

directors are liable to the extent of one year's wages; while, under the Dominion Winding-up Act, the wage-earner is entitled only to a preference for his unpaid wages not exceeding the arrears which have accrued during the three months next previous to the date of the winding-up order: R.S.C. 1906 ch. 144, sec. 70. The question is also of importance, because in many cases the entire assets of the company in liquidation are taken by debenture-holders; and, if the contention is well-founded, the directors, by reason of the winding-up order, may altogether escape this statutory liability.

Before considering the validity of this argument and the other questions raised, it is desirable to set out the facts proved at the trial, at length.

The Boyd-Gordon Mining Company has its head office at Toronto. It conducted mining operations in the district of Nipissing. On the 11th September, 1911, Pukulski recovered judgment against the company for \$157.06, wages earned during the month of June, July, and August, 1911, and \$22.04 taxed costs, in addition to the costs of execution. Upon the same day, writs of execution against goods and lands were issued to the Sheriff of Toronto, and on the following day these were placed in the hands of the Sheriff for execution. Contemporaneously, an execution was issued directed to the Sheriff of Nipissing. This was placed in the hands of that Sheriff on the 15th September.

On the 16th September, the company made an assignment for the benefit of its creditors; and on the 29th September an order was made for the winding-up of the company under the Dominion Act.

In order that the conditions precedent prescribed by the statute might be complied with, Pukulski's solicitor requested the Sheriffs to return these writs of execution, and they were respectively returned unsatisfied. The indorsement upon the writ to the Sheriff of Toronto was: "Nulla bona. The answer of Fred. Mowat, Sheriff." The return upon the Nipissing writ was: "Returned unsatisfied. H. Varin, Sheriff." Thereupon this action was brought.

The contention of the defendants is, that the returns made to the writs are void, because by sec. 22 of the Winding-up Act it is provided that, "after the winding-up order is made, no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court imposes;" and by sec. 23 it is provided that "every attachment, sequestration, distress, or execution put in force against the estate or effects