

essential features," complying with the former Act, 1897, then by sec. 9, the persons named in the agreement were constituted the body corporate, and if this had been shewn, the result of the action might have been different. I think that the judgment does not, in itself, afford any defence in this action. But this action is not against defendant as a shareholder. It is simply an action upon his agreement, to compel him to accept the shares, and pay for them: see *Ridwelly Canal Co. v. Raby*, 2 Price 93. The difficulty, however, fatal to the plaintiffs' recovery here is, that they did not subscribe within a reasonable time after defendant and others had become parties to the agreement. Without fixing a day limit, I think that in order to make the agreement operative and binding upon any one to the others, the whole undertaking should have been proceeded with within a reasonable time from its inception. Upon the facts before mentioned, this was not done, and I am not able to find that at any time after 1st October, 1899, defendant Turner agreed to be bound by his subscription, or approved and agreed to proceeding with the work, as it was afterwards done, nor that plaintiffs signed the agreement in the stock book, relying on defendant Turner's approval and consent. It can hardly be said in face of defendant's letter of 13th December 1899, that he stood by and allowed plaintiffs to suppose that he consented. Action dismissed with costs.

Washington & Beasley, Hamilton, solicitors for plaintiffs and defendant company.

J. J. Scott, Hamilton, solicitor for defendant Turner.

BRITTON, J.

FEBRUARY 1ST, 1902.

TRIAL.

ROBINSON v. McLEOD.

*Trade Mark—Infringement—Trade Union—User by Non-members—Right of.*

Action by plaintiff as organizer and general secretary of the Journeymen Tailors' Union of America, on behalf of himself and all other members of the union, to restrain defendant, his workmen and agents, from using or offering for sale any clothing, having attached or fastened upon it, any label or mark, being an imitation, counterfeit, or copy, or fraudulent or colourable imitation of the specific trade mark, registered, alleged to be the property of the plaintiff, and the other members of this union, and from in any way infringing his trade mark, and for damages.