

Notwithstanding what is said by one of the Judges in *Osborne v. Henderson*, I think the assets of the old concern were in this case fixed with a liability to pay the old creditors, so that the agreement between the old partners and the new company could not have been rescinded. The arrangement for a transfer of the whole business and assets, together with the burden of the liabilities, was the basis on which the new concern received its letters of incorporation; it was announced to the public in the prospectus filed in the office of the Provincial Secretary; and it was expressly communicated to these particular creditors, who gave their assent to the transfer of the business on these terms. No longer did they look to the old partners, who became members of the new company, but they relied upon the transfer of assets, which supplied the fund out of which they were to be paid, and upon the express promise of the defendant company to make payment of the claim. . . .

Appeal dismissed with costs.

LATCHFORD, J., concurred.

MAGEE, J., dissented, saying that the difficulty was that the plaintiffs had not abandoned their claim against the original debtors; that there was no consideration moving from the plaintiffs as a consideration for any promise by the new company; and that the company had not, on the facts, become trustees of moneys or property for the plaintiff so as to make the company liable within the authorities.

SUTHERLAND, J.

FEBRUARY 23RD, 1910.

RE STRATHROY LOCAL OPTION BY-LAW.

Municipal Corporations—Local Option By-law—Submission to Electors—Scrutiny of Votes Cast—Ballots Marked for Illiterate or Incapable Voters—Inquiry into—Rejection of Evidence—Powers of County Court Judge—Municipal Act, sec. 369.

Motion by James W. Prangley for a mandamus to the Judge of the County Court of Middlesex to compel him to inquire into