

LOGIE, J.

MARCH 9TH, 1920.

CLASSIC HOSIERY CO. LIMITED v. FILLIS.

Company—Purchase of "Business" of Firm—Going Concern—Assumption of Trade-liabilities—Agreement—Ratification by Shareholders—Informal Meeting—All Shareholders Present—Unanimity—Bill of Sale—Covenant—Mistake—Ratification—Amendment—Negligence of Solicitor—Failure to Prove—Secret Profits—Subscriptions for Shares—Paid-up Shares—Promissory Notes—Counterclaim—Bill of Costs.

Action by the company against A. W. Fillis and Adam Irving, trading under the firm name of Fillis Irving & McFadden, and against the firm and J. P. Eastwood and William Lorimer, for breach of a covenant in a bill of sale made by the defendants Fillis and Irving in favour of the company; for an accounting by the defendants other than Eastwood in respect of an alleged secret profit on the sale of the business of the firm to the company; for damages for the negligence of the defendant Eastwood as a solicitor; for payment of stock subscriptions of \$100 each by the defendants Fillis, Irving, Eastwood, and Lorimer; and against the defendants other than Eastwood for the amount of a promissory note. Counterclaim by the defendant Eastwood for \$119.16, the amount of a bill of costs, and by the defendant Lorimer on a promissory note of the plaintiff company to him for \$45.

The action and counterclaim were tried without a jury at a Toronto sittings.

J. S. Duggan and James Bicknell, for the plaintiff company.

H. J. Scott, K.C., for the defendants.

LOGIE, J., in a written judgment, after setting out the facts, said that, in anticipation of the purchase of the business of the firm, the shareholders of the company met on the 4th June, 1918, and passed a resolution "that the company take over by purchase the hosiery manufacturing business, plant, and goodwill thereof lately carried on under the partnership name of Fillis Irving & McFadden." That meant the purchase of the firm's business as a going concern, and not the purchase of the assets alone, ignoring the liabilities.

Nothing further was done towards completing the purchase and sale till the 5th July, 1918, when one McMurchy, having had some previous negotiations with Lorimer, vice-president of the plaintiff company, went to Eastwood's office with the intention of buying out Fillis and Irving's interest in the partner-