

all subsequent proceedings, and directing the solicitors who entered the appearance and defended the action to pay the plaintiff's costs, upon the grounds that the defendant never authorised the defence, and had never been organised as a company, and had never appointed officers, and had never appointed any person to accept service, and had given no instructions to the solicitors to defend.

The action was for damages for injuries sustained by the plaintiff on or about the 9th November, 1910, by reason of the negligence of the driver of a taxicab engaged by the plaintiff from the defendant's garage. The plaintiff recovered judgment against the defendant; but found no assets to realise upon.

J. MacGregor, for the plaintiff.

J. M. Godfrey, for the defendant and the solicitors who defended the action.

BOYD, C., referred to *Simmons v. Liberal Opinion Limited, In re Dunn*, [1911] 1 K.B. 966, and distinguished it from the present case. The defendant in that case was sued as a company; it turned out that, though some preliminary steps had been taken to form a company, the matter had not been consummated by registration, so that in fact there was no company—it was non-existent. In the present case, the defendant, sued as a company, had been legally constituted a company by letters patent of Ontario dated the 27th October, 1910. No steps appeared to have been taken to organise the company in the usual way; and, after the charter issued, nothing was done until lately, when a meeting was held, and the directors ratified what had been done in defending the action. The charter had not become forfeited under any of the provisions of the Companies Act, by reason of the inaction. . . .

[Reference to 7 Edw. VII. ch. 34, secs. 16, 17, 18, 21, 79, 85 (O.); Lindley on Companies, 6th ed., vol. 1, p. 378; *Farrell v. Eastern Counties R.W. Co.*, 2 Ex. 344; *Thames Haven Dock and R.W. Co. v. Hall*, 5 M. & Gr. 274.]

Application dismissed, with costs to be set off against the costs taxed to the plaintiff in the action.
