

HIGH COURT DIVISION.

FERGUSON, J.A.

JUNE 24TH, 1918.

RE MONARCH BANK OF CANADA.

MURPHY'S CASE.

Company—Winding-up of Banking Company—Contributory—Subscription for Shares—Failure to Shew Acceptance by Notice of Allotment—Constructive Notice—Oral Agreement—Promissory Note.

An appeal by Murphy from the order or direction of an Official Referee, in the course of a reference for the winding-up of the bank, that the name of the appellant should be placed upon the list of contributories.

The appeal was heard in the Weekly Court, Toronto.

W. J. McWhinney, K.C., for the appellant.

J. H. Spence, for the liquidator, respondent.

FERGUSON, J.A., in a written judgment, said that the appellant signed an application for shares, agreeing to pay therefor in instalments, in the manner and at the times set out in the written application. At the same time, he and one Barry, an agent of the bank who solicited his (the appellant's) application, entered into an oral agreement whereby the appellant gave Barry a demand-note for the total amount of his subscription, and Barry agreed to have the note accepted by the bank as payment for the shares, and to have the appellant appointed a director of the bank, and that the bank would take over his trading account and furnish him and his firm with large credits. The bank did not proceed upon the note, but upon the original subscription. In the books of the bank the shares were allotted on the terms of the original subscription. It was not asserted that the appellant was sent or received any notice of such allotment. It was, however, urged that, because he was notified by letter that his note was overdue, he had constructive notice of allotment under his signed application.

The learned Judge said that he could not agree with that argument. It might be inferred from the letter that the bank had agreed to accept the subscription on the terms of the appellant's verbal offer to Barry, but the liquidator did not assert that this