

MIDDLETON, J.

JANUARY 15TH, 1921.

*McINTYRE v. TEMISKAMING MINING CO.

Company—Power to Purchase Shares of another Company—Ontario Companies Act, secs. 23 (e), 94—By-law Passed by Directors and Approved by Shareholders—By-law in General Terms not Authorising Purchase of any Particular Shares—Validity—“Expressly”—Limitation by sec. 23 to Certain Kinds of Companies.

Motion by the plaintiff for an interim injunction, turned by consent into a motion for judgment.

The motion was heard in the Weekly Court, Toronto.

W. R. Smyth, K.C., for the plaintiff.

Strachan Johnston, K.C., for the defendants.

MIDDLETON, J., in a written judgment, said that the plaintiff, a minority shareholder of the defendant company, on behalf of herself and all other shareholders, asked for a declaration that a certain by-law, passed by the directors of the company and confirmed by the unanimous vote of the shareholders present or represented by proxy at a general meeting of the shareholders, was ultra vires and void.

The by-law was “that the directors be and they are hereby expressly authorised from time to time and whenever they see fit to purchase shares in any other corporation and to use the funds of the company for such purpose.”

The question raised was, whether, under sec. 94 of the Ontario Companies Act, R.S.O. 1914 ch. 178, a by-law in general terms was permissible. The plaintiff contended that a separate by-law, approving of each individual transaction in shares of another corporation, was necessary.

Section 23 (e) of the Act provides that a company shall possess, as incidental and ancillary to the powers set out in the letters patent, inter alia the power, subject to sec. 94, to acquire and hold shares in any other company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as directly or indirectly to benefit the company.

Section 94 (1): “The company, although authorised . . . to purchase shares in any other corporation, shall not do so or use any of its funds for such purpose until the directors have been expressly authorised by a by-law passed by them for the purpose and confirmed by a vote of the shareholders present . . . at