

failure to sell or take any steps to that end, are inconsistent with the position he now desires to take. The basis of the sureties' liability has been changed by him, it is said, to their detriment. But, whether that is so or not, the alteration of their rights discharges them from liability, because they can insist on literal compliance with the contract, the performance of which they guaranteed—notwithstanding that it may work out in a way not contemplated by the vendor when he took their obligation.

Reference to *A. Harris Son & Co. v. Dustin* (1892), 1 Terr. L.R. 404; *Moore v. Johnston* (1909), 9 W.L.R. 642; and *North-West Thresher Co. v. Bates* (1910), 13 W.L.R. 657.

The appeal should be dismissed with costs.

KELLY, J., was also of opinion, for reasons stated in writing, that the appeal should be dismissed with costs.

Appeal dismissed with costs, the Court being divided.

FIRST DIVISIONAL COURT.

JANUARY 24TH, 1916.

*RE SOVEREIGN BANK OF CANADA.

*CLARK'S CASE.

Bank—Winding-up—Contributory—Double Liability — Shares Purchased for Infant—Ratification after Majority—Receipt of Dividends—Knowledge—Laches—Acquiescence.

Appeal by Muriel I. Clark from the order of RIDDELL, J., ante 278, affirming an order of an Official Referee placing the name of the appellant upon the list of contributories of the bank in liquidation.

Leave to appeal was given by MIDDLETON, J., ante 328.

There was also an appeal by the liquidator from the order of RIDDELL, J., affirming the order of the Referee refusing to place the name of A. D. Clark upon the list.

The appeals were heard by MEREDITH, C.J.O., GARROW, MAC-LAREN, MAGEE, and HODGINS, J.J.A.

George Kerr, for the appellant Muriel I. Clark.

J. W. Bain, K.C., and M. L. Gordon, for the liquidator.

Joseph Montgomery, for A. D. Clark.