

former action, may look outside the judgment and the pleadings. And in this case it is not necessary to go beyond what is clearly admissible in order to come to the conclusion that the ground of dismissal was not confined to the issue as to the making of the calls. . . . Looking, as we are entitled to do, at the whole of the proceedings, including the third party proceedings, and reading, as we must, the judgment as a whole, it is apparent that it proceeded upon the basis of McKinnon's being not liable as a shareholder and of the plaintiffs assenting to that and giving up their claim against him as a holder of shares in the company. . . . The only fair inference from the way in which the third party claim was dealt with is, that, the basis of dismissal of the action being such as to put an end to all further claim on the part of the plaintiffs, no good reason existed for further prosecuting the claim against the third party. Coupled with this is the contemporaneous minute in the company's books of the president's statement that the case had been dismissed, which settled the matter as far as the company was concerned, the abstention from any subsequent demand for payment and from in any way treating him as a shareholder. . . .

Appeal dismissed.

JUNE 30TH, 1911.

RE LENZ.

Will—Construction—Avoidance of Intestacy—Indication of Intention to Dispose of whole Estate—Residuary Estate—Division into Shares—Deduction of Insurance Moneys from Shares—Testacy or Intestacy as to Insurance Moneys.

Appeal by the Official Guardian, on behalf of the infant son of the testator, from the judgment of MIDDLETON, J., ante 721, declaring the construction of the will of Charles Frederick Lenz, deceased.

The appeal was heard by Moss, C.J.O., GARROW, MACLAREN, and MAGEE, J.J.A.

I. F. Hellmuth, K.C., for the appellant.

E. D. Armour, K.C., for Catherine Bowstead and Emma Lenz, sisters of the testator.

J. Bicknell, K.C., and W. M. McClellmont, for Mary B. Lenz, the widow.

H. J. Martin, for the executors.