

The appeal was heard in the Weekly Court at Toronto.  
K. F. Mackenzie, for the appellants.  
J. A. Macintosh, for the liquidator.

CLUTE, J., set out the facts in an elaborate written judgment. He referred to the Ontario Companies Act, 2 Geo. V. ch. 31, under which the company had obtained its charter, and especially to Part VIII., which, the appellants contended, had not been complied with by the company. He also referred to *Re Canadian Tin Plate Decorating Co.* (1906), 12 O.L.R. 594; *Re Standard Fire Insurance Co.* (1885), 12 A.R. 486; *Hill's Case* (1905), 10 O.L.R. 501; *Nelson Coke and Gas Co. v. Pellatt* (1902), 4 O.L.R. 481; *Oakes v. Turquand* (1867), L.R. 2 H.L. 325, 342; *Nicol's Case* (1885), 29 Ch.D. 421, 426; *Hebb's Case* (1867), L.R. 4 Eq. 9; *Halsbury's Laws of England*, vol. 5, p. 173 et seq., paras. 288, 289, 294; *Elkington's Case* (1867), L.R. 2 Ch. 511; *Pellatt's Case* (1867), *ib.* 527; *Palmer's Company Law*, 9th ed., p. 105; *Roussell v. Burnham*, [1909] 1 Ch. 127; *Finance and Issue Limited v. Canadian Produce Corporation Limited*, [1905] 1 Ch. 37; *In re National Motor Mail-Coach Co. Limited*, [1908] 2 Ch. 228; *Burton v. Bevan*, *ib.* 240.

The charter, he continued, having provided for three directors only, six directors could not be legally elected; and, the company having assumed to elect the six directors, the six must be presumed to have acted under that election, and not by virtue of their being directors under the charter: *Garden Gully United Quartz Mining Co. v. McLister* (1875), 1 App. Cas. 39, 50, 53.

It was said that the proceedings towards election of directors, if entirely void, left the charter directors still in office; but, at the meeting at which the six directors were elected, the charter directors were not present, either in person or by proxy; they never assumed to act; and no valid allotment was ever made of any shares.

The creditors had no just cause to complain; they could easily have ascertained that the company was not authorised to commence business; and they were presumed to have known that any contract made by a company before the date at which it is entitled to commence business, is provisional only, and not binding on the company until that date: sec. 112, sub-sec. 3.

The provisions of the Act apply so as to prevent the recovery, even in winding-up proceedings: *In re Otto Electrical Manufacturing Co. (1905) Limited*, [1906] 2 Ch. 390; *New*