

MIDDLETON, J.

OCTOBER 21ST, 1913.

NORTHERN ELECTRIC AND MANUFACTURING CO.
LIMITED v. CORDOVA MINES LIMITED.

Company—Mortgage Made by Mining Company to Promoters and Owners of Stock—Action by Creditor to Set aside—Advances Made by Promoters—Judgment in Separate Action for Enforcement of Mortgage—Absence of Fraud—Assent of all Shareholders—Intra Vires Transaction—Application for Winding-up of Company.

Action by the plaintiffs, on behalf of themselves and all other creditors of the defendant company, to recover \$800, and to have it declared that a certain mortgage made by the defendant company to the defendants Hughes and Mackechnie, for \$60,000, on the 30th April, 1912, was ultra vires of the defendant company and void and a fraud upon the plaintiffs and the other creditors of the company.

In this action on the 22nd September, 1913, the plaintiffs, in their separate right, recovered judgment against the defendant company, and placed an execution in the hands of the Sheriff. At the time the action was begun, there were no executions against the defendant company in the Sheriff's hands.

The remaining claim in the action was tried before MIDDLETON, J., without a jury, at Peterborough, on the 14th October, 1913.

G. Grant, for the plaintiffs.

R. E. Wood, for the defendant company.

G. F. Shepley, K.C., and W. Tilley, for the defendants Hughes and Mackechnie.

No one appeared for the defendant Kirkgaard.

MIDDLETON, J.:—The defendants Kirkgaard, Hughes, and Mackechnie, being the owners of the mining property in question, caused the defendant company to be incorporated with the view of transferring the property to it. On the incorporation of the company, the property was conveyed in consideration of the issue of all the capital stock as paid-up, save a few shares necessary to the due incorporation of the company. These shares were held by Mr. Wills, the company's solicitor, and Mr. C. A. Bleeker, employed in his office. These two gentlemen were the nominees of the other three.