

There was no evidence to establish the negligence of Eastwood nor to shew secret profits made by any of the other defendants. These claims failed.

The shares allotted to the defendants on organisation were issued by the plaintiff company as fully paid-up. No call had been made upon them; and this claim failed also.

The action should be dismissed as against all the defendants with costs; and there should be judgment for Lorimer for \$45 and for Eastwood for \$119.16 with costs of the counterclaim.

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MIDDLETON, J.

MARCH 11TH, 1920.

RE SINCLAIR AND HILL.

*Trusts and Trustees—Trustee under Syndicate Agreement—Distribution of Fund in Hands of Trustee—Failure of Syndicate Project—Claims of Members of Syndicate who had not Paid their Shares in Full—Equity Arising from Initial Fraud—Money in Hand Insufficient to Produce Equality—Partnership Rule—Shortages Chargeable against those who had not Paid in Full.*

Motion by the trustee under a syndicate agreement for the advice and direction of the Court as to the persons entitled to share in the moneys available for distribution.

The motion was heard in the Weekly Court, Toronto.

J. J. Maclellan, for the applicant.

C. B. Nasmith, for Rebecca Piper.

MIDDLETON, J., in a written judgment, said that the question arose under the terms of a trust agreement, constituting what was called the "Weyburn Syndicate."

The whole project had resulted most disastrously, and there was only a small fund for division.

Some subscribers paid in full—others, on finding they had been defrauded, paid only parts of their contemplated shares. The question was, whether the money in hand should be divided among those who had put money into the venture in proportion to the money put in, as contended by counsel for Rebecca Piper, or should be first used to recoup pro tanto those who had paid in full, as counsel for the trustee contended.