

the directors alone, and dismissed the action as against them in case the plaintiff refused so to elect. The Court of Appeal, however, came to the conclusion that there was really only one cause of action viz., the issue of the false prospectus, and that it was no ground for striking out the names of the directors, or the compelling the plaintiff to elect to proceed against them alone, that the relief claimed against them differed in detail from that claimed against the company. A point was raised as to whether the action against the deceased director's personal representatives would lie, but the Court of Appeal held that this question would have to be left for the trial and could not be disposed of on the present application. See *Greenwood v. Leather Shod Wheel Co.* (1900) 1 Ch. 421, note¹ post.

SALE OF GOODS—CONTRACT—IMPLIED CONDITION THAT GOODS ANSWER DESCRIPTION — PASSING OF PROPERTY — SALE OF GOODS ACT, 1893 (56 & 57 VICT., C. 71.) SS. 13, 17, 35.

Varley v. Whipp (1900) 1 Q.B. 513, is a decision under the Sale of Goods Act, 1893, which is one of those codifying Acts passed of recent years in England, embodying in a statute the law as it had previously been formulated by judicial decisions on the subject of the sale of goods. Although the Act has not been reproduced in Ontario, the case is nevertheless of authority here. The action was brought for the price of a reaping machine, which the plaintiff agreed to sell and the defendant agreed to buy before he had seen it, and which the plaintiff stated to have been new the previous year, and to have been used to cut only fifty or sixty acres. The machine was delivered, and, shortly after, the defendant wrote complaining that it did not correspond with plaintiff's statement, and after some further correspondence the defendant returned the machine. Section 13 of the Act enacts, "Where there is a contract for the sale of goods by description there is an implied contract that the goods shall correspond with the description." And the first point to be determined was whether the sale in question was 'a sale by description.' Channell and Bucknill, JJ., held that it was. As Channell, J., puts it, "The term 'sale of goods by description' must apply to all cases where the purchaser has not seen the goods, but is relying on description alone."

The next question was, Had the property in the goods passed to the purchaser? And the Court held that the earliest date at