

fixed at the time of their appointment, as notice of an application for that purpose seems to be required, and it would in any case be difficult to decide such a matter in advance; but the Court adopted the suggestion of the meetings as to the proportions in which the several liquidators should share the remuneration to be allowed.

As to the costs of the contest the learned judge, following the rule laid down in *Re London and Northern Insurance Co.*, 19 L. T. N. S. 144,

Held, that one set of costs should be allowed to the shareholders and one to the creditors appearing on the petition, not including, however, any costs occasioned by the contest, and that costs must also be allowed to the Bank and to the petitioning creditor, those of the latter to include all reasonable disbursements connected with the holding of the meetings.

Re The Commercial Bank of Manitoba 342

2. *Company—Petition for winding up order—Allegation of insolvency—When Company insolvent within the meaning of The Winding Up Act—Pleading assignment of a chose in action.*—In a petition for an order against a company under The Winding Up Act, R.S.C. c. 129, the petitioner alleged that the Company "is insolvent and utterly unable to pay your petitioner's said debts and its other debts."

Held, that this was not equivalent to stating that the Company was "unable to pay its debts as

they became due," and was not a sufficient allegation of the Company's insolvency within the meaning of section 5, sub-section *a* of the Act, and that the petition must be dismissed with costs.

The petitioner's claim was based on a judgment alleged to have been recovered by another person, and acquired by the petitioner, of which he "is now the *bona fide* holder and owner."

Held, a sufficient statement of the claim of the petitioner, without an allegation that the judgment had been assigned by an instrument in writing.

Re Rapid City Farmers' Elevator Co. 571

3. *When company deemed to be insolvent—Proof of insolvency under The Winding Up Act.*—In supporting a petition for an order against a company under The Winding Up Act, R.S.C. c. 129, it is not sufficient to show that several demands of payment have been made by the creditor without success, unless a demand in writing has been served on the Company in the manner in which process may legally be served on it, under section 6 of the Act; nor can the Company be deemed to be insolvent within the meaning of the Act, because an execution has been returned *nulla bona* by a County Court bailiff.

The provisions of sections 5 and 6 of the Act are exclusive, and a petitioner for a winding up order must strictly prove the existence of one or more of the circumstances there set forth, or his petition will be dismissed.