

HON. MR. JUSTICE KELLY.

JULY 16TH, 1912.

RE DOMINION MILLING CO.

3 O. W. N. 1618.

*Company — Winding-up — Sale of Lands of Company by Mortgagee
—Leave to Proceed with Sale after Winding-up Order — Terms
—Costs.*

Application by a mortgagee for leave of the Court to carry out a sale under the power contained in his mortgage of certain property belonging to a company which had gone into liquidation subsequently to the initiation of the sale proceedings.

KELLY, J., reserved judgment in order to give the liquidator an opportunity to look into the adequacy of the proposed sale price, but the liquidator having been unreasonably dilatory and there being a danger of the proposed sale falling through, the liquidator was ordered to pay to the applicant on or before a certain named day the full amount of his claim and costs including the costs of this application, failing which the applicant was to be at liberty to complete the sale.

Costs of application to be added to claim in any event.

B. N. Davis, for the applicant (mortgagee).

D. Inglis Grant, for the liquidator.

HON. MR. JUSTICE KELLY:—On May 28th, 1912, a liquidator of the Dominion Milling Company Limited was appointed. Proceedings for sale by the applicant under power of sale in a mortgage from the company to him were then in progress, the sale having been advertised to take place on June 5th. On that day, and a short time before the hour fixed for the sale, it came to the knowledge of the applicant's solicitor that the company had gone into liquidation, and the property was offered for sale and a sale made "subject to the right that any liquidator may have in law under winding-up proceedings should it hereafter prove that he has any right to interfere with the sale or that under the circumstances the mortgagee had not the right to go on with the sale on account of the winding-up proceedings."

The applicant has applied to be permitted to continue the proceedings for sale and to carry out the sale made on June 5th. The motion came on on June 28th, and it was adjourned to July 4th, to enable the liquidator to continue his inquiries about the sale, and the selling value of the property. On July 4th, he was still unable to say what course he should pursue, and I have since that time reserved