The action was tried without a jury at a Toronto sittings.

I. F. Hellmuth, K.C., and Grayson Smith, for the plaintiff.

D. L. McCarthy, K.C., and A. W. Langmuir, for the defendants.

MASTEN, J., in a written judgment, said that the plaintiff sued as a shareholder of J. B. Henderson & Company Limited—a company incorporated under the laws of Ontario. She was the holder of 10 shares of stock of the nominal value of $1,000, fully paid. According to the style of cause, the plaintiff sued individually, and not on behalf of other shareholders. The plaintiff should be at liberty, if she so desired, to amend and claim in a representative capacity.

There were 6 distinct claims made in the action:—

(1) That 510 shares of the capital stock of the defendant company, duly applied for and allotted to the defendant William Strang, had not been paid-up, though calls of $100 per share had been duly made thereon.

These shares were paid-up in full, though not in cash: the cheque of William Strang was legally accepted in payment of the shares. And, besides, the plaintiff could not maintain an action for recovery of a balance due from a shareholder to the company in respect of his shares—the company would be the only proper plaintiff: Burland v. Earle, [1902] A.C. 83; Allen v. Hyatt (1914), 17 D.L.R. 7 (P.C.); Bennett v. Havelock Electric Light Co. (1911), 25 O.L.R. 200.

(2) That a certain agreement of the 24th August, 1910, made between the defendant company and the Strangs was ultra vires of the company because improvident.

The evidence as to improvidence was conflicting; and, in any case, improvidence is not a ground upon which such an agreement can be attacked by a shareholder; the attack can be upon the ground only that the agreement is fraudulent and a fraud upon the shareholder, and no such case was made out here.

(3) That there was no consideration to the company for the agreement.

As a fact there was consideration: the cheque of William Strang, when transmitted to William Strang & Co., was used to the advantage of the company and constituted a consideration.

(4) That, since the 24th August, 1910, there had been no proper board of directors to manage the affairs of the defendant company; and its acts since that date were illegal.

The board of directors was properly elected on the 24th August, 1910, and there continued to be a proper board from that time on: the directors then elected remained effectively in office.