

[Note: By sec. 110 "the practice of the Court in like cases" is made applicable, but that is "after a winding-up order is made." *Quære*, whether, before a winding-up order, the ordinary practice of the High Court would apply, e.g., as to cross-examination upon affidavits, which was in question upon the application before RIDDELL, J., in this matter, ante 294. The Editor is informed by counsel that that point was not raised before RIDDELL, J.]

TEETZEL, J.

DECEMBER 23RD, 1910.

\*RE MONARCH BANK.

*Banks and Banking—Powers of Provisional Directors—Payment of Commissions on Sales of Shares—Impairment of Capital—Bank Act, secs. 12, 13—Shares Issued at a Premium—Misfeasance or Breach of Trust—Liability in Winding-up Proceedings under sec. 123 of the Winding-up Act—Director not Liable for Expenditure by Co-directors not Directly Authorised by him.*

Appeal by Ostrom and others, provisional directors of the bank, from the judgment and report of J. A. McAndrew, an Official Referee, upon a reference for the winding-up of the bank, that the appellants were liable for breach of trust or misfeasance under sec. 123 of the Winding-up Act.

A. B. Morine, K.C., for the appellants Ostrom, Graham, and Livingstone.

H. E. Rose, K.C., for the appellants Kerr, Mackenzie, and Perfect.

C. A. Masten, K.C., and M. C. Cameron, for the liquidator.

TEETZEL, J.:—The appellants were provisional directors of the Monarch Bank, which was incorporated on the 20th July, 1905, by 4 & 5 Edw. VII. ch. 125 (D.); the time for obtaining the certificate under sec. 14 of the Bank Act was extended until the 20th July, 1907, by 6 Edw. VII. ch. 127 (D.)

The acts for which the learned Referee found the appellants to be liable were the payments of money received by them

\*This case will be reported in the Ontario Law Reports.