

1895.

August 1.

Before Mr. Justice Knox and Mr. Justice Aikman.

C. WILSON (DEFENDANT) v. M. MACAULIFFE (PLAINTIFF).*

Company—Director selling his own shares to shareholder of company—Action for deceit—Director not in a fiduciary position as regards individual shareholders.

A director of a company, though he may occupy a fiduciary position with regard to the shareholders collectively, holds no such position with regard to individual shareholders. *Gilbert's case* (1) and *Gower's case* (2) referred to.

THIS was an action to recover damages for the sale of shares in a company on the ground that the defendant at the time of sale knowing the shares to be worthless falsely represented both orally and in writing that they were a good investment, and thus induced the plaintiff to purchase. The plaintiff was a shareholder in the Himalaya Bank: the defendant was a director of the same Bank. The plaintiff in October 1890 purchased 100 shares in the Bank from the defendant, and again in November 1890 47 more shares. The shares were sold at somewhat less than the rate at which they were then being quoted in the market. The plaintiff subsequently discovered the shares which he had purchased to be worthless, and brought the present suit, in which he claimed the sum of Rs. 20,800, being the price he had paid for the shares with interest to date of suit, further interest until realisation and costs. The plaintiff alleged various specific acts of misrepresentation on the part of the defendant, both in his capacity of director of the Bank, and as a private vendor of shares.

The defendant traversed most of the allegations in the plaint, but in particular specifically denied that the plaintiff had been induced to purchase the shares in question by any representations of his, true or otherwise, asserting that the defendant had so purchased after making independent inquiries in Mussoorie and elsewhere and with the knowledge that there were rumours as to the solvency of the Bank.

The case went to trial on the main issue:—“Did the defendant by fraud or false representation induce the plaintiff to enter into

*First Appeal No. 221 of 1893, from a decree of H. M. B. Hopkins, Subordinate Judge of Dehra Dún, dated the 31st July 1893.

(1) L. R. 5, Ch., 559.

(2) L. R. 6 Eq., 77.

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the contract in question?" and the subsidiary issue as to the relief to which the plaintiff might be entitled. The Court of first instance, while holding that the defendant, as a director of the Bank, stood in no fiduciary position towards the plaintiff, so as to render it incumbent on him to disclose the true condition of the Bank's affairs, found that "the defendant did use fraud in order to induce the plaintiff to purchase from him the shares in question." The Court accordingly gave the plaintiff a decree for the major portion of his claim.

The defendant appealed to the High Court.

In appeal it was found that the shares in question were to the knowledge of the defendant worthless at the time when he sold them to the plaintiff, and that the plaintiff on the other hand believed that he was making a good bargain. It was found also that a director was in the same position as any other member of the company with regard to the sale of his shares, and to such a transaction as the present the maxim "*caveat emptor*" would apply. As to the actual misrepresentations, oral and otherwise, alleged by the plaintiff as the cause of his entering into the purchase of which he complained, it was held that no such misrepresentation had been established to the satisfaction of the Court as would entitle the plaintiff to relief in an action for deceit: that is to say, that, though the defendant may have been guilty of misrepresentation, it was not proved that such misrepresentation was the cause which induced the plaintiff to purchase the shares in question. The Court accordingly decreed the appeal, but under the circumstances of the case without costs.

[After a discussion of the evidence as to the existence of fraud or misrepresentation on the part of the defendant, the judgments of the Bench which heard the appeal went on in each case to discuss the legal point raised by the respondent as to the position held by a director in relation to the shareholders individually. Only so much of the judgments as deals with this latter question is here reported.—Ed.]

Mr. C. Ross Alston, for the appellant,

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The Hon'ble Mr. *Colvin* and Mr. *C. Dillon*, for the respondent.

KNOX, J.—We were at the hearing for some time much impressed with Mr. Colvin's argument that on the present case the appellant stood in a confidential relation to the respondent; that certain duties were imposed upon him by Act No. VI of 1882; that the appellant had a position which enabled him to acquire special knowledge to his own advantage, and that he was bound to protect the interest of the respondent. But while we were referred to cases which showed that a director did occupy a special position *quoad* the company and the shareholders [upon which see *Gilbert's case* (1) and *Gower's case* (2)], no single case was produced before us in which it had ever been held that the director of a company occupied any such relation to each individual shareholder. And in any case the relationship between directors and shareholders in a company is that of agent to principal, not of trustee and *cestui que trust*. I hold that the appeal must prevail, and, setting aside the judgment and decree of the lower Court, would dismiss the respondent's claim.

Under the circumstances of the case I would direct that each party pay his own costs.

AIKMAN, J.—Much argument was addressed to us with a view of showing that the defendant as director of the Bank stood in a fiduciary relation to the plaintiff, and that his mere silence as to the state of the Bank was sufficient to render him liable in an action for deceit. As to this I think the conclusion arrived at by the learned Subordinate Judge is correct, and that the case he refers to, *i.e.*, *Gilbert's case* (1), is an authority for the view which he took.

I would allow the appeal and dismiss the plaintiff's suit. But in the exercise of the discretion which the Court has on the question of costs, I would not allow the appellant his costs here or in the Court below, as his conduct, though not such as to render him liable in an action for deceit, is certainly not free from blame.

The order of the Court is that the appeal be decreed and the plaintiff's suit dismissed. The parties will pay their costs both here and below.

Appeal decreed.