

plaintiff paid the \$3,000 to the company and obtained the shares. He at once entered upon his duties as sales-manager and continued therein until early in August, 1918; he drew his salary for four months. During that period sales of 18 or 20 trucks were made, but none directly by him. Some of the trucks sold proved unsatisfactory and were brought back.

At a meeting of the shareholders held on the 30th July, 1918, it was resolved that the company should be voluntarily wound up. The plaintiff was present at the meeting and concurred in the resolution. An order was shortly afterwards made, under the Ontario Companies Act, R.S.O. 1914 ch. 178, for the winding-up of the company.

The plaintiff lodged a claim with the liquidator for salary to the 1st July, 1919, \$1,645, and commissions \$770, in all \$2,415; and he claimed a preference over other creditors, on the ground that his claim was for "wages." The Master in Ordinary, to whom the winding-up was referred, made an order giving the plaintiff leave to commence and prosecute an action against the company for his claim, and this action was brought accordingly.

The learned Judge said that the contract, in so far as the plaintiff was concerned, was an executed contract, he having paid his money to the company for the stock, the company having received the money and used it, he having entered upon his duties as manager, and the company having recognised him as manager and accepted and utilised his services. The contract was enforceable against the company, though not under its seal: *McKnight Construction Co. v. Vansickler* (1915), 51 Can. S.C.R. 374.

No proof was offered that the plaintiff was a director of the company; sec. 92 of the Ontario Companies Act applies only to a director; and a by-law was not necessary.

As to the claim for salary for the remaining 8 months of the year and 3 months longer, the learned Judge referred to *Ogdens Limited v. Nelson*, [1905] A.C. 109; *Chapman's Case* (1866), L.R. 1 Eq. 346; *Ex p. Maclure* (1870), L.R. 5 Ch. 737; *Leake on Contracts*, 6th ed. (1912), p. 637; and said that the plaintiff was entitled to claim for salary for the 8 months and 3 months.

In the case of companies being wound up, the allowance, in regard to claims such as the plaintiff's, should be dealt with by ascertaining the present value of an annuity of a sum equal to the weekly salary for the unexpired term, regard being had to the risk to health and life, and a deduction being made for the liberty to obtain new employment: *Yelland's Case* (1867), L.R. 4 Eq. 350; *Ex p. Clark* (1869), L.R. 7 Eq. 550.

The plaintiff did not appear to have made any great effort to secure another position.