

due deference to my recent colleagues, the Board of Judges, I feel that I must follow the latest judgment of the learned jurist who presides over the highest Court in our land.

It is unfortunate that this conflict of decision occurs; but I am bound to express my individual view, supported as it is by the judgment of the Supreme Court—a Court itself of appellate jurisdiction, and whose decisions are binding on all inferior Courts—rather than follow the opinion of my two learned brothers as expressed in a Court having only a co-ordinate jurisdiction with myself.

The appeal will be allowed, and the original assessment made by the Assessment Department against the rails, poles and wires of the Toronto Railway Company be restored to the roll.

I must decline to state a case under 57 Vic. (Ont.), cap. 51, section 5.

\* \* \*

ROBERTSON, J.] [AUG. 4.  
RE JOHN EATON CO.,  
LIMITED.

*Company—Winding-up—Assignment  
for Creditors.*

Petition of Reid, Taylor and Bayne, creditors, for a winding-up order under R.S.O., ch. 129, and of Edward Hughes & Sons for a similar order. Where there will in all probability arise many questions of a complicated character, such as ascertaining contributories, and as to whether or not the stock of the company is paid up, and probably questions as to the assignment of the policies of fire insurance which could not properly be disposed of under the assignment for benefit of creditors already made, an order should be made for winding-up under the statute, notwithstanding the assignment, and notwithstanding that the desire of the majority of the creditors in point of number and value was for an ordinary liquidation under the Assignment Act.

The case of *Re Hamilton Whip Co.*, 24, O.R. 107, is distinguishable, as in that case there were no complications and all the stock was paid up, while here it is certain that there will be complications arising out of the amounts of stock owing to the company by members of the co-partnership.

Order appointing provisional liquidator and for winding up, with a reference to the Master-in-Ordinary to issue to Reid & Co., the first applicants. Petition of second applicants dismissed without costs.

James Parkes, for Reid & Co.

Ritchie, Q.C., for E. Hughes & Sons.

Armour, Q.C., for assignee.

J. Baird, Strachan Johnston, W. E. Middleton and C. A. Masten for other creditors.

---

#### UNITED STATES.

---

GEORGIA.] [27 S. E. 174.  
STODDER v. SOUTHERN  
GRANITE CO.

*Fraudulent Release—Rescission.*

The plaintiff was injured by defendant's negligence. Afterwards, while still weak in body and mind on account of his injury, he was induced through fraud to sign a paper purporting to be in full settlement of all claim for damages. For this paper plaintiff received twenty dollars, which sum he alleged that he was utterly unable to repay. Accordingly, he asked to be allowed to rescind the contract without returning its benefits. The Court denied this request (Atkinson, J., dissenting), laying down the general rule as applying alike to fraudulent contracts and to those of parties mentally incapable that a plaintiff desiring to rescind a fraudulent contract must offer and be willing to perform such acts on his part as will restore the defendant to the position which he occupied before the transaction.