

*Held*, McDONALD, C.J., dissenting, that the defendant H. M. Bailey was liable as surety for the goods supplied the firm under the terms of the agreement.

*Held*, also, that the document being a mercantile one, must be liberally construed for the purpose of giving effect to the intention of the parties.

The agreement on the part of the company was made and signed by their agent, and was expressed to be made subject to the approval of the company, and in the statement of claim such approval was alleged to have been given.

*Held*, that if defendant wished to controvert the allegation he should have done so in his statement of defence.

*W. B. A. Ritchie*, Q.C., and *E. J. Morse*, for plaintiff.

*W. E. Roscoe*, Q.C., for defendant.

Full Court.]

[March 8.

WEATHERBE *v.* WHITNEY.

*Company—Fraudulent representations to induce purchase of shares—Right of individual shareholder to sue on behalf of himself and others—Special circumstances to be shown—Damages—Pleading—Costs.*

Plaintiff brought an action against the defendant W., alleging that he was induced to become a bondholder and shareholder to the Dominion Coal Co., Ltd., by the false and fraudulent representations of the defendant, giving particulars of the alleged false and fraudulent representations, and claiming certain relief. By amended paragraphs of his statement of claim plaintiff alleged that in respect of the matters stated he sued on behalf of himself and all the other shareholders and bondholders of the company who joined and contributed to the costs of the action.

*Held*, that the action being in reality one on behalf of all the stockholders of the company, it should, in the ordinary course, have been brought in the name of the Company, and that in order to enable plaintiff to sustain such an action in his own name on behalf of himself and other shareholders, special circumstances must be shown.

*Held*, also, that it was not sufficient for this purpose to show that the company was under the absolute control of the defendant, unless it was clearly and distinctly indicated that such control existed at the time the action was commenced.

*Held*, also, that the joinder of other shareholders of the company as plaintiffs in connection with one of the paragraphs of the statement of claim under which plaintiff alone could recover, would not prevent plaintiff from recovering all the damages to which he could show himself to be entitled.

Plaintiff, without asking to have the sale to him rescinded, or offering to return the stock or bonds, claimed to recover the damages he had sustained by reason of defendant's alleged fraud and misrepresentation, being the difference between the amount paid for the stock, and the real value of the stock at the time the purchase was made.

*Held*, that it was no answer to offer to take the stock and bonds and pay the purchase price with interest and expenses, less all sums paid for interest,