

*Held*: Objection invalid. The fact that the petitioner was a subsequent execution creditor was no bar to his filing the petition.

The objection was taken that since the passing of The Winding-up Amendment Act, 1889, no order could be made for winding-up a company in Manitoba; as to such companies The Winding-up Act, R.S.C., c. 129, was, by reason of the third section of the Amendment Act, no longer in force.

*Held*, that the provisions of The Winding-up Amendment Act, 1889, which are not made applicable to proceedings under The Winding-up Act, do not, in consequence of section 3 of the amending Act, apply to cases in which a petition has been presented to wind up a company incorporated in Manitoba. As to such companies the court has only the powers conferred by The Winding-up Act, R.S.C., c. 129, and those given by the amending Act, expressly made applicable to proceedings under the former Act.

The objects of the company were "Lake and river transportation of passengers and goods within the Province of Manitoba, cutting of logs, manufacture of lumber, etc., catching and dealing in fish, trading and dealing in general merchandise." It was objected that the charter of the company dealt with navigation and shipping and inland fisheries, matters which were reserved for the Parliament of Canada, and that the company was not one which could be incorporated by the Lieutenant-Governor under Con. Stat. Man., c. 9, s. 226.

*Held*, that the purposes for which the company was formed were within provincial authority, and did not infringe upon matters reserved for the Parliament of Canada; and that the purposes for which the company was incorporated were within the definition "Trading Company" in The Winding-up Act, s. 2, s-s. (C).

The sheriff fixed the 3rd of January, 1891, for the sale under the execution in his hands; it was shown that the writ was unsatisfied on the 30th December, 1890.

By section 5, s-s. (H) of The Winding-up Act, a company is to be deemed insolvent "If it permits any execution issued against it . . . to remain unsatisfied until within four days of the time fixed by the sheriff for the sale."

*Held*, that the writ in question was one unsatisfied within four days of or before the day of sale, and that the company was insolvent. Order made to wind up the company.

*T. G. Mathers* for petitioners.

*J. S. Hough* and *W. F. McCreary* for consenting creditors.

*J. W. E. Darby* and *J. D. Cameron* for opposing creditors.

BAIN, J.]

MCKAY v. NANTON.

[Jan. 26.

*Real Property Act—Preliminary objections to petition—Misnomer—Address for service.*

The caveatee, Nanton, having applied for a certificate of title, McKay filed a caveat and petition for the purpose of establishing his claim to the lands.

The objection was taken that in the caveat the name of the applicant was stated to be Augustus Meredith "Newton," the proper name of applicant being Augustus Meredith Nanton.

*Held*, that the caveat was not invalid on that account; the mistake was only an irregularity that did not affect the substantial justice of the proceeding.

Another objection was, that the petition did not show that the lands had not been registered under the Act.

*Held*, that as the petition alleged that the caveatee had applied to bring the land under the Act, and the petitioner had filed a caveat forbidding this, it would be assumed that the caveat was lodged before the registration of the certificate of title.

By the Real Property Act, 1889, s. 130, sub-sec. 8, it is provided that every caveat "shall state some address or place within the Province of Manitoba, at which notices and proceedings relating to such caveat may be served." Schedule "O" to the Act gives a form as follows: "I appoint . . . as the place at which notices and proceedings thereto may be served." The caveat filed in this case was as follows: "I forbid the bringing of such lands under the operation of the Real Property Act, 1889, appoint A. N. M., Commissioner of Railways' Office, Winnipeg, my agent, on whom notices and proceedings thereto may be served."

*Held*, that "the Commissioner of Railways' Office, Winnipeg," was merely descriptive of the person named and could not be taken to be the place at which service might be made. The direction in the statute must be deemed to be imperative, and a party seeking the benefit of the statute must comply with it strictly.