

SUTHERLAND, J.

NOVEMBER 8TH, 1917.

RE CIVIL SERVICE CLUB.

FURNISS WITHY & CO. LIMITED'S CLAIM.

Company—Winding-up—Club Subscription—Offer to Return—Acceptance—Contract—Consideration—Creditor's Claim—Preferred Claim—Moneys Deposited in Bank—Trust—Ear-marking.

Appeal by the claimant company from the certificate of the Local Master at Ottawa, in a reference for the winding-up of the club, which was incorporated as a company, of his finding against the claim of the appellant company to rank as a creditor upon the assets of the club in liquidation. The appellant company's claim was to rank not only as a creditor but as a preferred creditor.

The appeal was heard in the Weekly Court at Ottawa.

W. L. Scott, for the appellant company.

G. F. Henderson, K.C., for the liquidator.

Clarke, for one Ebbets, a creditor.

SUTHERLAND, J., set forth the facts in a written judgment. He said that, as the result of solicitation on the part of an agent of the club, the appellant company agreed to pay \$250 to the club for a life-membership. The appellant company paid the \$250, and a life-membership certificate was issued in favour of J. R. Binning, its manager, and sent to the company. The directors of the club, learning that persons had been induced by doubtful methods of solicitation to become life-members, on the 20th October, 1916, resolved that the subscriptions of these persons should be returned. The appellant company was notified of the resolution, and returned the certificate of life-membership to the club, in a letter in which the company said, "We note you will arrange to refund the cost of this membership."

The winding-up order was made shortly afterwards, the subscription-money not having been refunded.

It appeared that the moneys obtained for life-memberships through the efforts of the agent were wholly or in part carried into an account in a bank, commencing with a deposit of \$2,750 on the 25th September, 1916. The appellant company's cheque was sent to the club on the 21st September, 1916. The company