

MIDDLETON, J.

OCTOBER 28TH, 1920

RE BRITISH CATTLE SUPPLY CO. LIMITED.

HISEY'S CASE.

Company—Winding-up—Contributory—Companies Act, R.S.C. 1906 ch. 79, sec. 39—Amount Unpaid on Shares—Issue of Shares as Paid-up—Knowledge of Shareholder to Contrary—Estoppel—Liquidator—Agreement with Land Company—Set-off—Land not Conveyed.

Appeal by S. Hisey from an order of an Official Referee in a winding-up matter settling the appellant upon the list of contributories.

The appeal was heard in the Weekly Court, Toronto.
D. Inglis Grant, for the appellant.
Casey Wood, for the liquidator.

MIDDLETON, J., in a written judgment, said that certain matters were concluded, so far as he was concerned, by the judgment of a Divisional Court in *Re British Cattle Supply Co. Limited*, *McHugh's Case* (1919), 16 O.W.N. 206.

The stock subscribed by the land company was to be paid for partly in cash and partly by note. The land was to be paid for by the company. It was expected that one sum would be set off against the other, but the agreement was not an agreement to exchange stock for land. The stock was in fact unpaid. This had been found, and did not seem to admit of discussion.

In *Re Dominion Permanent Loan Co.* (1920), 47 O.L.R. 87, it was held that the limitation of liability on the part of shareholders in a company is that found in the statute, and that those who are in fact shareholders at the date of the liquidation must be placed on the list of contributories for the amounts unpaid upon their shares.

The Dominion Act under which this company was incorporated, the Companies Act, R.S.C. 1906 ch. 79, provides: "39. Every shareholder, until the whole amount of his shares has been paid-up, shall be individually liable to the creditors of the company to an amount equal to that not paid-up thereon."

When the company is insolvent this liability may be enforced by the liquidator so as to create a fund for payment of the creditors.

Ooregum Gold Mining Co. of India v. Roper, [1892] A.C. 125, and *Welton v. Saffery*, [1897] A.C. 299, shew that by no device or expedient can they destroy or alter this liability, which is the statutory incident of membership.