

W. E. Raney, K.C., for the appellant.

J. M. Ferguson, contra.

HON. R. M. MEREDITH, C.J.C.P.:—The outstanding features of the litigation involved in this appeal seem to me to be inconsistent and unsatisfactory. I find it difficult to account satisfactorily for the shareholder in the former litigation being taken out of liability and the shareholder in this litigation left to bear the brunt. I am also unable to understand why the roundabout, costly and needless process of winding up the company should have been resorted to and authorised if the truth be, as it was asserted in the argument of this appeal, that there are no ordinary creditors of the company unpaid, and that these proceedings are being carried on for the one purpose of enabling the shareholder who got relief from his subscription to recover, from the shareholder who did not, the amount of the former's payment upon his stock for which he has judgment against the company; why he was not left to the more usual and direct method of doing so.

But there is no power to deal with the latter question upon this appeal; the winding-up order must be treated as a valid subsisting one, which it is: if it should not have been made, objection should have been raised before it was granted. So too as to the relieved shareholder who is prosecuting the winding-up proceedings; the judgment upon which his rights are based is a valid and binding judgment now, and must be given full effect to as such, however much one might think that if his case were to be decided now, upon the whole evidence available upon this appeal, he might very well fail.

Nor can the appellant succeed merely to make the conclusion of each case alike: nor even because one may think he has a better right to succeed than, or at least as good a right to succeed as, the other shareholder seems now to have had. The single question is whether the learned referee was right or wrong in his conclusion that the appellant is not entitled to be relieved from liability for his shares.

I am quite sure there never was any intention on the part of any one connected with the company to cheat, at any time; sincere belief in the future of the patented process was the mainspring of all that was said and done by