

G. W. Adams, for the liquidator.

C. F. Ritchie, for the claimant.

KELLY, J.:—On the reference before the Master in Ordinary, in proceedings to wind up the Hartwick Fur Company Limited, he declared that Harry Murphy was entitled to rank in respect of a preferred claim for \$837.47, under the provisions of sec. 70 of the Dominion Winding-up Act.

The liquidator appeals against this decision on two grounds: (1) that the claimant does not come within the class of persons entitled to the preference given by sec. 70; and (2) that the money so allowed the claimant did not accrue to him in such manner and at such time as to entitle him to that preference.

In *Re Morlock and Cline Limited*, 23 O.L.R. 165, it was held that a commercial traveller is of the class of "clerks or other persons" mentioned in sec. 70. Murphy, the claimant, is, in evidence, a commercial traveller. His engagement with the company was to sell furs, and in the months during which he made the sales for making which he now claims, his whole time and services were to be given, and, so far as the evidence shews, were given, to the company. By the terms of the engagement he was to be paid, not a fixed salary or wages, but a commission on the amount of his sales. The contention is, that the character of his services and the mode of payment adopted took him out of the class entitled under the statute to a preference. The only circumstance which might be urged as against the claimant's right is the payment by commission instead of by straight salary; but the adoption of that means of payment does not, in my judgment, affect the relationship of the parties towards each other or take the claim out of the class intended to be benefited by the section referred to.

Nor do I think that the right of the appellant to succeed can be established on the other ground. The sales for making which the claim has been allowed were made in the months of March and April, 1913—perhaps some trifling sales later. The agreement was that payment should be made after the 1st July. The winding-up order, I am informed—it is not before me—was made on the 28th August, 1913. The Master had sufficient evidence before him to find that the amount allowed was due under the terms of sec. 70 so as to give the preference, and he so found. I see no reason for disturbing that finding.

The appeal is dismissed with costs.