

MEREDITH, C.J.C.P.

MARCH 4TH, 1913.

RE EMPIRE ACCIDENT AND SURETY CO.

FAILL'S CASE.

Company—Winding-up—Shareholder—Liability as Contributory—Evidence—Onus—Dominion Incorporation—Provisions of Companies Clauses Act—Proxies—Pledgor and Pledgee.

Appeal by Faill against the ruling of MACBETH, Co.C.J., as Referee in a winding-up proceeding, that the appellant was liable as a shareholder of the company and properly on the list of contributories as such.

The appeal was heard by MEREDITH, C.J.C.P., at the London Weekly Court, on the 1st March, 1913.

G. G. McPherson, K.C., for the appellant.

J. O. Dromgole, for the liquidator.

MEREDITH, C.J.C.P.:—The grounds of the appeal are: (1) that the appellant never was a shareholder; and (2) that, if he were, it was in such a capacity that he was not personally liable to pay for the shares.

The evidence adduced before the Referee was not as full as it might have been, and as, under ordinary circumstances, it should have been. The appellant's testimony, perhaps from lack of memory, left much to be desired in the way of light upon the real circumstances of the case: and I cannot but think that more light might have been thrown upon the subject of the missing books and papers of the company. Leitch, who seems to have been practically the company, was not examined as a witness. There can be little doubt that, if he would, he could make quite plain all that is left in doubt as to the stock in question in this appeal. But he is said to be now living in Alberta: and it is added that the amounts in dispute are really so small, though nominally large, that, whatever the result, it might be unprofitable to go to any further expense, such as would be needed in procuring the further evidence I have alluded to; that a call of five per cent. is likely to be all that shall be needed for the satisfactory and complete winding-up of the company.

In support of the first ground of the appellant's contention,