

H. E. Rose, K.C., for the appellant.

W. N. Tilley, for the liquidator.

SUTHERLAND, J.:—An appeal by Charles S. Meek from the order of Middleton, J., allowing an appeal by the liquidator from the order of an Official Referee, in winding-up proceedings, placing the appellant upon the list of contributories, as a stockholder of the company in respect of 100 shares, on which nothing had been paid. The company was originally incorporated with a capital stock of \$100,000, and up to the 9th December, 1908, only eighty per cent. thereof, or 800 shares, had been subscribed.

The company desired to increase the capitalization to \$150,000. The Companies Act, 7 Edw. VII. ch. 34, sec. 13 (a), requires that before such increase can be applied for it is necessary that ninety per cent. of the original stock shall have been subscribed.

A meeting of the stockholders was called for the date mentioned, at which Meek made a verbal application for 100 shares of the treasury stock, and a resolution was duly passed directing that a certificate or certificates for the same should forthwith be issued and delivered to him. At the same meeting, a resolution was passed authorising the increase of the capital stock to \$150,000. At a meeting of the directors held on the same day, the 100 shares referred to were treated as subscribed for, as a by-law authorising the increase of the capital stock was passed, wherein it was recited that ninety per cent. of the original capital had been allotted and taken up. According to the evidence of Meek, before this date he had been negotiating with the company for the sale of a patent owned by him, but an agreement as to the price had not been arrived at. His evidence is, that it was well understood and agreed, when he subscribed for the 100 shares, that they were to be paid for out of the purchase-price for the said patent. The application for the increased capital stock was thereupon made and granted.

On the 23rd January, 1909, at a meeting of shareholders, a resolution was duly passed authorising the purchase from Meek of the patent, for the price or consideration of 260 paid-up shares of the common stock of the company, and authorising its issue to him upon the patent being duly assigned to the company. On the same day, a by-law was passed by the company which authorised the issue as preferred stock of 440 shares of the 500 shares by which the capital stock had been increased.