

for his company was the ground on which Tudhope had subscribed for shares in the Port Arthur company. These shares were, in a sense, if not in reality, those of the Tudhope-Anderson Company.

Tudhope might perhaps at the time have set this up in answer to a demand of the company for payment of the shares, and, as it was argued, "litigate it." The directors may have been quite justified in believing, as it must be assumed they did, that it was in the interest of the company to enter into the agreement with the Speight company. They must have been impressed by the fact that the result would be prejudicial to the Tudhope-Anderson Company with respect to their agreement, and that this would be a proper cause of complaint which might lead to litigation. In so far as Tudhope and his shares were concerned, it would be unfair—indeed fraudulent—to hold him to this contract to keep shares which he had been induced to buy by reason of the expected benefits to a company in which he was interested, when those benefits were minimised or destroyed by the entering into a new agreement with another company.

The directors could, and in reality did, enter into a compromise of this claim for relief and restoration made by Tudhope.

The appeal both as to Tudhope and Shelden should be dismissed with costs.

MULOCK, C.J.Ex., and CLUTE, J., agreed with SUTHERLAND, J.

RIDDELL, J., agreed, for reasons stated in writing, that the appeal should be dismissed with costs. He was of opinion that Tudhope was not included in the resolution authorising the "call;" and, assuming that the transaction was wholly ultra vires, the objection remained that Tudhope did not and could not owe on any call, that his liability was a debt only, and therefore he could not be placed on the list of contributories.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT.

JUNE 9TH, 1920.

*MERRILL v. WADDELL.

Sale of Goods—Contract—Quality of Goods—Action for Damages for Inferiority—Acceptance without Inspection—Inferiority Revealed by Subsequent Inspection—Warranty of Quality—Waiver—Right of Rejection—Estoppel—Laches—Delay in Giving Notice and Making Claim—Damages—Measure of—New Trial.