RIDDELL, J., agreed with SUTHERLAND, J., that the appellant's consent to the closing of the part of the street referred to was not necessary; but was of opinion that the appeal should be allowed (with costs throughout), upon the ground that the County Court Judge's discretion was improperly exercised in closing part of the street to serve the purposes of a private corporation, no public purpose being achieved.

*Order as stated by* SUTHERLAND, J. (RIDDELL, J., *dissenting*).

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SECOND DIVISIONAL COURT. JUNE 9TH, 1920.

## *RE PORT ARTHUR WAGGON CO. LIMITED.

## *TUDHOPE'S CASE.

## *SHELDEN'S CASE.

*Company—Winding-up—Contributories—Application for Shares—Allotment—Notice—Acceptance—Special Contract as to Payment—Transfer of Shares not Paid for—Approval of Directors—Liability to Calls—Resolution of Directors—Dominion Companies Act, R.S.C. 1906 ch. 79, secs. 58, 59, 65, 66—"Call" Made upon Directors' Shares only—Invalidity as "Call"—Novation—Powers of Company—Surrender—Compromise.*

Appeal by the liquidator of the company from the order of MIDDLETON, J., 45 O.L.R. 260, 16 O.W.N. 65.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, and SUTHERLAND, JJ.

J. W. Bain, K.C., and M. L. Gordon, for the appellant.

W. N. Tilley, K.C., for Tudhope and Shelden, the respondents.

SUTHERLAND, J., in a written judgment, said that he was of opinion that the order of Middleton, J., should be affirmed, for the reasons stated by the learned Judge; but he (Sutherland, J.) would, if necessary, go farther and hold that there was in fact a matter of difference between Tudhope and the company resulting from the latter's dealings and agreement with the Speight company. That agreement would plainly prejudice the agreement which the company had theretofore made with the Tudhope-Anderson Company, the prospective benefit from which