

16 Sol. J. 517; Re Commercial Bank of Manitoba, 10 Man. L. R. 187. No technical effect should be given to the mere fact of there being a winding-up order. R. S. C. ch. 124 defines terms upon which deposits are to be made and their application, and deposits are segregated from the general assets of a company and set apart for the purposes defined in sec. 107 of R. S. C. ch. 129.

W. B. Raymond, for foreign liquidator. The company is insolvent. The winding-up order of May, 1900, so expressly declares, and it has not been appealed from. The ordinary rules do not govern this case, but those do which apply to liquidation of companies: Ex p. Furneaux, 2 Cox Eq. Cas. 219; Re Intercolonial Contract Co., L. R. 13 Eq. 623; Rawlins & MacNaghten's Company Law, p. 379. The deposit is an asset of the insolvent company, sent from its head office in Galesburg, Illinois, and the American policyholders will not be paid in full.

J. McBride, for Canadian liquidator.

FALCONBRIDGE, C.J.—This is a case in which a jury could and should have allowed interest at the legal rate. The rule as to interest in insolvency cases does not apply here, the question being simply one as to the application of the deposit under the terms of sec. 107. The company, being able to pay in full, should do so. Appeal allowed. Costs of all parties out of fund.

MAY 29TH, 1902.

DIVISIONAL COURT.

SHERLOCK v. WALLACE.

*Deed—Absolute in Form, but Intended as Collateral Security—Redemption—Waiver—Counsel at Trial—Mistake.*

Appeal by plaintiff from judgment of FERGUSON, J., ante p. 54.

T. W. Crothers, St. Thomas, for plaintiff.

J. M. McEvoy, London, and W. A. Wilson, St. Thomas, for defendants.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J., who said that, upon the findings below, the plaintiff was entitled to redeem upon payment of what was due upon the security, and that there must have been a misunderstanding as to the concession of counsel that, if the Judge thought that plaintiff had no right to profits, the action should be dismissed. The evidence shews that the counsel meant that the question of profits was the question to be determined at the trial, and not that he meant to waive the