SUTHERLAND, J. MARCH 15TH, 1910.

## HAMMOND v. BANK OF OTTAWA.

*Company—Winding-up—Mortgage Made by Company when Insolvent—Action by Liquidator to Set aside—Existing Debt to Bank—Security—By-law — Authorisation — Ratification—Ontario Companies Act, 1907, secs. 73, 74, 78.*

Action by the liquidator of the New Ontario Brewing Co. Limited to set aside, as fraudulent or unauthorised, a mortgage of land made by the company to the defendants shortly before a winding-up order was made.

M. G. V. Gould, for the plaintiff.

G. H. Kilmer, K.C., for the defendants.

SUTHERLAND, J.:—The New Ontario Brewing Co. Limited was incorporated under the laws of the province of Ontario, with its head office at North Bay. On and before the 8th December, 1908, the company was indebted to the Bank of Ottawa, the defendants, in the sum of $6,000. On that day the directors of the company passed a resolution in the following terms: "Whereas the Ontario Companies Act, sec. 73, authorises the directors of this company to borrow money for the purposes of the company. And whereas the directors of the company have borrowed from the Bank of Ottawa the sum of $6,000 for the purposes of the company. And whereas the directors have deemed it necessary and expedient to give to the Bank of Ottawa a mortgage upon the property of the company to secure the sum of $6,000. Now therefore be it enacted and it is hereby enacted that the directors of the company, having borrowed the sum of $6,000 from the Bank of Ottawa, upon the credit of the company, may issue bonds, debentures, mortgages, or other securities of the company, charge, hypothecate, mortgage, or pledge all or any part of the real or personal property, rights and powers, of the company, to secure such bonds, debentures, mortgages, or other securities, or any liability of the company. And it is further enacted that the president and the secretary be empowered to sign all documents necessary to secure the said loan of $6,000."

On the 22nd December, 1908, a special meeting of the shareholders of the company was held at its head office in North Bay for the purpose, among other things, of considering this by-law. In pursuance of the by-law and of the alleged confirmation thereof by the shareholders at that meeting, a mortgage, also dated the 22nd December, 1908, was executed by the company in favour of the bank for $6,000, upon property in North Bay then owned by the company.