

SUTHERLAND, J.

JULY 29TH, 1920.

HOOD v. CALDWELL.

Company—Resolution of Directors Fixing Remuneration of President and Manager of Company on Commission-basis—Correctness of Minutes of Meeting—Conflicting Evidence—Finding of Trial Judge—Payments Made to President—Scope of Resolution—Action by Shareholders to Compel Repayment to Company—Knowledge and Acquiescence—Estoppel—Failure to Shew Misrepresentation on Sale of Shares—Receipt of Dividends—Offer at Trial to Return—Pleading—Amendment—Agreement with Vendors of Property to Company—Issue of Shares—Irregularity.

Action by eleven shareholders of the Wentworth Orchard Company Limited against that company and one Caldwell and one Nicholson, for: (1) rectification of the minute-book of the defendant company by striking out a certain resolution appearing therein; (2) repayment by the defendant Caldwell to the defendant company of \$18,700 alleged to have been illegally paid to him by it under the authority of the said resolution; (3) an order setting aside an agreement dated the 8th April, 1912, whereby the defendants Caldwell and Nicholson, theretofore trading under the name of the Caldwell Orchard Company, sold to the defendant company their assets, in consideration of the issue to them of \$50,000 worth of common stock in the defendant company; and (4) a declaration that the said \$50,000 worth of common stock was irregularly issued.

The action was tried without a jury at Hamilton.

George Lynch-Staunton, K.C., and L. J. Counsell, for the plaintiffs.

W. M. McClemon, for the defendants Caldwell and the Wentworth Orchard Company Limited.

No one appeared for the defendant Nicholson.

SUTHERLAND, J., in a written judgment, said, after stating the facts, that a meeting of the directors of the defendant company was held on the 4th May, 1915, at which, as the minute-book shewed, "the question of providing for the management of the company was first taken up, and, upon motion by Messrs. Borer and Blagden, the president (A. C. Caldwell) was given complete charge of the management of the business, his remuneration to be 5 per cent. of the gross sales for the year."

Upon conflicting evidence, the learned Judge found that the minute of this resolution correctly recorded the action taken at the meeting.