

DECEMBER 7TH, 1911.

*BENNETT v. HAVELOCK ELECTRIC LIGHT CO.

*Company—Shares—Agreement—Sale of Property to Company
—Payment by Allotment of Shares—Action by Shareholders
to Set aside—Directors—Fraud.*

Appeal by the defendants from the order of a Divisional Court, 21 O.L.R. 20, 1 O.W.N. 751, setting aside the judgment of BRITTON, J., 21 O.L.R. 20, 1 O.W.N. 352, by which the action was dismissed, and directing that judgment be entered against the defendants the directors (other than Mathieson) for \$1,000.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

R. R. Hall and S. T. Medd, for the defendants.

D. O'Connell, for the plaintiffs.

MACLAREN, J.A.:—A careful examination of the evidence in this case leads me to the conclusion arrived at by the trial Judge, rather than to that of the Divisional Court. With great respect, I am of opinion that the latter erred in looking at the form rather than at the substance of the transaction in question. The form through which the parties went seems to be a clumsy contrivance, apparently resorted to by them from a mistaken view of the law. If they had put the transaction through in the form in which their actual agreement, as found by the trial Judge, was made, I am of opinion that it would have been unassailable and not open to the objections brought against it by the Divisional Court.

It has been found that the company paid only a fair price for the property; and, if the defendant Mathieson had simply sold it for that sum, and then had compensated the other defendants for the valuable services they had rendered him, there would have been no reasonable ground of complaint.

The price paid for the property was well known, as there was no secret about it; and there was no fraud.

Any irregularities in the matter were, I consider, such as might be condoned by the company; and, the company having, with full knowledge, ratified all that was done, the plaintiffs, who are only urging the claims of the company, can have no higher rights; and their action should be dismissed.

*To be reported in the Ontario Law Reports.