

HON. MR. JUSTICE MIDDLETON, IN CHRS. FEB. 9TH, 1914.

RE TUDHOPE MOTOR CO.

5 O. W. N. 865.

Company — Winding-up — Petition for under Dominion Winding-up Act, by Creditor Unwilling to Accept Compromise of Claim.

MIDDLETON, J., *held*, that a creditor cannot be compelled to accept the obligation of another company for his claim.
Order granted.

Motion by Parish & Bingham, creditors, for an order for the winding-up of the company, under the Dominion Winding-up Act.

J. A. Macintosh, for the petitioners.

M. B. Tudhope, for the company.

D. Inglis Grant, for creditors opposed to the motion.

HON. MR. JUSTICE MIDDLETON:—I am inclined to think that it may in the end turn out that the arrangement made and accepted by the majority of the creditors may be found to be from a business standpoint the best possible, but in my view this affords no answer to a winding-up application by a dissenting creditor. The creditor cannot in this way be compelled to accept the obligation of another company for his claim. He has the right to invoke the aid of the Winding-up Act and so to obtain what he can. It is not the case of a choice between a liquidation under the Dominion Act and a distribution of the debtor's estate under an assignment. There the Courts have found a discretion to exist, but this is an attempt to *coerce* an unwilling creditor by refusing to exercise the jurisdiction of the Court in his favour because of his unwillingness to accept a compromise which he deems unreasonable. No case can be found to justify this course. When the winding-up order is made the creditors may find that the arrangements made bind him, or that under the Act the majority may control his action, but this cannot be anticipated and he must be left to see how these matters work out.

The usual order must go. Costs of all parties out of the estate (if any).