

"The law of set-off, as administered by the courts, whether of law or equity, shall apply to all claims upon the estate of the company, and to all proceedings for the recovery of debts due or accruing due to the company at the commencement of the winding up, in the same manner and to the same extent as if the business of the company were not being wound up under this Act."

The other clause is the 73rd, which has been taken from the 135th section of the Insolvent Act of 1873, and which excludes from the application of the set-off debts acquired by a contributory who knows, or has probable cause for believing, that the company is unable to meet its engagements, or that the act was done in contemplation of insolvency for the purpose of enabling a contributory to claim a set-off. And by section 16 of the Act of 1889 this clause is made applicable to all debtors to the company.

These clauses of the Canadian Act were construed by the Supreme Court in *Maritime Bank v. Troop*, 16 S.C.R. 456, where it was held that, as against calls made by the court on a contributory pursuant to the provisions of the Winding-up Act, such contributory could not set off a debt due to him by the insolvent company prior to the commencement of the winding up.

The intention of the Legislature in excluding under section 73 the right of set-off in the special cases there legislated against brings up a canon of statutory construction which provides that what is excepted would otherwise be included in the general words of the statute, and it shows that set-off is to be allowed in other cases.

The Supreme Court having declared that the English rule which makes the fund created by calls made by the court pursuant to the provisions of the Winding-up Act "a trust for creditors," some reasonable interpretation must be given to the words "debts due or accruing due to the company at the commencement of the winding up."

The case of *Maritime Bank v. Troop* came up by way of appeal from New Brunswick, and is reported in 27 N.B. 295. Mr. Justice King, whose judgment in the court below was approved of by the Supreme Court (16 S.C.R. 456), in giving a dissenting judgment, remarked that the expression used in the Act did not include debts which became or accrued due by operation of the winding up; and he called attention to the fact that, in the case