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BOYD, C.

FEBRUARY 21ST, 1903.

TRIAL.

HIGHWAY ADVERTISING CO. OF CANADA v. ELLIS.

*Company—Promoters—Sale of Patent for Invention to Company—
Prior Agreement for Acquisition.*

Action to recover \$5,000 from the promoters and directors of the plaintiff company upon the ground that that sum was diverted from the assets of the plaintiff company, and to recover another sum of \$300.

A. B. Alyesworth, K.C., and J. M. McEvoy, London, for plaintiffs.

G. F. Shepley, K.C., and J. Heighington, for defendants.

BOYD, C.—The success of plaintiffs' case must rest on adequate proof being made of the allegation that defendants, as promoters of the company, obtained a half interest in the patent of invention operated by the company for the sole purpose and with the intention that such interest in the patent should be transferred to the company at a profit, upon its incorporation. The patent was disposed of by the proprietors and taken by the company at a valuation of \$50,000, of which \$5,000 was to be paid, and was paid in cash, out of the company's money. There is no contradiction of defendant Ellis's version of the matter, and it rests on his recollection and accuracy. It cannot be said that there was not a prior agreement for the acquisition of the patent by these men (now defendants) before the scheme of having a joint stock company was broached. Plaintiffs have failed to make good the essential allegation, and cannot recover on any other ground: *Burland v. Earle*, [1902] A. C. 99; *Re Lady Forest Mine*, [1901] 1 Ch. 589. The \$300 claim fails on the evidence supported by the conduct of the parties. Action dismissed with costs.