

Full Court.]

GOULD v. GILLIES.

[Sept. 2.]

*Company—Promissory note given in payment for shares—False representation by agent—Liability of principal—Damages.*

Defendant was induced to sign an application for shares in a company on the representation that the shares subscribed for were treasury stock, and that the money paid was to go into the treasury and was to be used for certain specified purposes. The shares were, as a matter of fact, the property of plaintiff, and the promissory note given by defendant in payment was indorsed to plaintiff. In an action on the note,

*Held*, 1. It was not necessary for defendant to shew that the false statement was the sole inducement which led him to apply for the shares or to explain upon which particular false statement he relied.

2. Defendant had not lost the right to assert his claim for damages through delay in repudiating the contract.

3. It was not open to plaintiff to say that he did not authorize anyone to sell his shares as "treasury stock" when, as a matter of fact they were sold as such, and that he was liable for the fraudulent acts of his agent even if he was innocent himself.

*W. B. A. Ritchie*, K.C., and *Robertson*, for appellant. *Mellish*, K.C., *O'Mullin* and *O'Connor*, for respondent.

Full Court.]

THE KING v. BARNES.

[Sept. 2.]

*Crown case reserved—Question of fact.*

The prisoner was tried and convicted before GRAHAM, E.J., with a jury for rape committed upon the person of a girl of the age of 14 years.

On a case reserved by the trial judge there were contradictory affidavits as to a communication alleged to have been made by the sheriff to the jury while they were considering their verdict, two of the jurymen swearing in answer to a question put by them to the sheriff that the latter said they would be obliged to report the prisoner guilty of rape, but if they did so and recommended the prisoner to mercy the judge would give him a light sentence. The sheriff in his affidavit denied this and said: "Whatever your verdict, bring it into Court."

*Held*, that the Court had no jurisdiction to decide a question of fact on a case reserved.