

MACMAHON, J. (after setting out the facts at length):—The winding-up order is dated 4th April, 1904, two years after the certificates for the 30 shares of paid up stock were issued to the appellant, who accepted the stock as being fully paid up; and where certificates are issued for fully paid up stock, as said by Sir Henry Strong in *Re Hess Manufacturing Co.*, 23 S. C. R. at p. 653, the Master under the winding-up order has no jurisdiction to entertain the question of liability, that question being one which could only be properly litigated in an action in due form instituted by the liquidator on behalf of the company.

Appeal allowed with costs.

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MACMAHON, J.

APRIL 25TH, 1905.

TRIAL.

MORAN v. WOODSTOCK WIND MOTOR CO.

*Sale of Goods—Warranty—Breach—Damages—Costs.*

Action to recover damages for breach by defendants of a warranty given by them in connection with a windmill sold to plaintiffs.

E. M. Young, Picton, for plaintiff.

J. G. Wallace, Woodstock, for defendants.

MACMAHON, J.:—On 11th February, 1904, plaintiff gave to defendants an order for a steel wind-motor which was to be erected on plaintiff's farm. . . .

On the back of the order the following warranty was indorsed by defendants: "We warrant the steel wind-motor when properly erected to be self-regulating, easy running, and the most durable machine made. We also agree that should the tower blow down or the mill leave the tower within one year after erection by storms from which no other wind-mills in the vicinity suffered, we will re-erect or replace it with another mill, free of charge. Should any of its parts be found defective on account of poor material or poor workmanship, we agree to furnish such part f.o.b. cars Woodstock, on the defective parts being shewn to us. We guarantee outfit against frost."