

JUNE 30TH, 1910.

## FOLEY v. BARBER.

*Company—Winding-up—Contributories — Misrepresentations —  
 Action to Set aside Application for and Allotment of Shares  
 —Evidence—Incorporated Company Becoming Shareholder—  
 Powers of Company—Manitoba Joint Stock Companies Act  
 —Powers of Vice-President and Manager — Absence of By-  
 law—Resolution.*

Appeal by the plaintiffs, an incorporated company, from the judgment of MAGEE, J., ante 40, dismissing the action.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, and MEREDITH, J.J.A.

E. D. Armour, K.C., and H. W. Mickle, for the plaintiffs.

J. A. Macintosh and Britton Osler, for the defendant Barber.

H. H. Shaver, for the defendant Carpenter.

The judgment of the Court was delivered by MEREDITH, J.A.:—The learned trial Judge's findings, upon conflicting evidence, cannot be disturbed; it may indeed be that there should be no inclination to disturb them, even if our opportunities for finding the truth, regarding the facts in question, were as great as his; and I may add that the plaintiffs have far from satisfied me that in taking the stock they relied upon any of the things which they now call misrepresentations; that, if no such misrepresentations had been made, they would not have acted just as they did.

Upon the question of law involved, my opinion also agrees with that expressed, and given effect to, by the trial Judge. The plaintiffs had power to purchase stock in the other company, though they could not regularly do so except when authorised by a by-law confirmed at a general meeting; but the want of such a by-law seems to me to be but one of those irregularities which the decided cases make ineffectual against the other company, acting, as it did, in good faith. The case would, of course, be very different if the plaintiffs had no power to purchase such stock; so, too, if the Act had provided for the registration of the by-law in a manner accessible to those dealing with the plaintiffs.

If these things be so, it is needless to consider any of the other questions argued here at such great length; and, considering that they are so, I would dismiss the appeal.