

two or three directors, the claim of another, the mortgage without authority from shareholders, and the absence of available assets so soon after the company's organization, are circumstances which render it reasonable for creditors to ask that the control of the company's affairs be not left with the directors. . . .

Counsel for the petitioners contended that they were entitled to an order under clauses a, d, g, and h of sec. 5 of the Act.

As regards clauses d and g, even if there were proof of facts to bring the company within either, there is no allegation of such facts in the petition, nor even a general allegation of insolvency of the company, but only of particular facts not coming under either of these two clauses. In *In re Wear Engine Works Co.*, L. R. 10 Ch. 188, an order was refused on that ground; and see also *In re Briton Medical and General Life Assn.*, 11 O. R. 478; *Re Grundy Stove Co.*, 7 O. L. R. 252, 3 O. W. R. 175.

As to clause h, there is here no evidence of a seizure. The petition alleges a seizure, but the solicitor's affidavit only states that the sheriff informed him he proceeded to make a seizure but found that all the goods, etc., were claimed under a mortgage, and his return must be *nulla bona*. This would imply that no seizure was in fact made. Even if this proceeding to make a seizure could be interpreted as the making of one, there is nothing to shew where it took place or that 15 days had elapsed. The secretary's affidavit verifying the petition in general terms, on information and belief, cannot be taken as sufficient, especially as the sources of the information are given, and manifestly do not relate to that fact.

As to clause a, the petition makes a direct allegation under that clause of the company's inability to pay their debts as they become due, but no evidence is given of a demand in writing and neglect by the company to pay within 60 days thereafter, as required by sec. 6, which specifies when the inability to pay debts shall be deemed to exist. In *In re Qu'Appelle Valley Co.*, 5 Man. L. R. 160, and *In re Rapid City Farmers' Elevator Co.*, 9 Man. L. R. 574, it was held by Taylor, C.J., that sec. 6 specifies the only way of bringing the case under clause a of sec. 5—a view apparently taken also by Proudfoot, J., in *In re Briton Medical and General Life Assn.*, 11 O. R. 478, and in which I concur. In England other proof is sufficient, as sec. 80 of the Companies Act only requires it to be to the satisfaction of the Court.