

SUPREME COURT OF ONTARIO

SECOND APPELLATE DIVISION.

DECEMBER 23RD, 1913.

LESLIE v. CANADIAN BIRKBECK CO.

5 O. W. N. 558.

*Company—Loan Company — Action by Shareholder for Account—
Prepaid Shares—Special By-laws of Company—Construction of
—Meaning of "Entire Profits" — Right of Prepaid Shares to
Share in Gross Earnings— Discretion of Directors as to Divi-
dends—Transfer of Assets to New Company—Reconstitution of
Shares—Acquiescence in by Plaintiff—Estoppel—Formation of
Reserve Fund—Mere Bookkeeping—Appeal.*

Action by a stockholder for an accounting of the profits of a company. Plaintiff was the holder of a certain class of stock called prepaid stock upon which \$50 a share had been prepaid. This stock was to receive 6 per cent. per annum upon the amount paid in, and any surplus profits were to be added to the prepayment until the total reached \$100 a share, when the stock was to rank as fully paid-up stock and to receive dividends accordingly. Plaintiff claimed that under the by-laws this prepaid stock was to receive a certain amount of the gross profits of the company for division among the holders of such stock and asked for an accounting upon this basis.

BRITTON, J. (24 O. W. R. 407) *held*, that the prepaid stock could only share in net earnings and that the directors of the company could determine how much they should distribute each year in earnings and that therefore the action must be dismissed.

SUP. CT. ONT. (2nd App. Div.) *held*, that the phrase "entire profits" did not necessarily mean more than "net profits."

That there was nothing to prevent the directors from transferring the surplus profits credited each share to a reserve fund as the shareholders were entitled to no dividends thereon until the amount reached \$50 per share and consequently it was a mere matter of bookkeeping.

Appeal dismissed without costs.

An appeal by the plaintiff from a judgment of HON. MR. JUSTICE BRITTON, 24 O. W. R. 407, dismissing plaintiff's action.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

J. R. Roaf, for plaintiff.

Hon. Wallace Nesbitt, K.C. and H. S. Osler, K.C., contra.

HON. MR. JUSTICE RIDDELL:—The facts are accurately and with a trifling exception fully stated in the reasons for judgment.

The objections taken before us by the appellant are two in number—one a matter of principle and of great im-