

# The Ontario Weekly Notes

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TORONTO, JULY 12, 1911.

No. 42.

## COURT OF APPEAL.

JUNE 30TH, 1911.

\*RE ONTARIO SUGAR CO.

McKINNON'S CASE.

*Estoppel—Res Judicata—Company—Winding-up—Contributory  
—Action for Calls — Dismissal — Consent Judgment —  
Grounds for—Ascertainment—Evidence outside of Plead-  
ings and Judgment.*

Appeal by the liquidator from the decision of MEREDITH, C.J.C.P., ante 496, 22 O.L.R. 621, dismissing an appeal from an order made by an Official Referee upon a reference for the winding-up of the company, striking the name of S. F. McKinnon off the list of contributories.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, and MAGEE, J.J.A.

Strachan Johnston, for the appellant.

J. Shilton, for S. F. McKinnon, the respondent.

The judgment of the Court was delivered by MOSS, C.J.O.:—  
McKinnon was one of the original subscribers for shares in the company. He signed the memorandum of agreement and stock-book upon which the petition for the issue of letters of incorporation was based, and thereby agreed to take 50 shares of the par value of \$100 each. He was named in the letters of incorporation as one of the incorporators. Calls were made upon him in respect of these shares to the extent of \$5,000. He denied that he was a shareholder and refused to pay the calls. Thereupon the company commenced an action against him on the 10th December, 1902. The statement of claim alleged, amongst

\*To be reported in the Ontario Law Reports.