

ground for the refusal of the appellant to register the transfer to the respondent.

Apart from any other objection to their validity, there was no consideration for the agreement said to have been entered into between the shareholders and the company, and the agreements of the shareholders, inter se, in my opinion, did not attach to the shares the incident of non-transferability without the consent of all the shareholders, and the only remedy for a breach of the agreement is an action for damages, or, in the case of a threatened breach, possibly an injunction to restrain it. . . .

[Reference to Buckley on Companies, 9th ed., pp. 35, 39; *Borland's Trustee v. Steel*, [1901] 1 Ch. 279; *New London and Brazilian Bank v. Brocklebank* (1882), 21 Ch.D. 302.]

The case of an agreement between intended incorporators and between shareholders after incorporation, in my opinion, stands on a footing very different from that on which an agreement contained in a company's articles of association or deed of settlement stands. In the latter case the agreement forms part of the very constitution of the company, and every one who deals with the company or with respect to shares in it has an opportunity of examining it; while in the former it is a collateral agreement and is not embodied in its constitution, and such a person would have no means of knowing of its existence.

To hold that a purchaser of shares, having no notice of the existence of such an agreement, is to be bound by it, would most seriously and unnecessarily, I think, hamper dealings in shares, and practically make it impossible for any one to buy shares in the open market except at the risk of finding out that, when he presented his transfer for registration, he acquired nothing by his purchase except a right of action against his vendor.

If the law were as it is contended by the appellant it is, if a group of shareholders in a company were to agree among themselves not to sell or transfer their shares without the consent of all the members of the group, the incident of non-assignability without consent would at once be attached to the shares, and any one buying shares from the members of the group would find himself in the position of having acquired nothing except a right of action against his vendor, unless he were fortunate enough to succeed in getting his transfer entered upon the books of the company, and perhaps even in that case.

On the other hand, if it is desired by the incorporators of a company that restrictions should be placed upon the right of