

fact, if it is important to decide whether the by-law was properly ratified under sec. 74, I find that it was not. Upon the evidence it does not appear to have "been confirmed by a vote of two-thirds in value of the shareholders present in person or by proxy at a general meeting of the company."

But it was contended on behalf of the defendants that it is sec. 78 that applies, and that under it no confirmatory by-law is necessary. A sufficient answer to that contention is that the by-law on its face expressly assumes to be passed under sec. 73, and a by-law so passed has no effect until it is so confirmed. Section 78 appears to be merely supplemental to sec. 73, and to authorise the directors to "charge, hypothecate, mortgage," etc., the "property" of the company "to secure any bonds," etc., duly authorised under sec. 73.

I find, therefore, that the mortgage in question was not properly authorised by the company, and must be set aside. There will therefore be judgment for the plaintiff, as liquidator of the New Ontario Brewing Co. Limited, to that effect, and the defendants will execute a discharge of the said mortgage. The plaintiff will have the costs of the action.

MEREDITH, C.J.C.P., IN CHAMBERS.

MARCH 16TH, 1910.

* KEMERER v. WATTERSON.

Writ of Summons—Service out of Jurisdiction—Con. Rule 162 (e), (h)—Place of Contract—Place where Payment to be Made—Assets in Ontario—Garnishable Debt—Conditional Appearance.

Appeal by the defendant from the order of the Master in Chambers, ante 433, dismissing a motion by the defendant to set aside the order of a Registrar, sitting for the Master in Chambers, and the writ of summons and the service of it upon the defendant in Montreal, but giving him leave to enter a conditional appearance.

E. P. Brown, for the defendant.

W. R. Smyth, K.C., for the plaintiff.

MEREDITH, C.J.:—The material upon which the Registrar's order, which gave leave to serve the writ out of Ontario, was made,

* This case will be reported in the Ontario Law Reports.