

was done, and the books of the bank did not shew it to have been considered.

The liquidator had failed to shew an acceptance by the bank of the written subscription, by proving both allotment and notice of allotment pursuant to that subscription; and for that reason had failed to make out his claim; and the appeal should be allowed with costs.

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FERGUSON, J.A.

JUNE 24TH, 1918.

RE MONARCH BANK OF CANADA.

SIMON'S CASE.

*Company—Winding-up of Banking Company—Subscription for Shares—Contributory—Allotment Made and Notified to Subscriber—Attempt to Shew, after Winding-up Order, that Subscription Made upon Conditions not Fulfilled—Oral Variation of Written Application—Mistake or Misrepresentation.*

An appeal by Simon from an order or direction of an Official Referee, in the course of a reference for the winding-up of the bank, that the name of the appellant should be placed upon the list of contributories.

The appeal was heard in the Weekly Court, Toronto.

W. J. McWhinney, K.C., for the appellant.

J. H. Spence, for the liquidator, respondent.

FERGUSON, J.A., in a written judgment, said that, in this case, subscription, allotment, and notice of allotment were proved; but the appellant sought now, in the winding-up, to assert that the subscription was conditional, and could not be accepted except subject to the condition that he should not be called upon to pay for his shares till a branch of the bank had been established in Halifax. This did not seem to be a condition precedent to the acceptance of the offer, but an attempt to add by parol a variation in contradiction of the terms of the written application—which could not be done.

In any event, what took place did not amount to a collateral condition or agreement, but was at most only a representation of what, in the opinion of the agent who solicited the subscription, would be done; and it was not now, after the winding-up order, and