

claim. His application was, in terms, for preferred shares only, and the application was headed "Application for Preferred Shares." The statement at the foot of the application was not, in form or in substance, an application for common shares, but was that the subscription for preferred shares "carries with it a bonus of 100 per cent. of fully paid-up and non-assessable common stock of the company"—in other words, that, on becoming a shareholder in respect of preferred shares, the subscriber was to be entitled to a bonus of an equal amount of fully paid-up and non-assessable common shares. Being fully paid-up and non-assessable, they must be shares that had already been allotted to some one, and therefore shares which the company could not allot to the appellant.

The company accepted the appellant's offer to take 10 shares of preferred stock; and they were duly allotted to him. It might be that, having accepted his application, the company was bound to see that he received the bonus of common stock; and that, if it had not done so, it might be liable to an action for breach of its agreement; but there was nothing in the nature of a conditional application. On the contrary, the foundation of the right of the appellant to the common shares was that he had become the holder of the preferred shares. Putting the case on the highest ground on which it could be put, his application meant: "I apply for 10 shares of preferred stock, and my subscription for these shares entitles me to a bonus of an equal amount of common stock, paid-up and non-assessable." His right to the bonus shares did not arise until he had become the holder of the preferred shares.

*Appeal dismissed with costs.*

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FIRST DIVISIONAL COURT.

JANUARY 10TH, 1916.

OLDRIEVE v. C. G. ANDERSON CO. LIMITED.

*Sale of Goods—Lumber in Esse at Time of Contract—"National Inspection"—Acceptance—Deduction for Excess—Caveat Emptor—Cash Discount—Evidence.*

Appeal by the defendant company from the judgment of the Junior Judge of the County Court of the County of Elgin in favour of the plaintiff in an action for the price of lumber sold and delivered to the defendant company.