

LENNOX, J.

FEBRUARY 12TH, 1920.

HENRY HOPE & SONS OF CANADA LIMITED v.
SINCLAIR.*Company—Calls on Shares—Original Subscription before Incorporation—Representations of Promoter—Conditional Subscription—Condition Subsequent.*

Action for the recovery of \$9,000 for unpaid calls upon shares in the plaintiff company, subscribed for by the defendant.

The action was tried without a jury at a Toronto sittings.
M. L. Gordon and G. Hamilton, for the plaintiff company.
R. McKay, K.C., for the defendant.

LENNOX, J., in a written judgment, said that the defendant was an original stockholder and one of the incorporators of the plaintiff company, having signed the stock-book on the 5th December, 1912. The only payment was \$100 on the 11th December, 1913. The defendant said that he was not shewn the prospectus of the company, if there was any, and also relied upon an agreement or undertaking of one Young, the general agent of the prospective company, who obtained his (the defendant's) subscription, that he should be relieved therefrom, and that his subscription was conditional upon that undertaking.

The learned Judge discussed the cases cited: *In re Universal Banking Co.*, Rogers' Case (1868), L.R. 3 Ch. 633; *In re National Equitable Provident Society*, Wood's Case (1873), L.R. 15 Eq. 236; *In re Aldborough Hotel Co.*, Simpson's Case (1869), L.R. 4 Ch. 184; *In re Sunken Vessels Recovery Co.*, Wood's Case (1858), 44 Eng. R. 1201; *In re Monarch Insurance Co.*, Gorrisen's Case (1873), L.R. 8 Ch. 507; *In re Haggert Bros. Manufacturing Co.*, Peaker and Runions' Case (1892), 19 A.R. 582; *In re Metal Constituents Limited*, Lord Lurgan's Case, [1902] 1 Ch. 707; *Buff Pressed Brick Co. v. Ford* (1915), 33 O.L.R. 264; *Re Monarch Bank of Canada*, Murphy's Case (1919), 45 O.L.R. 412, 48 D.L.R. 588; and said that representations made by a promoter of a prospective company do not bind the company when it becomes incorporated: it cannot have an agent until it has a legal existence.

The learned Judge said that he could find no valid answer to the plaintiff company's claim. The initial question was a question of fact—was the subscription conditional? Quite clearly it was not. Take all the defendant said, and it amounted only to an expression of a hope—mutual encouragement by persons entering upon a joint adventure. Interest was not claimed.

There should be judgment for the plaintiff company for \$9,000 with costs.