

had been a shareholder in plaintiff company in respect of 41,000 shares of the stock of the Harris-Maxwell Company which were transferred to the plaintiff company for an equal number of shares in the plaintiff company, and for delivery up by the defendant of his certificate for the plaintiff company's shares or for damages for breach of contract.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

G. H. Kilmer, K.C., for plaintiff company.

W. A. McMaster, for defendant.

HON. MR. JUSTICE MACLAREN:—I think this appeal must be dismissed. The appellant did not give us any precedent for such an action as the present, and I have not been able to find any. The action is based upon the alleged violation by defendant of a contract or agreement between the defendant and the other holders of a majority of the shares of two mining companies whereby they agreed to form a third company to which they promised to assign the shares which they held in the two amalgamating companies in exchange for an equal number of shares in the new company. This agreement bears date the 18th of January, 1910. The charter was not granted to the new company (Goldsmiths Limited, the plaintiff), until the 14th of March, 1910.

The action was begun by one Mackay, who was a shareholder in one of the amalgamating companies and a party to the agreement of January 18th, 1910, and Goldsmiths Limited as co-plaintiffs; but during the trial the name of Mackay was dropped and the action continued by the company alone.

It is an elementary principle of law that no one can sue on a contract unless he be either an original party to it or the lawful assignee of an original party.

The plaintiff company was not a party to the agreement of the 18th of January, 1910, the breach of which forms the basis of its present action, as it was not even in existence until nearly two months after that agreement was made. It does not claim to have any assignment from any of the original parties to the agreement in question of their claims against the defendant if indeed such claims as it seeks to have en-