

The plaintiff attacks and seeks to set aside certain dealings with the shares of the company which he says were made in fraud of the company as being sales of treasury stock for "a price infinitely below their proper value" for reasons fully set out.

The relief claimed is in substance to have these sales declared void and to have the certificate in respect thereof cancelled; and to have the directors and shareholders and the company restrained from dealing in any way with these shares or attempting to validate the transfers and pretended sales thereof. At the end the plaintiff claims \$500,000 damages against three of the personal defendants for fraud and conspiracy. This is presumably made on behalf of the company though not so stated.

Plaintiff also claims \$500,000 damages against the company and Worth, one of the personal defendants for breach of an agreement of 29th February, 1912, to which he and the company and the plaintiff were parties; authorizing a sale to Worth (on certain terms only) of these shares. This later claim is clearly one made by the plaintiff in his personal capacity and for his own benefit as it is made against the company.

The present motion is to strike out this latter claim.

F. Aylesworth, for the defendants.

T. P. Galt, K.C., for the plaintiff.

CARTWRIGHT, K.C., MASTER:—It is clear from *Stroud v. Lawson*, [1898] 2 Q. B. 44, that in an action of this character, where different reliefs are sought that there must be two plaintiffs though they may be the same person suing in different capacities. Here the plaintiff at present is only acting in his capacity as shareholder, bringing his action on behalf of the company. In that form he cannot make any claim for his sole personal benefit and certainly as pointed out by Mr. Aylesworth, he cannot be suing on behalf of the company and for relief against it in the same action.

The plaintiff must, therefore, amend by claiming on his own behalf for any damages accruing to himself personally, as well as for the relief he seeks for the benefit of the company. In view of what is said in *Stroud v. Lawson*, *supra*, he will do well to consider whether he can do this under C. RR. 185 and 186.