

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the principal question of fact to be decided was whether resolution No. 2 appearing on p. 40 of the minute-book of the company was in fact carried at the meeting held on the 16th October, 1917. It appeared in the minutes signed by the defendant Petrie as secretary pro tem.

If it was not carried, the defendant Petrie was guilty of both forgery and perjury, and it would require the cogent testimony which would have to be adduced to secure his conviction, if he were on his trial on those charges, to justify that conclusion. Several witnesses for the plaintiffs, men of apparent respectability, vehemently denied that any such resolution was carried or even put to the meeting. But great reliance was to be placed on the evidence of Mr. Fisher, manager of the Molsons Bank at Owen Sound, who appeared as the seconder of the motion. The learned Chief Justice found as a fact that the resolution was passed. Giving the plaintiffs' witnesses credit for honesty in giving their testimony, it must be concluded that in the confusion and excitement of a very heated meeting they failed to realise that the motion was being put and carried.

In any event it would be impossible to rescind this agreement. The parties could not be restored to their original position. Many of the lots had been sold, purchasers had received deeds, and other changes had taken place.

Nor could it be found that any damage had been sustained. The purchase appeared to be a liability, and not an asset, and the defendants at the trial invited the shareholders who were supporting this action to come into the new company on the same footing as they were in, even offering to forgo their commission, but that invitation had not been accepted.

The plaintiffs should have, at their own risk and expense, a reference to the Master at Hamilton as to the matters set up in the 10th and 11th paragraphs of the statement of claim. Save as to this, the action should be dismissed. Some of the defendants' proceedings seemed to invite attack, and there should be no costs. If the plaintiffs go into the Master's office, further directions and subsequent costs reserved until after report.