

actually received and disposed of by the purchasers, and the purchasers would be unable to set up any defect in the title of their vendor.

The learned Judge said that he could not see how the purchasers could, as a matter of law, successfully defend an action for the recovery of the price they agreed to pay. But there was no evidence in fact to meet the plaintiff's prima facie case. The plaintiff proved that the goods were sold and delivered and that the purchasers were solvent. That was sufficient to render the defendants prima facie liable to account for the profit which they, as constructive trustees, made in the transaction. The dismissal of the defendants' action on the notes made by the purchasers established nothing. They did not prove that, as a term of the consent given by them to the dismissal of their action, they were not contemporaneously paid in full, or that arrangements were not made by which they would thereafter be paid in full. The plaintiff's prima facie case compelled the defendants to negative these suggestions.

*Appeal dismissed with costs.*

MASTEN, J.

OCTOBER 16TH, 1918.

*\*HENDERSON v. STRANG.*

*Company—Action by one Shareholder to Set aside Transactions between Company and Principal Shareholder—Style of Cause—Amendment—Plaintiff Suing in Representative Capacity—Status of Plaintiff—Complaint that Shares of Principal Shareholder not Paid-up—Agreement Made between Company and Principal Shareholder—Improvvidence—Consideration—Cheque—Election of Directors—Board Remaining in Office—Loan of Money by Company to Shareholder—Ultra Vires—Companies Act, R.S.C. 1906 ch. 79, sec. 29, sub-sec. 2—Ownership of Shares—Share-register—Partnership not a Separate Entity—Restoration of Money to Company—Notice of Meeting of Shareholders—Plaintiff Represented by Proxy—Ratification of Agreement—Costs.*

Action by Mary H. Henderson against William Strang, William Strang & Son, and J. B. Henderson & Company Limited, for relief in respect of transactions between the defendants the Strangs and the defendant company in which the plaintiff was a shareholder.