

fore he repudiated liability. By all these steps they ratified and confirmed what Miller had done, and estopped themselves from contesting plaintiff's status as a shareholder. Assuming that plaintiff might at some earlier stage have effectively repudiated liability, his attempt to do so was entirely too late to succeed. It was made after the company had, by acts which admit of no other construction, fully recognized his position as a shareholder, and had conclusively ratified and accepted the contract which Miller had purported to enter into on their behalf. . . .

Action dismissed with costs. Judgment for defendants on their counterclaim with costs.

NOVEMBER 12TH, 1906.

DIVISIONAL COURT.

O'KEEFE BREWERY CO. v. GILPIN.

Sale of Goods—Action for Price—Alleged Inferiority of Part of Goods Supplied—Failure to Return.

Appeal by defendant from judgment of County Court of York in favour of plaintiffs in an action for the price of beer, etc., sold and delivered by plaintiffs to defendant.

The appeal was heard by FALCONBRIDGE, C.J., BRITTON, J., MABEE, J.

T. E. Godson, Bracebridge, for defendant.

W. R. Smyth, for plaintiffs.

FALCONBRIDGE, C.J.:—The trial Judge has manifestly given credit to Hill's account of the transaction in preference to defendant's; and I see no reason why he should not have done so. Hill states that on the second occasion of complaint by defendant, he told defendant to leave the beer there, and if it did not come right inside of a year there was no use keeping it, and that if it did not "come back," i.e., mature, defendant would have to ship it back, and he would get credit for it.