BANKRUPTCY—PROVABLE DEBT—LIABILITY CAPABLE OF BEING ESTIMATED—ANNUITY SUBJECT TO CONDITION.

Victor v. *Victor* (1912) 1 K.B. 247. In this case the action was brought to recover the amount of an annuity payable by the defendant to the plaintiff under a covenant contained in a separation deed. The deed was made in 1905 and the deed provided that if the parties resumed cohabitation the covenants were to be void. In 1911 the defendant was adjudicated bankrupt, the plaintiff did not prove her claim. In these circumstances the Court of Appeal (Cozens-Hardy, M.R., Moulton and Farwell, L.JJ.), overruling the judgment of Darling, J., held that the debt was one that which might have been proved in the bankruptcy and therefore that the action was not maintainable. The court distinguished the claim from one for alimony payable under the decree of a court; because the latter is from time to time subject to be varied, having regard to the circumstances of the husband and the whole conditions of the case, which has been held to be a claim which is not provable in bankruptcy.

PRACTICE—APPLICATION FOR SUMMARY JUDGMENT UNDER RULE 115 (ONT. RULE 603)—AFFIDAVIT OF CLAIM—DEPONENT UNABLE TO SWEAR POSITIVELY TO FACTS—ABSENCE OF JURISDICTION—COSTS OF ABORTIVE MOTION.

Symon v. *Palmer* (1912) 1 K.B. 259. This was an application for a summary judgment under Rule 115 (Ont. Rule 603). The English Rule requires that the affidavit verifying the plaintiff's cause of action is to be made by the plaintiff "or by any other person who can swear positively to the facts." The affidavit in the present case was made by the manager of the plaintiff's business and was made on information and belief. The defendant filed no answer. Bucknill, J., gave leave to sign judgment, but on appeal the Court of Appeal (Williams and Buckley, L.JJ., Kennedy, L.J., dissenting), held that the affidavits did not comply with the rule and that the motion must be dismissed, and that the costs of the motion were payable by the plaintiff forthwith. We may note that in a recent case of *Perrin* v. *Fouriezos*, before the Divisional Court (the Chancellor and Latchford and Middleton, JJ.), on 8th February last, the court in a similar state of facts held the affidavit to be sufficient. The above case had not then appeared.