

COMPANY—WINDING UP—COMPROMISE BY LIQUIDATOR—POWER TO COMPROMISE ACTION—EXTRAORDINARY RESOLUTION SANCTIONING COMPROMISE—COMPANIES ACT, 1862 (25 & 26 VICT., C. 89) S. 160—(R.S.C. C. 129, S. 61).

In *Cycle Makers' C. S. Co. v. Sims*, (1903) 1 K.B. 477, an action was brought by the liquidator of a company in voluntarily liquidation to recover a debt of £50 due to the company. The debtor was impecunious and the liquidator compromised the action for £14. Subsequently the company was ordered to be compulsorily wound up, and another liquidator was appointed and he brought the present action, claiming that the compromise was invalid because it had not been sanctioned by a resolution of the company as required by s. 160 of the Companies Act, 1862, and the Judge of the County Court held that the plaintiffs were entitled to judgment for £36. On appeal, however, the Divisional Court (Lord Alverstone, C.J., and Wills, and Channell, JJ.) reversed his decision, holding that the sanction of a resolution was not essential to the validity of the compromise which had been acted on for two years. The Divisional Court, moreover, pointed out that so long as the de facto compromise stood, a second action was not maintainable for the same debt, and that in any case it would be necessary first to set aside the compromise before a second action could be brought. According to the procedure in Ontario it would seem that the validity of the compromise might be attacked in the action in which it was made.

BILL OF EXCHANGE—PROMISSORY NOTE—JOINT AND SEVERAL—PROVISION AS TO GIVING TIME—BILLS OF EXCHANGE ACT, 1882 (45 & 46 VICT., C. 61) S. 83.

Kirkwood v. Carroll, (1903, 1 K.B. 531, was an action brought to recover from the defendants £125 as a makers of joint and several promissory note. The note in question contained a provision: "No time given to, or security taken from or composition or arrangement entered into with either party hereto shall prejudice the rights of the holder to proceed against any other party." The document was duly stamped with the revenue stamp payable on a promissory note, but the defendants contended that by reason of the above-mentioned stipulation the document was not a promissory note and was invalid for want of being duly stamped. Wright J., on the authority of *Kirkwood v. Smith* (1896) 1 Q.B. 582 (noted ante vol. 32, p. 504) held that the document was