

demnify and save harmless the partnership from all loss occasioned by the continuation of the said business by the said partnership." Under this resolution the business was so carried on until 19th November, 1902, when another resolution was unanimously passed by the directors authorizing a new agreement, which, after reciting the agreement of 4th July, and purporting to be in pursuance thereof, assumed to promise and covenant with the partnership to pay off, indemnify, and save them harmless from all the liabilities and obligations of the partnership in connexion with the business. These liabilities, when afterwards submitted, made up a total of \$30,736.85, of which \$30,094.63 was due to the Standard Bank. That resolution further provided that the agreement, with list of debts attached, should be submitted to the directors for approval before being finally executed.

On 21st January, 1903, the directors by resolution authorized the making of the agreement of November, 1902, and assuming the liabilities to the amount of \$30,736.85. Renfrew alone voted against this resolution. On 27th October, 1903, the liquidator commenced this action against the four members of the partnership, James Pakenham individually, and the Standard Bank, to recover in all a little over \$50,000, "the amount wrongfully paid by the company in discharge of the indebtedness of the partnership and its members to the Standard Bank and other persons," on the ground that the resolution of 21st January, 1903, authorizing the agreement of 19th November, 1902, was beyond the powers of the directors and in violation of their trust, and asking to have the agreement of November, 1902, cancelled, and the resolution authorizing it declared illegal and void.

On 14th December, 1903, on application of defendant Kendrick, an order was made *ex parte* to have Renfrew and the other two directors, Clarke and Morden, added as third parties, on the ground of the resolution of 4th June, 1902, and because, in the view of the defendants, the sums sought to be recovered by the liquidator represented losses incurred while the business was being carried on by the partnership pursuant to that resolution; and because of the subsequent resolution of 19th November, 1902, and the execution of the agreement of that date, and that there was an implied warranty by the directors that they had power to do what it was now sought to have declared by the Court to have been illegal and void.

This motion was to set aside this third party notice and order on which same issued, on behalf of Renfrew only.

R. McKay, for Renfrew.