decisive against the plaintiffs. If the recent case of Edwards v. Blackmore (1918), 13 O.W.N. 423, was authority to the contrary—authority for saying that nothing is now *ultra vires* of an Ontario provincial corporation—some other tribunal must say so.

What was said as to the third claim covered the fifth. The plaintiffs were bound by what their adviser knew; they trusted in him, not in their own understanding; he knew all the circumstances; and, acting for them, read the papers evidencing the transactions, and found and pronounced them to be accurate. So that it was not open to them now to contend that the transactions should be treated as loans of money, merely, because they now thought, or even then thought, that was their character.

But upon another ground, resting on admitted facts, the plaintiffs would have been entitled to some other relief in this action if they had not affirmed these transactions as they had.

Each of these contracts was a single one, but they were all alike in all respects: the plaintiffs were, as an essential part of each contract, to have an obligation upon the defendant company to resell or purchase the stock in the manner set out in the writings: if they had the right which such an obligation gave, they were entitled, upon the contracts, to judgment against all the defendants: if they had it not, then the contracts had never been completed, and the plaintiffs were entitled to a return of their money, but from the defendant company only: it was advanced to the company, and the company received it; it was not advanced to the defendant Siemon, and he had not the benefit of it. The defendant company, if they failed to become bound according to the terms upon which they were to get the money, could not retain it; there would no be contract: it would not have been a question of condition precedent or subsequent; it would have been a question of contract or no contract, and it is no contract when an essential part is omitted: see Morris v. Baron & Co., [1918] A.C. 1.

But the plaintiffs could not both approbate and reprobate; they could not have judgment upon the contracts, and also judgment in effect setting them aside.

As the record stood, the action must be dismissed as to the defendant company: but it was not a case for costs: these defendants ought to be under an obligation to resell or purchase, or else should return the money; but—as things now were—circumstances, the effect of which, evidently, was not foreseen, had relieved them from it, and left their co-defendant liable.

Action dismissed as to the defendant company without costs.