

have other difficulties to face. A simple contract creditor suing on behalf of himself and other creditors has no locus standi to attack a transaction by his debtor as ultra vires. I was urged to delay the decision of this action until a liquidator had been appointed; but the liquidator would stand in no better position than the company itself. He could attack, under the Winding-up Act, transactions which are declared to be fraudulent and preferential; he could probably attack transactions tainted with fraud of any kind; he may be able to assert the rights of creditors, but he can have no greater rights than the company and its creditors; so that no good purpose, from the plaintiffs' standpoint, would result.

Again, it is pointed out that judgment in the action upon the mortgage stands, and is not attacked. It is based upon the finding of the existence and validity of the mortgage, and it probably forms another insuperable difficulty in the way of the plaintiffs.

The action fails, and must be dismissed with costs.

It may be that the applicants will not consider it desirable to press the winding-up; and I am not sure that the facts proved at the trial are technically in evidence upon that motion. I shall withhold decision on the winding-up application until the matter is further spoken to.

BRITTON, J.

OCTOBER 24TH, 1913.

WHITNEY v. SMALL.

Partnership—Operation of Theatres—Pooling Agreement—Construction—Death of Partner—Continuance of Partnership—Right of Personal Representative—Declaratory Judgment—Account—Reference—Motion for Judgment where Defence Struck out—Rule 354—Practice.

Motion by the plaintiff for judgment on the statement of claim, the statement of defence having been struck out.

G. F. Shepley, K.C., and G. W. Mason, for the plaintiff.

J. H. Moss, K.C., for the defendant.

BRITTON, J.:—The action is brought for a declaration that, under and by virtue of a certain agreement between Clark J.