The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

A. Cohen, for the appellants.

A. McLean Macdonell, K.C., for the defendants, respondents.

RIDDELL, J., delivering the judgment of the Court, said that the judgment pronounced at the trial directed the defendants the Kenderdine Realty Company Limited to pay all moneys received or to be received by them in connection with the business matters and transactions of the Welland Industrial Reserve Syndicate into a named bank, to the credit of the said company, less all expenses, including proper payments to the Trusts and Guarantee Company Limited, necessary to obtain discharges of mortgages in reference to parcels of land sold, and less all necessary expenses to the collection of such moneys, including agents' commissions, and that the said company should not withdraw any of the said moneys therefrom, or should pay the same into Court. In the endorsement on the writ of summons and in the statement of claim, the appointment of a receiver was asked, but was not directed in the judgment.

The motion before MIDDLETON, J., was made after judgment, reference, and report, and was for the appointment of a receiver; that motion was refused; and RIDDELL, J., said that the Court agreed that no ground for the appointment of a receiver could, in this action, be at present urged which existed at the time of the trial or the commencement of the action.

But it was urged that since the trial the defendants were at fault, because they had (admittedly) failed to pay into the bank the moneys received before the trial.

There is no doubt as to the power of the Court to appoint a receiver at any stage of the action and for any sufficient cause; and the Court will do so in a partnership action upon a proper case being made out: Evans v. Coventry (1854), 3 Drew. 75, 82, 5 D. M. & G. 911; Estwick v. Conningsby (1682), 1 Vern. 118; Young v. Buckett (1882), 30 W.R. 511; Baldwin v. Booth, [1872] W.N. 229; Jefferys v. Smith (1820), 1 J. & W. 298; Chaplin v. Young (1862), 6 L.T.N.S. 97; Hall v. Hall (1850), 3 Macn. & G. 79, 86; Const v. Harris (1824), Turn. & Russ. 496, 253.

If this were a wilful default, the Court would appoint a receiver and manager, notwithstanding the serious effect upon the undertaking; but, as the neglect appeared to have been due to a misunderstanding of the direction of the Court, the defendants should have an opportunity to put themselves right by paying the money into the bank as ordered.