

*Privy Council Appeal No. 156 of 1919.*

Meredith Rountree - - - - - *Appellant*

v.

J. and L. M. Wood - - - - - *Respondents*

FROM

THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 16TH DECEMBER, 1920.

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*Present at the Hearing:*

VISCOUNT HALDANE.

VISCOUNT CAVE.

LORD SUMNER.

LORD PARMOOR.

[*Delivered by LORD SUMNER.*]

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The appellant sued for the price of 925 common shares of the Guardian Realty Company, Limited, of Canada, which he purported to have sold to the defendants at \$15 per share. He recovered judgment at the trial, which was reversed by the Appellate Division of the Supreme Court of Ontario, and he now appeals.

The respondents, stockbrokers in Toronto, who were interested in getting the shares of the above Company subscribed, employed the appellant, a stockbroker in Montreal, to place \$250,000 Preferred Stock for a cash commission and a bonus of 925 common shares under an underwriting letter, dated the 10th December, 1913. In addition to the terms as to commission and bonus, the letter contained the following:—

“The said underwriting shares to be delivered to you when the underwriting is fully paid. You are to have the privilege of selling to us all or any part of said 925 shares at a price of \$15 per share. Any of the said shares that you do not sell to us and retain for yourself are not to be offered except through us for a period of six months from 1st October next.”

The plaintiff procured subscriptions to the amount named, which were fully paid by July 1914. He received the whole of his cash commission and 300 of the bonus shares, and from time to time pressed for the residue. On 24th September certificates were tendered to him, which were in the defendants' names. He asked for certificates in his own name, which the defendants agreed to procure, but compliance with his wish involved some delay, and they were not actually handed to him until 5th October. In November he called on the respondents to buy these shares of him at \$15 per share. This they refused to do. Their case, both at the trial and on appeal, was that the option to sell the shares was, on the true construction of this letter, only exercisable before 1st October, 1914. The plaintiff's case was that it was exercisable within a reasonable time of the delivery of the share certificates to him. This was the principal issue and, if it is decided against the plaintiff, sundry minor questions become immaterial.

The Appellate Division of the Supreme Court of Ontario was of opinion "that the true meaning of the agreement is, that all shares that had not been sold prior to the 1st October should be considered as retained by the plaintiff," and were, therefore, not such as he could call upon the defendants to buy from him, though for the six months named he could only sell the shares through the defendants. The Court considered that the second and third of the sentences above quoted hung together, so that their effect would be: "You can sell these shares to us at \$15 if you like, and, if you keep them and do not sell them, there will follow a period of six months from the 1st October during which, if sold at all, they must be sold through us only." The plaintiff sought to read the sentences independently of one another, thus:—"From the 1st October to the 31st March, if you sell to third parties, you must sell through us; but for a reasonable time after we deliver your shares, you can sell them back to us if you like, and we will buy them ourselves at \$15 each."

Their Lordships think that the view of the Appellate Division of the Supreme Court was right. After the plaintiff had become entitled to his bonus shares, he might say that he would not sell them to the defendants, in which case he retained, or kept, them, or he might exercise the right of returning them to the defendants at a certain price. So far as he returned them, the matter ended in payment of money by the defendants: so far as he did not return but kept them back, he was limited, as to his channel of sale, for six months. The two sentences cannot be independent of one another, and, provision being made for the event of the option not being exercised, by fixing a limited period during which there was to be a restricted power of sale to third parties, it follows that the period for the exercise of the option terminates before the period for the restriction on the sales begins. This being the true construction of the words, it is enough to add that the practical business of the transaction is all on the side of the defendants, without further elaborating the matter.

The appellant further contended that delivery of the share certificates to him was a condition precedent to his exercise of the option to sell the shares to the respondents, and that, as delivery did not take place till after the 1st October, 1914, an extension of the time for the exercise of the option would be the legal consequence. This argument does not appear to have been presented to the Supreme Court. The letter says nothing about any condition precedent, for it is pressing the word "retain" too far to say that it imports delivery of some physical document of title, which could then be physically held back, and there is no other reason for implying it. Delivery of the shares would be material to the performance by the appellant of a contract to sell them to third parties, but, as the defendants had or controlled the shares already, an election to require the defendants to buy them at \$15 was entirely independent of their delivery of the certificates. Between the plaintiff and the defendants, even if the words "privilege of selling to us" import a transfer and not a mere contract, it is not necessary to presuppose delivery of the share certificates to the plaintiff. All that the defendants had to do was to pay the price for those which the plaintiff elected to sell, and to reduce in proportion the number of shares to be delivered to him. So far from its being necessary that he should receive certificates before he could elect how many he would not retain but would sell, it might be a useless formality to make out certificates in his name in substitution for certificates in the defendants' name, if they were only to be returned against a cheque for the appropriate amount.

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed with costs.

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In the Privy Council.

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MEREDITH ROUNTREE

*o.*

J. AND L. M. WOOD.

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DELIVERED BY LORD SUMNER.

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