

costs of the arbitration, which their counsel said they would themselves apportion, and the costs of the cross-appeals. J. W. Bain, K.C., and M. L. Gordon, for the liquidator of the Farmers' Bank. W. G. Thurston, K.C., for the Conger Coal Co. A. C. McMaster, for the Steele Briggs Seed Co.

HARRIS MAXWELL CO. v. GOLDFIELDS, LIMITED—MIDDLETON, J.,
IN CHAMBERS—JUNE 23.

Pleading—Statement of Claim—Amendment—Embarrassing Issue.]—Motion by the defendants to strike out an amendment to the statement of claim as embarrassing. Judgment: After the judgment of the Honourable Mr. Justice RIDDELL, reported 2 O.W.N. 1087, the plaintiffs elected to amend by continuing the action of the company and an amendment having been made, a motion to strike out the amendment as not being in conformity with this order was made before the Master and enlarged before me. After some argument it was arranged that the plaintiffs further amend the statement of claim, which was done, and the motion was again argued, not only as a motion upon this ground, but also as a motion attacking the statement of claim as embarrassing. I do not think the statement of claim offends against the order in any way. I then consider the "proposed amendment" as though incorporated in the statement of claim. Only one question was argued upon this. It was said that the plaintiffs could not in any way rely upon fraud that had been practiced upon individual shareholders—that any individual shareholder defrauded would have the right to attack any document in respect of which he had been defrauded, or he might, if so advised, affirm the contract, or by his actions he may lose the right to repudiate, but his rights are a matter in which he alone is concerned, and the company cannot base any claim upon the shareholders' right to repudiate. I think this is so, and that any attempt on the part of the company to set up the right of the shareholder, based upon a fraud practiced upon him, is an attempt to raise an issue not open to the plaintiffs and is embarrassing. If the documents signed by the shareholders are not in themselves operative because they are not sufficient in form or void (as distinguished from voidable) for any reason, they do not operate to transfer the shares, and as against the transferees this invalidity can be set up. The pleading should be amended in accordance with the above. Costs to the defendants in the cause. G. H. Kilmer, K.C., for the defendants. F. E. Hodgins, K.C., for the plaintiffs.