

As no property in the coal passed to the plaintiffs the judgment should be affirmed.

MACLAREN and MAGEE, JJ.A., agreed with LATCHFORD, J.

MASTEN, J., read a dissenting judgment. He was of opinion that the property in the coal passed to the plaintiffs, and that the appeal should be allowed.

Appeal dismissed with costs (MASTEN, J., dissenting).

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B.

MAY 19TH, 1919.

RE METROPOLITAN THEATRES LIMITED.

Company—Winding-up—Directors—Payment of Dividend out of Capital—Liability—Ontario Companies Act, R.S.O. 1914 ch. 178, sec. 95.

An appeal by E. C. Eckert, P. Noble, and S. Stevely from the order and report of the Master in Ordinary, in a winding-up matter, finding the appellants to have been directors of the company and to have been parties to the ordering, declaring, and paying of a certain dividend out of the funds of the said company contrary to law, and ordering them to pay the sum of \$1,500 to the liquidator of the company.

The appeal was heard in the Weekly Court, Toronto.

J. M. McEvoy, for the appellants.

A. C. McMaster, for the liquidator, respondent.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the transaction in respect of which these three directors had been held by the Master to be liable did not, on its face, seem to involve any great amount of moral turpitude. Out of the dividend declared two of them received \$20 each, and the third \$116. It was probable that it never occurred to them that they were doing wrong. In view of the apparent hardship of the case and of the very earnest and forceful argument presented by counsel on their behalf, the learned Chief Justice said, he had more than once gone over the material and the authorities, but found himself unable