

CLUTE, J.

JUNE 12TH, 1915.

RE DOMINION MILLING CO.

DENNIS'S CASE.

Company—Winding-up — Contributory — Agreement to Take Shares—Invalidity—Absence of Allotment—Issue of Certificates for Shares—Liability Confined to Shares for which Certificates Issued.

Appeal by George H. Dennis from the finding of the Master in Ordinary, in a reference for the winding-up of the company, that the appellant's name was properly placed upon the list of contributories in respect of the sum of \$380 unpaid upon five shares of the capital stock of the company.

The company was incorporated on the 30th April, 1909. On the 23rd August, 1909, the appellant entered into an agreement with the company, whereby the company agreed to employ him in its flour-mill at a salary of \$10 a week, and he agreed to buy 5 shares of the company's stock at \$100 a share and to pay 50 per cent. of the price, "and balance of stock to be paid as he sees fit or otherwise to be paid weekly as convenient." The company also agreed, in case of dissatisfaction of either party, "by giving 60 days' notice, to withdraw this agreement," and the company to pay in cash to the appellant "the amount of stock he has paid up in said company." On the 28th August, 1909 (months after the incorporation of the company), the appellant signed the memorandum of agreement which had been signed by the incorporators before incorporation, by which he purported to agree to take 5 shares and to become a shareholder. On the same day, he paid \$100, and was given a certificate for one share. Subsequently, he paid another \$100, and was given a certificate for one share. He allowed a further sum of \$50 to remain in the hands of the company from his wages; and he received back, under the agreement, \$130. There was no evidence of allotment.

The appeal was heard in the Weekly Court at Toronto.
D. Urquhart, for the appellant.
R. McKay, K.C., for the liquidator.

CLUTE, J., was of opinion, for reasons stated at length in writing, that the agreement did not amount to a subscription