

device of alleging that the defendant company and its solicitors well know that there was negligence, but fraudulently conspire to plead not guilty and to suppress the evidence in their possession.

This motion should, I think, be dismissed with costs to the plaintiff in any event.

PRIVY COUNCIL.

OCTOBER 17TH, 1913.

MONARCH LIFE ASSURANCE CO. v. EWAN
MACKENZIE.

Company—Action to Establish Right as Stockholder—Alleged Settlement of Prior Action — Denial of Consideration—Insurance of Certificate by Officers of Company—Estoppel—Same not Pleaded—No Right to Set up on Appeal—Forgery—Evidence—Findings of Trial Judge.

RIDDELL, J., dismissed an action for a declaration that plaintiff was the holder of 25 paid-up shares of the capital stock of defendant company alleged to have been issued to him as consideration for the settlement of a former action brought by plaintiff against defendant company and others, holding that defendant company had never acceded to such settlement.

ONT. C. A., 23 O. L. R. 342, MAGEE, J.A., *dissenting*, dismissed appeal with costs.

SUP. CT. CAN., DAVIES and IDINGTON, JJ., *dissenting*, allowed appeal and directed judgment to be entered in plaintiffs' favour with costs.

FITZPATRICK, C.J.C., and DUFF, J., *held*, that the defendant company were estopped from denying plaintiffs' claim by reason of a share certificate issued to plaintiff by defendant company's officers.

ANGLIN, J., *held*, that the certificate in question was *prima facie* evidence that plaintiff was a shareholder, which defendants had not sufficiently rebutted.

PRIVY COUNCIL, *held*, that as the question of estoppel was not raised by the pleadings or at the trial it could not be raised later, and that the findings of the trial Judge that defendants had not been a party to the alleged settlement and that there was no consideration for the alleged issuance of a share certificate to plaintiff were warranted by the evidence.

APPEAL allowed and action dismissed with costs throughout.

Appeal from the judgment of the Supreme Court of Canada, 45 S. C. R. 232, which, DAVIES and IDINGTON, JJ., *dissenting*, reversed the decision of the Court of Appeal for Ontario, 23 O. L. R. 342, which, MAGEE, J.A., *dissenting*, affirmed the decision of RIDDELL, J., dismissing plaintiff's action for a declaration that he was the holder