

governing alleged contracts of guarantee, namely, that the statute does not apply where the guarantor has a personal interest distinct from the person whose credit he guarantees; and, although I cannot come to the conclusion that the defendant's interest as a shareholder is legally distinct from the Diamond company, yet his actual interest and activity in the affairs of the company affords substantial assistance in determining the meaning and effect of the contract which in the end secured the delivery of the goods sued for.

In view of the conclusions I have reached, it is not necessary to consider any question as to the form of the pleadings, or the record as it now is under the new Rules, made up of the writ and the defendant's affidavit. There is no claim made for interest for the plaintiff company.

There will be judgment for \$1,495.02 and interest from the date of the writ with costs.

LENNOX, J.

FEBRUARY 2ND, 1915.

RE CHALLONER.

Will — Construction — "Interest of Stock" Used as Meaning Shares in Company — "Any Male Heirs" — "Equally Divided between" — Person in Existence and Unascertained Class of Persons — Vested Interest — Costs.

Motion by the executor of the will of Agnes Audley Challoner, deceased, for an order determining certain questions arising in the administration of the estate as to the meaning and construction of the will.

J. J. Coughlin, for the applicant.

C. G. Jarvis, for George Challoner Benson.

F. W. Harcourt, K.C., for an unascertained class of persons.

LENNOX, J.:—The testatrix drew her own will. It is dated the 9th June, 1903, and she died on the 26th March, 1904.

The clause of her will requiring construction is: "The interest of stock in 'The Mooney Biscuit factory' to be equally divided between George Challoner Benson and any male heirs of Albert Benson and Thomas Challoner Benson."