

OCTOBER 13TH, 1910.

*HAMMOND v. BANK OF OTTAWA.

Company—Winding-up—Mortgage Made by Company when Insolvent—Action by Liquidator to Set aside — Existing Debt to Bank—Security—By-law—Authorisation — Ratification—Ontario Companies Act.

Appeal by the defendants from the judgment of SUTHERLAND, J., 1 O. W. N. 519, in an action by the liquidator of the New Ontario Brewing Co. Limited, setting aside, as unauthorised, a mortgage of land made by the company, to the defendants shortly before a winding-up order was made.

The trial Judge held that the mortgage was not open to attack under sec. 94 of the Winding-up Act; but that it was not properly authorised by the company, and should be set aside.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

G. H. Kilmer, K.C., for the defendants.

J. M. Ferguson, for the plaintiff.

MOSS, C.J.O.:— . . . After the appeal was argued, we directed that the parties be at liberty, if so advised, to adduce further evidence bearing on the defence of pressure, and consideration, as set up in the third paragraph of the statement of defence, and both parties availed themselves of the privilege. This evidence is now before us, but in dealing with the appeal it may be convenient to first dispose of the branch of the case upon which the plaintiff succeeded at the trial.

For some time prior to and on the 8th December, 1908, the brewing company were indebted to the defendants to the amount of \$6,000 for moneys advanced in the ordinary course of dealing with them. Frequent demands for payment had been made by the defendants upon the company, with the result that the company agreed to secure the amount by mortgage upon their lands. On the 8th December the directors met and passed a by-law undoubtedly with the intention and for the purpose of implementing the agreement. But, through some misconception, the by-law was so drawn as to contain much more than was necessary to express and give effect to the intention. The debt of the defendants at that

* This case will be reported in the Ontario Law Reports.