

others had paid 60 per cent.; some 55 per cent., and some only 35 per cent., on their shares. It was urged by counsel for the holders of fully paid up shares that the surplus assets should be distributed amongst the members in proportion to the capital paid on the shares held by them. In some cases the articles of association of a company make provision that on the winding-up the surplus assets shall be so divided, as was done in *In re Anglo-Continental Corporation of Western Australia*, [1898] 1 Ch. 323, and *In re Mutoscope and Biograph Syndicate*, [1899] 1 Ch. 896, and when that is the case the principle of distribution thus provided for must be carried out.

The only provision made by the Peterborough Water Company for the distribution of the assets was by a resolution passed at a general meeting of the shareholders of the company on the 2nd March, 1900, which, after providing for payment at par value to the shareholders of the stock allotted to them in proportion to the amounts paid on the respective shares, and dividends thereon to 31st January, 1902, and after payment of the liabilities and the costs of winding-up, etc., directs that "the surplus at the credit of the company's account in the bank be distributed amongst the members according to their rights and interests in the company." This resolution was, no doubt, framed from the English Companies Act, 1862, sec. 133.

Where the articles of association or regulations (resolutions) of a company do not provide for the distribution of the assets on the winding-up of a company, then, as stated by Mr. Buckley in his work on Companies, 7th ed., p. 322: "If the surplus assets are sufficient to repay every member his capital in full and leave a surplus, such surplus, except so far as it consists of undivided profit, forms part of the joint stock which at the winding-up represented the capital, and, in the absence of provision to the contrary, is divisible among all the members in proportion to their interests in capital, that is, in proportion to the amount of their shares, not to the amounts paid on their shares." [Reference again to *Birch v. Cropper*, *supra*.]

I have just a word to say respecting the sum of \$5,279.64, which appeared as the net amount carried on the 31st December, 1901. Mr. Wood contended that this sum, being the profits for the year, should have been distributed as dividends among the shareholders, and formed no part of and should not have been included as part of the surplus assets for distribution under the winding-up. The admission in