

[Re Stubbins, 17 Ch. D. 58, and Ex p. Taylor, 18 Q. B. D. 295, distinguished; Ernest v. Cloydell, 2 De G. F. & J. at p. 198, and Molsons Bank v. Halter, 18 S. C. R. 88, referred to.]

Whatever might be the rights of the cestuis que trust as against the bank—as to which Foxton v. Manchester and Liverpool District Building Co., 44 L. T. N. S. 406, might be referred to—the payment to Hamilton was such a payment as sec. 99 of the Winding-up Act declares to be void.

In this view it was unnecessary to decide the other question raised, viz., whether the impeached transaction took place after the commencement of the winding-up, and, if it did, whether, by reason of that, the transaction, though not open to attack under the provisions of sec. 99, ought to be set aside.

The Chief Justice, however, pointed out the difference between sec. 153 of the English Act and sec. 21 of the Dominion Act, as to transactions entered into after the commencement of the winding-up; and also that by sec. 20 of the Dominion Act it is only from the time of the making of the winding-up order that the company are to cease to carry on their business, except for the purposes which the section mentions; and that by sec. 31 it is only upon the appointment of the liquidator that the powers of the directors cease.

Appeal dismissed with costs.

DIVISIONAL COURT.

OCTOBER 14TH, 1909.

CLUFF v. NORRIS.

*Partnership — Dissolution — Liabilities — Discharge of Retiring Partner—Acceptance of New Firm as Debtors—Conduct of Creditors—Novation—Findings of Fact—Appeal.*

Appeal by the defendant Norris from the judgment of RIDDELL, J., in favour of the plaintiffs, in an action brought against the appellant and one Lockhart, against whom the plaintiffs had obtained judgment by default, to recover \$608.44 for goods sold and delivered by the plaintiffs to the appellant and Lockhart, who carried on business in partnership as plumbers, and \$13.90 for interest, less \$193.10, for which credit was given, made up of \$50 paid on account on the 10th July, 1906, and two dividends received from the assignee of the estate of Norris & Lockhart, a partnership consisting of the defendant Lockhart and E. J. K. Norris, a brother of the appellant, who executed an assignment for the benefit of creditors on the 14th August, 1906.