

belonged to them set aside, and to obtain from Foster an accounting in respect of his dealings therewith.

The defendats were entitled to affirm Foster's alleged purchase, or to disaffirm it and have an accounting from him.

The trial Judge found that Foster was liable to pay to the defendants the value of such of the Kirkland Lake shares as came to Foster's hands as the result of his dealings with the Tough Oakes shares. The evidence on this issue was so fragmentary and unsatisfactory that the trial Judge was quite justified in refusing to accept it as sufficient to relieve Foster from liability. On the other hand, the Court should not deprive Foster of the opportunity to adduce further evidence in support of his contention that those shares were lost without neglect on his part and in circumstances entitling him to be relieved from further liability in respect thereof.

The judgment appealed from should be varied by striking out the paragraphs dealing with the defendants' Tough Oakes shares, and substituting a declaration that, in case the defendants should now elect to affirm the purchase set up by Foster, Foster is, as between him and the defendants, the owner of the shares, and has paid the full purchase-price thereof; or, in case the defendants should elect to disaffirm Foster's purchase, declaring Foster a trustee for them, directing that he account as a trustee, and directing a reference to the Master to take the accounts and report specially as to certain matters such as profits, damages, market-value of the shares, etc.

The judgment should also be varied by striking out the paragraphs dealing with the rights of the parties as to the 25,000 Kirkland Lake shares, and substituting therefor declarations that Foster received part of these shares as trustee for the plaintiffs, and directing an account and a reference, etc.

Further directions and costs of the reference should be reserved.

The plaintiff (Foster) should pay the costs of the counterclaim down to and including the trial.

The appeal from the judgment dismissing the action should be dismissed with costs.

There should be no costs to either party of the appeal from the part of the judgment which dealt with the counterclaim.

*Judgment below varied.*