

(10) By-law 27 further provided that in the event of the company being wound up, if any surplus of the capital assets was to be returned to shareholders, the holders of the second preference stock should be entitled to have the full nominal value of their shares, and all dividends thereof up to that date, returned and paid to them before any return of capital in respect of ordinary stock; and, subject thereto and to the first preference stock, the holders of the ordinary shares should be entitled to such surplus of the capital assets.

(12) The full nominal amount of the second preference stock and all dividends thereof up to 31st January, 1902, were duly tendered to the holders of such stock, and were accepted by them.

(16) The amount paid in by the holders of ordinary stock were returned and paid to them, with interest to 31st January, 1902.

(17) After providing for all the liabilities of the company, the return of all share capital, and the payment of dividends as above, there remained in the bank to the credit of the company a surplus of \$19,039.24.

The question for the opinion of the Court was: In what proportion or proportions were these surplus moneys distributable among the shareholders other than the holders of the first preference shares?

G. F. Shepley, K.C., for plaintiff.

R. E. Wood, Peterborough, for defendants Rogers and Lewis.

L. M. Hayes, Peterborough, for defendant Collins.

C. H. Bradburn, Peterborough, for defendant company.

MACMAHON, J.—No language could more clearly provide for exclusion of the second preference stockholders from participating in the surplus assets than that employed in the concluding words of the part of the by-law set out in paragraph 10 of the special case. Had the second preference stockholders not thus been contracted out of participation in the surplus assets, they might have been entitled to share therein with the holders of ordinary stock. [Reference to *Birch v. Cropper*, *In re Bridgewater Navigation Co.*, 14 App. Cas. 525.] The second preference shareholders are not entitled to share in the surplus assets.

The remaining question is: How are the surplus assets to be distributed amongst the holders of the ordinary stock? Some of such shareholders had fully paid up their shares;