

other things, that the defendant was one of the applicants for the letters of incorporation, and had ever since the incorporation been the holder of 50 shares of the capital stock of the company of the par value of \$100 each, and that five calls of 20 per cent. each had been duly made and notice thereof duly given to the defendant; and the plaintiffs claimed payment of \$5,000 for principal and \$164.14 for interest. In his statement of defence the defendant set up various grounds upon which he asserted that he never became or was a shareholder in the plaintiff company, and he also specifically denied that he ever became or was the holder of the said 50 shares or any shares of the capital stock of the company. He further alleged that the calls were not made in pursuance of the letters patent and the Ontario Companies Act and the by-laws of the company. He also caused third party proceedings to be instituted against one Richard Harcourt, claiming that the latter was bound to relieve him from the said shares and all liability in respect thereof. Mr. Harcourt having filed a defence to this claim, an order was made providing, amongst other things, for the trial of the issues between McKinnon and him by the Judge before whom the action was tried, immediately after the trial or otherwise as the trial Judge might direct.

The action and issue came on for trial before Magee, J., on the 5th October, 1904, in the presence of counsel for all parties, and, counsel aforesaid consenting thereto, it was ordered and adjudged that the action of the plaintiffs against the defendant be dismissed without costs, and that the claim of the defendant against the third party be withdrawn. With reference to this disposition of the matter, an entry appears on p. 137 of the minute-book of the company as follows: "Directors' meeting, 15th October, 1904. 3. S. F. McKinnon suit: The president reported that the case had been dismissed, which settles the matter as far as the company is concerned, but Mr. McKinnon would, in his (the president's) opinion, still be held liable to creditors of the company. . . ."

No further action was taken by the directors or the company. McKinnon's name continued on the books as a shareholder, but he was not aware of it. No further demand for payment was made; he was not notified of and did not attend or vote at shareholders' meetings or otherwise act as a shareholder.

The company continued business until the latter part of 1908, when, upon proceedings instituted under the Winding-up Act (Dom.), an order was made on the 15th December, 1908, declaring the company insolvent and directing it to be wound up