Privy Council Appeal No. 8 of 1914.

Edward Feltham Coates and others - - *Appellants,*

v.

The Sovereign Bank of Canada - - - *Respondent.*

FROM

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

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH AUGUST 1914.

Present at the Hearing:
THE LORD CHANCELLOR.
LORD MOULTON.
SIR CHARLES FITZPATRICK.

[*Delivered by* LORD MOULTON.]

The respondent, the Sovereign Bank of Canada, is a corporation (now in liquidation) incorporated under the Canadian Bank Act and having its head office in Montreal. Its general manager in the year 1906, which is the material date in the present case, was Mr. D. M. Stewart. By virtue of the provisions of the Canadian Bank Act, no banking company incorporated under it may purchase or deal in its own capital stock nor indeed the capital stock of any bank.

In September 1906 Mr. Stewart was in England and met Mr. Hanson, who was a partner in the appellant firm (which is the well-known

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firm of English stock-brokers who do business under the firm name of Coates, Son & Co.), and suggested to him that the Appellants should take an interest in his bank by buying a block of its stock. Mr. Hanson agreed to do so on certain terms. The letters that passed between the parties relevant to these terms are as follows :—

On September 14th, 1906, Mr. Hanson wrote to Mr. Stewart—

"DEAR MR. STEWART.

" I THINK it is desirable that you should write us a
" letter embodying the terms to which you agree in the event
" of our purchasing the 539 shares and I think one of the
" features was an undertaking on your part to take the shares
" back at our option within twelve months at 139 "

and on September 18th, 1906, he received from Mr. Stewart the following reply.

"Messrs. Coates, Son & Co.

"DEAR SIRS,

"REFERRING to my conversations with your Mr. Hanson,
" I beg to confirm the sale to you of five hundred and fifty
" (550) shares of stock in the Sovereign Bank of Canada at
" 138 net. It is understood that I will repurchase these
" shares from you at your option at any time within one year
" from this date at 139."

These documents represent a transaction between the appellants and Mr. Stewart personally. The Bank is not mentioned therein. But it is contended that the oral testimony of Mr. Hanson shows that Mr. Stewart made the contract on behalf of the Bank as its agent. In the opinion of their Lordships, the evidence to this effect is but slight, and the Courts below have found that the contract was made with Mr. Stewart personally. But though slight, the evidence shows that Mr. Hanson, in all good faith, took it that Mr. Stewart was acting on behalf of the Bank as his principal in the matter, and as in their Lordships' opinion it is not necessary to decide the point, they

will assume in favour of the appellants that the contract made actually by Mr. Stewart purported to be made by him on behalf of the Bank.

The appellants duly obtained the shares, and paid for them by a draft for 15,595*l*. 17*s*. 11*d*. drawn by the defendant Bank on the appellants, dated September 29th, 1906, and duly honoured at maturity. The proceeds of this draft were placed to the account of one L. P. Snyder with the Bank, and the shares were taken from shares then standing in his name in the stock ledger, and were transferred by him to the appellants or their nominees.

During the following year the Bank got into difficulties and the market value of its shares fell considerably. In June 1907 the appellants wrote to Mr. Stewart and to the Bank announcing their intention to exercise their option to require the shares to be taken back at 139. By that time Mr. Stewart had ceased to be general manager and had been succeeded by Mr. Jemmett. The reply which they received from the Bank was as follows:—

" Messrs. Coates, Son & Co.

" DEAR SIRS,

" WE beg to acknowledge receipt of your letter of " the 25th ult. enclosing a copy of a letter which on the " 1st inst. you forwarded to Mr. D. M. Stewart.

" Mr. Stewart forwarded the original of this letter to " the writer, but it was at once returned to him with the " statement that it referred to a matter with which the " Bank had and could have nothing to do.

"The Canadian Bank Act strictly prohibits any bank " in Canada from purchasing or dealing in the shares of " its capital stock, and therefore any undertaking which " Mr. Stewart may have given with respect to any shares " in this Bank's stock which he may have sold to you " cannot bind the Bank in any way whatever, and is " simply a personal matter between Mr. D. M. Stewart " and yourselves"

and to the position thus taken up the Bank has consistently adhered.

Thereupon the appellants, on October 25th, 1907, brought the present action against the Bank and Mr. Stewart, in the Superior Court of Quebec, claiming specific performance of the undertaking to take back the shares, or in the alternative the return of the money paid by them with $550 damages, being one dollar per share. Mr. Stewart did not contest the action, and judgment accordingly went against him. The Court decided in favour of the defendant Bank, and dismissed the action as against it. From that decision an appeal was brought to the Court of King's Bench for the Province of Quebec (Appeal Side), and was dismissed with costs. It is from the decision of that Court dismissing the appeal that the present appeal is brought.

Their Lordships are of opinion that neither of the claims set forth in the appellants' declaration can be supported, and that the judgments of the Courts below dismissing the action as against the Bank were right.

With regard to the claim based on the contract, it is evident that to purchase shares of its own capital stock would have been an *ultra vires* act on the part of the Bank, and consequently Mr. Stewart was not in fact its agent, to make a contract on its behalf, to purchase its shares either absolutely or conditionally. The Bank could not make a man its agent to do an act which it could not itself do by virtue of the limitations imposed on it by its charter of incorporation. Nor is there here any case of ostensible agency. The only "holding out" that is suggested is that Mr. Stewart was the general manager of the Bank (as in truth he was), and that fact cannot make him an ostensible agent with wider powers than belong to a general manager by virtue of his position, and those powers cannot include the

power of doing acts on behalf of the Bank which would be *ultra vires* on its part. The Bank is, therefore, in no sense a party to the contract. If it was made by Mr. Stewart in its name, it was without authority, and it is not liable under it in any way.

Nor is the claim for the return of the money sustainable. The money was in fact paid by a draft, but their Lordships are of opinion that this mode of payment was adopted merely for convenience, and that the rights of all parties would have been the same if it had been paid by a cheque or in notes and gold. It was received by the Bank in the ordinary way of business and it did with it precisely what it was directed to do. It was received by Mr. Stewart under the contract as the price of the shares, and was credited to the account of Mr. Snyder who transferred the shares to the appellants who still hold them. The Bank did not receive the money in any other manner than it receives any payments made to it in favour of a customer, and it discharges itself of such payment when it duly credits the money to the account of the customer. In the present case the payment was made in purchase of the shares and that purchase has been duly carried out. The breach that has been committed, which alone entitles the appellants to relief, is the breach of the undertaking to re-purchase the shares. Mr. Stewart alone is responsible under this undertaking, and the appellants have already obtained judgment against him for the breach of it. The Bank is not responsible under it in any way, and its connection with the matter consists only in the fact that it received money in the ordinary course of business and placed it to

the account of the customer as duly directed to do.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed. The appellants will pay the costs.

In the Privy Council.

EDWARD FELTHAM COATES AND OTHERS

v.

THE SOVEREIGN BANK OF CANDDA.

DELIVERED BY LORD MOULTON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.