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that s. 9 (2) applies to stipulations which *purport* to oust or lessen the jurisdiction and not only to stipulations which have that effect. There are, of course, no such stipulations as the latter. The answer to the second limb is that the effect of s. 9 (2) is to render such stipulations "illegal, null and void and of no effect". In my opinion, this carries the matter much further than the pre-existing law which regarded such stipulations as void or ineffective only in so far as they purported to oust the jurisdiction of the local courts. Apart from the provisions of s. 9 (2) the only effect they would have had would have been as submissions to arbitration. Now s. 9 (2) says that such stipulations are to be illegal, null and void and of no effect. I do not think that the section could more plainly say that no longer are they to have this effect, and accordingly I am of opinion that the appeal should be dismissed.

*Appeal dismissed with costs.*

Solicitors for the appellant, *P. F. Irvine & Co.*
Solicitors for the respondent, *Norton, Smith & Co.*

J. B.

[HIGH COURT OF AUSTRALIA.]

HAAS TIMBER & TRADING COMPANY PROPRIETARY LIMITED . . . DEFENDANT, } APPELLANT;

AND

WADE . . . . . PLAINTIFF, } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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BRISBANE, *Aug.* 3, 4;

SYDNEY, *Aug.* 27.

Dixon C.J., Fullagar and Kitto JJ.

*Companies—Allotment of shares—Shareholder induced to take up shares by fraud—Discovery of fraud—Rescission of allotment—Return of money paid to company for shares—Delay in taking action—Conduct consistent with that of shareholder—Laches—Acquiescence—Delay.*

The plaintiff was induced to take an allotment of shares in the defendant company by fraudulent misrepresentations made by a promoter of the company who was also a director. As soon as he discovered that these statements were false the plaintiff wrote to the promoter saying he desired to transfer the shares back to the company. The promoter said in a subsequent interview that under the articles of association any person wishing to transfer shares must give twenty-eight days' notice so that a transfer could be arranged. This misled the plaintiff into thinking that these requirements had to be fulfilled before he could get a refund. Two of the company's three directors then left and were not seen again. A month after the original letter the plaintiff's solicitors wrote requesting the company to refund the purchase price of the shares, and stating that the plaintiff would sign the necessary transfers. Seven weeks later a meeting of parties interested in the company was called which the plaintiff attended; in the directors' absence the meeting was informal but it purported to set up a board of management. Some days later the plaintiff issued the writ.

*Held*, that though the title of a person, induced to take an allotment of shares by a fraudulent misrepresentation made on behalf of a company, to an order for the rescission of his contract of membership and for a return of the money paid in respect of the shares may be precluded if, within a reasonable time after he discovers the misrepresentation, he does not repudiate the shares

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and institute proceedings for relief, even if there be no winding up to intercept his right, yet the question of what is a reasonable time is to be judged as a matter of fact in the circumstances, and a delay which is to be attributed to negotiations between him and the company cannot preclude a complaining shareholder from rescinding, and that in these circumstances the shareholder had originally expressed an unequivocal election to rescind; that the shareholder will lose his right to rescission if, after learning of the falsity of the misrepresentation, he acts in a manner which is inconsistent with any hypothesis except the continuance of his position as a member of the company or shareholder, but that the plaintiff had not so acted; that the reasonableness of the course taken by the shareholder must be determined by reference not only to the facts affecting his conduct but also to its probable consequences upon the company and others, but that nothing the plaintiff omitted to do led the company or others interested in it to take a course they would not otherwise have adopted, nor did the delay, which was not long, between the discovery of the misrepresentation and the issue of the writ lead to any alteration of their position.

Decision of the Supreme Court of Queensland (*Hanger* J.), affirmed.

APPEAL from the Supreme Court of Queensland.

On 30th May 1952 Charles William Wade commenced proceedings in the Supreme Court of Queensland against Haas Timber & Trading Co. Pty. Ltd. seeking rescission of an allotment of 3,000 shares in such company made to him on 20th November 1951 upon the ground that he had been induced to take up such shares by certain fraudulent misrepresentations made to him by a director of the company, who had in fact been the promoter of the company and was in actual control of its affairs.

The action was heard by *Hanger* J. who found all material issues in favour of Wade and pronounced judgment granting the relief prayed.

From that decision the company appealed to the High Court upon the ground that, notwithstanding the falsity of the representations, Wade was not entitled to relief because after learning of their falsity he delayed in taking action, acted as a member of the company, and acquiesced.

*E. S. Williams* (with him *J. Kimmons*), for the appellant. A shareholder entitled to rescind on the ground of fraud may lose his right to do so in certain circumstances, as where the shareholder does anything inconsistent with the right to repudiate. [He referred to *Re Hop & Malt Exchange & Warehouse Co.*; *Ex parte Briggs* (1).] Wade did not himself attempt to sell though he was

(1) (1866) L.R. 1 Eq. 483, at p. 487.

quite willing to see if a buyer could be found for him. He attended a meeting and acted as a shareholder. [He referred to *Nichol's Case* (1); *Re Breech-Loading Armoury Co. Ltd.*; *Ex parte Blackstone* (2); *Re Metropolitan Coal Consumers' Association Ltd.*; *Ex parte Edwards* (3); *Re Brinsmead (Thomas Edward) & Sons (Tomlin's Case)* (4).] There was undue delay on Wade's part. [He referred to *Re Russian (Vyksounsky) Iron Works Co. (Taite's Case)* (5); *In re London & Staffordshire Fire Insurance Co.* (6); *Aaron's Reefs* v. *Twiss* (7); *Civil Service Co-operative Society* v. *Blyth* (8); *First National Reinsurance Co. Ltd.* v. *Greenfield* (9); *Heymann* v. *European Central Railway Co.* (10).]

*L. Byth*, for the respondent. Wade did not delay in repudiating after he had discovered the fraud in March 1952. He sought to re-transfer the shares to the company by his letter of 4th March 1952 and to obtain his money back. This was a sufficient repudiation. He was informed by the directors that the company would take back the shares and return his money, and the evidence shows that the repudiation was accepted. [He referred to *Brunyate, Limitation of Actions in Equity* (1932), p. 229; *Re Queensland Linseed Industries Ltd.* (11).] Wade's subsequent actions were not inconsistent with his stand that he desired the return of his money. He cannot be said to have acted as a member of the company because of his subsequent conduct. He did not acquiesce. [He was stopped.]

*Cur. adv. vult.*

Aug. 27.

THE COURT delivered the following written judgment:—

The action out of which this appeal arises was brought by a shareholder against a company and the relief sought was rescission of the allotment of shares to the plaintiff and the return of the money paid up in respect of the shares. The plaintiff's case was that he had been induced to take up the shares by certain misrepresentations alleged to be fraudulent made by a director who had in fact been the promoter of the company and was in actual control of its affairs. *Hanger* J., who heard the action, made findings of all the material issues in favour of the plaintiff on 8th October 1953 and pronounced judgment granting the relief prayed.

(1) (1858) 3 De G. & J. 387, at p. 431 [44 E.R. 1317, at p. 1334].
(2) (1867) 16 L.T. 273.
(3) (1891) 64 L.T. 561.
(4) (1898) 1 Ch. 104.
(5) (1867) L.R. 3 Eq. 795.
(6) (1883) 24 Ch. D. 149, at p. 154.
(7) (1896) A.C. 273, at p. 294.
(8) (1914) 17 C.L.R. 601, at pp. 608, 612, 613.
(9) (1921) 2 K.B. 260.
(10) (1868) L.R. 7 Eq. 154, at p. 168.
(11) (1936) Q.W.N. 35.

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Subsequently his Honour gave his reasons in writing. The appeal from the judgment is based upon the ground that notwithstanding the falsity of the representations, the plaintiff was not entitled to relief because after learning of their falsity he delayed in taking action, acted as a member of the company and acquiesced. The company in question was incorporated on 22nd October 1951 under the name of the Haas Timber & Trading Co. Pty. Ltd. and it is the defendant-appellant. Under the articles of association three persons were appointed as its first directors; they were more fully described in the return of directors. They were Francis Morgan, manager, John Haas, taxi-owner and driver, and Frank Edgar Morgan, mechanic, son of Francis. On the day following the incorporation of the defendant company it entered into a contract for the purchase of certain land at Kingston having thereon a mill building, an office and two cottages and certain plant. The purchase price was £2,300 and it was to be paid by a deposit of £250 down and a single payment of the balance of purchase money, namely £2,050, on possession when the contract should be completed. The deposit of £250 was paid.

During the first week in November 1951 the plaintiff, whose name is Charles William Wade and who conducted what is called a mixed business, answered an advertisement which he saw in the press and in consequence the two Morgans visited him. They said in effect that they had formed the company, that the company had acquired a timber mill and had fully paid for it, and that they needed more money to expand operations and would apply it in the building of new mill-sheds and in the installation of plant. The statements so summarized were made during the course of an extended discussion which included a visit to the mill site. They said that the profits, which as they stated were then twenty-five to thirty pounds a week, would be doubled if the required money were invested in the company. The elder Morgan said that the money would be used for the building of new sheds on a new site and for the installation of new machinery. The plaintiff agreed to take up shares in the company. The elder Morgan also said that as long as the plaintiff was a shareholder he could live in a house rent free. The capital of the company consisted of 20,000 ordinary shares of one pound each. The plaintiff paid Morgan senior £3,000 and received a receipt. The receipt was dated 20th November 1951 and was expressed to be in consideration of share certificate No. 7 covering 3,000 shares. On the same day a memorandum was signed by Morgan on behalf of the directors declaring that the plaintiff was entitled to a house in Overend Street, Norman Park,

Kingston, rent free while he remained a shareholder. Again on the same day, 20th November 1951, a share certificate was issued to him certifying that he was a shareholder of 1,000 ordinary shares in the company. The plaintiff went into occupation of a house, No. 21 Overend Street.

The representation which, according to the finding of *Hanger* J., was made, that the mill had been paid for and that the plaintiff's money was required and would be used for the building of new mill-sheds and the installation of new machinery, was in fact false. The balance of purchase money of £2,050 had not in fact been paid. It was on the following day, 21st November 1951, that this sum was paid. It was paid out of the £3,000 paid by the plaintiff to Morgan senior which was thus used to complete the purchase of the mill and not to erect mill-sheds or acquire machinery. This, however, the plaintiff did not discover until later. In January and February 1952 on four days a week he went out to the mill and worked there for about three hours voluntarily. What he saw aroused some dissatisfaction if not distrust. He did not see new machinery. From the character of the mill and the work being done he did not see how twenty-five to thirty pounds a week could be earned. He was not, however, experienced in timber-milling and he does not appear to have reached any more than a state of lost confidence and suspicion. In February 1952, probably about the middle of that month, he wrote a letter to the secretary of the company, one W. J. King, who also had no experience in timber-milling. The letter has not been preserved, but according to the account which the plaintiff gave of what he wrote it seems to have complained that the new machinery had not been put in and that otherwise conditions were not satisfactory and to have requested that his money should be repaid to him. He said in evidence that the Morgans told him in response that the new sheds were to be put up at the beginning of March and that he should wait. Early in March he visited the office of King, the secretary, where he was shown an entry in a cash book from which it appeared that the payment to the vendors of the balance of purchase money had been made on 21st November 1951. He then knew that the most material representation made to him was false. *Hanger* J. formed a generally favourable impression of the plaintiff's honesty and accepted his testimony. No doubt his Honour's findings that the representations were made and that they were false to the knowledge of the Morgans are quite beyond attack and this was recognized on the part of the appellant company. It was not contended upon the hearing of the appeal

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that the defendant company could disavow responsibility for the representations made by Morgan senior.

On 4th March 1952 the plaintiff wrote a letter addressed to the managing director, meaning thereby Morgan senior, in which he said: "As requested and abiding by the rules of the company I hereby desire to transfer back to the company three thousand one pound shares; and in return for £3,000 I cease to have any interest in the company." This appears, at all events upon a first reading, to be a definite expression of an election to rescind the transaction. As it was justified by the false and fraudulent character of the representations on which the plaintiff acted, such an election communicated to the company would complete a strong presumptive title in the plaintiff to a decree rescinding the transaction. The defendant company, however, in this appeal denies that the plaintiff did in fact unequivocally disaffirm the transaction and maintains that he is precluded from the relief claimed because he acted inconsistently with such a disaffirmance and, further, because he was guilty of acquiescence, laches and delay.

In response to the letter of 4th March 1952, to which it will be necessary to return, the Morgans, father and son, came to see the plaintiff at his house. A long conversation took place, but the effect of what they said was that they had "lined up" someone to take over his shares and that the company would relieve the plaintiff of his shares and would repay him the £3,000. But they said that the plaintiff must give twenty-eight days' notice under the articles of association. The plaintiff on his side said that as soon as he could he would vacate the house, into occupation of which he had gone, and in the meantime would pay rent for it.

Article 3 of the articles of association of the company restricts the right to transfer shares. A transfer may not be made to a stranger if a member or someone selected by the directors as desirable to admit to membership is willing to purchase the shares at the fair value. The shareholder is bound to give a notice specifying the sum as the fair value and constituting the company as his agent for the sale of the shares at the price so fixed, or the fair value fixed in pursuance of the articles. If the company should, within the space of twenty-eight days after being served with such a transfer notice, find a member or some person selected as aforesaid willing to purchase the shares and should give notice thereof to the proposing transferor he is bound upon payment of the fair value to transfer the shares to the purchasing member. No doubt Morgan relied upon this article for the twenty-eight days which

he said was necessary. He appears to have said in effect that the plaintiff would be repaid his £3,000 and would be relieved of his shares but that he must proceed under the article giving twenty-eight days' notice so that the shares could be transferred to some other person. The plaintiff, one may be sure, drew no distinction between the two courses of transferring to a new shareholder and rescinding the allotment. Doubtless he regarded it as the company's business to adopt whatever course might be found convenient on its side to dispose of the shares. He would be satisfied with any compliance with his demand that the company should relieve him of the shares and pay him back his £3,000. About 15th March the two Morgans left Brisbane under some plea and proceeded first to Moree, thence to Sydney, and thence to Melbourne. They appear since to have left Australia. King wrote, if it be material, several letters and sent them several telegrams during March stating the situation and requesting them to return, but in vain. Indeed, a meeting of directors was summoned for 6th May 1952 and the Morgans were invited, but of course did not attend. Haas being the only director present, the meeting lapsed.

On 11th March 1952 in the name of the defendant company King wrote a letter to the plaintiff acknowledging his letter of 4th March, describing it as a letter specifying the plaintiff's desire to transfer back to the Haas Timber & Trading Co. Ltd. his 3,000 one pound shares in return for £3,000 and to cease to have any interest in the said company. Having so described it, King proceeded :—" This letter will be placed before my principals at an appointed time, and you will be advised of their decision which automatically concerns the house in which you reside." It will be seen that, though King's letter uses the word " transfer ", it treats the company as the body to which the shares are to be transferred back and which is to return the money. The plaintiff had consulted his solicitors and on 31st March 1952 they wrote on his behalf to King as secretary of the company. Their letter stated that the plaintiff had mentioned to them that it had been arranged between him and Morgan, the managing director for and on behalf of the company, to refund to the plaintiff the sum of £3,000 paid by him to Morgan in November 1951. It added that the plaintiff on his part had undertaken to sign the necessary transfer of shares and of course it had been agreed that he would vacate or pay rent for the house in Overend Street, Norman Park, which he had been occupying rent free while he had £3,000 invested in the company. The letter went on to say that the writers further understood that

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the refund of £3,000 was to be made on or before Monday next, 7th April. They asked King to let them know if that was the understanding of the position as mentioned to them by Morgan. They also asked the names and addresses of the shareholders of the company, together with the numbers of shares issued to them. There is a certain ambiguity in this letter, but the central feature of it is that the company was to pay back the £3,000. Apparently the solicitors did not clearly understand the references to the transfer but assumed that the company desired an instrument of transfer rather than a surrender or a contract effecting a rescission. Why the date 7th April was selected is not clear, but it seems to have been taken that the twenty-eight days would then expire. On 7th April the plaintiff saw King, who told him that Morgan had gone away, that he had written to him asking him to come back and meet the shareholders and put the facts before them and King said he had written two or three times. On 8th May 1952 King appears to have interviewed the company's auditor, who, according to a memorandum made by King, instructed him to advise all the interested parties in the company, enumerating certain persons to whom shares had been sold or offered or whose money had been obtained, including Wade. A letter was written by King to these persons, including Wade, informing them that an informal meeting had been called for 19th May at the office of the auditor " to discuss Haas Timber & Trading Co. business ". The letter continued :—" You are therefore requested to be in attendance at this meeting and bring with you documentary evidence such as share certificate, receipts for money paid to Mr. F. Morgan for the purchase of such shares. A full attendance of interested parties are (*sic*) requested to be present ". It would seem that King and two others formed some sort of informal board of management and no doubt the letter was written with their sanction. The meeting took place and Wade, among others, attended. He says that on arriving he said to King that he came as an observer only, but King denies that he heard this statement and Wade volunteered the information that he said it in a soft voice. What occurred at the meeting is the subject of some dispute. Wade says that he gave his assent to nothing. King says that Wade nodded his head on being asked whether he agreed to a proposal that the same board of management should continue and that one of the persons be appointed as a manager with a salary of fourteen pounds a week and that King be appointed secretary at five pounds a week and that the company continue in this way pending further inquiries.

The record of the meeting describes it as an informal meeting and discloses that a board of management consisting of three persons had been formed. Whatever view is taken of what the plaintiff actually did at the meeting it seems clear enough that he did not exercise any right to vote as a shareholder or purport to act as a shareholder but came only as an interested party. At worst for his case he concurred in a *modus vivendi* for conducting the affairs of the business independently of the lawful board of directors of the company.

The writ in the action was issued on 30th May 1952. The plaintiff continued to reside in the house for some time thereafter. It does not appear whether he was actually called upon to pay rent but he was prepared to do so. No point, however, arises from the occupation of the house. It is not on this ground that it is contended that the plaintiff had precluded himself from relief from the transaction by way of rescission and repayment of the moneys paid to the company in respect of the shares. What is said is that after the discovery of the falsity of the representations inducing the plaintiff to apply for the shares and pay the sum of £3,000, by the course he pursued with respect to the company he acted on the footing of a shareholder and inconsistently with the exercise of a right to repudiate his membership of the company and that in any case he did not repudiate the transaction with reasonable promptness. It was further submitted that even before the letter attributed to the middle of February but not produced, and certainly before the letter of 4th March 1952, he had all the means of knowing the truth and in fact suspected it and had yet gone on. Accordingly he was no longer entitled to rescind. This last contention cannot be sustained. It may be doubted whether he had adequate means of knowledge. But means of knowledge is not necessarily knowledge. Moreover, suspicion, doubt and distrust do not have the same consequence as knowledge and unless he had reasonably definite information of the falsity of the representations he could not be called upon to act. In *Central Railway Co. of Venezuela* v. *Kisch* (1), Lord *Chelmsford* said of the shareholder who was plaintiff in that case that although he "might have heard unfavourable rumours, and conceived suspicions of the company, at an early period after he obtained his shares, yet he received no certain information upon which he could act until" (2) a specified time after which he had done nothing amounting to acquiescence. He

(1) (1867) L.R. 2 H.L. 99.

(2) (1867) L.R. 2 H.L., at p. 112.

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therefore was not precluded from relief. Lord *Macnaghten* in *Aaron's Reefs* v. *Twiss* (1) used similar language: "Before the action the respondent appears to have heard rumours that the company was a swindle; but he had no certain information on which he could act" (2). The title of a person who is induced to take an allotment of shares by a fraudulent misrepresentation made on behalf of the company to an order for the rescission of his contract of membership and for a return of the money paid in respect of the shares may of course be precluded if, within a reasonable time after he discovers the misrepresentation, he does not repudiate the shares and institute proceedings for relief, even though there be no winding up to intercept his right. Moreover he will lose his right to rescission if, after learning of the falsity of the misrepresentation, he acts in a manner which is inconsistent with any hypothesis except the continuance of his position as a member of the company or shareholder. An attempt to sell the shares has been considered enough to bar relief: *Re Hop & Malt Exchange & Warehouse Co.*; *Ex parte Briggs* (3). If he accepts dividends having knowledge of the fraud which entitles him to rescission that will be enough: *Scholey* v. *Central Railway Co. of Venezuela* (4).

Delay stands on a somewhat different footing. It is necessarily a matter of degree and must depend on the circumstances of the given case. No doubt the well-recognized rule in equity is that a person who has entered into a contract by the fraudulent conduct of those with whom he has contracted is entitled to rescind such contract provided he does so within a reasonable time after his discovery of the fraud: *In re Scottish Petroleum Co.* (5). But this leaves the question of what is a reasonable time to be judged as a matter of fact upon the circumstances. A delay which is to be attributed to negotiations between the shareholder complaining and the company cannot be availed of as a ground precluding rescission: see *Neill's Case* (6), per *Wood* V.C. The reasonableness of the course taken by the shareholder must be determined by reference not only to the facts affecting his conduct but also to its probable consequences upon the company and others.

The plaintiff clearly intimated to the Morgans as directors who had assumed the control of the company's affairs that he demanded the return of his money and relief from his position as shareholder. That was done in the first few days of March. It was an unequivocal election, as it appears first to have been expressed. The

(1) (1896) A.C. 273.
(2) (1896) A.C., at p. 293.
(3) (1866) L.R. 1 Eq. 483.
(4) (1868) L.R. 9 Eq. 266, note; 39 L.J. Ch. 354.
(5) (1883) 23 Ch. D. 413, at p. 429.
(6) (1867) 15 W.R. 894.

Morgans drew his attention to article 3 of the articles of association, and it was the use by them of that article which led to whatever uncertainty or equivocation between repudiating the shares and transferring them it may be possible to discern in the plaintiff's letter of 4th March 1952 and in the letter of his solicitors of 31st March 1952. Any doubt about the letter of 4th March must arise from the words " and abiding by the rules of the company ". But it would be pressing these a long way to treat them as exhibiting an election to remain bound as a shareholder by the article. The preceding words " as requested " are important. They mean that he is taking the procedural course requested of him. The governing words are " transfer back ", words appropriate to describe an undoing of the transaction, particularly of the allotment of the shares. Clearly the plaintiff himself had no intention in fact of exercising any of the rights of a shareholder. What he demanded was his money back. The suggestion that he should transfer the shares was that of the representatives of the company, suggested as a procedure for effecting his desire. His action in attending the meeting of 19th May 1952 might at first sight suggest the exercise of the right of a shareholder. But it must be remembered that the meeting was summoned not only as an informal meeting, but as a meeting of persons interested in what should be done, whether the persons did or did not occupy the position of shareholders. The plaintiff was in a position of a person claiming repayment of money in respect of which shares had been issued. Again, it was the company who took the position that he should be invited to attend. The committee of management which assumed the control of the business was not a board of directors and had no legal authority to supersede the board of directors. They took control merely because the Morgans had deserted the undertaking and left the State of Queensland. Whether the plaintiff gave his assent or not the proposition that the committee of management should continue to carry on the business does not in these circumstances appear important, but in fact the learned judge has found specifically that he took no part in any discussion and gave no assent to any resolution passed at the meeting. It is difficult to regard his attendance as involving any inconsistency of conduct. It was quite compatible with the position that he had taken up that he required the repayment of his money and wished to relinquish his shares.

The delay imputed to the plaintiff in seeking relief is not in the circumstances great, and certainly not undue. Before his departure

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the Morgans had acquiesced in his request for the repayment of his money. The secretary, King, took no stand to the contrary. Discussions proceeded. The plaintiff was told that attempts were being made to persuade the Morgans to return and deal with the situation. The meeting of parties interested was summoned because they were concerned in a very obscure and difficult situation. The plaintiff's position had been made clear by his solicitor's letter. That was on 19th May and the writ was issued on 30th May 1952. A traditional reason which is given for requiring great promptness on the part of a shareholder seeking to relieve himself from a contract of membership on the ground of fraud is one that perhaps can seldom have much reality of application in the course of business as it proceeds at the present time. It is expressed by Lord *Romilly* M.R. in *Heymann* v. *European Central Railway Co.* (1) thus: "It is obviously of the utmost importance in these cases that a shareholder should come at the earliest opportunity, before other persons have entered into engagements with the company upon the faith of his being a member of it" (2). It seems probable that the defendant company was continuing to do some milling of timber, but it is a proprietary company and in any case there were not changing rights. Those actually or presumptively interested found themselves confronted with a situation and set about finding a remedy. Nothing the plaintiff omitted to do led them to take a course they would not otherwise have adopted. His position was clear enough. His delay, such as it was, in issuing his writ was attributable not to any uncertainty on his part as to where his interests lay, but to the absence of any authority with which to deal on behalf of the company, and the absence of anyone who could give a definitive answer to his claim. The fact is that as soon as he discovered the falsity of the material representation the plaintiff intimated clearly enough to the Morgans that he required repayment of his money and that he desired to return his shares. To this he obtained the apparently ready assent of Morgan senior. After that the course the plaintiff pursued was dictated by Morgan or Morgan's conduct, not by his own desires. He acquiesced in the procedure proposed, though he did not comprehend its possible implication. Morgan proposed it, as now seems certain, only because it meant delay. Then Morgan's disappearance left only King for the plaintiff to deal with and King naturally could or would do little but seek Morgan's return. Lastly the plaintiff deferred to those acting in the general interest who sought a solution of the difficulties

(1) (1868) L.R. 7 Eq. 154.

(2) (1868) L.R. 7 Eq., at p. 169.