

arguments and considered the evidence, they see no ground for not accepting the concurrent findings of the three Courts which have already decided this issue. They agree with the learned Judges of the Court of Appeal of Ontario in thinking that under the circumstances of the case the respondents were entitled to treat the appellants as trustees for them, and, subject to the question of procedure, to ask for the relief they obtained.

The appellants appear to have been under the impression that the directors of a company are entitled under all circumstances to act as though they owed no duty to individual shareholders. No doubt the duty of the directors is primarily one to the company itself. It may be that in circumstances such as those of *Percival v. Wright*, [1902] 2 Ch. 421, which was relied on in the argument, they can deal at arm's length with a shareholder. But the facts as found in the present case are widely different from those in *Percival v. Wright*, and their Lordships think that the directors must here be taken to have held themselves out to the individual shareholders as acting for them on the same footing as they were acting for the company itself, that is as agents.

The question of procedure has, however, been strenuously argued, and their Lordships will deal with the points raised under this head. There is no doubt that on the statement of claim the action was originally brought as a class action by the plaintiffs on behalf of themselves and all the other shareholders. In the absence of the company itself, which does not appear to have been properly made a party, the claim was demurrable. Moreover it appears on the face of the Statement of Claim that the shares of the plaintiffs had been transferred to the Dominion Company, so that, in the absence of a claim to set this transfer aside, a claim which could not have been successfully made in the absence of that company, the relief sought was demurrable on this ground also. The appellants, therefore, argued that as the proper plaintiff was the company and as the respondents had parted with their shares, the action must fail. It appears, however, that throughout the proceedings in the three Courts below the action was treated by these Courts, which had power to amend the pleadings if they thought it necessary, as one for a declaration that the appellants became, under the circumstances proved by the evidence, the agents of the respondents in dealing as they did with their shares, and that on this footing judgment was given in a form which afforded