

BOYD, C., IN CHAMBERS.

SEPTEMBER 20TH, 1912.

## \*RE BAYNES CARRIAGE CO.

*Company—Winding-up—Petition for—Evidence in Support—  
Examination of Directors—Winding-up Act, secs. 2(e), 13,  
107-133, 134, 135—Practice of High Court.*

Motion on behalf of the company and directors to set aside an appointment to examine the directors, and the subpoena to testify, therewith served by the petitioners, on the ground that it was not competent for the petitioners to use such evidence on an application for a winding-up order under the Dominion Act.

H. A. Burbidge, for the company and directors.  
Grayson Smith, for the petitioners.

BOYD, C.:—The petitioners are shareholders to the extent of \$50,000 paid-up shares, the total capital being \$375,000. The broad position taken is, that the procedure under the Consolidated Rules is not available under the Act. It is also argued that directors as officers cannot be so examined. . . .

[Reference to secs. 13, 107-133, 134, 135, of the Winding-up Act, R.S.C. 1906 ch. 144.]

I read the word used in sec. 135, "procedures," as including rules and regulations and methods of practice current in the High Court of Justice (sec. 2(e)), which are to be adapted as nearly as may be to the uses of the profession under the Winding-up Act. . . . The practice of the Court is to support petitions by affidavits or by viva voce evidence of witnesses under the Con. Rules in that behalf, 489, 491, 492. Substantially the very matter now in dispute was decided as I now decide in earlier cases; see *Re Belding Lumber Co. Limited*, 23 O.L.R. 255, 2 O.W.N. 739, 775.

I see no reason why the directors should not be examined as witnesses. They know more about the internal affairs of the concern than any other, or should have such knowledge, and the shareholders should not be deprived of this source of information when no imputation of mala fides exists. The policy of our legal methods is to facilitate and to simplify proceedings, and English cases in other conditions cannot control what is the

\*To be reported in the Ontario Law Reports.