

to come to conclusions different from those arrived at by the Master either as to matters of fact or law.

Reference to *Re Owen Sound Lumber Co.* (1917), 38 O.L.R. 414; *Re Port Arthur Waggon Co.*, *Tudhope's Case* (1919), 16 O.W.N. 65; *Bond v. Barrow Hæmatite Steel Co.*, [1902] 1 Ch. 353; *Dovey v. Cory*, [1901] A.C. 477; *Northern Trust Co. v. Butchart* (1917), 35 D.L.R. 169; an article by Mr. Justice Hodgins (when at the Bar) on paying dividends out of capital, in 44 C.L.J. 94.

There were obvious distinctions between this case and those in which directors had been exonerated.

A great factor in the situation lay in treating the lease under the conditions then existing as of any value whatever, instead of being, as the Master styled it, an overburdening liability, with 4 years to run—rental \$20,000 a year and \$16,000 worth of permanent improvements not removable by the lessees but remaining at the end of the term the property of the lessors.

These directors took no steps to protect themselves under sec. 95 of the Ontario Companies Act, R.S.O. 1914 ch. 178.

No objection appeared to have been taken to the admission of the minute-book as evidence. If the objection had been made and sustained, no doubt evidence to establish the facts set forth in the minutes could have been easily procurable.

The appeal must be dismissed; in the circumstances, without costs.

ROSE, J.

MAY 20TH, 1919.

***GROSSMAN v. MODERN THEATRES LIMITED.**

Landlord and Tenant—Lease of Theatre—Covenant of Lessee not to Assign or Sublet without Leave—Proviso that Leave should not be Unreasonably Withheld—Agreement by Lessee to Assign Lease—Refusal by Lessors of Leave—Claim that Leave Unreasonably Withheld—Onus—Conduct of Proposed Sublessee—Forfeiture of Lease—Waiver—Recognition of Lease as Subsisting by Acceptance of Rent—Rescission of Agreement—Return of Money Paid by Proposed Sublessee—Failure of Consideration—Claim for Specific Performance—Consolidation of three Actions—Costs.

Three actions consolidated by order of a Judge. In the first action Grossman sought the rescission of an agreement by which Modern Theatres Limited agreed to sell to him the lease of a cinematograph theatre and the return by Modern Theatres