

35, 1937

No. 96 of 1936

In the Privy Council.

ON APPEAL FROM THE COURT OF KING'S BENCH
(APPEAL SIDE) FOR THE PROVINCE OF QUEBEC.

BETWEEN

DAME GEORGIANA LAVERDURE,

*(Plaintiff in the Superior Court, and Respondent
in the Court of King's Bench)*

Appellant,

AND

HONOURABLE PAMPHILE DuTREMBLAY ET AL

*(Defendants in the Superior Court and Appellants
in the Court of King's Bench)*

Respondents,

AND

LUCIEN DANSEREAU

(Appellant in the Court of King's Bench)

Respondent,

AND

LA PRESSE PUBLISHING COMPANY LIMITED ET AL

(Mis-en-cause, in the Superior Court, and at the Court of King's Bench)

Mis-en-cause.

CASE FOR RESPONDENTS.

This appeal is from a judgment of the Court of King's Bench, appeal side, Province of Quebec, reversing by a majority of three judges, Record.
p. 59

RESPONDENT'S CASE

Record. Bond, Galipeault and St. Jacques, J.J. with two dissents, Dorion and St.
p. 23 (Germain, J.J., a judgment of the Superior Court, District of Montreal,
Duclos, J.

p. 7 The latter judgment had maintained an action in which Appellant,
De G. Laverdure, the widow and legatee of the late Edouard Berthiaume,
who died on the 24th of December, 1933, claimed from Respondents Du- 10
Tremblay et al, Trustees under a deed of gift of the late Honourable T.
Berthiaume, father of the deceased and also from Respondent DuTrem-
blay, as sole Trustee under the Will of the said late Honourable T. Ber-
thiaume, *part of a dividend* declared by "La Compagnie de Publication
de La Presse, Limitée," on its preferred and common stocks, on the 27th
of the same month, three days after such death, payable on the 2nd of
January following, this dividend having come to these trustees in their
capacity as such.

p. 99 By this deed of gift the Honourable T. Berthiaume appointed three 20
Trustees, whose successors the present Respondents are; he gave them
7400 common shares of the above mentioned company upon Trust to dis-
tribute the revenues as received in the proportion of one-sixth to them-
selves as their remuneration and five-sixths to his children living at the
time of the distribution and to the children of those then deceased, and in
case of *any* having died without issue, *their* shares to go to the surviving
brothers and sisters and nephews and nieces representing deceased brothers
and sisters.

p. 91 By his will he appointed one Trustee whose successor is Respon- 30
dent DuTremblay, and bequeathed to him the residue of his property which
residue included the remainder of the common stock and part of the pre-
ferred stock of the same company, upon a Trust substantially similar to
the one created by the deed of gift.

As previously stated, Edouard Berthiaume, one of the children of
the Honourable T. Berthiaume died suddenly a few days before the de-
claration of the dividend. He left no children and bequeathed his estate
to his widow, the Appellant. The question is whether or not the Appellant
is, under these circumstances, entitled to the *greater part* of this dividend, 40
namely to a proportion of it based upon the number of days that Edou-
ard Berthiaume lived since the date of the declaration of the previous
dividend.

The company does not declare dividends regularly, they are de-
clared from time to time during the year, though as it is a family cor-
poration a declaration is generally made about New Year.

The trial judge maintained the action applying articles 447 and
following of the Civil Code, of Quebec, which deal with usufruct.

These articles read as follows :

Record.

447. The usufructuary has the right to enjoy every kind of fruits, whether natural, industrial or civil, which the thing subject to the usufruct can produce.

10 448. Natural fruits are those which are the spontaneous produce of the soil. The produce and the increase of animals are also natural fruits.

The industrial fruits of the soil are those obtained by the cultivation or working thereof.

449. Civil fruits are the rent of houses, interest of sums due and arrears of rents. The rent due, for the lease of farms is also included in the class of civil fruits.

20 450. Natural and industrial fruits attached by branches or roots, at the moment when the usufruct is open, belong to the usufructuary. Those in the same condition at the moment when the usufruct ceases, belong to the proprietor, without recompense on either side for ploughing or sowing, but also without prejudice to the portion of the fruits which may be acquired by a farmer on shares, if there be one at the commencement or at the termination of the usufruct.

451. Civil fruits are considered to be acquired day by day, and belong to the usufructuary in proportion to the duration of usufruct.

30 This rule applies to rent from the lease of farms, as it does to the rent of houses and to other civil fruits.

Usufruct is defined by the same code as follows :

443. Usufruct is the right of enjoying things of which another has the ownership, as the proprietor himself, but subject to the obligation of preserving the substance thereof.

40 The trial judge holds that dividends are civil fruits under article 449, that *these dividends* represent profits accrued before the death of Edouard Berthiaume, that the declaration of the dividends did not create these profits and revenues, but merely fixed the proportion that each shareholder was to receive and the date of payment, that even if that was not so, the moment dividends were declared, article 451 applied retrospectively. He finally holds that the testator wished that the revenues given be acquired by his children day by day. p. 23

Record.
p. 66

In Appeal, Bond J. concurred in the reasons given by Galipeault J. and added that a dividend does not become a debt due by the company till after the declaration and that under the Deed of gift and the will, the Trustees were bound to distribute the dividends to the children living at the time of the distribution; such dividends were non-ascertained and had no existence till the declaration.

p. 74

Galipeault J. relied on the terms of the Deed of gift and of the will which he discussed with some detail and was of the opinion that the dividends once received by the Trustees had to be distributed to the children then living.

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p. 80

St. Jacques J. held that the Directors and the Trustees were distinct, even though the Trustees formed a part of the Board of Directors. He construed the documents as Bond and Galipeault JJ. had done and concluded that when the dividends were received by the Trustees, the latter had to distribute them among the then living children.

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p. 61

Dorion J. dissenting, held that dividends from such a company are not civil fruits as defined by article 449 C.C. but are either industrial, article 448 C.C. or analogous to industrial fruits and governed by the same rules. He, however, held that dividends are earned by the shareholder as the profits are being earned by the company and that the declaration merely apportions these profits, agreeing on this particular point with Duclos J. He adds that the British Apportionment Act did not change the law, it was merely declaratory.

p. 67

St. Germain J. also dissenting, construed the documents as Duclos J. did, holding that it was the wish of the late Honourable T. Berthiaume that the dividends should accrue from day to day previous to their declaration in favour of his children. He answers the objection that by the documents the Trustees are given discretion as to how much of the revenues received they will distribute and as to when they will do so, by stating that this was a discretion given to the Directors and not to the Trustees. He also holds that dividends are civil fruits to which article 451 is applicable, particularly because it was usual to declare a dividend at New Year's. He answers the objections based on the fact that shareholders have no rights until a dividend is declared, by quoting French writers on the subject, who, he says, uphold the view adopted by Duclos J. as to the nature of a dividend.

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Respondents submit that the judgment of the Court of Appeals should be affirmed for the following among other reasons:

Because under the terms of the instruments, the Trustees were to distribute, at their discretion as to time and amount, but only after receipt

by them, these dividends to the children or grand-children then living, and in no case were they to be paid to outsiders;

Because this is not a usufruct but a Trust to pay out revenues as and when received, and the rules respecting usufruct do not apply;

10 Because under Quebec law, even in the case of usufruct dividends are not governed by article 451 of the Civil Code;

Because the dividends in this case were not payable regularly at fixed dates.

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Mis-en-cause.

CASE FOR RESPONDENTS

LAWRENCE JONES & Co.,
Lloyd's Buildings,
London, E.C. 3.