

MAGEE, J.

OCTOBER 6TH, 1909.

## FOLEY v. BARBER.

## MONTREUIL v. BARBER.

*Company—Winding-up — Contributories — Misrepresentations —  
Actions to Set aside Applications for and Allotments of Shares  
—Evidence—Incorporated Company Becoming Shareholder—  
Powers of Company—Manitoba Joint Stock Companies Act—  
Powers of Vice-President and Manager—Absence of By-law—  
Resolution.*

The plaintiffs in these two actions sought to set aside applications made by them for shares in the Distributors Company Limited, of which the defendant Barber was liquidator, and the allotment of the shares, on the ground of misrepresentation by the company and the co-defendant Carpenter, against whom they also sought damages. The liquidator counterclaimed to have the plaintiffs declared liable to be placed on the list of contributories of the company, in course of winding-up under the Dominion Winding-up Act.

The Distributors Company was incorporated on the 28th September, 1904, the incorporators being H. P. C. Carpenter, H. M. Mulholland, J. L. Birney, S. M. Culp, and T. Oliphant, the objects being, *inter alia*, to deal in all kinds of fruit, &c., and for such purposes to acquire and take over as going concerns the businesses of Husband Bros. & Co., C. P. Carpenter & Son, and S. M. Culp, and to acquire other businesses. H. M. Mulholland traded as Husband Bros. & Co., and H. P. C. Carpenter as C. P. Carpenter & Son.

E. D. Armour, K.C., and H. W. Mickle, for plaintiffs.

J. A. Macintosh and Britton Osler, for defendant Barber.

H. H. Shaver, for defendant Carpenter.

MAGEE, J., after stating the facts, and referring to portions of the evidence, proceeded:—

I do not think the plaintiffs Montreuil et al. have proved any misrepresentation against the company or the defendant Carpenter such as alleged, and I do not find any reason why they should not be placed on the list of contributories in respect of the 15 shares.

As regards the 5 shares in respect of which also the liquidator asks that they be declared liable to pay, as they never agreed to subscribe for any of them otherwise than as fully paid shares not subject to call, they cannot be made contributories in respect of them.