

HODGINS, MASTER IN ORDINARY.

APRIL 12TH, 1898.

MASTER'S OFFICE.

RE FARMERS' LOAN AND SAVINGS CO.

EX PARTE TOOGOOD.

*Company—Winding-up—Application for Leave to Add Company as a Party to an Action against Directors for Misfeasance in Office.*

An application by a shareholder in this company, under sec. 16 of the Dominion Winding-up Act, for leave to add the company as a party to an action on behalf of herself and other shareholders for indemnity and damages against the directors, trustees, managing agents, and auditors of the company, for issuing false reports and statements to the plaintiff and the other shareholders, the public, and the government, concerning the concerns and affairs of the said company, and for improperly paying dividends out of the capital of the company, when in insolvent circumstances, and for malfeasance, neglect of duty, breach of trust, and maladministration in their offices, and misapplication of funds, whereby the company became insolvent and the shares of the shareholders became worthless, and for an account, etc.

THE MASTER:—Section 16 is practically a statutory injunction prohibiting actions against a company in liquidation.

The action is one to which the creditors cannot be made parties; and to any moneys recovered therein for the breaches of trust charged the creditors have no claim.

In *Bank of Toronto v. Cobourg, Peterborough, and Marmora R. W. Co.* (affirmed on appeal, 10 O. R. 376), I held that the creditors of a company had no fiduciary right against its directors for certain breaches of trust. Such right is now extended to creditors by the Winding-up Act, and can only be enforced under sec. 83 of the Act.

In the jurisdiction conferred upon this Court for the winding-up of insolvent companies, some special features may