such wide powers to a committee of the Bench. He hoped that the House would not at once give its sanction to the rules, and begged to move—That an address be presented to Her Majesty, praying that the Rules of the Supreme Court of Judicature, 1883, may be annulled."

# REPORTS

## *ONTARIO.*

(Reported for the LAW JOURNAL.)

### IN THE FIRST DIVISION COURT OF THE COUNTY OF YORK.

PHŒNIX MUTUAL INSURANCE COMPANY v. DEANS.

*Mutual Insurance Company—Winding up proceedings—Qualification of directors—Assessment.*

An order for winding up under 41 Vict. (Ont.) cap. 5, having been taken out to wind up a Mutual Fire Insurance Company,

*Held*, that the validity of these proceedings could not be questioned in a collateral proceeding, e.g. in a suit upon one of the undertakings at the instance of the liquidator.

The qualification of the directors being questioned,

*Held*, that they were qualified, and that a director could qualify upon a policy covering partnership property, as each partner had an insurable interest to the full extent of the value of the firm's stock-in-trade.

*Quære*, whether the qualification of the directors could be questioned, after a resolution of contributories had conferred express powers to levy assessments on the *Board of Directors*, and whether an assessment by a *de facto* board would not suffice.

The assessment was for the whole of all balances existing upon all undertakings held by the Company.

*Held*, proportionate and valid.

*Held*, that previous irregular assessments would not invalidate the final assessment if the effect of irregularity would not decrease the amount called for by the final assessment.

[Toronto. Sept. 5, 1883.

The facts of the case fully appear in the judgment of

MCDOUGALL, J. J.—This is an action brought by the Phœnix Mutual Insurance Company—a Company incorporated under the provisions of R. S. O., cap. 161, and having its head office in Toronto—against the defendant to recover $34.12 upon an undertaking given by the defendant, when he effected an insurance in the plaintiff company.

It appears from the evidence adduced at the trial that the plaintiff company is being wound up by proceedings taken under the provisions of 41 Vict., cap. 5, Ont.; and an order dated 3rd March, 1882, directing the winding up of the company, was proved and filed.

It appears that after the granting of the order in question, a special general meeting of the members of the company was held, pursuant to notice, on 21st March, 1882, at which meeting a liquidator, Mr. O. R. Peck, was duly appointed (see 41 Vict., Ont., cap. 8, sec. 8, sub-sec. 4). Certain other resolutions were passed at the same general meeting, amongst others one, conferring upon the directors certain limited powers pursuant to sec. 8, sub-sec. 6 of the Act, which resolution is in following words :—Moved by John Downey, seconded by Charles Nelson, "That, notwithstanding the appointment of a liquidator, the powers of the Board of Directors under secs. Nos. 27, 47, 56, and 63 of the Mutual Insurance Act statutes, Ontario, cap. 161, shall be continued."

Acting, it is alleged, under the powers conferred by this resolution, the directors at a subsequent board meeting held for that purpose, (and at the request of the liquidator) made a general assessment upon all the undertakings and premium notes, held by the company, which assessment, it appears from the evidence, was a call for the entire balance outstanding upon each and every premium note and undertaking in the hands of the company, at the date of such assessment, 21st April, 1882, and amongst the undertakings so assessed was the undertaking signed by the defendant. This assessment not having been paid by the defendant and others, the liquidator has commenced a number of actions in the First Division Court of the County of York in the name of the plaintiff company (see sec. 9, sub-sec. 1 of the Winding up Act) to recover the same.

The principal objections may, I think, be summarized as the following :

1. That the provisions of the Winding up Act do not apply to this Insurance Company, because the plaintiff company is virtually, if not actually, insolvent. The Act, it is urged, is only intended to apply to the case of a solvent