

most that sec. 3(3) of the Act could effect would be to wipe out the subscriptions altogether; that these defendants had bound themselves without subscription and were shareholders; and so their appeals were dismissed.

The case of the defendant O'Connor was different: he had done no act to establish his status as a shareholder; but he had allowed his name to be on the list of shareholders for two years and more without objection, and he could not now be relieved. His subscription was voidable only, not void; and his right to avoid should have been exercised promptly on discovering the facts.

Reference to *Oakes v. Turquand* (1867), L.R. 2 H.L. 325; *Palmer's Company Precedents*, 11th ed., pp. 196, 197; *Carrique v. Catts and Hill* (1914), 32 O.L.R. 548.

FALCONBRIDGE, C.J.K.B., and LATCHFORD, J., concurred.

HODGINS, J.A., read a dissenting judgment in regard to O'Connor's appeal. He was of opinion that the effect of the section referred to was to wipe out the subscription or make it legally non-existent.

Appeal dismissed with costs; HODGINS, J.A., dissenting in the O'Connor case.

JUNE 9TH, 1915.

CITY OF TORONTO v. PILKINGTON BROTHERS LIMITED AND WEBER.

Highway—Encroachment of Building upon City Street—Failure to Prove Boundary of Street—Evidence—Plans and Surveys.

Appeal by the plaintiffs from the judgment of MIDDLETON, J., 7 O.W.N. 806.

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

C. M. Colquhoun, for the appellants.

Joseph Montgomery, for the defendant company, respondents.

Z. Gallagher, for the defendant Weber, respondent.

THE COURT dismissed the appeal with costs.