

FERGUSON, J.A., in a written judgment, said that this was a class action brought by the plaintiff, on behalf of himself and all other shareholders in the Ontario Petroleum Company, a Dakota corporation, organised by the defendants to take over from them oil land in the township of Mosa, in Ontario, and to develop the same. The claim of the plaintiff was to set aside the defendant F. J. Carman's purchase, and was based on the failure to disclose Carman's option and on the allegation that Carman gave no consideration. The learned trial Judge concluded that, when Carman incorporated the company, he conceived and then had a present intention of defrauding the future shareholders; but the learned Justice of Appeal did not agree that that was the proper inference from the facts. He was of opinion, upon consideration of all the evidence, that the transfer by Carman to the company of 750,000 shares and the option must be treated as one transaction, entered into honestly and in good faith on the 1st November, 1916; that Carman did exercise that option on the 5th March, 1917, and in doing so did assume substantial obligations which he had honestly and faithfully performed; that the defendants had not been guilty of fraud in the taking, exercising, or performance of the option or agreement; and that the purchase should stand.

Before this action was commenced, the Ontario Petroleum Company was, by order of the Court in South Dakota, dissolved and its property vested in the individual defendants for the benefit of the shareholders and creditors of the dissolved corporation. The learned trial Judge declared that the order of dissolution was obtained by fraud; he did not set it aside, but appointed a new trustee and receiver. The defendants said that, at the time the Ontario Petroleum Company (Dakota) was organised, it had no license to do business in Ontario, and consequently the conveyances to that company could not be recorded; that they had obtained an Ontario charter with the object of vesting the properties in the Ontario company; and that the dissolution in Dakota was not for a fraudulent purpose, but was merely a preliminary to making a transfer of the assets to the Ontario company. Counsel for the respondent, however, agreed that, for the purposes of this appeal, the Court should consider the Dakota company as dissolved; and, in view of that agreement, it was unnecessary to deal with the issue.

The appeal should be allowed with costs and the action should be dismissed without costs.

MACLAREN and MAGEE, JJ.A., agreed with FERGUSON, J.A.

HODGINS, J.A., also read a judgment. He was of opinion that the Dakota decree dissolving the corporation entirely disabled