

This leave was refused on the ground that an appointment had been taken out to settle the list of contributories, and that all the defences raised by Gorrell could be dealt with upon the application to place him upon the list of contributories, with a right of appeal as wide as an appeal in an action that had been tried.

If that is the case, the action ought not to be allowed to proceed. There are in all about 16 actions, and if all are allowed to proceed a great delay may ensue and very large expense will be incurred.

This case is, after all, simply whether Gorrell is or is not a contributory.

The referee is, in my opinion, right in thinking that he has complete jurisdiction. The dictum which would on first impression seem to be against that view is that of the Chief Justice in *Re Hess Manufacturing Co.*, 23 S. C. R. 665. He said: "Relief by way of rescission is beyond the jurisdiction of the Master in a winding-up proceeding under the Dominion statute." I think the learned Chief Justice did not intend to go as far as to say that the Master had not jurisdiction to declare rescission to the extent of removing a name from the list of contributories, or, in other words, to give effect to a defence, if proved, of fraud in procuring the signature of a person to a subscription for shares. The Master has no authority to grant substantive relief such as might be claimed by counterclaim, or to rescind in the case of a sale by a promoter, or to give the consequential relief which in some cases rescission would involve.

The appellant, having resisted the claim for calls, and having put in his defence and counterclaim before the winding-up order, is not too late to insist upon the same defence now, if he can establish it: see *Whiteley's case*, [1900] 1 Ch. 365.

In view of what is said in the *Hess* case, I add that if the appellant shall not be able, by reason only of want of jurisdiction of the official referee, to avail himself of as full defence before said official referee as in the action, the present application and my decision thereon shall not stand in the way of, nor prejudice the appellant in, a future application.

Appeal dismissed. Costs reserved until after determination of question of appellant's liability.