

“(3) Did the defendant delay unreasonably to repudiate after he became dissatisfied with the terms? A. Yes.

“(4) Do you find in favour of the plaintiff or the defendant? A. The plaintiff.

“This is the unanimous verdict of the jury.”

The learned Chancellor thereupon entered judgment for the plaintiffs for \$2,000 and costs.

Upon the argument of the appeal many grounds of objection were taken to the judgment, which were not set up by the defendant's pleadings, nor raised at the trial, nor even hinted at in the reasons for appeal. If the last was the only objection to now entertaining these grounds, it might not be found insuperable; but at this stage of the case the other objections to entering upon new grounds are very weighty.

It is said that at the opening of the case at the trial application was made on behalf of the plaintiffs to dispense with the jury, on the ground that there were mixed questions of law and fact involved rendering the case one more suitable to be tried by a Judge without a jury, but that in order to retain the jury the defendant's counsel abandoned all contentions on the law and stated his willingness to abide by the result on the facts.

Although this does not appear upon the record, the course the case took at the trial seems to indicate the likelihood of something of the kind having taken place.

After the jury rendered their findings no argument on the law was addressed to the learned Chancellor, nor was he asked by the defendant's counsel to hear any. We are thus left without the benefit of knowing his views upon the questions of law raised by the pleadings. In argument the defendant now complains that the questions of law were not dealt with, and also that (*a*) there was misdirection in the charge, (*b*) other questions than those submitted should have been submitted to the jury, (*c*) question No. 4 should not have been submitted to the jury, (*d*) there was no proof of a by-law of the plaintiffs, the Gowganda-Queen Mines, Limited, permitting the sale of shares at a discount, (*e*) that evidence to shew that no statutory meeting of the company under section 111 of the Ontario Companies Act was held, was rejected, and (*f*) that other evidence tendered on the defendant's behalf was improperly rejected.

As to (*a*), the misdirection now claimed to have been given was in stating to the jury that a statement by a person soliciting subscriptions for shares that according to the engineer's report the outlook was good, and that it was a promising outlook, that being the substance of the engineer's report, was not a mis-