

subscription for the shares was procured by fraudulent misrepresentations upon discovery of which he had repudiated it. The jury found that he was not misled by any statements made to him and that he had delayed his repudiation for an unreasonable time after becoming dissatisfied. Judgment was entered for the plaintiffs at the trial and defendant appealed directly to the Court of Appeal, where he complained of misdirection and non-direction to the jury. His objections on these grounds were overruled for the reason that they were not taken at the trial and the jury were properly instructed as to the subject matter. Another objection was that a question, "Do you find in favour of the plaintiffs or the defendant?" should not have been submitted, as to which the Court of Appeal held that it was taken too late, and even if it had been raised at the trial it could not prevail, as the Judge had a right to put the general question if he thought fit, if his charge was such as to enable the jury to deal with the issues by a general verdict.

A third objection that there was no proof of a by-law authorised the sale of shares at a discount was disposed of on the ground that as such a by-law existed proof could have been easily made and the plaintiffs would be allowed to put in a copy before the Court of Appeal.

The Court also held that an allotment made without compliance with the provisions of sec. 106 of the Ontario Companies Act was voidable only and could not be avoided except upon a record properly framed for the purpose.

The defendant appealed to the Supreme Court of Canada and was heard by SIR CHARLES FITZPATRICK, C.J., and DAVIES, IDINGTON, DUFF, ANGLIN and BRODEUR, JJ.

John W. McCullough, for the appellant.

W. R. Smyth, K.C., for the respondent.

THEIR LORDSHIPS affirmed the judgment of the Court of Appeal for the reasons given therein.

*Appeal dismissed with costs.*

\* Leave to appeal to Privy Council was refused, 25th July, 1912.—Ed.