

SECOND DIVISIONAL COURT.

MAY 26TH, 1916.

*RE PARKIN ELEVATOR CO. LIMITED.

*DUNSMOOR'S CASE.

Company—Winding-up—Creditor's Claim—Special Privilege over other Creditors—"Clerk or other Person"—"Arrears of Salary or Wages"—Winding-up Act, R.S.C. 1906 ch. 144, sec. 70—Sales-agent—Commissions.

Appeal by the liquidator of the company from the order of FALCONBRIDGE, C.J.K.B., ante 66.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

M. A. Secord, K.C., for the appellant.

P. Kerwin, for D. A. Dunsmoor, the respondent.

MEREDITH, C.J.C.P., read a judgment in which, after stating the facts, he said that three things must be established before any one claiming a privilege under sec. 70 of the Winding-up Act, R.S.C. 1906 ch. 144, could have it given to him: (1) the claim must be one of a "clerk or other person" in, or having been in, the employment of the company, in or about its business or trade; (2) for "arrears of salary or wages due and unpaid" at the time of the making of the winding-up order; and (3) must not exceed "the arrears which have accrued . . . during the three months next previous to the date of such order."

Treating the enactment as remedial and giving it such liberal construction as will best ensure the attainment of its object according to its true meaning and spirit (sec. 15 of the Interpretation Act, R.S.C. 1906 ch. 1), the person seeking its benefit must bring his case fairly within its provisions: the onus is upon him.

Reference to the Wages Liability Act, R.S.C. 1906 ch. 98; the Companies Act, R.S.C. 1906 ch. 79, sec. 166; the Wages Act, R.S.O. 1914 ch. 143; the Ontario Insurance Act, R.S.O. 1914 ch. 183, sec. 231; the Ontario Companies Act, R.S.O. 1914 ch. 178, sec. 174; In re Earle's Shipbuilding and Engineering Co., [1901] W.N. 78; The Elmville (No. 2), [1904] P. 422; Re Klein, [1906] W.N. 148; Re Morlock and Cline Limited (1911), 23 O.L.R. 165; Re Hartwick Fur Co. Limited, Murphy's Claim (1914), 6 O.W.N. 363; and said that the cases had already gone to the furthest extent which the elasticity of the words of the enactment would permit—whether they had or had not been overstretched in any case.