

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

the creditors of the company is not *ultra vires* of such directors, and does not require special statutory authority or the formal assent of the whole body of shareholders.

*Quære*.—Is such an assignment within the provisions of the Chattel Mortgage Act of Ontario, R. S. O. c. 119?

Where such an assignment was made, and the property was formally handed over by the directors to the trustees, who took possession and subsequently advertised and sold the property under the deed of assignment,

*Held*, that if the assignment did come within the terms of the act, its provisions were fully complied with, the deed being duly registered, and there being an actual and continued change of possession as required by section 5. In such deed of assignment the property was decided as, "All the real estate, lands, tenements and hereditaments of the said debtors (company) whatsoever or wheresoever, of or to which they are now seized or entitled, or of or to which they may have any estate, right, title or interest of any kind or description with the appurtenances, the particulars of which are more particularly set out in the schedule hereto, and all and singular the personal estate and effects, stock in trade, goods, chattels, right and credits, fixtures, book debts, notes, accounts, books of account, causes in action, and all other the personal estate and effects whatsoever and wheresoever, etc."

The schedule annexed specifically designated the real estate, and included the foundry erections and buildings thereon erected, and including all articles such as engines, etc., in or upon said premises.

*Held*, that this was a sufficient description of the property intended to be conveyed to satisfy sec. 23 of R. S. O., c. 119. *McCall v. Wolff* (May 12, 1885, unreported) approved and followed.

Appeal dismissed.

*Robinson, Q.C.*, and *W. M. Hall*, for the appellants.

*McMichael, Q.C.*, *S. H. Blake, Q.C.* and *H. McK. Wilson, Q.C.*, for the respondents.

Ont.]

[March 14.]

## SHOOLBRED'S CASE.

*Company—Winding up Act—45 Vict. c. 23 (D.)—Appointment of liquidator under—Notice of appointment under sec. 24—Order set aside for want of.*

It is a substantial objection to a winding up order appointing a liquidator to the estate of an insolvent company under 45 Vict. cap. 23, that such order has been made without notice to the creditors, contributories, shareholders or members of the company as required by section 24 of said act, and an order so made was set aside, and the petition therefor referred back to the judge to be dealt with anew.

*Per Gwynne, J.*, dissenting, that such an objection is purely technical and unsubstantial, and should not be allowed to form the subject of an appeal to this court.

Appeal allowed.

*Cassels, Q.C.*, and *Walker* for appellants.

*Bain, Q.C.* for respondents.

P. Q.]

[March 14.]

*WHEELER ET AL.* (Defendants in the Court below), Appellants, and *BLACK ET AL.* (Plaintiffs in the Court below), Respondents.

*Actio confessoria servitutis—Building of barn over alley subject to right of access to drain—Aggravation—Art 557, C.C.*

By deed dated August 22, 1843, P. D. sold to one J. B. a certain property in the town of St. John, P.Q., with the right of draining the cellar or cellars of the said property by making and passing a good drain through the lots the said Pierre Dubeau has and possesses . . . and beneath the alley now left open and between the several houses belonging to the said Pierre Dubeau, and the said deed of sale establishing the said servitude was duly registered by a memorial thereof, October 6, 1843.

The respondents having subsequently acquired said property, by their present action against the appellants, owners of the servient land, prayed that the said appellants' property be declared to have been, and to be still, subject to said servitude, and that the appellant