

The
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COURT OF APPEAL.

OCTOBER 30TH, 1909.

BERKINSHAW v. HENDERSON.

Contract—Formation of Company—Oral Agreement between Corporators before Formation—By-laws—Unanimous Approval of Shareholders—Omission of Term in Written Agreement—Evidence—Statute of Frauds.

Appeal by the plaintiff from the judgment of a Divisional Court, 12 O. W. R. 919.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, J.J.A.

Strachan Johnston, for the plaintiff.

E. E. A. DuVernet, K.C., and W. B. Raymond, for the defendants.

OSLER, J.A.:—I have scrutinised the evidence with some care in the light of the full discussion it received during the argument of the appeal, and am of opinion that the view taken of it in the Court below as expressed by the Chancellor is the right one.

Even if it be competent for individuals to contract an agreement which, after the incorporation of a company, will have the effect of controlling the statutory rights and powers of its members, and the management of its affairs in the manner prescribed by law and by the terms of its charter, such an agreement ought to be proved in the clearest and most satisfactory way, and should not readily be inferred from conflicting accounts of oral statements made many years ago.