

PROUDFOOT, J.]

SAMS v. HUTCHINSON.

Winding-up Act—Necessity for liquidators to sue by order of court—Objection made too late—Mortgage received as collateral security—Production before judgment entered.

Action by plaintiffs to recover the price of an implement manufactured by them. A winding-up order had previously been obtained against plaintiffs, and a liquidator appointed. An objection was taken at the trial, after the evidence had been given, that the action should have been brought in the name of the liquidator and with the approval of the Court, under s. 31 of R.S.C., c. 129. The order authorizing the liquidator to sue either in his own name or that of the plaintiff was put in after the hearing.

Held, that the objection was too late and must be overruled.

Semble the proper course is to move in Chambers to dismiss the action for want of authority to sue; and *semble*, also, as the plaintiffs under the statute had power to sue, they could do so without the authority of the Court, if they chose to run the risk of costs.

The plaintiffs had obtained a mortgage from one of the defendants as collateral security for the debt, which they had assigned to a bank. The Court directed that judgment was to be entered for plaintiffs only on the production of the mortgage and a reconveyance or discharge thereof to the mortgagor.

ROBERTSON, J.]

WADDELL v. ONTARIO CANNING CO.

Company—Illegal acts done by majority of shareholders—Right of minority to investigation—By-law ratifying illegal acts—Invalidity of—Injunction.

In a company consisting of seven shareholders, the plaintiffs, four of the shareholders, holding 25 per cent. of the stock, claimed that there had been mismanagement of the company's funds in the payment of large sums to the president and secretary for salaries or services without any legal authority therefor, and in failure to declare any dividends, though the company had made large profits, and that no satisfactory investigation or statement of the company's affairs could be obtained though frequently applied for, and it was impossible to ascertain the company's true financial standing. Under

these circumstances an investigation of the company's affairs was directed.

At a meeting of four of the directors, constituting the majority, held after proceedings taken by the minority to disallow the illegal payments made to the president and secretary, and without proper notice to the minority of such meeting or its object, a resolution was passed ratifying the payments made to the secretary, and at an adjourned meeting, of which also the minority received no notice, by-laws were passed ratifying the payments made both to the president and secretary.

Held, that the resolution and by-laws were invalid and could not be ratified by the shareholders; and an injunction was granted restraining the company from acting thereunder, or from holding a meeting of shareholders to ratify and confirm same.¹

Bain, Q.C., and F. R. Waddell for plaintiff.

E. Martin, Q.C., and Duff for defendants.

Div'l Court.]

REGINA v. RICHARDSON.

Recognizance—Absence of affidavit of justification—Sufficiency—R.S.C., c. 178, s. 90.

By s. 90 of R.S.C., c. 178, and the rule of court thereunder, no motion to quash any conviction brought before any court by *certiorari* shall be entertained unless the defendant is shown to have entered into a recognizance with two or more sufficient sureties.

Held, that the sufficiency of the suretyship is not shown by the mere production of the recognizance, but there must be evidence on which the court can say there were sufficient sureties.

When, therefore, there was no affidavit of justification to the recognizance it was held not to comply with the statute.

V. Mackenzie, Q.C., for motion.

REGINA v. FLOREY.

Closing shops—By-law for—Discrimination—Illegality—Distress—51 Vict., c. 33 (O.)—37 Vict., c. 33, s. 2, ss. 14, R.S.O., c. 184, s. 421.

A by-law passed by the town of A. under s. 2, ss. 2 of the Ontario Shop Regulation Act, 51 Vict., c. 33 (O.), provides (1) That all shops, etc., where goods were exposed or offered for sale by retail in the town should be closed at seven p.m. on each day of the week, excepting