being passed, but long previous thereto, and the directors (now deeming it necessary and expedient to give the defendants a mortgage to secure the $6,000) take steps for the purpose. Under sec. 78 the directors had power to do all that the by-law authorised, and it ought not to be considered that the failure to refer to all the powers enabling them to do the act should render it nugatory.

In the case of individuals possessing and exercising powers of appointment or sale it has been so held. See Kelly v. Imperial Loan Co., 11 A. R. 526, 11 S. C. R. 516, and cases there cited.

Further, there is to be borne in mind the principle that this objection would not be open to the company, and that in this respect the plaintiff occupies no higher position.

The defendants, having received a mortgage, apparently duly executed on behalf of the company, were entitled to assume that everything necessary to its valid execution had been regularly and properly done. There is a distinction between what directors have no power to do at all and what they have power to do provided certain conditions are complied with; and, whilst it is held that companies are not bound by acts of the former class, it is held that they may be bound by acts of the latter class in favour of all persons dealing with them bona fide without notice of irregularities of which they may be guilty: Lindley on Companies, 6th ed., p. 213. The instrument on its face appears to be proper and regular to effectuate the purpose for which it was agreed to be given, and there is nothing to shew that the defendants were aware of the co-called irregularities preceding its execution. Upon this branch of the case the learned trial Judge's conclusion should be reversed, and the instrument upheld.

Then comes the question upon which the learned trial Judge held in the defendants' favour. The mortgage having been made within three months next preceding the commencement of the winding-up, there is a presumption that it was made wtih intent to defraud the company's creditors. But the presumption is not a conclusive or irrebuttable presumption. It places upon persons whether creditors or not, to whom a mortgage is given within the prescribed limit of time, the onus of shewing the absence of intent to defraud the creditors of the company. So far as the sections of the Winding-up Act relating to voluntary and fraudulent conveyances and other dealings are concerned, the law remains as enunciated in the case of Lawson v. McGeoch, 20 A. R. 111. It was open to the defendants to overcome the statutory presumption of intent, and, as the authorities have settled, the intent of the debtor alone to defraud is not sufficient. It must be the conjoint intent of debtor and creditor; and the intent to prefer is in general