

It was stated that there are no creditors of the Birkbeck Company; that the action was brought in the supposed interest of and for the benefit of the shareholders; and that if moneys were recovered from the directors, the only persons entitled would be practically the same body of shareholders to whom the dividends in question had already been paid. The defendants in their defence claim relief as to this feature of the case. Inasmuch as this action is being proceeded with by the liquidators only with the sanction of the Court, there is complete power in the Court to see that no hardship results to the directors in respect to the dividends in dispute; and, if it appears that the only persons who would be entitled to receive them, as part of the depleted capital of the company, if they are recovered from the defendants, are the same persons to whom these moneys have already been paid, the Court may direct that portion of the liquidators' claim in the action to be abandoned; so no real necessity exists for any endeavour to stretch the scope of the third party Rule.

No hardship will result from allowing this appeal, and it is allowed. The order of the Master will be vacated and the service of the third party notice set aside. The defendants must pay the costs of the plaintiffs and the third parties before the Master and of this appeal.

Reference may be had to the following cases: *Parent v. Cook*, 2 O. L. R. 712, 3 O. L. R. 350; *Wynne v. Tempest*, [1897] 1 Ch. 110; *Moore v. Death*, 16 P. R. 296; *Catton v. Bennett*, 26 Ch. D. 161; *Wye v. Hanes*, 16 Ch. D. 489; *Moxam v. Grant*, [1900] 1 Q. B. 88; *Davey v. Corry*, [1901] A.C. 477; *Miller v. Sarnia Gas Co.*, 2 O. L. R. 546; and *H. & L.*, p. 392, and additional cases there referred to.

CARTWRIGHT, MASTER.

OCTOBER 12TH, 1906.

CHAMBERS.

PEPPER v. OTTAWA TYPOGRAPHICAL UNION NO.
102.

*Writ of Summons—Service on President of Trade Union—
Effect of Registration of Union under Ontario Insurance
Act—Body Corporate—Party to Action.*

Motion by defendants to set aside service of a copy of the writ of summons on their president for them.

J. G. O'Donoghue, for defendants.

J. R. Code, for plaintiff.