In this case it may be contended that the company was not really finally organized tlll January, 1893; but even if that be so, finding, as I must, on the evidence, that there was an agreement between Reimer, Iredale, and Smith that they should transfer their business to the company in exchange for fully-paid-up shares to the extent of Reimer's 160 shares, Iredale 160 shares, and Smith 158 shares, and that this agreement was carried out in fact, though not in writing, and the company got the existing assets of the concern, I must hold that these shares must be treated as fully-paid-up shares. We have no similar provision in our Act to the Companies Act of 1867, 31 Vict., c. 131, s. 25, which compels the registration of all agreements for the transfer of property to companies in exchange for paid-up shares; and therefore an agreement such as is set up in this case is valid if made in good faith, and if it be free from fraud.

As to the case of Joseph Smith and W. J. Smith, who are subscribers for one share each in the company, they were not parties to the original agreement, and transferred no property, or otherwise in any way paid for their shares. They must therefore be fixed on the list of contributories for the amounts placed against their names by the liquidator, viz., $25 each: *Re Heyford Iron Works Co.*; *Forbes* v. *Judd Case*, 5 Chan. 270.

The list of contributories as filed by the liquidator must be varied by removing the names of J. Reimer, Thomas Iredale, and Edward Smith.

I do not propose to consider or decide the question as to whether R.S.O., c. 183 (the Winding-up Act) is *ultra vires* of the Local Legislature. I hold for the purposes of this enquiry that the winding-up order was properly made.

I do not allow any costs to Reimer, Iredale, or Smith of this contestation, but I think the whole affair was so loosely managed that the liquidator was bound to place them on the list in the first place. Costs of liquidator out of estate.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

Q.B.D.] [Nov, 14.

ALLISON *v.* MCDONALD.

Partnership—Collateral security—Principal and surety.

When the creditor of a partnership who holds a mortgage on property of the firm amply sufficient to secure his claim discharges that mortgage at the request of one partner without the consent of or notice to the other, although he knows that the partnership has been dissolved and that the continuing partner has assumed the liabilities, he cannot afterwards recover as against the retiring partner.

Judgment of the Queen's Bench Division, 23 O.R. 583, reversed; MACLENNAN, J.A., dissenting.

J. A. Robinson and *W. J. Tremear* for the appellant.

Aylesworth, Q.C., for the respondent.