

The Ontario Weekly Notes

VOL. XVI.

TORONTO, AUGUST 8, 1919.

No. 21

HIGH COURT DIVISION.

SUTHERLAND, J.

JULY 29TH, 1919.

HAWKINS v. ALLIED TRUCK CO. LIMITED.

Company—Voluntary Winding-up—Ontario Companies Act, R.S.O. 1914 ch. 178—Claim of Sales-manager for Salary and Commissions—Allowance of Sum Based upon Present Value of Salary for Unexpired Term after Winding-up Order—Disallowance of Claim for Unearned Commissions—Agreement with Company—Executed Contract—Absence of Seal and By-law—Sec. 92 of Act—Right to Rank on Assets—Claim for Preference Disallowed.

Action for a declaration that the plaintiff was entitled to enforce against the assets of the defendant company (in voluntary liquidation) a claim made for salary and commissions.

The action was tried without a jury at a Toronto sittings.

R. McKay, K.C., for the plaintiff.

A. C. Heighington, K.C., for the liquidator of the company.

SUTHERLAND, J., in a written judgment, said that on the 3rd April, 1918, an agreement was made and put in writing between C., the president of the defendant company, and the plaintiff, whereby, in consideration of the plaintiff purchasing 30 shares of the defendant company's stock for \$3,000, the company agreed to engage the plaintiff as general sales-manager and treasurer, at a weekly salary of \$35 and a commission on all sales at 2½ per cent. and a further commission of 2½ per cent. on all sales made directly by him—"this agreement to be in full force and effect for one year from date, after which time the same may be terminated upon three months' written notice by either party." The defendant company was incorporated in August, 1917; its business was to sell old motor-cars which had been converted into trucks. The