Judge, and dismissed the Company's action. Their decision was affirmed by the Court of King's Bench for the Province of

Quebec. From the Judgment of that Court the present Appeal has been brought.

The argument on the Appeal before this Board resolved itself into two questions—

(1.) Had the Company power to buy Buisson Point?

(2.) Did the Company, in fact, buy it?

The Company was incorporated in 1888 by a Quebec statute, 51 & 52 Vict. c. 73, under the name of the Chambly Manufacturing Company, for the purpose of creating water power on the River Richelieu near Chambly, and carrying on business there as an electrical lighting and power company. That Act, and a subsequent Act passed in 1895, were replaced by a Quebec statute passed in 1898, 61 Vict. c. 65. By it the Company was re-incorporated under its original name, and its powers were increased. In 1901 by another Quebec statute, 1 Edward VII. c. 67, assented to on the 28th of March 1901, the corporate name of the Company was changed to the name of The Montreal and St. Lawrence Light and Power Company, and its powers were again increased.

The provisions of the Act of 1898 were discussed at considerable length. On the one hand, it was argued that by that Act the Company was empowered to set up works on any river in the Province of Quebec except that part of the Province which forms the judicial district of Quebec. On the other hand, it was contended that, notwithstanding the generality of the language of the Act, the Company was still restricted to the use of the River Richelieu and its tributaries, and that its operations must be confined within certain prescribed limits, which do not include or extend to Buisson Point. In the opinion of their Lordships, it is not necessary to pronounce a decision on the construction of the Act of 1898. In view of the provisions of the

Act of 1901, under which the Company seems to have been absorbed or acquired (as its President prefers to say) by another Company known as the Montreal Light, Heat, and Power Company, it would serve no useful purpose to do so. Whatever may be the sphere of the Company's operations as described in the Act of 1898, it is clear that the Company was empowered to acquire and hold, for the purpose of its business, real or immovable estate not exceeding a specified sum in yearly value in any part of the Province outside the prohibited district. The Company acting *boná fide* must be the sole judge of what is required for the purpose of its business. It appears, therefore, to their Lordships that the transaction in itself was not *ultra vires*, and consequently the first question must be answered in the affirmative.

As regards the second question—the question whether the Company did in fact buy, or bind itself to buy, the property—the real difficulty is to ascertain the gist and substance of the Company's complaint. There is no suspicion of fraud or circumvention or surprise or collusion. It is not suggested that Robert took advantage of the innocence or inexperience of those with whom he was dealing. They were "all," as James Ross, the Vice-President of the Montreal Light, Heat, and Power Company, said, "first-" class business men, and associated with him in" many enterprises." It is not suggested that Porteous, the President of the Appellant Company, or the Secretary, or the Notary betrayed the interests of the Company confided to them. There is no entry in the minutes disavowing the action of the President or censuring him for exceeding his instructions. The case presented by the learned Counsel for the Company in his opening address was that the notion of buying was not in the mind of the Directors at all.

They wanted—or James Ross, who, though not a director, had a controlling interest in the Company and in other Companies of the same class, and was the prime mover in the matter, wanted—an option, an option pure and simple, that would lapse of itself if nothing was done. That was the real meaning, it was said, of the Resolution of the 17th of July 1901. But somehow, without any fault on the part of anybody in particular, the Company found itself committed to a purchase. Now, the facts of the case, when examined, tell a very different story. It is quite true that at first the negotiation was for an option. It seems that a tender for the lighting of the City of Montreal was then in the market, and Ross and his associates thought that the water power at Buisson Point was, at any rate, worth securing. They had obtained the offer of an option from Robert, the owner of Buisson Point. Robert saw his opportunity, and, after a week's delay on the part of Ross, pressed for an immediate reply. On the 11th of July he wrote, "I shall consider myself free unless I "hear from you to-day." There was no reply, or no satisfactory reply, to this communication. Then he made a definite offer in writing to sell the property to Ross or his nominee on certain terms which gave an option to the purchaser of abandoning the purchase within a fixed time on forfeiting the deposit. On the same day, the 11th of July 1901, in the absence of Ross, Porteous, who held a power of attorney from Ross, and was, as Ross said, his "trusted ally," accepted the offer in Ross' name, and declared his nominee to be "The Montreal and Saint "Lawrence Light and Power Company." Then came the Directors' meeting of the 17th of July. The minutes of that meeting were entered by Porteous himself. The preamble to the Resolution certainly contains the word "option."

"The purchase," it says, "was to be in the "shape of an option up to the 30th of November "1901 for the sum of $275,000, of which "$15,000 is to be paid in cash on the passing "of the deed to the Company." The Resolution is, "That the President and Secretary "be authorized to complete the transaction and "sign the necessary documents." If the minutes are read with any attention it becomes quite plain that what was meant was not a mere option but an actual conveyance with the option of re-conveyance within a specified time. So the Company's Notary must have understood it. In order to prepare the conveyance he must have had before him Robert's offer of the 11th of July, and Porteous' acceptance of it, as well as the Resolution of the 17th of July. It was his duty "to complete the transaction," so far as the legal part of the business was concerned, and prepare "the necessary documents," and no fault can be found with what he did. The deed was passed and the deposit of $15,000 duly paid by the Company.

There is no satisfactory explanation why the directors allowed the 30th of November to slip by without making any move. The directors may have thought that Ross had assumed the management of their affairs. Ross may have supposed that the directors were then looking after their own business. Porteous may have forgotten the terms of the bargain, or he may have judged it inexpedient to throw the bargain up at that particular moment. Whatever the cause was, Robert was not to blame. His conduct seems to have been quite straightforward and above board. It was no fault of his if the directors of the Company were careless or supine.

Another point was made on behalf of the Company. It seems to have been a mere afterthought, for there is no hint of it before the action was launched. It is said that the

meeting of the 17th of July was irregular: there was not a quorum present; therefore the Resolution passed on that occasion was invalid and goes for nothing. It is quite true that the by-laws require the presence of three directors to make a quorum—and only two attended on the 17th. But, after all, the by-laws of a Company constituted as the Montreal and St. Lawrence Light and Power Company was constituted are not public property. They concern matters of internal management. Those who deal with the Company have no means of access to them, no right to pry into the Company's archives or interrogate its officials. There was nothing to put Robert on enquiry. The officials of the Company, the President, the Secretary, and the Notary furnished him with a copy of a Resolution which purported to be a Resolution of the Directors duly and regularly passed. On the faith of that representation Robert altered his position and parted with his property. The Company cannot now be heard to say to the vendor: "you should not have given credit to what our people told you." If such a plea were listened to, no one would be safe in dealing with a Company having private regulations of its own inaccessible to the outside world to which appeal could be made, in case of need, to relieve it from solemn obligations, or save it from a bad bargain.

Such being their Lordships' view it would seem to be a work of supererogation to enquire whether the Resolution of the 17th of July, if invalid, has been validated by subsequent Resolutions or by the subsequent conduct of the Company.

On the whole their Lordships agree with the Superior Court sitting in Review and the Court of King's Bench and they will humbly advise His Majesty that the Appeal should be dismissed.

The Appellant will pay the costs of the Appeal.