

contracted and had never in any way consented to or known of Ellis' diversion of the money, and that was all Knowling actually knew about the matter. The fact that Knowling was a director he considered did not prevent the company from being estopped by the certificate signed by him, there being no evidence that he had acted in collusion with Ellis. He thought the certificate was binding quite irrespective of the transfer from Ellis to the firm; and, in the absence of any evidence to the contrary, he thought Knowling might well have thought that the shares were issued to Ellis by mistake. He therefore struck the applicants' name off the list of contributories.

COMPANY—CONTRACT OF SERVICE—SALARY TO BE PAID OUT OF "PROFITS"—"PROFITS"—WINDING-UP—SURPLUS.

*In re Spanish Prospecting Co.* (1911) 1 Ch. 92. In this case an appeal was had from a decision of Eady, J. The point in controversy was comparatively simple. A claim for arrears of salary was made against a company in liquidation in the following circumstances. The claimants had been employed by the company at a fixed salary to be payable out of the "profits" of the company and not otherwise, but it was agreed that the salary was to be cumulative and that the arrears might from time to time be paid out of profits as they should accrue. In the voluntary liquidation the whole of the assets had been sold and sufficient realized to pay all creditors except the claimants to whom a sum of about £8,000 for arrears of salary was due, and the subscribed capital was returned to the shareholders in full leaving a balance of £3,328 which the claimants contended should be applied on account of their claim. Eady, J., came to the conclusion that this balance was not "profits" because at the date of the winding-up there appeared to be a debit balance of £270 on profit and loss, and that the £3,328 was the surplus of realized assets and not profits. From this conclusion the Court of Appeal (Cozens-Hardy, M.R., and Moulton and Farwell, L.J.J.) dissent, the surplus in question not being due to any new business carried on by the liquidator ought, in their opinion, properly to be carried to the credit of the profit and loss entirely irrespective of what appeared to be the state of that account at the date of the winding-up. Moulton, L.J., is of the opinion that "profits" are ascertainable by "a comparison of the assets of a business at two dates." He probably means "net assets" after deducting all liabilities, as it seems clear a mere comparison of gross assets would furnish no criterion for ascertaining profits.