Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Charles Langelier v. *Philippe Angers, from the Court of King's Bench for the Province of Quebec (Appeal Side); delivered the 31st July* 1912.

PRESENT AT THE HEARING:

THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD ATKINSON.
LORD SHAW.

[DELIVERED BY LORD SHAW.]

This is an Appeal against the Judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) given on the 8th October 1910. The Court of King's Bench reversed a Judgment of the Superior Court for Quebec, of date the 25th January 1910.

There is not a little confusion in regard to transactions and attempts at transactions, mostly abortive and all of a highly speculative character, between the persons mentioned as involved therein on the Record. Their Lordships express no surprise at the difficulties which confronted the Canadian Courts in attempting to unravel or to bring within any known legal category the rights of parties in the case.

This confusion is reflected in the specific heads of the relief claimed. Of these the really important one is the first. It asks for a declaration that in a certain sale of the 7th December

1908 the Defendant and Appellant Mr. Langelier acted " en qualité d'associé, de mandataire, et de " prête-nom du demandeur pour un quart." It was suggested in the course of the discussion at the Bar that there might possibly be three contracts which gave rise to some rights on the part of the Respondent as against the Appellant, viz., partnership, joint adventure and agency ; and it was asked which of these were affirmed by the Respondent. To this the reply was perhaps the only one available in the circumstances, viz., that refuge could be taken in alternatives.

It is accordingly difficult to ascertain exactly where the learned Judges of the King's Bench placed this contract, as their Decree appears simpliciter to affirm the conclusion of the Action as laid. But it would rather appear –although the matter is not certain—that they were of opinion that the contract of parties was that of partnership. This difficulty does not, of course, arise with regard to the Judgment of the Superior Court, as that Court holds that the parties were under no contract relations whatever. Cimon, J., has analysed with much care the whole situation of parties in fact and in law and has after a detailed investigation and review reached conclusions from which their Lordships do not see any ground for dissent.

But out of respect for the learned Judges of the King's Bench it may not be inexpedient, notwithstanding Mr. Justice Cimon's analysis, to recall one or two facts which are undisputed and which in their Lordships' opinion illustrate the danger of raising out of materials so loose as those founded on a definite mercantile contract. In the first place the only contract of partnership or otherwise which is said by Mr. Angers to have existed is a verbal contract. There is no writing of any kind under the hand of Mr. Angers which bound him in anything.

In the second place the verbal contract stands on his own testimony, indefinite as that is; it is denied by Mr. Langelier. The latter had evidently from some memoranda hopes of receiving some assistance financially from Mr. Angers and others, but so far as Mr. Angers was concerned these hopes were vain. When 10,000 dollars were required a Mr. Broët contributed 5,000, Mr. Larue 3,000, and Mr. Langelier 2,000. Mr. Angers contributed nothing.

In the third place, if this was a partnership, how many partners were there? It is admitted that the idea was to have eight persons associated in some way, then it is admitted that this failed and the number was reduced to three, then it is alleged—and this is the Respondent's case—that a contract was in the end arrived at, and that he, Mr. Angers, who had contributed and was to contribute nothing, did at last become one of four persons associated with the other three under a contract of partnership.

There are parts of the evidence as to "arranging"—for that probably is the only suitable term—as to arranging the personnel of this Company, which are surprising. One would have thought it not unlikely that when three partners were in view they would have been the three persons who had paid down their money in this speculative proposal. According to Mr. Angers this was not so at all. He, Mr. Angers, was in, and Mr. Broët, the largest contributor, was out. Then, according to the evidence of Mr. Angers, there occurs what might, had not a solemn contract with most serious consequences for the Appellant been founded on it, be considered an entertaining item even in the records of company promoting. Angers, having given his account of the failure to get eight men associated says "then, as we ought to have been "eight and remain only four, Mr. Broët, instead

" of having one-eighth, has come to have one-
" fourth by the consent of us three.

" *Q.* You decided on it in his absence?

" *A.* We decided on it in his absence.

" *Q.* He must have been surprised when he
" saw that you had manœuvred it like that.

" *A.* It is Mr. Langelier who manœuvred it."

Mr. Broët unfortunately is dead. Mr. Langelier denies any such transaction. Their Lordships agree with Mr. Justice Cimon in holding it to be altogether unproved that any contract of the kind indicated was made. Such a contract must bind all parties or none. How was Mr. Angers bound? It seems unnecessary to point out that any attempt to lay obligations, for instance for partnership losses, upon Mr. Angers would have been a hopeless attempt for he had signed nothing, contributed nothing, and, in their Lordships' opinion, bound himself to nothing.

As stated, the facts are fully gone over by Mr. Justice Cimon. In their Lordships' opinion they fully justify his opinion that no partnership has been proved. The above illustrations are only given to show how loose, confused, and imperfect is the material out of which one of the most important consensual contracts has been attempted to be constructed. Such a fabric cannot stand.

Their Lordships find it necessary to make one further observation. If this were a partnership, the partner's remedy would—in the ordinary case arising out of such circumstances as are here alleged to have arisen—be for an account. Under that account the assets, debts, and divisible balance of the concern would have appeared. What has been asked here, however, and under the Judgment has been obtained, is a declaration of partnership, and of the indebtedness of the Appellant, one partner, to the

Respondent, another partner, taken at a certain date and calculated on the result of one paper transaction on which a profit appeared to the firm. The Board were informed that the transaction never went through in fact, and the documen appear to establish that this was so. The Respondent has naturally followed up his declaration with a petitory action, and in this action standing the declaration, he must have succeeded. Their Lordships are of opinion that such a mode of distribution of partnership assets would be wholly irregular, and is not according to law. The true view is that concisely expressed by Lord Lindley in these words :—

" No partner has a right to take any portion of the " partnership property and to say that it is his exclusively. " No partner has any such right, either during the existence " of the partnership or after it has been dissolved."

Their Lordships will humbly advise His Majesty that the Appeal should be allowed, the Judgment of the Superior Court restored, and the Appellant found entitled to the costs of the Action and of this Appeal.

In the Privy Council.

CHARLES LANGELIER

v.

PHILIPPE ANGERS.

DELIVERED BY LORD SHAW.

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