

The evidence as to the alleged misrepresentation by which, as the appellant alleges, he was induced to become a subscriber for the shares, was conflicting, and the Master gave credit to Adams, a witness for the respondent, preferring it to that of the appellant and three of his relatives, all of whom are seeking to be released from their subscriptions for shares, on practically similar grounds to those relied upon by the appellant; and the Master's finding was concurred in by the Chief Justice, from whose judgment the appeal is brought.

In such a case as this an appellate Court is rarely warranted in reversing the findings of fact; but, if the question were merely one as to the weight of evidence, the appellant would not have satisfied us that the Master's conclusions were wrong; on the contrary, I think that he came to a right conclusion on the evidence.

As we have come to this conclusion, the appeal fails; but, if there were doubt as to its being a proper conclusion, the further fact, which the Master has found, that the appellant, with full knowledge of the true facts as to the matter with respect to which the representations are alleged to have been made, elected to remain a shareholder, that his finding is concurred in by the Chief Justice, and that there was ample evidence to warrant it, is fatal to the appellant's case; and the appeal must be dismissed.

We were asked by the appellant's counsel, if we should be against him, to vacate the winding-up order; but it is not open to us to do so, even if we were of opinion that it was wrongly made. This decision will not, however, prejudice any application which the appellant may be advised to make to vacate or set aside the order.

For the same reasons which influenced the Chief Justice to give no costs of the appeal before him, we may properly leave the respondent to bear his own costs of this appeal.

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DECEMBER 1ST, 1913

CANADIAN LAKE TRANSPORTATION CO. v. BROWNE.

*Contract—Dispute as to Terms—Conflict of Evidence—Counter-claim for Breach—Findings of Trial Judge—Appeal—Written Agreement—Alterations—Oral Assent to—Statute of Frauds—Amendment.*

Appeal by the plaintiff company from the judgment of FAL-