

MACLAREN, J.A., dissented (except as to the first question), for reasons stated in writing.

*Conviction affirmed; MACLAREN, J.A.,  
dissenting.*

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HIGH COURT DIVISION.

MIDDLETON, J.

FEBRUARY 25TH, 1913.

\*RE MODERN HOUSE MANUFACTURING CO.

DOUGHERTY AND GOUDY'S CASE.

*Company—Winding-up—Contributories—Contract with Company to Take Payment for Land in Company-shares—Allotment of Shares—Failure to Transfer Land—Remedy in Damages—Costs.*

Appeal by L. M. Dougherty and R. J. Goudy from an order of the Master in Ordinary, upon a reference for the winding-up of the company, placing the appellants' names upon the list of contributories with respect to 1,500 shares.

W. M. Douglas, K.C., for the appellants.

G. F. Shepley, K.C., for the liquidator.

MIDDLETON, J.:—The appellants, whom for convenience I shall call the shareholders, agreed to sell certain property to the company for the price of \$5,000 in cash and \$6,500 fully paid-up shares, "to be allotted and issued . . . upon the vesting in the company of the title" to the property to be transferred.

The vendors failed to make title to the property; and afterwards a new arrangement was entered into, by which the shares were at once allotted, and a bond was taken in the penal sum of \$5,000 conditioned upon the making of title. The shares in respect of which it is sought to hold the appellants liable are part of the 6,500 shares referred to.

The learned Master has taken the view that, inasmuch as the shareholders have never transferred the property, and as they have undoubtedly acted as shareholders of the company with respect to the stock in question, and are now estopped from

\*To be reported in the Ontario Law Reports.