

It must be remembered, however, that it is advisable to state all possible grounds in the petition, even though there may be no apparent evidence in support of the same at the time that the petition is launched. This does not seem very logical when the ground which may subsequently appear on the evidence is one within the knowledge of the company itself: but the authorities seem to make no exception, but to insist stringently on the rule that the issue of an order must depend on what is alleged in the petition; see *Abbott Mitchell Iron and Steel Co.* supra, and *Re Briton Medical and General Association*, 11 O.R. 478, following the English authority on the point, *Re Wear Engine Works Co.*, L.R. 10 Ch. p. 191.

A point which has caused real or apparent conflict of decision, namely, as to the discretion of the court in granting a winding up order, has been recently dealt with by the Court of Appeal in *Re Strathy Wire Fence Co.*, ante p. 671.

It was held by Boyd, C., in *Re Maple Leaf Dairy Co.*, 2 O.L.R. 590, that the court has a discretion as to granting a winding up order (see ss. 9 and 19) and that this discretion will be exercised against the granting of an order when the assets are small and the creditors have almost unanimously entered upon an assignment for the benefit of creditors.

In this case the petitioner has relied on the decision of Meredith, C.J., in *Re William Lamb Manufacturing Co.*, 32 O.R. 243, as deciding that the petitioner has the right to an order "ex debito justitiæ." The chancellor expressed his dissent from this decision, which was to be expected in view of his judgment in *Wakefield Rattan Co. v. The Hamilton Whip Co.*, 24 O.R. 107.

In the *Strathy* case these authorities were considered by Teetzel, J., who did not give effect to the *Lamb* case and gave leave to appeal from his judgment refusing an order both as to discretion and upon the merits.

The judgment of the Court of Appeal confirming Teetzel, J., and refusing an order was delivered by Garrow, J.A., to the following effect: "The decisions in our courts are apparently conflicting, although I think the actual conflict is more apparent than real. I do not understand Meredith, C.J., (in the *Lamb* case) to say that in his opinion it is absolutely a matter of course to grant the order, no matter what the circumstances may be, nor do I understand the Chancellor (in the *Hamilton Whip* and *Maple Leaf*