

private character, and that the solicitor was not entitled to be present thereat, and that the managing clerk could only attend on giving the required undertaking, and the Court of Appeal (Collins, M.R. and Stirling and Cozens-Hardy, L.JJ.) upheld his decision.

COMPANY—WINDING UP—LOSS OF CAPITAL — PROFITS EARNED BEFORE WINDING UP—DIVIDEND NOT DECLARED—"SURPLUS ASSETS"—PREFERENCE AND ORDINARY SHAREHOLDERS.

In re Crichton's Oil Co. (1902) 2 Ch. 86, a point arising in a winding up proceeding is decided¹. The capital of the company consisted of ordinary and preference shares of £10, paid in full. The preference shares were entitled to a cumulative preferential dividend. The articles of association empowered the directors to set aside profits for a reserve fund. For three years the business was carried on at a loss, and £4,346 of capital was lost. In the next year a profit of £1,675 was made, but no dividend was declared, or any appropriation made of that sum. The company went into liquidation, and upon the winding up the debts were all paid, and £7 per share was returned to the shareholders. The above-mentioned sum of £1,675 remained in the hands of the liquidators, and the question was, how it was to be distributed. The preference shareholders who had received no dividend for the three years the business was carried on at a loss, or for the following year, claimed that it should be distributed among them. The ordinary shareholders on the other hand claimed that it should be divided rateably among all the shareholders, and Wright, J., gave effect to the latter contention, and the Court of Appeal (Collins, M. R., and Stirling and Cozens-Hardy, L. JJ.) affirmed his order. The articles provided that in the event of a winding up "the surplus assets" were to be divided equally between all the shareholders, and it was held that the fund in question must be regarded as "surplus assets," all moneys remaining after payment of outside claims coming under that head.

PRACTICE—JURISDICTION—ENGLISH CONTRACT—FOREIGN DEFENDANT—ACTION TO ENFORCE CHARGE ON ASSETS IN FOREIGN COUNTRY—SERVICE OUT OF JURISDICTION—FOREIGN DEFENDANT NECESSARY OR PROPER PARTY TO ACTION AGAINST DEFENDANT WITHIN JURISDICTION—RULE 64 (g)—(ONT. RULE 162 (g).)

Duder v. Amsterdamsch Trustees (1902) 2 Ch. 133, was an action brought to enforce an alleged equitable charge on property and assets of an equitable company in Brazil. The action was