

The learned Judge then dealt with the jurisdiction of Mr. Roche, the reference having been directed to the Master in Ordinary. By an order in council of the 13th December, 1918, Mr. Roche was appointed Assistant Master in Ordinary pro tem., during the illness of Mr. Neville, the Assistant Master, who had since died. The Master in Ordinary himself had been ill since the spring of 1919; and on the 3rd May, 1919, the Chief Justice of Ontario made a written direction that Mr. Roche should perform the duties of the Master during the illness of the latter: see sec. 76 (7) and (8) and sec. 77 of the Judicature Act, and Rules 759 and 760. Mr. Roche took the oath of office prescribed for all officers, but did not take the same oath again before entering upon the duties of Assistant Master in Ordinary pro tem. The learned Judge said that he attached no weight to the objection made to Mr. Roche's jurisdiction. Instead of it being obligatory for him to take the oath again, to do so would be a work of supererogation.

It was argued that there was no authority in the Winding-up Act or elsewhere for empowering a sale of the assets of a company in liquidation to be made which involved the compulsory acceptance, by even a minority of shareholders in the company, of shares in a new company proposed to be created for the purpose of taking over the assets of the company in liquidation.

The learned Judge had come to the conclusion that this point was not so free from reasonable doubt as to warrant him in determining that the Assistant Master in Ordinary could properly approve of the acceptance of the offer or direct the liquidators to accept it and carry out a sale, or to warrant him (the learned Judge) in making a substantive order to that effect.

There was no such provision as was contained in the English Companies Act of 1862, secs. 161, 162, and in the Companies (Consolidation) Act of 1908, sec. 192 (123). Reference to *Re Cambrian Mining Co.* (1883), 48 L.T.R. 114; *In re Imperial Mercantile Credit Association* (1871), L.R. 12 Eq. 504; *In re Agra and Masterman's Bank* (1866), *ib.* 509, note; *Emden's Winding-up of Companies*, 8th ed. (1909), p. 325.

It was argued that, as the Winding-up Act, R.S.C. 1906 ch. 144, also contains a section, 34 (*h*), authorising the liquidator with the approval of the Court, to "do and execute all such other things as are necessary for winding-up the affairs of the company and distributing its assets, and as the provisions of the Ontario Companies Act, R.S.O. 1914 ch. 178, sec. 184 (1) and (2), should be held to apply to this company, the two Acts should be read together, and under them the Court should be declared to have power to sanction the acceptance of the offer and direct the liquidators to carry out the sale.