

Thomas Chandler Haliburton was a poor business man .

(Never published)

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The author of "Sam Slick" was no business man. In spite of his long training and experience as a lawyer and on the bench, he was ~~not~~ ^{MULCTED} of a considerable sum ~~of money~~, right in his own town of Windsor. The details are in Nova Scotia Law Reports 1853-55, page 350 et seq., "Bank of Nova Scotia v. Haliburton".

Judge Haliburton was the owner of a large gypsum quarry at Windsor. In the year 1842 he entered into an agreement with one James L. Songster, on the following terms:-

Songster was to superintend the working of the quarry and the sale of plaster. He was to pay the expenses ~~of working the quarry~~, out of the gross proceeds of the sales, and the net proceeds were to be divided between him and Haliburton on the basis of 2/3 to Haliburton and 1/3 to Songster. Preliminary expenses involved the building of a wharf and a tramway or railway, and Haliburton authorized King & Fraser, the agents of the Bank of Nova Scotia at Windsor, to advance money to Songster whenever he required it for the quarry. This authorization was verbal.

At the time he made this open arrangement Haliburton was 46, and he had come to a turning point in his life. His wife had died the year before. (He had married her on a visit to England in 1816 when he was twenty.) His head was filled with the strong wine of success as a literary man -- he had revisited England in 1838 and stayed a year, enjoying lavish attentions as the author of "Sam Slick".

In April 1841 he had received an appointment as justice of the supreme court of Nova Scotia, after serving as first justice of the inferior court of common pleas since 1829. As a judge he was witty but seldom profound; he had no deep interest in the law; his taste was that of a Tory country gentleman, convivial and observing, and his gift with the pen had blossomed forth with "Sam Slick" in 1836. From that time ~~on~~ on, his time and thoughts were absorbed more and more in the new career of an internationally famous author.

In the spring of 1843 he decided to make another visit to England, where he purposed writing another book. ("The Attache, or Sam Slick in England"). In May he called at the office of King & Fraser and informed them that he was going abroad. Mr. Fraser then brought up the matter of the continuing loans to Songster, and asked for a written guarantee by Haliburton. The judge promptly wrote the following:-

"I hold myself accountable for all advances made to J.L. Songster since June 6, 1842, on account of my quarries at Windsor.

"15th May, 1843.

(signed) T.C. Haliburton"

Fraser then asked him if he wished King & Fraser to go on with Songster as usual, and Haliburton replied, "Oh yes." He added that "monies will be coming in from Songster."

It was, to say the least, a casual way of doing business, and it went on for some years. At the end of 1843 and again at the end of 1844 Songster informed Haliburton of the amount of the loan ~~and~~ outstanding. As he testified in court long afterwards, Haliburton "took no notice of it. He once asked me something about his share of the interest." Mr. King afterwards testified that ~~Haliburton~~ "I have heard the defendant (Haliburton) inquire at the office how Songster was getting on, and when told there was a large balance due he never recalled his authority. The defendant occasionally asked how Songster was getting on. When we told him there was a large balance due by him, he said 'I wish you would shove him up'". (Meaning presumably that he wished King & Fraser would

larger
press Songster for/payments on the loan.)

In April ~~1845~~ 1845 King & Fraser made their last advance to Songster. He was making small payments on the loan from time to time, and they (and the Bank of Nova Scotia) seemed satisfied with that. At no time did they furnish Haliburton with a statement of the loan account, even after they ceased to advance money to Songster in 1845. Meanwhile, at the end of each year, Songster was making up a statement of net profit on quarry operations, ~~divided~~ dividing it between Haliburton and himself, two-thirds and one-third, according to their unwritten partnership agreement. Nobody -- neither King & Fraser, nor the Bank of Nova Scotia, nor Haliburton, nor Songster -- seems to have worried a bit about the large unpaid loan going on year after year. From time to time Songster made a small payment and that was all.

In 1848 Haliburton and Songster came to a new agreement. Songster took a lease of the quarries and agreed to pay a royalty of so much per ton on the plaster sold. There seems to have been no mention of the Bank of Nova Scotia loan. Apparently Haliburton assumed that it had been paid off under the old partnership agreement. Songster made no effort to enlighten him. Nor did King & Fraser.

In January 1850 King & Fraser drew up a statement of the loan, which Songster attested with his signature. In December of that year they persuaded him to make another payment on it. It was the last they got from him.

At no time did King & Fraser try to find out the exact status of Songster in the management of the quarries. They were satisfied with Haliburton's guarantee. For his part Haliburton seems to have cautioned Songster, at the beginning of their partnership, against revealing to anyone the terms on which they worked the quarries.

This state of affairs continued until Fraser's death in July 1852, when the Bank of Nova Scotia made an examination of the King & Fraser agency. The Bank discovered at once that the loan to Songster was getting old (the last advance had been made in 1845) and pressed for payment. Songster was unable to pay a penny. ~~THE BANK~~ ~~XX~~ The Bank turned to Haliburton, who ~~XXXX~~ was astonished and then completely hostile. Seeing that the last loan had been made in 1845 he claimed immunity under the Statute of Limitations. In March 1853 the Bank of Nova Scotia brought suit against Haliburton.

The trial took place in Windsor in May 1854, before Chief Justice Brenton Halliburton, and the verdict was in favor of the Bank of Nova Scotia to the sum of £887/10/3d. A suit to set this verdict aside was argued in Michaelmas term, 1854, before the Chief Justice and Justices Edmund Murray Dodd and William Frederick DesBarres. (Judge T.C.Haliburton, being the defendant, could not sit on the case, of course. Nor could Judge William Blowers Bliss, who was a stockholder in the Bank of Nova Scotia.) In this argument Haliburton was represented by C.W.H.Harris, Stewart and Smith. The Bank of Nova Scotia was represented by Mr. Johnston, Q.C.

The verdict was again in favor of the Bank. The judges held that a definite partnership existed between Songster and Judge Haliburton during the period 1842-1845 when the money was borrowed. The dissolution of this partnership in 1848, when Songster leased the quarries and agreed to pay Haliburton a royalty per ton, did not release Haliburton from his obligations to the Bank of Nova Scotia under the old agreement. And the attested statement and the payment made by Songster in 1850 to the Bank's agents, King & Fraser, kept the old agreement valid. Haliburton could not claim exemption under the Statute of Limitations until six years more had expired.

The court, in summing up, remarked upon "the very extraordinary and unusual neglect" of the Bank's agents to render accounts to Haliburton from time to time, " as well as the no less extraordinary omission of his own agent or partner, except for one or two years, to inform him of the amounts which he received from the Bank".

So Haliburton had to pay the £887/10/3, a considerable sum in those days.

This seems to have been the only case in which the Appeal Court of Nova Scotia decided an action in which one of their brother judges was involved.

It made Haliburton somewhat of a laughingstock in the Province, where as a judge on the bench and as the author of "Sam Slick" he had so long chastised the Bluenoses for their gullibility and lack of business sense. It may have been one of the reasons why, in 1856, he left Nova Scotia to live in England.

Note:- the Haliburton family coat of arms, of which there is a replica in Fort Anne museum, Annapolis Royal, N.S., bears the motto "WATCH WEEL"