

legal evidence against the respondent, I would also unhesitatingly reach the same conclusion. . . .

[Reference to *In re Barangah Oil Refining Co.*, Arnot's Case, 36 Ch.D. 702.]

It is true that it would appear from the evidence that much less was said by McMahon against setting him down as a shareholder than against setting him out as president; but that was only natural; one would not expect anything else. The gravest feature of the case was in the complaint of subscribers that McMahon's name lured them into the company to their loss. Attention would be centred upon that.

I do not stop to consider whether I should or should not agree with the Referee on the ground upon which he held that the respondents are not liable, because it does not seem to me to be needful to go as far as he went, in this respect, in order to defeat the appellants' claim, if subscription for the shares had been proved.

There was a real contest, waged in good faith, between the company and McMahon, as to whether he was liable or not as a shareholder of 50 shares of the company. At a meeting of the company, called for the purpose of considering all such matters, a compromise, made in good faith on both sides, was reached, and a settlement effected, which had been, entirely, carried out years before the winding-up order in this matter was made. Assuredly such a settlement is valid, and cannot now be ripped up by a creditor of the company or by any one else. In *Lord Belhaven's Case*, 3 De G.J. & S. 41, and in *Dixon v. Evans*, L.R. 5 H.L. 606, persons who were admittedly shareholders were relieved under a compromise: in such a case as this, necessarily, there must be power to compromise or otherwise release a claim such as this, for, if not, relief would be obtained in an action, whether brought by the company or the alleged shareholder; and the law could hardly compel a company to litigate even a claim in which it was obvious that it must fail. There is no question of reducing the capital stock of the company; the stock remains; there was no question of subscription for it beyond the 10 shares.

The appeal must be dismissed with costs.