The company was then undoubtedly in financial difficulties and unable to pay its debts in full, and the defendants later applied for a winding-up order, under R. S. C. 1906 ch. 144, and amending Acts, which they obtained on the 11th February, 1909. On the same day an order was also obtained appointing John W. McNamara, of North Bay, provisional liquidator, and a reference directed to the Local Master at North Bay to appoint a permanent liquidator.

On the 31st March, 1909, the plaintiff was duly appointed by the Master permanent liquidator of the company, and, on the 15th October, 1908, he secured the approbation and consent of the Master to this action being brought, as appears by a certificate filed.

The plaintiff in his statement of claim seeks relief under sec. 94 of the Winding-up Act, alleging that the mortgage in question, having been made within three months next preceding the commencing of the winding-up of the company, and being voluntary or gratuitous, without consideration, or with a merely nominal consideration, must be presumed to be made with intent to defraud the creditors.

In face of the fact that the consideration mentioned in the mortgage, $6,000, was proved at the trial to have consisted of an existing debt from the company to the bank, and that the bank were endeavouring to get security therefor, I cannot find that the plaintiff is entitled to succeed under that section.

The mortgage is, however, attacked by the plaintiff on the further ground that no by-law of the directors of the company was passed authorising the said mortgage, as required by the Ontario Companies Act. I assume the plaintiff to refer in his pleading to sec. 73 of the Ontario Companies Act, ch. 34 of 1907. At all events, it is under that section of the Act that the directors assumed to act in passing the by-law, as appears on its face. So far as the mere formal passing of the by-law is concerned, it has apparently been regularly passed. It is the only action of the directors of the company apparently intended to authorise the giving of the mortgage in question, and it is expressly said to have been taken under and in pursuance of the section referred to. But, when we come to read carefully sec. 73, can it be said to apply or can it be construed as applying to a mortgage given to secure an existing debt or liability? Is not the clear deference in the section to the borrowing of money on the part of the company by the issue of bonds, debentures, or other securities? I think it is, and, if so, this by-law, which was not passed for such a purpose, but to secure an existing debt, is without effect for the purpose of making valid the mortgage in question. If this be so, then the mortgage never was properly authorised by the company, and the question of its ratification under sec. 74 becomes of no practical importance. As a matter of