

Defendants have by no means made it apparent that the majority of the shareholders are opposed to the actions, or that they do not desire them to be proceeded with in the name of the company. But, if it be assumed that defendants are able to shew that the name of the company is being used as plaintiff contrary to the wish of the majority of the shareholders, that would not end the litigation, but would merely alter the form of the actions. Enough is shewn to enable it to be seen that the actions are being prosecuted with the sanction of a large body of the shareholders. The decision of the Divisional Court goes no further than to determine that, in the facts of these cases, the actions should be allowed to proceed as framed. No rule of practice has been seriously interfered with . . . and the decision has established no precedent likely to be of general application. There are no grounds upon which the discretion to permit the matter to be considered further should be exercised.

Motion dismissed with costs.

NOVEMBER 14TH, 1904.

C.A.

RE BADEN MACHINERY MANUFACTURING CO.

Company — Winding-up — Contributories — Shares—Payment—Evidence of.

Appeal by Charles Hood and A. J. Snow from order of FERGUSON, Jt, 3 O. W. R. 190, dismissing their appeal from report of local Judge at Berlin, in a winding-up reference, placing them upon the list of contributories for \$2,500 each.

R. S. Robertson, Stratford, and R. F. Segsworth, for appellants.

J. C. Haight, Waterloo, for liquidator.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, JJ.A.), was delivered by

MOSS, C.J.O.— . . . The appellants' contention is that the shares are fully paid up. It is admitted that they were not paid for in cash, but it is contended that they were issued to them as fully paid up shares, in consideration of the transfer by them or on their account of certain property to the company after its formation. They claim to have acquired the property in question by purchase from a firm of Oelschlager Bros., who for some years prior to the formation of the company had been carrying on the business of