Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Dominion Cotton Mills Company, Limited, and others, v. *George E. Amyot and others (Respondents), and Alfred Brunet (Intervenant), from the Superior Court of the Province of Quebec in Review; delivered the 17th May* 1912.

PRESENT AT THE HEARING:

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

[DELIVERED BY LORD MACNAGHTEN.]

At the conclusion of the argument in this case it was intimated that their Lordships would humbly advise His Majesty that the Appeal should be allowed and the action dismissed with costs both here and below to be paid by the Respondents, and that the Intervenant should bear his own costs. An order to that effect has been made and it only remains for their Lordships to state briefly their reasons for the advice so tendered to His Majesty.

The action was brought by two shareholders in the Dominion Cotton Mills Company, Limited, hereinafter called the Cotton Company, in their individual capacity against the Cotton Company and the Dominion Textile Company, Limited, hereinafter called the Textile Company, seeking

to set aside a lease of the Cotton Company's mills, dated the 10th of November 1905, which was granted by the Cotton Company to the Textile Company for the period of 21 years from the 1st of April 1905, as well as a resolution passed by the Cotton Company in general meeting approving of that lease.

No further or other relief was sought by the Plaintiffs.

The Trial Judge in the Superior Court gave judgment for the Plaintiffs and set aside both the resolution and the lease with costs against both Companies.

In the Superior Court in Review the judgment of the Trial Judge was affirmed by a majority of two judges to one, Charbonneau, J., dissenting.

The grounds on which the Plaintiffs claimed relief were (1) that the lease was *ultra vires* the Cotton Company, and (2) that the transaction was of a fraudulent character and amounted to a confiscation of the interests of the Plaintiffs and other dissentient shareholders.

The Cotton Company was incorporated by letters patent in the year 1890, with the object of carrying on the business of cotton manufacturers. In 1900 the letters patent were superseded by the Dominion Statute 63 & 64 Victoria, chap. 98, which empowered the Cotton Company " to construct, acquire, operate, " and dispose of cotton and woollen manu- " factories of every description."

Although the Cotton Company paid dividends in the earlier part of its existence, at first at the rate of 8 per cent. and afterwards at the rate of 6 per cent., the management seems to have been unsound from the beginning. No reserve fund was formed. No provision was made for renewals. In 1899 on the appointment of a new manager a sum of about $2,000,000 was spent or

misspent on machinery. The expenditure was made without the consent or knowledge of the Bank of Montreal, who were the largest creditors of the Cotton Company. Then application was made to the Bank to provide for this expenditure. The manager of the Bank was much dissatisfied, and it was a question with the Bank whether they would find the money or make the Cotton Company liquidate their bills. Ultimately the Bank consented to make the required advance on the Company agreeing to issue bonds to the amount of $2,000,000. The bonds were underwritten by the directors and the principal creditors of the Company, the Bank of Montreal underwriting for $500,000 and the president of the Cotton Company and his friends for a still larger amount. It was found impossible to dispose of these bonds on the market either in Canada or England. The evidence is that "nobody would "take them." So the Bank consented to carry them for a time. The directors had previously endeavoured to raise money by the issue of preference shares, but they got no support from the general public and very little help from shareholders. Towards the end of 1901 payment of dividends was discontinued. The shares of the Company fell to 26 cents. The position of affairs was serious. The prospect of dividends was, as the manager of the Bank of Montreal says, "very remote." To add to the gravity of the situation ruinous competition was going on in the cotton business. The principal competitors of the Cotton Company were the Merchants Cotton Company, the Montmorency Cotton Mills Company, and the Colonial Bleaching and Printing Company. The Cotton Companies, as Mr. Forget, the late president of the Cotton Company, says, "were fighting each other for "all they were worth."

In this state of things on the 29th of December 1904 the Royal Trust Company, on

behalf of a syndicate formed for the purpose of acquiring capital stock and a controlling influence in the Cotton Company and its three principal competitors, sent a circular to the shareholders in the Cotton Company offering to purchase shares in that Company at 50 per cent. of their par value, payable half in 6 per cent. bonds and half in 7 per cent. preference stock of a new Company then in course of formation, and afterwards incorporated by letters patent as the Dominion Textile Company. The offer was accompanied by a letter signed by the Directors of the Cotton Company stating that they had considered the offer in all its bearings and had come to the conclusion that it was a reasonable proposal backed by responsible parties and that they considered its acceptance in the best interests of their shareholders, and adding that they had as individual shareholders accepted the offer and recommended all their shareholders to do the same.

The holders of 24,467 shares in the Cotton Company out of 30,336 shares then outstanding accepted the offer of the Royal Trust Company and transferred their shares accordingly. Those shares were afterwards vested in the Textile Company. The Textile Company also acquired a preponderating influence in the three other Companies and thus became in a position to manage the businesses of the four Companies as one concern. At first it was arranged that the Textile Company should sell the goods produced in the mills of the Cotton Company at a commission which is shown by evidence to have been a fair and reasonable commission. Afterwards, as a simpler and more convenient mode of conducting the combined business, it was arranged that the Textile Company should take a lease of the Cotton Company's mills, and so the lease of the 10th of November 1905 was executed. It is in respect of this lease that the Plaintiffs

sue for relief in this action, and the relief as already stated is confined to a claim to have the lease declared null and void. It is difficult to see what legitimate advantage the Plaintiffs could hope to obtain from the only relief they claimed. The lease if not *ultra vires* even though annulled by the Court was capable of being ratified by the majority who were of course interested in supporting it.

The principles applicable to cases where a dissentient minority of shareholders in a company seek redress against the action of the majority of their associates are well settled. Indeed they were not contested at the Bar. In order to succeed it is incumbent on the minority either to show that the action of the majority is *ultra vires* or to prove that the majority have abused their powers and are depriving the minority of their rights. It would be pedantry to go through the line of decisions by which those principles have been established. But there is a passage in a recent Judgment of this Board in the case of *Burland* v. *Earle*, 1902, A.C. 83, which has the high authority of Lord Davey, so apposite to the circumstances of the present case, that it may be useful to cite it at length.

" It is," say their Lordships, "an elementary principle " of the law relating to joint stock companies that the " Court will not interfere with the internal management of " companies acting within their power, and, in fact, has no " jurisdiction to do so. Again, it is clear law that in order " to redress a wrong done to the company or to recover " moneys or damages alleged to be due to the company the " action should be *primâ facie* brought by the company itself. " These cardinal principles are laid down in the well-known " cases of *Foss* v. *Harbottle** and *Mozley* v. *Alston*,† and in " numerous later cases which it is unnecessary to cite. But " an exception is made to the second rule where the persons " against whom the relief is sought themselves hold and " control the majority of the shares in the company and " will not permit an action to be brought in the name of " the company. In that case the Courts allow the share- " holders complaining to bring an action in their own " names. This, however, is a mere matter of procedure in

* 2 Hare. 461.
† 1 Ph. 790.

" order to give a remedy for a wrong which would other-
" wise escape redress, and it is obvious that in such
" an action the plaintiffs cannot have a larger right to
" relief than the company itself would have if it were
" plaintiff, and cannot complain of acts which are valid if
" done with the approval of the majority of the shareholders
" or are capable of being confirmed by the majority. The
" cases in which the minority can maintain such an action
" are therefore confined to those in which the acts com-
" plained of are of a fraudulent character or beyond the
" powers of the Company. A familiar example is where the
" majority are endeavouring directly or indirectly to
" appropriate to themselves money, property, or advantages
" which belong to the Company or in which the other
" shareholders are entitled to participate, as was alleged in
" the case of *Menier* v. *Hooper's Telegraph Works.** It
" should be added that no mere informality or irregularity
" which can be remedied by the majority will entitle the
" minority to sue if the act when done regularly would be
" within the powers of the company and the intention of
" the majority of the shareholders is clear. This may be
" illustrated by the judgment of Mellish, L.J., in *MacDougall*
" v. *Gardiner*, I., Ch. D. 13.

" There is yet a third principle which is important for
" the decision of this case. Unless otherwise provided by
" the regulations of the company a shareholder is not
" debarred from voting or using his voting power to carry
" a resolution by the circumstance of his having a particular
" interest in the subject matter of the vote. This is shown
" by the case before this Board of the *North-West Transpor-*
" *tation Company, Limited*, v. *Beatty*, 12 A. C. 589. In
" that case the resolution of a general meeting to purchase
" a vessel at the vendor's price was held to be valid notwith-
" standing that the vendor himself held the majority of the
" shares in the company, and the resolution was carried by
" his votes against the minority who complained."

* 9 Ch. 350

The first question, therefore, is:—Was the lease of the 10th of November 1905 *ultra vires?* On that point there is really no room for doubt or argument. The Dominion Statute of 1900 in express terms authorises the Cotton Company to dispose of its mills, and the lease which is impeached by the Plaintiffs is a disposition within the letter of the Statute.

The next question is:—Have the majority abused their powers and deprived the minority

of their rights? In their statement of claim the Plaintiffs alleged that the lease was the result or outcome of a conspiracy on the part of the Syndicate which began by coercing or deluding shareholders in the Cotton Company into parting with their shares at an under value. And the learned Counsel with the view, it was said, of throwing light on the transaction impeached by the Plaintiffs, dwelt at considerable length on the circular of the Royal Trust Company, the recommendation of the Directors of the Cotton Company, and the short space of time which the shareholders had to make up their minds whether they would or would not sell their shares at the price offered. But the sale of the Company's shares to the Textile Company is not the gist of this action. No complaint, apparently, has ever been made by any one of the selling shareholders on the score of under value or on any other ground. And the majority of the Directors not being members of the Syndicate after investigation and consideration accepted the offer of the Royal Trust Company without acquiring or seeking to acquire any interest in the Syndicate. No doubt the Syndicate hoped and expected to make a good thing out of the venture, and of course they offered the lowest price which in their opinion would tempt a majority of the shareholders to part with their shares. On the other hand it must be borne in mind that unless the venture were successful the security for the price offered would be of comparatively little value.

The Plaintiffs have gone into a great deal of evidence for the purpose of showing that there was a suspicion of some unfair dealing somewhere, and that the lease was granted at an under value. In their Lordships' opinion they have not succeeded in proving anything of the

kind. The bulk of their evidence consists of a collection of Directors' reports in past years in which the shareholders were presented with statements that would not bear close examination, and with a view of the position of the Company that was over sanguine if not extravagant. Nor have the Plaintiffs, in their Lordships' opinion, succeeded in showing any oppressive conduct or any want of good faith on the part of the directors of the Textile Company, or the directors of the Cotton Company nominated by the Textile Company, or any individual connected with the management of either of those Companies. Oddly enough, in the statement of claim, one of the grievances of the Plaintiffs is that they were not given an opportunity of taking part in the scheme which they denounce as a fraudulent conspiracy. The evidence seems to show that the valuation which the directors of the Cotton Company placed on the assets of that Company at the time when the Syndicate made their offer was a fair and liberal valuation, that the Cotton Company was then going from bad to worse, that there was no reasonable prospect of any revival of prosperity, and what is still more important that the terms of the lease were intended to be fair and are fair.

In their Lordships' opinion the case of the Plaintiffs failed on both grounds and they had no hesitation in advising His Majesty that the action should be dismissed.

In the Privy Council.

THE DOMINION COTTON MILLS COMPANY, LIMITED, AND OTHERS,

v.

GEORGE E. AMYOT AND OTHERS (RESPONDENTS) AND ALFRED BRUNET (INTERVENANT).

DELIVERED BY LORD MACNAGHTEN.

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