

same, and alleges that if valid the debentures were used by one of the officers of the company in fraud of the company.

G. F. Shepley, K.C., for appellant Bank of Montreal.

W. A. Skeans, for appellant Blayney.

Hamilton Cassels, K.C., for liquidator.

Judgment of the Court (MEREDITH, C.J., MACMAHON, J.) was delivered by

MEREDITH, C.J.:—I am unable to agree with the ruling which has been made. It is plain, I think, that the debts, for the proof of which provision is made by sec. 56 and the following sections, which deal with the subject of proof of debts, are unsecured or only partly secured debts, in respect of which the creditor seeks to rank upon the general estate of the company in the liquidation, and have no application to fully secured claims where the creditor is content to rely upon his security and that only, and does not seek to share in common with other creditors in the distribution of the general assets of the company.

The provisions as to valuing securities (secs. 62, 63) are in entire harmony with this view.

Nor are these provisions applicable where there is a contest as to the right of the creditor to the security which he claims to hold for his debt. They are in their very nature applicable only where the right to the security is not disputed, and, as I have already said, are designed for the purpose of ascertaining for what sum the creditor is to be entitled to prove in the liquidation as an unsecured creditor.

Nowhere in the Act do I find any power conferred upon the Court in the winding-up to call upon any one who does not claim to rank as a creditor and to be entered upon the dividend sheet, to submit his right or title to any security he claims to have upon the property of the company to adjudication by the Court, or anything which confers upon the Court jurisdiction to try the question of right in the winding-up.

The course taken by the appellants in sending in their claims has led, I think, to the complications which have arisen; and though the ruling appealed from should be reversed, it is not, I think, unreasonable that the appellants should bear their own costs of the appeal. The costs of the liquidator will be paid out of the estate.

Proudfoot & Hayes, Goderich, solicitors for the appellants the Bank of Montreal.

E. G. Graham, Brampton, solicitor for appellant Blayney.

Cassels, Cassels, & Brock, solicitors for the liquidator.